

# NEW JERSEY



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## THE JOURNAL OF STATE AGENCY RULEMAKING

### VOLUME 20 NUMBER 4

February 16, 1988 Indexed 20 N.J.R. 321-434

(Includes adopted rules filed through January 22, 1988)

**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: DECEMBER 21, 1987**

See the Register Index for Subsequent Rulemaking Activity.

**NEXT UPDATE: SUPPLEMENT JANUARY 19, 1988**

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**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **March 17, 1988**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## NEW JERSEY REGISTER

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

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The New Jersey Register (ISSN 0300-6069) is published the first and third Monday (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, \$75 (\$150 by First Class Mail); back issues when available, \$8 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to: New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in Trenton, New Jersey and additional mailing offices.

*The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by OAL Publications of the Office of Administrative Law. Subscription rates for this 39-volume, regularly updated set of State administrative rules are available on request. The Code is sold either in the full set or in one to four volumes depending on the Department coverage desired.*

# RULE PROPOSALS

## AGRICULTURE

### (a)

#### DIVISION OF MARKETS

#### New Jersey Sire Stakes Program

**Proposed Amendments: N.J.A.C. 2:32-2.1, 2.3, 2.5, 2.10, 2.12, 2.13, 2.14, 2.19, 2.20, 2.22, 2.25, 2.27 and 2.33**

**Proposed Repeal: N.J.A.C. 2:32-2.8**

Authorized By: Sire Stakes Board of Trustees; and  
Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 5:5-91.

Proposal Number: PRN 1988-79.

Submit comments by March 17, 1988 to:

Bruce A. Sterns, Executive Director  
Equine Industry Programs  
State Department of Agriculture  
Division of Markets  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-8830

The agency proposal follows:

#### Summary

The New Jersey Sire Stakes Program is a 16 year old program which has given the State of New Jersey prominence in Standardbred horse breeding. In 1987, the Program rules were substantially reworded to follow the actual course of events in the season.

Substantive changes in the rules are proposed for 1989. These changes include scheduling and more flexible first year allowances for some other registration problems, stallion registration, more races and the reduction of some starting times, to reflect the conditions of racing as it has improved.

#### Social Impact

The Sire Stakes Board of Trustees sees little if any new or additional social impact to the participants except to increase the number of starters by building more registration flexibility into entry. The reduction in starting times is a reflection and tribute to the quality of horses being raced in New Jersey and the reduction should not disqualify any competitive classes of horses from a race.

#### Economic Impact

The proposed amendments should result in a positive economic impact on Sire Stakes Program participants as the changes were made to conform the rules to the improved condition of racing in New Jersey. The only proposed increases in monetary outlay by participants are in N.J.A.C. 2:32-2.12(b), requiring assessment of a \$1,000 penalty prior to granting three-year-old season eligibility to a horse whose owner failed to make the first sustaining payment for its two-year-old season after making the nomination payment, and N.J.A.C. 2:32-2.13, which increases the dishonored check administrative fee from \$25.00 to \$50.00. Liability for both the penalty and the fee is within the control of Program participants.

#### Regulatory Flexibility Statement

Many of the participants in the Sire Stakes Program are small businesses by definition of the Regulatory Flexibility Act, P.L. 1986, c.169 and as such an analysis is appropriate.

The test of any promotion program is to provide fair and equal opportunity to participate with a minimum cost, to prevent cheating and ensure an improvement of the breed. To this extent, rules are needed to ensure an honest improvement. The purpose of the Sire Stakes Program is to provide competitions for the Standardbred horses that are at once challenging enough to improve the breed and open enough to encourage the maximum participation of all possible Standardbreds, with a reward of significant size to make it worthwhile to do so.

The Sire Stakes Board of Trustees is aware of the facts of the industry it regulates. The total value of the 9,000 plus Standardbred stallions and race horses in New Jersey exceeds \$84 million. Standardbred owners, breeders and trainers put \$33 million of expenses into the economy each

year and realize about \$35 million worth of revenue. Individually, it costs approximately \$15,000 per year to keep a race horse but the purse revenues are only \$14,000.

While the Sire Stakes Board of Trustees could raise entry fees to increase rewards, it must balance this method against helping to make a more profitable climate for the keeping of horses in New Jersey. To raise fees would discourage many small participants. The alternative is for the Legislature to supply either increased race track revenues through a change in the funding formula of the percentages deducted by statute, which the Sire Stakes Board has asked the Legislature to do, or supply more money for awards from the general revenues.

The Sire Stakes Program, by providing 365 races at both pari-mutuel and fair tracks, provides over \$6 million in purse money and another \$3 million in restricted races for New Jersey sired performers. The Program has continued to grow despite its funding problems. The number of small businesses participating in the Program has increased each year. Therefore, the Sire Stakes Board of Trustees believes the program is beneficial to the small businesses of the Standardbred industry based on the continuing and increasing numbers of small business participants.

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

#### SUBCHAPTER 2. NEW JERSEY SIRE STAKES CONDITIONS

##### 2:32-2.1 Adoption of by-laws

(a) The by-laws of the New Jersey Sire Stakes Board of Trustees are hereby adopted as follows:

1. (No change.)

2. Those horses eligible to race under the Sire Stakes Program shall be any foal of any registered New Jersey stallion standing at a New Jersey breeding farm and either owned by a resident of the State of New Jersey or leased by a resident thereof for a period of not less than 10 years to stand the full season on a New Jersey breeding farm. A copy of any such lease shall be filed with [the United States Trotting Association,] the Standardbred Breeders and Owners Association of New Jersey[,] and the New Jersey [Racing Commission] **Sire Stakes.**

3.-15. (No change.)

##### 2:32-2.3 Registration of stallions

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

[(c) The registration must be returned by December 1st for stallions that have previously registered and/or stood in New Jersey, and December 1st for any new stallions, with a certificate of good health enclosed. The certificate of good health must be completed by a licensed New Jersey veterinarian during the months of October or November which precede the approaching breeding season for which the registration is issued.]

**(c) The registration must be returned by December 1. The Certificate of Good Health must be completed by a licensed New Jersey veterinarian on the farm where the stallion is standing, between January 1 and January 21 of the year the stallion is registered and standing. The Certificate of Good Health, when signed by the veterinarian, is to be sent along with a copy of the EIA-AGID test chart to the Director of Animal Health, New Jersey Department of Agriculture, CN 330, Trenton, New Jersey 08625.**

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

##### 2:32-2.5 [Certificate of mating] **List of mares bred**

When a mare is bred to a New Jersey registered stallion, the stallion owner must supply the New Jersey Standardbred Breeders and Owners Association, the New Jersey Sire Stakes, and the United States Trotting Association a list of mares bred, on a form prescribed by the Sire Stakes Board of Trustees, stating that the mare has been bred to said stallion. The certificate is to be supplied by September 15 of the breeding season.

##### 2:32-2.8 [Number of Sire Stakes races] **(Reserved)**

[A minimum of seven Sire Stakes Races per division will be conducted each year. The minimum total of seven includes both Fair and Pari-mutuel Division races.]

**AGRICULTURE**

**PROPOSALS**

2:32-2.10 Sustaining fees  
 In [1987] **1988**, the sustaining fee schedule will be as follows:

PARI-MUTUEL DIVISION		
Age	First Sustaining Fee	Second Sustaining Fee
2	\$300.00 (Feb. 15)	\$500.00 (Apr. 15)
3	\$350.00 (Feb. 15)	\$600.00 (Apr. 15)
4	\$250.00 (Feb. 15)	\$400.00 (Apr. 15)

FAIR DIVISION		
Age	First Sustaining Fee	Second Sustaining Fee
2	\$100.00 (Jan. 15)	\$150.00 (Mar. 15)
3	\$100.00 (Jan. 15)	\$150.00 (Mar. 15)
4	\$100.00 (Jan. 15)	\$150.00 (Mar. 15)

2:32-2.12 Eligibility  
 (a) In order for Sire Stakes eligible two-year-old horses to remain eligible as three-year-olds, their owners must have made the yearling nomination and the first two-year-old sustaining payment. In order for eligible three-year-old horses to remain eligible as four-year-olds, their owners must also have made the first three-year-old sustaining payment as well as the nomination and the first two-year-old sustaining payment. This condition applies to both the Fair and Pari-mutuel Divisions.

(b) A two-year-old's owner who makes the nomination payment but fails to make the first sustaining payment in either the Fair or Pari-mutuel Program may regain his or her horse's eligibility for its three-year-old season by payment of a penalty of \$1,000 plus the amount of the first sustaining payment within 30 days of the original due date of the payment. The horse will not be eligible to compete as a two-year-old in the program to which the payment was missed but will be able to compete as a three-year-old provided those payments are made in a timely fashion.

2:32-2.13 Dishonored checks  
 An individual whose check for a sustaining payment, nominating payment, or starting fee is dishonored by the bank will be turned over to the New Jersey Racing Commission for appropriate action and the horse or horses will be immediately declared ineligible for all future Sire Stakes events until the check is made good. A [\$25.00] **\$50.00** administrative fee must be paid for each dishonored check.

2:32-2.14 No cash or partial payments  
 The New Jersey Sire Stakes Program will accept no cash payment on nominating and sustaining payments. All fees [will] **must** be paid in [good] United States funds. No post-dated checks or partial payments on a nominating, sustaining, or entry fee will be accepted on individual horses.

2:32-2.19 Entry fee deadlines  
 (a)-(c) (No change.)  
 (d) The starting fee will not be refunded unless the horse dies between the time of declaration [to start] and the start of the race.  
 (e) When an owner has outstanding debts owed to the New Jersey Sire Stakes, every horse owned in whole or part by that owner shall be subject to be declared ineligible by the Board of Trustees or its representatives to be entered or to start in any New Jersey Sire Stakes Race until such time that debt is collected.

2:32-2.20 Starting fees  
 Starting fees will be added to the basic purse only in Fair and Pari-mutuel series races. Starting fees for the [1987] **1988** season will be:

Pari-mutuel Division		Fair Division	
2 year olds .....	\$500.00	2 year olds .....	\$75.00
3 year olds .....	\$500.00	3 year olds .....	\$75.00
4 year olds .....	\$200.00	4 year olds .....	\$75.00

2:32-2.22 Qualifying standards  
 (a) All starters in the New Jersey Sire Stakes Pari-mutuel Division must meet the following qualifying [conditions] **standards** for the [1987] **1988** racing season.  
 1. (No change.)  
 2. The [1987] **1988** New Jersey Sire Stakes qualifying times at the Pari-mutuel tracks will be as follows:

		One Mile Track		5/8 Mile Track		1/2 Mile Track
Two-Year-Old Trot	[2:07]	<b>2:06</b>	[2:08]	<b>2:07</b>	[2:09]	<b>2:08</b>
Three-Year-Old Trot		2:03		2:04		2:05
Four-Year-Old Trot		2:02		2:03		2:04
Two-Year-Old Pace		2:03		2:04		2:05
Three-Year-Old Pace		2:01		2:02		2:03
Four-Year-Old Pace		2:01		2:02		2:03

NOTE: When racing at the mile track, two seconds are allowed off the half mile, but when racing on a 1.2 mile track, two seconds are subtracted.

3.-4. (No change.)  
 (b) All starters in the New Jersey Sire Stakes Fair Division must meet the following conditions for the [1987] **1988** racing season.

1. All starters in the New Jersey Sire Stakes Fair Division shall have raced within 30 days of the race in which they have been entered. A three-year-old shall show a satisfactory racing line in one of their last two starts. A two-year-old shall show a satisfactory racing line in one of their last three starts. A satisfactory racing line is defined as a qualifying or racing line in the following times or better with allowances for track conditions.

	Trotters	Pacers
Two-Year-Olds	2:12	2:10
Three-Year-Olds	2:10	2:08
Four-Year-Olds	2:09	2:07

2. In the event a horse competes in an uncharted race or races, he will be eligible to race in the Fair Program provided he has a satisfactory charted line within 30 days.

3. Horses may be placed on the stewards list for subsequent poor performance.

2:32-2.25 Eligibility papers  
 [In any case] (a) At a fair track where a horse is entered to race and his eligibility papers are not available at post time, said horse will be ordered scratched by the presiding judge. If, however, the New Jersey Sire Stakes Race Secretary or a New Jersey Sire Stakes Official has signed for or accepted the trainer's eligibility papers, and the papers are subsequently lost, the horse may be allowed to start.  
 (b) At a Pari-mutuel event, eligibility papers should be on file in the racing office or the horse may be ordered scratched by the presiding judge.

2:32-2.27 Final races  
 (a) There will be a two- and three-year-old "Final" race in each Pari-mutuel Division at the Pari-mutuel raceways as scheduled by the New Jersey Sire Stakes Board of Trustees. There will be a minimum \$10,000 Fair "Final" race in each Division for two- and three-year-olds. **Consolation races in the Pari-mutuel program may be scheduled at the option of the tracks and shall be conducted under track rules.**  
 (b)-(i) (No change.)

2:32-2.33 Dress requirements  
 Racing colors, helmet, and white pants, in accordance with the New Jersey Racing Commission rules, will be required to be worn by any person warming up a horse on a New Jersey fair track [one] **one and one-half** hours before post time. Violators will be subject to a fine or suspension.

**(a)**

**DIVISION OF RURAL RESOURCES**  
**State Agriculture Development Committee**  
**Acquisition of Development Easements**  
**Proposed New Rule: N.J.A.C. 2:76-6.16**  
**Proposed Amendments: N.J.A.C. 2:76-6.2, 6.5, 6.6, 6.9 and 6.15**  
 Authorized By: State Agriculture Development Committee,  
 Arthur R. Brown, Jr., Chairman.  
 Authority: N.J.S.A. 4:1C-5f.  
 Proposal Number: PRN 1988-72.

**PROPOSALS**Interested Persons see **Inside Front Cover****AGRICULTURE**

Submit comments by March 17, 1988 to:  
 Donald D. Applegate, Executive Director  
 The State Agricultural Development Committee  
 CN 330  
 Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The acquisition of development easements as provided for in the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 et seq. (P.L. 1983, c.32), is an effort to encourage the preservation of agricultural lands to protect the State's diminishing farmland resources. Landowners that satisfy the eligibility requirements, as provided in N.J.A.C. 2:76-6, may voluntarily apply to a county agriculture development board (board) to sell a development easement. The value of the development easement is determined through an appraisal and review process outlined in N.J.A.C. 2:76-6.8. Ultimately, the fair market value of the development easement shall be certified by the State Agriculture Development Committee (Committee). The actual purchase of the development easement occurs by a 50/50 cost-share between the State and the county and/or local government.

Once a development easement has been purchased, a Deed of Easement is recorded which permanently prohibits any non-agricultural development on the premises. The restriction runs with the land and is binding upon every successor to the land. Any areas which the landowner wishes to be exempt from the deed restrictions must be identified in detail prior to the appraisal process and excluded from the application.

The proposed new rule and amendments will allow residual dwelling site opportunities on the premises at a net density of up to one unit per 50 acres. Residual dwelling site opportunities are areas within which the Committee and the board shall permit the construction of a residential unit and other appurtenant structures. The residual dwelling site(s) shall be located within the premises and be exempt from the provisions of the deed restrictions. The number of residual dwelling site opportunities shall be determined by the board during its preliminary review of the application, but may not exceed a net density of one unit per 50 acres. The size of the residual dwelling site opportunity shall be two acres or the minimum residential lot size required by local municipal zoning, whichever is greater.

Under the proposed new rule and amendments, the entire premises shall continue to be appraised according to existing procedures and Committee policies. The value of the residual dwelling site opportunities shall be determined on a differential per acre value. The purchase price of the development easement shall be adjusted according to the landowner's acceptance or rejection of any residual dwelling site opportunities and the per acre fair market value of the development easement certified by the Committee. In summary, the Committee and the board will not purchase a development easement on the land allocated to the residual dwelling site opportunities.

Upon the request of the landowner to construct one (or more) of the residential units permitted according to the residual dwelling site opportunities allocated to the premises, the board and the Committee shall approve or disapprove the location of the residual dwelling site(s) based on how it (they) will affect the continued viability of the agricultural operation. Such consideration shall include but not be limited to: specific site limitations such as soils, topography and drainage; potential for clustering; and sufficient buffer from the remaining agricultural land.

**Social Impact**

The proposed new rule and amendments will have a positive social impact. Under the current procedural rule, landowners interested in selling a development easement and wishing to construct a residential unit must exempt a tract before applying to sell the development easement. This, however, has proved to be a time-consuming and costly process because of the prohibitive engineering and subdivision costs associated with designating such a site and has acted as a disincentive to enter the easement purchase program. Furthermore, exempting out tracts from the application does not meet the needs of landowners who wish to retain the ability to construct a residential unit for children, other family members or for future non-related owners of the farmland. Such decisions to locate a site are best left until the actual need to construct the residential unit arises. Because of this uncertainty, many current owners of farmland have not applied to sell a development easement for fear of being "locked in" to the physical layout of their current operation.

While the Committee determined in previous rule proposals and amendments that it should not encourage further residential development

on the premises for the purpose of providing a residence for someone who may or may not be operating the farm and that residential conversion of farmland should be minimized whenever possible, it also recognizes that the provision of additional residential units at an established low density not to exceed one unit per 50 acres will add substantial incentive for increased participation in the easement purchase program while effectively preserving the majority of the farmland in the application.

Current owners of farmland will not be forced into trying to predict the residential needs of their families at some time in the future. Nor will the physical layout of their current farming operation limit the future structural organization or economic viability of subsequent agricultural uses and operations on the same deed restricted land. For these reasons, residual dwelling site opportunities will provide greater long range planning flexibility for current farmland owners, with a cumulative effect of more farmland entered into the easement purchase program.

Under the proposed new rule and amendments, the Committee and board will continue to retain the right to give final approval to the location of new residential structures as well as to any subdivision of the premises to ensure that the resulting farm operation(s) is (are) a viable agricultural unit(s).

**Economic Impact**

The proposed new rule and amendments will have a positive economic impact on the agricultural industry and on participation in the easement purchase program. Landowners will retain the right to develop a small portion of their property at some future time, but be able to delay decisions regarding the exercising of residual dwelling site opportunities allocated and the location of residential structures which would not be an integral part of their existing operation until a time when such decisions may be appropriate. Landowners will not be compensated for the development easement on that portion of their property. Through this incentive, the State will see more and more farmland permanently preserved from nonagricultural development through the easement purchase program.

While the Committee recognizes that the value of the restricted "after" value of the farm may be enhanced by the presence of residual dwelling site opportunities, it is extremely difficult to determine precisely the full extent of such an economic impact. Under ordinary circumstances, the value of a residual dwelling site would be determined according to the current fair market value of a standard minimum sized building lot according to the existing zoning regulations. However, numerous factors complicate the typical appraisal and valuation of residential building sites whose size and location remain unknown until an undetermined future date. These factors include the changing desires and residential needs of the landowners, evolving municipal land use regulations, and the rise and fall of the value of building lots in a given area over time. Because of these uncertainties, the Committee feels the most acceptable method of determining the value of the development easement is to adjust its total value according to the per acre value of the development easement certified by the Committee and the acreage of the total residual dwelling site opportunities allocated to the property.

**Regulatory Flexibility Statement**

The majority of the land potentially subject to development easements is owned by small businesses, as that term is defined in the Regulatory Flexibility Act, P.L. 1986 c.169. The proposed new rule and amendments benefit such landowners by providing residential dwelling site opportunities on land subject to development easements which would otherwise prohibit such opportunities. Since the allocation of residual dwelling site opportunities is determined by an appropriate board from the application submitted by a landowner seeking to sell a development easement, no expenditures beyond those involved in the easement application are contemplated for the landowner in obtaining residual dwelling site opportunities. While acceptance by the owner of such opportunities may reduce the purchase price of the development easement, the acceptance or rejection of the opportunities is completely at the landowner's discretion. The actual economic impact upon the landowner shall be based more upon when or if the opportunities are exercised than upon their existence alone. Upon exercise of the residual dwelling site opportunities, the landowner shall incur subdivision, engineering and construction costs as appropriate for the dwelling.

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

2:76-6.2 Definitions

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

“Residual dwelling site opportunity” means an area, a minimum of two acres in size or the area required for a building lot as identified by municipal zoning, whichever is greater, upon which the committee and the board shall permit the construction of a residential unit and other appurtenant structures. Construction on a residential dwelling site shall be expressly limited to such a residential unit and other appurtenant structures.

2:76-6.5 Preliminary board review

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

(c) The board shall review the application pursuant to N.J.A.C. 2:76-6.16 and inform the landowner of the permitted number of dwelling site opportunities available on the premises.

[(c)](d) The board shall, concerning an application submitted in accordance with N.J.A.C. 2:76-6.4(b) and which has received preliminary board approval, enter into an option agreement with the landowner. The option agreement shall:

1. Contain the deed restrictions identified in N.J.A.C. 2:76-6.15;
2. Clearly identify the number of dwelling site opportunities authorized under N.J.A.C. 2:76-6.16; and
3. Contain the deed restriction identified in N.J.A.C. 2:76-6.16(c).

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

2:76-6.6 Preliminary committee review

(a) (No change.)

(b) The committee shall review the application to ensure that residual dwelling site opportunities have been allocated in accordance with the provisions of N.J.A.C. 2:76-6.16.

[(b)](c) (No change in text.)

2:76-6.9 Final board review

(a) The board shall inform the landowner of the fair market value certification and shall proceed to negotiate a purchase price of the development easement with the landowner. In no case shall the committee make a grant to the board for more than 50 percent of the fair market certification.

1. The purchase price of the development easement shall be adjusted according to the landowner's acceptance or rejection of any residual dwelling site opportunities authorized pursuant to N.J.A.C. 2:76-6.16.

2:76-6.15 Deed restrictions

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

(d) The deed restriction contained in N.J.A.C. 2:76-6.16(c) shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities.

2:76-6.16 Residual dwelling site opportunity

(a) Residual dwelling site opportunities shall be allocated to the premises pursuant to the following conditions:

1. The number of residual dwelling site opportunities shall be allocated at a density of one per 50 acres. This density shall include any existing residential units or any proposed units which have received final municipal approval on the premises at the time of the landowner's submission of an application to sell a development easement to the board.

2. A landowner may reject the allocation of a residual dwelling site opportunity in exchange for the fair market value of the development easement on the respective parcel.

(b) The final purchase price of the development easement shall be adjusted on a per acre basis by the area occupied by the allocated residual dwelling site opportunities and the per acre fair market value of the development easement certified by the committee.

(c) The following restriction shall be incorporated in the deed of easement when there has been an award of one or more residual dwelling site opportunities:

( ) residual dwelling site opportunities, each consisting of ( ) acres, have been allocated to the premises pursuant to the provisions of N.J.A.C. 2:76-6.16. Upon the Grantor exercising a residual dwelling site opportunity, the location

of the site(s) shall be selected with the approval of the Grantee and the Committee pursuant to standards established by N.J.A.C. 2:76-6.16(d). Once selected, the site(s) shall be identified by a legal metes and bounds description and appropriately recorded as an addendum to this easement. The area occupied by the residual dwelling site shall be exempt from the terms and conditions of this easement. In the event a subdivision of the premises occurs in compliance with N.J.A.C. 2:76-6.15(a)13, any unexercised residual dwelling site opportunities shall be reallocated to the subdivided tracts as determined by the Grantee and the Committee. For the purpose of this easement, a residual dwelling site is an area upon which the committee and the board shall permit the construction of a residential unit and other appurtenant structures. Construction on a residual dwelling site shall be expressly limited to such a residential unit and other appurtenant structures.

(d) The board and committee shall approve or disapprove the location of a residual dwelling site based on how the residual dwelling site(s) will affect the continued viability of the agricultural operation. Such consideration shall include but not be limited to the following factors:

1. Site limitations: soils, topography, drainage, flooding and other related factors;
2. The potential for clustering; and
3. Maintaining a sufficient buffer from the remaining agricultural land.

## PERSONNEL

### (a)

#### MERIT SYSTEM BOARD

The following proposals are authorized by the Merit System Board, Peter J. Calderone, Assistant Commissioner, Department of Personnel.

Public hearings concerning the proposed amendments to N.J.A.C. 4A:1-1.3, 4A:6-1.3 and 4A:6-1.10, and proposed new rules 4A:4 will be held on the following dates:

March 8, 1988 at 5:30 P.M.  
Office of Administrative Law  
9 Quakerbridge Plaza, 1st Floor  
Trenton, New Jersey

March 15, 1988 at 5:00 P.M.  
Essex County College  
Lecture Hall 2131  
303 University Avenue  
Newark, New Jersey

March 17, 1988 at 5:30 P.M.  
Pennsauken Middle School  
Room 208  
8201 Park Avenue  
Pennsauken, New Jersey

Please contact Ms. Dolores Carvill at (609) 292-6568 if you plan to attend and wish to be included on the list of speakers.

Submit written comments by March 17, 1988 to:

Peter J. Calderone  
Assistant Commissioner  
Department of Personnel  
CN 312  
Trenton, N.J. 08625

#### General Rules and Department Organization Definitions

##### Proposed Amendment: N.J.A.C. 4A:1-1.3

Authority: N.J.S.A. 11A:2-6(d), 11A:4-1 and 11A:4-3.

Proposal Number: PRN 1988-82.

The agency proposal follows:

##### Summary

In the process of developing proposed new rules on Selection and Appointment, N.J.A.C. 4A:4, published in this issue of the New Jersey

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Register, the Merit System Board (Board) determined that certain terms used in that chapter required definitions. These terms are "closing date for examination," "filing date for examination," "title scope" and "unit scope." Thus, the Board proposes that these terms be defined in an amendment to N.J.A.C. 4A:1-1.3.

**Social Impact**

The proposed amendment to N.J.A.C. 4A:1-1.3 is not substantive. Its effect should be limited to making it easier to understand and use the rules found in Title 4A of the New Jersey Administrative Code.

**Economic Impact**

The proposed amendment should not have an economic impact on State and local government because the amendment is technical rather than substantive. As noted above, the effect of the amendment will be to facilitate the use of merit system rules.

**Regulatory Flexibility Statement**

A regulatory flexibility statement is not required because this proposal will have no effect upon small businesses.

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

**4A:1-1.3 Definitions**

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

...  
**"Closing date for examination"** means the date by which an applicant for an examination must meet all of the requirements contained in the examination announcement.

...  
**"Filing date for examination"** means the date by which an application for an examination must be received in the office designated in the announcement. When mailed, the filing date is the date by which a properly addressed application must be postmarked.

...  
**"Title scope"** means a defined group of job titles used as a factor in determining eligibility for promotional examinations. Title scope may also include educational, experience and other specific requirements.

...  
**"Unit scope"** means a defined part of a governmental agency used as a factor in determining eligibility for promotional examinations.

**(a)****Selection and Appointment****Proposed New Rules: N.J.A.C. 4A:4-1 through 4A:4-7****Proposed Repeals: 4:1-8, 4:1-9, 4:1-10.2 through 4:1-10.5, 4:1-11, 4:1-12, 4:1-13, 4:1-14, 4:1-15, 4:1-16.13; 4:2-6.3, 4:2-11, 4:2-13, 4:2-14.1, 4:2-15.1; 4:3-6.4, 4:3-11.1, 4:3-13.2 and 4:3-14**

Authority: N.J.S.A. 11A:2-6(d), 11A:2-11, 11A:2-12, 11A:2-13 through 11A:2-15, 11A:2-20, 11A:4-1 *et seq.*, 11A:7-13, 40A:14-127, 40A:14-12 and 38:23A-2.

Proposal Number: PRN 1988-69.

**Summary**

In response to the adoption of N.J.S.A. 11A:1-1 *et seq.* (the Civil Service Act), all of Title 4 of the New Jersey Administrative Code is being revised to incorporate changes made by the reform legislation and to reflect needed changes in language, organization and policy. In this proposal, N.J.A.C. 4:1-8, 4:1-9, 4:1-10.2 through 4:1-10.5, 4:1-11, 4:1-12, 4:1-13, 4:1-14, 4:1-15, 4:1-16.13, 4:2-6.3, 4:2-11, 4:2-13, 4:2-14.1, 4:2-15.1, 4:3-6.4, 4:3-11.1, 4:3-12, 4:3-13.2 and 4:3-14, rules that concern employee selection and appointment, are proposed for repeal and N.J.A.C. 4A:4-1 through 4A:4-7 are proposed to replace them.

Along with the other proposed subchapters, Subchapter 1 combines rules for both State and local government service in enumerating the types of appointments that may be made. N.J.A.C. 4A:4-1.1 (unclassified appointments), 4A:4-1.3 (career service appointments), 4A:4-1.5 (provisional appointments), 4A:4-1.6 (interim appointments), 4A:4-1.7

(temporary appointments) and 4A:4-1.8 (emergency appointments) all recodify existing types of appointments.

However, N.J.A.C. 4A:4-1.2 implements the statutory provision in N.J.S.A. 11A:3-3 creating a senior executive service in State service. N.J.A.C. 4A:4-1.4 codifies for the first time in rule form the conditional regular appointment, which permits a regular appointment in the competitive division of the career service to be made subject to the result of a challenge by a higher ranking eligible on a selection and appointment issue. N.J.A.C. 4A:4-1.5 provides that a provisional employee must be separated from the provisional title if that employee fails to apply for and take an examination that is announced following the provisional appointment. This section will encourage provisional employees to file for examinations in which they are genuinely interested and will help to reduce the number of persons serving provisionally, a primary goal of the civil service reform legislation. N.J.A.C. 4A:4-1.9 simplifies current rules on the return of employees to their permanent titles in State and local government service after serving pursuant to certain types of appointments referred to in the section. Finally, N.J.A.C. 4A:4-1.10 requires that all types of appointments must be approved by the Department of Personnel, and further requires that employees be notified of any personnel actions affecting them. Note that the reference to N.J.A.C. 4A:3 in proposed N.J.A.C. 4A:4-1.1(b) is to a chapter on Classifications, Compensation and Services, which the Department is developing for proposal, and that the reference to N.J.A.C. 4A:8-2 in proposed N.J.A.C. 4A:4-1.6(e) is to those new rules proposed in that August 3, 1987 New Jersey Register at 19 N.J.R. 1363(a).

Subchapter 2 covers competitive examinations. N.J.A.C. 4A:4-2.1 specifically concerns examination announcements and applications and provides for the form of notice of upcoming examinations, the content of the announcement, application deadlines and related issues. The forms that the examinations themselves will take are prescribed in N.J.A.C. 4A:4-2.2, which also permits the selection by the Department of Personnel of "subject matter specialists", in accordance with N.J.S.A. 11A:4-1d.

Criteria for the decision to hold open competitive examinations are found in N.J.A.C. 4A:4-2.3, which also sets the procedure for meeting residential and other announced requirements. The section also incorporates the statutory requirements that persons applying for the titles of Municipal Firefighter and Municipal Police Officer must be under 35 years of age as of the announced closing date to be eligible to be examined for those titles, with certain limited exceptions.

Promotional examinations are covered in N.J.A.C. 4A:4-2.4 through 4A:4-2.6. N.J.A.C. 4A:4-2.4 deals with promotional title scopes in local service, including in-series titles and situations where a promotion is to be made from the noncompetitive division of the career service to the competitive division. N.J.A.C. 4A:4-2.5 concerns promotional title scopes in State service. This rule divides promotional titles into the categories of professional, para-professional and non-professional, and defines the procedure for determining title scope, based on whether the promotion is within the same category or between categories. The section includes subsections on promotions from the noncompetitive division to the competitive division. Movement from a noncompetitive title to a competitive title with the same class code is treated, for purposes of this subchapter, as a promotion.

Finally, N.J.A.C. 4A:4-2.6 prescribes eligibility rules for promotional examinations in both State and local service. Four options have been presented for public comment regarding N.J.A.C. 4A:4-2.6(c), which concerns the use of out-of-title work for promotional examination eligibility or for credit on the promotional examination. One of the options will be selected by the Department for adoption. The first option contains a blanket prohibition. The second option provides for a general prohibition, but allows the Merit System Board to allow credit for out-of-title work in exceptional circumstances. The third option also contains a general prohibition, but sets standards and procedures for exceptions to be made at the second level of a disqualification appeal. Finally, the fourth option allows out-of-title work to be credited for promotional examination eligibility. The section also recognizes the special dilemma of persons who have been laid off or reemployed or who have accepted a voluntary demotion who wish to qualify for a particular promotional examination, and prescribes criteria pursuant to which such persons may be found eligible.

N.J.A.C. 4A:4-2.7 permits a promotion of an employee who has not taken a competitive examination if certain conditions, listed in the section, are met. Provisional appointment to the promotional position is no longer a condition.

Scheduling of both promotional and open competitive examinations is provided for in N.J.A.C. 4A:4-2.8 and permits persons arriving at the

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examination site within 30 minutes after the scheduled starting time to take the examination, with a limited exception in the case of oral examinations, and to have the full allotted time for the examination.

Make-up examinations are provided for in N.J.A.C. 4A:4-2.9, which permits the granting of a make-up for most types of examinations if the candidate shows within prescribed time limits that he or she has a reason recognized in the section for not being able to take the examination on the scheduled date and time. Unlike the current rule, prearranged vacation plans are only a valid reason for requiring make-up if the vacation is outside of New Jersey and not within any state that is geographically contiguous to New Jersey. The section also prescribes criteria for conditions under which make-ups may be held.

The provisions on conduct and security of examinations are found in N.J.A.C. 4A:4-2.10.

N.J.A.C. 4A:4-2.11 concerns the criteria considered in the determination of whether a candidate meets residence requirements for examination eligibility and codifies related concerns.

N.J.A.C. 4A:4-2.12 permits examination announcements for professional titles to include, through the professional qualifications substitution program, provisions for substituting applicable work experience for college degrees on a year-for-year basis.

Scores from The College Level Examination Program (CLEP) are acceptable for substitution for college credits required by examination announcements, as provided in N.J.A.C. 4A:4-2.13.

N.J.A.C. 4A:4-2.14 requires that a disabled or handicapped examination candidate must be afforded reasonable accommodations, upon request by the candidate, to make the examination physically accessible to the candidate, and further provides that a candidate may apply for an examination waiver where the candidate's physical or emotional condition may preclude the candidate from taking the examination.

Standards for examination rating, once an examination has been given to candidates for a particular title, are found in N.J.A.C. 4A:4-2.15.

Finally, N.J.A.C. 4A:4-2.16 provides a retention schedule for documents relating to the examination application, administration and scoring process and describes which of these documents must be open to public inspection.

Subchapter 3 includes rules on eligible lists. N.J.A.C. 4A:4-3.1 enumerates and describes the types of eligible lists that may be issued in competitive examination situations, instances where former permanent employees wish to be reemployed, and instances where permanent employees are laid off, laterally displaced or demoted in lieu of layoff.

The order of names on eligible lists is set out in N.J.A.C. 4A:4-3.2. This rule implements the changes made by N.J.S.A. 11A:4-8 regarding tied scores. The life span of each type of list is spelled out in N.J.A.C. 4A:4-3.3, which also provides grounds for the cancellation of lists in certain situations. The option of extending a list to a four year duration, as provided in N.J.S.A. 11A:4-b, is contained in this rule. N.J.A.C. 4A:4-3.4 provides for the revival of eligible lists by the Commissioner of Personnel if particular criteria are met. Provisions for the consolidation of eligible lists are found in N.J.A.C. 4A:4-3.5, which expands the scope of the current rule to permit consolidation by supplementing an incomplete list with another list for an appropriate title and combining of names of eligibles by scores, pursuant to N.J.S.A. 11A:4-4c. Instances where names may be added to eligible lists are provided for in N.J.A.C. 4A:4-3.6.

The sequence of priority of the different types of eligible lists is outlined in N.J.A.C. 4A:4-3.7, which provides a clearer statement of list priority than is found in the current rule.

Lastly, N.J.A.C. 4A:4-3.8 permits the Department of Personnel to correct eligible lists pursuant to certain prerequisites.

Subchapter 4 includes rules on the certification of names from eligible lists. N.J.A.C. 4A:4-4.1 sets out the procedures for determining when a certification of names from an eligible list is necessary. N.J.A.C. 4A:4-4.2 provides for the issuance of a certification by the Department of Personnel to the appointing authority, notification of the certification to the certified candidates, the entitlement of the appointing authority to a complete certification, the measures an appointing authority must take when an incomplete certification exists, and the requirement that an appointing authority appoint candidates from a complete certification. N.J.A.C. 4A:4-4.3 permits the Department of Personnel to authorize a certification from certain eligible lists under circumstances where an eligible list is unavailable or incomplete and where other criteria also are met.

A limit on the number of times a candidate may be certified to one appointing authority before the name must be withheld from a future certification to that appointing authority is found in N.J.A.C. 4A:4-4.4.

A certification that is limited to persons of a particular sex, religion or national origin may be issued if the appointing authority shows certain required facts and other information that establishes a bona fide occupational qualification (BFOQ), as set out in N.J.A.C. 4A:4-4.5. The section also includes a reference to appeal rights arising from such a BFOQ designation.

N.J.A.C. 4A:4-4.6 permits the certification of candidates who are on military leave at the time of certification and provides for the handling of related issues.

The removal of an eligible's name from a list is provided for in N.J.A.C. 4A:4-4.7, which is similar to the current rules in that it enumerates proper reasons for such removal. However, the section is also a clarification of the current rule because it incorporates part of N.J.S.A. 11A:4-11, which lists factors to be considered in determining whether an eligible's criminal record relates adversely to the employment sought and circumstances that must be present for an expungement of a criminal record to be an aid for an eligible.

N.J.A.C. 4A:4-4.8 requires an appointing authority to dispose of a certification at the appropriate time by one of the methods listed in the section. The "rule of three", which permits the appointing authority to appoint one of the top three eligibles from a list according to certain procedures, is found in the section. Criteria that the appointing authority must meet for an extension of time for certification disposal are also found in this section.

The limited circumstances under which the date of an eligible's appointment may be made after the expiration of a list are set forth in N.J.A.C. 4A:4-4.9.

N.J.A.C. 4A:4-4.10 permits the certification of additional eligibles where an eligible who has accepted employment is thereafter found to be unavailable.

Subchapter 5 provides rules on the working test period. N.J.A.C. 4A:4-5.1 includes a definition of the working test period and states to whom such a period is applicable. The duration of the working test period is laid out in N.J.A.C. 4A:4-5.2 and is set according to whether the appointment was made to State or to local service and whether the appointment was made to a law enforcement title. The requirement for a working test period progress report is set out in N.J.A.C. 4A:4-5.3. In contrast to prior rules, progress reports would be required in local service and law enforcement titles. Appeals concerning disciplinary actions against and separations of employees serving in a working test period are cross-referenced in N.J.A.C. 4A:4-5.4. Circumstances under which an employee who is serving in or has completed his or her working test period may be restored to an eligible list or a former title are found in N.J.A.C. 4A:4-5.5.

Subchapter 6 concerns the disqualification of applicants and appointees from examinations and appointments, and appeals that such persons may make from such determinations. This subchapter combines elements of several different existing rules to form one subchapter. This new subchapter will make it easier for applicants and others who are interested to understand an integral part of the merit system.

N.J.A.C. 4A:4-6.1 lists the reasons for a person's ineligibility for an examination or for appointment, possible alternatives to automatic ineligibility and the effective date of such ineligibility. Actions that may be taken against persons who are found to be disqualified are listed in N.J.A.C. 4A:4-6.2 and a complete description of appeal procedures from any such action are included in N.J.A.C. 4A:4-6.3.

N.J.A.C. 4A:4-6.4 combines three current rules on an examination candidate's review of an examination scoring key and of the candidate's own test paper, time periods within which the candidate may do so, and appeal rights for a candidate's challenge against the scoring key.

The two current rules on procedures for and appeals from a determination that a candidate is medically and/or psychologically unfit to perform the duties of a particular title are combined in N.J.A.C. 4A:4-6.5. Disqualification appeals on all matters other than those concerning medical and/or psychological unfitness and other than appeals described in other sections of Subchapter 6 are provided for in N.J.A.C. 4A:4-6.6.

Subchapter 7 deals with appointments and movement of employees not covered in the other subchapters.

N.J.A.C. 4A:4-7.1 consolidates several current rules regarding permanent voluntary transfers and temporary voluntary or involuntary transfers of employees. The rule provides, for the first time, that transfers need not be made "in title". However, when an employee is appointed to a different title upon transfer, the rule requires that appropriate promotional, lateral title change or voluntary demotion procedures be utilized. Further, the rule provides for notice to employees who are going to be transferred. Reassignments are covered in N.J.A.C. 4A:4-7.2. Unlike

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transfers, reassignments are in-title movements within the same organizational unit.

Relocation assistance may be available to permanent employees in State service pursuant to N.J.A.C. 4A:4-7.3. The rule implements the new statutory provision, N.J.S.A. 11A:4-16, by making assistance available to employees who have been transferred or reassigned. Such assistance may include, if the employee qualifies, a commutation allowance, reimbursement of one-time moving expenses, and a relocation allowance for certain rental situations or situations involving the sale and purchase of a new home.

N.J.A.C. 4A:4-7.4 delineates the rights of a permanent employee who is transferred or reassigned in layoff and promotional examination situations, while N.J.A.C. 4A:4-7.5 limits the possibility that an employee who is serving in his or her working test period will be transferred or reassigned, thereby increasing the stability of the new employee's work atmosphere.

Lateral title changes are covered in N.J.A.C. 4A:4-7.6, which defines the term and sets the conditions under which such a movement is appropriate, procedures to follow to effect the change and the consequences of a title change to a similar title and of a title change to a dissimilar title.

N.J.A.C. 4A:4-7.7 implements new statutory provisions found in N.J.S.A. 11A:4-16, restricting improper use of transfers, reassignments and lateral title changes.

N.J.A.C. 4A:4-7.8 provides for voluntary demotions, explains when an employee may retain permanent status and seniority, and describes how leave entitlements are affected.

Situations where an employee is appointed from an open competitive eligible list to a title in a different organizational unit within the same governmental jurisdiction are dealt with in N.J.A.C. 4A:4-7.9. This entirely new rule provides for the employee's new status, leave entitlements, salary requirements and regular reemployment rights.

The last section of this subchapter, N.J.A.C. 4A:4-7.10, concerns the criteria that an employee must meet for placement on a regular reemployment list after the employee has resigned, retired or been demoted.

**Social Impact**

The proposed new rules include numerous technical changes and substantive additions to and deletions from provisions found in the current rules concerning the selection and appointment of persons for employment in State and local government services. One major change is the clarity and superior organization of the proposed new rules which should effectively implement the purposes and requirements of the new Title 11A. This clarity and superior organization is demonstrated by the reduction of the total number of rules, which will help to make the rules more readily available, and more easily and accurately put to use. In real numbers, this means the repeal of 94 current rules which will be replaced by 65 rules. Another major organizational change, which will make these rules easier to use, is that all rules are applicable to both State and local service, with exceptions clearly marked.

Subchapter 1, which concerns the types of appointments that may be made, has several provisions which will have an impact upon participants in the merit system. The recognition of a conditional regular appointment safeguards the rights of appellants who, if vindicated, may be entitled to an appointment, but also allows persons conditionally appointed to remain eligible for the subject title and/or retain rights that they formerly held by virtue of returning to former permanent titles. The proposed rule on provisional appointments will assist in reducing these appointments by ensuring that such appointees file for exams. Finally, the rule on approval of appointments will have a beneficial impact on employees by ensuring that they are notified of all changes in their status.

As for proposed subchapter 2, which concerns competitive examinations, these rules should provide everyone concerned with the examination process a clearer guide to each step of the process, from announcements to rating examinations. These rules should help make candidates feel that the examination process is fairer and more logical. A major change is the codification of promotional examination procedures, with added flexibility in determining title scopes.

The subchapter on eligible lists should permit the more orderly issuance and use of eligible lists and promote a better understanding of how needs of an appointing authority may affect the use of an eligible list. This subchapter should result in greater use of eligible lists, due to such provisions as combining lists and extending their duration. Subchapter 4, which deals with the certification process, includes a new rule on the certification of persons meeting a particular BFOQ, which will aid an appointing authority that has highly specialized needs at a particular time,

but prohibits any such BFOQ from being impermissibly discriminatory against the candidates. In addition, removal from an eligible list because of a criminal record will be a more stringent process, closely related to the concerns posed by a criminal record, which will enhance both the security of the State corrections system and the futures of persons who are truly rehabilitated and law abiding.

The subchapter on the working test period will help regularly appointed persons, their supervisors and the appointing authorities know their respective rights and responsibilities concerning a new appointee's probationary period. Appropriate use of the working test period will be enhanced by the addition of uniform provisions on progress reports for all probationary employees.

Subchapter 6, which deals with examination and selection disqualification, describes more precisely than the current rules, how and why candidates may be disqualified from the selection process and how such a disqualification may be challenged. This newly-organized subchapter should therefore increase candidates' understanding of the merit system.

The subchapter on other types of employee movements and appointments will have a substantial positive impact upon career mobility. Transfers will no longer be restricted to in-title movements. Further, the provision for resignation/new appointment will allow employees to accept open competitive appointments in other departments without loss of leave entitlements. The provision on reimbursement for some relocation expenses in cases of certain transfers should boost employee morale.

**Economic Impact**

This proposal will have at least a partial economic impact upon employees, appointing authorities and the public at large. Most of the changes in the rules are generally restatements of existing policy and practice, but there should be a positive economic impact on the State simply because of the more concise and better organized nature of the proposed rules. Also, although the relocation assistance program provided for in Subchapter 7 will cost the State money, the financial help that certain transferees will receive actually may serve to pump dollars back into the State's economy through the expenditure of the assistance allocations by the transferees.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since this proposal will have no effect on small businesses.

**Full text** of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 4:1-8, 4:1-9, 4:1-10.2 through 4:1-10.5, 4:1-11, 4:1-12, 4:1-13, 4:1-14, 4:1-15, 4:1-16.13; 4:2-6.3, 4:2-11, 4:2-13, 4:2-14.1, 4:2-15.1; 4:3-6.4, 4:3-11.1, 4:3-13.2 and 4:3-14.

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

**CHAPTER 4  
SELECTION AND APPOINTMENT**

OLD CITATION	NEW CITATION	OLD CITATION	NEW CITATION
4:1-8.1	4A:4-2.16	4:1-8.23	4A:4-6.6
4:1-8.2	4A:4-2.2	4:1-8.24	4A:4-2.16
4:1-8.3	4A:4-2.1	4:1-8.25	4A:4-2.16
4:1-8.4	4A:4-2.6	4:1-8.26	4A:4-6.5
4:1-8.5	4A:4-2.7	4:1-8.27	4A:4-6.5
4:1-8.6	4A:4-2.3	4:1-9.1	4A:4-6.4
4:1-8.7	4A:4-2.3	4:1-9.2	4A:4-6.4
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## SUBCHAPTER 1. TYPES OF APPOINTMENTS

## 4A:4-1.1 Unclassified appointments

(a) An unclassified appointment may be made at the discretion of the appointing authority, to any title or position allocated to the unclassified service by statute or the Board.

(b) The permanent appointment rights of Title 11A, New Jersey Statutes, are not applicable to unclassified appointments. See N.J.A.C. 4A:3.

## 4A:4-1.2 Senior executive service appointments: State service

(a) A senior executive service appointment may be made to any position allocated to the senior executive service by the Board.

(b) Permanent career service employees and qualified persons without permanent status are eligible for senior executive service appointments. See N.J.A.C. 4A:3-2.

## 4A:4-1.3 Career service appointments

(a) Regular appointments to titles allocated to the competitive division of the career service shall be subject to an examination process and successful completion of a working test period.

(b) The Commissioner may authorize an appointing authority to make a regular appointment of a qualified person to a title in the noncompetitive division of the career service without an examination. Preference shall be given to disabled veterans and then veterans. See N.J.A.C. 4A:5 on veterans preference.

(c) The Commissioner may authorize the promotion, through promotional examination procedures, from the noncompetitive division, of permanent employees who meet the open competitive requirements, to:

1. A related entry level title in the competitive division; or
2. In appropriate situations, to a related above-entry level title in the competitive division.

## 4A:4-1.4 Conditional regular appointments

(a) A conditional regular appointment may be made in the competitive division of the career service when disputes or appeals concerning higher ranking eligibles may affect the final appointments. The names of conditional appointees shall remain on the eligible list for consideration for other employment.

(b) If the rights of a higher ranked eligible are upheld, the conditional regular appointment shall end.

(c) If the final determination of appointment rights causes no change in the selection process, the conditional appointment will be changed to a regular appointment. The original date of appointment will be retained.

(d) The appointing authority shall advise conditional appointees of their status and rights, including any change in appointment status.

## 4A:4-1.5 Provisional appointments

(a) A provisional appointment may be made only in the competitive division of the career service when all of the following conditions are met:

1. There is no complete list of eligibles, and no one remaining on an incomplete list will accept provisional appointment;

2. The appointee meets the minimum qualifications for the title at the time of the appointment; and

3. The appointing authority certifies that failure to make the provisional appointment will seriously impair its work.

(b) Any employee who is serving on a provisional basis and who fails to file for and take an examination which has been announced for his or her title shall be separated from the provisional title. The appointing authority shall be notified by the Department and shall take necessary steps to separate the employee within 30 days of notification, which period may be extended by the Commissioner for good cause.

## 4A:4-1.6 Interim appointments

(a) An appointing authority may make an interim appointment to a specific position in State service or a specific title in local service, where a permanent employee is on a leave of absence. The appointing authority may reserve a position/title for the employee on leave as a vacant position/title, rather than make an interim appointment.

1. Any interim appointment shall remain in effect only during the period of time that the permanent employee is on an approved leave of absence.

2. At the end of the interim appointment, the appointee shall return to his or her permanent title.

(b) An interim appointee shall possess the minimum qualifications needed for appointment.

(c) If a complete eligible list exists for the title, the interim appointment shall be made from that list. An interim appointee's name shall remain on the eligible list for consideration for permanent employment.

(d) An interim appointee shall continue to accrue seniority in his or her permanent title.

(e) The layoff rights of an interim appointee shall be determined from his or her permanent title. See N.J.A.C. 4A:8-2.

(f) The appointing authority shall advise interim appointees of their rights under an interim appointment.

## 4A:4-1.7 Temporary appointments

(a) The Commissioner may approve the establishment of temporary positions for an aggregate period of not more than six months in a 12-month period. A temporary position which is established as a result of a short-term grant may be established for a maximum of 12 months.

(b) An appointee to a temporary position shall meet the minimum qualifications for the title.

(c) The acceptance or refusal of a temporary appointment shall not affect any future permanent appointment rights.

(d) In State service, the Commissioner may authorize temporary appointments to permanent positions under appropriate circumstances.

## 4A:4-1.8 Emergency appointments

The Commissioner may authorize an emergency appointment for a period not to exceed 30 days, where the appointing authority certifies that the failure to make such appointment will result in harm to persons or property.

## 4A:4-1.9 Return of employees to their permanent titles

(a) An employee with permanent status in a career service title, who is returned during or at the end of the working test period in

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another title, or from an appointment under N.J.A.C. 4A:4-1.1, 1.4, 1.5, 1.6, 1.7 or 1.8, to his or her permanent title, will have rights to a position in the permanent title in the same organizational unit.

1. The employee must have held the permanent title within current continuous service.

2. In State service, an organizational unit shall mean an appointing authority. In local service, an organizational unit shall mean a department or separate agency within the same governmental jurisdiction. A school district shall be considered a separate jurisdiction.

(b) The appointing authority shall use the following procedures, to effect the return of the permanent employee:

1. Reassign the employee to a vacant position/title;
2. Separate a provisional employee with no permanent status and reassign the returning employee to the position/title; or
3. Return an employee serving provisionally in the permanent title of the returning employee to his or her permanent title and reassign the returning employee to the position/title.

(c) The appointing authority and the returning employee may agree to use the following optional procedures to effect the return of the permanent employee.

1. The employee may accept appointment to other titles in the same or a different series for which the employee qualifies in the same or another organizational unit.

2. The status and compensation rights of the returning employee shall be determined in accordance with normal merit system rules and policies.

(d) When the appointing authority offers the employee options under (b) and (c) above, the employee may choose to accept either option.

(e) If the appointing authority offers only an option under (b) above, the employee must accept the option offered.

(f) Layoff procedures must be utilized when the appointing authority cannot effect the return of a permanent employee under (b) or (c) above. See N.J.A.C. 4A:4-4.8(c) on certification procedures.

**4A:4-1.10 Approval of appointments by Department of Personnel**

(a) All appointments, promotions and related personnel actions are subject to the approval of the Department of Personnel.

(b) Following submission and review of personnel actions, the appointing authority shall be notified by the Department of Personnel whether the action has been approved or disapproved and the reasons for any disapproval. The appointing authority shall provide written notice to all affected employees of such personnel actions.

**SUBCHAPTER 2. COMPETITIVE EXAMINATIONS**

**4A:4-2.1 Announcements and applications**

(a) Notice of open competitive examinations shall be announced in a monthly job listing or by other appropriate means as approved by the Commissioner to secure sufficient qualified candidates. Copies of notices for all open competitive examinations shall be available in each regional office of the Department of Personnel.

(b) In order to notify all employees of promotional opportunities, notices of promotional examinations and applications shall be provided to eligible employees by the Department of Personnel or as directed by the Department of Personnel through the appointed authority. The appointing authority shall conspicuously post notices at all geographic locations within the unit scope to which the examination is open. Appointing authorities shall maintain a record of such posting.

(c) Examination announcements shall include at least the following information:

1. Title of the examination;
2. Salary information;
3. Minimum qualifications for admission to the examination;
4. Filing information; and
5. In open competitive examinations, a reference to duties and responsibilities.

(d) Applications for open competitive examinations shall be filed with the Department of Personnel and applications for promotional examinations shall be filed with the appointing authority no later than the announced filing date, which in no case shall be less than

two weeks after the announcement. When mailed, the postmark date will be considered the date on which the application is filed.

(e) Prior to the filing date, an applicant may amend a previously submitted application.

(f) The Department may request clarifying information from an applicant.

(g) All examination applications shall remain confidential, except as the Commissioner may determine to be in the public interest.

**4A:4-2.2 Types of examinations**

(a) The Commissioner of the Department of Personnel shall administer examinations for appointment in the competitive division of the career service which may include any one or more of the following:

1. Written tests;
2. Oral tests;
3. Performance tests;
4. Physical performance tests;
5. Evaluation of education, training or experience;
6. Assessment exercises; and
7. Other appropriate measures of knowledge, skills and abilities.

(b) The Department may select special examiners to act as subject matter specialists or to provide other assistance. Employees of the State or local jurisdictions may be so engaged as part of their official duties during normal working hours with the approval of their appointing authority. Extra compensation may be provided for such service outside normal working hours.

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

**4A:4-2.3 Open competitive examinations**

(a) Vacancies shall be filled by promotional examination unless the Commissioner determines that it is in the best interest of the career service to hold an open competitive examination. The determination to announce an open competitive examination shall be based on at least one of the following conditions:

1. The vacancy is in an entrance level title;
2. There are fewer than three qualified permanent employees in appropriate lower titles in the promotional unit scope;
3. A list resulting from a promotional examination will be exhausted before all present or anticipated vacancies are filled; or
4. The title requires special, technical or professional training or qualifications which are not required in lower titles.

(b) Unless otherwise specified, an applicant shall meet the following criteria by the announced closing date:

1. Be a resident of the State or specified local jurisdiction (see N.J.A.C. 4A:4-2.10), except when:

- i. A different residency requirement is specified by law or provided by the Commissioner; or
- ii. It appears that there is an inadequate number of qualified residents available for the title.

2. Meet all requirements specified in the examination announcement:

i. Applicants for the titles of Municipal Firefighter and Municipal Police Officer must be under the age of 35 on the announced closing date for an open competitive examination to be eligible to take the examination. Former Municipal Police Officers under 45 years of age and who resigned in good standing may adjust their age by subtracting previous years of service from their actual age on the closing date.

ii. Veterans who are above a maximum age requirement, may recalculate their age for recording purposes pursuant to N.J.S.A. 38:23A-2; and

3. File an application with all supporting documents or proofs by the announced filing date.

(c) When a promotional examination is announced, an open competitive examination may also be announced.

**4A:4-2.4 Promotional title scope: local service**

(a) If a title which is the subject of a promotional examination is part of a title series, then the examination shall be open to either the next lower or next two lower in series titles.

(b) When the title which is the subject of the promotional examination is not part of a title series, the examination shall be open to

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all applicants having a total of one year permanent service who meet the open competitive requirements.

(c) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the open competitive requirements and, if appropriate, employees serving in the next lower or next two lower in-series noncompetitive titles.

(d) In extraordinary circumstances, the Commissioner may set another appropriate title scope.

**4A:4-2.5 Promotional title scope: State service**

(a) For the purpose of announcing promotional examinations, all titles will be divided into one of the following categories:

1. Professional, which requires a Bachelor's or higher level degree;
2. Para-professional, which requires at least 60 general college credits or 12 or more specific college credits (but less than a full degree); or
3. Non-professional, which requires less than 60 general college credits or less than 12 specific college credits.

(b) When a promotion is within the same category, the examination, with or without open competitive requirements, as appropriate, shall be open to one of the following:

1. The next lower or next two lower in-series titles. See N.J.A.C. 4A:1-1.3 for definition of title series.
2. All titles at or up to four class codes below the class code of the title which is the subject of the examination. See N.J.A.C. 4A:1-1.3 for definition of class code.
3. All titles to a level that is more than four class codes below the class code of the title which is the subject of the examination. In such case, applicants must meet the open competitive requirements unless the Commissioner finds sufficient justification not to require one or all of the open competitive requirements.

4. All applicants in the unit scope who meet the open competitive requirements.

5. To related titles, pursuant to an established plan approved by the Commissioner.

6. In extraordinary circumstances, the Commissioner may set another appropriate title scope.

(c) When a promotion is between categories as listed in (b) above, the Department shall open the examination to either all applicants having a total of one year permanent service who meet the open competitive requirements, or to all titles at or up to three class codes below the class code of the title which is the subject of the examination, with or without open competitive requirements, as appropriate.

(d) When a promotion is to be made from the noncompetitive division of the career service to a related entry level title in the competitive division of the career service, the examination shall be open to all applicants who meet the complete open competitive requirements and who are either:

1. Serving in the next lower or next two lower in-series noncompetitive titles; or
2. Serving in noncompetitive titles at or up to three class codes below the title which is the subject of the examination.

(e) The movement of a permanent employee in the noncompetitive division to a related title with the same class code in the competitive division of the career service shall be considered a promotion for purposes of this subchapter. The examination shall be open to all applicants who meet the complete open competitive requirements and who are either:

1. Serving in a related noncompetitive title with the same class code as the promotional title, the next lower in-series noncompetitive title and related lower competitive titles; or
2. Serving in competitive and noncompetitive titles with the same class code or up to three class codes below the title which is the subject of the examination.

**4A:4-2.6 Eligibility for promotional examination**

(a) Applicants for promotional examinations shall meet all of the following criteria by the announced closing date:

1. Shall have one year of continuous permanent service for an aggregate of one year in a title or titles to which the examination

is open. Aggregate service does not include periods of suspension, leaves of absence without pay and periods of layoff or furlough;

2. Meet all other requirements contained in the announcement. If an examination announcement is amended, all requirements must be met by the announced closing date; and

3. File an application on or before the application filing date.

(b) In local service, applicants for promotion from entry level law enforcement or firefighter titles shall have three years of continuous permanent service in a title to which the examination is open, except as otherwise provided by law.

**OPTION ONE**

(c) Applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credits in the examination process.

**OPTION TWO**

(c) Except when permitted by the Merit System Board for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process.

**OPTION THREE**

(c) Except when permitted by the Department of Personnel for good cause, applicants for promotional examinations with open competitive requirements may not use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process.

1. An applicant who has been found ineligible due to out-of-title work may, at the second level of a disqualification appeal (see N.J.A.C. 4A:4-6.6(b)), submit a detailed statement from his or her supervisor describing the out-of-title duties performed and the reasons why it was necessary to perform such duties. A statement shall also be submitted from the personnel officer of the appointing authority verifying the supervisor's statement.

**OPTION FOUR**

(c) Applicants for promotional examinations with open competitive requirements may use experience gained as a result of out-of-title work to satisfy the requirements for admittance to the examination or for credit in the examination process.

(d) Employees who have accepted a voluntary demotion to or are appointed from a special reemployment list to a title to which the examination is open, may, in order to satisfy the requirement of (a)1 above, include continuous permanent service in any higher related or comparable title.

(e) An employee who has established eligibility for a promotional examination with a closing date earlier than the effective date of a layoff shall be permitted to take such examination.

(f) Employees who are laid off and who subsequently return to a title to which a promotional examination is open between the filing deadline and the examination date, shall be allowed to file for the examination.

(g) The time requirements specified in (a) and (b) above may be reduced to completion of the working test period if:

1. There is currently an incomplete promotional list and/or the number of employees eligible for examination will result in an incomplete list;

2. It appears that vacancies to be filled within the duration of the promotional list will exceed the maximum number of eligibles that could result from examination; or

3. Other valid reasons as determined by the Commissioner.

**4A:4-2.7 Promotion upon waiver of competitive examination**

(a) The Commissioner may authorize the promotion of a qualified permanent employee in the competitive division of the career service by regular appointment without competitive examination if:

1. The employee has been successfully tested in the basic skills required for the promotional title;

2. The employee has not failed, within one year prior to the announced closing date, a promotional examination for that title. However, an employee who subsequently passed an examination for that title shall be eligible for promotion;

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3. The number of interested eligibles does not exceed the number of promotional appointments by more than two; and

4. Veterans preference rights are not affected.

**4A:4-2.8 Scheduling of examinations**

(a) Examinations may be scheduled for one or more sessions on a Statewide, regional or local basis.

(b) Candidates will be notified in an appropriate manner of the time and place of the examination, and of any postponement or cancellation.

(c) Candidates shall be at the examination site at the designated time. Candidates arriving late shall only be admitted as follows:

1. Candidates for written examinations or examinations containing written and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time.

2. Candidates for a timed performance test shall be admitted to the examination if they arrive at the test room within five minutes of the designated time.

3. Candidates for oral examinations or examinations containing oral and performance parts shall be admitted to the examination if they arrive at the test room within 30 minutes after the designated time, provided the last scheduled candidate has not started the examination.

(d) A candidate who arrives late and is admitted to the examination shall receive the full allotted time to complete the examination.

(e) Jurisdictions operating under Title 11A, New Jersey Statutes, shall furnish sufficient facilities for the conduct of examinations when requested by the Department.

**4A:4-2.9 Make-up examinations**

(a) Make-up examinations may be authorized for the following reasons:

1. Error by the Department of Personnel;

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

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

4. Natural disaster;

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

6. Other valid reasons.

(b) Employees returning from military leave shall have an opportunity to take promotional examinations that have not yet been administered, or make-up examinations for active promotional lists for which they were eligible while on military leave. If the eligible passes the examination, his or her name will be placed on the eligible list based upon the score obtained, as if the examination had been taken when originally held.

(c) In situations involving illness, death or natural disasters, a candidate must request, in writing, a make-up examination, within five days after the examination date. In case of military leave or prior vacation plans, a written request for a make-up examination must be submitted prior to the examination date.

(d) Make-up examinations will be administered as far as possible under the same conditions as the original examination, except that:

1. Skilled trade performance examinations and physical performance examinations will be held with the next scheduled test and the eligibles will be added to the original list; and

2. For examinations which are held more than once a year and which may be scheduled again within six months, make-up examinations may be held with the next regularly scheduled examination and the eligibles will be added to the original list for the same title and jurisdiction.

(e) The name of any candidate passing a make-up examination will be added to the eligible list. Except for error by the Department, prior appointments from the eligible list will not be affected by the addition of a name to the list.

(f) All candidates taking make-up examinations, except physical performance examination and those under (d)2 above, shall, as a

precondition to taking the make-up examination, be required to sign a statement that they have no knowledge of the content of the examination as a result of information gained from or furnished by other candidates who participated in the original examination.

(g) When an examination requires a multiple assessment of a candidate which results in a group consensus rating by a panel of experts, a make-up examination shall not be held. The only exception to this will be documented error on the part of the Department of Personnel. In this case, a make-up may be granted if practicable.

**4A:4-2.10 Conduct and security of examinations**

(a) The Department shall insure that all applicants for an examination are given equal opportunity to demonstrate their relative merit and fitness.

(b) In the conduct or administration of an examination, the following shall be considered prohibited actions:

1. Securing, by unauthorized persons, of questions or materials, unless the same are available to all applicants;

2. Securing, by unauthorized persons, of information concerning the number or identity of applicants until all parts of the examination have been held and a resulting eligible list issued;

3. Identification of an applicant's examination papers or work before all examinations have been rated, where anonymity is required;

4. Impersonation of an applicant, either in person or by the improper exchange of applicant numbers or in any other manner;

5. Use or attempted use of any unauthorized aids, information or assistance, including copying or attempting to copy from, or helping or attempting to help another applicant in any part of an examination or performance of work assigned;

6. A candidate's participation in an examination if it would likely result in physical injury to the candidate or others, or damage to property; or

7. Copying, recording or transcribing any examination question or answer, and/or the removal from any examination room of any question sheet, answer sheet, scrap paper, notes or other papers or materials related to the content of an examination.

(c) Anyone participating in a prohibited action under (b) above shall be disqualified from the examination and may be rejected from future examinations and subject to punishment as provided by law.

**4A:4-2.11 Residence standards**

(a) Where residence requirements have been established, residence means a single legal residence. The following standards shall be used in determining legal residence:

1. Whether the locations in question are owned or rented;

2. Whether time actually spent in the claimed residence exceeds that of other locations;

3. Whether the relationship among those persons living in the claimed residence is closer than those with whom the individual lives elsewhere. If an individual claims a parent's residence because of separation from his or her spouse, a court order or other evidence of separation may be requested;

4. Whether, if the residence requirement of the anticipated or actual appointment was eliminated, the individual would be likely to remain in the claimed residence;

5. Whether the residence recorded on a driver's license, motor vehicle registration, or voter registration card and other documents is the same as the claimed legal residence. Post office box numbers shall not be acceptable; and

6. Whether the school district attended by child(ren) living with the individual is the same as the claimed residence.

(b) Unless otherwise specified, residency requirements shall be met by the announced closing date for the examination.

(c) The Department of Personnel will review residence requirements for examination candidates. It is the responsibility of the appointing authority to review and enforce residence requirements relating to appointment and continued employment.

(d) When there is a requirement that an employee reside within a specific distance of the work site, a written request must be submitted by the appointing authority to the Department for such a restriction.

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1. A request must be received and approved prior to the announcement of the examination.

2. However, the Department may, in appropriate circumstances, add special residency limitations after an eligible list is promulgated.

(e) An applicant seeking to appeal a residency determination shall utilize the procedures contained in N.J.A.C. 4A:4-6.6. The applicant shall have the burden of proving his or her residence.

**4A:4-2.12 Professional qualifications substitution program**

(a) Applicants for designated open competitive or promotional examinations for professional titles may be permitted to substitute appropriate work experience, on a year-for-year basis, for specified higher educational requirements.

1. For titles requiring specific coursework or major fields of study, the successful completion of the coursework or fields of study shall be required.

2. Examination announcements shall contain, when appropriate, general information on the eligibility requirements and use of this program.

3. Appointing authorities shall conspicuously post information about this program.

(b) The Department shall make the determination whether prior work experience may be substituted for specified education requirements.

**4A:4-2.13 College Level Examination Program (CLEP)**

(a) College Level Examination Program (CLEP) scores are acceptable as a substitution for college credits required for open competitive or promotional examinations. Acceptable scores are those consistent with scores accepted for credit by Thomas A. Edison College as published annually in its catalog.

(b) The following standards shall be considered:

1. Applicants may be considered eligible to take open competitive and promotional examinations by substituting a combination of education, appropriate work experience and acceptable CLEP scores:

2. Acceptable scores on the CLEP General Examination and Subject Examinations will be considered the same as college undergraduate credits:

3. Acceptable scores on the five-part CLEP General Examination may be substituted for up to 30 undergraduate college credits:

4. Where specific course work and/or a major field of study are required in the job specification or examination announcement:

i. An acceptable score on an appropriate CLEP Subject Examination may be substituted for college credit hours;

ii. An acceptable subscore on an appropriate subsection of the CLEP General Examination may be substituted for undergraduate college credit hours for the course work requirement;

5. Acceptable scores achieved on any of the CLEP Subject Examinations shall be viewed to correspond to those credits normally earned during the final two years of a four-year college curriculum;

6. Acceptable scaled scores or subscores on the CLEP General Examination shall be viewed to correspond to those credits normally earned during the first two years of a four-year college curriculum.

(c) Information about testing site locations and application procedures may be obtained from the CLEP Educational Testing Service (ETS), Princeton, New Jersey and Thomas A. Edison College, Trenton, New Jersey.

(d) Examination announcements shall contain general information on eligibility requirements and utilization of CLEP.

(e) Appointing authorities shall conspicuously post information about CLEP.

**4A:4-2.14 Accommodation and waiver of examinations for disabled or handicapped persons**

(a) Otherwise qualified applicants who have a disability or handicap may request accommodation in taking an examination by indicating their request for accommodation on the examination application.

1. Upon receipt of the request for accommodation, the Department shall make reasonable accommodation where appropriate and notify the candidate of the arrangements.

(b) The Commissioner may waive an examination for an otherwise qualified candidate or provisional who suffers from a physical, mental or emotional affliction, injury, dysfunction, impairment or dis-

ability which makes it physically or psychologically not practicable to undergo the testing procedure for a particular title, but does not prevent satisfactory performance of the title's responsibilities under conditions of actual service.

1. A request for waiver shall be in writing, filed with the Department and contain:

i. The examination's title and symbol number, or in the case of a provisional, his or her title and employer;

ii. A statement from the appointing authority that the individual can satisfactorily perform the duties of that title under actual conditions of service;

iii. A physician's statement with supporting medical documentation;

iv. Whether the individual has previously filed for or taken an examination for that title, the results, if any, and whether an accommodation has previously been made; and

v. Agreement to undergo any additional physical or psychological examinations that the Department deems appropriate.

(c) If reasonable accommodation can be made, the waiver request will be denied and arrangements made for such accommodation.

(d) If reasonable accommodation is not possible, the Commissioner will decide whether to grant a waiver, and if granted, whether the candidate will be employed or placed on an eligible list and in appropriate cases, granted seniority.

**4A:4-2.15 Rating of examinations**

(a) Ratings may be computed by a valid statistical method based on the use of scoring formulas and/or conversion tables.

1. When education and experience are to be rated as part of an examination, that which exceeds the minimum shall be graded through the use of scales prepared by the Department.

2. Ties in final earned ratings shall not be broken.

(b) Examinations consisting of more than one part may be rated independently.

1. Candidates failing to meet minimum standards on one part of the examination shall be ineligible for the remaining parts.

2. Candidates who do not receive a passing score on one part of an examination shall be deemed to have failed the entire examination.

(c) Promotional examinations may include an evaluation of seniority and performance ratings.

**4A:4-2.16 Retention and inspection of examination records**

(a) The following examination records shall be retained until the expiration of the eligible list:

1. The public announcement;

2. All applications;

3. The examination papers;

4. A description of the examination, including the date held, rating system, scoring keys and minimum score required, if any;

5. The list of eligibles; and

6. Any other pertinent information.

(b) All examination records listed in (a)1, 4 and 5 above shall be open to public inspection. The Commissioner shall determine which other records may be open to public inspection and the conditions for such inspection.

**SUBCHAPTER 3. ELIGIBLE LISTS****4A:4-3.1 Types of eligible lists**

(a) The Commissioner may establish the following types of eligible lists:

1. Open competitive, which shall include all qualified eligibles following examination procedures.

2. Promotional, which shall include permanent employees who meet qualification requirements;

3. Regular reemployment, which shall include former permanent employees who resigned in good standing, retired, or were voluntarily demoted, who timely request reemployment and whose reemployment is certified by the appointing authority as being in the best interests of the service;

4. Police or fire reemployment, which shall include former permanent uniformed members of a police or fire department who resigned in good standing and whose reemployment is certified by

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the appointing authority as being in the best interests of the service; and

5. Special reemployment, which shall include former and current permanent employees who were laid off, laterally displaced or demoted in lieu of layoff.

**4A:4-3.2 Order of names on eligible lists**

- (a) The order of names on an open competitive list shall be:
  1. Eligibles entitled to disabled veterans preference in order of their scores;
  2. Eligibles entitled to veterans preference in order of their scores; and
  3. Non-veteran eligibles in order of their scores.
  4. Eligibles who receive the same score shall have the same rank. See N.J.A.C. 4A:4-4.2(c).
  5. See N.J.A.C. 4A:5-2.1 for examples on use of open competitive list.

(b) Eligibles on a promotional list shall appear in the order of their scores.

1. When scores are tied, veterans shall be listed first within each rank. See N.J.A.C. 4A:4-4.2(c).
2. See N.J.A.C. 4A:5-2.2 for examples on use of a promotional list.

(c) Eligibles on special reemployment lists shall be ranked in order of seniority in the permanent title from which they were displaced, with the name of the person with the greatest seniority in the highest class code/level title appearing first on the list.

(d) Eligibles on regular or police and fire reemployment lists shall be ranked in the order of seniority in the permanent title from which they resigned, retired or were voluntarily demoted, with the name of the person with the greatest seniority appearing first on the list.

(e) It shall be the responsibility of an eligible to keep a current address on file with the Department of Personnel.

**4A:4-3.3 Duration and cancellation of eligible lists**

(a) Open competitive and promotional lists shall be promulgated for three years from the date of their establishment, unless the Commissioner determines that, under the circumstances, a shorter time period is appropriate.

1. An eligible list may, for good cause, be extended by the Commissioner prior to its expiration date, except that no list shall have a duration of more than four years.
2. The name of any employee shall not remain on a regular reemployment list for more than three years from the date of resignation, except as provided in (a)1 above.
3. Special reemployment, police reemployment and fire reemployment lists shall have unlimited durations.

(b) The Commissioner may, in cases of fraud, illegality, test invalidity, error by the Department or other good cause, cancel an eligible list prior to its expiration date by issuing a public notice and entering such notice in the minutes of the Merit System Board.

**4A:4-3.4 Revival of eligible lists**

(a) The Commissioner may revive an expired eligible list under the following circumstances:

1. To implement a court order, in a suit filed prior to the expiration of the list;
2. To implement an order of the Commissioner or Board in an appeal or proceeding instituted during the life of the list;
3. To correct an administrative error; or
4. For other good cause.

**4A:4-3.5 Consolidation of eligible lists**

(a) The Commissioner may consolidate successive eligible lists for a given title which result from successive open competitive or promotional examinations by one or more of the following methods:

1. Placing the first name on the later list after the last name of the prior list;
2. Supplementing an incomplete list with an eligible list for an appropriate title; or
3. Combining of names of eligibles by scores.

(b) When eligible lists are consolidated, the part of the eligible list which was promulgated first shall not continue beyond its expiration date.

**4A:4-3.6 Additions to eligible lists**

(a) The Commissioner may add names to an eligible list at any time during the life of the list under the following circumstances:

1. A make-up examination has been given and a candidate has received a passing score;
2. To correct an error by the Department of Personnel;
3. To implement an appeal decision; or
4. Where a third party, such as a college or the Veterans Administration, has submitted documents to correct an administrative error.

(b) When the name of an eligible is added to an existing list to correct an error made by the Department of Personnel, the Department shall determine the retroactive certification and/or appointment rights. When the name of an eligible is added to an existing list for any other reason, the Commissioner shall determine the effect of the action on certifications and prior permanent appointments. See also N.J.A.C. 4A:4-1.4 for conditional regular appointments.

**4A:4-3.7 Priority of eligible lists**

(a) When there is more than one current eligible list for a title, the priority of the lists shall be as follows:

1. Special reemployment, when the available position/title is in the department from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;
2. Promotional;
3. Special reemployment, when the available position/title is located in a department other than that from which the eligible was laid off, laterally displaced or demoted in lieu of layoff;
4. Regular reemployment, police or fire reemployment; and
5. Open competitive.

**4A:4-3.8 Correction of errors**

(a) The Department may correct an error at any time during the life of an eligible list.

(b) The Commissioner shall determine whether such correction shall affect any prior appointments or certifications.

(c) Corrections of errors may result in a change in ranking. See N.J.A.C. 4A:4-3.6.

**SUBCHAPTER 4. CERTIFICATION FROM ELIGIBLE LISTS**

**4A:4-4.1 Need for certification**

(a) When a vacancy is to be filled in the competitive division of the career service from an eligible list, the appointing authority shall request a certification of names for regular appointment. Such request shall be submitted in advance under procedures set by the Department of Personnel to enable the Department to issue or authorize the necessary certification or advise that there is no appropriate eligible list.

(b) When a permanent competitive position has been filled on a nonpermanent basis, the Department of Personnel shall determine whether there is a need to issue a certification.

**4A:4-4.2 Issuance of certification**

(a) Upon determining that there is a need for a certification as provided in N.J.A.C. 4A:4-4.1, the Department of Personnel shall issue or authorize the issuance of a certification to the appointing authority containing the names and addresses of the eligibles with the highest rankings and the appropriate list.

(b) When a certification is issued, the Department shall notify or authorize the notification of the eligibles whose names appear on the list, at the last known address. See N.J.A.C. 4A:4-3.2(e) for address change notification.

(c) An appointing authority shall be entitled to a complete certification for consideration in making a permanent appointment, which means:

1. From special, regular and police and fire reemployment lists, the name of one interested eligible for each permanent appointment; or
2. From promotional and open competitive lists, the names of three interested eligibles for the first permanent appointment, and the name of one additional interested eligible for each additional permanent appointment. Eligibles who receive the same score shall have the same rank. If three or more eligibles can be certified as a

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result of this ranking without resorting to all three highest scores on the list, then only those eligibles will be certified.

i. When fewer than three interested eligibles are certified, the appointing authority may either: make a permanent appointment; make a provisional appointment from the list; make a provisional appointment of another qualified person if no eligible on the list is interested; or vacate the position/title.

ii. When a certification is comprised of multiple lists and an eligible's name appears more than once, the eligible will only be counted once for purposes of making a complete certification.

(d) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

**4A:4-4.3 Certification from appropriate lists**

(a) When an eligible list for a title is either unavailable or incomplete, the Department may authorize a certification from an eligible list for an appropriate title of the same or higher level, in the same or related series under the following conditions:

1. The education and experience requirements for both titles are substantially similar;

2. The necessary knowledge, skills and abilities were evaluated in the examination process;

3. The geographic scope of eligibility to which the announcement was limited is the same as or includes the geographic location of the original title; and

4. The appropriate eligible list may be used to supplement any existing list in order to establish a complete certification.

(b) The Department of Personnel may also authorize a certification from a common or similar State or local service eligible list under the following circumstances:

1. The appointing authority has requested the use of such list in writing;

2. The examination requirements of the titles for which the eligible lists may be certified shall be appropriate for the title in the requesting jurisdiction;

3. The State or local lists will be used to supplement the existing list in order to create a complete certification; and

4. Only those persons on the eligible list who have expressed an interest in working in the jurisdiction shall be certified.

(c) In local service, regular reemployment lists may be used to certify against vacancies in the same or comparable titles in all appointing authorities in the respective jurisdiction, except school districts.

(d) See N.J.A.C. 4A:8-2.3 for uses of special reemployment lists in State and local service.

**4A:4-4.4 Limitation on number of times eligible is certified**

(a) A non-veteran eligible who has been certified to the same appointing authority from an open competitive list on three occasions and who has been passed over in favor of a lower ranked eligible on each occasion, shall have his or her name withheld from future certification to the same appointing authority. The appointing authority may request that such eligible be recertified, in which case only that eligible and any higher or equal ranking veteran eligible shall be certified.

(b) All eligibles on a promotional list shall be certified, in order of rank, as long as they remain on the list.

**4A:4-4.5 Certifications limited to persons of a particular sex, religion or national origin**

(a) A certification may be issued limited to persons of a particular sex, religion or national origin of the eligibles, where such factors are bona fide occupational qualifications (BFOQ) that are essential to successful job performance and the normal operation of the appointing authority.

(b) A request for a BFOQ designation shall be submitted by the appointing authority to the Department of Personnel, Division of Equal Employment Opportunity and Affirmative Action (EEO/AA) and shall include:

1. The purpose of the BFOQ being requested;

2. An accurate description of the employment for which the BFOQ is sought, including:

i. The position number in State service;

ii. The duties of the position and percentage of time required to perform those duties;

iii. The post location; and

iv. The shift designation.

3. A statement why a person without the specific BFOQ cannot perform the position's duties;

4. What accommodations were considered to permit persons without the BFOQ to perform the duties and why the accommodations were not adopted; and

5. Such other information as requested by the Division.

(c) The appointing authority shall have the burden of proof that a BFOQ designation is necessary.

(d) The Director, Division of EEO/AA shall review the request and advise the appointing authority in writing of his or her decision.

(e) Any person who has been denied an employment opportunity as a result of a BFOQ designation may contest the designation as a discrimination appeal in State service (N.J.A.C. 4A:7-3.2 et seq.) or a general appeal in local service (N.J.A.C. 4A:2-1.1).

**4A:4-4.6 Eligibles on military leave**

(a) Interested eligibles on military leave shall continue to be certified. The appointing authority may consider such eligibles immediately available for appointment even though reporting for work may be delayed.

(b) On return from military duty, an appointed eligible shall, after successful completion of the working test period, have the same rights, privileges and obligations as if the eligible had served continuously in the title from the original effective date of appointment.

**4A:4-4.7 Removal of names**

(a) The name of an eligible may be removed from an eligible list for any of the following reasons:

1. The causes for disqualification listed in N.J.A.C. 4A:4-6.1;

2. Permanent appointment through certification to the title for which the list was promulgated or made appropriate, except that the appointment to a lower title will not be cause for removal;

3. Inability, unavailability or refusal of eligible to accept appointment. An eligible who has declined appointment may, upon written request, have his or her name withheld from future certifications until available for appointment. The Department of Personnel must be notified when the eligible wishes to be considered for certification;

4. The eligible has a criminal record which adversely relates to the employment sought.

i. The following factors may be considered in determining whether a criminal record adversely relates to employment:

(1) The nature and seriousness of the crime;

(2) The circumstances under which the crime occurred;

(3) The date of the crime and age of the eligible when the crime was committed;

(4) Whether the crime was an isolated event; and

(5) Evidence of rehabilitation.

ii. The presentation of a pardon or an expungement shall prohibit removal from a list, except for law enforcement, correction officer or firefighter titles and other titles as the Commissioner may determine.

5. Notice by the postal authorities that they are unable to locate or deliver mail to the eligible;

6. Non-compliance with the instructions listed on the notice of certification;

7. Discontinuance of an eligible's residence in the jurisdiction to which an examination was limited or for a title for which continuous residency is required;

8. Discontinuance of the eligible's employment in the unit scope to which a promotional examination was limited. An employee who subsequently returns to the promotional unit scope within current continuous service may request, in writing to the Department, that his or her name be restored to the promotional list;

9. Employees who are involuntarily transferred shall be retained on a promotional list until they have had an opportunity to take a promotional examination in the new promotional unit scope or have been appointed from the list;

10. Failure to maintain interest in a geographical area or choice; and

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11. Other valid reasons as determined by the Commissioner.

(b) An appointing authority that requests removal of an eligible's name from a list shall submit to the Department, no later than the date for disposition of the certification, all documents and arguments upon which it bases its request.

1. Unless otherwise provided, the appointing authority shall provide the eligible with copies of all materials sent to the Department.

2. If the appointing authority fails to provide either the Department or the eligible with copies of materials, the request for removal may be denied.

(c) The Department of Personnel shall determine if there are sufficient grounds for removal, notify the appointing authority and the eligible of its decision, and advise the eligible of his or her appeal rights.

(d) An eligible may appeal his or her removal from an eligible list utilizing the procedures in N.J.A.C. 4A:4-6.3.

(e) The removal of names from an eligible list will advance the rank order of all names below it. The Department may supplement a certification to provide the appointing authority with the number of names necessary for a complete certification.

**4A:4-4.8 Disposition of a certification**

(a) Upon receipt of a certification, an appointing authority shall take whichever of the following actions is appropriate when a permanent appointment is to be made:

1. Appoint the eligible whose name has been certified from the special reemployment list;

2. Appoint the eligible whose name has been certified from regular or police or fire reemployment lists; or

3. Appoint one of the top three eligibles (rule of three) from an open competitive or promotional list, provided that:

i. Disabled veterans and then veterans shall be appointed in their order of ranking from an open competitive list;

ii. If the eligible who ranks first on a promotional list is a veteran, then a non-veteran may not be appointed; and

iii. See N.J.A.C. 4A:4-2(c)2 for tie scores.

(b) The appointing authority shall notify the Department of Personnel of the disposition of the certification by the disposition due date in the manner prescribed by the Department.

1. The report of disposition of the certification shall include:

i. Name of the eligibles to be permanently appointed;

ii. The effective date of the requested permanent appointments;

iii. In local service, the appointee's salary;

iv. A statement of the reasons why a higher ranked eligible was not selected;

v. In situations where an appropriate list is used, the title and functions of the appointee's employment; and

vi. Any other requested information.

(c) Failure to dispose by the due date may result in constructive appointment or other remedial action as set forth in N.J.A.C. 4A:10-2.

(d) If the certification will result in the displacement of a provisional employee who has permanent status, and it is necessary to institute layoff procedures, the Department may, upon written request from the appointing authority, extend the time for disposing of the certification for an additional 45 days. See N.J.A.C. 4A:8-1.1 et seq. for layoff procedures.

(e) See N.J.A.C. 4A:10-2.2 for penalties for failure to appoint from a complete certification.

**4A:4-4.9 Date of appointment**

(a) An eligible shall not be appointed and begin work after the expiration date of the eligible list except:

1. When the eligible is on military leave, or, in the case of promotional appointments, is on an approved leave of absence. Persons returning from military leave or an approved leave of absence may begin work upon their return to active service.

2. When there is limited revival or statutory extension of an employment list, except that no appointment shall be made beyond the statutory extension date; or

3. When the certification is made just prior to the expiration of the eligible list, in which case the date of appointment and the date the eligible begins work shall coincide with the disposition due date.

**4A:4-4.10 Certification of additional eligibles**

If, after accepting employment, an eligible cannot begin work within three weeks or such other reasonable time as specified by the appointing authority, the appointing authority may consider the eligible unavailable and request that the Department certify additional names.

**SUBCHAPTER 5. WORKING TEST PERIOD****4A:4-5.1 General provisions**

(a) The working test period is part of the examination process designed to permit an appointing authority to determine whether an employee can satisfactorily perform the duties of the title.

(b) All regular appointments to a title in the career service shall be subject to a working test period, except:

1. Appointments from special, police and fire and regular re-employment lists;

2. Appointments to a comparable or lower related title in lieu of layoff; or

3. Appointments to titles previously held on a permanent basis within current permanent continuous service.

4. For lateral title changes, see N.J.A.C. 4A:4-7.6(b).

(c) During the working test period, an employee shall perform the duties of the title for which appointment was made.

(d) An employee who is serving a working test period shall not be eligible for a promotional examination from that title.

**4A:4-5.2 Duration**

(a) The working test period shall not include any time served by an employee under provisional, temporary, interim or emergency appointment. The working test period shall begin on the date of regular appointment. See N.J.A.C. 4A:1-1.3 for definition of regular appointment.

(b) The length of the working test period, except as provided in (c) through (e) below, shall be as follows:

1. In local service, a period of three months of active service, which may not be extended.

2. In State service, a period of four months of active service, which the Commissioner may extend on request of an appointing authority for an additional two months. Such request must be submitted at least five working days before the end of the four month period. The appointing authority shall notify the employee of the extension.

i. Regularly appointed employees serving in intermittent titles shall serve a working test period of 88 work days, which, upon the request of the appointing authority, may be extended by the Commissioner for an additional 44 work days. For purposes of this subsection, any part of a day shall constitute a work day.

ii. An employee serving in an intermittent title who is furloughed prior to completing the working test period, shall resume the working test period upon return from furlough.

(c) When notice of termination is served following the last day of the working test period pursuant to N.J.A.C. 4A:2-4.1(c), the working test period shall end on the date of service of the notice.

(d) Persons appointed to entry level law enforcement, correction officer and firefighter titles shall serve a 12-month working test period. A law enforcement title is one that encompasses use of full police powers.

1. Law enforcement officers who are required by N.J.S.A. 52:17B-66 et seq. (Police Training Act) to complete a police training course shall not begin their working test period until notification is received by the appointing authority from the Police Training Commission of the successful completion of the police training course.

2. Law enforcement officers who have successfully completed the police training course prior to appointment shall begin their working test period on the date of regular appointment.

3. Appeals from failure to successfully complete the police training course shall be in accordance with procedures established by the Police Training Commission. See N.J.A.C. 13:1-11.

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(e) An approved leave of absence shall extend the completion of the working test period for a period of time equal to that leave.

**4A:4-5.3 Progress reports**

(a) The appointing authority shall prepare a progress report on the employee at the end of two months and a final report at the conclusion of the working test period. If the Commissioner has extended the working test period in State service pursuant to N.J.A.C. 4A:4-5.2(b)2, the appointing authority shall also prepare a progress report at the end of five months and a final report at the conclusion of the extended working test period.

(b) For entry level law enforcement, correction officer and firefighter titles, the appointing authority shall prepare a progress report on the employee at the end of six months and a final report at the conclusion of the working test period.

(c) The appointing authority shall furnish the employee with a copy of all reports and the Commissioner with a copy of the final report.

**4A:4-5.4 Working test period appeals**

(a) An employee may be separated for unsatisfactory performance at the end of the working test period. See N.J.A.C. 4A:2-4 for procedures.

(b) An employee may be disciplined during the working test period. See N.J.A.C. 4A:2-2 and 3 for procedures.

**4A:4-5.5 Restoration to eligible list or former title**

(a) An employee who, either during or at the end of a working test period, resigns in good standing or is separated due to unsatisfactory performance may, upon request, be restored to an eligible list, if the Commissioner determines that the employee is suitable for appointment to another position.

1. The Commissioner may consider:

- i. Whether the list can be certified to another appointing authority;
- ii. The recommendation of the employee's former appointing authority; and
- iii. Any other relevant factors.

2. Any employee who has been removed for disciplinary reasons shall not be restored to an eligible list.

3. Any employee who has filed an appeal pursuant to N.J.A.C. 4A:2-4 shall have his or her request for restoration held in abeyance pending the appeal.

(b) An employee with permanent status in a title with the same or lower class code/level shall continue to accrue seniority in his or her permanent title for the duration of the working test period. See N.J.A.C. 4A:4-1.9 for procedures on restoration to a former title.

**SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS****4A:4-6.1 Examination and selection disqualification**

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;
2. Is ineligible, by law, for employment in the title;
3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;
4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

**4A:4-6.2 Actions against disqualified persons**

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

**4A:4-6.3 Examination and selection appeals**

(a) Appeals may be made on:

1. Examination items and scoring (see N.J.A.C. 4A:4-6.4);
2. Disqualification for medical or psychological reasons (see N.J.A.C. 4A:4-6.5); and
3. Other examination related matters (see N.J.A.C. 4A:4-6.6) including:

- i. Other disqualifications under N.J.A.C. 4A:4-6.1;
- ii. List extension or revival; and
- iii. Denial of veterans preference.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

**4A:4-6.4 Review of scoring key and examination papers**

(a) Candidates for multiple choice examinations shall be permitted to review the scoring key for a period of five business days beginning on the second business day after the examination has been held.

1. Candidates for tests other than multiple choice shall use the procedures in (b) below.

2. Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

3. In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers.

(b) Within the review period set forth in (a) above, candidates may file an appeal against the scoring key and/or test content.

1. The appeal shall be in writing, specify the question(s) being challenged and must be received by the Department of Personnel by the end of the review period.

2. All questions under appeal shall be reviewed by the Department of Personnel and, when necessary, appropriate action taken to modify the examination scoring.

3. No appeal relating to the scoring key shall be permitted after the review period.

(c) Within 20 business days after the Department provides notification of examination results, candidates may review their examination papers.

1. Candidates shall be permitted only one review within this time and shall not be permitted to copy any questions or answers.

2. Candidates may file an appeal regarding the examination results pursuant to N.J.A.C. 4A:4-6.6.

**4A:4-6.5 Medical and/or psychological unfitness appeals**

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to medical or psychological unfitness to effectively perform the duties of the title.

1. The appointing authority shall furnish a copy of the certification and the report and recommendation or its appropriate excerpts of a New Jersey licensed physician, psychologist or psychiatrist to the

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Department of Personnel. A removal request may be denied where such professional report and recommendation is not provided.

2. The candidate shall also receive copies of all materials furnished to the Department of Personnel, unless the examining physician, psychologist or psychiatrist states, in writing, that such disclosure would be injurious to the candidate's health.

(b) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. A request has been made by the appointing authority to remove his or her name from the list;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, it is advisable to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(c) Upon receipt of a notice of a candidate's appeal, the appointing authority shall submit to the Department of Personnel, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request. The appointing authority shall also furnish the appellant with all of the information supplied to the Department of Personnel, upon receipt of a written request from the appellant's attorney or doctor.

1. All professional reports submitted shall include the following:

- i. The professional's signature and the date;
- ii. The length of the examination or interview;
- iii. A specific diagnosis or statement of behavioral pattern relating to appellant's ability to effectively perform the specific duties of the title, or the specific reasons for a recommendation; and
- iv. All tests that have been administered (for example, EKG, EEK, X-ray, M.M.R.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

2. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

3. The Department of Personnel may extend the time period for filing the required reports for good cause.

(d) The Department of Personnel shall present all psychological appeal documents to the New Jersey Personnel Medical Review Panel (Review Panel), which is composed of professionals in the medical or psychological field. All medical appeal documents shall be presented to the New Jersey Personnel Medical Examination Panel (Examination Panel), which is composed of medical professionals. Either panel may request additional psychological or medical reports, examinations or other materials.

1. Both the appellant and the appointing authority may present information, in person, to either the Review Panel or Examination Panel, whichever is appropriate.

2. If both parties agree, the appeal shall be reviewed upon the written record.

(e) The Review Panel or Examination Panel, whichever is appropriate, shall prepare a written report, including recommendations, for the Merit System Board.

1. The appellant and appointing authority shall be provided with copies of the report.

2. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report.

(f) The Merit System Board shall review the written report and exceptions, if any, and render a written final decision.

**4:4A-6.6 Disqualification appeals**

(a) Appeals other than scoring and item appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological unfitness appeals (N.J.A.C. 4A:4-6.5), shall follow the following procedures:

1. An appeal must be filed within 20 days of notice of the action, decision or situation being appealed.

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

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

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

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

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

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

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

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

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

**SUBCHAPTER 7. OTHER APPOINTMENTS OR EMPLOYEE MOVEMENTS****4A:4-7.1 Transfers**

(a) A permanent transfer is the movement of a permanent employee between organizational units within the same governmental jurisdiction.

1. In State service, an organizational unit shall mean an appointing authority.

2. In local service, an organizational unit shall mean a department or separate agency within the same county or municipality. A school district shall be considered a separate jurisdiction.

(b) If the transferred employee is concurrently appointed to a title other than that held on a permanent basis at the time of transfer to accurately reflect new duties, the permanent transfer shall be made in combination with appropriate promotional, lateral title change or voluntary demotion procedures. See N.J.A.C. 4A:4-2.4 et seq., 4A:4-7.6 and 4A:4-7.8, respectively.

1. The employee shall retain permanent status in the previously held permanent title with the recipient organizational unit until examination and working test period procedures are concluded.

2. If the employee does not successfully complete the examination or working test period procedures, the recipient organizational unit shall return the employee to his or her permanent title within this organizational unit pursuant to N.J.A.C. 4A:4-1.9 unless the employee has been disqualified for further employment.

(c) A permanent transfer shall require the consent of both organizational units, the affected employee, and the approval of the Department of Personnel.

1. Consent may be withdrawn by any party prior to the effective date of the transfer.

2. The consent of the employee shall not be required when there is a transfer or combining of functions or operations across organizational unit lines.

(d) A temporary transfer may be voluntary or involuntary and is the movement of a permanent employee between organizational units within the same governmental jurisdiction for a maximum of six months to effect economies, make available a needed service for short periods or for any other documented purpose which is in the best interest of the public service. All temporary transfers must be approved by the Commissioner of the Department of Personnel.

(e) Any affected employee must be given at least 30 days' written notice of an involuntary transfer.

1. The notice shall contain the following:

- i. The organizational unit to which the transfer is being made;
- ii. The effective date of the transfer; and
- iii. The reason for the transfer.

2. Less than 30 days' notice may be given where the employee gives his or her consent for a shorter notice period or the Commissioner of the Department of Personnel finds that an emergent condition requires a more immediate transfer.

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A reassignment is the in-title movement of an employee to a new job function, shift, location or supervisor within the organizational unit. Reassignments shall be made at the discretion of the head of the organizational unit. See N.J.A.C. 4A:4-7.7 for appeals.

**4A:4-7.3 Relocation assistance: State service**

(a) Subject to available appropriations, the Commissioner may allow relocation assistance for permanent employees who are transferred or reassigned on a permanent basis to a new work location due to either a closing or phasedown in anticipation of closing of a State operation.

1. In order to be eligible to participate in the program, an employee's new job site must be at least 25 miles from the prior job site.

2. Relocation assistance will be paid and verified by the receiving appointing authority.

(b) Such assistance may consist of all or part of the following:

1. A commutation allowance applied to the round trip mileage between an employee's domicile and new job site, reduced by the normal commutation mileage between the domicile and the previous job site.

i. The allowance shall be equal to the standard State Mileage Allowance for operating a personal motor vehicle, and shall be limited to a period of six months from the effective date of the transfer.

ii. An employee who is offered fully paid car, van pooling or mass transit options shall not be eligible for a commutation allowance.

2. A one-time moving expense allowance which is to be set by the Commissioner not to exceed \$1,000 for the shipment of household items from the employee's prior domicile to a domicile established as a result of the new work assignment.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the job site.

ii. The move must be made within one year of the effective date of the transfer.

3. The relocation allowance which is to be set by the Commissioner not to exceed \$1,000 for costs involved in terminating a lease, in rental situations, or costs involved in the sale and purchase of a home, including but not limited to broker's fees and closing costs.

i. The employee must demonstrate that the change in domicile was for the sole purpose of establishing a domicile closer to the new job site.

ii. The move must be made within one year of the effective date of the transfer.

(c) Relocation assistance shall be limited at the employee's option to commutation allowance under (b)1 above or the moving expense allowance and the relocation allowance under (b)2 and 3 above.

**4A:4-7.4 Retention of rights**

(a) An employee who is temporarily transferred shall retain promotional rights in the promotional unit scope from which he or she has transferred.

(b) An employee who is either transferred or reassigned shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation leave entitlements. In State service, an employee's rate of compensation, anniversary date and administrative leave entitlements shall be retained.

(c) An employee who is permanently transferred due to a combining of functions or operations of two or more organizational units shall retain promotional rights in the prior promotional unit scope only for promotional examinations he or she has filed for or taken.

(d) An employee who is reassigned from one promotional unit scope to another shall retain no promotional rights in the former unit.

**4A:4-7.5 Transfer during a working test period**

(a) An employee who is serving a working test period may only be transferred due to a transfer or combining of functions or operations.

(b) An employee who is permanently transferred due to a combining of functions or operations during the working test period shall

be permitted to complete the working test period in the new organizational unit.

**4A:4-7.6 Lateral title change**

(a) A lateral title change is the movement of a permanent employee from his or her permanent title to an equivalent title within the same organizational unit. Such procedures are also applicable to certain transfers under N.J.A.C. 4A:4-7.1.

1. In State service, a lateral title change may only be made if the titles are assigned the same class code.

2. Movement between variants of a title shall be considered a lateral title change.

(b) If the nature of the work, education and experience requirements of both titles are substantially similar, the employee shall retain his or her permanent status.

1. The employee shall retain accumulated seniority or service for purposes of determining promotional, layoff or demotional rights and sick and vacation entitlements.

2. In State service, the employee's rate of compensation on direct movement as adjusted or workweek, work year and the employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

(c) If the nature of the work, education and experience qualifications of both titles are dissimilar, then the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. Examination procedures may be waived by the Commissioner of the Department of Personnel if the employee has previously held the title on a permanent basis during current continuous service.

2. The employee shall retain accumulated service for purposes of determining sick and vacation leave entitlements.

3. In State service, the employee's rate of compensation on direct movement as adjusted for workweek, work year and employee relations grouping, anniversary date and administrative leave entitlement shall be retained.

4. A lateral title change pending examination shall not be permitted at the entry level of a title series, or when either a special reemployment or complete promotional list exists or when the Department of Personnel has received a request to conduct a promotional examination.

(d) A lateral title change shall require the consent of the employee, the head of the organizational unit and the approval of the Department of Personnel except when the title change results from changes in the Department of Personnel Classification Plan.

**4A:4-7.7 Appeals**

Transfers, reassignments or lateral title changes shall not be utilized as part of a disciplinary action, except when disciplinary procedures have been utilized. When an employee challenges the good faith of a transfer, reassignment or lateral title change, the burden of proof shall be on the employee.

**4A:4-7.8 Voluntary demotion**

(a) A voluntary demotion is the voluntary movement of a permanent employee from his or her permanent title to a lower title in local service or, in State service, to another title with a lower class code, within the same organizational unit.

(b) Permanent status and seniority shall be retained when the demotion is to any title previously held on a permanent basis during current continuous service or to a lower related title.

(c) If the criteria set forth in (b) above are not met, the employee shall be appointed pending examination and satisfactory completion of the working test period. An employee who fails the examination or is released at the end of the working test period shall be restored to his or her permanent title, unless disqualified for further employment.

1. An employee who seeks to return to his or her prior permanent title at the end of the working test period in the lower title may request placement on a regular reemployment list.

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(d) The employee shall retain accumulated service for the purpose of determining sick and vacation leave entitlements, and in State service, administrative leave entitlement.

(e) With the Commissioner's approval, this section may also apply to employees with permanent status in titles in the non-competitive division who take a voluntary demotion to a title in the competitive division of the career service.

**4A:4-7.9 Resignation/new appointment**

(a) A permanent employee who is appointed from an open competitive list to a title in a different organizational unit within the same governmental jurisdiction shall be considered to have resigned from the previous permanent title.

1. Accumulated service for purposes of determining sick and vacation leave, and in State service, administrative leave, entitlements shall be retained.

2. In State service, appointing authorities shall make the appointment at the minimum or authorized hiring rate, unless a higher rate is approved by the Commissioner.

(b) The employee may request placement on the regular reemployment list for the previous title.

**4A:4-7.10 Regular reemployment**

(a) A permanent employee who has resigned in good standing, retired or voluntarily demoted, may, within three years of such action, request consideration for reemployment by indicating availability to his or her appointing authority. Upon recommendation of the appointing authority that such reemployment is in the best interest of the service, the employee shall have his or her name placed on a regular reemployment list for up to three years from the date of resignation, retirement or voluntary demotion except if the list is extended under N.J.A.C. 4A:4-3.3(a)1.

(b) A permanent employee who has been placed on disability retirement may be reinstated following a determination from the Division of Pensions that the retiree is no longer disabled.

(c) Seniority commences as of the date of regular reemployment.

**(a)**

**Notice of Extension of Comment Period and Additional Public Hearings on Proposed Amendments to N.J.A.C. 4A:6-1.3 and 4A:6-1.10.**

Take notice that further opportunity for public comment will be made available on the proposed amendments to N.J.A.C. 4A:6-1.3 and 4A:6-1.10, published in the January 19, 1988 New Jersey Register at 20 N.J.R. 133(a).

The period for written comments has been extended to **March 17, 1988.**

Further, at the public hearings scheduled for the proposed N.J.A.C. 4A:4, Selection and Appointment, published elsewhere in this issue of the New Jersey Register, testimony will also be accepted on the proposed amendments to N.J.A.C. 4A:6-1.3 and 4A:6-1.10.

**COMMUNITY AFFAIRS**

**DIVISION OF HOUSING AND DEVELOPMENT**

The following proposals are authorized by Leonard S. Coleman, Jr., Commissioner, Department of Community Affairs.

Submit comments by March 17, 1988 to:

Michael L. Ticktin, Esq.  
Administrative Practice Officer  
Department of Community Affairs  
CN 804  
Trenton, NJ 08625

**(b)**

**Emergency Shelters for the Homeless Maintenance and Operation Standards Proposed New Rules: N.J.A.C. 5:15**

Authority: N.J.S.A. 55:13C-5.  
Proposal Number: PRN 1988-65.

The agency proposal follows:

**Summary**

The proposed new rules establish standards for the construction, maintenance and operation of emergency shelters for the homeless. The rules were developed in accordance with N.J.S.A. 55:13C-5 and in consultation with the Department of Human Services and the Department of Health.

Subchapter 1 sets forth that the public officer appointed by a municipality is responsible for the administration and enforcement of these rules and that if there is no public officer appointed the Bureau of Rooming and Boarding House Standards is responsible. (A public officer is designated by a municipality, as the person responsible for the licensure, regulation and inspection of emergency shelters for the homeless.)

The subchapter also sets forth three classes of shelters, the contents of the application to be filed, the requirements for a hearing, how exceptions to the rules may be obtained and other general administrative matters.

Subchapter 2 sets forth definitions.

Subchapter 3 sets forth the requirements for services to be provided to residents and the admission and discharge criteria. It sets forth that facilities wherein children reside must provide sleeping areas, access to three meals a day and referral services for medical and mental health care as well as employment counseling. The subchapter also sets forth recordkeeping requirements and staffing requirements for emergency shelters.

Subchapter 4 sets forth the requirements for building maintenance, furnishing, equipment and fire safety. It sets forth that existing shelters shall conform to Subchapter 4 of the Uniform Fire Code (N.J.A.C. 5:18 and 5:18A) for R-1 use group and that newly constructed or converted shelters shall conform to the Uniform Construction Code—R-1 use group. This subchapter sets forth the requirements for housekeeping and maintenance of the facilities and requires that bedding and linens be provided and that they be clean. The rules also provide for minimum square foot requirements for dining, leisure and sleeping areas, as well as minimum bathroom facilities.

**Social Impact**

The adoption of these proposed rules would result in a positive social impact on persons residing in emergency shelters for the homeless. The rules provide for uniform standards for the maintenance of such facilities, for the services to be provided to residents and the rights of residents. While it has been determined that the homeless present a significant social problem, figures are unavailable at this time regarding the number of homeless.

**Economic Impact**

The adoption of these proposed rules is likely to result in additional costs to some emergency shelters to the homeless in order for them to be brought into compliance. This impact will be offset by the availability of funds through the Emergency Shelter Grant Program, administered by the Bureau of Housing Services, within the Department of Community Affairs. Current funding is \$800,000.

**Regulatory Flexibility Statement**

Shelters for the homeless are owned and operated by non-profit and by religious organizations. The rule does not apply to small businesses.

**CHAPTER 15  
EMERGENCY SHELTERS FOR THE HOMELESS**

**SUBCHAPTER 1. ADMINISTRATION AND ENFORCEMENT**

**5:15-1.1 Title**

This chapter, promulgated pursuant to N.J.S.A. 55:13C-1 et seq., shall be known and may be cited as the "Rules Governing Emergency Shelters for the Homeless."

**5:15-1.2 Scope and purpose**

(a) These rules are promulgated for the purpose of establishing standards to ensure that every emergency shelter in the State of New Jersey is constructed, maintained, and operated in such a manner as will protect the health, safety, and welfare of its occupants.

(b) These rules shall not apply to institutions or facilities subject to the inspection and licensing of the State Department of Human Services or the Department of Corrections; facilities operated by the Division of Youth and Family Services; or facilities subject to the

supervision of the Department of Health pursuant to N.J.S.A. 26:1-1 et seq. of the Public Health Law.

(c) Any person, partnership, corporation, organization, county, municipality or other entity, which operates a shelter is subject to the requirements of these rules.

(d) The provisions of these rules apply to any facility providing shelter and services to homeless adults or families and:

1. Is not a hotel or motel facility, a rooming house or a facility which provides shelter substantially similar to a house or an apartment and which includes individual private cooking areas and private bathrooms, except if the hotel, motel or rooming house space is used by a social services agency, and the space is used under a contract or lease with the hotel, motel or rooming house (including hotels and motels owned or leased by not-for-profit or charitable organizations), in which case these rules shall apply.

2. Is not a boarding home as defined in N.J.S.A. 55:13B-1 et seq.

#### 5:15-1.3 Administration and enforcement

(a) It shall be the duty and responsibility of the public officer designated by the municipality to administer and enforce the provisions of these rules with regard to emergency shelters for the homeless located within the municipality.

1. When a municipality does not designate and appoint a public officer to administer and enforce these rules within 90 days of the effective date of these rules, it shall be the duty of the Bureau to administer and enforce them.

2. A municipality shall notify the Bureau of the name and office telephone number of the person appointed.

3. Notwithstanding (a) above, only the construction official of a municipality shall be authorized to issue a certificate of occupancy on a building requiring a certificate of occupancy pursuant to the State Uniform Construction Code and N.J.A.C. 5:15-1.5(c).

#### 5:15-1.4 Continuation of lawful existing use

The lawful occupancy and use of any emergency shelter for the homeless existing on the effective date of these rules may be continued unless a change is required by the provisions of these rules and unless it is owned or operated by a person who has not obtained a license on or before December 31, 1987.

#### 5:15-1.5 Construction and alteration; change of use

(a) No emergency shelter for the homeless may be constructed or altered except in accordance with the Uniform Construction Code (N.J.A.C. 5:23).

(b) No building which is not lawfully occupied and used as an emergency shelter for the homeless on the effective date of these rules shall be used as an emergency shelter for the homeless unless the owner and any operator thereof has been licensed as provided in these rules and unless a certificate of occupancy allowing use as an emergency shelter for the homeless for the number of occupants accommodated or intended to be accommodated is obtained from the construction official having jurisdiction.

(c) A new or amended certificate of occupancy shall be required in the event of any change of use other than the following:

1. A conversion from a one or two-unit dwelling to an emergency shelter occupied or intended to be occupied by five or fewer residents.

2. A conversion from a multiple dwelling to an emergency shelter occupied or designed to be occupied by at least six and not more than 20 residents.

3. A conversion from a hotel to an emergency shelter occupied or intended to be occupied by no more than the designed occupant load.

4. The use of a building, or portion thereof, that is an auditorium, gymnasium or similar A-3 assembly use as defined in the BOCA National Building Code as a Class II shelter as defined in N.J.A.C. 5:15-1.6(b)2.

(d) Nothing in these rules shall be construed to impair the power of the construction official or fire official to enforce any applicable provision of their respective codes pertaining to emergency shelters, including, without limitation, provisions concerning hazardous conditions in existing buildings.

#### 5:15-1.6 Licenses

(a) No person or agency shall own or operate an emergency shelter for the homeless without a license from the public official having jurisdiction, or the Bureau.

(b) There shall be three classes of shelters, which shall be as follows:

1. Class I—adult individuals, 24 hour a day shelter;

2. Class II—adult individuals, providing shelter during the night time hours only;

3. Class III—facilities with children.

(c) The annual fee for licenses shall be \$10.00.

(d) Except as otherwise provided in the Rehabilitated Convicted Offenders Act (N.J.S.A. 2A:168A-1 et seq.), no license shall be issued to any person who has at any time been convicted of embezzlement, extortion, crimes against the person or other like offenses, or to any partnership of which such person is a member, or to any association or corporation of which said person is an officer, director, employee or in which, as a stockholder, such person has or exercises a controlling interest either directly or indirectly.

(e) No license shall be issued to any person who is not qualified pursuant to N.J.A.C. 5:15-4.6(f).

#### 5:15-1.7 License applications

(a) The following information shall be required of a person applying for a license:

1. Name of applicant;

2. Address;

3. Telephone number;

4. Social security, federal I.D. number or non-profit I.D. number;

5. Date of birth;

6. Names and addresses of all partners, officers, directors and stockholders owning a controlling interest if the applicant is a partnership, association or corporation;

7. Name and home address of the person upon whom any orders or notices shall be served;

8. The following information regarding the structure to be used:

i. Street address;

ii. Tax map lot and block;

iii. Number of stories;

iv. The maximum number of residents;

v. The date the building received its certificate of occupancy for its use as an emergency shelter for the homeless and a copy thereof.

#### 5:15-1.8 Administrative hearings

(a) Any person aggrieved by any ruling, action or order of the public officer or the Bureau shall be entitled to an administrative hearing in accordance with the Administrative Procedures 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.

(b) When the ruling, action or order complained of was issued by the public officer in a municipality the parties to the hearing shall be the municipality and the person aggrieved.

(c) When the ruling, action or order complained of was issued by the Bureau the parties to the hearing shall be the Bureau and the person aggrieved.

(d) In accordance with the Administrative Procedure Act, the Commissioner or his designee shall issue the final decision in all cases.

(e) The request for a hearing shall be filed with the public officer or the Bureau within 15 days of the receipt of the ruling, action or order. When the request is sent to the public officer a copy shall be sent to the Bureau by the complainant.

#### 5:15-1.9 Exceptions

(a) An owner may request an exception waiving, modifying or postponing the application of any rule contained in this chapter.

(b) Requests for exceptions shall be filed with the local officer or Bureau, as appropriate, within 20 days of the receipt of the ruling, action or order at issue but in no case after the date for abatement of any violation. The request shall state the rule that the owner wishes to be waived, modified postponed, the reasons for the request and how the health, safety and welfare of the residents will not be jeopardized if the exception were granted.

(c) These rules apply to all emergency shelters unless the licensee obtains a waiver from the local officer or Bureau. A request for a waiver shall be submitted in writing and shall be granted or denied within 15 days of its receipt by the local officer or Bureau. A waiver may be granted when it can be shown that there is an emergent need for the emergency shelter for which the waiver is sought, and that the denial of the waiver would unreasonably delay or impede the opening of the shelter.

(d) Any waiver granted pursuant to this section shall be effective for a period of no longer than 45 days unless the local officer or Bureau has received and approved a plan, submitted by the licensee, which demonstrates how the emergency shelter will be brought into compliance with these rules.

#### 5:15-1.10 Search warrants

(a) In the event that any local officer or Bureau representative is denied access to any emergency shelter for the homeless, a search warrant shall be obtained by the local officer or Bureau representative in any court having jurisdiction.

(b) The application for the search warrant shall state that access to the premises is required in order to enforce the Act or these rules and shall specify whether the desired inspection is a regular inspection in response to information received indicating the possible existence of a condition in violation of the Act or of applicable rules.

#### 5:15-1.11 Tense, gender, and number

Words in this chapter which are used in the masculine include the feminine and neuter; words used in the singular include the plural; and words used in the plural include the singular, all except where the context clearly indicates otherwise.

#### 5:15-1.12 Severability

If any provisions of these rules shall be held invalid or ineffective in whole or in part, or inapplicable to any person or situation, it is the purpose and intent of these rules that all other provisions thereof shall nevertheless be separately and fully effective.

### SUBCHAPTER 2. DEFINITIONS

#### 5:15-2.1 Definitions

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

"Act" means the Act concerning emergency shelters for the homeless (P.L. 1985 c.48, N.J.S.A. 55:13C-1 et seq.)

"Adult shelter" means a facility established and operated for the purpose of providing temporary shelter or food and shelter for households without children.

"Alteration" means a change or rearrangement in the structural parts or in the egress facilities of any building or structure, or any enlargement thereof or the moving of such building or structure from one location to another.

"Bureau" means the Bureau of Rooming and Boarding House Standards in the Division of Housing and Development of the Department of Community Affairs.

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Competent staff" means persons able, both physically and mentally, to carry out the duties assigned to them and includes persons who are full or part time paid or volunteers.

"Director" means the Director of the Division of Housing and Development of the Department of Community Affairs.

"Egress" means path by which a person can travel safely and without assistance from a unit of dwelling space along a continuous and unobstructed line to an exterior open area.

"Emergency shelter" means emergency shelter for the homeless.

"Emergency shelter for the homeless": see N.J.S.A. 55:13C-2.

"Exit" means a means of egress from the interior of a building to an open exterior space.

"Financial services" means any assistance permitted or required by these rules to be furnished by an owner or operator to a resident in the management of personal financial matters, including, but not limited to, the cashing of checks, holding of personal funds for safekeeping in any manner or assistance in the purchase of goods or services with a resident's personal funds.

"Habitable room" means a residential room or space in which the ordinary functions of domestic life are carried on, including bedrooms, living rooms, studies, recreation rooms, kitchens, dining rooms, and other similar spaces, but excluding closets, stairways, laundry rooms, toilet rooms, and bathrooms.

"Licensee" means any person licensed by the public officer or the Bureau as either an owner or an operator.

"Limited period time" means providing shelter for less than 24 hours a day. The term also means providing shelter for more than 14 people for longer than seven days at a time more than four times a year until such persons can find and occupy affordable housing on a permanent basis.

"Local social services" means any governmental, non-profit, municipal, or other governmental agency organized for the purpose of providing health services, administered by a full-time health officer and conducting a public program pursuant to law.

"Means of egress": see the definition of "egress" above.

"NFPA" means the National Fire Protection Association.

"Public officer" means the person designated by a municipality pursuant to the Act and these rules who shall be responsible for the licensure, regulation and inspection of emergency shelters for the homeless.

"Resident" means a person residing in an emergency shelter for the homeless, exclusive of the owner and his family, any bona fide employees, and the operator and his family.

"Shall" as used in these rules, is always to be construed as mandatory.

"Story" means that portion of a building that is between a floor level and the next higher level or roof above.

"Travel distance" means the maximum length of exit-way access travel, measured from the most remote point to an approved exit along the natural and unobstructed line of travel.

### SUBCHAPTER 3. RIGHTS OF RESIDENTS

#### 5:15-3.1 Enumeration of rights

(a) The licensee must promulgate reasonable resident rules governing day-to-day life and activities in the facility and post these rules in a location readily accessible to residents and visitors.

(b) Upon admission, residents must be notified as to the location of the facility rules setting forth their rights and responsibilities while residing in the facility.

(c) At a minimum, the facility must afford each resident the following rights and protections which shall be set forth in the resident rules:

1. To remain in the facility and not to be involuntarily removed without cause as set forth in N.J.A.C. 5:15-3.8;
2. To receive visitors in designated areas of the facility during reasonable hours as specified in the resident rules;
3. To exercise one's civil, constitutional, or legal rights;
4. To reasonable privacy in caring for personal needs;
5. To have private written and verbal communications including the right to meet with legal representatives and legal counsel. The resident rules must not unreasonably restrict access by legal representatives and legal counsel to any areas of the facility. Any requirements as to prior notice, hours of access, or access to private family areas shall be set forth in the resident rules;
6. To present grievances on one's own behalf, or on behalf of other residents, to the licensee and to the local social services agencies without fear of reprisal;
7. To manage one's own financial affairs, unless the person freely agrees to other arrangements with the shelter operator;
8. To confidential treatment of personal, social, financial and medical records;
9. To be free from restraint or confinement;
10. To receive and send mail or any other correspondence without interception or interference;
11. To leave and return to the facility and grounds at reasonable hours in accordance with the rules of the facility;
12. To a safe, healthful, and decent living environment that recognizes the dignity and individuality of the resident;

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13. To refuse to perform services for the licensee except pursuant to a bona fide contract between resident and licensee.

5:15-3.2 Facility rules

(a) The facility rules inform residents of the obligations upon which their continued residence in the shelter depends. Such rules must clearly set forth the resident's obligations concerning compliance with the resident rules and the sanctions for non-compliance. At a minimum, rules concerning the following obligations shall be set forth in the resident rules:

1. Seeking permanent housing;
2. Seeking employment;
3. Ensuring school attendance of school-age children in their family;
4. Supervising minor family members;
5. Utilizing child care provided through the facility, when such care is available or if offered, to enable the parent or caretaker relative to seek employment and/or permanent housing or to attend school or training;
6. Maintaining cleanliness of their own sleeping and living areas, including bathroom and cooking areas, if any;
7. Using communal areas appropriately;
8. Notifying facility staff of any illness of themselves or any member of their family; and
9. That residents are subject to removal for destruction of property, drunkenness, use of alcohol or drugs, violence or inappropriate activity that causes a disturbance.

(b) Each resident shall have the responsibility of complying with all reasonable rules of the facility and to respect the personal rights and private property of the other residents.

5:15-3.3 Resident services, general

(a) The licensee shall be responsible for the development and provision of resident services which shall include, at a minimum, room, board (if available), supervision, information and referral services.

(b) A licensee who proposes to serve a population with particular needs, for example, the aged, substance abusers, alcoholics or alcohol abusers, ex-offenders, or the mentally or physically disabled, shall demonstrate that cooperative arrangements have been made with appropriate providers of funding or services and that a program of service and staff sufficient to meet the needs of the population:

1. Is planned at the time of application; and,
2. Is in place at the start of operations and is continued thereafter.

(c) The licensee shall establish procedures and assign staff sufficient to carry out the activities required in this section, as required in N.J.A.C. 5:15-3.5(g).

5:15-3.4 Resident services; facilities with children

(a) In all emergency shelters wherein facilities with children reside, the following services shall be provided as a minimum:

1. Sleeping area;
2. Access to three meals a day;
3. Appropriate levels of supervision, as required in N.J.A.C. 5:15-3.5(b);

4. Referral services for medical care, mental health care, employment counseling and social service needs as are required.

5:15-3.5 General supervision services

(a) Supervision services shall include, but shall not be limited to:

1. Intake;
2. Recording a daily census;
3. Monitoring residents to identify abrupt or progressive changes in behavior or appearance which may signify the need for assessment and service;
4. Surveillance of the grounds, facility, and activities of residents to prevent theft and resident harm;
5. Handling individual emergencies including arranging for medical care or other services;
6. Conduct and supervision of evacuation and monthly fire or evacuation drills;
7. Investigation and recording of incidents involving resident endangerment;

8. Guidance to assure residents attend meals if available and maintain appropriate nutritious intake;

9. Guidance to assure that necessary personal hygiene and grooming activities are performed.

(b) All staff shall be trained in the means of rapidly evacuating the building.

(c) At least one staff person on each shift shall be designated as responsible for the conduct and supervision of any evacuation.

(d) In the event that a resident develops a medical condition which requires immediate or continued medical or skilled nursing services which cannot be provided on an outpatient basis or which constitutes a danger to self or others, the licensee shall:

1. Make arrangements for transfer of such residents to an appropriate medical facility; and,
2. Notify the resident's representative, or next of kin, if known.

(e) In the event that a resident exhibits behavior which constitutes a danger to self or others, the licensee shall:

1. Arrange for appropriate professional evaluation of the resident's condition;
2. Notify the resident's representative or next of kin, if known; and,
3. If necessary, arrange for transfer of the individual to a facility providing the proper level of care.

(f) Each licensee shall designate staff to perform supervision functions during all hours of operation.

(g) The minimum number of supervision staff per adult facility required shall be determined by resident census. The following number of staff shall be on duty and on site at all times.

Resident Census	Staff Required
1- 19	1
20- 40	2
41- 80	3
81-120	4
121-150	5
161-200	6

(h) For the purposes of calculated minimum staff requirements food service and transportation personnel are not counted.

(i) Staff shall be immediately physically accessible at all times while on duty.

(j) Staff may be assigned other duties in the facility which do not interfere with their physical accessibility, provided that such staff remain responsible for, and available for, the supervision of residents.

(k) In facilities with 20 or more persons, one of the staff who is required between 11:00 P.M. and 7:00 A.M. may be permitted to sleep.

5:15-3.6 Supervision; facilities with children

(a) In addition to the requirements of N.J.A.C. 5:15-3.4, supervision of the program and resident families with children in facilities shall include but shall not be limited to:

1. Maintaining a list of school-age children currently residing in the facility and the location of the school each child attends. The facility must verify departure for school on a daily basis during the school year;

2. Handling and documenting individual emergencies, including arranging for medical care or other emergency services and maintaining records of any special medical needs or conditions, the prescribed regimen to be followed and the names and phone numbers of medical doctors to contact should an emergency arise concerning these conditions;

3. Handling and documenting incidents involving resident endangerment, injury, or death;

4. Reporting or causing a report to be made to the Division of Youth and Family Services for child abuse and mistreatment involving a resident under age 18;

5. Instituting fire safety measures and arranging for fire safety training for facility staff and residents; fire drills must be held with staff and residents on a monthly basis and a record of such drills must be maintained; and

6. Securing the facilities. Such security may include locking the facility to control access and egress during specified nighttime hours, provided the door is steadily openable from the inside without a key.

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(b) A sufficient number of competent staff must be on-site at all times to supervise, operate, and maintain the premises in a safe and sanitary condition and to render the services the facility is required to provide pursuant to the provisions of these rules.

(c) The minimum number of program and services staff required for assistance and supervision of all the residents in facilities with children will be determined by a census of the resident population.

(d) One staff person for every 25 residents must be on duty and on site during resident nighttime sleeping hours. For all other hours, in accordance with the program and services provided pursuant to the operational plan, approved by either the Bureau or the public official, the following minimum number of staff must be on duty:

Resident Census	Minimum Staff Required
1-19	1
20-60	3
	1 additional supervisory staff member per 40 additional residents

(e) For purposes of calculating minimum staff requirements, security, food service and transportation personnel are not counted.

1. At least one member of the staff on duty shall have a minimum of eight hours of basic first-aid training.

2. Staff may be assigned other duties in the facility which do not interfere with their accessibility.

3. The staffing ratio may be temporarily suspended under the emergency conditions set forth in N.J.A.C. 5:15-3.7(g) and (h).

(f) Any staff member or volunteer who has contracted an infectious or contagious disease shall cease work at the facility. Return to work by personnel who have been diagnosed to have a communicable disease may, at the request of the facility director, be subject to a physician's written approval.

(g) The licensee shall orient and train employees in residents' rights and facility rules, procedures and/or rules relative to the specific duties to be performed, and emergency procedures.

**5:15-3.7 Information and referral services**

(a) The licensee shall have knowledge of, and provide linkages with, community resources which can assist each resident to maintain or improve his or her level of functioning.

(b) Information and referral services shall include:

1. Establishing linkages with and arranging for services from public and private sources for medical, housing, social, legal, and welfare services;

2. Cooperating with providers of services essential to residents;

3. Assisting residents to secure services needed; and,

4. Arranging for resident participation in community-based and community-sponsored activities.

(c) The licensee shall utilize and cooperate with external service providers and shall:

1. Permit residents to meet in private with service providers;

2. In no way inhibit access to residents who need and desire services, unless such access is denied based on the criteria set forth in N.J.A.C. 5:15-3.7;

3. Identify persons in need of services and assist external service providers in establishing a relationship with these residents; and,

4. Cooperate with service providers in executing a plan for service for individual residents.

(d) Each licensee shall designate sufficient staff to perform information and referral services.

**5:15-3.8 Admission standards**

(a) The licensee shall admit and care for only those individuals who do not require services beyond those permitted by law and rules.

(b) The licensee shall not accept, except on an emergency basis, nor permit to remain in the facility any person who:

1. Causes danger to himself or others or interferes with the care and comfort of other residents;

2. Is in need of a social, religious, cultural, or dietary regimen that cannot or will not be met by the facility;

3. Is in need of a level of medical or nursing care that cannot be rendered safely and effectively at the facility;

4. Is incapable of ambulation on stairs without personal assistance, unless such a person can be assigned a room on a floor with ground level egress; or,

5. Is under 18 years of age (unless part of a family).

(c) The person designated by the licensee as responsible for admission decisions shall interview each resident within 24 hours of entry to determine the immediate needs of the resident and whether or not the facility can meet or continue to meet those needs.

(d) Within 24 hours of entry, the person designated by the licensee shall inform the resident of the conditions and rules governing residency and termination of residency, of the services to be provided and of the charges for services, if any.

(e) The licensee shall assist persons who are accepted on an emergency basis, and who are not appropriately placed, to relocate within 72 hours of their admission.

(f) A licensee shall not permit occupancy to exceed the number of persons specified as the licensed capacity or on the certificate of occupancy.

(g) Notwithstanding (f) above, the Department may authorize a licensee to provide short-term emergency shelter to a number of persons in excess of the certified capacity of the facility. At the time of licensing, or at the request of a currently licensed facility, the local authority or the Bureau shall establish a limit on the number of persons that may be admitted to a given shelter in emergency situations. This emergency capacity shall be predicated upon the physical layout of the facility and the conditions set forth in (h) below. Emergency capacity shall be posted in writing next to the facility license and the certificate of occupancy.

(h) The licensee may provide short-term emergency shelter to persons in excess of certified capacity only if all the following conditions are met:

1. Snow emergencies, excessive cold, or other circumstances create an emergency need for additional shelter space;

2. The licensee is able to meet the food and shelter needs of all persons in residence;

3. The licensee assigns staff sufficient to meet census-based staffing requirements set forth in these rules; and

4. The number of persons admitted is not in excess of the authorized emergency limit.

**5:15-3.9 Discharge or removal**

(a) A licensee may remove a resident under the terms set forth in the facility rules. The licensee shall notify social services, advocacy or other involved groups for assistance and advice for alternate living arrangement before moving a resident.

(b) In the event of transfer to a health, mental health, or other facility, the licensee shall send identifying information and identification of the resident's representative and physician, if available.

(c) Prior to removal the licensee shall explain to the resident(s) the basis for removal and assist the resident(s) in preparation for moving.

(d) The licensee shall return to the resident, representative, or other appropriate individual or agency any monies, property, or items of value which came into the possession of the operator after discharge or transfer.

**5:15-3.10 Resident funds and valuables**

A licensee who receives any funds or property from a resident or who acts in any way as a financial agent for a resident, either formally or informally, shall issue a signed receipt to the resident noting the date, amount, or description of property and the nature of the transaction. Records of all transactions shall be maintained as part of the operator's permanent records.

**5:15-3.11 Resident fund accounts**

(a) The licensee may offer a resident an opportunity to place personal funds in a facility-maintained account;

(b) The licensee shall not require a resident to maintain a personal fund account at the facility against the resident's wish;

(c) The licensee shall provide for the safekeeping and accountability of resident funds;

(d) The licensee shall hold resident funds in trust for the sole use of the resident and shall not use these funds for any other purpose;

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(e) Resident funds shall not be commingled with the personal funds of the licensee or the operating funds of the facility or become an asset of the licensee;

(f) The resident may terminate the personal fund account at any time;

(g) No service fee shall be charged by the licensee for maintaining a fund account for a resident;

(h) Each resident shall have the opportunity, during regular business hours, to examine his or her personal fund account records upon request.

**SUBCHAPTER 4. FACILITY REQUIREMENTS**

**5:15-4.1 General requirements**

A licensee shall afford any officer or duly authorized employee or agent of the public officer or Bureau full access at any time to the residents, grounds, buildings, and during facility business hours, to books and papers relating to the facility.

**5:15-4.2 Building standard requirements**

(a) A building newly constructed after January 1, 1987 for use as a shelter shall be in compliance with the Uniform Construction Code for R-1 use, group occupancy, if residency is for more than 30 days or R-2 if residency is for 30 days or less.

(b) In an existing shelter or an existing structure modified for use as a shelter after January 1, 1987, the structure shall conform to the requirements of the Uniform Fire Code (N.J.A.C. 5:18-4) for R-1 use group structures, if residency is for more than 30 days, or R-2 if residency is for 30 days or less.

**5:15-4.3 Equipment and furnishings requirements**

(a) The licensee shall provide equipment and furnishings which support daily activities and do not endanger resident health, safety, and well-being.

(b) All equipment and furnishings shall be durable, clean, and appropriate for their intended function.

(c) The facility must furnish each resident, whether an adult or a child, with a clean bed (or cribs for infants) a minimum of 27 inches in width, solidly constructed, and in good repair which has clean and well-constructed bedding which shall be treated with fire retardant material.

(d) Each resident shall be supplied with:

1. Sheets;
2. A pillow case;
3. At least one blanket;
4. Towels;
5. Soap; and,
6. Toilet tissue.

(e) Bed linens, blankets, and towels shall be clean and washable; and sufficient in number for changes when necessary.

(f) All operable windows must be equipped with screens and locks.

(g) Light fixtures must be shaded to prevent glare. All electrical outlets accessible to children must be adequately protected.

(h) Dining areas must be furnished with dining tables and chairs appropriate to the size and function of the facility.

(i) Living rooms, sitting rooms, lounges, and recreation areas must be furnished with tables, chairs, lighting fixtures, and other equipment appropriate to the size and function of the specific area and of the facility.

(j) Heating systems must be maintained in good working order.

**5:15-4.4 Laundry facilities**

If provided, laundry facilities shall be located in a clean, dry, well-lighted area.

**5:15-4.5 Posting areas**

The licensee shall maintain areas suitable for posting required notices, documents, and other written materials in locations visible to, and accessible to, residents, staff, and visitors.

**5:15-4.6 Housekeeping**

(a) All areas of the facility shall be free of vermin, rodents, and trash.

(b) All areas of the facility, including, but not limited to, the floors, walls, windows, doors, ceilings, fixtures, equipment, and furnishings shall be clean and odor free.

(c) Blankets and pillows shall be laundered as often as necessary for cleanliness and freedom from odors.

(d) Adequate, properly maintained supplies and equipment for housekeeping functions shall be provided.

**5:15-4.7 Maintenance**

(a) The licensee of each facility shall ensure the continued maintenance of the facility.

(b) The building and grounds shall be maintained in a clean, orderly condition and in good repair.

(c) All equipment and furnishings shall be maintained in a clean, orderly condition and in good working order.

(d) Walls and ceiling covering shall be free of peeling paint.

(e) Floors and floor coverings shall be free of cracks and missing or raised portions which constitute a safety hazard.

(f) Electrical systems including appliances, cords, and switches shall be maintained in good working order.

(g) Plumbing and plumbing fixtures shall be maintained in good working order.

(h) Ventilation, air conditioning, and air-changing systems shall be maintained in good working order.

(i) Windows and screens shall be kept clean and in good repair.

**5:15-4.8 Safety procedures**

(a) Chain locks, hasps, bars, padlocks, and similar devices must not be used in any communal area in a way that would inhibit access to an exit.

(b) Doors in residents' rooms in Class III facilities must be able to be secured by the resident, provided such doors can be unlocked from the outside and the inside and keys are available to supervisory and security staff at all times.

(c) Residents shall not have access to storage areas used for cleaning agents, bleaches, insecticides, or any other poisonous, dangerous, or flammable material, unless necessary for work they are performing.

(d) Hallways and corridors shall not be used for storage of equipment or trash.

**5:15-4.9 Kitchens; sanitation and sanitary procedures**

(a) All kitchens or food services and preparation areas shall be well-lighted and ventilated, and provided with essential and proper equipment adequate for the number of residents to be served, for storage, refrigeration, freezing, preparation, and serving of food.

(b) Food service areas must be provided with sufficient and suitable space and equipment to maintain efficient and sanitary operation of all required functions, in compliance with the New Jersey State Sanitary Code (See N.J.A.C. 8:8, 8:9, 8:22, 8:23, 8:24, 8:26, 8:44, 8:51-7, and 8:57). All other State, county, and local health and fire department regulations relating to kitchen operations, for fire protection, safety, sanitation, and health shall also be complied with.

**5:15-4.10 Space requirements for shelters**

(a) Every Class I and III emergency shelter shall have space for dining and leisure activities.

(b) Space used for sleeping or for passage shall not be considered as dining or leisure space.

(c) Space provided for dining shall be at least 12 square feet per certified bed for the first 50 beds and 10 square feet for each additional bed.

(d) Space provided for leisure area shall be at least 12 square feet per bed.

(e) When not in use, dining space may be used, with prior written approval of the public officer or the Bureau, as leisure space.

**5:15-4.11 Bath and toilet facilities**

(a) There shall be a minimum of one tub or shower for every 20 individual residents and one sink and one toilet for every 20 residents. Urinals may be substituted for no more than one half of the total toilets required. Separate bathrooms shall be provided for males and females in ratios appropriate to the percentage of males and females in the facility census.

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(b) Facilities shall provide adequate space and equipment, such as bathtubs, portable tubs, and basins, for the bathing and changing of infants and young children.

(c) Facilities shall assure that bathing and toilet facilities are accessible and in working order with hot and cold water 24 hours a day.

(d) Curtains, dividers, partitions, private stalls, or other similar devices shall be utilized to afford residents privacy when using toilets, showers, and tubs. Private areas for changing clothes shall be provided adjacent to tubs and showers.

(e) Bathrooms shall be cleaned as often as is necessary to maintain sanitary conditions.

(f) Hot water for bathing and washing shall be maintained at a maximum temperature of 120 degrees Fahrenheit.

**5:15-4.12 Sleeping rooms; adult shelter facilities**

(a) In single occupancy sleeping rooms, a minimum of 70 square feet per room shall be provided;

(b) In sleeping rooms for two or more residents, a minimum of 50 square feet per resident shall be provided.

1. A minimum of three feet, which is included in the per resident minimum, shall be maintained between beds and for aisles;

2. Shall have no more people sleeping therein than can be adequately provided for;

3. Separate sleeping rooms shall be provided for men and women;

4. If partitions are used to subdivide sleeping areas within the same room, their minimum height shall be sufficient to afford individual privacy, approximately five feet high;

5. Partitions separating sleeping rooms from other rooms shall be ceiling high and smoke tight;

6. All sleeping rooms shall be adequately lighted and adequately ventilated.

7. Bedrooms shall open directly into exit corridors;

8. A passageway or corridor may not be used as a bedroom;

9. Bedrooms shall have individual, lockable storage lockers for resident belongings. Each locker shall be large enough to accommodate winter clothing.

10. Adequate storage space for cleaning supplies and equipment shall be provided.

**4:15-4.13 Sleeping rooms; child shelter facilities**

Sleeping rooms in facilities with children shall have a minimum of 50 square feet, if occupied by one resident.

**5:15-4.14 Food and dietary requirements**

(a) The licensee of Class III emergency shelters shall provide residents three well balanced and nutritious meals a day. The meals may be provided on-site or off-site, either directly or through contractual arrangement.

(b) No more than 15 hours shall elapse between meals.

(c) In Class III emergency shelters, the licensee shall provide refrigeration and cooking equipment capable of being used for the storage and preparation of infant formula, baby food, milk and juices.

**5:15-4.15 Personnel**

(a) The licensee shall provide staff sufficient in number and qualified by training and experience to render those services mandated by these rules.

(b) A current, written staffing schedule shall be maintained on site.

(c) The licensee shall maintain personnel records which are current, contain sufficient information to support placement in any position required by these rules and record all wages, benefits, reimbursements, bonuses, gifts, or payments given any employee or resident.

(d) Any person working in the food service area shall have a tuberculosis skin test or a chest x-ray at the time he or she, begins work and at least every 24 months thereafter. A person having a positive skin test shall be required to have a chest x-ray.

(f) No individual who is suffering from a degree of mental illness or habituation or addiction to alcohol or other drugs such that the individual causes, or is likely to cause, danger to himself or others or is unable to perform his or her assigned duties, shall be employed or permitted to work as either an employee or volunteer.

(g) No individual shall be permitted to work, either as an employee or volunteer, if infected with a communicable disease that might endanger the health of residents.

**5:15-4.16 Staff qualifications**

(a) Each staff member shall be capable of associating with, and providing services and supervision to, the population served by the facility.

(b) Staff who have contact with residents shall be able to communicate in the predominant language of the residents, understand and carry out directions and instructions, record messages and keep records.

(c) No person under 18 years of age shall be:

1. Charged with direct responsibility for the supervision of residents; or

2. Permitted to work in an on-site supervision position.

**5:15-4.17 Records**

(a) Licensees shall maintain records that accurately reflect the number of persons and their names:

1. Residing in the shelter;

2. Who sought admission and were not admitted to the shelter; and

3. Who were discharged from the shelter.

(b) The licensee shall prepare and keep an emergency incident report indicating the following:

1. The name or names of the person(s) involved;

2. The date and time of the emergency;

3. The type of emergency; and

4. The disposition.

(c) The records required in (a) and (b) above shall be maintained on the premises and retained for one year.

**(a)**

**Continuing Care Retirement Community Rules  
Application Fees; Nonbinding Reservation  
Agreements**

**Proposed Amendment: N.J.A.C. 5:19-6.3  
Proposed New Rules: N.J.A.C. 5:19-8**

Authority: N.J.S.A. 52:27D-332, 358.

Proposal Number: PRN 1988-74.

The agency proposal follows:

**Summary**

In the course of its review of comments received regarding the recently adopted rules implementing the Continuing Care Retirement Community Regulation and Financial Disclosure Act (P.L. 1986, c.103), see February 1, 1988 New Jersey Register, the Department found that it would be desirable to add provisions to those rules placing reasonable limits on application fees (not more than \$500.00 unless the actual cost to the provider of processing the application is higher) and establishing a procedure for the making of nonbinding reservation agreements. Since these revisions could not appropriately be included in the adoption, they are now being presented as a new proposal.

**Social Impact**

The \$500.00 fee limitation will not adversely affect any facility, since a higher fee can be charged if justified by actual cost of processing. The use of nonbinding reservation agreements will enable potential providers to test the market, thereby increasing the likelihood that facilities will be developed where they are most needed and will provide the services that are required there.

**Economic Impact**

The application fee limitation will restrict the ability of providers to charge higher application fees than would be warranted by their actual costs, to the consequent economic benefit of prospective residents. The use of nonbinding reservation agreements will allow potential providers to better gauge the demand for their services, thereby avoiding wasteful miscalculations.

**Regulatory Flexibility Statement**

Some of the providers of continuing care retirement community facilities may qualify as small businesses under the provisions of the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.); however, they should not be exempted from compliance with the rules, since exemption would not conform to the statutory requirement that application fees "cover the provider's reasonable cost for processing" (N.J.S.A. 52:27D-322).

Providers qualifying as "small businesses" for purposes of the Administrative Procedure Act should no more be entitled to charge excessive application fees than any other providers. Nonbinding reservation agreements, as provided in N.J.A.C. 5:19-8, will be of especial benefit to small business providers since market miscalculations would be of greater harm to them than to larger firms which might more readily absorb any adverse effects.

The reporting and/or recordkeeping requirements on small businesses are not in excess of those required to implement the provisions of the Continuing Care Retirement Community Regulation and Financial Disclosure Act (N.J.S.A. 52:27D-330).

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

**5:19-6.3 Deposits and application fees**

(a) All deposits, downpayments, or other funds paid to a provider by a purchaser shall be held in an interest bearing separate trust account in a banking or similar institution located within this State or deposited with an attorney licensed to practice law in this State, or until occupancy or cancellation of the contract, as governed by N.J.A.C. 5:19-7.4.

(b) Application fees shall not exceed \$500.00 unless the provider can demonstrate that the actual cost of processing exceeds \$500.00.

**SUBCHAPTER 8. NONBINDING RESERVATION AGREEMENTS****5:19-8.1 Scope**

Upon application to and certification by the Department as provided in N.J.A.C. 5:19-8.2 below, a provider may accept a nominal sum, not to exceed 10 percent of the entrance fee, which sum shall be held in trust, as a nonbinding reservation for the purpose of determining the market demand for a proposed continuing care retirement community and shall not be deemed to be an offer or disposition of an interest therein, provided the provider shall do so under the terms and conditions contained in this subchapter.

**5:19-8.2 Application**

(a) Prior to accepting any nonbinding reservation agreements, the provider shall submit an application to the Department for certification that contains the following information:

1. The name and address of the provider;
2. The location and description of the facility to be developed;
3. The number and types of living units to be contained in the continuing care retirement community as well as a description of the services and facilities;
4. The selling price at which each living unit will be offered, together with a general description of the living unit or interest offered at that price and the estimated periodic charges;
5. The name and address of the person or firm holding the deposits and the name and location of the banking or similar institution wherein the deposits will be deposited;
6. A statement that no binding contract for a living unit will be offered or accepted until the continuing care retirement community is certified by the Department in accordance with this chapter;
7. A copy of the most recent financial statement of the provider, certified to be true and accurate by an independent public accountant;
8. A copy of all advertising material;
9. A copy of the proposed reservation agreement form;
10. Any other material deemed necessary by the Department in furtherance of the provisions of this chapter.

(b) The application shall be accompanied by a filing fee in the amount of \$250.00.

**5:19-8.3 Advertising standards**

(a) All nonbinding reservations advertising material shall conform to the provisions of N.J.A.C. 5:19-5 and, in addition, shall contain the following:

1. A statement that the purpose of the advertising is to solicit nonbinding reservations;
2. A statement that the nonbinding reservation is not a contract and may be cancelled by the prospective purchaser at any time, without cause;
3. A statement that any money paid to the developer shall be refunded to the prospective purchaser upon request and cancellation of the nonbinding reservation.

**5:19-8.4 Reservation form**

(a) Every provider accepting any nonbinding reservation agreement shall be given a reservation form to all prospective purchasers, which shall contain the following items:

1. The name and location of the project;
2. The name and address of the provider;
3. The name and address of the prospective purchaser;
4. A description of the particular living unit reserved;
5. The purchase price and terms;
6. A notice in 10-point bold face type that the nonbinding reservation agreement does not obligate the purchaser in any way; that there is or is not, as the case may be, a guarantee by the provider that the purchase price and terms will not be changed for such period of time as may be specified in the agreement; that there is or is not, as the case may be, a guarantee that the living unit described in the agreement will be built or otherwise made available for purchase by the prospective purchaser; and that he or she may receive a refund of the deposit, upon request, at any time prior to the execution of a contract or agreement of sale;
7. All nonbinding reservation agreements shall be signed by the party reserving the unit and the provider or the provider's agent;
8. A statement of the period of time for which the nonbinding reservation agreement is effective.

**5:19-8.5 Effective period**

Unless cancelled by the prospective purchaser, the nonbinding reservation agreement shall be effective for a period of not less than 30 days after notice to the prospective purchaser that the application for certification and the disclosure statement have been certified by the Department as provided in this chapter or until the provider withdraws the proposal to establish a continuing care retirement community.

**5:19-8.6 Notice**

The provider shall give written notice to the prospective purchaser that the application for certification and the disclosure statement have been certified by the Department, enclosing a copy of the disclosure statement, and shall notify the prospective purchaser that he or she must enter into a contract or agreement of sale within a specific period of time, but not less than 30 days, or the nonbinding reservation will expire and all deposit money will be refunded.

**5:19-8.7 Period of validity of certification**

The certification of an application to accept nonbinding reservations shall be valid for a period of one year from the date of certification unless an application for certification pursuant to N.J.A.C. 5:19-3 is submitted during that time, in which event the certification of the application to accept nonbinding reservations shall automatically be extended for the entire certification period and may be further extended from time to time by the Department.

## (a)

**Senior Citizen and Disabled Protected Tenancy  
Application Procedure: Taxable Income  
Proposed Amendment: N.J.A.C. 5:24-2.3**

Authority: N.J.S.A. 2A:18-61.38.

Proposal Number: PRN 1988-73.

The agency proposal follows:

**Summary**

The Department of Community Affairs proposes to amend the Senior Citizens and Disabled Protected Tenancy rules in response to the holding of the Appellate Division in the case of *The Prudential Insurance Company of America v. Guttenberg Rent Control Board, et al.*, (220 N.J. Super. 25), which was decided September 2, 1987. In that case, the court held that a lump sum pension payment is to be included in a tenant's income for purpose of determining eligibility for protected tenancy only to the extent of the amount of annuity actuarially available to a person of the tenant's age and sex, at the then prevailing interest rate, out of the amount of the lump-sum payment that exceeded the amount contributed. The court further stated that inclusion of lump-sum, non-repeated distributions as "income" for determining eligibility for protected tenancy would be counter to the statutory mandate to liberally construe the statute to effectuate its remedial purpose and recommended that this matter be addressed either by statute or by regulation.

The Department therefore proposes to redefine "income" for purposes of determining eligibility for protected tenancy by making lump-sum non-repeated distributions includable only to the extent of the actuarial value, for the year in question, of the lump sum payment, less any contributions by or on behalf of the recipient. For the sake of reasonable consistency, returned employee contributions are excluded from the "excluded pension payments" that must be taken into account in computing income.

**Social Impact**

Adoption and implementation of this proposed amendment will allow tenants to receive a one-time lump sum payment without thereby losing the right to protected tenancy, that is, the right not to be evicted for 40 years when their building is converted from a rental property to a condominium or cooperative. This will be beneficial to senior citizens and disabled tenants who cannot afford to purchase their units and cannot find adequate substitute rental housing which is affordable to them at their usual income level, but who would otherwise lose the right to protected tenancy because of a substantial one-time payment.

**Economic Impact**

To the extent that this amendment enables more tenants to receive protected tenancy, those tenants will benefit by avoiding having to go elsewhere and pay higher housing costs and building owners, and any persons who have bought or might buy units occupied by eligible tenants, will sustain a commensurate loss as a result of their inability to legally remove the tenant after three years.

**Regulatory Flexibility Statement**

Many of the condominium or cooperative converters or building owners to which this rule applies may be considered small businesses as defined in the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). However, there is no basis for exemption or preferential treatment of these small businesses. To exempt the small businesses from compliance with the rule would be contrary to the provisions of N.J.S.A. 2A:18-61.22 et seq., which protect senior citizens and the disabled from condominium or cooperative conversion, and to the provision of N.J.S.A. 2A:18-61.39 which states that the legislation is remedial and is to be "liberally construed". The statutorily required notices to tenants regarding intent to convert, plan of conversion, etc. require a certain amount of paperwork on the part of the converter or owner; however, it is not possible to assess the potential costs at this time, due to the variety of circumstances of individual converters or owners.

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

5:24-2.3 Application procedure

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

(c) Taxable income shall include all income subject to the New Jersey Gross Income Tax, without allowance for any deductions or exemptions. Non-taxable income shall include, without limitation,

any excluded pension payments (exclusive of moneys designated as refunded employee contributions), any Social Security, SSI or Railroad Retirement payments, any payments from any public assistance program and any interest on tax exempt securities or accounts. **Any lump-sum, non-repeated distribution shall be considered as income only to the extent of the amount of annuity actuarially available to a person of the recipient's age and sex, at the prevailing interest rate, during the year in question, out of the lump-sum payment after there has been subtracted from such lump-sum payment any contributions made by the recipient or by a person who designated the recipient as his or her beneficiary.**

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## (b)

**DIVISION OF COASTAL RESOURCES****Coastal Wetlands Maps in Salem County****Proposed Amendment: N.J.A.C. 7:7-2.2**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:9A-1 et seq. and 13:1D-1 et seq.

DEP Docket Number: 001-88-01.

Proposal Number: PRN 1988-78.

A public hearing concerning this proposed amendment will be held on:

March 16, 1988 at 7:00 P.M.

The Old Court House

Market Street and Broadway

Salem, New Jersey 08079

Copies of the wetlands maps affected by this proposed amendment are available at the Salem County Clerk's Office, and are available for inspection at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

Submit comments by March 17, 1988 to:

Michael P. Marotta, Esq.

Office of Regulatory Services

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Pursuant to N.J.S.A. 13:9A-1 et seq., known as the Wetlands Act of 1970, the Department of Environmental Protection is authorized to regulate certain activities on mapped tidal wetlands throughout the State. The purpose of the proposed amendment is to update the wetlands boundaries of the mapped wetlands of Salem County so that they accurately reflect both natural changes and changes which have resulted from permitted filling and construction. Individual notice to affected property owners has been given and a public hearing has been scheduled in accordance with the provisions of the Wetlands Act of 1970. The list of affected wetlands appears at N.J.A.C. 7:7-2.2(c)8.

The Department is proposing to alter the coastal wetlands boundaries that appear on 10 existing maps for Salem County. The relocation of these existing boundaries will result in the addition of approximately three-fifths of an acre of new wetlands in Salem County while approximately 9.5 acres of land which does not currently meet the definition of wetlands will be removed.

**Social Impact**

If this proposed amendment is adopted, approximately 9.5 acres of land presently designated as wetlands lands would be removed from the coastal wetlands inventory and would no longer be subject to the restrictions placed upon such lands pursuant to the Department's Rules on Coastal Resources and Development (N.J.A.C. 7:7E). In general, all development or disturbance within coastal wetlands is restricted except for commercial production of salt hay and other agricultural activities. Such restrictions would apply to property which would be classified as wetlands by this proposal.

**Economic Impact**

The proposed amendment is likely to result in a reduction in property value of those lands which will be designated as coastal wetlands. A beneficial economic impact is also expected due to a reduction in potential flood damage, recovery costs and the maintenance of high water levels for those lands designated as coastal wetlands. A positive economic impact would result to those lands no longer subject to wetlands restrictions.

**Environmental Impact**

The coastal wetlands area protects the land from the force of the sea, tempers the impact of weather, provides a habitat for waterfowl and for two-thirds of all fish and shellfish. It also assists in absorbing discharge from inland rivers. Designation of specific wetlands areas and the regulation of activities in these areas will help to prevent further deterioration and destruction of wetlands. Among the regulated activities are dredging, filling and the discharging of pollutants.

**Regulatory Flexibility Statement**

The Department has determined, pursuant to the Regulatory Flexibility Act (P.L. 1986, c.169), that the proposed amendment may impose additional requirements upon certain small businesses who may be engaged in activities upon lands designated as coastal wetlands by this proposal. In order to assure that the rule serves the purpose for which it was intended and implements the statutory purpose, it must apply to all persons who engage in activities upon wetlands. No distinction can be made between small businesses and other parties.

Full text of the proposal follows.

7:7-2.2 Wetlands

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

(c) The Wetlands Order promulgated by the Commissioner of Environmental Protection in April 1972, any amendments thereto, and these rules shall be applicable only in those areas shown upward of the upper wetland boundary on the following maps:

1.-7. (No change.)

8. Salem County

**AGENCY NOTE: The following maps are proposed to be altered.**

231-1752	...	...
...	273-1776	315-1764
266-1770	...	...
266-1776	294-1746	329-1770
...	...	...
273-1764	294-1764	329-1788

9.-11. (No change.)

**(a)**

**DIVISION OF ENVIRONMENTAL QUALITY**

**Toxic Catastrophe Prevention Act**

**Confidentiality and Trade Secrets**

**Proposed New Rules: N.J.A.C. 7:31-2.12, 2.15 and 7:31-5**

Authorized By: Richard T. Dewling, Commissioner, Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3, 13:1D-9, 13:1K-19 et seq., and specifically N.J.S.A. 13:1K-29.

DEP Docket Number: 002-88-01.

Proposal Number: PRN 1988-81.

Public hearings concerning this proposal will be held on:

March 9, 1988 at 10:00 A.M.

Rutgers University—Camden Campus Center  
326 Penn Street

Camden, New Jersey 08102

March 10, 1988 at 10:00 A.M.

Rutgers University  
Herrmann Lewis Labor Education Center

Ryders Lane (Off Route 1)

New Brunswick, New Jersey

Submit comments by March 17, 1988 to:

James A. Blocher

Office of Regulatory Services

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Toxic Catastrophe Prevention Act, N.J.S.A. 13:1K-19 et seq., ("TCPA" or "the Act"), requires that industries which handle, use, manufacture, store or generate extraordinarily hazardous substances (EHS) in or above the reportable quantities established for the EHS in N.J.A.C. 7:31-2.3 (see 19 N.J.R. 1687(a) at 1693) develop programs for the management of risks associated with these chemicals. A central assumption of the Act is that there will be a requirement for registrants to disclose significant amounts of information, including certain confidential information, regarding the operations of covered facilities to the New Jersey Department of Environmental Protection ("Department") for an analysis of the potential risk of the use of extraordinarily hazardous substances. The Act requires the Department to adopt regulations to govern the internal management of confidential information supplied to it pursuant to the Act and permits an owner of an affected facility to petition the Department to withhold from the Department trade secret or security information, which, notwithstanding the Department's management procedures to protect such information, must be kept privileged so as not to competitively disadvantage or compromise the security of the facility or its operations.

The Department is proposing N.J.A.C. 7:31-5 in order to establish the principles, guidelines and procedures governing the internal management of confidential information supplied to the Department by registrants as mandated by the Act at N.J.S.A. 13:1K-29. The proposed rules will also establish procedures for the assertion, substantiation, review and appeal of both confidentiality claims to withhold from public disclosure certain information required to be submitted to the Department, and petitions to withhold from the Department certain privileged trade secret and security information which would otherwise be required to be submitted to the Department pursuant to the Act or the TCPA program.

The Department is also proposing a new inspection section, N.J.A.C. 7:31-2.12, and a new insurance section, N.J.A.C. 7:31-2.15. The inspection and insurance sections initially proposed in the September 21, 1987 issue of the New Jersey Register at 19 N.J.R. 1687(a) are being withdrawn. However, the Department shall consider all comments received in response to the initial proposal regarding these sections in the response to comments document which shall be prepared for this proposal.

N.J.A.C. 7:31-2.12 describes the Department's right to inspect and the registrant's responsibilities during inspections of sites in the State of New Jersey to determine compliance with the Act and this chapter. The rule also explains in particular the procedures and rights of a registrant during an inspection of a site which contains either privileged trade secret or security information, or confidential information. It provides that a registrant need not disclose or submit trade secret or security information to the Department if the registrant has asserted a petition to withhold privileged trade secret or security information and such petition has not been denied. It further provides that any confidential information for which the registrant has submitted a confidentiality claim and which claim has not been denied, which is submitted or disclosed to the Department during an inspection, including photographs, shall be labeled as confidential and shall not be disclosed except as authorized by this chapter.

N.J.A.C. 7:31-2.15 establishes the administrative procedures that will be followed to obtain information concerning risks at EHS facilities from insurance carriers which underwrite any part of the environmental liability or worker's compensation insurance for a registrant's site. The rule also provides that information obtained from insurance carriers pursuant to the Act can be disclosed only to the Department's employees or agents to assist in enforcing the Act, or for use in a civil or criminal proceeding, if so ordered by a court. This section will provide comprehensive coverage for all confidential information provided to the Department pursuant to the Act and the TCPA program.

The Toxic Catastrophe Prevention Act registration form is set forth as Appendix II of this chapter.

N.J.A.C. 7:31-5.1 describes the scope of the subchapter and requires that all registrants asserting confidentiality claims or petitions to withhold privileged trade secret or security information follow the procedures set forth in the subchapter. It also requires that the Department, its employees and agents strictly adhere to the established procedures for both

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maintaining the confidentiality and security of confidential information and for the public disclosure of confidential information.

N.J.A.C. 7:31-5.2 provides that the Department shall protect from public disclosure any confidential information obtained and that such information will be disclosed only to employees and agents of the Department on a need-to-know basis in order to carry out the provisions of the Act. It also provides that confidentiality claims and petitions to withhold privileged trade secret or security information shall be submitted on Department supplied forms, and that any confidential information be delivered to the Department by certified mail, return receipt requested, or by other means which provides verification of delivery. It further provides that no employees or agents of the Department are authorized to sign confidentiality or non-disclosure agreements.

N.J.A.C. 7:31-5.3 provides that certain information required to be submitted to or disclosed to the Department may not be the subject of a confidentiality claim, including information which is required to be publicly disclosed pursuant to law or court order, basic information included on the TCPA registration form, patented information, and information submitted to the Department which is not properly marked and identified as confidential. It also provides a partial listing of the types of information and records which may not be the subject of a petition to withhold privileged trade secret or security information because they are necessary for the proper implementation of the Act or because they are required to be disclosed to other governmental agencies or entities pursuant to Federal or State law or regulation, including the Occupational Safety and Health Act, 29 U.S.C. §651 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., and the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq.

N.J.A.C. 7:31-5.4 establishes the detailed procedures a registrant must follow in submitting a confidentiality claim at any time the registrant provides or discloses confidential information to the Department. It also provides the procedures for submitting the public copy and substantiation form along with the required fee for Department review of the claim should the Department receive a request for public disclosure of the information or otherwise decide to determine whether the information is entitled to confidential treatment.

N.J.A.C. 7:31-5.5 establishes the procedures and criteria for Department determinations of confidentiality claims. It provides that a claimant may contest a denial by the Department of its confidentiality claim by submitting a written request for an adjudicatory hearing.

N.J.A.C. 7:31-5.6 establishes the detailed procedures a registrant must follow in asserting a petition to withhold privileged trade secret or security information at the time of filing the summary risk management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program, or within 30 days of the creation of new privileged trade secret or security information. Such petition must be submitted on a form provided by the Department. The required substantiation form and the fee for Department review must be submitted within 30 days of receipt of a written request by the Department if the registrant's summary risk management program is accepted for further review, within 30 days after receipt of notice that its risk management program is unacceptable, within 30 days after receipt of a request for the site data if the registrant has no risk management program, or within 30 days after receipt of a written request by the Department if the registrant has created new privileged trade secret or security information. The rule also provides that the Department may request supplemental information from the petitioner in support of its petition to withhold privileged trade secret or security information.

N.J.A.C. 7:31-5.7 establishes the procedures and criteria for Department determinations of petitions to withhold privileged trade secret or security information. It provides for an initial determination by the Department whether the petition is sufficient and permits a petitioner to submit supplemental information if the petition is determined to be insufficient. If a petition is finally denied, the petitioner will be notified of its right to request an adjudicatory hearing. Denial of a petition to withhold information as privileged trade secret or security information does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the denial of the petition concluded that the information sought to be withheld is not confidential information.

N.J.A.C. 7:31-5.8 establishes Departmental procedures for maintaining the confidentiality and security of confidential information. Access to confidential information is limited to only those employees and agents of the Department who are designated in writing by the Commissioner and whose activities necessitate such access. Confidential information will be stored only in locked cabinets and procedures are specified for the

security of any confidential information added to a computerized data base. A records custodian for confidential information submitted to the Department will be designated by the Commissioner and will be responsible for acknowledging and recording the receipt of all such information and for maintaining the confidential information file and storage area.

N.J.A.C. 7:31-5.9 establishes the procedures and notification requirements for the disclosure of confidential information to other State or Federal agencies, and to agents of the Department.

N.J.A.C. 7:31-5.10 provides that a person shall not disclose, seek access to, obtain or have possession of any confidential information except as authorized and establishes the remedies and penalties which the Department may pursue against a violator of the provisions of this subchapter.

N.J.A.C. 7:31-5.12 contains definitions which clarify the meanings of the terms used in N.J.A.C. 7:31-5, including "confidential information", "trade secret" and "privileged trade secret or security information". Privileged trade secret or security information is defined as trade secret or security information which is not otherwise required to be disclosed by any Federal or state law or regulation, which has never been released to anyone outside the business, and which the Department has determined the registrant is entitled to withhold from and not disclose to the Department.

N.J.A.C. 7:31-5.13 provides for a fee of \$350.00 which must be paid by a registrant at the time it submits a substantiation form in support of either a confidentiality claim or a petition to withhold privileged trade secret or security information from the Department.

N.J.A.C. 7:31-5.14 provides that petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of such petitions require the specified signatures and two part certification provided in N.J.A.C. 7:31-2.17(a). It also provides that confidentiality claim forms and substantiation forms in support of such claims require the specified signature and certification provided in N.J.A.C. 7:31-2.17(b).

N.J.A.C. 7:31-5.15 provides that denial of a confidentiality claim and denial of a petition to withhold privileged trade secret or security information as additional Department actions which a registrant may contest by submitting a written request for an adjudicatory hearing to the Department.

**Social Impact**

The proposed new rules are expected to have a positive social impact by balancing the Department's need to have access to the information necessary to carry out the mandate of the Act against the registrant's desire to protect its confidential information from unnecessary disclosure. By permitting registrants to assert confidentiality claims for certain information and by providing adequate safeguards for the internal management of such confidential information, the Department is seeking to ensure that it will receive the information it needs in order to properly implement the TCPA program. And, by allowing registrants to assert confidentiality claims to withhold from public disclosure certain information required to be submitted to the Department and petitions to withhold privileged trade secret or security information, the rules seek to assure the regulated community that its privileged trade secrets and security information and other confidential information will be protected from unwarranted and unnecessary disclosure.

The public will benefit because these rules will ensure that the Department has access to the information it needs in order to implement the TCPA program properly so that the potential for release of extraordinarily hazardous substances and the severity of any EHS release will be significantly reduced.

It is estimated that approximately two-thirds of the facilities subject to the Act will not have confidential information or privileged trade secret or security information at their facilities, and thus will not be affected at all by these rules. Only those facilities which have confidential information and desire to protect it from public disclosure, or which have privileged trade secret or security information and desire to protect it from disclosure to the Department, will be affected by these rules. These facilities will be required to complete and submit confidentiality claim forms, petitions to withhold privileged trade secret or security information forms and any necessary substantiation and supplemental information in order to protect their confidential information and privileged trade secret and security information.

**Economic Impact**

The promulgation of these rules is not expected to significantly increase the costs of compliance with the Act or to otherwise significantly impact the affected facilities. As noted, it is anticipated that approximately two-

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thirds of the facilities subject to the Act will not have confidential information or privileged trade secret or security information at their facilities. Those facilities not affected include wastewater and water treatment facilities, chemical warehouses, chemical repackaging plants, and some chemical manufacturing facilities. These rules are expected to have only a negligible economic impact on the remaining one-third of the affected facilities, because of the significant protection provided by the rules against the unnecessary disclosure of confidential information.

Some economic impact will be realized due to the requirement to complete and submit confidentiality claim forms, petitions to withhold privileged trade secret and security information forms, any necessary substantiation and supplemental information and to pay the required fee for Department review of claims and petitions. It is difficult to estimate the cost of complying with these rules; however, the costs per registrant may range from less than \$100.00 to several thousand dollars depending upon whether the registrant is required to submit and substantiate a confidentiality claim or desires to submit a petition to withhold privileged trade secret or security information. The fee for review of either a confidentiality claim or a petition to withhold privileged trade secret or security information is \$350.00. However, no other economic impact on the affected facilities is anticipated because of the protection provisions for confidential information built into the rules.

One method by which the Department has attempted to hold down the cost of complying with these rules is the provision requiring the completion and submission of the public copy, the confidentiality claim substantiation form, and the payment of the required fee for Department review, only upon receipt of a request for public disclosure of the information or when the Department otherwise desires to determine whether the information is entitled to confidential treatment. Many registrants submitting or disclosing confidential information to the Department will thus incur only the costs involved in preparing the confidential copy and the confidentiality claim form itself.

The Department will, of course, incur some additional administrative costs because of the requirements to review confidentiality claims and petitions to withhold privileged trade secret and security information, and to implement the confidentiality and security provisions contained in the rules. However, it is not anticipated that these costs will be significant in relation to the overall cost of implementing the TCPA program, and the costs will be offset, at least in part, by the fees paid to the Department by claimants and petitioners pursuant to N.J.A.C. 7:31-5.13(a) and (b).

#### Environmental Impact

The promulgation of these new rules is expected to have a positive impact on the environment. By providing adequate safeguards for the protection of confidential information submitted by registrants, the Department is seeking to ensure that it has access to the information it will need in order to effectively implement the TCPA program, and thus reduce the threat of EHS releases to the environment.

Non-disclosure of privileged trade secret and security information to the Department could have a negative impact on the environment, because this information would not be available to the Department to properly review and inspect a facility or the facility's Risk Management Program. Without a proper or complete review or inspection of a facility's Risk Management Program, an accidental release may occur that could otherwise have been avoided. This could cause permanent injury or death to the surrounding population or could lead to damage to the aquatic, biotic or geological environment. Because of the protection for confidential information contained in these rules and because the definition of privileged trade secret or security information specifically exempts information required to be disclosed by any Federal or State law or regulation, the Department believes it will have access to the information it needs in order to effectively implement the TCPA program.

Regardless of whether a registrant supplies certain privileged trade secret information to the Department, the registrant is still required to comply with the Act and the TCPA program.

#### Regulatory Flexibility Statement

These rules would apply to all facilities which handle, use, manufacture, store or generate any extraordinarily hazardous substance in or above the reportable quantity established for the EHS in proposed N.J.A.C. 7:31-2.3, (see 19 N.J.R. 1687(a) at 1693), and which have a desire to protect either confidential information, or privileged trade secret or security information. It is estimated that of the 741 facilities already impacted by the Act, 68 are "small businesses" as defined in the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, and may be impacted by these rules if they have confidential information or privileged trade secret

or security information which they desire to protect from disclosure either to the public or to the Department, respectively.

In order to take advantage of the protection for confidential information and privileged trade secret and security information provided by the proposed new rules, the small businesses will have to prepare and submit to the Department the appropriate confidentiality claim form, petition to withhold privileged trade secret or security information form, substantiation form, or supplemental information in support of a petition. In so doing it is likely that some small businesses may need to retain or consult with attorneys regarding the completion of the appropriate forms or possibly to contest a denial by the Department of a claim or petition. In addition, any small business submitting a claim or petition must pay the fee for Department review of its claim or petition substantiation form which is \$350.00 each. Of course, those small businesses which have no confidential information or privileged trade secret or security information, or which do not desire to protect it, will not be impacted by these rules.

In accordance with the New Jersey Regulatory Flexibility Act, P.L. 1986, c.169, the Department has determined that to exempt small businesses from these rules would be inequitable as it would deny them the significant protection afforded by the rules for confidential information and privileged trade secret or security information. Therefore, no exemption for small businesses is provided.

Full text of the proposed new rules follows.

#### 7:31-2.12 Inspections

(a) The Department shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Act, this chapter, or any order or consent order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the site, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute except for those parts or portions of any materials, equipment, documents and records which contain either privileged trade secret or security information or confidential information for which the registrant has submitted a petition in accordance with N.J.A.C. 7:31-5.6, or a claim in accordance with N.J.A.C. 7:31-5.4, and which petition or claim has not been denied by the Department. Those parts or portions of any materials, equipment, documents and records containing privileged trade secret or security information shall be treated as provided in (b)1 below, and those parts or portions containing confidential information shall be treated as provided in (b)2 below. Such right of inspection shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested. Owners, operators or registrants, and any employees or representatives thereof, shall not hinder or delay, and shall assist, the Department and its representatives in the performance of all aspects of any inspection.

(b) At the commencement of an inspection by the Department, a registrant may identify those materials, equipment, documents and records at the site which contain either privileged trade secret or security information or confidential information for which an appropriate petition or claim has been asserted and which has not been denied by the Department.

1. Those parts or portions of any materials, equipment, documents and records at the site which contain privileged trade secret or security information need not be disclosed to or submitted to the Department. Any such materials, areas, documents or records disclosed to or submitted to the Department during an inspection shall not be entitled to be treated as privileged trade secret or security information thereafter. The fact that such trade secret or security information has been disclosed to or submitted to the Department shall not prohibit the registrant from asserting a confidentiality claim concerning such information.

2. Those parts or portions of any materials, equipment, documents and records at the site which contain confidential information shall be disclosed to or submitted to the Department during an inspection, including all negatives and prints of photographs, and shall be labelled "confidential". In order to assert a confidentiality claim, a

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properly completed claim form must be submitted to the Department at the same time any such confidential information is submitted or disclosed to the Department. These materials, equipment, documents and records shall not be disclosed by the Department to other persons except in accordance with the provisions of this chapter.

(c) The Department plans to inspect a site at least annually to verify the registrant's compliance with the Act, this chapter and the risk management program or risk reduction plan.

(d) Within a reasonable time after an inspection, the registrant or owner or operator shall be furnished with an inspection report which will list any deficiencies found.

**7:13-2.15 Release of information by insurance carriers**

(a) After a review of documents and an EHS facility inspection, the Department may determine that a registrant shall authorize the facility's environmental liability or worker's compensation insurance carrier to supply certain information to the Department.

(b) The determination will be based on a finding that the insurance information is necessary for the Department to evaluate effectively the facility's EHS management practices;

(c) The information to be supplied to the Department by the insurance carrier shall include, but not be limited to:

1. Reports of inspections for compliance with mandated codes or standards;
2. Reports of safety and environmental inspections or audits;
3. Reports of inspections of fire protection equipment; and
4. Reports of any additional studies conducted which evaluated the adequacy of the registrant's management of EHSs;
5. The reports requested in (c)1 through 4 above shall include a summary of any deficiencies found and any recommended remedial actions.

(d) Upon written request from the Department, the registrant shall, within 30 days, authorize the insurance carrier to release the information requested to the Department. The insurance company shall forward to the Department the requested information within 30 days of the receipt of the authorization to do so from the registrant.

(e) The Department is authorized to disclose information obtained from an insurance carrier or its representative pursuant to this section only to its own employees or agents to assist in enforcing the provisions of the Act, or for use in a civil or criminal proceeding, if so ordered by a court.

**SUBCHAPTER 5. CONFIDENTIALITY AND TRADE SECRETS**

**7:31-5.1 Scope and applicability**

(a) This subchapter constitutes the rules for the assertion, substantiation, review, and appeal of confidentiality claims and petitions to withhold privileged trade secret or security information, and establishes the principles, guidelines and procedures governing the internal management and disclosure of confidential information provided to the Department pursuant to this chapter.

(b) All registrants asserting a confidentiality claim or a petition to withhold privileged trade secret or security information shall follow the procedures set forth in this subchapter.

(c) The Department, its employees and its agents shall strictly adhere to the procedures established by this subchapter for maintaining the confidentiality and security of confidential information and for the disclosure of confidential information.

**7:31-5.2 General provisions**

(a) All information collected by or originated by the Department in connection with the Act, this chapter or the TCPA program shall be made available to the public in accordance with N.J.S.A. 47:1A-1 et seq. except as otherwise provided in this subchapter.

(b) The Department shall protect from disclosure to the public any confidential information obtained pursuant to the Act or this chapter.

(c) Confidential information, supplied to the Department, will be disclosed only to the employees or agents of the Department and only on a need-to-know basis for the purposes of carrying out or enforcing

the provisions of the Act or this chapter, or for use in civil or criminal proceedings, if so ordered by a court.

(d) A registrant may file a claim with the Department to withhold from public disclosure confidential information required to be submitted to the Department at any time such information is required to be submitted or disclosed to the Department. A registrant may file a petition to withhold from the Department privileged trade secret or security information only at the time of filing the summary risk management program statement with the Department pursuant to N.J.A.C. 7:31-2.6(b) and (c) and 2.10, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. All such claims or petitions and any required substantiation shall be submitted in writing on forms provided by the Department in accordance with N.J.A.C. 7:31-5.4 and 5.6, respectively. If the space provided for responses on Department forms is not sufficient, additional pages, properly referenced, may be attached to the required forms to provide complete responses. All forms can be obtained from:

Chief, Bureau of Release Prevention  
 New Jersey Department of Environmental Protection  
 Division of Environmental Quality  
 CN 027  
 Trenton, New Jersey 08625

(e) The registrant shall initially submit or disclose only the confidential copy of documents containing confidential information to the Department. The public copy which shall have deleted all confidential information and be available for public disclosure shall be submitted to the Department only upon the Department's receipt of a request for the public disclosure of the information or if the Department otherwise decides to determine whether the information is entitled to confidential treatment. The confidential copy shall be for the Department's record and shall include all necessary information.

(f) Any confidential information supplied to the Department shall be sent by certified mail, return receipt requested, by personal delivery, or by other means that provides verification of delivery, the date of delivery, and the name of the person who receives the document at the Department.

(g) A properly completed and submitted petition to withhold privileged trade secret or security information or any subsequent interim decisions by the Department concerning such petition shall not exempt the registrant from compliance with the requirements of the Act or this chapter, except that the registrant will not be required to provide the Department with the trade secret or security information claimed as privileged, unless the petition is finally denied.

(h) No employees or agents of the Department are authorized to sign a confidentiality agreement or other non-disclosure agreement, and any such agreement so executed will be of no force or effect as to the Department.

**7:31-5.3 Exclusions from confidential information and privileged trade secret information or security information**

(a) Information required to be submitted or disclosed to the Department pursuant to the Act or this chapter which meets the following criteria shall not be considered as confidential information, regardless of any claim or petition either pending or approved:

1. The name of the registrant, its address, and the name and location of its EHS facilities;
2. The chemical or common name, Chemical Abstract Services number, United States Department of Transportation identification number, extraordinarily hazardous substance name or other identifying name for the substances listed in Table I in N.J.A.C. 7:31-2.3, or any regulation promulgated under the Act;
3. Information required to be publicly disclosed pursuant to any other Federal or State act or regulation;
4. Information supplied to the Department by a registrant contained within the Toxic Catastrophe Prevention Act registration form, as set forth in Appendix II and made a part of this chapter.
5. Information required to be publicly disclosed pursuant to a court order or ruling;

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6. Information which is patented or has a patent pending;
7. Information which is published or available through any public source;
8. Information which is known to persons outside the registrant's business, who are not bound by a confidentiality agreement or other duty to keep the information confidential;
9. Information which is determined not to be confidential information pursuant to this chapter;
10. Information required to be submitted to the Department which is contained in the Summary Risk Management Program checklist established pursuant to N.J.A.C. 7:31-3.14 and which is set forth in Appendix I.

11. Information required to be included in the registrant's emergency response plan pursuant to N.J.A.C. 7:31-3.10(c); and

12. Information submitted or disclosed to the Department by a registrant which is not marked or which does not display in bold type or stamp the word "Confidential" on the top of each page.

(b) At a minimum the following information required to be submitted or disclosed to the Department pursuant to the Act or this chapter shall not be considered privileged trade secret or security information regardless of any petition either pending or approved:

1. Hazard analysis records;
2. Safety review records;
3. Risk analysis records;
4. EHS Accident records;
5. Process flow and piping and instrumentation diagrams;
6. Standard operating procedures;
7. Preventive maintenance procedures;
8. Inspection reports;
9. Safety and emergency procedures;
10. Training records and procedures; and
11. Criteria for design and operation.

### 7:31-5.4 Confidentiality claims

(a) Any registrant required to submit or disclose to the Department any information pursuant to the Act or this chapter which in the registrant's opinion constitutes confidential information, may assert a confidentiality claim by following the procedures set forth in this section.

(b) Any registrant asserting a confidentiality claim shall do so in writing on a form provided by the Department at the time the registrant provides or discloses confidential information to the Department.

(c) Any registrant submitting any information to the Department and asserting a confidentiality claim covering any information contained therein shall submit a confidential copy of the document to the Department along with a properly executed confidentiality claim form. The confidential copy shall contain all the information required by the Act or this chapter including any information which the claimant requests to be treated as confidential. A second copy, the public copy, which shall be identical to the confidential copy except that it shall contain no information which the claimant requests to be treated as confidential, shall be submitted to the Department only if the Department receives a request for public disclosure of the information or if the Department decides to determine whether the information is entitled to confidential treatment. The public copy can be a photocopy of the confidential copy, with the allegedly confidential information blacked out. When a public copy is required, the Department shall notify the claimant by certified mail, return receipt requested, that it must submit the public copy and the required fee, along with the confidentiality claim substantiation form as required by N.J.A.C. 7:31-5.5(d), to the Department within 30 days or its claim will be considered abandoned and the confidential copy shall be treated as public information.

(d) The top of each page of the confidential copy containing any information which the claimant desires to be treated as confidential shall display the heading "CONFIDENTIAL" in bold type, or stamp.

(e) All parts of the text of the confidential copy which the claimant requests to be treated as confidential shall be underscored or highlighted in a clearly identifiable manner. This manner of marking confidential information shall be such that both the information

claimed as confidential and the underscoring or highlighting is reproducible on photocopying machines. Information not so marked will be treated as public and may be disclosed without notice to the claimant.

(f) The confidential copy, containing the information which the claimant alleges to be entitled to confidential treatment, shall be sealed in an envelope which shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope, together with the confidentiality claim form (which may or may not be enclosed in a separate envelope, at the option of the claimant), shall be enclosed in another envelope for transmittal to the Department, at the following address:

Chief, Bureau of Release Prevention  
New Jersey Department of Environmental Protection  
Division of Environmental Quality  
CN 027  
Trenton, New Jersey 08625

The outer envelope shall bear no marking indicating the confidential nature of its contents.

(g) To ensure proper delivery, the complete package should be sent by certified mail, return receipt requested, by personal delivery or by other means which will provide verification of delivery, the date of delivery and the name of the person who receives the document at the Department. Ordinary mail may be used, but the Department will assume no responsibility for packages until they are actually received at the address provided in (f) above.

(h) The certification on the bottom of the confidentiality claim form shall contain the signature and certification specified in N.J.A.C. 7:31-5.14(b). Any substantiation form which the claimant submits to support a confidentiality claim shall also contain the signature and certification specified in N.J.A.C. 7:31-5.14(b).

(i) For information which in the registrant's opinion constitutes confidential information and which is merely disclosed to the Department during an inspection at the EHS facility, only one copy, the confidential copy, need be revealed to the Department at that time. A properly executed confidentiality claim form for the information disclosed shall be submitted to the Department at the time of such disclosure. The second copy, the public copy, will be submitted to the Department only if it becomes necessary for the Department to make a confidentiality determination concerning the information claimed as confidential which is disclosed during an inspection. Any information disclosed to the Department during an inspection which is not properly marked and identified as confidential information will not be considered confidential or be treated as such by the Department.

### 7:31-5.5 Determination of confidentiality claims

(a) Information for which a confidentiality claim has been asserted will be treated by the Department as entitled to confidential treatment, unless the Department determines that the information is not entitled to confidential treatment as provided in this section.

(b) The Department shall act upon a confidentiality claim and determine whether information is or is not entitled to confidential treatment whenever the Department:

1. Receives a request under N.J.S.A. 47:1A-1 et seq. to inspect or copy such information;
2. Decides to determine whether information in its possession is entitled to confidential treatment; or
3. Desires for any reason in the public interest to disclose the information to persons not authorized by this subchapter to have access to confidential information.

(c) Whenever the Department is required to or decides to make a determination whether information is entitled to confidential treatment, the Department shall first make a determination that the information claimed as confidential has not been the subject of a prior confidentiality determination by the Department concerning the same facility, or if it has, that the prior determination upheld the registrant's claim. If such a prior determination held that the confidentiality claim was invalid, the Department shall notify the claimant by registered mail, return receipt requested, that the information claimed as confidential is the subject of a prior determination concerning the confidentiality of the same information in which it

was held that such claim was invalid and the Department will treat the information as public information.

(d) If the Department determines that the information is not the subject of a prior confidentiality determination, the Department shall notify the claimant by certified mail, return receipt requested, of the claimant's right to submit substantiation in support of its claim that the information is entitled to be treated as confidential. The substantiation shall be submitted in writing on a form provided by the Department, shall be accompanied by the public copy of the information and the fee set forth in N.J.A.C. 7:31-5.13(a) for review of the substantiation, and shall be received by the Department within 30 days of receipt of the Department's notice. The substantiation shall include, but need not be limited to, the following:

1. The reasons why the information needs to be treated as confidential;

2. The extent to which disclosure of the information would result in damage to the claimant, including a description of the damage, and an explanation of the relationship between disclosure and the damage;

3. The period of time for which confidential treatment is desired by the claimant (for example, until a certain date, until the occurrence of a specified event, or permanently);

4. The measures taken by the claimant to guard against undesired disclosure of the information to others, and claimant's intention to continue such measures and any new measures the claimant intends to implement in the future to protect the information;

5. The extent to which the information has been published or otherwise disclosed to others, including employees, and the precautions taken in connection therewith;

6. Prior confidentiality determinations concerning the information made by the Department, another agency or a court, and a copy of such determination;

7. Whether the information is patented, or whether a patent has been applied for, and, if so, identification of the patent and an explanation why the patent:

i. Does not connect the claimant with the confidential information; and

ii. Does not protect the claimant from competitive harm.

8. The ease or difficulty with which the information could be discovered through reverse engineering and an estimate of the cost;

9. Whether any Federal or State statute or regulation requires the public disclosure of the information, and a copy thereof; and

10. For security information, a description of the adverse impact disclosure would have on either the facility's security or its operations.

(e) Failure of a claimant to furnish timely substantiation or to pay the required fee waives the claimant's confidentiality claim and the information will be treated as public information.

(f) The registrant may assert a confidentiality claim for any confidential information contained in its substantiation form submitted to the Department pursuant to (d) above. To claim this material as confidential, the claimant shall clearly designate those portions of the substantiation form claimed as confidential in accordance with the procedures provided in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the claimant.

1. The claimant shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c). The certification on the substantiation form shall be executed as provided in N.J.A.C. 7:31-5.4(h).

(g) The substantiation form shall be enclosed in envelopes as specified in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein. To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(h) The Department may extend the time limit for submitting substantiation pursuant to (d) above to not more than 60 days upon receipt of a request in writing for good cause shown.

(i) After receiving the substantiation, the Department shall make a final confidentiality determination in accordance with the criteria set forth in (j) below.

1. If, after review, the Department determines that the information is not entitled to confidential treatment, the Department shall so notify the claimant by certified mail, return receipt requested. The notice shall state the basis for the determination, and shall advise the claimant of its right to request an adjudicatory hearing in accordance with the procedures specified in N.J.A.C. 7:31-5.15. The notice shall also advise the claimant that the Department shall make the information available to the public on the 30th day following receipt by the claimant of the written notice, unless the Department has received a timely written request for an adjudicatory hearing to contest such decision.

2. If, after review, the determination is made that information is entitled to confidential treatment, the information shall not be disclosed, except as otherwise provided by this subchapter. The claimant shall be notified of the Department's determination by regular mail. The notice shall state the basis for the determination and that it constitutes final agency action.

(j) If the claimant satisfies each of the following substantive criteria, the Department shall determine that the information for which a confidentiality claim has been asserted shall be treated as confidential:

1. The claimant has established a reasonable basis for treating the information as confidential;

2. Except for security information, the claimant has shown that disclosure of the information would be likely to cause damage to its competitive position;

3. The claimant has asserted a confidentiality claim which has not expired by its terms, been waived or withdrawn;

4. The claimant has shown that reasonable measures have been taken to protect the confidentiality of the information and that the claimant intends to continue to take such measures;

5. The information is not, and has not been, available or otherwise disclosed to persons other than employees, except under a confidentiality or non-disclosure agreement, without the claimant's consent (other than by subpoena or by discovery based on a showing of special need in a judicial or quasi-judicial proceeding, as long as the information has not become available to a person not involved in the proceeding);

6. Any prior confidentiality determinations concerning the information made by the Department, another agency or a court approved or upheld the registrant's confidentiality claim;

7. The information is not the subject of a patent, or if patented, the patent does not connect the claimant with the confidential information and does not protect the claimant from competitive harm;

8. The confidential information is not readily discoverable through reverse engineering;

9. No statute or regulation requires public disclosure of the information; and

10. For security information, the claimant has shown that disclosure of the information would likely have an adverse effect on the security of the facility or its operations.

#### 7:31-5.6 Petitions to withhold privileged trade secret or security information

(a) Any registrant required to submit or disclose trade secret or security information pursuant to the Act or this chapter which the registrant believes must be kept privileged so as not to competitively disadvantage the facility, or compromise the security of the facility or its operations, may petition the Department for the right to withhold the privileged trade secret or security information by following the procedures set forth in this section and by paying the fee set forth in N.J.A.C. 7:31-5.13(b). Any registrant of a facility submitting such a petition shall provide complete responses on all required submissions to the Department except for those items which would require the disclosure of privileged trade secret or security information which the petitioner seeks to withhold. For those items, the petitioner shall note that a petition to withhold privileged trade secret or security information has been submitted, along with the date thereof.

(b) Any registrant asserting a petition to withhold privileged trade secret or security information shall do so in writing on a form provided by the Department at the time of filing the summary risk

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management program statement, or within 30 days after receipt of a Department request for the site data for registrants with no risk management program as provided by N.J.A.C. 7:31-2.9(b)1, or within 30 days of the creation of new privileged trade secret or security information. A petitioner shall also submit in writing substantiation on a form provided by the Department to support its assertion that the information sought to be withheld is privileged trade secret or security information, and pay the fee set forth in N.J.A.C. 7:31-5.13(b) for review of its petition and substantiation in accordance with the following:

1. A petitioner whose summary risk management program statement is accepted for further review in accordance with N.J.A.C. 7:31-2.6(e) shall submit its substantiation and fee within 30 days of receipt of a written request by the Department.

2. A petitioner whose risk management is determined to be unacceptable shall submit its substantiation and fee at the time it submits the site data as required by N.J.A.C. 7:31-2.9(b)2, that is, within 30 days after receipt of notice that its risk management program is unacceptable.

3. A petitioner who does not have a risk management program shall submit its substantiation and fee at the same time it submits its petition to withhold privileged trade secret or security information, that is, within 30 days after receipt of a request for the site data from the Department in accordance with N.J.A.C. 7:31-2.9(b)1.

4. A petitioner who creates new privileged trade secret or security information shall submit its substantiation and fee within 30 days after receipt of a written request by the Department.

(c) The substantiation shall include, but need not be limited to, the following:

1. Identification of the specific use of the trade secret and an explanation why it is of interest to competitors and should be treated as a privileged trade secret. Such identification shall include, but not be limited to, the following:

i. A description of the specific use of the trade secret, identifying the product, process, or activity in which it is used;

ii. If the petitioner's company or facility has been linked to the trade secret in publications or other information available to the public, an explanation why this knowledge does not eliminate the justification for trade secrecy;

iii. If the trade secret is unknown outside of the petitioner's company, an explanation how competitors could deduce this information from any disclosure required under the Act or this chapter; and

iv. An explanation why the trade secret information sought to be withheld would be valuable to competitors;

2. A description of the specific measures taken to safeguard the confidentiality of the trade secret or security information;

3. Identification of any and all persons, including employees of the facility, to whom the trade secret or security information has been disclosed, including a copy of any signed confidentiality agreement requiring the person to refrain from disclosing the information sought to be withheld, or a description of any other methods used to ensure the confidentiality of the trade secret or security information. Officers or employees of the United States government to whom the information was disclosed for use in national defense purposes are not to be identified;

4. An indication of the number of and location of all documents which contain the allegedly privileged trade secret or security information;

5. A list of all local, State and Federal government entities to which the trade secret or security information has been disclosed. For each entity, whether a confidentiality claim for the information was asserted and whether the government entity granted or denied that claim shall be indicated;

6. A description of the harm to the petitioner's competitive position that would likely result from disclosure of the trade secret, including an estimate of the potential loss in sales or profitability;

7. A description of the extent to which the trade secret information is discoverable through the process of reverse engineering, including a description of the factors which influence the cost of discovering the trade secret by reverse engineering and a rough estimate of the cost of such discovery;

8. Identification of any patent to which the trade secret or petitioner's use of the trade secret is subject and an explanation why the patent:

i. Does not connect the petitioner with the trade secret; and

ii. Does not protect the petitioner from competitive harm;

9. A description of how disclosure of the trade secret or security information would likely affect the security of the facility or national defense; and

10. Any other relevant information to assist the Department in determining the validity of the petition to withhold privileged trade secret or security information.

(d) The certification on the bottom of the petition and substantiation form shall contain the signatures and two part certification specified in N.J.A.C. 7:31-5.14(a).

(e) The registrant petitioning to withhold privileged trade secret or security information may claim as confidential any confidential information contained in the substantiation form by following the procedures set forth in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public and may be disclosed without notice to the petitioner.

(f) The petitioner shall initially submit to the Department only the confidential copy of any substantiation form which contains confidential information prepared in accordance with the provisions specified in N.J.A.C. 7:31-5.4(c).

(g) The Department may request supplemental information from the petitioner in support of its petition and substantiation to withhold trade secret or security information. The Department may specify the kind of information to be submitted, and the petitioner may submit any additional detailed information which further supports the information previously supplied to the Department in the petitioner's initial substantiation within 30 days of receipt of the Department's request. The petitioner may claim as confidential any confidential information included in the supplemental information, and shall clearly designate those portions of the supplemental information claimed as confidential in the manner described in N.J.A.C. 7:31-5.4(d) and (e). Information not properly marked will be treated as public information and may be disclosed without notice to the petitioner. A petitioner submitting supplemental information shall include a certification which shall contain the signatures and two part certification specified in N.J.A.C. 7:31-5.14(a). If supplemental information is submitted by the petitioner and the petitioner claims portions of it as confidential information, then the petitioner shall initially submit to the Department only the confidential copy of the supplemental information as prescribed in N.J.A.C. 7:31-5.4(c).

(h) The confidential copy of any petition to withhold privileged trade secret or security information, and the substantiation form or supplemental information which contains confidential information shall be enclosed in envelopes in accordance with the procedures set forth in N.J.A.C. 7:31-5.4(f) and be forwarded to the address provided therein.

(i) To ensure proper delivery, the methods specified in N.J.A.C. 7:31-5.4(g) shall be followed.

(j) A petitioner shall update information submitted to the Department regarding a pending or approved petition within 30 days of the petitioner's knowledge or receipt of new information which could affect the petition to withhold privileged trade secret or security information.

#### 7:31-5.7 Determinations of petitions to withhold privileged trade secret or security information

(a) Upon receipt of a petition to withhold privileged trade secret or security information, the Department shall first make a determination that the information petitioned to be withheld as privileged trade secret or security information has not been the subject of a prior determination by the Department of a petition to withhold the same information concerning the same facility, or if it has, that the prior determination upheld the registrant's petition to withhold the information.

1. If such a prior determination held that the petition to withhold the trade secret or security information was invalid, the Department shall notify the petitioner that the information petitioned to be withheld from the Department is the subject of a prior determination

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concerning the withholding of the same information in which it was held that such petition was invalid, and the Department shall require the petitioner to submit or disclose the information to the Department.

(b) Failure of a petitioner to furnish timely substantiation or to pay the required fee waives its petition to withhold privileged trade secret or security information and the Department will require the petitioner to submit or disclose the information to the Department. Failure to furnish substantiation or to pay the required fee does not affect the registrant's right to assert a confidentiality claim concerning the same information.

(c) If the Department determines that the petition to withhold privileged trade secret or security information is not the subject of a prior determination, the Department shall determine whether the petitioner has presented sufficient support for its petition to withhold privileged trade secret or security information in its substantiation. A petition to withhold such information as privileged will be considered sufficient if, assuming all the information contained in the substantiation is true, this supporting information meets the criteria set forth in (d) below.

(d) A substantiation submitted under N.J.A.C. 7:31-5.6 will be determined to be sufficient to support a petition to withhold privileged trade secret or security information if the substantiation asserts specific facts to support the following conclusions:

1. The petitioner has established that the information sought to be withheld as privileged trade secret or security information is entitled to protection as confidential information in accordance with the criteria in N.J.A.C. 7:31-5.5(j)1 through 10;

2. The petitioner has not disclosed the information sought to be withheld to any other person other than to the petitioner's employees involved in its use, or, if the information relates to national security, to officers or employees of the United States government;

3. The petitioner is not required by any State or Federal law or regulation to disclose the information to any governmental entity or agency, regardless of any right of the petitioner to make a claim or confidentiality upon disclosing the information to such governmental entity or agency.

(e) If the petition does not meet the criteria for sufficiency set forth in (d) above, the Department shall notify the petitioner in writing of this fact by certified mail (return receipt requested). The notification shall include the reasons for the Department's initial decision that the petition is insufficient, and shall inform the petitioner of its right to submit in writing supplemental information to the Department within 30 days of receipt of the notice in accordance with N.J.A.C. 7:31-5.6(g) to support the facts asserted in its substantiation. The notification may specifically request supplemental information in particular areas relating to the petition and shall inform the petitioner of its right to claim as confidential, any confidential information contained in any supplemental information it submits, and will include a reference to N.J.A.C. 7:31-5.4(d) and (e) as the source for the proper procedures for making such confidentiality claim.

(f) Upon receipt of supplemental information or after the 30 day period to submit supplemental information has expired, the Department shall determine whether the petition meets the standard of sufficiency set forth in (d) above.

1. If after receipt of supplemental information, the Department determines that the petition is sufficient, the Department will make a final determination concerning the petition to withhold trade secret or security information in accordance with (g) below.

2. If after the expiration of the 30 day period specified in (e) above, no supplemental information has been received by the Department, and the Department makes a final determination that the petition is still insufficient, the Department will notify the petitioner by certified mail (return receipt requested) that its petition is considered abandoned. The notice shall state the basis for the determination and will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's determination. A determination that a petition to withhold privileged trade secret or security information is insufficient does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the determination of insuffi-

ciency concluded that the information sought to be withheld is not confidential information.

(g) Once a petition has been determined to be sufficient under (d) or (f)1 above, the Department will determine whether the petition to withhold trade secret or security information will be granted or denied.

1. The petitioner will be notified by regular mail that its petition has been granted if the Department determines that the information submitted in support of the petition is true and that the information sought to be withheld is a trade secret or security information which meets the following criteria:

i. The information is trade secret or security information entitled to be treated as confidential information in accordance with the criteria established in N.J.A.C. 7:31-5.5(j)1 through 10;

ii. The information has never been released to any person other than to the petitioner's employees who are involved in its use, or, if the information relates to national security, to officers or employees of the United States government;

iii. The information is not otherwise required to be disclosed by any Federal or State law or regulation to any governmental entity or agency, regardless of any right by the petitioner to make a claim of confidentiality upon disclosing the information to any such governmental entity or agency; and

iv. The information is not included on the list provided at N.J.A.C. 7:31-5.3(b).

2. If the Department determines that the information submitted in support of the petition is not true or that the information sought to be withheld is not a trade secret or security information which is entitled to be treated as privileged in accordance with the criteria set forth in (g)1 above, the petitioner shall be notified by certified mail (return receipt requested) that its petition has been denied. The notification shall state the basis for the determination, and shall advise the petitioner of its right to request an adjudicatory hearing in accordance with the procedures specified at N.J.A.C. 7:31-5.15. Unless a request for an adjudicatory hearing is received within the time limit specified by N.J.A.C. 7:31-5.15(a), the Department will require the registrant to submit or disclose the information to the Department within 30 days of the registrant's receipt of the Department's denial of its petition. A denial of a petition to withhold privileged trade secret or security information does not affect a registrant's right to assert a confidentiality claim concerning the same information, unless the denial concluded that the information sought to be withheld is not confidential information.

**7:31-5.8 Maintaining the confidentiality and security of confidential information**

(a) Until such time as a final confidentiality determination has been made, access to any information for which a confidentiality claim has been made will be limited to only those Department employees and agents whose activities necessitate such access and as provided at N.J.A.C. 7:31-5.9.

(b) No disclosure of information for which a confidentiality claim has been asserted shall be made to any other persons except as provided in this subchapter.

(c) Nothing in this section shall be construed as prohibiting the incorporation of confidential information into cumulations of data subject to disclosure as public records, provided that such disclosure is not in a form that would foreseeably allow persons, not otherwise having knowledge of such confidential information, to deduce from it the confidential information or the identity of the registrant who supplied it to the Department.

(d) Only those Department employees who are designated as records custodians in accordance with (1) below, shall open any envelope which is marked "CONFIDENTIAL" and is addressed as provided at N.J.A.C. 7:31-5.4(f).

(e) All submissions entitled to confidential treatment as determined at N.J.A.C. 7:31-5.5 shall be stored by the Department or its agents only in locked cabinets.

(f) Any record made or maintained by Department employees or agents which contains confidential information shall be treated as confidential in accordance with the provisions of this section.

**ENVIRONMENTAL PROTECTION****PROPOSALS**

(g) Confidential information shall not be publically disclosed by the Department and shall not be communicated over telecommunications networks, including but not limited to telephones, computers connected by modems, or electronic mail systems.

(h) Any document, which contains confidential information and is transmitted by the Department to the registrant or to any authorized person, shall be sent by certified mail or by other means that requires a verification of receipt, the date of receipt, and the name of the person who receives the document.

(i) The Department's contact regarding confidential information shall be the registrant's responsible manager.

(j) Any document prepared by the Department for the registrant which contains confidential information shall display the word "CONFIDENTIAL" in bold type or stamp on the top of each page. The envelope containing this document shall be addressed to the registrant's responsible manager and shall display the word "CONFIDENTIAL" in bold type or stamp on both sides. This envelope shall be enclosed in a plain envelope addressed for mailing.

(k) No persons other than the Commissioner and his or her designated employees or designated agents or an administrative law judge conducting a hearing on the confidentiality of information pursuant to N.J.S.A. 52:14F-1 et seq., shall have access to confidential information and such access shall be on a need-to-know basis only. Said designated representatives of the Commissioner shall be employees or agents of the Department and such designations shall be made in writing.

(l) The Commissioner shall designate employees to act as records custodians of all confidential information gathered pursuant to the Act or this chapter. These designated employees shall be responsible for acknowledging and recording the receipt of confidential information from a registrant, for tracking and recording all confidential information given to Department-designated employees or agents or an administrative law judge, for maintaining and upkeeping the confidential information file and storage area and for establishing any other methods deemed appropriate to protect the confidentiality of information through internal procedures or guidelines.

(m) Any confidential information added to a computerized data base shall only be added to computers which are:

1. Capable of being locked during periods of non-use by means of a lock and key mechanism, or by the use of passwords or levels of security clearances, or by other means that restrict access only to authorized Department personnel;
2. Are not tied to another computer system by means of a communications network; and
3. Are kept within an office capable of being locked when not being used by an authorized person.

(n) Any confidential information submitted to the Department which becomes obsolete or is no longer needed by the Department for the implementation of the Act or this chapter shall be returned to the registrant.

**7:31-5.9 Disclosure of confidential information**

(a) The Department may disclose confidential information to a person other than a Department employee, agent or administrative law judge only as provided in this section.

(b) The Department may disclose confidential information to any other governmental agency if:

1. The Department receives a written request for disclosure of the information from a duly authorized officer or employee of the other agency;
2. The request sets forth the official purpose for which the information is needed;
3. The Department notifies the other agency of the Department's determination that the information is entitled to confidential treatment, or of any unresolved confidentiality claim covering the information;
4. The other governmental agency has first furnished to the Department a written formal legal opinion from the agency's chief legal officer or counsel stating that under applicable law the agency has the authority to compel the person who submitted the information to the Department to disclose such information to the other agency; and

5. The other agency agrees not to disclose the information further unless;

- i. The other agency has statutory authority both to compel production of the information and to make the proposed disclosure; or
- ii. The other agency has obtained the consent of the affected registrant to the proposed disclosure; and

6. The other agency has adopted regulations or operates under statutory authority that will allow it to preserve confidential information from unauthorized disclosure.

(c) The Department may disclose confidential information to an agent of the Department and to an agent's employees when the agent is assisting in implementing the Act, its activities necessitate such access, and the requirements of (c)1 below have been satisfied. Any such disclosure of confidential information shall be restricted to a person approved in writing by the Department.

1. An agent shall not receive any confidential information unless:

i. It has submitted a plan to the Department which describes measures for adequately protecting confidential information from unauthorized disclosure, and such plan has been approved by the Department;

ii. It has provided written documentation demonstrating, to the satisfaction of the Department, that it maintains professional liability insurance and comprehensive general liability insurance in amounts to be set by the Department; and

iii. In addition to the requirement of (c)2 below, it has signed an agreement developed by the Department, protecting confidential information from unauthorized disclosure. The agreement shall include a provision whereby the agent assumes liability for any damages to the registrant resulting from the intentional or negligent release of confidential information by the agent and its employees.

2. Any person granted access to confidential information pursuant to this section shall sign an agreement developed by the Department protecting the confidentiality of the information prior to receipt of the information.

3. Any person who receives confidential information pursuant to this section shall take appropriate measures to protect the information from unauthorized disclosure which shall include, but not be limited to:

- i. Keeping the information confidential from unauthorized persons;
- ii. Keeping any records containing confidential information in a locked file cabinet or safe, when not in use;
- iii. Using the information only for the use approved by the Department;
- iv. Not reproducing the confidential information; and
- v. Returning all material on which the confidential information has been recorded to the Department within 30 days after finishing using the information.

(d) Except as otherwise provided in (e) below, the Department shall notify in writing the registrant who supplied the confidential information of:

1. Its disclosure to another agency or agent of the Department;
2. The date on which disclosure was made;
3. The name of the agency or agent to which disclosed; and
4. A description of the information disclosed.

(e) The Department may disclose any confidential information to any other person if it has obtained the written consent of the registrant's responsible manager to such disclosure.

1. The giving of consent by a registrant to disclose shall not be deemed to waive a confidentiality claim with regard to further disclosures unless the authorized disclosure is of such nature as to make the disclosed information accessible to the general public.

(f) The Department may use confidential information in a civil or criminal proceeding, if permitted by a court.

**7:31-5.10 Wrongful access or disclosure**

(a) A person shall not disclose, seek access to, obtain or have possession of any confidential information obtained pursuant to the Act or this chapter, except as authorized by this subchapter.

(b) Every Department employee or agent who has custody or possession of confidential information shall take appropriate

**PROPOSALS****Interested Persons see Inside Front Cover****ENVIRONMENTAL PROTECTION**

measures to safeguard such information and to protect against its improper disclosure.

(c) A Department employee or agent shall not disclose, or use for his or her private gain or advantage, any information which came into his or her possession, or to which he or she gained access, by virtue of his or her official position of employment or contractual relationship with the Department.

(d) If the Department finds that any person has violated the provisions of this subchapter, it may:

1. Commence a civil action in Superior Court for a restraining order and an injunction barring that person from further disclosing confidential information; and

2. Pursue any other remedy available by law.

(e) In addition to any other penalty that may be sought by the Department, violation of this subchapter by a Department employee shall constitute grounds for dismissal, suspension, fine or other adverse personnel action.

(f) Disclosure by an agent in violation of this subchapter or the contractual provisions described in N.J.A.C. 7:31-5.9(c) shall constitute grounds for debarment or suspension as provided in "Debarment, Suspension and Disqualification from Department Contracting," N.J.A.C. 7:1-5, in addition to whatever other remedies may be available to the Department at equity or law.

(g) Use of any of the remedies specified under this section shall not preclude the use of any other remedy.

#### 7:31-5.11 Use of confidential information in rulemaking, permitting, and enforcement proceedings

Notwithstanding any other provisions of this subchapter, the Department may use confidential information in rulemaking, permitting, and enforcement proceedings.

#### 7:31-5.12 Definitions

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

"Agent of the Department" means a person, including a consultant or a contractor, authorized by the Department to act for it in implementing the Act and this chapter.

"Claimant" means any person who submits a confidentiality claim under this chapter.

"Confidential copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which contains all the required information including any information which the claimant requests to be treated as confidential. The confidential copy shall be labelled as such and all confidential information contained therein shall be clearly identified.

"Confidential information" means information required to be submitted or disclosed to the Department pursuant to this chapter, the public disclosure of which would competitively disadvantage the facility or compromise the security of the facility or its operations, consisting of non-privileged trade secret information, proprietary information and non-privileged security information.

"Confidentiality claim" or "claim" means a written request made by a registrant pursuant to this chapter to withhold from public disclosure certain information required to be submitted to the Department.

"Employee" means any person allowed or permitted to work by a registrant, except that independent contractors, subcontractors, consultants and employees of affiliated companies or corporations shall not be considered employees of the registrant.

"Person" means corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any

agencies or instrumentalities thereof, and any legal successor, representative, agent or agency of the foregoing.

"Petition to withhold privileged trade secret or security information" or "petition" means a written request made by a registrant pursuant to this chapter to withhold from disclosure to the Department certain information which is privileged trade secret or security information.

"Petitioner" means any person who submits a petition to withhold privileged trade secret or security information under this chapter.

"Privileged trade secret or security information" means trade secret or security information which the Department has determined the registrant is entitled to withhold from and not disclose to the Department, consisting of trade secret or security information which is not otherwise required to be disclosed to either the public or to any governmental agency or entity by any Federal or State law or regulation, and which has never been released to any person other than the registrant's employees involved in its use.

"Public copy" means a copy of any information submitted to the Department pursuant to the Act or this chapter which is identical to the confidential copy except that any confidential information shall be deleted. The public copy can be a photocopy of the confidential copy, with the confidential information blacked out.

"Security information" means information the release of which could either compromise the physical security of the facility or its operations, or adversely affect national security.

"Substantiation" means the written submittal on a Department-provided form which supports either a confidentiality claim or a petition to withhold privileged trade secret or security information.

"Trade secret" means a formula, process, device or compilation which a registrant uses in its business and which gives it an opportunity to obtain an advantage over competitors who do not know or use it.

#### 7:31-5.13 Fees

(a) Each registrant submitting a confidentiality claim substantiation form in accordance with N.J.A.C. 7:31-5.5(d) shall submit a fee of \$350.00 for the review of its claim at the time it submits the claim substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

(b) Each registrant submitting a petition to withhold privileged trade secret or security information in accordance with N.J.A.C. 7:31-5.6 shall submit a fee of \$350.00 for the review of its petition at the time of submitting the petition substantiation form. The fee shall be paid in the manner specified and be sent to the address indicated in N.J.A.C. 7:31-2.16(h).

#### 7:31-5.14 Required signatories and certifications

(a) All petitions to withhold privileged trade secret or security information and substantiation forms and supplemental information in support of petitions to withhold privileged trade secret or security information shall contain the signatures and two-part certification required by N.J.A.C. 7:31-2.17(a).

(b) All confidentiality claim forms and substantiation forms in support of confidentiality claims, shall be signed and certified in accordance with N.J.A.C. 7:31-2.17(b).

#### 7:31-5.15 Adjudicatory hearings

(a) Within 20 calendar days from receipt of a certified letter denying a confidentiality claim or denying a petition to withhold privileged trade secret or security information, the registrant may submit a written request meeting the requirements of N.J.A.C. 7:31-2.19(a) to the Department for an adjudicatory hearing to contest such action.

(b) Requests received by the Department pursuant to (a) above shall be processed and reviewed in accordance with the requirements of N.J.A.C. 7:31-2.19(b), (c) and (d).

DEQ-080  
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APPENDIX II  
New Jersey Department of Environmental Protection  
Division of Environmental Quality  
CN 027, Trenton, NJ 08625

OFFICIAL USE

"TOXIC CATASTROPHE PREVENTION ACT"

**REGISTRATION FORM**

**SECTION A**

- 1. Legal Name of Registrant \_\_\_\_\_
- 2. Nature of Business \_\_\_\_\_
- 3. NJ Employer ID # \_\_\_\_\_ APEDS # (if any) \_\_\_\_\_  
NJPDES # (if any) \_\_\_\_\_ PWS # (if any) \_\_\_\_\_
- 4. Facility Location \_\_\_\_\_  
*No. Street City*
- 5. Registrant's Mailing Address \_\_\_\_\_  
*No. Street City State Zip*
- 6. Name of Responsible Manager \_\_\_\_\_ Title \_\_\_\_\_ Tele # ( ) \_\_\_\_\_
- 7. Name of Plant Contact \_\_\_\_\_ Tele # ( ) \_\_\_\_\_
- 8. Title \_\_\_\_\_

**SECTION B**

- 1. Does this site or water treatment system use, manufacture, store, handle or generate at any time an Extraordinarily Hazardous Substance (EHS) listed in Table I of N.J.A.C. 7:31-2.3 as a raw material, intermediate, final product, by-product or waste product?  
 Yes  No If "No", sign the certification below. If "Yes", proceed to Question 2.
- 2. Does this site or water treatment system use, manufacture, store, handle or generate within any one hour period an Extraordinarily Hazardous Substance (EHS) as a raw material, intermediate, final product, by-product, or waste product equal to or in excess of the minimum reportable quantities indicated in Table I or N.J.A.C. 7:31-2.3?  
 Yes  No If "No", sign the certification below. If "Yes", complete this registration form and sign the certification below.

**SECTION C — CERTIFICATIONS**

Highest Ranking Official of Site/Water Treatment System

I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and/or imprisonment.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name (Print) \_\_\_\_\_ Title \_\_\_\_\_

Principal Executive Officer, General Partner or Proprietor, Ranking Elected Official

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false information, including the possibility of fine and/or imprisonment.

Signature \_\_\_\_\_ Date \_\_\_\_\_  
Name (Print) \_\_\_\_\_ Title \_\_\_\_\_



**SECTION E**

Complete this section for each EHS and facility listed in Section D. Make additional copies of this page if necessary.

1. Facility Name or Designation \_\_\_\_\_ Facility Location \_\_\_\_\_

Indicate the EHS for which the following process description and equipment list applies: \_\_\_\_\_

2. **PROCESS DESCRIPTION** — Provide a general description of the process involved in the use, manufacture, storage, handling or generation of the EHS. Indicate typical and maximum operating conditions (i.e. temperatures and pressures) as they relate to the EHS. PROVIDE A SIMPLIFIED FLOW SHEET.

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3. **EHS EQUIPMENT** — Complete the following table for each major piece of EHS equipment directly involved in the use, manufacture, storage, handling, or generation of the EHS as described in Section E2. Equipment should include all storage and process vessels, as well as the number and size of drums, cylinders and shipping containers.

Equipment Description	Designation	Maximum Capacity (lbs.)	Distance to Nearest Property Line (ft.)	Age of Equipment (yrs.)	Comments
1.					
2.					
3.					
4.					
5.					
6.					
7.					

4. Indicate the four-digit SIC Code for the facility \_\_\_\_\_

**SECTION F**

Make additional copies of this page or provide attachments if necessary.

1. Does the site or water treatment system have an existing Risk Management Program (RMP) as described in N.J.A.C. 7:31?  
 Yes  No

2. Identify any risk reduction efforts and safety measures employed by the registrant to minimize the risks of an accidental release of an EHS from the equipment listed in Section E3.

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3. Identify the position titles and expertise of the persons involved with the development of the Risk Management Program.

Position Title	Expertise	Company Affiliation	Relationship to Registrant

4. Provide a description of the area surrounding each facility listed in Section E, including location of other companies, residential areas and major highways. Indicate proximity to schools, hospitals, nursing homes and public water supplies if located within a two mile radius.

Provide a USGS Topographic Map of the area indicating the location of each facility listed in Section E, unless previously submitted to the department.

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**SECTION G**

INSURANCE CARRIERS - Identify those insurance carriers underwriting the registrant's environmental liability and worker's compensation insurance policies.

Name	Address	Type of Policy	Amount of Insurance	Limitations or Exclusions

**HEALTH****(a)****LOCAL HEALTH DEVELOPMENT SERVICES  
Licensure of Persons for Public Health Positions****Proposed Repeal: 8:7-1.2****Proposed New Rule: 8:7-1.2**

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,  
New Jersey Department of Health.

Authority: N.J.S.A. 26:1A-39.

Proposal Number: PRN 1988-76.

Submit comments by March 17, 1988 to:

Ronald S. Ulinsky  
Chief, Evaluation  
New Jersey Department of Health  
120 South Stockton Street  
CN 364  
Trenton, NJ 08625

The agency proposal follows:

**Summary**

A license granted by the New Jersey Department of Health is required for any person who is employed as a Health Officer or Sanitary Inspector, First Grade. The State Commissioner of Health, on behalf of the New Jersey Department of Health, grants a license to those candidates who submit evidence of the required training and experience, are accepted to and subsequently pass an examination indicating their fitness for the positions they seek.

N.J.S.A. 26:1A-39 addresses examination and licensing of Health Officers, etc. This statute authorizes the Public Health Council to establish qualifications for the licensing of certain public health positions. It also calls for the Commissioner to cause examinations to be conducted for the purpose of determining applicant qualifications.

In order to accomplish processing of candidates, conducting examinations, initial licensing and license renewal, there has been established within the New Jersey Department of Health, upon the Commissioner's authority, a board of examiners known as the Public Health Examining Board.

The proposed new rule revises the composition of the Board to more accurately reflect the multiple professional disciplines associated with knowledge and ability of individuals engaged in public health/environmental health activities.

The current rule is being proposed for repeal due to the substantial revision in the Board's composition.

**Social Impact**

The proposed new rule is not expected to have a direct social impact. Any social impact will come indirectly via better qualified candidates for licensure as Health Officers and Sanitary Inspector, First Grade.

**Economic Impact**

There is no anticipated economic impact. The Board has been functioning in its present capacity without compensation. The proposed new rule changes only the composition of the Board. License and application fees remain the same.

**Regulatory Flexibility Analysis**

New Jersey Statutes Annotated 26:1A-39 and the subsequent rule found in New Jersey Administrative Code 8:7-1.2 are specifically limited to licensure exams for Health Officers, etc. and the composition of the Board of Examiners including operating guidelines. No regulation of business, industry or government agencies is intended or anticipated.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 8:7-1.2.

Full text of the proposed new rule follows:

**8:7-1.2 New Jersey Public Health Licensing and Examination Board**

(a) There shall be established within the New Jersey Department of Health, a board of examiners to be known as the Public Health Licensing and Examination Board.

(b) On behalf of the New Jersey Public Health Council and the New Jersey Commissioner of Health, the Board shall conduct examinations for the licensing of:

1. Health Officer; and
2. Sanitary Inspector, First Grade

(c) The Public Health Council shall prescribe the qualifications necessary for the licensing of Health Officers and Sanitary Inspector, First Grade and shall prescribe the qualifications necessary for the renewal of any license permitted to remain in effect under N.J.S.A. 26:1A-41.

(d) The Board shall be composed of 11 members appointed by the Commissioner of Health as follows:

1. One of the members of the Board shall represent the Commissioner of Health. The Commissioner's representative shall be the Deputy Commissioner or Assistant Commissioner responsible for Local Health Development Services or shall be selected from professional staff of that unit. The individual shall serve as Chairperson of the Board.

2. Three members of the Board shall be licensed Health Officers. Individuals will be recommended to the Commissioner of Health by the Executive Committee of the New Jersey Health Officers Association.

3. Three members of the Board shall be licensed as Sanitary Inspector, First Grade. Individuals will be recommended to the Commissioner of Health by the Executive Committee of the New Jersey Environmental Health Association.

4. One member of the Board shall be a representative of the Commissioner of the New Jersey Department of Environmental Protection.

5. One member of the Board shall be a representative of the New Jersey Department of Personnel.

6. One member of the Board shall be a health professions educator.

7. One member of the Board shall be a consumer representative.

(e) With the exception of the Chairperson, who shall serve in this capacity until replaced by the Commissioner of Health, a Board member is:

1. Appointed for a term of two years; and
2. Permitted to serve for no more than three consecutive terms.

(f) As vacancies occur, the Commissioner of Health shall appoint a person representing the constituency similar to that of the person being replaced. The replacement appointment shall be for completion of the unexpired term.

(g) For the purpose of conducting business, six members of the Board shall be required for a quorum and no actions shall be taken by the Board in the absence of a quorum.

(h) In the absence of the Chairperson at a business meeting, the members of the Board shall elect a Chairperson pro tem to direct the business of that meeting.

(i) Any action of the Board shall require a majority vote of members present and no proxy votes shall be permitted. In order to provide a timely response to issues before the Board, under special circumstance, Board members may be polled by the Chairperson via telephone.

(j) Members of the Board shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties.

(k) The Board shall keep minutes of all meetings and shall transmit the record of all transactions and recommendations to the Public Health Council and the Commissioner of Health.

(l) All business transactions of the Board shall be done with the signature of the Chairperson.

(a)

**COMMUNITY HEALTH SERVICES****Retail Food Establishments and Food and Beverage Vending Machines****Proposed Readoption: N.J.A.C. 8:24**

Authorized By: Paul Jackson, Acting Chairperson, Public Health Council.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1988-68.

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

Wednesday, March 2, 1988 at 10:00 A.M.  
New Jersey Department of Health  
Health and Agriculture Building, Room 103  
John Fitch Plaza  
Trenton, NJ

Submit comments by March 17, 1988 to:

Richard F. Matzer, M.P.H.  
Coordinator Health Projects III  
Retail Food Project  
Food and Milk Program  
CN 364  
Trenton, NJ 08625-0364

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:24 (Chapter XII State Sanitary Code) expires on April 4, 1988. On July 6, 1972 the Public Health Council pursuant to its authority delegated in N.J.S.A. 26:1A-7, adopted sanitary regulations pertaining to retail food establishments. These were subsequently readopted with revisions on April 4, 1983.

The Public Health Council has reviewed these rules and has determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated and is proposing this readoption without change. A comprehensive review of these rules is currently underway by the Department of Health and in the near future, proposed amendments which reflect the most current public health practices and interpretations will be proposed.

Foods improperly prepared by retail establishments have been involved in many disease outbreaks including salmonellosis, staphylococcal intoxication, clostridium perfringens illness, infectious hepatitis, among others. The potential health hazard to the consumer is greatly increased by the frequency that meals are eaten away from the home, while the types of foods prepared in retail food establishments are becoming more complex. Therefore, the continued regulation of the operation of retail food establishments is necessary to protect the health of consumers.

A summary of each subchapter of N.J.A.C. 8:24 follows:

8:24-1 provides for the declaration of violative establishments as nuisances; separability; and defines words and terms used throughout the Chapter and those establishments that must comply with the provisions set forth.

8:24-2 specifies that foods used in retail food establishments must be from approved sources and safe for human consumption.

8:24-3 provides for the protection of food from contamination while stored, prepared, served and transported; and specifies that adequate equipment must be provided for the hot and cold holding of foods, and that food must be held at safe temperatures.

8:24-4 provides for the protection of food through specific health and disease controls, hygienic practices, and handwashing.

8:24-5 specifies that food equipment shall be constructed of safe, durable and easily cleanable materials; requires that equipment be cleaned and sanitized by specified methods following use.

8:24-6 requires that the water supply be safe and of adequate quantity; that ice is produced and handled in a sanitary manner; that sewage be disposed of by approved systems; that plumbing be properly installed, maintained, and protected from contamination; that handwashing and toilet facilities be provided and properly maintained; that garbage and rubbish be stored inaccessible to vermin and that facilities be maintained in a sanitary manner; and that vermin be controlled.

8:24-7 states that all other facilities of a retail establishment must be constructed and maintained in a sanitary condition; included are walls, floors, ceilings, lighting, ventilation; also, included are requirements for the control and restriction of live animals.

8:24-8 refers to temporary and mobile retail food establishments, and agricultural markets specifying requirements for approved food sources, food protection, equipment maintenance, water supply and waste disposal, handwashing, and general construction and maintenance of facilities.

8:24-9 states that all retail food establishments must operate in compliance with 8:24 and Title 24, Revised Statutes, that establishments shall be inspected by the Department of Health authority; that records pertaining to food and supplies must be available; provides for the examination and condemnation of adulterated or unwholesome food and the closure of an establishment if suspected as a source of foodborne infection; states that violative establishments are liable to penalties as provided by law, that the public must be informed of sanitary conditions through postings and available inspection reports, and that establishments shall be issued evaluations by the Department of Health authority based upon sanitary conditions observed during inspections.

8:24-10 provides for the submission and review of plans for the construction or renovation of a retail food establishment, and that preoperational inspections of these establishments be conducted by the Department or local health authority. In addition, this subchapter recommends that supervisory personnel be certified in food safety and sanitation by an approved course of instruction.

8:24-11 refers specifically to requirements for vending machines, their construction, maintenance and location; the use of approved food supplies; personal hygiene of persons providing maintenance, the general protection of foods; proper methods of waste disposal; that water be from an approved source; and states inspection frequency and that machines must be accessible for inspections. This subchapter also provides for additional requirements to be met by retail food establishments such as the use of approved chemical sanitizing solutions and boiler water additives.

**Social Impact**

Once readopted, the rules will continue to provide reasonable standards in order to prevent food related morbidity and mortality; avoid cost-associated adversities resulting from foodborne illness; and create and maintain a safe and clean environment in which foods are produced, processed, stored or prepared by the retail food industry in New Jersey. Compliance with the standards of operation established under these rules is an indispensable part of the Department's efforts to ensure the service of safe food in New Jersey. Failure to readopt these rules would seriously jeopardize food safety and sanitary conditions of retail food facilities within the State.

**Economic Impact**

Illnesses and outbreaks of foodborne disease cause economic losses and problems for patients and their families, for the establishment that prepared the implicated food, for the food industry in general, and for governmental agencies responsible for food protection and disease surveillance. The estimated national economic impact of foodborne salmonellosis, alone, has been as high as \$200,000,000 annually. If readopted, these rules would not cause an additional significant financial burden to the retail food industry. To the contrary, the rules would provide for the identification of hazards and the implementation of controls in food service operations thereby aiding the industry in directing resources to those areas which have been shown to be the most cost beneficial in controlling foodborne disease.

**Regulatory Flexibility Statement**

Regarding a reduction in the regulatory burden upon businesses employing less than 100 people, in this instance the provider of the small business must meet the same requirements due to the potential public health risk. Both the large and the small firms falling within the purview of these rules have the same responsibility of preventing illness related to food processed on the retail level; therefore, a reduction of the regulatory burden would not apply to small businesses.

**Full text** of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 8:24.

(a)

**NARCOTIC AND DRUG ABUSE CONTROL  
Controlled Dangerous Substances  
Use of Sodium Pentobarbital in Animal Humane  
Societies**

**Proposed Amendments: N.J.A.C. 8:65-1.3, 6.6  
Proposed New Rule: 8:65-8.13**

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,  
Department of Health.

Authority: N.J.S.A. 24:21-9.

Proposal Number: PRN 1988-77.

Submit comments by March 17, 1988 to:

Lucius A. Bowser, R.P., M.P.H.  
Chief,  
Office of Drug Control  
CN 362  
Trenton, NJ 08625-0362  
(609) 984-1308

The agency proposal follows:

**Summary**

The Department of Health is proposing to amend N.J.A.C. 8:65-1.3, concerning animal humane facilities and their handling of controlled dangerous substances. The changes being proposed were included in a previous New Jersey Register, January 10, 1980, 12 N.J.R. 13(a), and were adopted with an effective date of March 6, 1980. They remained in effect until the various subchapters expired, pursuant to Executive Order No. 66 (1978). When the new rules were proposed and adopted for each subchapter, text was inadvertently deleted. (See 17 N.J.R. 1508(a) and 17 N.J.R. 2132(a) for N.J.A.C. 8:65-1.3; 17 N.J.R. 528(a) and 17 N.J.R. 2135(a) for N.J.A.C. 8:65-6.6; and 17 N.J.R. 2721(a) and 18 N.J.R. 555(c) for N.J.A.C. 8:65-8.13.) The omissions recently came to light when reviewing the New Jersey Administrative Code.

The proposed amendment to N.J.A.C. 8:65-1.3 set forth the limitations of control over animal humane facilities wishing to use Sodium Pentobarbital. The proposed amendment to N.J.A.C. 8:65-6.6 allows the registered agent of a humane society or animal shelter to apply for Federal purchase order forms. Proposed new rule N.J.A.C. 8:65-8.13 sets forth the manner of preparation and labeling of extemporaneous supplies of Sodium Pentobarbital by animal humane facilities.

**Economic Impact**

The proposed new rule and amendment will not have any impact on animal humane facilities' use of Sodium Pentobarbital for euthanasia purposes because they will clarify responsibilities of owners of animal humane facilities. There will be no added costs to facility owners through the imposition of these changes.

**Regulatory Flexibility Statement**

The proposed new rule amendments will not have any impact on the 75 animal humane facilities in New Jersey subject to these changes as small business entities. These 75 registrants are currently meeting all of the other rules regarding handling of Sodium Pentobarbital for euthanasia purposes and the proposed changes will not add any additional paper work or recordkeeping requirements.

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

8:65-1.3 Activities requiring registration

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

(i) A person or duly authorized agent registered as a dispenser for the purchasing and dispensing of Sodium Pentobarbital for the purpose of animal euthanasia shall be limited to registration in Schedule II N (Sodium Pentobarbital) and may possess or have under his control such amounts as are reasonably necessary to administer euthanasia on the premises of the registered location.

8:65-6.6 Procedure for executing order forms

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

(f) The registered agent of a Humane Society or licensed animal shelter may apply for Federal purchase order forms as described in

N.J.A.C. 8:65-6.4 and 8:65-6.5. Execution of the order forms shall be as specified in (a) through (e) above.

8:65-8.13 Humane societies and animal care facilities

(a) Incorporated humane societies or licensed animal care facilities authorized to purchase, possess and to dispense Sodium Pentobarbital for animal euthanasia pursuant to N.J.S.A. 24:21-11(f) shall:

1. Be authorized to dispense any commercially prepared Sodium Pentobarbital drug product for animal euthanasia approved for interstate sale by the United States Food and Drug Administration, provided the registrant complies with the approved recommended dosage regime in the labeling;

2. Be authorized to dispense a standard compounded formula of Sodium Pentobarbital for animal euthanasia established by the Department as follows:

i. Sodium Pentobarbital injection (for animal euthanasia), formula non-sterile solution:

U.S.P. Pentobarbital Sodium (Powder)	460 grams
Isopropyl Alcohol	250 mls.
Methyl Violet	1 drop
U.S.P. Water for injection	
Quantity sufficient to make	1000 mls.

ii. Using the formula in (a)2; above, the strength of this mixture will provide 460 mgs of Pentobarbital Sodium per milliliter.

iii. Lethal dose: one milliliter per 10 pounds of body weight for small animals; horses and other large animals—one milliliter per 10 pounds of body weight subject to a maximum dose of 100 milliliters.

iv. Package and storage: Package in tight containers with rubber stoppers and store under refrigeration. Solutions decompose on standing. Heat accelerates the decomposition.

v. Expiration date: five days from date of manufacture.

(b) Labeling: sample labeling is as follows:

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.
- 8.
- 9.

1. Name and address, city and State of registrant;  
2. Name of preparation: "Pentobarbital Sodium Injection";  
3. Strength of the preparation: "460 milligrams per one milliliter";  
4. "Lethal dose: one milliliter per 10 pounds of body weight for small animals; horses and large animals—one milliliter per 10 pounds of body weight subject to a maximum dose of 100 milliliters.";

5. "Batch number . . .";

6. "Net contents . . .";

7. "Expiration date . . .";

8. "Keep under refrigeration.";

9. "Warning: Do not use the injection if it contains a precipitate."

(c) A master formula and production record shall be made and retained on file at the formulating (compounding) site. This record shall contain:

1. Name, address, city and State of registrant;  
2. Name and strength of the product and a description of the dosage form;

3. The name and weight or measure of each active ingredient including the control number of each such ingredient;

4. A statement of the theoretical yield of finished product;

5. A statement describing the equipment and utensils used in the formulating (compounding);

6. A description of the finished drug product containers and closures including a specimen or copy of each label and all other labeling signed and dated by the person or persons responsible for approval of such labeling; and

7. Complete manufacturing and control instructions, procedures, special notations and precautions to be followed.

(d) Batch production records shall be prepared for each batch of drug product produced and shall include complete information relating to the production of each batch. The records shall contain:

**PROPOSALS**

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**HUMAN SERVICES**

1. An accurate reproduction of the appropriate master formula production record, checked for accuracy, dated and signed;
2. Documentation that each significant step in the manufacture, processing, packaging or holding of the batch was accomplished, including:
  - i. Dates;
  - ii. Identity of the individual equipment used;
  - iii. Specific identification of each batch of component or materials used;
  - iv. Weights and/or measures of components used in processing;
  - v. Copy of all labeling used;
  - vi. Identification of the person performing each step in the process and identification of the person checking the weights, measures and operations;
  - vii. A statement of the theoretical yield; and
  - viii. A statement of the actual yield.

**HUMAN SERVICES**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Administrative Manual  
JerseyCare Manual  
Presumptive Eligibility**

**Proposed Amendment: N.J.A.C. 10:49-1.1  
Proposed New Rules: N.J.A.C. 10:72-6**

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

Authority: N.J.S.A. 30:4D-3, 30:4D-6, 30:4D-7a, b, and c, 30:4D-12, and Section 1920 of the Social Security Act.

Proposal Number: PRN 1988-80.

Submit comments by March 17, 1988 to:  
Henry W. Hardy, Esq.  
Administrative Practice Officer  
Division of Medical Assistance and Health Services  
CN 712  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Section 1920(a) of the Social Security Act, established by the Omnibus Budget Reconciliation Act of 1986, provides that states may implement an expedited process of enrolling eligible pregnant women in the Medicaid program. This process is known as presumptive eligibility. On May 4, 1987, New Jersey enacted legislation (P.L. 1987, c.115) amending the New Jersey Medical Assistance and Health Services Act to establish presumptive eligibility in this State.

Under current processes, a pregnant woman requiring assistance for her prenatal care must file an application for Medicaid with the county welfare agency. In accordance with the rules of the Department of Human Services, the county welfare agency must, with some exceptions, arrive at a determination of eligibility or ineligibility within 30 days of the application date but not before all factors of eligibility are verified. While retroactive medical assistance is provided for up to three months prior to the application date (so long as the woman was eligible in those months), a pregnant woman's access to medical care may be restricted during the application processing period because of the lack of Medicaid coverage. The absence of Medicaid coverage during the application processing period may limit necessary prenatal care thus negatively affecting the birth outcome and the health of the mother.

Under presumptive eligibility, certain medical providers will be authorized to make a preliminary Medicaid eligibility determination on behalf of a pregnant patient. This finding, based on the patient's statements with no verification required, will entitle the pregnant woman to limited Medicaid coverage. This coverage is restricted to ambulatory prenatal care for up to 45 days from the date of the presumptive eligibility determination.

At the time of the presumptive eligibility determination, the pregnant woman will complete portions of a Medicaid application necessary to

constitute a valid application. The provider will forward that application, as well as a certification of presumptive eligibility, to the county welfare agency. The county agency will, in turn, provide the provider with a special Medicaid number for the woman under which the provider may bill the program for ambulatory prenatal care.

The county welfare agency will have 45 days from the date of the presumptive eligibility determination to complete the woman's Medicaid application. During that period, the presumptively eligible woman must contact the county welfare agency to complete the application process. The presumptive eligibility period will end at the earlier of a determination of eligibility or ineligibility for Medicaid or 45 days from the original date of presumptive eligibility.

In order to be a qualified provider (authorized to make presumptive eligibility determinations), the provider must be participating in the Medicaid program and currently certified by the Department of Health as a provider of HealthStart Comprehensive Maternity Care Services (as proposed at 19 N.J.R. 1978(a)). The provider must also provide either outpatient hospital services or clinic services under the direction of a physician. Additionally, the provider must be trained in the presumptive eligibility determination process and approved by the Division of Medical Assistance and Health Services. Qualified providers will be supplied with a complete set of the eligibility rules, the forms necessary to fulfill the presumptive eligibility process, and a procedural guide to presumptive eligibility criteria and processes.

**Social Impact**

Presumptive eligibility provides a vehicle for low-income pregnant women to expeditiously enter a program of prenatal care. Early prenatal care is critical to birth outcome. This presumptive eligibility process will assist in obtaining that care to which, under current processes, access may have been limited. It is expected that the availability of earlier prenatal care may contribute to higher birth-weight and healthier babies.

The proposed amendment and new rules will also impact any medical providers which elect to participate in the presumptive eligibility process as well as the county welfare agencies, which will have additional responsibilities in this process.

**Economic Impact**

It is estimated that the increased expenditure for services provided under the presumptive eligibility period will be minimal. Under current eligibility processes, the services provided under this new 45-day presumptive eligibility period could be covered for eligible women through retroactive Medicaid benefits. Any additional costs will be contingent on two factors. To the extent that the presumptive eligibility process encourages earlier application for Medicaid benefits or more women to seek such benefits, service expenditures could increase on the short term. Also, incorrect presumptive eligibility determinations by qualified providers will result in additional program costs. Any of these increased expenditures would be borne by the State and Federal governments. The Division of Medical Assistance and Health Services will monitor the determinations made by those providers and will work with the providers in developing corrective action to assure that such additional costs are minimized.

It is expected that, through access to early prenatal care and the resulting improvement in the health of babies born to affected women, the Medicaid program should anticipate significant long-term program cost reductions.

There is no cost to the patient for any services provided during the presumptive eligibility period.

**Regulatory Flexibility Statement**

Some of the providers which elect to participate in this process may be categorized as small businesses. No medical provider is required to participate in this proposed presumptive eligibility process, either through mandate or as a condition of receiving Medicaid funds. Participation is wholly at the option of the provider. It is felt that any additional recordkeeping and other compliance requirements will be offset by the following factors. In lieu of presumptive eligibility, a provider must maintain records sufficient to allow for patient billing, to charge other medical assistance programs for the cost of care, or to charge the unpaid service to uncompensated care. Through presumptive eligibility, the provider will be able to immediately bill the Medicaid program for costs associated with ambulatory prenatal care.

The Department has made every attempt to minimize paperwork and other administrative processes associated with the presumptive eligibility period. The requirements of this proposal are the minimum necessary for the Division of Medical Assistance and Health Services, as well as the

county welfare agencies, to properly track the application process, assure integrity of both the application process and the Medicaid billing system, and meet Federal requirements for matching funds.

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

10:49-1.1 Who is eligible for Medicaid

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

(d) **Exceptions to eligibility:** The following are exceptions to the eligibility process.

1. **Newborn:** Although both the mother and the newborn infant may be eligible recipients on the date of delivery, the newborn infant is not immediately assigned a Person Number. In order to expedite payment to the practitioner and the hospital for inpatient hospital services rendered to a newborn during the mother's confinement, allowance has been made to reimburse providers using the mother's Health Services Program (Medicaid) Case Number and Person Number. When the mother is discharged from the hospital, services to the newborn may no longer be claimed by the practitioner and/or hospital under the mother's Person Number. The mother must contact the county welfare agency [or]/ board of social services to obtain a Person Number for the newborn. It is the duty of the practitioner or the hospital to contact the county welfare agency/board of social services to obtain the newborn's Person Number for billing purposes.

2. **HealthStart—Comprehensive Maternity Care Services: Approved HealthStart Maternity Care Providers (independent clinics and hospital outpatient departments) may determine presumptive eligibility for pregnant women who require services.** (See N.J.A.C. 10:49-1.3 and 3.1.)

(e) **To apply for benefits:** If a patient has not applied for benefits, is unable to pay for services rendered and appears to meet the requirements for eligibility for the New Jersey Medicaid Program, the provider should encourage the patient, or his/her representative, to apply for benefits through the county welfare agency [or]/ board of social services for **programs such as [the] Aid to Families with Dependent Children [program], Medicaid Only, [the] Optional Categorically Needy (JerseyCare) for pregnant women and for children up to the age of two, or for [the] Medically Needy [program]; to the Social Security Administration for Supplemental Security Income benefits for the aged and disabled;** or, in certain cases, to the New Jersey Division of Youth and Family Services. The agency will process the application and notify the patient of the resulting determination. **If it is not known which agency is responsible for determining eligibility or which program might be applicable, the Medicaid District Office can be of assistance.** (See Appendix A)

1. A patient receiving services prior to the notification of eligibility should be informed that he/she is considered responsible for all charges incurred until proof of eligibility is verified. Once eligibility is verified, the provider may not bill the patient for any portion of the costs of allowable services rendered on or after the effective date of eligibility.

2. **Presumptive Eligibility—HealthStart Comprehensive Maternity Care providers: Independent clinics and hospital outpatient departments, if so designated, may determine "presumptive eligibility" for pregnant women who require services from such a provider.** (See N.J.A.C. 10:49-1.3 and 3.1.)

(f) (No change.)

(g) (No change.)

## CHAPTER 72 JERSEY CARE MANUAL

### SUBCHAPTER 6. PRESUMPTIVE ELIGIBILITY

#### 10:72-6.1 Scope

(a) **Presumptive eligibility provides ambulatory prenatal care to pregnant women from a qualified provider for a period not to exceed 45 calendar days. Presumptive eligibility continues until the county welfare agency reaches its formal eligibility determination as follows:**

1. **The period of presumptive eligibility begins on the date a qualified provider determines that, based on information provided by the pregnant woman, the woman meets the requirements and standards of this chapter applicable to pregnant women.**

2. **The period of presumptive eligibility will terminate with the earlier of:**

i. **The date a determination of eligibility or ineligibility for Medicaid is made by the county welfare agency; or**  
ii. **Forty-five days from the date the presumptive eligibility determination was made by the qualified provider if no determination of eligibility or ineligibility has yet been made by the county welfare agency.**

(b) **A qualified provider shall be:**

1. **A participating Medicaid provider;**

2. **Currently certified by the New Jersey Department of Health as a provider of HealthStart Comprehensive Maternity Care Services (see N.J.A.C. 10:49-3). A provider certified only for Medical Maternity Care Services, Health Support Services, or Pediatric Preventive Services shall not be a qualified provider for purposes of this subchapter;**

3. **A provider of the following services:**

i. **Outpatient hospital services; or**

ii. **Clinic services furnished by or under the direction of a physician, without regard to whether or not the clinic itself is administered by a physician; and**

4. **Trained and approved by the Division of Medical Assistance and Health Services for the purposes of making presumptive eligibility determinations.**

i. **The Division of Medical Assistance and Health Services will monitor the presumptive eligibility determinations made by qualified providers. In the event the review discloses a pattern of incorrect presumptive eligibility determinations or failure to adhere to procedural requirements, appropriate staff of the Division will meet with the qualified provider to discuss corrective action and to provide additional training if indicated. Continued incorrect presumptive eligibility determinations or failure to adhere to procedural requirements will result in the Division revoking approval for that provider to make presumptive eligibility determinations.**

#### 10:72-6.2 Responsibilities of a qualified provider

(a) **From preliminary information provided by a woman whose pregnancy has been medically verified, the qualified provider shall determine if the pregnant woman meets the eligibility criteria of this chapter as it applies to pregnant women. The qualified provider must obtain sufficient information from the pregnant woman to complete the Certification of Presumptive Eligibility by having the pregnant woman complete, sign and date an application for Medicaid benefits as designated and provided by the Division of Medical Assistance and Health Services. For purposes of the presumptive eligibility determination, the qualified provider shall request from the pregnant woman only that information necessary to determine her presumptive eligibility or ineligibility. The qualified provider shall make the determination of eligibility based solely on information obtained in the interview and shall not require any verification or documentation of the pregnant woman's statements.**

1. **For any pregnant woman determined presumptively eligible, the qualified provider shall complete and sign the Certification of Presumptive Eligibility. The completed Certification of Presumptive Eligibility together with the pregnant woman's application for Medicaid shall be mailed or otherwise forwarded to the county welfare agency of the pregnant woman's county of residence within two working days of the presumptive eligibility determination. The qualified provider shall inform the pregnant woman that her presumptive eligibility provides only limited services for no more than 45 days and that she must contact the county welfare agency in order to set up an appointment to complete the application process for Medicaid benefits. The qualified provider shall give the presumptively eligible pregnant woman a copy of both the Certification of Presumptive Eligibility and her application for Medicaid benefits. The qualified provider shall advise the presumptively eligible pregnant woman, in writing, of the address and telephone number of the appropriate county welfare agency office.**

2. **For any woman for whom the qualified provider is unable to determine presumptive eligibility or who is ineligible under the criteria and standards of this chapter as it applies to pregnant women, the qualified provider shall refer the woman to the county welfare agency for evaluation of potential eligibility for Medically Needy or other Medicaid entitlement. The address and telephone number of the ap-**

propriate county welfare agency office shall be provided, in writing, to the pregnant woman.

#### 10:72-6.3 Responsibility of the county welfare agency

(a) Upon the receipt of a Certification of Presumptive Eligibility together with the Medicaid application from a qualified provider, the county welfare agency shall:

1. Review the Certification of Presumptive Eligibility and the Medicaid application for completeness. Any certification that is not signed and dated by the qualified provider and does not include the estimated date of conception and delivery and the date of the presumptive eligibility determination shall be deemed to be incomplete. Any Medicaid application that does not contain the applicant's name, address, date of birth, race, signature and date shall be deemed to be incomplete. If either the certification or application is incomplete, the county welfare agency shall promptly return both documents to the qualified provider for completion along with a cover specification of the incomplete information. The county welfare agency shall retain a copy of any such material returned to the qualified provider;

2. If the Certification of Presumptive Eligibility and the Medicaid application are complete, create in the Medicaid Status File, an eligibility record for the presumptively eligible pregnant woman. The record shall include a termination date that equals the 45th calendar day from the date the qualified provider determined the woman to be presumptively eligible. The county welfare agency shall accept the completed and signed application just as any other bona fide application for Medicaid benefits;

3. Within five working days of the receipt of a completed Certification of Presumptive Eligibility, notify the qualified provider of the pregnant woman's Medicaid identification number;

4. Notwithstanding the application disposition standards in N.J.A.C. 10:72-2.1(d), arrive at a case disposition within 45 days of the date of the presumptive eligibility determination.

i. The policy at N.J.A.C. 10:72-2.1(d)2 concerning delayed application processing applies equally to the processing of the application of a presumptively eligible pregnant woman. In the event the 45-day processing standard is exceeded, the qualified provider must be notified within two working days of the 45th day that the woman is no longer presumptively eligible and that processing of her Medicaid application has been delayed.

ii. In the event the processing of the application is delayed beyond the 45-day processing standard, the county welfare agency shall provide the applicant written notification prior to the expiration of the process period setting forth the specific reasons for the delay;

5. In the case of a presumptively eligible pregnant woman who is determined ineligible for Medicaid within the 45-day processing period, terminate eligibility on the Medicaid Status File immediately with a termination date of the day of the ineligibility determination. Within two working days of the determination of ineligibility, the county welfare agency shall notify the provider, in writing, of the pregnant woman's ineligibility for Medicaid;

6. In the case of a presumptively eligible pregnant woman who is determined eligible for Medicaid within the 45-day processing standard, assign a Medicaid number appropriate to the pregnant woman's eligibility status and, within two working days of the determination of eligibility for Medicaid, notify the qualified provider of the eligibility determination. In such instances, the termination date on the presumptive eligibility record should be updated to reflect the last day of presumptive eligibility; and

7. In circumstances when the determination of eligibility or ineligibility is not made within the 45-day processing standard, the county welfare agency is not required to notify the qualified provider of its final decision.

(b) The county welfare agency is required to conduct a face-to-face interview and verify all factors of eligibility before determining a presumptively eligible woman eligible for Medicaid benefits.

#### 10:72-6.4 Applicant responsibilities

A presumptively eligible pregnant woman must contact the county welfare agency so that a face-to-face interview can be scheduled. As part of the eligibility determination process for her Medicaid application, the pregnant woman must be interviewed by county welfare agency staff, complete any forms required as a part of the application

process, and assist the county welfare agency in securing evidence that verifies her statements regarding eligibility.

#### 10:72-6.5 Notification and fair hearing rights

(a) For a presumptively eligible pregnant woman who is subsequently determined eligible for Medicaid benefits:

1. The county welfare agency is not required to provide either timely or adequate notice for the end of the presumptive eligibility. The pregnant woman has no right to a fair hearing based on the termination of her presumptive eligibility.

2. The county welfare agency shall provide the applicant notice of denial of her Medicaid application in accordance with N.J.A.C. 10:72-5.1. The pregnant woman has the right to apply for a fair hearing based on the denial of her Medicaid application.

(b) For a presumptively eligible pregnant woman whose eligibility for Medicaid has not yet been determined within 45 days from the date of the presumptive eligibility determination:

1. The county welfare agency is not required to provide either adequate or timely notice for the termination of her period of presumptive eligibility. The pregnant woman has no right to a fair hearing based on the termination of presumptive eligibility.

2. In accordance with N.J.A.C. 10:72-2.1(d)3, the county welfare agency shall provide the pregnant woman with written notification prior to the expiration of the 45-day period setting forth the specific reasons for the delay in the Medicaid application processing. The pregnant woman is entitled to a fair hearing based on the county welfare agency's failure to determine her Medicaid eligibility or ineligibility within the 45-day application processing period.

(c) A woman denied presumptive eligibility by a qualified provider is neither entitled to adequate notice of that determination nor entitled to a fair hearing on that action. The denial of presumptive eligibility shall not affect the woman's right to apply for Medicaid at the county welfare agency and to receive a formal determination of eligibility or ineligibility.

### (a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

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

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

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

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

Proposal Number: PRN 1988-70.

Submit comments by March 17, 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 Pharmaceutical Assistance to the Aged and Disabled (PAAD) Eligibility Manual (N.J.A.C. 10:69A). The current text of this chapter is scheduled to expire on April 26, 1988, pursuant to Executive Order No. 66(1978), commonly known as the "Sunset" Executive Order. The Chief, Bureau of Pharmaceutical Assistance for the Aged and Disabled, within the Division of Medical Assistance and Health Services, has reviewed the existing rules and found them necessary for the continued operation of the PAAD program. The rules establish a uniform system of determining eligibility for all applicants, and serve to fulfill the statutory mandate requiring the Commissioner to establish, by regulation, a system for determining eligibility, including provisions for submission of proof of income, and evidence of coverage of prescription drug costs by any other assistance or insurance plan (N.J.S.A. 30:4D-24).

The New Jersey PAAD Program was established by P.L. 1975, c.194, effective August 21, 1975. The intent of this program was to extend assistance to certain persons whose level of income disqualified them for medical assistance under the Medical Assistance and Health Services Act (Medicaid) but who had significant need for prescribed drugs and drug products and were unable to fully pay for them.

The law currently extends eligibility to any resident of the state of New Jersey who is either a recipient of Disability Insurance benefits under Title II of the federal Social Security Act (42 U.S.S. #401 et seq.) or 65 years of age and over and whose annual income is less than the statutory limits (reference is made to N.J.S.A. 30:4D-21). The current statutory income limits are \$13,650 for single individuals and \$16,750 for married persons.

Income, as defined in the rules, includes all income from whatever source derived including, but not limited to salaries, wages, dividends, interest, and pensions, annuities, retirement benefits, etc. (N.J.A.C. 10:69A-2.1 Definitions).

The rules were originally readopted in 1983: reference is made to R.1983 d.154, notice of which appeared in the May 16, 1983 issue of the New Jersey Register at 15 N.J.R. 806(b).

Since the 1983 readoption, there have been several amendments to the PAAD rules. The scope of service was expanded to allow coverage for insulin, insulin syringes, insulin needles and certain diabetic testing materials for eligible beneficiaries. (Reference is made to N.J.A.C. 10:69A-4.1 which was amended by R.1985 d.690, effective January 21, 1986. The adopted text of the rule appeared at 18 N.J.R. 190(a)). This change was made in order to comply with amendments to the PAAD statute (Reference is made to P.L. 1985, c.55, #1; P.L. 1985, c.291, #2, codified as N.J.S.A. 30:4D-22).

The income standards which appear in N.J.A.C. 10:69A-6.2 have been amended periodically to conform with statutory increase in income levels.

There is one minor change proposed with this readoption. The Division has always accepted a letter from the Railroad Retirement Board as one acceptable proof of age. Additional language has been added to clarify this requirement.

The rules are necessary, adequate, reasonable, efficient and responsive for the purpose for which they were promulgated. The rules have been effective in providing covered pharmaceutical services for eligible beneficiaries.

The rules have also enabled pharmaceutical providers to be reimbursed for providing services to PAAD beneficiaries. Therefore, the rules should be continued.

#### Social Impact

Currently, there are approximately 247,000 persons enrolled in the PAAD Program. The vast majority are aged 65 and over, although approximately 25,000 are disabled individuals who qualified for PAAD. Those persons who qualify are able to obtain prescription drugs, paid for by the State, with only a minimal cost (\$2.00 co-payment per prescription) to themselves.

If this Program were not available, many persons living on a fixed income, such as Social Security Retirement and/or Disability benefits, would have to assume the full cost for their prescription drugs, or do without them.

In addition, continuation of the PAAD program will allow pharmaceutical providers to be reimbursed for claims which are timely and correctly submitted. For additional information concerning the impact on providers, reference is made to Subchapter 5 of the Pharmacy Manual. (N.J.A.C. 10:51-5).

The rules should be continued so that the affected public, which has generally supported the PAAD program, can continue to receive coverage under PAAD.

#### Economic Impact

There is no change in reimbursement to pharmaceutical providers associated with this proposed readoption.

PAAD beneficiaries are still required to pay the \$2.00 co-payment per prescription.

In State Fiscal Year 1987, the cost to the State for paying PAAD claims was approximately 95 million dollars. The PAAD program is wholly State funded.

#### Regulatory Flexibility Statement

The Division does not believe that a regulatory flexibility analysis is required, as the primary impact of the rules is on the individuals who apply for and receive Pharmaceutical Assistance to the Aged and Disabled. The responsibility for processing applications, reapplications and terminations is assigned to the Division of Medical Assistance and Health

Services. In addition, the rule contains a few general references to pharmaceutical providers, which can be found in N.J.A.C. 10:69-4; however, the general rules which impact directly on pharmacies are contained in N.J.A.C. 10:51-3.

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

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

#### SUBCHAPTER 6. ELIGIBILITY REQUIREMENTS

##### 10:69A-6.1 Age

(a) (No change.)

(b) The following are acceptable proofs of age.

1. Primary proof: The applicant is required to submit a photocopy of one of the following documents:

i.-iv. (No change.)

v. Railroad retirement letter (can be obtained from Railroad Retirement Board);

vi. (No change.)

2. (No change.)

(c) (No change.)

## INSURANCE

### (a)

#### DIVISION OF LICENSING AND ENFORCEMENT

##### Insurance Producer Licensing: Professional Qualifications

##### Notice of Correction: N.J.A.C. 11:17-3.2

Take notice that the text of proposed new rule N.J.A.C. 11:17-3.2(e)4 was inadvertently omitted from the Notice of Proposal published in the February 1, 1988 New Jersey Register at 20 N.J.R. 237(a).

Full text of the omitted paragraph follows (additions indicated in boldface **thus**).

##### 11:17-3.2 Prelicensing education

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

(e) Upon application to the Supervisor of Insurance Education, any of the courses in (c) above may be waived for any license applicant who can demonstrate that he or she satisfies at least one of the following:

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

4. For title insurance authority only, is an attorney at law in New Jersey.

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

## LAW AND PUBLIC SAFETY

### (b)

#### DIVISION OF CONSUMER AFFAIRS BOARD OF COSMETOLOGY AND HAIRSTYLING

##### Proposed Repeal: N.J.A.C. 13:27A and 13:28

##### Proposed New Rules: N.J.A.C. 13:28-1.1 through 13:28-6.34

Authorized By: Frances Gray, Chairperson, Board of Cosmetology and Hairstyling.

Authority: N.J.S.A. 45:5B-6.

Proposal Number: PRN 1988-75.

Submit comments by March 17, 1988 to:

Richard G. Griswold, Executive Director  
Board of Cosmetology and Hairstyling, Room 311  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The State Board of Cosmetology and Hairstyling (Board) was established by the Cosmetology and Hairstyling Act of 1984, N.J.S.A. 45:5B-1 et seq., merging the functions of the former Board of Barber Examiners and the Board of Beauty Culture Control. Under this new statutory scheme the Board will continue to issue license renewals to the barbers and beauticians initially licensed by their respective former boards, but with the exception of beauty culture students and barber apprentices who were in programs on December 4, 1985, the effective date of the Act, the Board will no longer issue any new barber or beautician licenses. Instead, a cosmetologist-hairstylist license, in which all the functions of barbering and beauty culture are combined, will be issued to those seeking licensure. Only one kind of shop license is issued and all shops may provide any or all of the services defined as the practice of cosmetology and hairstyling. Beauty culture schools, formerly licensed and regulated by the Board of Beauty Culture Control, are now licensed and regulated by the Board of Cosmetology and Hairstyling. The statutory scheme allows licensed teachers in these schools to upgrade their licenses by taking and passing a Board-approved course in Teaching of Shaving. Barbers and beauticians are given an opportunity to upgrade their licenses to that of a cosmetology and hairstyling license, by taking an appropriate test. If they fail the test, however, a course must be taken before they attempt the test a second time.

Under this scheme the Board is charged with providing regulatory standards for five different categories of practicing licenses, shops and schools. The Board must also devise and administer examinations for the various licenses to be issued. The rules of the Board of Beauty Culture Control, N.J.A.C. 13:28-1 et seq. and the Board of Barber Examiners, N.J.A.C. 13:27A-1 et seq., have remained in effect until now, pursuant to the State Agency Transfer Act, N.J.S.A. 52:14D-1 et seq., insofar as they were consistent with the Cosmetology and Hairstyling Act of 1984. The Board has reviewed these rules and proposes to repeal both N.J.A.C. 13:28-1 et seq. and 13:27A-1 et seq. and proposed new rules suited more precisely to the new statutory scheme. Many of the old rules of the Board of Beauty Culture Control are effectively retained in an updated and/or amended form, and a number of new rules will be included. The proposed rules are codified at N.J.A.C. 13:28-1 et seq. Chapter 27A of Title 13, rules applicable to barbers, is reserved. The proposal includes six subchapters:

N.J.A.C. 13:28-1 contains five sections. N.J.A.C. 13:28-1.1, 1.2, 1.3 and 1.5 deal with the same subject matter as repealed N.J.A.C. 13:28-1.16, 1.18, 1.23, 1.26, 1.27 and 1.28, detailing and clarifying procedures and requirements for applicants for licensure by examination, for reexamination in case of failure to achieve a passing grade, for temporary permits for applicants awaiting examination, and procedures for obtaining duplicate copies of lost licenses. New N.J.A.C. 28:1-1.4 permits an applicant who already holds both a barber license and beauty culture license to obtain a cosmetology and hairstyling license without further examination. Similarly, a licensed beauty culture teacher holding a barber license may obtain the upgraded license simply by paying the appropriate fee.

N.J.A.C. 13:28-2 contains eleven sections dealing with licensed shops. These effectively update and replace the current N.J.A.C. 13:28-1.1, 1.3 through 1.7, 1.9, 1.10, 1.17, 1.51, 1.54 and 1.56. N.J.A.C. 13:28-2.1 details procedures for applying for an initial shop license. N.J.A.C. 13:28-2.2 and 2.3 describe procedures to follow in the event that a shop moves to a new location, or there is a transfer of ownership. N.J.A.C. 13:28-2.4 requires that a new shop application be made where a shop license is not renewed within 90 days of the expiration of an existing license. N.J.A.C. 13:28-2.5 sets out the minimum standards for floor space and equipment for shops seeking initial licensure after December 4, 1985; these requirements may be waived for good cause for beauty and barber shops initially licensed before that date. N.J.A.C. 13:28-2.6 prohibits the residential use of a shop or portion of a shop and requires separate entrances for shops in buildings which also contain private residences. N.J.A.C. 13:28-2.7 prohibits the leasing of space to a non-employee for the purpose of providing cosmetology services or ancillary services. The prohibited practice is commonly known as a "chair rental" or "booth rental." N.J.A.C. 13:28-2.8 permits the sale of merchandise in a licensed shop provided that the space allotted is in addition to the required minimum space for the shop. N.J.A.C. 13:28-2.9 permits the offering of ancillary services related to the practice of cosmetology and hairstyling if performed in a safe and sanitary manner by adequately trained personnel. Explicit requirements are set out for the safe offering of electrolysis and tanning services. N.J.A.C. 13:28-2.10 requires that all licenses be

posted with current pictures attached and that prices for all offered services be posted together with a notice informing customers that the shop is licensed by the Board. N.J.A.C. 13:28-2.11 describes the requirements for shop supervision as set out in N.J.S.A. 45:5B-11.

N.J.A.C. 13:28-3 incorporates the Board's safety and sanitation rules, effectively updating and replacing current N.J.A.C. 13:28-1.11 and 1.29 through 1.49. N.J.A.C. 13:28-3.1 sets out general standards for keeping the equipment and premises of a shop clean. N.J.A.C. 13:28-3.2 requires practitioners to maintain standards of personal cleanliness and to use safe practice techniques, following all manufacturers' directions when using chemical products. Smoking by practitioners while serving a client is prohibited as is working while having a communicable disease that may be transmitted to clients.

N.J.A.C. 13:28-4, replacing current N.J.A.C. 13:28-1.12 and 1.13, sets out three rules informing shop owners that their premises are subject to inspection by the Board, and that owners, as well as the shop supervisors and other personnel, are responsible for non-compliance with the rules and applicable law by virtue of their position as employers.

N.J.A.C. 13:28-5 sets out Board fees for licenses, license renewal, applications, examinations, permits and the like. The proposed fees are essentially the same as those presently in N.J.A.C. 13:28-4.1. The latter were set late in 1985 based on a projection of the operating expenses and income of the new Board. The Board anticipates, however, that a new fee schedule will be forthcoming during 1988, prior to the next renewal cycle.

N.J.A.C. 13:28-6 sets out 34 Board rules for licensed schools of cosmetology and hairstyling in New Jersey, replacing and updating current Board of Beauty Culture rules concerning schools of beauty culture at N.J.A.C. 13:28-2. N.J.A.C. 13:28-6.2 prescribes simplified application procedures for new schools, simplifying present procedures at N.J.A.C. 13:28-2.2 to 2.4. N.J.A.C. 13:28-6.3 prohibits registering of any students until final approval is obtained. N.J.A.C. 13:28-6.4 prohibits false advertising by schools and requires new schools to choose names that are not confusing, such as names similar to established schools or names that may give the impression that such private schools are actually public schools, or are in fact approved by the Department of Higher Education. N.J.A.C. 13:28-6.5 prohibits the operation of a licensed shop as part of the school and N.J.A.C. 13:28-6.6 requires separate entrances for any shop located on school premises. N.J.A.C. 13:28-6.7 sets out the minimum requirements for floor space for licensed schools relative to the number of students enrolled. N.J.A.C. 13:28-6.8 requires that, in general, the school register new students with the Board before classes start, but relaxes the present rule, N.J.A.C. 13:28-2.10, to the extent that where there is some unavoidable delay in the processing of the registration, the student may attend classes for a period not to exceed two weeks while awaiting the completion of the registration process. N.J.A.C. 13:28-6.9 requires that where non-English speaking students are enrolled, the enrollment contract must be in the language spoken by the student and the school must provide courses in that language taught by a licensed teacher who is fluent in both English and the language in which the course is offered. N.J.A.C. 13:28-6.10 requires that new classes start on the first Monday of each month or the first working day after the first Monday if that Monday is a holiday. N.J.A.C. 13:28-6.11 and 6.12 deal with course scheduling. A maximum of 40 credit hours per week for regularly scheduled classes for full-time students is permitted, with up to eight hours of make-up classes for those absent from regularly scheduled classes. Part-time students may be scheduled for no more than 20 regular hours a week, with similar provisions for make-up times for these students. N.J.A.C. 13:28-6.13 requires schools to submit proposed class schedules to the Board for approval each year. N.J.A.C. 13:28-6.14 prohibits smoking by teachers and students in classrooms and clinics. N.J.A.C. 13:28-6.15 requires the school to keep detailed attendance records so that the Board can verify that applicants have received the requisite 1200 hours of training. The present rule is relaxed to permit monthly rather than weekly reporting by the schools as to attendance records. N.J.A.C. 13:28-6.16 prohibits the conducting of other businesses on school premises and permits demonstrations by outside persons only where there is no conflict with class schedules. N.J.A.C. 13:28-6.17 requires notice when a school moves to a new location together with the submission of a new application, but permits continuous operation of the school pending completion of the application process. N.J.A.C. 13:28-6.18 and 6.19 require that each school have a supervising teacher and that each branch school be licensed separately. N.J.A.C. 13:28-6.20 sets out the minimum equipment and facilities necessary for the operation of a school. N.J.A.C. 13:28-6.21 sets out student standards and requirements and defines the status of

Junior and Senior students. Students who are more than ten minutes late for any scheduled class may lose credit for the whole hour. The school may dismiss students who do not observe school rules, but the student is given the right to appeal to the Board. Transfer of credits from approved out-of-state schools is permitted. Schools are required to give examinations to students 50 hours prior to completion of the course. N.J.A.C. 13:28-6.22 places on the schools the burden of ensuring that applications for Board examination are submitted to the Board within 30 days of a student's graduation. N.J.A.C. 13:28-6.23 sets out the number of licensed teachers that must be employed and prohibits teachers from engaging in private practice during schools hours. N.J.A.C. 13:28-6.24 prohibits the employment of non-licensed teachers but permits non-licensed persons to demonstrate the use of certain products under the supervision of a licensed teacher. Supervising teachers must have a minimum of two years experience, and the school is required to apprise the Board of changes in its teaching staff. N.J.A.C. 13:28-6.25 and 6.26 permit schools to offer 250 hour refresher courses and postgraduate courses. N.J.A.C. 13:28-6.27 regulates the operation of school clinics where senior students are permitted to gain practical experience by performing cosmetology and hairstyling services on members of the public. Such clients must be informed that students are performing the services. One significant change from the present rules permits schools to advertise clinic services in order to ensure that a sufficient number of clinic patrons are available to provide the opportunity for senior students to acquire the requisite practical experience before graduation.

N.J.A.C. 13:28-6.28 through 6.32 set out the required hourly curricula for the offering of Board approved courses by schools. N.J.A.C. 13:28-6.33 describes the amounts for which bonds must be posted by schools pursuant to N.J.S.A. 45:5B-32(c). N.J.A.C. 13:28-6.34 permits applicants for a teacher's license who, prior to December 4, 1985, were enrolled in a 1500 hour teachers' course to apply for examination as soon as 500 hours of acceptable training is completed, inasmuch as the new licensing scheme requires completion of a 500-hour course only.

#### Social Impact

The Cosmetology and Hairstyling Act of 1984, N.J.S.A. 45:5B-1 et seq., established a new regulatory and licensing mechanism for the practice of barbering, beauty culture and cosmetology-hairstyling. The Act repealed the laws regarding the Board of Beauty Culture Control and the State Board of Barber Examiners and established a single Board, the Board of Cosmetology and Hairstyling (Board), to regulate practice of these related occupations. The Act directed the Board to protect those members of the public who are direct recipients of the services regulated by the Act and registered students receiving instruction at licensed schools of cosmetology and hairstyling from unsafe, fraudulent and deceptive practices, as well as practices which reduce competition. The Board is also mandated to maintain and ensure standards of competency and integrity for the occupations of cosmetology and hairstyling and to ensure that registered students at cosmetology and hairstyling schools receive thorough and reliable instruction.

By repealing the rules promulgated by the former Boards of Barber Examiners and Beauty Culture Control and proposing new rules, the Board is fulfilling its statutorily mandated duties. These new rules will have a beneficial impact on consumers, students, licensees and the Board's own regulatory process. It is expected that the proposed rules will enhance the protection of consumers who seek cosmetology and hairstyling services. It is also anticipated that licensees will benefit from the clarification of licensees' duties under the new statutory scheme. There is further benefit to licensees in that the proposed rules will minimize the ability of unlicensed and/or unscrupulous individuals to gain unfair advantage over state-licensed professionals who expend much time and money in an effort to succeed legitimately in the cosmetology and hairstyling fields. Finally, the implementation of these clearly-defined rules will enhance the Board's regulatory and enforcement function.

#### Economic Impact

The New Jersey Board of Cosmetology and Hairstyling (Board) expects that some of the proposed rules will have an economic impact on the cosmetology and hairstyling profession. However, in drafting these rules the Board has attempted to minimize any adverse economic impact as much as possible, while at the same time carrying out its statutorily mandated duty.

There are five categories of licensees who will be affected by the proposed rules. These are: individuals previously licensed by the Board of Barber Examiners, individuals previously licensed by the Board of Beauty Culture Control, licensed cosmetologist-hairstylists, licensed

shops and licensed schools. A majority of the proposed rules are the same as the current rules which the Board of Beauty Culture Control has implemented and administered. Licensees under that Board have always had to abide by such rules and the economic impact of the proposal will be minimal; any further economic impact those licensees experience will be in terms of the several new provisions proposed. Barbers who were previously licensed under the former Board of Barber Examiners and who operated under that Board will feel the economic impact of having to comply with the proposed rules for the first time.

N.J.A.C. 13:28-2.3 will have an economic impact on barbers who own or maintain their own shops which were in existence prior to December 4, 1985. Such economic impact will result from the fact that purchasers of existing barber shops will be required to comply with proposed rule N.J.A.C. 13:28-2.5. That rule sets forth physical requirements for obtaining a shop license. In the event that a particular barber shop does not meet these physical requirements, a purchaser may have to expend money to bring such a shop into compliance in order to acquire a new shop license. This in turn may affect a barber's ability to expeditiously sell his shop. However, N.J.A.C. 13:28-2.5(e) provides that where applications are made to issue a new shop license for premises that had been licensed by the former Board of Barber Examiners or the former Board of Beauty Culture Control and the shop premises do not meet the minimum requirements of the proposed rule, the Board may waive one or more of the requirements for good cause shown. Thus, previously licensed shops which apply for an initial shop license after December 4, 1985 may be granted a waiver in appropriate situations. This section was added to the rule to help alleviate any undue economic burden a shop owner may experience in selling a particular shop.

N.J.S.A. 13:28-2.9 will have a beneficial economic impact on all licensed shops. The rule allows shops to now offer ancillary services on the premises. This will enable shops to expand their customer base. Such expansion will allow the licensed shop the opportunity to increase its revenues.

Proposed N.J.A.C. 13:28-2.11 provides that each shop shall insure that there is at least one experienced practicing licensee on the premises at all times to generally oversee the management of the shop. This will have a direct economic impact on shop owners, who must pay a salary to such a licensee or supervise the shop themselves.

Proposed N.J.A.C. 13:28-5 will have only a minimal economic impact on licensees in that its requirements are similar to the fee schedule presently set out in N.J.A.C. 13:28-4.1. The fees were set in late 1985 based on a projection of the operating expenses and income of the new Board.

Proposed N.J.A.C. 13:28-6 sets forth the requirements for schools of cosmetology and hairstyling. These rules are similar to the rules for beauty culture schools under the Board of Beauty Culture Control. The major change occurs in proposed N.J.A.C. 13:28-6.28(j), which allows schools to advertise for clinic patrons upon whom cosmetology and hairstyling services will be performed by senior students. This will allow schools to increase the number of patrons their students will be able to serve; the rule will have a positive economic impact in that schools will be able to reduce clinic costs by increasing the number of patrons attending their school clinic.

In sum, while the barbers licensed by the previous Board of Barber Examiners will experience some adverse economic impact, beauticians, new licensees and schools of cosmetology and hairstyling will feel little impact in that the proposed rules are similar to those rules which the Board of Beauty Culture Control has previously had in effect.

#### Regulatory Flexibility Statement

The proposed rules apply to virtually all licensees of, or applicants to, the State Board of Cosmetology and Hairstyling and thus apply to both large and small businesses. There are approximately 60,700 licensed practitioners, 7,300 licensed shops and 38 licensed schools in the State. There are approximately 5,500 examination applicants per year.

The reporting, recordkeeping and compliance requirements in the proposed rules are as follows: N.J.A.C. 13:28-1 includes methods by which an applicant can obtain licensure as a practitioner or teacher, or acquire a temporary or student permit. N.J.A.C. 13:28-2.2 sets out the proper methods to obtain a shop license permission to transfer shop location and permission to transfer ownership of a shop, and establishes the physical requirements for a shop license to be issued. Further, the rule sets forth the ancillary services allowed to be performed in a licensed shop and provides that each shop shall ensure that there is at least one experienced practicing licensee present to generally oversee the management of such a shop. N.J.A.C. 13:28-3.1 provides the safety and sanitation requirements of licensed shops. N.J.A.C. 13:28-4.1 requires that individ-

uals rendering cosmetology and hairstyling services be in compliance with all pertinent statutes and rules and that the holder of a shop license as well as a shop supervisor shall be responsible for compliance therewith. N.J.A.C. 13:28-5.1 establishes the fee schedule for applications. N.J.A.C. 13:28-6.1 regulates schools of cosmetology and hairstyling. The rule establishes standards for the licensed school which include application procedures for obtaining school licenses; procedures for student registration; physical requirements of licensed schools; school training schedules; school records; teacher qualifications; student qualifications; clinical work standards; curriculum for licensees who were licensed by previous Boards and now wish to convert their licenses to a cosmetology and hairstyling license; and training courses for applicants to obtain a teacher's license.

The costs of compliance with the provisions of N.J.A.C. 13:28-1 through 13:28-5.1 will be borne uniformly by all applicants, without variation in the cost for businesses of different types and of different sizes, inasmuch as these rules reflect the minimum requirements for licensed practitioners and licensed shops under the Cosmetology and Hairstyling Act of 1984. Likewise, these rules were designed to minimize any adverse economic impact on small businesses. In this regard, the Board of Cosmetology and Hairstyling has provided various rules that give the Board discretion to waive rule requirements where in the Board's opinion compliance by an individual would be too burdensome and the public health and safety would not be endangered by such waiver.

The costs involved in complying with N.J.A.C. 13:28-6.1 will be borne proportionally by all schools of cosmetology and hairstyling. There will be a slight variation in the costs for schools of different sizes. However, any increase in the cost of compliance will be felt by large businesses and not small businesses. This is because a school with more than 100 students enrolled must provide supplemental floor space for each additional student. Further, the larger the number of students a school has enrolled, the higher its cost of compliance will be in that the school must provide a greater amount of teaching equipment, employ a larger teaching staff, and maintain a larger number of student records. Hence, the proposed rule will not have an unfair or disproportionate economic effect on small schools.

In view of the fact that the proposed rules operate proportionally on all practicing licensees who are composed largely, if not entirely, of small businesses, and do not adversely affect cosmetology and hairstyling schools which fall within the definition of a small business, the intent of the Regulatory Flexibility Act vis a vis minimizing adverse economic impact has been satisfied.

Full text of the rules proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:27A and 13:28.

Full text of the proposed new rules follows:

## CHAPTER 28

### BOARD OF COSMETOLOGY AND HAIRSTYLING

#### SUBCHAPTER 1. PRACTICING LICENSES, APPLICATION AND EXAMINATIONS

##### 13:28-1.1 Application for examination for licensure; acceptable documentation of credentials

(a) Applications for examination may be procured from the office of the Board of Cosmetology and Hairstyling.

(b) All applications must be accompanied by satisfactory proof of age. The following are deemed to constitute such proof:

1. Birth Certificate or Baptism Certificate;
2. Passport, citizenship papers, immigration certificate or Alien Registration Card;
3. A valid New Jersey driver's license; or
4. Any other document or affidavit which constitutes a valid proof of age.

(c) All applications must be accompanied by proof of satisfactory completion of high school or its equivalent. The following are deemed to constitute such proof:

1. A high school diploma or the equivalent thereof;
2. A certified High School transcript substantiating successful completion of a secondary program; or
3. Any other document or affidavit which constitutes reliable proof of educational attainment.

(d) All applications must be accompanied by satisfactory proof of the attainment of the requisite training in cosmetology and hairstyling.

1. Applicants obtaining their cosmetology and hairstyling training in another state or country must demonstrate, by way of certification from that state's or country's licensing authority that such training conforms substantially with the standards applicable to cosmetology and hairstyling schools in the State of New Jersey. Applicants holding a license from another state who have engaged in the practice of cosmetology and hairstyling for at least three years in that state, may submit, in lieu of documentation of cosmetology and hairstyling training, a notarized affidavit of work experience and a letter of certification of licensure by the State's board.

(e) Application for licensure as a teacher must be accompanied by satisfactory proof of the requisite work experience in the form of affidavits from former employers.

(f) All applications for licensure must be accompanied by the appropriate fee as set forth in N.J.A.C. 13:28-5.1.

##### 13:28-1.2 Examination and reexaminations

(a) Applicants shall be subject to testing in all areas of cosmetology and hairstyling appropriate for the license sought, and such examination shall be in three parts: practical, oral and written.

(b) Applicants must receive a passing grade on each part of the examination to obtain a license.

(c) An applicant who fails one or more parts of the examination shall be reexamined only on the part(s) failed; provided, however, that an applicant for a cosmetology and hairstyling license pursuant to N.J.S.A. 45:5B-18 and -19 who fails one or more parts of the examination shall retake the complete examination.

(d) An applicant who fails the examination or fails to appear for an examination may be rescheduled for examination upon written notice to the Board. Payment of the initial fee shall entitle an applicant to be scheduled for no more than two examinations.

##### 13:28-1.3 Temporary permits and student permits

(a) Upon the Board's acceptance of an application to sit for an examination, a temporary permit, which shall be valid for a period of 120 days, may be issued to an applicant.

(b) Upon application, the Board may issue a student permit to any student registered at a licensed New Jersey cosmetology and hairstyling school or enrolled in a New Jersey State approved high school or vocational program.

1. An application for a student permit shall be accompanied by the appropriate fee as set forth in N.J.A.C. 13:28-5. and a certification from the school that the student has completed 600 hours of cosmetology and hairstyling training.

##### 13:28-1.4 Application for license to teach or practice cosmetology and hairstyling by persons holding both a barber license and a beauty culture license

(a) Any person holding both a New Jersey State barber license and a New Jersey State operator, manager-operator or beautician license may be issued a license to practice cosmetology and hairstyling upon notice to the Board and payment of the appropriate fee as set forth in N.J.A.C. 13:28-5.

(b) Any person holding both a New Jersey State barber license and a New Jersey state license to teach beauty culture may be issued a license to teach cosmetology and hairstyling upon application to the Board and payment of the appropriate fee as set forth in N.J.A.C. 13:28-5.

##### 13:28-1.5 Lost licenses

Licensees may secure a duplicate replacement license upon payment of the required fee as set forth in N.J.A.C. 13:28-5 and submission of an affidavit indicating the circumstances under which the license initially issued was lost or destroyed.

#### SUBCHAPTER 2. SHOP LICENSES

##### 13:28-2.1 Applications

(a) Applications for a shop license may be procured at the office of the Board.

(b) Where the application is for other than an individual proprietorship it must be accompanied by proof of the form of ownership of the shop. The following are deemed to be proof of the form of ownership:

1. Incorporation papers;
2. Partnership agreement; or
3. Any other document or affidavit which constitutes reliable proof of ownership.

(c) All applications must be accompanied by an acceptable floor plan.

(d) Upon receipt of an acceptable application and the requisite fee as provided in N.J.A.C. 13:28-5, the Board shall conduct an inspection of the premises. No shop shall be permitted to operate until the Board has reviewed the inspection report and issues a shop license.

#### 13:28-2.2 Removal of a shop

(a) Prior to the removal of a shop to another address, the holder of a shop license shall notify the Board of his intention and make application for a new shop license pursuant to N.J.A.C. 13:28-2.1.

1. An acceptable application shall be received by the Board not less than three weeks prior to the intended opening date of the new shop.

2. No practice of cosmetology and hairstyling shall be done on the premises of the new shop until a shop license has been issued.

#### 13:28-2.3 Transfer of ownership

(a) Upon a transfer of ownership the holder of a shop license shall, by letter, notify the Board of the transfer, providing the name and address of the new owner. The shop license shall be surrendered to the Board as soon as the transfer of ownership is complete.

(b) Prior to the completion of a transfer of ownership, the intended new owner shall apply for a new shop license pursuant to N.J.A.C. 13:28-2.1.

#### 13:28-2.4 Renewal of shop license

(a) The holder of a shop license shall submit an application for renewal of that license prior to the expiration of the current license.

(b) The Board, in its discretion, may renew shop licenses within 90 days from the date of expiration.

(c) The Board will not renew a shop license if the application for renewal is submitted more than 90 days after the date of expiration. In such cases the shop owner shall be required to make application for an initial shop license pursuant to N.J.A.C. 13:28-2.1.

(d) Notwithstanding the Board's renewal or restoration of an expired license, the Board may initiate whatever penalty action it may deem appropriate for the operator of a shop without a valid license.

#### 13:28-2.5 Physical requirements for shops applying for initial shop license on or after December 4, 1985

(a) All licensed premises shall contain not less than 350 square feet of space. An additional 50 square feet of space shall be provided for every work station in excess of two.

(b) Each shop shall contain at least one lavatory. Lavatories shall include a toilet, hand washing facilities and a door.

(c) All shops must contain the following:

1. At least one shampoo basin with hot and cold running water and a reclining chair;
2. A dry sterilizer for each work station;
3. A wet sterilizer for each work station;
4. A closed container for clean linens;
5. A closed container for soiled linens;
6. Hair drying facilities;
7. A dispensary or place where supplies are prepared and dispensed; and

8. Such other equipment as is necessary to provide those services offered by the shop in a safe and sanitary manner.

(d) Shops shall display a permanent sign indicating the name of the shop, which shall be clearly visible to the general public from the exterior of the shop.

(e) Where application is made to issue a new shop license for premises that had been licensed by the former Board of Barber Examiners or the former Board of Beauty Culture Control, and the shop premises do not meet the minimum requirements of this section, the Board may, in its discretion, waive one or more of the require-

ments of this section for good cause shown. Such waiver will not be granted where the failure to meet minimum requirements may result in the inability of the shop owner to provide cosmetology and hairstyling services in a safe and sanitary manner.

#### 13:28-2.6 Shops within residential premises

(a) No portion of a licensed shop shall be used as a portion of a private residence.

(b) Entrances to shops located within private residences must permit patrons to enter the shop directly, without requiring passage through any portion of the residence.

#### 13:28-2.7 Leasing space prohibited

No holder of a shop license shall lease or sublease space or provide space on the licensed premises to a non-employee for the purpose of providing cosmetology and hairstyling services or ancillary services as part of a separate business to be conducted by the non-employee. Practices commonly known as chair rentals or booth rentals are prohibited by this section.

#### 13:28-2.8 Sale of merchandise

The holder of a shop license may permit the sale of merchandise within licensed premises, provided that space allocated for such sales is in addition to the space required by N.J.A.C. 13:28-2.5.

#### 13:28-2.9 Ancillary services

(a) The holder of a shop license may offer ancillary services related to the beautification of the body or the enhancement of personal appearance, but not included in the definition of cosmetology and hairstyling, on the licensed premises, provided that these services are performed in a safe and sanitary manner by personnel who are adequately trained to render such services, and that the space allocated for such services is in addition to the space required by N.J.A.C. 13:28-2.5.

(b) If electrolysis for the removal of superfluous hair is offered, it must be performed by an electrologist who has completed either a course or program of training in electrolysis approved by the New Jersey State Department of Education or another course or program of training in electrolysis substantially equivalent to a course or program approved by the New Jersey Department of Education.

(c) If tanning booths or tanning beds are utilized, they must be operated by an individual who is appropriately trained in the use of the tanning equipment. Manufacturer's instructions concerning the use and limitations on the use of the tanning equipment must be scrupulously followed.

1. Appropriate warnings concerning possible hazards from over-exposure to ultraviolet radiation must be posted in plain sight near the equipment and clients using the equipment must be verbally informed of such possible hazards.

#### 13:28-2.10 Posting of licenses and required notices

(a) All shops shall display the following in a location clearly visible to all patrons:

1. The shop license;
2. Licenses for all practitioners rendering services within the shop. Each license shall contain a current picture of the licensee;
3. A listing of all services performed and the charges for each service; and
4. The following notice:

#### NOTICE

This shop and the operators herein are licensed to engage in the practice of cosmetology and hairstyling by the State Board of Cosmetology and Hairstyling, an agency of the New Jersey Division of Consumer Affairs. Any member of the consuming public having a complaint concerning the manner in which this practice is conducted may notify the State Board of Cosmetology and Hairstyling at 1100 Raymond Boulevard, Newark, New Jersey 07102, or the New Jersey Division of Consumer Affairs, 1100 Raymond Boulevard, Newark, New Jersey 07102.

#### 13:28-2.11 Supervision of shops and absence of experienced practicing licensee

(a) Each shop shall ensure that there is at least one experienced practicing licensee present to generally oversee the management of the shop. The experienced practicing licensee shall either:

1. Hold a beautician, barber or cosmetologist-hairstylist license and have three years of experience as a beautician, barber or cosmetologist; or

2. Hold a beautician or cosmetologist-hairstylist license and have been issued a manager-operator license by the Board of Beauty Culture Control.

(b) A shop which satisfies the requirements of (a) above by employing a practicing licensee who holds a barber license shall be prohibited from employing senior students unless the shop employs a practicing licensee who holds a license as a beautician or a cosmetologist-hairstylist and has at least three years of experience as a beautician or a cosmetologist-hairstylist, who shall supervise the rendering of cosmetological services by the senior students.

(c) A letter of permission shall be issued by the Board to allow a shop owner to operate his licensed shop for one day per week without the services of an experienced practicing licensee.

1. The shop owner shall furnish the Board with the name and license number of a New Jersey licensee, who has been licensed in the State for at least one year, who will be in charge of the licensed shop in the absence of the experienced practicing licensee.

2. This subsection is intended specifically to allow continuous operation of the licensed shop on the experienced practicing licensee's regularly scheduled day off. The day of the week must remain consistent. If the licensed shop owner desires to change his licensee-in-charge or experienced practicing licensee's day off, he must request a new letter of permission. The Board requires 30 days notice prior to approving any change.

(d) A letter of permission will be issued by the board to allow a shop owner to operate his licensed shop for a period of two weeks without the services of an experienced practicing licensee.

1. The shop owner shall furnish the Board with the name and license number of a New Jersey licensee, who has been licensed in the State for at least one year who will be in charge of the licensed shop in the absence of the experienced practicing licensee.

2. This subsection is intended specifically to allow continuous operation of the licensed shop during the experienced practicing licensee's vacation period. The Board will require 30 days notice before any vacation period will be approved.

3. No more than two vacation periods per year will be approved for a given shop.

**SUBCHAPTER 3. SAFETY AND SANITATION**

**13:28-3.1 Premises**

(a) All licensed shops, including lavatories therein, shall be properly lighted and ventilated.

(b) All licensed shops shall have an adequate supply of potable water.

(c) All licensed shops shall dispose of wastes in a manner which shall not pose a public health hazard.

(d) All licensed shops and the furniture, fixtures, equipment and supply cabinets therein shall be maintained in a sanitary manner and in good repair. Floors shall be thoroughly cleaned daily.

(e) All tools, implements and electrical appliances used within a licensed shop shall be maintained in a sanitary and safe manner. Tools and utensils applied directly to patrons shall be thoroughly cleaned and sanitized after each and every use.

(f) All linens and toweling used within a licensed shop shall be laundered and sanitized before each and every direct contact with a patron. In lieu of laundered and sanitized linens, disposable toweling may be used.

**13:28-3.2 Personnel**

(a) All practitioners shall wash their hands before and after serving each patron.

(b) All practitioners shall be attired in clean clothes.

(c) No practitioner shall serve a patron if the practitioner has a communicable disease which may be transmitted to patrons in the normal course of rendering cosmetological services.

(d) No practitioner shall serve a patron whom the practitioner knows or has reasonable grounds to believe has a communicable disease which may be transmitted in the normal course of rendering cosmetological services.

(e) All practitioners shall utilize safe practice techniques and follow manufacturers' instructions when utilizing any chemical preparations in the rendering of cosmetology and hairstyling services.

(f) No practitioner or patron shall smoke while services are being performed.

**SUBCHAPTER 4. ENFORCEMENT**

**13:28-4.1 Inspection of premises**

Any premises where it appears that cosmetology and hairstyling services have been or are being rendered shall be subject to inspection by the Board or its representative.

**13:28-4.2 Compliance with statutes and rules**

Any individual rendering cosmetology and hairstyling services shall be in compliance with all pertinent statutes and rules.

**13:28-4.3 Responsibility for compliance with laws**

The holder of a shop license, as well as the shop's supervisor, shall be responsible for compliance with all of the laws relating to the operation of the premises at which cosmetology and hairstyling services are rendered. Operators as well as supervisors shall be responsible for compliance with all the laws relating to the practice of cosmetology and hairstyling.

**SUBCHAPTER 5. FEES**

**13:28-5.1 Fee schedule**

(a) The following fees will be charged by the Board:

- 1. Initial shop license—(one year): \$ 35.00
- 2. Biennial shop license—renewal: \$ 50.00
- 3. Examination fee for practicing & teacher licenses: \$ 20.00
- 4. Biennial barber license—renewal: \$ 20.00
- 5. Biennial beautician license—renewal: \$ 20.00
- 6. Biennial cosmetologist hairstylist license—license renewal \$ 20.00
- 7. Biennial manicurist license—renewal: \$ 20.00
- 8. Biennial teacher license—renewal: \$ 20.00
- 9. Restoration fee for lapsed practicing & teaching licenses: \$20.00 plus license fee
- 10. Duplicate license: \$ 5.00
- 11. Initial school license (one year): \$100.00
- 12. Biennial school license—renewal: \$100.00
- 13. Endorsement: \$ 50.00 plus license fee
- 14. Student registration card: \$ 3.00
- 15. Student permit: \$ 3.00
- 16. Temporary permit: \$ 15.00

**SUBCHAPTER 6. SCHOOLS OF COSMETOLOGY AND HAIRSTYLING**

**13:28-6.1 Compliance with law**

Licensed schools shall comply with the Cosmetology and Hairstyling Laws of the State and these rules. Any school violating any provision of this chapter shall be subject to disciplinary action by the Board. A notice of proposed suspension or revocation of a license shall inform the licensee of the right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

**13:28-6.2 Application procedure for school licenses**

(a) When a request is received by the Board for information regarding initial licensure of a school, an application, bond forms, a school bulletin and an evaluation criteria work sheet will be forwarded to the individual requesting the information along with a copy of the school rules and regulations.

(b) Upon receipt of a completed application the School Committee shall review the application. A complete application shall include: a school bond; school bulletin; a certificate of incorporation or partnership agreement where applicable; personnel data form(s); floor plan; employment contract (one year minimum) with the supervising teacher; hour by hour breakdown of the 1,200 hour course; a sample enrollment agreement (contract); sample certificate of completion;

sample advertisements; certified-audited financial data; and the required licensing fee as set forth in N.J.A.C. 13:28-5.1.

(c) Upon approval of the initial application by the School Committee, the prospective owner(s) and the supervising teacher shall appear before the full Board for an interview. Upon completion of the interview, the Board will approve or disapprove the application.

1. If the application is approved, approval will be granted subject to the completion of a satisfactory school inspection and satisfaction of all minimum square footage and equipment requirements as set forth in N.J.A.C. 13:28-6.7(a) and 13:28-6.20(b).

(d) Upon approval of the initial application for school licensure and satisfactory completion of the school inspection, an initial cosmetology and hairstyling school license shall be issued for the current registration period.

#### 13:28-6.3 Student registration

Students shall not be registered at a school until such time as that school has been licensed.

#### 13:28-6.4 Name of school; advertisements; signs

(a) School advertisements shall set forth the name and address of the school as it appears on the license for that school.

(b) False or misleading statements in school advertisements or any statement appearing in school advertisements endeavoring to influence the public to enroll in the school through the use of the name "State Board of Cosmetology and Hairstyling", other than advertising that the school is licensed and governed by the rules of the Board, are prohibited.

(c) Each school shall display, at the main entrance, a sign indicating that the establishment is a school of cosmetology and hairstyling.

(d) A private school of cosmetology and hairstyling should exercise great care in the selection of the name of school.

1. No new or modified school name shall infringe on the name of another existing school.

(e) No school, proposed or previously licensed, shall adopt any title or name commonly accepted as descriptive of collegiate or university institutions.

(f) No new or modified school name shall contain any word or phrase referencing a political subdivision, geographical area, the State of New Jersey, county of location, or municipality closely associated with the location of the school.

#### 13:28-6.5 School shops

Schools of cosmetology and hairstyling are prohibited from operating shops in conjunction with, or as a part of, the school administration.

#### 13:28-6.6 Separate entrance for shop located on school premises

Where any person, organization, corporation, association or partnership has any interest in both a licensed school and a licensed shop and both operations are conducted on the same premises the licensed school and the licensed shop shall have separate and distinct entrances.

#### 13:28-6.7 Size of schools; number of students

(a) Each school shall have at least 2,500 square feet of floor space, consisting of at least 500 square feet for offices, reception area and locker space separate and apart from the lavatories, and at least 2,000 square feet for working space.

1. The number of students in the first 2,000 square feet of working space is limited to 100 students.

2. For every student thereafter there shall be 20 square feet of floor space per student.

(b) The Board shall make a survey to determine the maximum number of students that any school may have in attendance. In determining this maximum number, the Board shall apply the formula set forth in (a) above.

(c) No school shall be permitted under any circumstances to have in attendance any student beyond the maximum number approved.

#### 13:28-6.8 Student registration cards

(a) A request shall be submitted by the school to the Board for a student registration card.

1. This request shall be submitted on application forms to be provided by the Board. The application shall contain a declaration

of the student's assigned class schedule as approved by the school director. Any change of the student's assigned class schedule shall be reported to the Board in writing.

2. Upon completion of the form in (a) above, the form shall be returned to the Board together with a photograph for each student, measuring 1½ inches by 1¾ inches, and proof of the student's legal name, date of birth and the required fee.

3. All costs of submission of this application form shall be paid by the student.

(b) A student registration card is valid from the date of issue until the particular student's education is completed in the course in which the student is enrolled, as long as the student is not absent from school for period of more than three months.

1. In instances where absences exceed three months, the student shall be dropped from the school's time sheets and must obtain a new registration card in order to resume training.

(c) The school shall submit applications for student registration cards at least two weeks in advance of the authorized monthly starting date.

1. In instances where this is not possible and a registration card is not received prior to the monthly starting date, a school may allow a student to attend classes, provided that an application for a student registration card has been submitted to the Board office on or before the authorized monthly starting date. No student shall be permitted to continue to attend classes in this manner for more than 30 days. If, for any reason, the student registration card is not issued during that period, the student's training shall be discontinued until a registration card is issued.

#### 13:28-6.9 Non-English speaking student enrollment

(a) A licensed school shall evaluate each non-English speaking student to determine whether such student is likely to succeed in the intended course of study. Upon such determination being made, the school may enroll the non-English speaking student.

(b) The Board approved enrollment agreement and application for student registration must specify the language in which the course will be offered.

1. The licensed school shall submit the text of the enrollment agreement to the Board for approval before the school may require students to sign the enrollment agreement.

2. The enrollment agreement shall be printed in the language in which the course will be offered and the student shall be provided with a copy of it.

(c) Schools offering courses in languages other than English shall employ an appropriately licensed teacher who is fluent in the English language and in the language in which the course is offered. The school's records shall contain evidence that the teacher is sufficiently qualified to adequately provide instruction in the non-English language.

(d) Instruction materials, for example, textbooks, and demonstration materials, shall be printed in the language in which the course will be offered.

(e) Final testing and periodic examinations required to be taken by the non-English speaking student shall be given in that particular student's language.

#### 13:28-6.10 Commencement of classes

School classes shall commence on the first Monday of each month, provided, however, that if a holiday falls on the first Monday, school classes shall commence on the first working day following the holiday.

#### 13:28-6.11 School credits by hour

(a) School hour credits shall not be granted for more than 40 hours of regularly scheduled class time in any calendar week.

(b) A student may be given credit for up to eight hours of make-up classes in excess of his or her regularly scheduled classes where such make-up time is necessary because of absence of the student from his or her regularly scheduled classes.

1. Each school shall submit a schedule of day or night make-up hours to be approved by the Board.

PROPOSALS

13:28-6.12 Training schedules

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

1. "Full-time student" means a student who regularly attends classes more than 20 hours a week, Monday through Friday inclusive.

2. "Part-time student" means a student who regularly attends classes 20 hours or less per week, Monday through Friday inclusive.

(b) Any part-time student may attend classes on Saturday upon approval by the school director.

(c) Any student who is absent from a regulatory scheduled class may attend a designated make-up class upon approval by the school director, provided that the total class hours for any week shall not exceed 48.

13:28-6.13 School schedules

(a) Each school shall submit a schedule of proposed classes including hours of instruction to be taught during the school year. This schedule must be approved by the Board prior to implementation.

1. Board approval will not be granted for school class sessions of less than three hours daily.

2. A copy of the approved schedule of classes shall be kept on the school premises at all times.

(b) The Board shall be advised one month in advance of any proposed change in the schedule of classes.

13:28-6.14 Smoking in schools

Schools shall not permit smoking by students or teachers in classrooms or clinics.

13:28-6.15 School records

(a) Each school shall maintain a register of all students and check students' attendance twice daily.

(b) Each school shall keep a detailed record of students' attendance at classes and subjects taught at these classes.

(c) All school records relating to students shall be maintained for a period of five years. All records shall be maintained in a manner and condition subject to convenient inspection by inspectors or members of the State Board.

(d) Uniform student sign-in sheets shall be kept on a daily basis and shall be retained on the school premises at all times.

1. Uniform time sheets of daily attendance records for each student shall be forwarded to the office of the Board at the end of each month.

(e) School rules and regulations and copies of current cosmetology and hairstyling laws and rules of the State of New Jersey shall be maintained by each school in a location readily accessible to the students and management.

13:28-6.16 Other trades; demonstrations

(a) Trades or professions other than the teaching of cosmetology and hairstyling shall not be practiced on the premises of a licensed school.

(b) A school shall not rent space for demonstrations to outside companies, individuals, corporations, associations, partnerships or other entities unless such space is in excess of the required minimum footage for school premises pursuant to N.J.A.C. 13:28-6.7. Demonstrations shall not conflict with the regular school operation and may only be conducted after Board approval.

13:28-6.17 Transfer of school business, relocation, renewal

(a) When a duly licensed school moves to a new location or undergoes a transfer of ownership, the school shall give notice to the Board as soon as practicable, pursuant to N.J.S.A. 45:5B-36, and shall submit an initial application for licensure.

(b) In the case of a move or transfer in (a) above, the Board may waive any provisions of this subchapter relating to the initial application for licensure of schools which the board in its discretion deems to be unduly burdensome under the circumstances of the particular move or transfer. The Board may permit the new school to operate pending completion of the application process.

13:28-6.18 Supervising teacher

A proposed new school shall supply the Board with satisfactory evidence, in the form of a one-year employment contract, of employment of a supervising teacher prior to final approval of its application by the Board.

13:28-6.19 Branch schools licensed separately

All premises used as a licensed school, including each and every branch school, must be licensed separately.

13:28-6.20 Equipment

(a) Each school shall possess and operate equipment adequate and sufficient for the courses of instruction administered. This equipment shall be modern, installed in accordance with standard building codes or safety regulations and operated in conformity with standard safety regulations.

(b) The minimum equipment required for schools shall be as follows:

1. Six shampoo bowls in good running condition;
2. One straightening apparatus;
3. One marcel stove;
4. Six manicure tables;
5. Six hair dryers;
6. One container for liquid sterile solution for each manicure table;
7. Four dry sterilizers;
8. Four wet sterilizers;
9. Six canvas-blocks;
10. One practice manikin per student;
11. One facial chair and one barber chair;
12. A latherizer, one hone, one strap and electric clippers;
13. Two steamers or heat caps;
14. One student locker for each pupil with provisions for security of students' equipment in the locker rooms;
15. Separate lavatories for men and women with toilets and with sinks having hot and cold running water; and
16. One teachers' rest room for schools having three or more teachers.

(c) Each school shall supply each student with the following tools: two hair brushes, combs, 100 clips, cape, razor, shears, cold wave rods, end papers, rollers, hair dye brush, swab or applicator bottle, straightening combs, marcel iron and text book. Manicuring students shall be supplied with kits having a pusher, files, emery boards, nipper, nail brush, orange wood stick, spatula and tweezer. Student kits are to be inspected by teachers and kept in sanitary condition.

(d) Each school shall have a sufficient supply of working places, chairs, mirrors, shelves, facilities, blackboards and charts as required for students who take notes on lectures.

(e) Each school shall have separate, closed cabinets for supplies as follows:

1. At least two closed containers for soiled linens;
2. At least three closed containers for all waste materials;
3. Sufficient supply of properly labeled lotion containers with tops or covers.

(f) Each school shall have separate lecture rooms for junior and senior students.

(g) Each school shall provide furnishings and supplies sufficient to accommodate and properly teach its students.

(h) Any equipment which may be hazardous to operate shall be used by a student only when there is a licensed teacher in the room.

(i) Each school shall install a bulletin board in a location which is readily accessible to all persons. All notices and school rules and curricula shall be posted on the bulletin board.

13:28-6.21 Student standards and requirements

(a) An application for student registration and all training courses administered by licensed schools shall be accompanied by proof, by affidavit or otherwise, that the particular student has been informed that he or she must meet the minimum requirements for admission to licensing examination and that an examination must be taken and successfully completed. A copy of this notification must be retained in the student personnel file.

(b) Students and teachers shall be attired in washable clean overall outer garments during attendance at school.

(c) Junior and senior students, and those enrolled in a teacher training course, shall be designated by the following forms of identification:

1. Junior students: white uniform;  
2. Senior students: a uniform of one color other than white to be designated by the school;

3. Teacher training and all others: identification badge.

(d) Junior and senior students shall be distinguished as follows:

1. Junior students are those students who have completed less than 600 hours of their courses in cosmetology and hairstyling;

2. Senior students are those students who have completed 600 hours or more of their courses in cosmetology and hairstyling;

3. Junior manicuring students are those students who have not yet completed the first 100 hours of their course in manicuring;

4. Senior manicuring students are those students who have completed 100 hours of their course in manicuring.

(e) Upon filing and acceptance by the Board of applications for permission to enroll in a teacher training course, student registration cards will be issued by the Board. Students taking teacher courses shall comply with all Board rules of the particular school.

(f) Each student shall sign the register each time he or she enters and leaves the school.

(g) Any student who is more than ten minutes late for class shall be penalized one hour unless the tardiness is due to an emergency condition as explained by the student, in writing, at the time of his or her attendance at that class.

(h) Failure of any student to observe school rules and regulations shall be considered sufficient justification for expulsion. A student who is expelled may request a hearing before the Board. Where good cause is demonstrated, a hearing may be scheduled.

(i) A school shall notify the Board of all students whose training may be interrupted or terminated prior to graduation.

(j) Upon a student's completion of the curriculum and his or her graduation, the school shall certify this information to the Board and shall make such notation on the monthly time sheets submitted by the school.

(k) Failure of a school or student to comply with any provision of N.J.A.C. 13:28-6.21 may result in the Board's refusal to recognize credit hours claimed by or for a student and disqualify that student for examination by the Board.

(l) A student who desires to transfer to another school shall notify the Board of his or her intention at least two weeks in advance of the proposed transfer.

1. Upon application for a transfer, the new school shall conduct an evaluation to determine the number of hours for which the student may be credited and advise the Board of the results of the evaluation.

2. Credit hours for cosmetology and hairstyling training in out-of-state schools will be granted if such schools are approved by the Board.

(m) The school to which the student transfers shall submit to the Board an application for a new student registration number.

(n) Any student who is absent from school over a period of three months shall automatically be dropped from the monthly time sheets.

1. A student requesting reinstatement shall be re-registered in accordance with N.J.A.C. 13:28-6.8.

2. The school may petition the Board for an adjustment with respect to credit hours to which a student may be entitled upon reinstatement.

3. No credit of hours will be given to any student who is absent from school for a period of five years or more.

(o) Examinations shall be administered by the school to the student at least 50 hours prior to completion of his or her course in accordance with the standard procedures followed by public educational institutions in the State in all courses of instruction. The examination shall be written, practical and oral.

(p) All students shall complete a course of study consisting of 1,200 hours in conformance with the curriculum adopted by the Board.

(q) All students who successfully meet the requirements of this section shall be issued a diploma by the school.

13:28-6.22 Application submission by schools

The school shall submit applications for each student for examination within 30 days after the student's completion of 1,200 hours of course study. Each application must be accompanied by two recent photographs, a copy of a high school or equivalency diploma and the appropriate fees pursuant to 13:28-5.1.

13:28-6.23 Number of teachers employed; teacher restrictions

(a) The number of teachers a school shall employ shall be determined in the following manner:

1. A minimum of two licensed teachers per school;

2. Three teachers for a school attendance of 51 but not exceeding 75 students;

3. An additional teacher shall be required for every group of 25 students enrolled in excess of 75 students.

(b) Teachers shall devote their entire time during school hours to the proper instruction of students and shall not engage in private or public practice of cosmetology and hairstyling during school hours. Teachers licensed by the Board shall be in constant attendance at all classes conducted by licensed schools.

(c) A substitute teacher licensed by the Board shall be in attendance when a regular teacher is absent.

(d) A teacher shall immediately inform the Board in writing of the termination or interruption of services performed by him or her for a school.

13:28-6.24 Employment of licensed teachers

(a) A school shall permit only a licensed teacher or a registered student teacher to teach its students; provided, however, a demonstrator may demonstrate new processes, preparations and appliances to a class of school students if such demonstration is supervised by a licensed teacher at the school.

(b) Each school shall employ a teacher supervisor who has been a licensed teacher actively teaching for a period of two years who will be responsible for the conduct of the teaching staff and students.

(c) Each school shall submit a list of its teachers and registered student teachers to the Board and advise the Board in writing immediately of changes in its teaching staff.

13:28-6.25 Refresher courses

(a) Refresher courses shall be administered only to a person who holds or once held a practitioner's license which he or she has allowed to lapse and who desires to prepare for an examination.

(b) The school shall forward applications for registration cards to the Board for all persons desiring to enroll in refresher courses.

(c) A student permitted by the Board to enroll in refresher courses shall comply with that particular school's rules and with the rules of the Board.

(d) Credit will not be given by the Board for refresher courses of less than 250 hours.

13:28-6.26 Postgraduate courses

(a) Postgraduate courses shall be administered only to persons who presently hold a current practitioner's license, or to persons who have completed 1,200 hours of training and were graduated but have not obtained their license and desire to obtain advanced education in the practice of cosmetology and hairstyling.

(b) The school shall forward applications for student registration cards to the Board for all persons desiring to enroll in postgraduate courses.

(c) A student permitted by the Board to enroll in postgraduate courses shall comply with that particular school's rules and with the rules of the Board.

(d) Credit will not be given by the Board for postgraduate courses of less than 250 hours.

13:28-6.27 Clinical work prerequisites and limitations

(a) Any school performing clinical work shall display in a conspicuous place in the waiting room and senior room a sign readily visible and legible, stating: SERVICES DONE HERE BY SENIOR STUDENTS ONLY. This sign shall be in letters at least one inch high.

(b) A school shall not permit its students to practice cosmetology and hairstyling on the public under any circumstances except by way

of clinical work performed upon persons willing to submit themselves to such practice.

(c) Before clinical work may be performed, the person to receive cosmetology and hairstyling services shall be advised by the teacher in charge that the operator is a senior student.

(d) Theory shall be taught in every subject before a senior student may be permitted to perform clinical services upon any subject or model.

(e) Clinical services may be performed upon the general public during the hours of school training daily from Monday to Saturday inclusive by senior cosmetology students and senior manicuring students only.

(f) Senior students shall be prohibited from distributing appointment cards and soliciting or making appointments for services to patrons during school hours.

(g) The instructor shall at all times be responsible for assigning subjects or models to the senior student.

(h) Teachers shall not perform or complete any one or a series of services or receive compensation for services on patrons in school clinics.

(i) Truthful, non-deceptive school advertisements for clinic patrons upon whom cosmetology and hairstyling services may be performed are permitted, provided however, that all such advertisements must clearly inform the prospective clinic client that the advertised services are to be performed by senior students under the supervision of licensed teachers.

(j) Fees shall not be accepted from any person who acts as the subject or model for the purpose of a demonstration in school classes or clinics.

(k) The school shall keep records or slips showing the number of cosmetology and hairstyling treatments or operations of clinical work by senior students. These records or slips shall be maintained and kept by the school on its premises as part of its official records.

(l) Clinic hours may be determined by the school; provided, however, that at least one hour of classroom instruction for full-time students and one half hour of classroom instruction for part-time students must be scheduled for each day in addition to any scheduled clinic practice for such students.

13:28-6.28 Curriculum for 500-hour course for barbers who wish to obtain a cosmetology-hairstyling license

TIME DISTRIBUTION FOR INSTRUCTION UNITS AND CLINICAL PRACTICE:

	Hours of Class and Subject Related Instruction	Hours of Practical Instruction	Total
Make-up, Depilatory, Eyebrow Arching	15	45	60
Roller Control, Pin Curls, Fingerwaving, Back Combing	50	90	140
Bleaching including Frosting, Tipping & Streaks	50	70	120
Permanent Waving	50	80	130
Manicuring & Pedicuring	15	35	50
<b>TOTAL</b>	<u>180</u>	<u>320</u>	<u>500</u>

13:28-6.29 Curriculum for 1200 hour cosmetology and hairstyling course

TIME DISTRIBUTION FOR INSTRUCTIONAL UNITS AND CLINICAL PRACTICE:

	Hours of Class and Subject Related Instruction	Hours of Practical Instruction	Total
State Laws, Rules & Regulations for Cosmetology & Hairstyling Administrative Shop Operations	10	0	10
Sanitation & Sterilization	3	7	10
Facials & Massage, Skin Care, Make-up, Depilatory, Eyebrow Arching, Shaving	30	70	100
Shampooing—including Temporary & Semi-Permanent Rinses	25	45	70
Hair and Scalp treatments, reconditioning treatments	15	40	55
Hair & Basic layer & Cap Cut—Razor, Scissors, Thinning Shears, Tapering	40	130	170
Hairstyling—including Pin Curls, Fingerwaving, & Blow Waving	30	150	180
Hair Tinting & Bleaching including Frosting, Tipping & Streaks	35	110	145
Permanent Waving	30	100	130
Chemical Relaxing & Pressing	30	60	90
Thermal Curling & Waving	15	45	60
Manicuring & Pedicure	50	100	150
Chemistry Relating to Cosmetology	30	0	30
<b>TOTAL</b>	<u>343</u>	<u>857</u>	<u>1200</u>

13:28-6.30 Curriculum for 25 hour shaving course for beauticians who wish to obtain a cosmetology-hairstyling license

TIME DISTRIBUTION FOR INSTRUCTIONAL UNITS AND CLINICAL PRACTICE

	Theory	Practical	Total
Shaving Course Outline:	10	15	25

13:28-6.31 Curriculum for 500 hour course for student teachers

TIME DISTRIBUTION FOR INSTRUCTIONAL UNITS AND CLINICAL PRACTICE

	Hours of Class and Subject Related Instruction	Hours of Practical Instruction	Total
State, laws, rules & Regulations for cosmetology & Hairstyling Administrative Shop Operations	5	0	5
Sanitation & Sterilization	5	0	5
Facials, Massage, Skin Care, Make-up, Depilatory, Eyebrow Arching, Shaving	15	15	30
Shampooing—including Temporary & Semi-Permanent Rinses	10	10	20
Hair and Scalp Treatments, Reconditioning Treatments	10	10	20

Hair & Basic Layer & cap cut—razor, scissors, thinning shears, tapering	20	30	50
Hairstyling—Including Pin Curls, Fingerwaving & Blow Waving	20	30	50
Hair Tinting & Bleaching including Frosting, Tipping & Streaks	20	20	40
Permanent Waving	20	20	40
Chemical Relaxing & Pressing Thermal Curling & Waving	15	25	40
Manicuring & Pedicuring	20	20	040
Chemistry Relating to Cosmetology	10	0	10
Teaching Methods	50	100	150
<b>TOTAL</b>	<u>220</u>	<u>280</u>	<u>500</u>

13:28-6.32 Curriculum for Board administered and approved teacher shaving course

TIME DISTRIBUTION FOR INSTRUCTIONAL UNITS AND CLINICAL PRACTICE

	Theory	Practical	Total
Shaving Course Outline:	10	15	25

13:28-6.33 Bond for schools of cosmetology and hairstyling  
 (a) Each school of cosmetology and hairstyling licensed by the Board shall post a bond in favor of the State in an amount to be determined as follows:

1. Schools with an average weekly enrollment of 1 to 20 students ..... \$10,000
2. Schools with an average weekly enrollment of 21 to 75 students ..... \$15,000
3. Schools with an average weekly enrollment of over 75 students ..... \$20,000

13:28-6.34 Eligibility for a teacher's license for applicants enrolled in a teacher's training course prior to December 4, 1985  
 Any applicant for a teacher's license who was enrolled in a 1500-hour teacher training course prior to December 4, 1985 may apply for examination for a teacher's license at any time after December 4, 1985 provided that the applicant has completed 500 hours of acceptable teacher training pursuant to N.J.A.C. 13:28-6.31.

(a)

STATE ATHLETIC CONTROL BOARD

Weighing of Boxers

Proposed Amendment: 13:46-1A.3

Authorized By: Larry Hazzard, Commissioner, State Athletic Control Board.

Authority: N.J.S.A. 5:2A-7(c).

Proposal Number: PRN 1988-67.

Submit comments by March 17, 1988 to:

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

The agency proposal follows:

Summary

This proposal amends N.J.A.C. 13:46-1A.3 by adding a new subsection (g). Pursuant to this amendment, the Commissioner's authority to authorize boxers to compete if they are one pound or less above the contracted weight would be codified. This is the current policy in New Jersey and is a policy followed in other states.

Social Impact

The proposed amendment will permit the Commissioner to authorize a boxer to compete if he is one pound or less above the contracted weight for the bout in question. Such a variance routinely occurs in a boxer, particularly if the individual retains fluid easily. This amendment will make N.J.A.C. 13:46-1A.3 consistent with N.J.A.C. 13:46-1A.2, which permits the Commissioner to authorize a boxer to exceed the weight differences therein established in appropriate circumstances. Under the amendment, the Commissioner will be guided by his duty to ensure that the health and safety of boxers are safeguarded. No boxer shall be permitted to enter the ring unless the physician appointed by the Commissioner has certified his fitness to engage in a boxing contest. Permitting a boxer who is one pound or less above the contracted weight to compete should not pose a health or safety risk to the boxer, in view of the comprehensive pre-bout physical examination he must pass, and should also reduce the need for a boxer to attempt to lose weight rapidly on the day of a bout, a dangerous practice which could jeopardize the boxer's health. See N.J.A.C. 13:46-1A.3(h).

Economic Impact

There will be no increased costs to the State Athletic Control Board if the proposed amendment is adopted. Further, there should be no increased costs to boxers or promoters if the amendment is adopted.

Regulatory Flexibility Statement

Since this proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, the analysis mandated by the Regulatory Flexibility Act, P.L. 1986, c.169, is not required.

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

13:46-1A.3 Weighing of boxers

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

**(g) Upon the written approval of the Commissioner, and upon the written consent of both boxers, a boxer who is one pound or less above the contracted weight for a particular bout may be permitted to compete in that bout.**

TRANSPORTATION

(b)

CONSTRUCTION AND MAINTENANCE

Contract Administration

Classification of Prospective Bidders

Proposed Amendment: N.J.A.C. 16:44-1.2

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

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Proposal Number: PRN 1988-71.

Submit comments by March 17, 1988 to:

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

The agency proposal follows:

Summary

The proposed amendment will effect a procedural change in the manner in which prospective bidders are classified. In the past, the Department published a listing of the types of work and the amount of work on which prospective bidders were entitled to bid. This method proved to be rather cumbersome in view of technological changes in the various industries and the varying amounts and types of work on which prospective bidders were pre-qualified to perform. Such prequalifications information is maintained in the Department's Bureau of Contract Administration, and thus precludes duplication of effort.

The Department therefore proposes to amend N.J.A.C. 16:44-1.2 to comply with current procedural changes.

**Social Impact**

The proposed amendment will effect a procedural change in the manner of publication of the certain disciplines or types of work in which prospective bidders are classified and preclude the need for rule amendment upon the addition of new disciplines (types of work) and improve work methods.

**Social Impact**

The Department will incur direct and indirect costs involved in the publication of this amendment. There will be no costs to prospective bidders in view of this procedural change. The Department will realize substantial savings in that there will be no requirement to amend the rule in the future to add or delete any disciplines (types of work) pertaining to prospective bidders.

**Regulatory Flexibility Statement**

Since the proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-19, a regulatory flexibility analysis is not required. The rule simply effects a change in procedure.

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

16:44-1.2 Classification of prospective bidders

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

(c) Prospective bidders will be classified according to the type of work and the amount of work on which they are entitled to bid. **The types of work for which prospective bidders may seek classification are on file at the Department of Transportation, Bureau of Contract Administration, 1035 Parkway Avenue, Trenton, New Jersey 08625.** [As to type of work:

1. Grading: Work involving grading and drainage, including drainage structures;
2. Paving: Work involving all types of paving;
3. Grading and paving: Work involving grading, drainage, including drainage structures, and all types of paving;
4. Bridge: Work involving bridges, viaducts, retaining walls and foundations;
5. Heavy highway: Work involving any combination of the above types of work.
6. Any other special type of work undertaken by the Department of Transportation: such as, but not limited to the following:

- Apply bituminous materials
- Blasting
- Borings
- Bridge repairs
- Bulkheads
- Chemical vegetation control
- Clearing
- Concrete repairs
- Concrete sawing, sealing and curing
- Core drilling
- Curb, sidewalk and miscellaneous concrete work
- Demolition
- Drainage
- Drainage structures and chambers
- Dredging
- Electrical
- Engineering
- Erection of bridge railing
- Fencing
- Form handling or striping
- Foundation
- Grouting
- Grubbing
- Guard rail
- Erection of iron and steel and/or Prestressed concrete and/or protective coating of structural steel
- Landscape
- Mowing
- Natural stone masonry

- Erection of ornamental and light structural metal and bridge railing
- Erect permanent forms
- Painting
- Pavement marking
- Pile driving
- Pipe line construction
- Pneumatic mortar or gunite
- Railroad electrification
- Special railroad station structures
- Railroad signal work
- Railroad track work
- Reinforcing steel
- Rock drilling
- Sand drains and sand fill
- Sandblasting
- Sewage disposal
- Shear connector studs
- Signs and sign structures
- Top soiling and seeding
- Tree trimming
- Trenching
- Tunneling
- Underground utilities
- Waterproofing
- Welding]
- (d)-(q) (No change.)

**OTHER AGENCIES**

**(a)**

**CASINO CONTROL COMMISSION**

**Applications**

**Junket Representative and Junket Enterprise License Fees**

**Proposed New Rule: N.J.A.C. 19:41-9.11A**

**Proposed Amendment: N.J.A.C. 19:41-9.9A**

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and (d), 5:12-69, 5:12-70(e), 5:12-141 and P.L. 1987 c.426.

Proposal Number: PRN 1987-501.

Submit comments by March 17, 1988 to:

David C. Missimer  
Senior Assistant Counsel  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN-208  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The following proposed new rule and amendment are being published pursuant to amendments to the Casino Control Act, N.J.S.A. 5:12-1 et seq., concerning junkets. These amendments were signed into law by the Governor on January 14, 1988 and are designated P.L. 1987, c.426. The statutory amendment provides for the qualification standards for a junket enterprise being equivalent to those of a gaming-related casino service industry under N.J.S.A. 5:12-92a and the standards for a junket representative being those required of a casino key employee. The term for each type of license remains three years.

The proposed new rule and amendment are designed to recover the increased costs occasioned by the heightened scrutiny and level of complexity of investigations conducted under the new license standards. The proposed new rule establishes a separate category of junket representative license fees, employing the identical formula used for casino key employee fees. The proposed amendment to N.J.A.C. 19:41-9.9A raises the license fee for a junket enterprise to that currently charged for a gaming-related casino service industry license.

**Social Impact**

To the extent that the proposed new rule and amendment, coupled with the more stringent license standards, may reduce the number of junket enterprises and representatives licensed to conduct junket business with the casino industry in Atlantic City, the Legislature has determined that such attrition is an acceptable cost of proper oversight. Those remaining junket representatives and junket enterprises will be subject to a detailed, searching investigation consonant with the highest requirements for licensure under the Casino Control Act. Casino licensees and patrons will have the assurance that persons engaged in junket activity have met the most exacting standards.

**Economic Impact**

The proposed new rule and amendment are expected to increase the business costs of junket representatives and junket enterprises conducting junkets to Atlantic City casinos. The higher license fees will recoup the additional expenses to be incurred by the Commission and the Division of Gaming Enforcement in applying the new license standards. The Commission has determined that each applicant or renewing licensee should be held responsible within fair and reasonable limits for all investigative and administrative costs attributable to it in accordance with N.J.A.C. 19:41-9.1(c).

Accordingly, applicants for an initial or renewal junket representative license will pay the cost of his or her investigation, with a minimum fee of \$500.00 and a maximum charge of \$3,000. Junket enterprise license applicants will pay a flat fee of \$3,000.

**Regulatory Flexibility Statement**

The proposed fee schedules will be imposed on applicants for an initial or renewal junket enterprise license and for a junket representative license endorsed as a sole owner/operator junket enterprise. The vast majority of these enterprises are located outside of the State of New Jersey and thus do not meet the definition of "small business" under the Regulatory Flexibility Act.

As to the remaining applicants located in New Jersey, the proposed new rule and amendment will have some impact on their operations. The enterprises and individuals working as junket representatives for the enterprise will have their initial and renewals costs substantially increased. More detailed application forms will have to be completed, as well as tax and net worth statements provided as part of the new license standard.

In developing the proposed fee schedules, the Commission has balanced the necessity for a thorough investigation and consideration of license applications by enterprises engaging in a sensitive, highly regulated industry against the economic impact of the rules, and has determined that to minimize the impact of the rules on small business would undermine the regulatory system encompassing the casino industry as a whole, and endanger the public safety and welfare. Therefore, no exemption from coverage is provided.

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

**19:41-9.9A Junket enterprise license fees**

(a) In accordance with Section 102(c) of the Act, all junket enterprises shall meet the standards established for casino key employees in order to be licensed. Under Section 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) The initial application and issuance fee for a three year junket enterprise license shall be **\$3,000** [\$1,500].

(c) The application and issuance fee for the renewal of a three year junket enterprise license shall be **\$3,000** [\$1,500].

**19:41-9.11A Junket representative license fees**

(a) **In accordance with Section 102(b) of the Act, all junket representatives shall meet the standards established for casino key employees, except for residency, in order to be licensed. Under Section 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional three year periods.**

(b) **The fee for the issuance or renewal of a junket representative license shall be as follows:**

**1. A minimum application charge of \$500.00, which shall be credited to the total fee; and**

**2. Payment for the efforts of professional agents and employees of the Commission and Division at the rate of \$40.00 per hour spent on matters directly related to the applicant or licensee; and**

**3. Payment for all unusual or out of pocket expenses incurred by the Commission and Division on matters directly related to the applicant or licensee; provided, however, that the amount of the issuance or renewal fee shall not exceed \$3,000.**

**(a)****CASINO CONTROL COMMISSION****Accounting and Internal Controls****Proposed Readoption: N.J.A.C. 19:45**

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c) and (f), 5:12-69, 5:12-70(g), (j), (l), (m) and (n), 5:12-99 and 5:12-101.

Proposal Number: PRN 1988-63.

Submit comments by March 17, 1988 to:

Carole R. Jacobson, Esquire

Casino Control Commission

3131 Princeton Pike Office Park

Building No. 5, CN 208

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:45 concerning accounting and internal controls. These rules would otherwise expire on April 7, 1988. The rules were originally filed with the Office of Administrative Law and became effective on May 25, 1978. The rules implement the applicable provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) (the Act) concerning the Commission's responsibility to regulate and monitor: the fiscal affairs of licensees (section 70(l)); practices and procedures for negotiable transactions (section 70(g)); a uniform standard of accounting methods (section 70(m)); financial reports (section 70(n)); and the operations of casinos for the purposes stated in section 63(f) of the Act.

The staffs of both the Commission and the Division of Gaming Enforcement (Division) have continually reviewed, monitored and assessed the merits and viability of the system in operation since the rules were readopted in 1983. This review has included comments received from the industry or other interested persons filed pursuant to section 69(c) of the Act and the applicable provisions of the Administrative Procedure Act. Indeed, such comments have often been the catalyst and inspiration for change. As a result of this review process, the Commission has adopted over 30 amendments to these rules since the chapter was last readopted.

For example, in May 1985, after receiving input from both the Atlantic City Casino Hotel Association and the Division of Gaming Enforcement, the Commission adopted substantial amendments to N.J.A.C. 19:45-1.27 concerning patron credit. These amendments define the detailed procedures which casinos must follow when granting gaming credit and recording gaming checks which have been exchanged, redeemed or consolidated. The rule specifies the information that casinos must obtain from prospective credit patrons and record in the credit files. It also specifies the information that must be verified, how the verification procedures are to be performed, how often they have to be repeated, and who has the authority to perform verifications. In addition, the amendments specify the personnel who are authorized to grant credit to patrons and require recordation of the reasons why a patron's credit line is granted, changed or denied.

In April 1986, N.J.A.C. 19:45-1.1 and 1.25 were amended to expand the category of instruments which may be accepted by a casino licensee as a cash equivalent. Specifically, the definition of cash equivalent was expanded to include certain checks made payable to the presenting patron and endorsed in blank before the general cashier. Identification procedures required to be observed by a casino licensee prior to the acceptance of any cash equivalent within this new category were also provided. The purpose of these amendments is to enable patrons wary of carrying cash or bearer instruments to bring funds to Atlantic City without committing those funds to deposit at any particular casino. Through these amendments, patron convenience has been accommodated while maintaining stringent internal control procedures designed to assure the continued integrity of cash deposit and redemption procedures.

In making changes, the Commission has always been responsive to changing social and economic conditions, and has exercised its regulatory and review powers in a flexible manner. Because these rules are continually reviewed, they are presently proposed for readoption without any substantive or technical amendments.

These rules proposed for readoption create a minimal system of accounting and internal controls which the industry must maintain and which the Commission and Division must monitor. The rules establish standards and procedures designed to assure the integrity of casino operations. The rules require, among other things, the maintenance of a complete and accurate record of accounts and financial affairs; the maintenance of appropriate security; the retention of appropriate personnel; adequate procedures to control the distribution and use of gaming chips, and, generally, financial procedures adequate to control all aspects of gaming operations.

These rules are essential to the maintenance of casino operations as required by the Casino Control Act. The discontinuance of these rules would make it extremely difficult, if not impossible, for the State to adequately assure the integrity of gaming operations and would undoubtedly enhance the danger that gaming operations in New Jersey would become subject to the same abuses, for example, skimming and embezzlement, which have plagued other gaming jurisdictions.

#### Social Impact

The continuation through readoption of N.J.A.C. 19:45 will have a positive effect on the public and the industry. The standards and procedures created by these rules have been effective in preserving the financial integrity of casino gaming operations. An integral and essential element of the regulation and control of casino gaming by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1(b)(6)). Through the controls provided by these rules, the public can be assured that State government is fulfilling its regulatory obligations under the Act in such a manner as to promote public confidence and trust (see N.J.S.A. 5:12-1, 70(g), (j), (l) and (m)). These rules fulfill the public policy and legislative findings expressed in the Act (see N.J.S.A. 5:12-1(b)(14)), which states that "[c]onfidence in casino operations is eroded to the extent the State of New Jersey does not provide a regulatory framework for casino gaming that permits and promotes stability and continuity in casino gaming operations." The system of accounting and internal controls provided by these rules helps to create and maintain a healthy social climate for the presence of casino gaming in this State and is responsive to the public policy of the Act.

These rules benefit the industry by establishing a system of uniform accounting controls and procedures which protect a casino's assets. Absent such procedures, there undoubtedly would be an increase in attempts at fraud, embezzlement or other unlawful business practices. Thus, these rules provide and foster a healthy business climate for the industry as well as for the public. The failure to readopt these rules would enhance the danger of financial irregularities in the industry which would in turn reflect adversely on the image of Atlantic City and the State. Failure to maintain public confidence and trust in the integrity of the gaming industry in Atlantic City could lead to less participation by both operators and the public, thus limiting the anticipated benefits of casino gaming which led to its adoption in this State.

#### Economic Impact

These rules benefit the casino industry by providing the casinos with a logical, systematic framework for conducting fiscal operations. These rules do, however, impose upon the industry certain costs of compliance, since they oblige casinos to institute internal control systems and procedures and hire personnel to maintain them. However, since these systems and procedures protect against embezzlement and other unlawful diversion of a casino's assets, there is some cost savings to the industry.

These rules provide an efficient procedure for implementing those provisions of the Act which require the Commission and Division to control and monitor the fiscal affairs of the casino industry. Although these rules require the expenditure of time by Commission and Division personnel to assure proper implementation and compliance, the cost is far less to the State than that which would be incurred in the absence of the present system. The State's interest in maintaining the present operating standards, controls and procedures provided by these rules is clear. Since the State taxes the gross revenue of a casino (see N.J.S.A. 5:12-144), it is imperative that the revenue reported is accurate. Otherwise, the money derived by the State from gaming activity may be substantially diminished.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these rules do not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, P.L. 1986 c.169.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:45.

(a)

### CASINO CONTROL COMMISSION

#### Gross Revenue Tax

#### Investment Obligation Alternative Tax

#### Investment Tax Credits

#### Proposed Readoption: N.J.A.C. 19:54

Authorized By: Casino Control Commission,

Theron G. Schmidt, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, 5:12-70(e), 5:12-144(a) and (f), and 5:12-144.1(c).

Proposal Number: PRN 1988-64.

Submit comments by March 17, 1988 to:

Carole R. Jacobson, Esquire  
Casino Control Commission  
3131 Princeton Pike Office Park  
Building No. 5, CN 208  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:54 concerning the gross revenue tax, the investment obligation alternative tax and investment tax credits. These rules would otherwise expire on April 15, 1988. N.J.A.C. 19:54-1, gross revenue tax, was originally filed and became effective on May 25, 1978. The rules implement the provisions of the Casino Control Act, N.J.S.A. 5:12-1 et seq., concerning the gross revenue tax, N.J.S.A. 5:12-144(a), and the Commission's obligation to promulgate rules to facilitate its collection, N.J.S.A. 5:12-70(e).

N.J.A.C. 19:54-2, investment obligation alternative tax, was originally filed and became effective on February 21, 1984. The rules implement the provisions of the Casino Control Act concerning the investment obligation alternative tax and the Commission's obligation to promulgate rules for determining the eligibility of all investments and cumulative investments made thereunder, N.J.S.A. 5:12-144(f). It should be noted that, pursuant to the terms of N.J.S.A. 5:12-144(g), the Commission is no longer responsible for the implementation and enforcement of the investment obligation and alternative tax created by N.J.S.A. 5:12-144. Rather, this responsibility now resides with the Casino Reinvestment Development Authority (CRDA). Although the Commission will no longer utilize the rules in subchapter 2, these rules are incorporated by reference in the rules of the CRDA at N.J.A.C. 19:65-5.1, and remain necessary and appropriate to the regulation of investments made pursuant to the investment obligation imposed by N.J.S.A. 5:12-144. Therefore, until the CRDA takes action to reproduce subchapter 2 in its own rules, the Commission remains obliged to readopt the subchapter.

The rules contained in subchapter 3 were originally filed and became effective on April 7, 1986. These rules implement the Commission's obligation to provide a standard upon which a casino licensee may petition the CRDA for a deferral of an investment tax credit under a claim of "extreme financial hardship", N.J.S.A. 5:12-144.1(c).

The Casino Control Act imposes a tax of eight percent on the gross revenue of operating casinos. Monies collected from this tax are deposited in the Casino Revenue Fund, a special account created in the Department of the Treasury by section 145 of the Casino Control Act. Pursuant to the State Constitution, the proceeds of this tax are used to fund programs for the benefit of senior citizens and disabled residents of this State. N.J.A.C. 19:54-1 implements the underlying legislation by establishing procedures for the computation, collection, verification and enforcement of the gross revenue tax.

As noted above, the Casino Control Act establishes an investment obligation alternative tax for casino licensees, N.J.S.A. 5:12-144. Investments may be made as an alternative to paying the additional two percent tax on gross revenue which would otherwise be incurred whenever the gross revenues of a casino licensee in any year from 1979 through 1983 exceed the amount of its cumulative investments in this State as of that year. N.J.A.C. 19:54-2 implements the underlying legislation by addressing, among other things: procedures for determining the eligibility of investments and cumulative investments; substantive standards for determining the eligibility of investments and cumulative investments; procedures for insuring the completion and operation of eligible investments and for imposing conditions on investments to insure their intended purpose and viability; requirements concerning the sale or disposition of casino facilities and eligible investments; investments by multiple parties; restrictions on investments in licensed casino hotel facilities; procedural guidelines and substantive standards concerning allowable contributions of money and realty; procedures and standards for determining liability for the investment alternative tax; reporting, audit and disclosure requirements concerning investment obligations and the investment alternative tax; and penalties and sanctions for failure to file reports or pay the investment alternative tax.

The Casino Control Act also imposes an investment alternative tax on the gross revenues of casino licensees earned after 1983, N.J.S.A. 5:12-144.1. Casino licensees may elect to obtain tax credits against this tax by making certain types of investments specified in the statute. Any casino licensee which elects to make qualifying investments for credit against the tax may seek a deferral of its obligation to actually make the investments in that tax year by establishing that the making of the investments would cause "extreme financial hardship" to the licensee. N.J.A.C. 19:54-3 implements the Commission's responsibility to establish a uniform definition of "extreme financial hardship". The rules also establish procedural requirements to facilitate the Commission's processing and review of a petition by a casino licensee for a determination of extreme financial hardship.

These rules have historically provided an efficient and effective mechanism for the enforcement and collection of the gross revenue tax and the enforcement and implementation of the investment alternative tax obligation. The standards and procedures provided by these rules have enabled the Commission, the CRDA and the industry to cooperate in fulfilling the tax obligations imposed by the Act. The failure to readopt these rules would seriously hamper the State's ability to assess and collect the gross revenue tax and to insure that the industry is meeting its alternative investment obligations under the Act. These rules should continue to be effective in the future. Because these rules have been continually reviewed since they were last readopted in 1983, they are presently proposed for readoption without any substantive or technical amendments.

**Social Impact**

Pursuant to the New Jersey Constitution, Art. 4, §7, ¶2 and N.J.S.A. 5:12-145, the gross revenue tax provides monies for reductions in property taxes, rentals, telephone, gas, electric, and municipal utilities charges of eligible senior citizens and disabled residents of the State, and for additional or expanded health services or benefits or transportation services or benefits to eligible senior citizens and disabled residents. The manner in which the proceeds of this tax are distributed is determined by the Legislature. The Commission's role, and the purpose of these rules, is to insure the verification and collection of the tax revenues which fund the various social programs established by the Legislature. The failure to readopt these rules would seriously impair those social programs which rely upon the accurate assessment and collection of the gross revenue tax by the Commission.

Legalized casino gaming was approved by the citizens of New Jersey as a unique tool of urban redevelopment for Atlantic City. The introduction of a limited number of major casino hotel complexes was intended to facilitate the redevelopment of existing blighted areas in the city and to attract new investment capital to New Jersey in general and to Atlantic City in particular. N.J.S.A. 5:12-1(b)(4). These rules enable casino licensees to obtain credit for qualifying investments as opposed to paying the investment alternative tax. To date, all obligated casinos have elected

to make investments rather than pay the investment alternative tax, and thus, these rules have assisted in achieving the statutory goal.

**Economic Impact**

An important responsibility of the Commission is the assessment and collection of the gross revenue tax. In fulfilling this responsibility, there is an expenditure of time and money by the Commission staff. The money expended, however, is recoverable from the casino industry through licensing fees. The efficient collection of the tax provides monies to fund the various social programs established by the Legislature, which directly benefit eligible senior citizens and disabled residents of this State. The eight percent tax is used to underwrite real estate tax rebates, home health care services, rental assistance, utility payments and transportation costs. During fiscal year 1987, the gross revenue tax collected from the 11 operating casinos was approximately \$189 million.

A schedule of revenues from the Casino Revenue Fund which have been appropriated to the various social programs during the last fiscal year is as follows:

	<u>FY '87</u>
Boarding Home Regulation and Assistance .....	\$7,023,000
Congregate Housing Support Services .....	461,978
Task Force Study:	
Housing Options for Seniors .....	36,370
Pharmaceutical Assistance to the Aged and Disabled	44,706,629
General Medical Services	
to the Aged and Disabled .....	10,982,882
Lifeline Credit Program .....	66,219,963
Reimbursement to Municipalities for Senior and	
Disabled Citizens Property Tax Exemptions .....	17,900,000
Transportation Assistance for Senior	
and Disabled Citizens .....	9,331,938
Total Expenditures .....	<u>\$156,662,760</u>

In imposing an investment alternative tax in lieu of an additional two percent tax on gross revenues, the Legislature hoped to attract new investment capital to New Jersey in general and to Atlantic City in particular (see N.J.S.A. 5:12-1b(4)). These rules promote that goal by facilitating the infusion of investment capital in Atlantic City and New Jersey. Casino licensees have historically chosen to invest rather than pay over an additional gross revenue tax, and thus, these rules have had a beneficial impact on both the local and State economies.

Pursuant to N.J.S.A. 5:12-144.1, the Legislature has provided a procedure whereby casino licensees may petition the CRDA for a deferral of an investment tax credit obligation under a claim of "extreme financial hardship". These rules impose a slight economic burden on a petitioning casino licensee by requiring it to amass and supply to the Commission and the Division of Gaming Enforcement information and documentation necessary to establish "extreme financial hardship". Such documentation may include, among other things, specific information concerning the assets, liabilities, resources and operating performance of the licensee, its holding and intermediary companies and any other related entity which is required to qualify or hold a casino license under the Act. Correspondingly, the receipt of this information may impose a slight economic burden on the Commission and Division during the processing and review of the information. No deferrals have been granted by the CRDA, and thus, the application of casino revenues to the purchase of bonds or the making of investments for the public good has not been adversely affected by these rules.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since the proposed readoption does not impose any reporting, recordkeeping or compliance requirements on small businesses as defined by the Regulatory Flexibility Act, P.L. 1986, c.169.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 19:54.

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

(a)

### OFFICE OF ADMINISTRATIVE LAW

#### Uniform Administrative Procedure Rules Ex Parte Communications

##### Adopted Amendment: N.J.A.C. 1:1-14.5

Proposed: October 5, 1987 at 19 N.J.R. 1761(b).

Adopted: January 19, 1988 by Ronald I. Parker, Acting Director,  
Office of Administrative Law.

Filed: January 20, 1988 as R.1988 d.78, **without change**.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Effective Date: February 16, 1988.

Expiration Date: May 4, 1992.

#### Summary of Public Comments and Agency Responses:

The Office of Administrative Law (OAL) received a comment from the Election Law Enforcement Commission (ELEC) which recommended that the proposed amendment specify types of permissible and impermissible ex parte communications between an agency representative and the agency head or, in the alternative, prohibit all ex parte communications. The OAL does not believe that it is possible to specify categories of information which may always be communicated to the agency head. The test set forth by the Supreme Court in *In Re Opinion No. 583 of the Advisory Committee on Professional Ethics*, 107 N.J. 230 (1987) is whether ex parte communication of the particular information would compromise the agency head's ability to adjudicate the case impartially. This determination must be made in each case depending on the circumstances and the nature of the communication. Nor does OAL believe that it can prohibit all ex parte communications. The Supreme Court explicitly rejected that conclusion since an agency representative also has an ethical responsibility to keep the client, the agency head, advised about the status of the case.

The commenter was also concerned that the rule would restrict a representative's ability to participate in the drafting of a proposed settlement. This is not OAL's intention. The rule specifically permits ex parte communications "for purposes of conferring settlement authority on the representative." This permission includes instructions relating to implementing a settlement, offer or acceptance and the drafting of any necessary documentation.

Finally, the Commission believed that it should be exempted by special rule from the prohibition because of its bipartisan nature. While bipartisanship may insulate the ELEC from partisan pressures, it is unrelated to the ethical responsibility of the Commission's representatives to refrain from causing agency head partiality by ex parte comments. Therefore, the OAL does not feel it is appropriate to adopt a special rule for ELEC.

Accordingly, the OAL decided to adopt without change the proposed amendment codifying the Supreme Court's ruling in *In Re Opinion No. 583 of the Advisory Committee on Professional Ethics*, 107 N.J. 230 (1987).

Full text of the adoption follows.

#### 1:1-14.5 Ex parte communications

(a)-(c) No change.

(d) Where an agency or agency staff is a party to a contested case, the legal representative appearing and acting for the agency in the case may not engage in ex parte communications concerning that case with the transmitting agency head, except for purposes of conferring settlement authority on the representative or as necessary to keep the agency head as a client informed of the status of the case, provided that no information may be disclosed ex parte if it would compromise the agency head's ability to adjudicate the case impartially. In no event may the legal representative participate in making or preparing the final decision in the case.

## COMMUNITY AFFAIRS

(b)

### NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

#### Substantive Rules: Accessory Apartments

##### Adopted New Rules: N.J.A.C. 5:92-16

Proposed: November 16, 1987 at 19 N.J.R. 2089(b).

Adopted: January 19, 1988 by the New Jersey Council on  
Affordable Housing, William A. Angus, Jr., Acting Chairman.

Filed: January 21, 1988 as R.1988 d.84, **without change**.

Authority: N.J.S.A. 52:27D-301, et seq.

Effective Date: February 16, 1988.

Expiration Date: June 16, 1991.

#### Summary of Public Comments and Agency Responses:

The Council received two letters regarding N.J.A.C. 5:92-16. One was from the Eastern Paralyzed Veterans Association; the other was from Mr. Patrick Hare. These comments and the Council's responses follow:

COMMENT: The Council should clarify its proposed rule on accessory apartments to guarantee accessibility for the disabled.

RESPONSE: The Council certainly encourages all units to be accessible to the disabled. However, matters related to accessibility are regulated by N.J.A.C. 5:23-7 and need not be addressed by the Council.

COMMENT: The Council should not allow communities to project accessory apartment units if the community requires a long period of review prior to approval.

RESPONSE: The Council, as part of its review, will be requiring fast tracking of accessory apartment applications.

At the New Jersey Council on Affordable Housing's January 19, 1988 meeting, the Council directed that a sentence be added to the Summary accompanying this rule. The last paragraph of the Summary should now read:

Under the proposed rule, municipalities will be able to receive approval on an accessory apartment program. However, the program shall be monitored and should the program lag behind schedule, the municipality shall be required to provide another method of fulfilling the fair share. Furthermore, should the Council determine that it has overstated the potential for accessory apartments, it is the Council's intent to amend this rule.

Full text of the adoption follows.

### SUBCHAPTER 16. ACCESSORY APARTMENTS

#### 5:92-16.1 General provisions

(a) Municipalities may provide zoning for the creation of affordable accessory apartment units.

(b) "Accessory apartment" means a self-contained residential dwelling unit containing its own kitchen, sanitary facilities, and private entrance, which is created within an existing home, or through the conversion of an existing accessory building on the same site, or by addition to an existing home or accessory building.

#### 5:92-16.2 Unit creation

(a) In determining that portion of its fair share obligation that it may allocate to accessory apartment, a municipality shall calculate one half of one percent (.005) of the base housing stock, multiplied by six years.

(b) For purposes of this section, the base housing stock shall be the number of dwelling units in the areas designated by the municipality for accessory apartments zoning that are of sufficient size and character, as determined by the Council, so as to permit conversion to an accessory apartment.

#### 5:92-16.3 Conversion standards

(a) Any accessory apartment ordinance must insure compliance with all applicable zoning ordinances.

(b) Parking shall be provided for accessory apartment units.

(c) The creation of an accessory apartment shall not violate municipal on-site sewer requirements.

(d) An accessory apartment shall be considered rental rehabilitation and shall be subject to a 10 year affordability control pursuant to N.J.A.C. 5:92-12.2.

(e) The municipality shall provide a plan to promote the accessory apartment program for approval by the Council.

(f) An accessory apartment shall not be used in fulfillment of a municipality's rental component pursuant to N.J.A.C. 5:92-14.4 and is not eligible for rental bonus credits pursuant to N.J.A.C. 5:92-14.4(d).

#### 5:92-16.4 Occupancy and marketing

(a) The municipality shall require that 50 percent of the accessory apartment units created be provided for low income households.

(b) The municipality shall insure that all accessory apartment units are affirmatively marketed pursuant to N.J.A.C. 5:92-15 et seq.

#### 5:92-16.5 Terms

(a) Two years from the date of substantive certification, the municipality shall provide the Council with a report on the type and number of the created accessory apartment units.

(b) The municipality shall project the total in (a) above over the six year certification period to determine the total number of units expected to be created.

(c) If the total in (a) above is less than the total identified in the housing element, the municipality shall provide an alternative method of fulfilling the fair share obligation.

(d) If the alternate method adopted to fulfill the fair share obligation pursuant to (c) above involves the zoning of new sites, the municipality shall participate in any mediation sessions conducted by the Council.

(e) The municipality may provide a back-up plan to the accessory apartment program in the final housing element.

## EDUCATION

### (a)

#### STATE BOARD OF EDUCATION

#### Public, School and College Libraries Standards for Federation of Free Public Libraries; County Library Reorganization

#### Readoption with Amendments: N.J.A.C. 6:64

Proposed: November 2, 1987 at 19 N.J.R. 1931(a).

Adopted: January 11, 1988 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: January 12, 1988 as R.1988 d.67, **without change**.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 40:9A-4 and 40:33-13.2d through 40:33-13.2n.

Effective Date: January 11, 1988 (for readoption), February 16, 1988 (for amendments).

Expiration Date: January 11, 1993.

#### Summary of Public Comments and Agency Responses:

Two letters with comments were received.

One organization proposed inclusion of the county AVA Commissions in the general mission of aid to local libraries.

The other organization stated that:

1. No provision exists in the rules for a regional branch library.
2. Standards for individual municipal libraries are inappropriate for county library branches.

The responses of the Department of Education to these comments were that:

1. The proposed rule readoption does not address county AVA Commissions.
2. The rules do not preclude county branch libraries from serving more than one municipality.

3. The purpose of the rule is not to develop standards for county library branches. Current trends have shifted from developing standards toward planning for local needs.

Full text of the readopted rules may be found in the New Jersey Administrative Code at N.J.A.C. 6:64.

Full text of the adopted amendments follows.

#### 6:64-1.1 Advisory council of federation of free public libraries; appointment; term

(a) Each federation shall have an advisory council appointed by the boards of trustees of the free public libraries of the municipalities constituting the federation and by the county library commission, if the county library is a participating member.

(b) (No change.)

(c) The number of members on the advisory council and the apportionment among the appointing authorities shall be determined by agreement, except that there shall be at least one representative from each appointing authority.

(d) The term of each member of the advisory council shall be two years, or as determined by the appointing authority.

#### 6:64-1.2 Duties of advisory council of federation of free public libraries

(a) The advisory council shall advise the appointing authorities on all matters relating to cooperative or joint library services, including the review of all contracts, and shall make recommendations for revision or renewal as may be advisable and practical.

(b) (No change.)

#### 6:64-1.3 Employees of federation of public libraries

(a) (No change.)

(b) At least one-third of the aggregate number of employees specified in (a) above shall hold professional librarians' certificates as specified in N.J.S.A. 45:8A-1 et seq.

#### 6:64-2.1 Scope and purpose

The rules set forth in this subchapter provide for the implementation of three options for county library reorganization as provided in N.J.S.A. 40:33-13.2d et seq. The options for county library reorganization are designated as the "branch development option", the "service contract option" and the "tax base sharing option".

#### 6:64-2.2 Definitions

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

"Member of a county library system" means a municipality providing financial support to a county library pursuant to N.J.S.A. 40:33-9 or a municipality receiving first level services pursuant to N.J.S.A. 40:33-15 et seq.

"Patron services" means circulation of library materials, reference assistance and public programs provided by a county library.

"Service contract" means an agreement for library services negotiated among a county library commission, the governing body of a county and the governing body of a municipality.

#### 6:64-2.3 General provision

(a) (No change.)

(b) There must be a library building adequate to house the collection with a separate meeting room and at least three readers' seats for every 1,000 population of its municipality(ies). The building may be owned by the municipality or county, or the building may be rented.

(c) (No change.)

(d) After the establishment of a county branch library or a joint branch library, the county library must submit annually to the State Librarian a report certifying that the branch library or joint branch library meets the standards enumerated in (a), (b) and (c) above.

(e) After the adoption of a service contract, the county library must submit annually to the State Librarian a copy of the service contract with a statement certifying that the services provided to a municipality are as specified in N.J.A.C. 6:68-1.4 to 1.6. The county

## ADOPTIONS

## ENVIRONMENTAL PROTECTION

library may request from the State Librarian a waiver from the requirements of N.J.A.C. 6:68-1.4 to 1.6 if it can be established that equivalent centralized services are provided.

(f) After the adoption of the tax base sharing option, the county library must submit annually to the State Librarian a report certifying that it complies with N.J.A.C. 6:68-1.4 to 1.6.

## 6:64-2.4 Appeal procedure

Appeals from any action of the State Librarian regarding the rules in this subchapter may be requested, and opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, a formal hearing may be requested pursuant to N.J.S.A. 18A:6-24. Such hearings shall be governed by the provisions of 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.

## ENVIRONMENTAL PROTECTION

## DIVISION OF ENVIRONMENTAL QUALITY

## (a)

**Worker and Community Right to Know Act  
Environmental Hazardous Substances and  
Hazardous Materials Lists**

**Adopted Amendments: N.J.A.C. 7:1G-2.1, 2.2, 4.1  
and 4.2**

**Adopted Repeal: N.J.A.C. 7:1G-5.4**

Proposed: March 16, 1987 at 19 N.J.R. 438(a).

Adopted: January 22, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 22, 1988, as R.1988 d.89, **without change**.

Authority: N.J.S.A. 34:5A-1 et seq. and 13:1D-9.

DEP Docket Number: 004-87-02.

Effective Date: February 16, 1988.

Expiration Date: October 1, 1989.

**Summary of Public Comments and Agency Responses:**

The comment period was held open until December 30, 1987 (see 19 N.J.R. 2234(a)). Two written comments were received in response to the proposal.

COMMENT: One comment noted that the proposed amendments would add the entire U.S. Department of Transportation Hazardous Materials Table in Title 49 of the Code of Federal Regulations, Part 172.101, to the Department's Hazardous Materials List. It stated that this would significantly increase the work effort involved in preparation of the Emergency Services Information Survey (ESIS). Therefore, it recommended that a listing of all CAS numbers be provided by the Department for all reportable items on the Hazardous Materials List. The comment indicated that this would streamline preparation of the ESIS and permit all New Jersey Right to Know submittals to be computer generated.

RESPONSE: The Department appreciates the commenter's concern that the completion of the Right to Know survey forms not become unduly burdensome and time consuming because of the addition of a significant number of new substances to the list of reportable materials. It foresaw the need to identify all substances on the list by number and has compiled a new listing, the New Jersey Right to Know Hazardous Substances List, which includes, whenever possible, the appropriate CAS number for each compound. The generics are the primary substance groups which do not have CAS numbers. This new listing is being mailed along with the Right to Know survey forms and should permit the preparation of the surveys in a more efficient manner. Therefore, no change to the amendments as proposed is necessary.

COMMENT: An individual expressed concern that agricultural businesses were not subject to the New Jersey Right to Know program.

RESPONSE: This is a concern that the Department shares. Many people are potentially exposed to the harmful substances used in agriculture. There is proposed legislation in the New Jersey Assembly, Bill A-2224, which would extend Right to Know coverage to agricultural

employers. However, at this time, agricultural employers are not among the Standard Industrial Classification codes required to comply with the New Jersey Worker and Community Right to Know Act. Therefore, no change to the amendments as proposed will be made.

Full text of the adoption follows.

## 7:1G-2.1 Designation of substances

The following substances and corresponding Chemical Abstract Services (CAS) numbers are designated as Environmental Hazardous Substances pursuant to the Act. Each substance has further been identified according to the classifications, in N.J.A.C. 7:1G-2.2. Substances may have numerous synonyms which are not included herein.

Chemical	CAS Number	Group Number
...		
BROMINE	7726-95-6	34
...		
CHLORINE	7782-50-5	34
...		
HYDROGEN CHLORIDE	7647-01-0	35
HYDROGEN FLUORIDE	7664-39-3	35
HYDROGEN SULFIDE	7783-06-4	35
...		
METHYL ISOCYANATE	624-83-9	20
...		
PHOSPHORUS TRICHLORIDE	7719-12-2	35
...		

## 7:1G-2.2 Chemical group and group numbers

The groups and their designated group numbers, to which Environmental Hazardous Substances listed in N.J.A.C. 7:1G-2.1 belong, are designated herein, to reflect similarity in chemical structure, with the exception of Pesticides (Number 28) and Dyes (Number 10), which reflect commercial use:

GROUP NO.	CHEMICAL GROUP
01-33 (No change.)	
34	Halogens
35	Inorganic Acids

## 7:1G-4.1 Designation of Hazardous Materials

(a) The substances contained in the Optional Materials Table in Title 49 of the Code of Federal Regulations, Part 172.102, as amended by publication in the Federal Register, 48 Fed. Reg., Vol. 48, No. 211, pp. 50234-50279 (October 31, 1983) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L. 1983, c.315, N.J.S.A. 34:5A-1 et seq.

(b) The substances contained in the Hazardous Materials Table in Title 49 of the Code of Federal Regulations, Part 172.101, as amended by publication in the Federal Register, 49 Federal Register, Vol. 49, No. 189, pp. 38133-38134 (September 27, 1984) are designated, by reference, as Hazardous Materials pursuant to the Worker and Community Right to Know Act, P.L. 1982 c.315, N.J.S.A. 34:5A-1 et seq.

## 7:1G-4.2 Amendments to Hazardous Materials List

(a) (No change.)

(b) The Department will publish in the New Jersey Register, any revisions by the United States Department of Transportation (USDOT) to the Optional Materials Table and Hazardous Materials Table in Title 49 of the Code of Federal Regulations, as amended. Effective upon such publication in the Register, such amendments by the USDOT shall be incorporated into N.J.A.C. 7:1G-4.1.

## 7:1G-5.4 (Reserved)

**(a)**

**Worker and Community Right to Know Act  
Assessment of Civil Administrative Penalties  
Adopted Amendments: N.J.A.C. 7:1G-3.2 and 5.2  
Adopted New Rules: N.J.A.C. 7:1G-7**

Proposed: May 4, 1987 at 19 N.J.R. 703(a).

Adopted: January 22, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 22, 1988 as R.1988 d.90, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1B-3, 13:1D-2 and 34:5A-1 et seq.

DEP Docket Number: 011-87-04.

Effective Date: February 16, 1988.

Expiration Date: October 1, 1989.

**Summary of Public Comments and Agency Responses:**

The public comment period was held open until December 30, 1987 (19 N.J.R. 2234(b)). The Department of Environmental Protection received four written comments regarding the proposed amendments to N.J.A.C. 7:1G-3.2 and 5.2 and the proposed new rules, N.J.A.C. 7:1G-7. One comment from the union representing health care professionals was in support of the proposal and stated "that the Department will need to have the ability to assess penalties in order to force certain employers to comply with the Act." The Department appreciates this comment in support of the proposal.

The Department would like all business and industry that will be subject to the provisions of this subchapter to view these rules in the context of the entire Right to Know program. The Department has committed significant resources to the implementation and operation of the Right to Know program and it seeks a comparable commitment on the part of New Jersey business and industry. The Department is willing to provide assistance to the regulated community. If employers have concerns or questions at any time in the survey process, the Department is available to help clarify issues and answer inquiries.

The other three comments were from two public utility systems and an attorney representing two manufacturing trade organizations.

COMMENT: Three comments concerning the proposed amendments to N.J.A.C. 7:1G-3.2 and 5.2, recommended that the deadline for submission of clarifying information should be extended from 14 days to 30 days.

RESPONSE: The Department has considered this suggestion and is in agreement. Both sections have been changed to provide that "Submission of the clarifying information by the employer to the Department is mandatory within 30 days of notification, or other date specified by the Department."

COMMENT: A comment was received suggesting that the definition of a "completed survey", as found in N.J.A.C. 7:1G-7.2, be amended to provide that if a company has received no response from the Department within 45 days, the survey would be "deemed" complete.

RESPONSE: The Right to Know program must constantly review and update survey information for accuracy in order to develop the most complete and useful database possible. More than 30,000 surveys are sent out to covered employers throughout the State and all must be reviewed when returned. Therefore the Department does not feel that it is appropriate to impose such a time constraint on itself which may undermine its ability to enforce the reporting provisions of the Act.

COMMENT: One comment opposed N.J.A.C. 7:1G-7.3(f) which provides that a hearing may be denied by the Department based on an incomplete hearing request. The commenter suggested that a 10 day extension be granted automatically, rather than at the discretion of the Department.

RESPONSE: The Department believes that the information to be provided in the hearing request is adequately described by the rule and that sufficient time is allowed for preparing the request. Any employer who has questions about preparing a request for hearing is encouraged to contact the Department for assistance. The decision to grant a 10 day extension to correct deficiencies in an incomplete filing will be made on a case-by-case basis.

COMMENT: One comment was opposed to the "seriousness factor" in N.J.A.C. 7:1G-7.8(a)1 being based on the quantity, instead of on the hazard posed by the specific substance.

RESPONSE: While the hazard posed by a specific substance depends on its chemical and physical characteristics, categorizing all hazardous substances into several seriousness factors would be both a difficult and extremely subjective process. Whereas, the failure to report or inaccuracy in reporting a large quantity of a hazardous substance is clearly a more serious violation of the rule than overlooking or inaccurately reporting a small quantity of the same hazardous substance. Therefore, the Department will not change the proposed basis for determining the seriousness factor.

COMMENT: Another comment concerned the quantity ranges proposed in N.J.A.C. 7:1G-7.8(a)1 for the seriousness categories. It stated that the three ranges were too low and recommended that they be increased.

RESPONSE: In developing the proposed quantity ranges, the Department considered the fact that the failure to report or inaccuracy in reporting relatively small amounts of some substances could pose rather significant hazards. Therefore, the Department will not increase the proposed quantity ranges upon which the seriousness factor is based.

COMMENT: An additional comment on N.J.A.C. 7:1G-7.8(a)1 stated that "the proposal appears to provide for a separate penalty for each chemical omitted from the surveys".

RESPONSE: While this comment accurately reflects the Department's intent that a separate violation occurs and a separate penalty can be assessed for each compound or substance which is not reported or is inaccurately reported, this paragraph and its subparagraphs have been revised to further clarify that intent.

COMMENT: Two comments were received about the "type factors" described in N.J.A.C. 7:1G-7.8(a)2 and 3ii. Both commenters disagreed with a penalty factor being levied for "unintentional and unforeseeable" violations.

RESPONSE: The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., provides for the imposition of penalties for violations without regard to the employer's intentions. The Department may, of course, consider an employer's intent on a case by case basis in assigning a value to the type factor in accordance with the schedule of factor values. Therefore, if the Department determines that the violation was unintentional and unforeseeable, the type factor with the lowest value would be applied in assessing the penalty amount.

COMMENT: Two comments opposed N.J.A.C. 7:1G-7.8(a)4 because they believed the Right to Know program was exceeding its authority by penalizing employers for releases of hazardous substances in addition to non-reporting of the substances on Right to Know surveys. They argued that the program was levying multiple penalties.

RESPONSE: The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., covers reporting not releasing. The authority to penalize for releases exists under separate laws and regulations enforced by the Department. Instead, the Department is proposing to penalize the employer because it discovers through a release episode that a reportable hazardous substance was omitted or reported inaccurately on the Right to Know Survey. An additional value is being placed on the penalty to emphasize to employers that they must completely and accurately disclose all of the information required on the survey forms. This section has been clarified.

COMMENT: A second comment concerning N.J.A.C. 7:16-7.8(a)4 requested a definition of "release of a reportable substance".

RESPONSE: As the Department is not seeking to assess penalties for environmental releases under this rule, the definition of "release" is not appropriate here.

The Department has made the following changes based on the Department's own review which indicated a need for citation corrections, typographic corrections or further clarification.

The citation to the section entitled "Clarification of Completed ESI Survey" has been corrected to read "N.J.A.C. 7:1G-5.2".

In the definition of "Time related violations", the term "or" was corrected to read "are".

In N.J.A.C. 7:1G-7.3(a)4, (c) and (d), the phrase "an adjudicator" has been added to clarify the type of hearing to which an alleged violator is entitled under this section.

At N.J.A.C. 7:1G-7.3(c), the address to which a written request for an adjudicatory hearing should be submitted is changed to:

Assistant Director  
Environmental Enforcement  
Division of Environmental Quality  
CN 027  
Trenton, N.J. 08625

In N.J.A.C. 7:1G-7.7(a), the first sentence has been rewritten to clarify that the type of penalty referred to is the civil administrative penalty assessed by the Department.

In the table at N.J.A.C. 7:1G-7.7(a), the phrase in line 1 has been corrected to read "Less than four weeks late".

N.J.A.C. 7:1G-7.8(a)1 was changed by the addition of "or inaccurately reported" at the end of the first sentence. This language clarifies the seriousness factor determination in light of the inclusion of "misrepresentation of information" in the N.J.A.C. 7:1G-7.2 definition of "non-time related violation".

In N.J.A.C. 7:1G-7.8(a)1i, the phrase describing the maximum inventory for the seriousness factor "Major" is corrected to read "(greater than 1000)".

In the table at N.J.A.C. 7:1G-7.8(a)3ii(1), the term "Willful" is corrected to read "Willful", and at N.J.A.C. 7:1G-7.8(a)3ii(3) the phrase "unintentionable and unforeseeable" is corrected to read "Unintentional and unforeseeable".

In N.J.A.C. 7:1G-7.8(a)4, the last sentence has been deleted as it merely provides one basis for the rule.

In N.J.A.C. 7:1G-7.8(b)1, the phrases "for any violation" and "for each such violation" have been added to clarify that the \$2,500 maximum penalty referred to applies to each individual violation.

At N.J.A.C. 7:1G-7.10(a), the term "Department" has been substituted for the phrase "Commissioner, as he deems appropriate," to clarify that the election as to the type of penalty to be assessed in a particular case has been properly delegated to employees within the Department.

**Full text** of the adoption follows (additions to the proposal shown in boldface with asterisks **\*thus\***; deletions from the proposal shown in brackets with asterisks **\*[thus]\***).

#### 7:1G-3.2 Clarification of completed Environmental Survey

The Department may require an employer to submit information clarifying any statement made on Part I and Part II of the Environmental Survey. The Department shall transmit this clarifying information to the county health department (or county clerk if there is no county health department), as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within 14 days of notification, or other date specified by the Department.

#### 7:1G-**[3.3]\*\*5.2\*** Clarification of completed ESI Survey

The Department may require an employer to submit information clarifying any statement made on the Emergency Services Information Survey. The Department shall transmit this clarifying information to the local fire department and police department as it deems necessary. Submission of the clarifying information by the employer to the Department is mandatory within **\*[14]\* \*30\*** days of notification, or other date specified by the Department.

### SUBCHAPTER 7. ASSESSMENT OF CIVIL ADMINISTRATIVE PENALTIES

#### 7:1G-7.1 Authority and scope

(a) This subchapter is promulgated to provide a schedule and procedures for the assessment of civil administrative penalties as provided in the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., at N.J.S.A. 34:5A-31(d).

(b) N.J.S.A. 34:5A-31(a) provides four options for enforcement actions whenever an employer is in violation of the Worker and Community Right to Know Act, or any rule or regulation issued pursuant to the Act. One of the options is to levy a civil administrative penalty in accordance with N.J.S.A. 34:5A-31(d). Under that section, the Commissioner is authorized to assess a penalty of not more than \$2,500.00 for each violation, and additional penalties of not more than \$1,000.00 for each day during which a violation continues after receipt of an order from the Department. N.J.S.A. 34:5A-31(d) further provides that, "Any amount imposed under this subparagraph shall fall within a range established by regulation by the commissioner for violations of similar type, seriousness, and duration." This subchapter establishes those ranges.

(c) This subchapter shall govern the assessment of civil administrative penalties for violations of the Worker and Community Right

to Know Act, N.J.S.A. 34:5A-1 et seq., or of any rule or regulation issued pursuant to that Act by the Department of Environmental Protection.

#### 7:1G-7.2 Definitions

In addition to the definitions set forth in N.J.A.C. 7:1G-1.2, the following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

"Completed survey", as used in N.J.S.A. 34:5A-7 and this subchapter, means a survey form entirely filled out, and free from deficiencies, errors or omissions.

"Inventory range" means the range in which the quantity of the hazardous substance and material at the facility is reported on the Environmental Survey or on the Emergency Services Information Survey.

"Non-time related violation" means a violation other than a time related violation. These may occur when there is a failure to carry out a duty imposed by statute, order, or regulation. Examples of such violations include the failure to list all reportable substances and misrepresentation of information.

"Order" means any and all orders issued or entered into by the Department including, but not limited to, Administrative Orders and Administrative Consent Orders.

"Reportable substance" means those substances and/or materials which are on the Environmental Hazardous Substance List set forth in N.J.A.C. 7:1G-2 or the Hazardous Materials List set forth in N.J.A.C. 7:1G-4.

"Time related violation" means that type of violation that occurs when there is a failure to meet a time limit or deadline imposed by statute, order, or regulation. Examples of such violations **\*[or]\* \*are\*** failure to submit the Environmental Survey or Emergency Services Information Survey within the required time frame and failure to supply clarifying information as requested by the Department within the required time frame.

#### 7:1G-7.3 Procedures for assessment of civil administrative penalties

(a) Before any assessment is levied pursuant to this subchapter, the alleged violator shall be notified by certified mail, return receipt requested, or by personal service. Such notice shall include:

1. A reference to the statute, regulation, and/or order violated;
2. A concise statement of the facts alleged to constitute the violation;
3. A statement of the amount of civil administrative penalties sought to be imposed; and
4. A statement of the alleged violator's right to **\*[a]\* \*an adjudicatory\* hearing** and notice of the procedure for requesting **\*[a]\* \*an adjudicatory\* hearing**.

(b) A notice of assessment of a civil administrative penalty may be issued separately or as part of an administrative order issued pursuant to N.J.S.A. 34:5A-31(b) requiring the alleged violator to take affirmative action to comply with the Worker and Community Right to Know Act or a rule or regulation issued pursuant to the Act.

(c) The alleged violator shall have 20 calendar days from receipt of the notice of civil administrative penalty assessment within which to deliver a written request for a hearing to:

**\*Assistant\* Director**  
**\*Environmental Enforcement\***  
 Division of Environmental Quality  
 CN **\*[405]\* \*027\***  
 Trenton, New Jersey 08625

(d) The party requesting **\*[a]\* \*an adjudicatory\* hearing** shall, in its request for a hearing, furnish the Department with the following:

1. A statement of the legal authority and jurisdiction under which the hearing or action to be taken is to be held;
2. A reference to the particular sections of the statutes and rules involved;
3. A short and plain statement of the matters of fact and law asserted; and

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4. The provisions of the order or notice of assessment to which the party objects, the reasons for such objections, and any alternative provisions proposed.

(e) If a hearing request is not timely received by the Department, the Department shall deny the request.

(f) If a request is incomplete the Department may deny the hearing request. An additional 10 days to correct deficiencies in an incomplete filing may be granted by the Department.

(g) The hearing shall be held pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Practice Rules, N.J.A.C. 1:1-1 et seq.

(h) After a hearing, and upon finding that a violation has occurred, the Commissioner or his authorized representative may issue a final assessment of the amount of the fine specified in the notice or such lesser amount as he may assess pursuant to the provisions on compromise of N.J.S.A. 34:5A-31(d). If no hearing is requested or if the Department denies the request, the original notice of assessment becomes a final order upon the twenty-first calendar day following its receipt.

(i) Payment of an assessed civil administrative penalty is due when a final order is issued by the Commissioner subsequent to a hearing, if any, or the notice becomes a final order. If the alleged violator fails to pay the penalty to the Department or to make acceptable arrangements to pay the penalty within a reasonable period of time thereafter, the Department may institute a civil action pursuant to N.J.S.A. 34:5A-31(e) for a civil penalty not to exceed \$2,500.00 per day.

**7:1G-7.4 Compromise of penalties**

(a) At his discretion, the Commissioner or his authorized representative may compromise a penalty assessed pursuant to this subchapter in whole or part, on the following terms and conditions:

1. Upon the posting by the violator of a performance bond or similar form of security in an amount and upon terms deemed satisfactory by the Commissioner;
2. On the basis of mitigating or extenuating circumstances;
3. Upon any other terms or conditions acceptable to the Commissioner or his authorized representative.

**7:1G-7.5 Alternative remedies**

Neither the assessment of a civil administrative penalty nor the payment of any such penalty shall be deemed to affect the availability to the Department of any other enforcement provision provided for by N.J.S.A. 34:5A-31, or any other statute, in connection with the violation for which the assessment is levied.

**7:1G-7.6 Records of assessments**

(a) In order to promote consistency in the application of this subchapter, the Department shall collect and maintain in a discrete file a record of each assessment made pursuant to this subchapter. Such file shall be a public record and shall be kept available for public inspection pursuant to N.J.S.A. 47:1A-1 et seq.

(b) The file shall, at a minimum, include a copy of each notice and all final orders issued pursuant to N.J.A.C. 7:1G-7.3, and the terms of any compromise agreed to pursuant to N.J.A.C. 7:1G-7.4.

**7:1G-7.7 Penalty for time related violations**

(a) The **\*assessed\*** penalty for **\*a\*** time related **\*[violations]\* \*violation\*** is determined by the number of weeks or fraction thereof that the Environmental Survey, the Emergency Services Information Survey or the clarifying information requested by the Department is overdue. The following table shall be used to determine the penalty:

1. Less than four weeks late*[r]*	\$100.00
2. Four weeks to six weeks late	\$500.00
3. Six weeks to eight weeks late	\$1000.00
4. Eight weeks to 10 weeks late	\$1500.00
5. Ten weeks to 12 weeks late	\$2000.00
6. More than 12 weeks late	\$2500.00

**7:1G-7.8 Penalty for non-time related violations**

(a) The penalty which may be assessed for a non-time related violation under this subchapter is \$2,500.00 or a fraction thereof, to be determined pursuant to N.J.S.A. 34:5A-31(d) by application of

factors indicative of the type, seriousness, and duration of the violation, as described below:

1. Seriousness factor: The seriousness of a violation is determined with reference to the maximum inventory of a **\*[single]\*** chemical **\*[or group of chemicals]\*** stored, handled, or manufactured at any one time at the facility but not reported **\*or inaccurately reported\***. There are three degrees:

i. Major: The maximum inventory of a **\*[single]\*** chemical **\*[or a group of chemicals]\*** stored, handled, or manufactured at the facility at any one time is within inventory range 13 to 20, inclusive (greater than **\*[1,001]\* \*1000\***), as defined in N.J.A.C. 7:1G-7.2.

ii. Moderate: The maximum inventory of a **\*[single]\*** chemical **\*[or a group of chemicals]\*** stored, handled, or manufactured at the facility at any one time is within inventory range 11 or 12 (10 to 1,000).

iii. Minor: The maximum range of a **\*[single]\*** chemical **\*[or a group of chemicals]\*** stored, handled, or manufactured at the facility at any one time is within inventory range 10 (less than 10).

2. Type factor: The type factor reflects the circumstances of the violation and the responsibility of the violator. There are three degrees:

i. Willful: A willful violation is one which is the result of some deliberate, knowing or purposeful action or inaction by the violator.

ii. Unintentional but foreseeable: An unintentional but foreseeable violation is one which the violator, by the exercise of reasonable diligence, could have or should have foreseen and prevented but was not caused by a deliberate, knowing, or purposeful action or inaction by the violator.

iii. Unintentional and unforeseeable: An unintentional and unforeseeable violation is one which the violator could not be expected to have foreseen, even by the exercise of reasonable diligence.

3. Schedule of factor values: Penalties for non-time related violations shall be computed after assigning values to the seriousness and type factors from the table below:

i. Seriousness:	Values
(1) Major	1.00
(2) Moderate	0.50
(3) Minor	0.25
ii. Type:	Values
(1) Willful	1.00
(2) Unintentional but foreseeable	0.50
(3) <b>*[Unintentionable]* *Unintentional*</b> and unforeseeable	0.25

4. In the event **\*[there is]\* \*that the Department becomes aware through\*** an environmental release of a reportable substance which was not reported or inaccurately reported to the Department **\*on a survey\***, an additional value between 0.10 and 0.25, depending on **\*[the]\*** inherent toxicity or harmful characteristics of the substance, shall be added to the type factor. **\*[This is intended to reflect the higher standard of care in the storage and use of hazardous substances and/or materials which the Department seeks to encourage.]\***

(b) Computation of penalty: The penalty for non-time related violations shall be computed as follows:

$$(\text{seriousness}) \times (\text{type}) \times (\$2,500.00) = \text{penalty}$$

1. If the penalty computed by this method is greater than \$2,500 **\*for any violation\*** the \$2,500 maximum penalty shall be assessed **\*for each such violation\***.

**7:1G-7.9 Daily penalty**

(a) After receipt of an Administrative Order from the Department to cease a violation, either time related or non-time related, and for each day during which the violator fails to comply with the terms of the Administrative Order, a daily penalty shall be assessed, in addition to any other penalties provided for in this subchapter, based on the following table:

1. During first week after deadline	\$100.00/day
2. During second week after deadline	\$200.00/day
3. During third week after deadline	\$500.00/day
4. During fourth week after deadline and subsequently	\$1000.00/day

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7:1G-7.10 Violations which are both time and non-time related  
 (a) In some cases a single offense may constitute both a time related and a non-time related violation. In such cases, the \*[Commissioner, as he deems appropriate,]\* \*Department\* may elect to:  
 1. Assess penalties for the time related violation only; or  
 2. Assess penalties for the non-time related violation only; or  
 3. Assess penalties for both the time related violation and the non-time related violation.

## (a)

## DIVISION OF WATER RESOURCES

**Flood Hazard Area Delineation  
 Redelineation of Raritan River and Peters Brook  
 Adopted Amendment: N.J.A.C. 7:13-7.1(d)**

Proposed: January 20, 1987 at 19 N.J.R. 167(b)

Adopted: January 18, 1988 by Richard T. Dewling,

Commissioner, Department of Environmental Protection.

Filed: January 20, 1988 as R.1988 d.79, **without change.**

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

DEP Docket Number: 060-86-12.

Effective Date: February 16, 1988.

Expiration Date: May 4, 1989.

**Summary of Public Comments and Agency Responses:**

The proposed amendment originally appeared in the April 7, 1986 New Jersey Register at 18 N.J.R. 600(a). The Department of Environmental Protection ("Department") held a public hearing on the proposed rule amendment on May 21, 1986 at the Hillsborough Township Municipal Building in Neshanic, New Jersey. Sixteen people were in attendance with four people offering comments. Three written comments were also received. Comments received during the public comment period indicated that the public notice was inadequate and misleading. The Department subsequently withdrew the proposal at 19 N.J.R. 167(a).

The proposal was repropose on January 20, 1987 in the New Jersey Register at 19 N.J.R. 167(b). The notice advised that a public hearing had been scheduled for February 5, 1987 at 1:00 P.M. at the Hillsborough Township Municipal Building, 330 Amwell Road, Neshanic, New Jersey to afford the public an opportunity to be heard on the proposed action by the Department. In addition, the Department issued a notice of public hearing on December 17, 1987 which was published in the Hillsborough Beacon. Both notices invited written comments to be submitted on or before February 19, 1987. Of the approximately 18 people that were in attendance at the hearing, seven people commented. One written letter was received during the comment period.

At the hearing, the Department proposed an additional floodway revision at Route 206 in the vicinity of the municipal boundaries of Somerville and Raritan Boroughs at Orlando Drive. The revision reflected an optimization of the existing hydraulic modeling of the floodway. That revision is not, however, being adopted as part of this proposed amendment. Although no adverse comments were received, the Department has decided to propose this revision separately because it had not been proposed and the maps were not available prior to the hearing. The proposal appeared in the July 20, 1987 New Jersey Register at 19 N.J.R. 1277(a) and the adoption appeared in the October 5, 1987 New Jersey Register at 19 N.J.R. 1797(a).

COMMENT: Since the proposed redelineation is essentially identical to the redelineation proposed in April 1986, the comments made on the earlier version of this proposal should be incorporated in this adoption summary.

RESPONSE: The following 12 comments represent the comments from the May 21, 1986 hearing. The comments and the Department's responses appeared in the summary to the second proposal at 19 N.J.R. 167(b).

COMMENT: The summary and economic impact statement set forth in the notice of proposal for the amendment (18 N.J.R. 600(a)) failed to adequately describe the actual, foreseeable impacts of the proposal.

RESPONSE: In most cases, the impact of a redelineation of a stream is minor. Updated hydraulic and hydrologic information usually results in some limited expansion of the area regulated under the Department's flood hazard area control rules, N.J.A.C. 7:13-1. However, because of the special circumstances of this commenter, the impact of the redelinea-

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tion is potentially greater. The notice of proposal for this amendment does fail to draw attention to the actual increases in the elevation of the design flood which the redelineation describes. The lack of this information in the preamble of the proposal might have interfered with the ability of members of the public to comprehend the potential impact of the proposal upon them. It is the Department's policy to err on the side of public participation in cases where there is some doubt regarding the adequacy of the notice. Therefore, the Department has concluded that it is appropriate to repropose the Raritan River redelineation.

COMMENT: The redelineation will stagnate further individual lot development in some areas and discourage home owners who want to expand or make substantial improvements to existing dwellings.

RESPONSE: The redelineation will restrict development where land falls within the Department's expanded jurisdiction. However, the purpose of redelineation is to identify and control development in areas subject to flooding in order to minimize loss or damage. The risk of flooding is weighed against the right of property owners to develop their property. Some restrictions are necessary to insure the safety and welfare of the community.

COMMENT: Property that has never been subject to flooding is being designated as being in a flood hazard area.

RESPONSE: Redelineations are based on a theoretical 100-year storm rather than historical records of flooding. The proposal process is not the appropriate forum in which to seek removal of property from a flood hazard area. Federal Emergency Management Agency ("FEMA") map amendments are processed through the Federal government.

COMMENT: The Flood Hazard Area Control Act requires that stream delineations identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams (see N.J.S.A. 58:16A-52). The Department does not evaluate the "relative risk", as required by this section of the Act.

RESPONSE: When the Department developed the flood hazard area control rules, N.J.A.C. 7:13-1 et seq., the risk of flooding was weighed against the rights of property owners in the flood plain to develop their properties as they please. Those rules reveal a balance between competing interests which reasonably meets this requirement in the Flood Hazard Area Control Act. What the commenter appears to be suggesting is that the law requires a risk assessment for each property along each stretch of stream to be delineated. A reasonable interpretation of what the legislature intended is that the Department balance the risk against the right to develop on a programmatic basis. This is what the Department did when adopting the flood hazard area control rules. The rules only prohibit significant development in the floodway (the main stream channel). Within the flood fringe, most types of uses are allowed, within the reasonable restrictions set by the rules. To set different standards for each property owner or each stream, as this comment suggests, would create a method of operation for the flood control program which could, in the Department's opinion, have resulted in unacceptable piecemeal, and possibly inconsistent, delineations.

COMMENT: The elevations on the flood insurance map should not be based on the failure of the dam at Chimney Rock.

RESPONSE: Failure of the dam was not a consideration in the redelineation as proposed.

COMMENT: The definition of "flood hazard area design flood" in the rules, N.J.A.C. 7:13-1.2, appears to have been based on an old Water Policy and Supply Council resolution dated December 16, 1974. What was the justification for the December 1974 Water Policy and Supply Council resolution calling for a design flood discharge flood hazard area of 25 percent greater than the design discharge used for defining floodway limits ("25 percent add-on")?

RESPONSE: The United States Geological Survey ("U.S.G.S.") within the Department of the Interior through a cooperative program with this Department completed a study to develop a method for computing design discharges which takes into consideration the rapid urbanization that increases flood peaks. By resolution of the Water Policy and Supply Council, the method of computing flood discharges shall be consistent with the methodology in "Magnitude and Frequency of Floods in New Jersey with Effects of Urbanization" by Doctor Stephen J. Stankowski of the U.S. Department of Interior. It was further resolved that alternative methods may be used to compute the design flood discharges and under the provisions of N.J.S.A. 58:16A-52, the State design flood discharge shall be 25 percent greater than the design discharge used for defining the floodway limits.

COMMENT: Since the proposed revision apparently adopts the U.S.G.S. 500 year flood delineation and seemingly results in a delineation of greater flood hazard area elevations than that which would result from application of the Department's 25 percent add-on, upon what factual basis does the Department justify adoption of such a delineation?

RESPONSE: The discharges used in the delineations are based on the discharges used in the Federal flood insurance studies of Franklin, Manville and Hillsborough, prepared by the U.S.G.S. Pursuant to N.J.S.A. 58:16A-52(b), the Department shall, wherever practical, make delineations identical to the floodway delineations approved by the Federal government for the National Flood Insurance Program. Review of the floodway design flood discharges were developed by the U.S.G.S. using gage data from series stream gages and log-Pearson Type II analyses. This methodology is the method preferred by the Department rather than the Special Report #38 along gaged streams and is acceptable to the Department according to the "Technical Manual for Stream Encroachment" prepared by the Department's Bureau of Flood Plain Management. The discharges and flood profiles used in the flood insurance studies were approved by FEMA, FEMA's technical evaluation consultants (Dewberry and Davis), and the State of New Jersey. The 100-year and 500-year discharges were reviewed for consistency along the Raritan River and the State flood hazard area design discharges were computed to be within five percent of the 500-year discharges which were used in the Federal flood insurance studies.

Revisions to Peter's Brook show a .3 foot increase of the State flood hazard area water surface profile. The increase in the water surface profile along Peter's Brook reflects the backwater of the Raritan River.

COMMENT: Has the Department investigated the accuracy of the data and information provided by the Federal government upon which it relies in this proposed rule?

RESPONSE: The Department has no reason to believe that the information and data provided by the U.S.G.S. is inaccurate. The public participation process associated with the adoption of the redelineation provides an opportunity for any suggestions of error to be expressed.

COMMENT: Upon what factual basis does the Department contend that the proposed revision is simply "more accurate" and will "result in the more exact location of the floodway and the flood fringe"? What consideration has the Department given to periodic updating of flood area delineation mapping along all delineated streams to keep delineations consistent, accurate, and current in lieu of the arbitrary 25 percent add-on "buffer"?

RESPONSE: There were several factors considered while preparing the revised delineations. Factors include topography, hydrology, hydraulics and acceptance by various agencies.

The up-date of the Raritan River and Peters Brook is based upon existing data. The planimetric mapping appears to be adequate. It was indicated at the public hearing held on May 21, 1986 that Allied Roofers Supplies in South Bound Brook obtained an approved Department stream encroachment application and was constructed. The new Allied Roofers structures have been incorporated in the mapping. The proposed delineation mapping was sent to each of the affected municipalities and county engineering departments for review and comments.

Maps are updated through a map amendment process pursuant to N.J.S.A. 58:16A-52 to reflect approved major stream encroachment applications, flood control projects, dams, revisions requested by private individuals and up-dates based on more recent FEMA flood studies. All requests and revisions are required to include revised or up-dated data that conforms to State standards.

The data generated by U.S.G.S. conforms to State standards. The discharges are based on gage data, which is more accurate than Special Report #38 discharges and obviously more accurate than using multipliers of the mean annual flood, as used in the Raritan River Flood Hazard Report #2.

The floodways in Flood Hazard Report #2 for the Raritan River were hand-set, while the revised floodway, as determined by U.S.G.S. in their flood insurance studies, evaluated and tested the original floodway limits in the Flood Hazard Report #2 to check if the Department exceeded its .2 foot rise criteria in their E-431 hydraulic computer model. The floodway limits generally have not changed. The floodway limits are very similar, even with increased 100-year water surface profiles.

The State is justified in using the profiles from the Federal flood insurance studies. The flood discharges and water surface profiles for the various design floods were approved by FEMA, FEMA's technical evaluation consultants (Dewberry and Davis) and local municipalities by their flood prevention ordinance, and the State of New Jersey as a coordination agency. In addition, N.J.S.A. 58:16A-52(b) states that the

Department shall, wherever practicable, make floodway delineations identical to the floodway delineations approved by the Federal government for the National Flood Insurance Program. The revised flood profiles are higher than the original profiles and are consistent with the high water marks from Hurricane Doria, August 27, 1971, the flood of record.

The hydraulics for the revised profiles and floodway limits were computed by the U.S.G.S. E-431 hydraulic computer model. The E-431 computer model is very similar to the U.S. Army Corps of Engineer's ("C.O.E.") HEC-2 hydraulic model. It uses the same data base information as the HEC-2 hydraulic model for input and generates the same output data. The U.S.G.S. E-431 hydraulic model has been accepted by FEMA for use in the National Flood Insurance Program, as well as by the State of New Jersey.

The delineations of the 100-year flood and the New Jersey flood hazard area design flood limits are more accurately drawn than the original delineations. The flood limits from the Federal flood insurance studies along the Raritan River were reviewed and the limits were adjusted within the contour limits of the original State topography to match the Federal study limits. The flood limits of the State, Federal and local municipalities agree as much as possible.

COMMENT: The methodologies used by the Department to delineate and redelineate streams should be proposed and adopted as a rule.

RESPONSE: The Department will take this suggestion into consideration.

COMMENT: Were the actual boundaries of the proposed redelineation set solely by a computer program or were they actually drawn by a professional after evaluation of the data generated?

RESPONSE: The HEC-2 and E-431 hydraulic models generate flood profiles and floodway limits. The width and location of the floodway is determined at each cross section. In between each cross section engineering judgment is used to determine the configuration of the floodway between cross sections. The water surface flood profile is plotted using the water surface elevation calculated at each cross section for the various design floods. The evaluations from the water surface profiles are then delineated or plotted to a corresponding ground elevation on the topography. If more detailed topography is submitted for review, we can more accurately plot the 100-year flood and the flood hazard area design flood limits.

COMMENT: Is the Department currently making delineations or redelineations along other streams in New Jersey based on computer programs or factors other than those utilized in connection with the proposed redelineation of the Raritan River and Peters Brook? If so, upon what basis is the Department making such other delineations and redelineations and what is the Department's justification for the contemporaneous application of differing process along different streams in the State?

RESPONSE: The State of New Jersey, Department of Environmental Protection, Bureau of Flood Plain Management has delineated and adopted over 2,000 miles of stream. The majority of streams were delineated using the C.O.E.'s HEC-2 hydraulic computer model; however, the Department has based delineations on the U.S.G.S. E-431 and the Soil Conservation Service's ("SCS") WSP2 water surface profiles computer program. The C.O.E. HEC-2, U.S.G.S. E-431 and SCS WSP2 generate elevation discharge relationships for each design flood based on similar input data and each program generates essentially the same answers; however, the format of each program is different.

COMMENT: Uncontrolled building in, for example, Clinton Township and other townships to the west and north of Somerset County is contributing to flooding problems and should be checked.

RESPONSE: Discussion of structural flood relief measures is beyond the scope of the floodway delineation program. The floodway delineation program exists solely to identify the boundaries of the New Jersey flood hazard area and subportions thereof.

COMMENT: The hearing should be postponed because of an article in the Star Ledger dated January 25, 1987 indicating that the hearing was to be held at Hillsborough High School rather than at the municipal building.

RESPONSE: The notice of public hearing was accurately published in the New Jersey Register at 19 N.J.R. 167(b) and in the Hillsborough Beacon. At the hearing, Department officials were told that a news article appeared in the Star Ledger in which the location for the hearing was listed as the local high school rather than the township municipal building. The two buildings are only a few miles apart. The start of the hearing was delayed to allow people who had mistakenly gone to the high school time to get to the municipal building.

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COMMENT: The Flood Hazard Area Control Act at N.J.S.A. 58:16A-52 mandates that delineation procedures be in the rules. The Department has failed to meet this mandate and therefore the present proposal is ill-considered and premature.

RESPONSE: N.J.S.A. 58:16A-52(a) states as follows:

The [D]epartment shall adopt rules and regulations which delineate as flood hazard areas such as, in the judgment of the [D]epartment, the improper development and use of which would constitute a threat to the safety, health and general welfare from flooding. Such delineations shall identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways necessary to preserve the flood carrying capacity of natural streams.

The Department agrees that the statute requires rulemaking. However, N.J.S.A. 58:16A-52(a) merely requires that the delineation be by rule. When the Department delineates a stream it is accomplished by rulemaking. The statute does not require that the Department promulgate the procedures by which streams are delineated.

N.J.S.A. 58:16A-52(c) states that "the [D]epartment shall establish a procedure for reducing any delineated flood hazard area when a change has been made which increases the flood carrying capacity of the stream at that location." This subsection does not require rulemaking. The statute merely states that the Department have a procedure for reassessing an initial delineation of a stream. The Department does have such a procedure. When the Department reevaluates a stream delineation or information is brought to its attention that shows that a delineated flood hazard area should be reduced, the Department may reduce the flood hazard area. The procedure through which a stream is redelineated is rulemaking, such as in the present case.

COMMENT: N.J.S.A. 58:16A-52 requires the Department to "identify the various subportions of the flood hazard area for reasonable and proper use according to relative risk, including the delineation of floodways." This language clearly shows an intention that the flood hazard area would be divided into more segments than merely the floodway and the fringe.

RESPONSE: The Department disagrees. The commenter offers no evidence to substantiate the claim that the flood hazard area must be divided into more than two segments. The floodway and fringe are the various subportions of the flood hazard area.

COMMENT: It is recognized that some land use restrictions are appropriate in areas frequently inundated by flooding. However, the land use rules of N.J.A.C. 7:13 apply to the full extent of the flood fringe area. There is no justification for stringent land use rules as one moves further from the floodway into areas less and less frequently inundated.

RESPONSE: This comment goes beyond the scope of this rule proposal. For a full analysis of the justification for N.J.A.C. 7:13, the commenter should refer to the summary of the pre-proposal and proposal of those rules at 15 N.J.R. 824(a) and 15 N.J.R. 2104(a) respectively.

Further, in response to the suggestion that the manner in which the Department regulates the fringe area may result in an unjust taking of property, it should be noted that the rules do not prohibit development but rather regulate development in order to minimize the chance of flooding. Most uses for property continue to be possible and do in fact occur.

COMMENT: The Department relies upon a 1974 Water Policy and Supply Council resolution as the justification for the 25 percent add-on. That resolution apparently added 25 percent to the 100 year discharge as a safety factor anticipating urbanization. In the 1984 amendments to the Flood Hazard Area Control Act rules, the Department required two stringent land use requirements. First, the criteria for the floodway allowed an increase in flood elevation of .2 feet whereas the Federal criteria allowed a one foot increase. Second, a 20 percent net fill requirement was introduced. Having adopted detailed rules with substantial justification, reliance upon the 25 percent add-on factor adopted by the Water Policy and Supply Council in 1974 is no longer valid.

RESPONSE: The 1984 amendments to the rules were the result of many years of study in this area. The Department was fully cognizant of the scope of the rules which included the 25 percent add-on to the 100 year flood hazard area. Nothing has led the Department to believe that less regulation is needed. The rules are part of a comprehensive approach to New Jersey's flood control problem. They are a recognition of the fact that strong flood control measures are needed due to the unique needs of this State.

This proposal is not the appropriate forum in which to question the justification for the 25 percent add-on. Questions related to the flood hazard area control rule amendments of 1984 should have been raised

during the proposal of those rule amendments. For a full explanation of the justification for the 1984 amendments to the flood hazard area control rules, the commenter should examine the pre-proposal, proposal and adoption of the 1984 amendments to the flood hazard area control rules. The pre-proposal appears at 15 N.J.R. 824(a), the proposal appears at 15 N.J.R. 2104(a) and the adoption appears at 16 N.J.R. 1201(a).

Full text of the adoption follows.

AGENCY NOTE: No change in the text of N.J.A.C. 7:13-7.1(d) is required by this adoption. Maps and associated flood profiles, showing the location of the revised delineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Quakerbridge Road, Trenton, New Jersey and at the Bureau of Flood Plain Management, 1911 Princeton Avenue, Lawrenceville, New Jersey. In addition, maps of the adopted delineation were sent to the Clerks of the affected municipalities and to the Planning Boards of the affected counties in conjunction with the notice of proposal.

(a)

## DIVISION OF SOLID WASTE MANAGEMENT

### Solid Waste Facilities: Records

#### Adopted Amendment: N.J.A.C. 7:26-2.13

Proposed: January 20, 1987 at 19 N.J.R. 171(a)

Adopted: January 15, 1988, by Richard T. Dewling,

Commissioner, Department of Environmental Protection  
Filed: January 15, 1988, as R.1988 d.73, **without change.**

Authority: N.J.S.A. 13:1E-1 et seq.

DEP Docket Number: 061-86-12.

Effective Date: February 16, 1988.

Expiration Date: November 4, 1990.

Summary of Public Comments and Agency Responses:

**No comments were received.**

Full text of the adoption follows.

7:26-2.13 Solid waste facilities: records

(a) Each solid waste facility permittee shall maintain a daily record of wastes received. The records shall include:

1.-7. (No change.)

(b)-(i) (No change.)

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(b)

## DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

### Renal Disease Services

#### Standards and General Criteria for the Planning and Certification of Need for Regional End-Stage

#### Renal Disease Services

#### Adopted Amendments: N.J.A.C. 8:33F-1.2 and 1.4

Proposed: November 16, 1987 at 19 N.J.R. 2093(a).

Adopted: January 20, 1988 by Molly Joel Coye, M.D., M.P.H.,  
Commissioner of the Department of Health (with approval of  
the Health Care Administration Board).

Filed: January 22, 1988, as R.1988 d.88, **with technical changes**  
not requiring additional public notice and comment (N.J.A.C.  
1:30-4.3).

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

Effective Date: February 16, 1988.

Expiration Date: January 14, 1990.

Summary of Public Comments and Agency Responses:

**No comments received.**

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**Summary of changes made between proposal and adoption:**

As stated in the Summary of the proposal of these amendments, the threshold of medical/surgical and/or intensive/coronary care admissions required of an applicant to perform back-up and acute hemodialysis treatment is being lowered from 11,250 to 9,400 in order to reflect the recent removal of same day surgical procedures from annual hospital admissions data. Because of this revised reporting method, hospital admissions data will no longer include same day surgical procedures. The number of these procedures, however, will continue to be calculated separately by the Department. If these procedures had been included in hospital admissions data in 1986, they would have comprised approximately 16.8 percent of such admissions. Thus, the 11,250 admissions criterion is being decreased by the same percentage in order to take into account the revised reporting of hospital admissions data.

Therefore, in proposing these amendments, wherever the admissions criterion threshold figure of 11,250 appeared in N.J.A.C. 8:33F, it was amended to read 9,400. However, through a publication error, a portion of N.J.A.C. 8:33F-1.4(c)2 was deleted from the proposal printed in the November 16, 1987 New Jersey Register. The technical correction has been made on adoption.

Full text of the adoption follows.

## 8:33F-1.2 Utilization standards

(a) The following minimum utilization rates shall apply for the initiation of new ESRD services.

1.-6. (No change.)

7. "Back-up" dialysis for ESRD chronic patients:

i. Facilities which provide only acute hemodialysis services are not intended to serve ESRD patients with irreversible renal failure. These patients should receive hemodialysis services only through approved ESRD facilities. Similarly, "back-up" dialysis provided for ESRD patients during inpatient stays are considered a component of an approved ESRD dialysis center which provides both acute and chronic hemodialysis. However, "back-up" dialysis provided for ESRD patients during inpatient stays may be provided by non-ESRD approved facilities under the following circumstances:

(1) The non-ESRD approved facility proposing to provide back-up dialysis must document at least 9,400 inpatient medical/surgical and/or intensive/coronary care admissions annually. In the case of multi-hospital systems, the 9,400 inpatient admissions must occur at one hospital in the system and may not be the sum of admissions at all hospitals comprising the system.

(2) To provide chronic "back-up" dialysis services, the applicant hospital with 9,400 inpatient medical/surgical and/or intensive/coronary care admissions must present written certification of the following to the Department of Health:

(A)-(B) (No change.)

(3) (No change.)

8. (No change.)

(b) (No change.)

## 8:33F-1.4 Acute hemodialysis standards

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

(c) Applications for certificate of need from non-ESRD approved facilities proposing to offer only acute hemodialysis services will be considered only under the following conditions:

1. The non-ESRD approved facility proposing to provide acute hemodialysis during an inpatient stay must document at least 9,400 inpatient medical/surgical and/or intensive/coronary care admissions annually. In the case of multi-hospital systems, the 9,400 inpatient admissions must occur at one hospital in the system and may not be the sum of admissions at all hospitals comprising the system.

2. To provide acute hemodialysis services, with its own resources, the applicant hospital with the \*[11,250]\*\*9,400\* inpatient medical/surgical and/or intensive/coronary care admissions must present written certification that the proposed service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to overdose and poisoning.

3. The non-ESRD approved facility with less than 9,400 inpatient medical/surgical and/or intensive/coronary care admissions and

proposing to provide acute hemodialysis services must provide substantive data that the proposed acute hemodialysis service is needed. In so doing, the applicant must provide written documentation of a minimum of 24 acute cases during the previous 12 months within the applicant institution. The 24 cases shall be limited to kidney disease patients and shall exclude those due to drug overdose and poisoning. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program shall be exempt from the minimum 24 case requirement; and

4. The applicant with less than 9,400 annual inpatient admissions also must demonstrate that in the absence of the proposed service, the population to be served will be denied reasonable access based upon medical necessity to an approved hospital ESRD dialysis center providing inpatient dialysis. Reasonable access shall be interpreted to mean not more than 20 straight miles travel from the point of origin of the patients. The length of time it takes to confirm that a patient needs acute dialysis and to arrange the logistics of such treatment is such that a patient can easily be transferred to a hospital ESRD dialysis center during the time this is occurring and without jeopardy to the patient. A hospital participating in an Inter-Hospital Hemodialysis Outreach Program for acute hemodialysis shall be exempt from the aforementioned 20 straight miles travel requirement.

(d) (No change.)

(b)

## DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

### Certificate of Need: Psychiatric Inpatient Beds Child and Adolescent Acute Psychiatric Bed Standards

**Adopted Repeal: N.J.A.C. 8:43E-4.1 through  
8:43E-4.4**

**Adopted New Rule: N.J.A.C. 8:43E-4.1 through  
8:43E-4.21**

Proposed: November 16, 1987 at 19 N.J.R. 2094(a).

Adopted: January 20, 1988 by Molly Joel Coye, M.D., M.P.H.,  
Commissioner of the Department of Health (with approval of  
the Health Care Administration Board).

File: January 22, 1988 as R.1988 d.87 **with technical changes**  
including typographical errors not requiring additional public  
notice and comment (see N.J.A.C. 1:30-4.3(c)).

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

Effective Date: February 16, 1988.

Expiration Date: December 11, 1992.

#### Summary of Public Comments and Agency Responses:

Written comments were received from the following: the Juvenile Detention and Monitoring Unit of the New Jersey Department of Corrections, the New Jersey Psychiatric Association, and the Newark Beth Israel Medical Center.

COMMENT: The Department of Corrections states that there is an increasing number of juveniles with serious behavioral and emotional disorders, including suicidal tendencies, who are entering juvenile detention facilities. There is a dearth of quality psychiatric services available to serve these youth. In order to meet this need, the Department of Corrections requests that the rule require that child and adolescent acute psychiatric units must have a written affiliation agreement with juvenile detention centers.

RESPONSE: The Department of Health is in agreement that there should be affiliation agreements between child and adolescent acute psychiatric units and juvenile detention centers. The beds and associated clinical services covered by this rule are intended to function as a diagnostic and short term treatment service. They also serve a gate-keeping function between the setting where a crisis occurs and followup care subsequent to treatment. The need to serve children in the criminal justice system is reflected by including them in the need methodology section (N.J.A.C. 8:43E-4.5(b)7vi). The Department therefore has amended N.J.A.C. 8:43E-4.8, Continuity of care, to include affiliation agreements with juvenile detention centers.

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**COMMENT:** The New Jersey Psychiatric Association expresses opposition to the summary statement regarding the placement of children and adolescents in the "least restrictive setting". They request that the language be changed to "most clinically appropriate facility whatever that may be". The New Jersey Psychiatric Association further states its opposition to the following language in the summary statement: "institutionalization should be used as a last resort". They affirm that this is not necessarily correct; rather institutionalization could be the first and most appropriate step.

**RESPONSE:** The terminology of "least restrictive setting" is used to assure that a search is made for less restrictive community mental health services before placing patients in child and adolescent acute psychiatric units. The language does not preclude the direct admission from designated screening services when such direct admission is appropriate. The language is supported by the need to provide safeguards for the civil liberties of adolescents; and by national experts advising the Departments of Health and of Human Services that community based outpatient services should be preferred for children whenever possible. The existing language places an appropriate obligation on mental health administrators to weigh the restrictiveness of treatment options when dealing with children and adolescents.

It is the Health Care Administration Board's position, and the Department concurs, that the language of "least restrictive setting" can and should be changed to "most appropriate and least restrictive setting". This latter language is already used in section 8:43E-4.1. The use of the first phrase is restricted to the summary statement before the rule itself, and does not otherwise appear. Future copies of the summary statement will be amended to read "most appropriate and least restrictive setting". A change to the rule itself is not required since the desired language is already used.

**COMMENT:** The New Jersey Psychiatric Association states that the bed methodology in the proposed regulation will result in too few child and adolescent acute psychiatric beds, especially when presented on a county basis.

**RESPONSE:** The bed need methodology in this rule will result in an expansion of child and adolescent acute psychiatric beds from 79 to 157 beds. This approximate doubling of the existing capacity is based on an estimate of actual children presently served or needing services in acute psychiatric units. For instance, it counts children in existing Children's Crisis Intervention Service (CCIS) units, children in acute care hospitals, in State facilities, children diverted from existing CCIS units, and a percentage of children in the juvenile justice system. Although the need is by county, the methodology permits certificate of need applicants to add together the need from several counties, in order to plan effective and efficient units. The provision of discrete child and adolescent acute psychiatric units in each and every county would result in diminished quality of care, due to undersized units, and would result in inefficiency from excess capacity and possible inappropriate admissions.

**COMMENT:** The New Jersey Psychiatric Association questions the basis and criteria for a length of stay of less than 30 days in the definition for child and adolescent acute psychiatric beds.

**RESPONSE:** The existing CCIS units with child and adolescent acute psychiatric beds have an average length of stay of 22.6 days. This supports the definition with an average length of stay of less than 30 days. An average length of stay greater than 30 days would be defined as an intermediate service similar to N.J.A.C. 8:43E-5.1 regarding intermediate and special adult psychiatric beds.

**COMMENT:** The New Jersey Psychiatric Association requests definition and clarification of the qualifications of case managers.

**RESPONSE:** Case managers with varied professional mental health backgrounds, such as social workers, mental health workers, or counselors, have been found useful to appraise the needs of psychiatric patients and their appropriate utilization of services within the community. A rigid definition of their qualifications is not required to assure that the care for individual children is delivered in a coordinate fashion.

**COMMENT:** The New Jersey Psychiatric Association states that child and adolescent acute psychiatric beds should be restricted to licensed hospitals.

**RESPONSE:** The Division of Mental Health and Hospitals has determined the CCIS services equivalent to child and adolescent acute psychiatric services can be innovatively and effectively provided in a non-hospital setting. Such services have the benefit of adding a more home-like therapeutic environment to the treatment setting. The Department wishes to continue the option for these innovative services. The rules assure quality of care by requiring that the necessary array of diagnostic and treatment services be available.

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**COMMENT:** The New Jersey Psychiatric Association questions the lack of detail in this rule regarding the staffing and purpose of partial hospitalization. Also cited is the severe shortage of partial hospitalization programs.

**RESPONSE:** The Department of Health is in agreement that there is a shortage of partial hospitalization services. However, it is not the intent of this rule to regulate the planning and certificate of need for such services. Such services should be encouraged through programs developed by the Division of Mental Health and Hospitals.

**COMMENT:** The New Jersey Psychiatric Association questions the minimum size of a 4 bed children's sub-unit and a 12 bed child and adolescent acute psychiatric unit.

**RESPONSE:** The size of these units was arrived at after much professional debate by the Childrens Psychiatric Task Force, which was convened by the Department of Health to advise in the development of this rule, and which represents a realistic compromise between the need for efficient size units and the need to provide geographic distribution of these services in the less densely populated areas of the state.

**COMMENT:** The New Jersey Psychiatric Association states that the bed need methodology does not count children served out of state, is overly restrictive on a county basis, and uses non-hospital services in the inventory of existing services.

**RESPONSE:** The number of New Jersey children served out of state is difficult to quantify, as is the number of children that will continue to be cared for out of state. The methodology used does not include children served out of state as part of the turnaways from existing CCIS units.

**COMMENT:** The New Jersey Psychiatric Association questions the applicability to this rule of the Screening Law P.L. 1987 Chapter 116. The law may be intended to apply only to adults and not to children and adolescents. Nevertheless, the New Jersey Psychiatric Association uses the Screening Law P.L. 1987 Chapter 116 to point out that there is a mechanism for private practitioners to admit patients through their own court hearings. They state that this route of entry should be available rather than admissions through designated screening services. They point out that the criteria of harm to themselves or others, is similar between adults and children and should be applicable to admission of both groups.

**RESPONSE:** The Department agrees that the Screening Law does not apply directly to the commitment of children. The rules governing the commitment of children are found in R. 4:74-7(j) (Rules Covering Courts of the State of New Jersey). The Department therefore has amended N.J.A.C. 8:43E-4.5(g) to reflect the rules applicable to children. The Department remains of the opinion that screening services for admitting children to acute psychiatric beds are beneficial and required to assure that children are referred to the services appropriate to their need; that their rights to civil liberties are considered and that children have equal access to needed services irrespective of their financial status.

**COMMENT:** The New Jersey Psychiatric Association questions the participation of physicians in units meeting the access criteria of the rule, due to the low level of reimbursement for children with coverage by Medicaid and Blue Cross/Blue Shield. A higher percentage of commercial insurance should be set.

**RESPONSE:** The proportion of children with mental health problems is disproportionately high in low income populations, as demonstrated by the risk factor analysis conducted by the New Jersey Division of Mental Health and Hospitals. The minimum percentage of non-investor owned insurance and Medicaid reimbursement is required, in order to provide adequate access to children needing these services. The adequacy of physician reimbursement cannot be addressed by this rule.

**COMMENT:** The New Jersey Psychiatric Association requests more psychiatric control and more regulation, as well as more education and licensing for the "milieu" staff. The New Jersey Psychiatric Association wants language stating that only a psychiatrist should be in charge of a multidisciplinary treatment team.

**RESPONSE:** A multidisciplinary treatment team has been found to be most efficacious in providing the mix of services required for the comprehensive need assessment and treatment of individual cases. This is especially important for children undergoing the stress of maturation and needing education and social counseling. The rule permits a wholistic framework of treatment, without limiting the role of the psychiatrist.

**COMMENT:** The New Jersey Psychiatric Association states that the schooling and recreational components need to be more defined in the rule.

**RESPONSE:** The Department agrees that schooling and recreational components of these services are crucial to preparing children for a return to their community. However, the varying lengths of stay and diverse

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needs of the patients would make any requirement by the Department of Health overly rigid and inappropriate.

COMMENT: The New Jersey Psychiatric Association has a primary concern regarding the lack of simultaneous regulations for child and adolescent intermediate and special psychiatric beds. These should be an integral component in order to provide continuity and quality of care.

RESPONSE: The Department agrees that intermediate and special psychiatric beds are appropriate for children. However, this rule for child and adolescent acute beds is being given priority because it is intended to serve a gate-keeping and coordinating role in the total system of psychiatric care for children. The need for intermediate care beds is being reviewed at this time by the Department of Health and the Division of Mental Health and Hospitals of the Department of Human Services.

COMMENT: Newark Beth Israel Medical Center suggests that the definition section concerning age range be changed from 0 to 18 years to 0 to 14 years, not including the 14th birthday. This range would allow the most productive use of the unit and still be within accepted clinical parameters.

RESPONSE: This rule is intended to address the needs of both children and adolescents. The age limits are not intended to be rigidly interpreted. They will allow the placement of patients in the most appropriate level, according to their level of social as well as physical maturation. The upper age limit of 18 years is also congruent with the open adult care psychiatric bed rule, N.J.A.C. 8:43E-2.1 et seq.

COMMENT: Newark Beth Israel Medical Center comments on the desirability of physical and programmatic separation between child and adolescent units. They state that there are serious risk factors involving sexual and physical abuse and psychological trauma, due to exposure to a more psychologically disturbed adolescent population.

RESPONSE: The Department shares the concerns regarding the safety of the younger patient. To reinforce this concern, the department has amended N.J.A.C. 8:43E-4.4(a), Unit size, to reflect the specific planning needs of both children and adolescents.

COMMENT: Newark Beth Israel Medical Center requests that the bed need rule, N.J.A.C. 8:43E-4.5, reflect the greater percentage of need in inner cities, since there is 2.5 times as much need in poverty populations as in the population at large.

RESPONSE: The bed need formula does take socioeconomic factors linked with the incidence of childhood mental disease into account. The mental health risk factor score is calculated by county. The Department is not in favor of separate need calculations for inner cities because of the desire to draw patients from a broad social and geographic area. Typographical errors in the bed need formula have been corrected on adoption.

COMMENT: Newark Beth Israel Medical Center states that the required occupancy rate for existing small units is not statistically valid.

RESPONSE: The section on minimum occupancy levels is required in order to prevent the expansion of inefficient and underutilized services.

COMMENT: Newark Beth Israel Medical Center states that the staffing requirement for pediatricians should be amended to permit a consultative relationship, rather than hiring a pediatrician as part of the staff of a child and adolescent unit.

RESPONSE: The rule specifies neither the method nor the hours for pediatrician staffing; since staffing is dependent on patient mix and unit size, the needs of the patient population must dictate the appropriate staffing.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks \*thus\*; deletions from proposal shown in brackets with asterisks \*[thus]\*).

#### SUBCHAPTER 4. CHILD AND ADOLESCENT ACUTE PSYCHIATRIC BEDS

##### 8:43E-4.1 Scope

(a) The New Jersey Department of Health currently licenses and regulates inpatient psychiatric beds in licensed general and special hospitals throughout the State. These rules set forth the criteria by which the Department of Health will review Certificate of Need applications for the addition or establishment of new Child and Adolescent Acute Psychiatric Beds in any existing or proposed health care facility in New Jersey, or in any facility designated as a Children's Crisis Intervention Service by the Department of Human Services.

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(b) Children's acute psychiatric inpatient care is viewed as a single and highly specialized phase in an overall system of services for psychiatrically impaired youth. These inpatient services are designed to provide short-term treatment within a comprehensive network of mental health care in the community. This approach encourages and supports the delivery of services in the most appropriate and least restrictive setting.

(c) The rules in this subchapter apply exclusively to and identify standards for the review of Certificate of Need applications for child and adolescent acute psychiatric beds.

##### 8:43E-4.2 Definitions

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

"Adolescent acute psychiatric beds" means beds in a designated unit of a licensed acute care or special hospital or in a designated free-standing psychiatric unit or facility, established for the provision of intensive treatment to persons generally between the ages of 13 and 18 who are experiencing an acute episode of a primary psychiatric disorder and have been medically evaluated to require the services of a specifically designated unit. The Diagnostic and Statistical Manual (DSM) III, which is published by the American Psychiatric Association, is the recognized guide for making diagnostic decisions.

"Case management service" means a mechanism to assure a comprehensive appraisal of a child's needs and to utilize the most appropriate resources within the child's community to meet these needs.

"Children's acute psychiatric beds" means beds in a designated unit of a licensed acute care or special hospital or in a designated free-standing psychiatric unit or facility, established for the provision of intensive treatment to persons generally under the age of 13 who are experiencing an acute episode of a psychiatric disorder and have been medically evaluated to require acute psychiatric inpatient services. The Diagnostic and Statistical Manual (DSM) III, which is published by the American Psychiatric Association, is the recognized guide for making diagnostic decisions.

"Children crisis intervention service" means a regional community-based acute care inpatient psychiatric service designated by the Commissioner of the Department of Human Services to provide assessment, crisis stabilization, evaluation and treatment to children and adolescents with an average length of stay not to exceed 30 days. Children and adolescents are screened by local emergency/screening services and referred for admission if this level of inpatient care is indicated.

"Community outreach services" means a service provided to a child or adolescent and their caretaker in the setting where a crisis occurs, providing assessment and intervention services to determine the need for emergency and stabilization services, or referral to outpatient services, or admission to an inpatient facility or residential program.

"Department" means the New Jersey Department of Health.

"Emergency/screening mental health services" means a public or private ambulatory care service or a discrete program designated by the Commissioner of the Department of Human Services for the provision of emergency mental health services including assessment, psychiatric crisis intervention, psychiatric and medical evaluation, initial diagnosis, treatment, and referral services for mentally ill persons. These services are available on a 7-day, 24-hour basis to individuals experiencing an acute psychiatric crisis within a specified geographic service area as defined in N.J.S.A. 30:4-27, P.L. 1987, c.116.

"Mental health service area" means a designated area of the State, approved by the New Jersey Department of Human Services as a primary catchment area for community mental health service delivery.

"System of care" means a comprehensive spectrum of clinical services and other essential support services which are organized into a coordinated network to meet the multiple needs of emotionally disturbed children and adolescents and their families. This comprehensive continuum of services would include an array of mental health services including, but not limited to, provisions for emergency/screening, crisis intervention, outpatient services, partial hospi-

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talization, as well as provisions for respite and home-based services, residential treatment services and inpatient hospitalization.

**8:43E-4.3 Submission of Certificate of Need application**

(a) Applications for establishment of new Children's Acute Psychiatric Beds will be competitively reviewed pursuant to batching procedures set forth in the N.J.A.C. 8:33-1.5. The following schedule will apply for the submission of Certificate of Need applications for child and adolescent psychiatric beds during calendar year 1988:

Deadlines for Actual Submission	Cycle Begins
January 1	February 15
July 1	August 15

(b) After calendar year 1988, the batching schedule will be established in N.J.A.C. 8:33-1.5 or if changes to the batching schedule are necessary, the changes will be announced by the Department of Health in the form of a Miscellaneous Notice published in the New Jersey Register.

**8:43E-4.4 Unit size**

(a) In order to support a core staffing pattern and the necessary range of services in the provision of acute psychiatric care to children and adolescents, the minimum number of beds which may be established in a single treatment unit is 12. The minimum size of a sub-unit of children's beds is four but must be proposed and operated in combination with adolescent beds in a treatment unit which includes at least 12 beds. **\*The applicant shall demonstrate how the program being proposed will address the specific needs of both children and adolescents.\*** These beds must be used exclusively for the provision of acute psychiatric services to children and adolescents.

(b) The maximum number of child and/or adolescent beds that may be established in a single, discrete treatment unit is 20.

(c) The Department may consider exceptions to (a) and (b) above when the applicant documents that at a higher or lower capacity, economies of scale will be achieved, the quality of care will be maintained in the treatment program, and access to care will be appreciably improved.

**8:43E-4.5 Bed need**

(a) The general formula for the determination of Child and Adolescent Acute Psychiatric Bed Need is as follows:

New Beds Needed = Total Beds Needed minus Available Beds

$$(b) \text{ Total Beds Needed} = \frac{\text{Statewide Beds Needed}}{21} \text{ plus } \frac{\text{SD} \times (T-50)}{10}$$

1. SD = Standard deviation of bed need estimate for each county

2. T = Average T score of bed need distribution and T score of county-specific children's mental health risk factor

$$3. \text{ T Score for Bed Need} = \frac{\text{Average bed need minus mean bed need}}{\text{SD}} \times 10 + 50$$

$$4. \text{ Average Bed Need} = \frac{\text{Normative bed need plus Actual bed use}}{2 \times .85}$$

$$5. \text{ Normative Bed Need} = \frac{\text{Total annual patient days needed in State}}{\text{County children's population}} \times \frac{\text{State children's population}}{365}$$

$$6. \text{ Actual Bed Use} = \frac{\text{Annual patient days utilized by children in each county}}{365}$$

7. Estimated Annual Patient Days Needed in State minus the sum of Patient days in the following categories:

i. Patient days in existing Children's Crisis Intervention Service (CCIS) Units as contained in the official inventory of general hospital and free-standing beds;

ii. 80 percent of the general hospital psychiatric patient days for children and adolescents, excluding any hospital-based CCIS unit patient days;

iii. 75 percent of the patient days at Trenton State Hospital, calculated by county, for 90 percent of admitted children and adolescents, using their first 30 days of hospital stay;

iv. 75 percent of the patient days at the Arthur Brisbane Children's Treatment Center (ABCTC), for all admitted children using their first 30 days of hospital stay;

v. 80 percent of the patient days expected by estimating the number of children and adolescents refused admission to a CCIS unit

due to lack of capacity. An Average Length of Stay (ALOS) of 22.6 days utilized to reflect average of CCIS units.

vi. Patient days expected by the diversion of children and adolescents requiring acute inpatient psychiatric treatment from the juvenile justice system. Based on 5% of juvenile violent crimes, multiplied by CCIS ALOS (22.6 days).

8. T Score for Children's Mental Health =

$$\frac{\text{County Mental Health Risk Factor minus mean Risk Factor}}{\text{Standard Deviation of County Risk Factors}} \times 10 + 50$$

9. County Mental Health Risk Factor = the mental health inpatient need scores for children and adolescents which were derived for each New Jersey county in a statistical procedure based on the correlation between the treated prevalence and incidence of mental illness among children and adolescents and the 28 area characteristics such as poverty, child abuse, school dropout rate, infant mortality and others.

(c) Available Beds = child and adolescent acute psychiatric inpatient beds as defined in N.J.A.C. 8:43E-4.3 which have been approved through the Certificate of Need process or are in operation. Beds allocated to each county are based on the averaging of distribution by population and actual bed usage.

(d) Data requirements are as follows:

1. Data utilized in (b)7 above shall be updated by the N.J. Department of Health in conjunction with the Department of Human Services and published annually.

2. Data in (b)9 above regarding the mental health risk factor is developed by the Division of Mental Health and Hospitals and will be updated every three years. Copies can be obtained by writing to the Division at 13 Roszel Road, Princeton, N.J. 08540, or by calling (609) 987-0887.

3. Data utilized in (c) above shall be updated by the Department of Health at least 45 days prior to the Certificate of Need application submission. Copies of information for (b)7 and (c), can be obtained by writing to Health Systems Services, CN 360, Room 604, Trenton, N.J. 08625, or by calling (609) 292-5960.

(e) Each applicant must also justify the need for the number of Child and Adolescent Acute Psychiatric Beds proposed in the Certificate of Need application through provision of the following documentation:

1. A description of alternative settings and treatment models that are currently available for the provision of psychiatric services to emotionally disturbed children and adolescents in the service area, and a justification of the need to utilize an inpatient setting to accomplish treatment goals. The applicant must discuss how the proposed program/service would fit into a comprehensive system of care. Applicants must show linkages with these services through a formal affiliation agreement between the applicant and those community agencies/services whose geographic service area(s) coincide with the applicants' proposed primary service area(s). No child or adolescent acute psychiatric service will be approved where the use of alternative, less costly settings or models of care is determined to be available for the appropriate and effective treatment of the identified target population.

2. Projected average length of stay must be demonstrated to be clinically appropriate through analysis of current length of stay data in facilities treating similar populations in New Jersey and must conform to N.J.A.C. 8:43E-4.9.

3. Projected numbers of admissions to the proposed children's acute psychiatric beds must be justified through identification of major referral sources and documentation through letters of support of the numbers of patients who would be likely to be referred on an annual basis if the proposed service was established. These would include local designated emergency/screening services, general hospitals, community mental health agencies, the Division of Youth and Family Services (DYFS), the family court, family crisis intervention units, and detention centers.

(f) In addition to (a) through (e) above, when the application is submitted by or on behalf of an existing provider for the purpose of increasing existing Child and Adolescent Acute Psychiatric Bed capacity, the applicant must additionally demonstrate the following:

1. Occupancy rates (based on total licensed bed capacity) for the previous 12 months must meet or exceed the following percentages

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in relation to unit size: over 16 beds—90 percent; 12 to 15 beds—85 percent; 11 beds or less—80 percent. At the proposed new capacity, it must be demonstrated that annual occupancy will exceed 80 percent within two years of operation.

2. Average length of stay (ALOS) must not exceed 110 percent of ALOS in existing Child and Adolescent Acute Psychiatric Beds statewide based on data reported to the Department for the previous calendar year.

3. Numbers of target population patients admitted during the previous two calendar years, their average length of stay, and patient days.

4. Numbers of target population patients referred but not accepted during the last two calendar years, and an explanation of their disposition.

(g) Applicants seeking to establish Child and Adolescent Acute Psychiatric Beds must meet the criteria mentioned below as well as the provisions at N.J.A.C. 8:43E-4.11. The applicant must directly or indirectly through Affiliation Agreements as required in N.J.A.C. 8:43E-4.5(e)1, and 8:43E-4.8 provide the following services:

1. \*[Designated emergency and screening service, as defined in N.J.S.A. 30:9A and N.J.S.A. 30:4-27, P.L. 1987 Chapter 116, for the service area encompassed within the geographic area served by the proposed unit.]\* Referral to the proposed Child and Adolescent Acute Psychiatric Service by the appropriate designated emergency and screening service shall be in accordance with the \*[procedures set forth at N.J.S.A. 30:4-27, P.L. 1987, Chapter 116, governing admission to inpatient facilities for the treatment of persons who are mentally ill]\* **\*rules governing the commitment of children R.4:74(j) (Rules Covering the Courts of the State of New Jersey)\***;

2. Intensive inpatient care which focuses on crisis intervention directed towards the resolution of a psychiatric emergency and an attempt to restore the child to his or her previous level of functioning;

3. Diagnostic evaluations to assess all the factors contributing to the child's emotional status;

4. Community outreach services for the purpose of providing case consultation and crisis intervention to prevent unnecessary hospitalization or a disrupted placement;

5. Case management services for the purpose of linking children and families to the appropriate array of aftercare services. This service would maintain advocacy responsibility for the child upon discharge (whether to a more intensive or to a less restrictive service) to insure that services to the child and adolescent are prioritized and coordinated by the various agencies involved in providing aftercare services to the child and family;

6. Community mental health services, including outpatient and partial care services, as defined in the *Rules and Regulations Governing Community Mental Health Services under the Community Mental Health Services Act N.J.S.A. 30:9A-1 et seq.* An exception will be permitted for applicants not providing these services where written affiliation agreements exist and the CMHC(s) within the proposed service area provide letters of support for the project;

7. An information and referral system to provide guidance and direction to referral source agents for children and adolescents for whom hospitalization has been deemed inappropriate or when the unit is at capacity by providing assistance to the referral source in securing the necessary alternative service(s) and by providing follow-up to determine if these services were obtained. Specific procedures and transfer agreements with specialized facilities for patients who cannot be accommodated on the unit shall be established and documented.

## 8:43E-4.6 Admissions criteria

(a) Written admissions criteria and policies must be developed by the facility and included as part of the Certificate of Need application.

(b) Written admissions criteria shall at a minimum address the following:

1. Diagnostic and other patient characteristics or factors both acceptable and not acceptable for admission;

2. For those individuals deemed ineligible for admission to the facility, a description of referral procedures to a more appropriate facility;

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3. Policy on acceptance of individuals without or with limited ability to pay for treatment;

4. Policy on acceptance of individuals with Medicaid insurance coverage;

5. Policy on the treatment of individuals requiring both psychiatric and medical care;

(c) Admissions criteria shall reflect the following:

1. The designated emergency screening service shall be the route of entry for patients in those areas which have a functioning service available. For areas without a designated or functioning screening service the applicant shall describe the procedure to credentialed professionals with admitting privileges. Children and adolescents who have been evaluated by a credentialed professional can be seen directly by a children's inpatient service, and may be admitted in accordance with admission procedures established by the applicant and contained in the application.

2. Provisions for accepting children in crisis.

3. Method for assuring that alternatives to inpatient hospitalization have been fully evaluated and deemed inappropriate or unavailable prior to admission.

(d) The facility, or parts thereof, must provide assurances that it will request designation as a Mental Hospital or as a Children's Crisis Intervention Service by the Commissioner of the Department of Human Services for the provision of Child and Adolescent Acute Psychiatric Services.

(e) The admissions policy must assure that priority will be given to:

1. Children and adolescents who are at immediate risk of serious physical harm to self or others or of causing serious damage to property due to impaired judgement; and who display severely disruptive behavior, or intentional self-injury, or impulses to assault others or damage property;

2. Children or adolescents who are diagnosed as suffering from a serious psychiatric disorder with acute or severe behavioral disorganization who are unknown to the system and who need a complete diagnostic assessment and evaluation in order to determine the most appropriate range of services to prevent them from being served inappropriately or from going untreated;

3. Children and adolescents who have previously received psychiatric inpatient treatment and/or who have severe, incapacitating psychiatric disorders which require immediate treatment to prevent further deterioration;

4. Children and adolescents who present behavior problems associated with major mental illnesses which are too severe to be managed at a less intensive level of care. Alternatives to inpatient care should be fully evaluated and deemed inappropriate or unavailable prior to admission;

5. Children and adolescents with a secondary diagnosis \*[if]\* **\*of\*** chemical dependency or retardation will be considered for admission only if there is another primary psychiatric diagnosis.

## 8:43E-4.7 Accessibility of care

(a) Provisions for assigning all admissions, including the medically indigent, to the applicant's psychiatric staff shall be documented.

(b) For facilities under the Standard Hospital Accounting and Rate Evaluation (SHARE) system, at N.J.A.C. 8:31A-1.1 et seq., the following thresholds have been established concerning payment for services:

1. Medicaid participation shall be considered a desirable feature of the Certificate of Need application by the Department of Health and will be given preference during the review process. If an applicant is not presently certified by Medicaid, the applicant must show evidence that an application for Medicaid participation has been submitted in order to receive such departmental preferences.

2. A minimum of 10 percent of the total occupied acute psychiatric bed complement shall be utilized annually for medically indigent patients within all Child and Adolescent Acute Psychiatric units. Within the 10 percent, a minimum of five percent must be available for free care to individuals under the Community Services Administration (CSA) poverty guidelines, with the balance available to individuals under partial pay arrangements. For existing facilities seeking to add adult, child and/or adolescent psychiatric beds, this require-

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ment must be met in all licensed psychiatric beds of the facility at the completion of the project and prior to licensure of the new beds. The Department may consider exceptions to this requirement for facilities which demonstrate a significant financial hardship based on the case mix of patients by payer source.

3. Access to services by patients with insurance coverage from all primary payer sources shall be demonstrated in the proposed or existing case-mix of the facility. This shall be documented by data or admissions policies providing that a minimum of 50 percent of the patient case-mix shall be medically indigent or covered by non-investor owned insurance carriers, including Medicaid and Blue Cross/Blue Shield. For existing facilities, this requirement must be met in all licensed psychiatric beds of the facility at the completion of the project and prior to licensure of the new beds.

(c) The applicant must assure that it has a treatment policy whereby no patient will be discharged prior to the completion of treatment as a result of the inability to pay, except based on free choice by the patient or the patient's family. Existing facilities will document implementation of this policy by providing average length of stay data by payer source and diagnosis.

(d) The applicant must assure that individuals previously hospitalized in either a State or County psychiatric facility will not be denied admission to the unit solely because of such previous hospitalization.

(e) The applicant must assure that individuals with a diagnosis of alcoholism and/or drug abuse exclusively (and with no primary psychiatric diagnosis) will not be accepted for treatment in the psychiatric unit. Referral agreements with appropriate facilities designated for substance abuse treatment must be in evidence. Admission of patients with dual diagnoses of substance abuse and a primary psychiatric diagnosis are acceptable for admission where an applicant demonstrates availability of appropriate clinical services for this population.

(f) The applicant must assure compliance with all applicable Civil Rights and non-discrimination requirements of Federal and New Jersey law.

(g) All applicants must submit an annual report documenting compliance with these accessibility requirements. The Department may assess licensure or rate-setting penalties for non-compliance with Certificate of Need conditions.

## 8:43E-4.8 Continuity of care

(a) Applicants for acute psychiatric services for children and adolescents must present evidence that linkages will be established with community mental health agencies offering child and adolescent mental health emergency/screening, crisis intervention, outpatient care, partial hospitalization, case management and residential and group home care; with school systems\*, **youth correction facilities\*** and the local district offices of the Division of Youth and Family Services (DYFS) within the applicant's primary service area. Specific affiliation agreements with specialized facilities for patients who cannot be accommodated on the unit/facility should be established (for example, specialized programs for chemically addicted youth or youth with severe developmental disabilities which may impede their ability to participate in the therapeutic milieu of the inpatient program).

(b) The purpose of the affiliation agreements is to assure a full range of community-based services to emotionally disturbed youth and to develop a formal mechanism of communication and referral between public and private providers of services to the target population. Applicants are expected to participate in a system of care by showing evidence that written agreements have been established with other general hospitals, community mental health agencies, DYFS, **\*youth correction facilities and other parts of\*** the juvenile justice system, local education authorities and state or county hospitals (where appropriate) in the proposed service area as outlined in N.J.A.C. 8:43E-4.5(e)1 **\*[above]\***. These affiliation agreements are to clarify admissions, referral, transfer, discharge, and service relationships between agencies. At a minimum, the affiliation agreements should address the following areas:

1. A description of the psychiatric patient population to be served by the unit;

2. Clear guidelines for admission to the children's acute psychiatric service, for integrating medical care, for handling crises and providing emergency backup support;

3. The development of a referral process for transfer of patients needing aftercare services and/or hospitalization or residential placement in a longer-term facility;

4. Case management responsibilities and treatment services; and

5. Policies regarding third party reimbursement.

## 8:43E-4.9 Average length of stay—Child and Adolescent Acute Psychiatric Services

Projected average length of stay (ALOS) in facilities proposing new Child and Adolescent Acute Psychiatric Beds shall not exceed 110 percent of ALOS of all existing Child and Adolescent Acute Psychiatric Units in the state, as reported in the full last calendar year of data available to the Department, and shall not exceed 30 days.

## 8:43E-4.10 Aftercare services

(a) The applicant shall demonstrate how all patients, regardless of the ability to pay, shall have arrangements provided for follow-up care on an outpatient basis to reduce recidivism and to prevent further deterioration which would require a more restrictive level of care. Aftercare services may be provided by the applicant directly or by referral to agencies with which the applicant has affiliated pursuant to N.J.A.C. 8:43E-4.8. At a minimum, aftercare services should provide linkages for clinical case management, partial hospitalization, crisis intervention, and respite care.

(b) The applicant shall also describe the mechanism by which needed residential or other specialized services are procured. The applicant shall assure availability of those services necessary to meet the needs of patients who are unable to utilize community mental health centers or private practitioners.

(c) In order to assure that the child receives the necessary aftercare services, a case management system is needed while the child is an inpatient, and will be continued upon discharge. The application shall fully describe the case management function.

## 8:43E-4.11 Impact on area psychiatric units

(a) Occupancy rates in all existing Child and Adolescent Acute Psychiatric Units impacted by the proposed new units or facility shall meet or exceed the following percentages in relation to unit size prior to the approval of additional Child and Adolescent Acute Psychiatric Beds: 16 to 20 beds—80 percent; 12 to 15 beds—75 percent; 11 beds or less—70 percent.

(b) The applicant must demonstrate that the proposed bed addition will not negatively impact utilization of existing Child and Adolescent Acute Psychiatric Units in the proposed service area. In reviewing impact, the review process may consider such issues as geographic accessibility, economic and financial efficiencies, referral patterns, commitment to serve the indigent, the demonstration of innovative financing mechanisms for the provision of indigent care, and the quality of services offered. Submission of statements from affected hospitals indicating support or no projected impact shall be considered evidence in demonstrating compliance with this standard.

## 8:43E-4.12 Treatment program, staffing pattern, and discharge planning

(a) The proposed treatment program, staffing pattern, and discharge planning process must be identified within the Certificate of Need application. All applicants for Child and Adolescent Acute Psychiatric Beds must demonstrate the ability to comply with State psychiatric licensure standards as well as the current Joint Committee on Accreditation of Hospitals (JCAH) Standards applicable to psychiatric facilities and units, Title XIX (Medicaid) licensing and staffing standards, and appropriate seclusion and restraint standards. The treatment program and staffing pattern must be fully described and their clinical appropriateness clarified.

(b) The treatment program consists of the following:

1. The inpatient program shall provide a full range of psychiatric diagnostic and therapeutic interventions including, but not limited to, individual, group, psychopharmacological, family, and milieu therapy. The unit shall also make provisions for education and recreational activities. The applicant shall discuss the therapeutic rationale and the role of the various program components. The

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framework which will be used in organizing the daily activities shall be described. Further, the applicant shall discuss those measures which will be instituted to assure the availability of an ongoing and active treatment program.

2. The applicant shall discuss the provisions which will be made for the patient's nonpsychiatric care (that is, medical, dental).

3. The treatment program shall minimally focus on the following goals:

i. To protect the child or adolescent from harming himself or others;

ii. To conduct a detailed evaluation of child or adolescent's family for the purpose of providing a comprehensive diagnostic picture. This evaluation should take into consideration all the factors contributing to the child's emotional status (that is, developmental issues, cognitive functioning, sociocultural and familial factors, interpersonal relationships and physical health.) The assessment should include an identification of the child or adolescent's strengths as well as his or her deficiencies. Both of these sources of data shall be used as the basis for the development of the child or adolescent's treatment plan;

iii. To use interdisciplinary assessment as the basis for the development of an individualized treatment plan which includes the coordination of service needs upon discharge;

iv. To stabilize and treat the child or adolescent's acute disorder and to prepare the child or adolescent for the next phase of treatment at either a less intensive or more intensive level of care;

(c) The staffing pattern consists of the following:

1. The application shall describe the management, organization, and staff that will be available on the unit during specific hours of operations, including evenings, nights, and weekends. Applicant shall present the criteria which will be used in organizing staff into the various service delivery components.

2. Until licensure standards are adopted by the Department of Health, the child or adolescent's acute psychiatric program should be staffed with a multidisciplinary team which should include the following: a board certified or eligible child psychiatrist and a board certified or eligible pediatrician, child psychologist, social worker, special education teacher, occupational, nursing and child care staff, and availability of other consultants as required to meet the special needs of the patients served (for example, pediatric neurologist, speech and language specialists, etc.) a case manager is a critical member of the treatment team and must be included as part of the staffing complement. A case manager should have working knowledge not only of child and adolescent development and mental health programs but of related health, education and social service resources in order to facilitate the child or adolescent's treatment plan.

3. The program should have adequate personnel and outreach capacity to evaluate the child's family and to work with the family on an ongoing basis while the child is in treatment.

(d) Discharge planning consists of the following:

1. The structure of the discharge planning process shall be described in the Certificate of Need application. Discharge planning should be viewed as an integral part of the child or adolescent's treatment plan and should therefore begin at intake.

2. In order to facilitate a smooth transition for the child or adolescent and coordination of the appropriate aftercare services, those individuals who will provide for the child or adolescent's post-discharge needs should be involved in the discharge planning process (that is, the patient, natural parents, foster family, therapeutic group home or residence and representatives from all appropriate agencies/services which will be involved with the child or adolescent).

3. The discharge planning system must show evidence that it is designed to effectively reduce length of stay to the most efficient, clinically appropriate level.

4. The following data should at a minimum be available to guide the discharge planning process:

i. A comprehensive psycho-social history to help determine future service needs;

ii. A comprehensive summary of all assessments which have been conducted (for example, psychiatric, physical, social, familial, economic, legal, vocational, and educational) along with a report on the

child's progress and response to corresponding therapeutic interventions during hospitalization.

5. Referral/affiliation agreements for follow-up care must be in evidence. Referral/affiliation agreements must address the basic areas identified in N.J.A.C. 8:43E-4.8.

6. The applicant shall describe the mechanism which will be employed to assure that the aftercare services which are deemed to be clinically necessary for each patient upon discharge are made available.

#### 8:43E-4.13 Appropriateness of cost for facilities under SHARE reimbursement

(a) The projected SHARE reimbursement rate and projected per diem charges to private pay patients and commercial insurers must be provided in the Certificate of Need application. Sufficient details to determine the basis for these projections must be made available to the Department.

(b) The applicant must demonstrate that the proposed program design and staffing pattern will permit charges for direct patient care costs to be within an acceptable range of state-wide average charges for existing child or adolescent acute inpatient units as determined by the Department.

(c) The projected rates must be determined reasonable by the Department in comparison to average per diem rates of existing New Jersey facilities providing Child or Adolescent Acute Psychiatric Services within two years of operation.

(d) The method of physician billing to patients shall be detailed. Any physician costs included in the per diem rates shall be itemized and the projected charges identified.

(e) All ancillary and clinical support services which may be routinely provided to and charged to patients shall be detailed. A list of standard laboratory tests required upon admission shall be provided. No project shall be approved unless all mandatory laboratory and diagnostic tests as required are justified as medically necessary by the applicant.

(f) The policies and procedures for informing patients of the charges for care prior to or upon admission must be detailed.

(g) The number of single-bedded rooms must be itemized and justified.

#### 8:43E-4.14 Capital financing

Financing construction, modernization/renovation, or major moveable equipment projects requires a minimum equity contribution from the applicant of at least 15 percent of total project costs, including all financing and carrying charges. Where a hospital demonstrates financial hardship to the satisfaction of the Department, this equity requirement may be reduced by one-half of one percent for each full percentage point the hospital uncompensated care percentage exceeds the statewide average uncompensated care percentage for acute care hospitals.

#### 8:43E-4.15 Physical environment

(a) Services should be provided in an identifiable unit with adequate space to have areas for sleeping, dining, education, recreation, occupational/recreational therapy, and offices for evaluation and treatment, as well as provisions for outdoor space and space for non-therapeutic social activities. The unit should reflect a home-like environment to the extent possible; the design of the unit and its furnishings should be age appropriate. The relationship of the unit to other services and other factors designed to enhance the program should be considered in determining the location of the unit.

(b) The design of the facility should, within reasonable construction cost guidelines and consistent with applicable Federal and State life-safety and BOCA codes, provide the most appropriate clinical environment to meet treatment goals. Adequate space should be provided for the treatment staff either on, or in close proximity, to the unit. A floor plan or rough drawing of the proposed new facility or unit(s) should be contained in the application to demonstrate compliance with these standards and consistency with the proposed treatment plan.

#### 8:43E-4.16 Local endorsement guidelines

The applicant must document adequate evidence of local support for the project in the proposed service area by submitting letters of

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endorsement from recognized mental health service delivery agencies, including State and/or County funded community mental health agencies, and general hospitals providing psychiatric inpatient services, as well as endorsement from local schools, local offices of DYFS and the juvenile justice system.

**8:43E-4.17 Standards regarding County Mental Health Board review**

The County Mental Health Board(s) of the service area proposed to be served by the applicant shall receive a copy of the Certificate of Need for their formal action at the time of submission to the Department. A letter of endorsement from the Board(s) or its Administrator reflecting Board action shall be considered a significant factor in assessing local need for the project. County Mental Health Board comments should be forwarded to the Department of Health, Health Systems Agencies, and to the Division of Mental Health and Hospitals in a timely manner consistent with Certificate of Need procedures as identified in N.J.A.C. 8:33-3.1 et seq.

**8:43E-4.18 New Jersey Department of Human Services endorsement**

The Department of Human Services shall review every application for Child and Adolescent Acute Psychiatric Beds. This review will be based upon the criteria contained within these rules. A statement of non-endorsement by the Department of Human Services, due to the applicant's inability to meet the criteria for designation as a Mental Hospital or a Children's Crisis Intervention Service shall constitute a reason for denial by the Department of Health.

**8:43E-4.19 Data**

Each applicant will provide such utilization data as required by the Department of Health in order to implement the planning assessments necessary under the rules as part of an ongoing process of collecting, analyzing, and evaluating data pertaining to the psychiatric treatment of children and adolescents.

**8:43E-4.20 Competitive review**

(a) Where the need in a service area for additional Child and Adolescent Acute Psychiatric Beds has been demonstrated, and more than one applicant has filed a Certificate of Need to establish such services, the Department may approve only the number of applicants necessary to provide the estimated number of beds needed in the area. In making a determination, the Department will give priority to the applicant or applicants who, relative to all other projects, demonstrate the fullest level of compliance with the following criteria:

1. Full compliance with all standards and guidelines in these rules;
2. The highest level of access to services by the medically indigent and by persons under cost-based insurances;
3. Projects which can be implemented in the most cost effective and efficient manner, measured by capital costs, projected per diem charges, and reduction of excess acute care bed capacity in the area;
4. Projects which most closely conform to bed need for Child and Adolescent Acute Psychiatric Beds in the area, as presented in N.J.A.C. 8:43E-4.5;
5. Projects which meet the standard for geographic accessibility, where one could reach the unit from any point in the applicant's primary service area within one hour of travel time;
6. Projects which are determined to provide the highest level of quality in the proposed services based on staffing, program, and linkages to assure aftercare services;
7. Projects which demonstrate the greatest local endorsement including letters of support from Local Health Planning Agencies, County Mental Health Board(s), mental health providers and other entities as outlined in N.J.A.C. 8:43E-4.16 in the proposed service area;
8. Projects which have the endorsement of local school districts, local DYFS district offices, local jurisdictions of the Family Court, Family Crisis Intervention Units, and local detention centers;
9. Projects which demonstrate affiliation with residential and other ambulatory services including partial hospitalization, local schools, outpatient services, and crisis intervention services for the purpose of linking the child and family to the appropriate aftercare services.

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**8:43E-4.21 Enforcement and sanctions**

(a) The Department in conjunction with the Department of Human Services shall monitor compliance with the terms and conditions of approved applications. The Department will determine whether the recipient of a Certificate of Need or its successor is operating a service which materially complies with the representations made in its application for that Certificate of Need and conditions assigned to its Certificate of Need approval. Failure to document compliance shall constitute an adequate basis for licensure suspension or revocation.

(b) Upon notice of the proposed denial of an application for the Certificate of Need or suspension or revocation of the license, the applicant/licensee shall have the right to request a hearing within 30 days in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14B-9, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1-1 et seq.

**HUMAN SERVICES**

**(a)**

**DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES**

**Administration Manual, Hospital and Special Hospital Manual, Physicians Manual, Nurse-Midwifery Services, Independent Clinic Manual Comprehensive Maternity Care Services and Comprehensive Pediatric Care Services (HealthStart)**

**Notice of Correction: N.J.A.C. 10:49-3.20**

**Take notice** that an error appears in the February 1, 1988 issue of the Register at 20 N.J.R. 287. HCPC Code W9069 should read:

W9069	HealthStart Pediatric Care Registration	\$13.00 \$13.00
	Case coordination activities including, but not limited to: —appointment reminders (by telephone and/or letter) —follow-up on referrals and missed appointments —*provisions or arrangement for* 24 hour telephone access	

NOTE: Procedure code W9069 \*[is to]\* \*may\* be billed only in conjunction with\*:\*

\*(1)\* the Early \*and\* Periodic Screening, Diagnosis and Treatment (EPSDT) examination (code W9820), performed \*[at the child's first HealthStart visit and at annual intervals.]\* \*in the physician's office or in the independent clinic, or;

**2. the Annual Health Maintenance examination (Code 90753, 90754, 90763 or 90764) performed by a HealthStart physician in a hospital outpatient department where physicians bill independently for professional services.\***

Hospital outpatient departments are prohibited from using this code. A completed HealthStart Pediatric Preventive Child Health form must accompany the Health Insurance Claim Form 1500-N.J. \*[and MC-19.]\* \*A completed Form MC-19 is also required when billing Code W9820.

NOTE: EPSDT examination or Annual Health Maintenance examination code replaces the age appropriate HealthStart Pediatric Preventive Care Visit code.\*

**INSURANCE****(a)****DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION****Obligations of Licensees to the Public and to Each Other****Adopted Amendment: N.J.A.C. 11:5-1.23**

Proposed: September 8, 1987 at 19 N.J.R. 1621(a).

Adopted: November 10, 1987 by New Jersey Real Estate Commission, Daryl G. Bell, Executive Director

Filed: January 14, 1988 as R.1988 d.69, **with substantive and technical changes** not requiring additional public notice and comments (See N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 45:15-6

Effective Date: February 16, 1988

Operative Date: March 1, 1988

Expiration Date: November 7, 1988

**Summary of Public Comments and Agency Responses:**

The Real Estate Commission received 13 written comments on this proposed amendment to N.J.A.C. 11:5-1.23(c). A total of nine written and three verbal comments supported adopting the proposal. Several of those comments included recommendations of non-substantive changes, primarily directed to the language of the waiver form which the rule mandates be used in situations where brokers are directed by their principals not to cooperate with other licensees. In addition, the Commission received three comments which expressed opposition to the proposed amendment and one which was neutral. Furthermore, an inquiry was made in regard to the impact the proposed amendment will have on existing procedures used by brokers to establish office exclusive listings. The contents of the comments and the Commission's response to them are summarized below.

**COMMENTS:** The majority of the comments received by the Commission approved the proposed amendment. However, several of these comments recommended changes to ensure that licensees and the selling public are fully advised of the effect of a Waiver of Broker Cooperation. The Commission received several suggestions to expand the language of the introductory statement in the waiver form entitled "Note", so as to more fully explain the potential disadvantages of the waiver (that is, that such a waiver may result in a property selling less quickly and at a lower price than if marketed with the cooperation of other brokers). Other favorable comments suggested that the Commission incorporate language which would require the disclosure of the exact percentage or amount of commission split offered to cooperating brokers. Finally, some favorable comments suggested revising the disclosure statement on the effect of a waiver of cooperation by having it indicate that such waivers "shall" rather than "may" result in a property selling more slowly and/or at a lower price than would be the case were it marketed on a cooperative basis.

One comment submitted in opposition to the proposed amendment asserted that it lacks sufficient language to assist the consumer in making an informed decision regarding broker cooperation. That comment suggested further that the Commission adopt the more detailed waiver language which appeared in the prior proposal on this rule, which was published in the New Jersey Register on August 18, 1986 at 18 N.J.R. 1680(a).

Two other comments asserted that the proposal is "offensive and misdirected" and "unnecessary and unfair", respectively, because the language in the proposal puts a negative connotation on all non-cooperative listings, including those involving commercial properties, which are frequently marketed on a non-cooperative basis.

**RESPONSE:** As suggested by most of the comments received, and in the interest of providing full disclosure to and assuring a complete understanding by a seller prior to his or her execution of a waiver of broker cooperation, the Commission determined to adopt this rule with the addition of more detailed wording in the waiver form, so as to more fully inform sellers of the potential negative effects of waiving broker cooperation.

The Commission disagreed with the comments which alleged that the language of the proposed amendment is offensive and misdirected or prejudicial. The objective of this amendment is to ensure that the property

owner is aware of the potential adverse consequences of a Waiver of Broker Cooperation. The intent of this amendment is to eliminate the abuse of non-cooperative listings by unscrupulous brokers who may obtain such listings from unknowledgeable property owners. The amended rule clearly provides for an owner to enter into a non-cooperative listing agreement if, after being advised of the potential negative effects of a waiver of cooperation, he or she, as opposed to the broker, decides that their interests are best advanced by such an arrangement.

The comments which suggested changing the word "may" to "shall" in the text of the waiver form were rejected, because it is conceivable that a property marketed on a non-cooperative basis might sell as quickly and at as high a price as it would have were it cooperatively listed.

The comments which urged inclusion of language which would mandate the disclosure of commission splits on listing agreements were duly noted by the Commission. However, as this proposal is directed to the procedures to be followed on non-cooperative listings, which per se do not involve splits of commissions with cooperating brokers, it was decided that the concerns raised in those comments would be addressed in the context of deliberations upon the need for amendments to the rules dealing directly with commission splits, N.J.A.C. 11:5-1.33 and 34.

One comment also noted that the proposed change to the first sentence of subsection (c), which referred to cooperation with all other brokers "on an equal basis", could result in confusion, as that language is susceptible to being interpreted in a way which would contradict the language of the above-referenced rules which directly address commission splits. In an effort to avoid any such confusion, the text of this portion of the amendment has been revised to clarify that commission splits continue to be governed by those rules. This is a clarifying revision to the proposal, not requiring republication.

**Full text** of the adoption follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

11:5-1.23 Obligations of licensees to the public and each other  
(a)-(b) (No change.)

(c) Every licensee shall fully cooperate with all other New Jersey licensees **\*[on an equal basis.]\*** **\*utilizing cooperation arrangements which shall protect and promote the interests of the licensee's client or principal. Commission splits shall be governed by the provisions of N.J.A.C. 11:5-1.33 and 11:5-1.34.\*** Full cooperation requires a listing broker to transmit to their principal(s) all written offers submitted through the offices of other licensees on properties listed with the listing broker. Full cooperation also requires listing brokers not to place restrictions upon the showing of properties listing with them to prospective purchasers who are working through cooperating brokers. This obligation shall be a continuing one unless the client or principal, with full knowledge of all relevant facts, expressly relieves his agent from this responsibility. Should the client or principal direct the licensee not **\*to\*** cooperate with all other licensees, evidence of this intent shall be in writing in the form of a WAIVER OF BROKER COOPERATION as set forth below and signed by the client or principal. Copies of this WAIVER OF BROKER COOPERATION and of the listing agreement to which it relates shall be provided to the client or principal and to their authorized representative by the Broker. This waiver shall become a part of the listing agreement at the time it is signed, and shall be made available for inspection by other Brokers upon request. However, no direction or inducement from the client or principal shall relieve the licensee of his responsibility of dealing fairly and exercising integrity with all other licensees.

**WAIVER OF BROKER COOPERATION**

**\*[NOTE: SALES POTENTIAL MAY BE LIMITED BY THE USE OF THIS WAIVER]\***

**\*I UNDERSTAND THAT COOPERATION AMONGST BROKERS PRODUCES WIDER EXPOSURE OF MY PROPERTY AND MAY RESULT IN IT BEING SOLD OR LEASED SOONER AND AT A HIGHER PRICE THAN WOULD BE THE CASE WERE MY BROKER NOT TO COOPERATE WITH OTHER BROKERS. I FURTHER UNDERSTAND THAT WHEN MY BROKER COOPERATES WITH OTHER BROKERS, I CAN STILL HAVE THE ARRANGEMENTS FOR THE SHOWING**

**ADOPTIONS**

**LAW AND PUBLIC SAFETY**

**OF THE PROPERTY AND ALL NEGOTIATIONS WITH ME OR MY ATTORNEY MADE ONLY THROUGH MY LISTING BROKER'S OFFICE, SHOULD I SO DESIRE.**

However, despite my awareness of these factors, I direct that this\* [This]\* property is to be marketed only through the efforts of the Listing Broker. This listing is not to be published in any multiple listing service. I will only consider offers on this property which are obtained by, and I will only allow showings of this property to be conducted by the Listing Broker or his or her duly authorized representatives. THE LISTING BROKER IS HEREBY DIRECTED NOT TO COOPERATE WITH ANY OTHER BROKER.

By signing below, the parties hereto confirm that no pressure or undue influence has been exerted upon the owners as to how this property is to be marketed by the Listing Broker.

The owner(s) further confirm receipt of a fully executed copy of the listing agreement on this property, and of this Waiver of Broker Cooperation form.

DATED: \_\_\_\_\_ Owner \_\_\_\_\_  
 \_\_\_\_\_ Owner \_\_\_\_\_  
 \_\_\_\_\_ Listing Broker \_\_\_\_\_  
 By: Authorized Licensee or Broker \_\_\_\_\_

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

**LABOR**  
**(a)**

**DIVISION OF WORKPLACE STANDARDS**  
**Safety and Health for Public Employees**  
**Benzene**

**Adopted Amendment: N.J.A.C. 12:100-4.2**

Proposed: December 7, 1987 at 19 N.J.R. 2239(a)  
 Adopted: January 22, 1988 by Charles Serraino, Commissioner, Department of Labor

Filed: January 22, 1988, as R.1988 d.86, with technical changes not requiring additional public notice and comment (See N.J.A.C. 1:30-4.3)

Authority: N.J.S.A. 34:6A-25 et seq., specifically 34:6A-30: 29 CFR Part 1910

Effective Date: February 16, 1988  
 Expiration Date: November 5, 1989

**Summary of Public Comments and Agency Responses:**

The New Jersey Department of Labor held a comment period open until January 11, 1988. The Department also solicited comments from a list of interested parties. These interested parties are listed below:

- New Jersey Association of School Administrators, Trenton, N.J.;
- New Jersey Conference of Mayors, Asbury Park, N.J.;
- New Jersey Business and Industry Association, Trenton, N.J.;
- New Jersey State Chamber of Commerce, Trenton, N.J.;
- American Industrial Hygiene Association, New Jersey Section, Cranbury, N.J.;
- American Society of Safety Engineers, New Jersey Section, Cranford, N.J.;
- New Jersey State Safety Council, Cranford, N.J.;
- New Jersey State League of Municipalities, Trenton, N.J.;
- New Jersey Association of Counties, Trenton, N.J., and
- New Jersey School Boards Association, Trenton, N.J.

No comments were received on the amendments. Editorial changes were made to subsection (a) to promote clarity and conciseness.

Full text of the adopted amendment follows (additions to proposal indicated in boldface with asterisks \*thus\*; deletions from proposal indicated in brackets with asterisks \*[thus]\*):

12:100-4.2 Adoption by reference

(a) The standards contained in 29 CFR Part 1910, General Industry Standards with \*[all]\* \*the\* amendments published in the Federal

Register through September 11, 1987 \*with certain exceptions noted in (b) and (c) below,\* are adopted as occupational safety and health standards \*[for the protection of public employees engaged in general operations and]\* shall include:

- 1.-18. (No change.)
- 19. Subpart Z—Toxic and Hazardous Substances
  - i. (No change.)
  - (b)-(c) (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: N.J.A.C. 12:100-4.2(a)19 was erroneously omitted from the Adoption Notice appearing in the October 19, 1987 issue of the New Jersey Register at 19 N.J.R. 1909(a).

**LAW AND PUBLIC SAFETY**  
**(b)**

**DIVISION OF CRIMINAL JUSTICE**  
**POLICE TRAINING COMMISSION**  
**Radar Instructor Certification**

**Adopted Amendment: N.J.A.C. 13:1-4.6**

Proposed: November 16, 1987 at 19 N.J.R. 2123(a).  
 Adopted: December 17, 1987 by Donald R. Belsole, Chairman, Police Training Commission.

Filed: January 21, 1988 as R.1988 d.83, without change.

Authority: N.J.S.A. 52:17B-71(h).

Effective Date: February 16, 1988.

Expiration Date: July 19, 1988.

Summary of Public Comments and Agency Responses:  
**No comments received.**

Full text of the adoption follows.

13:1-4.6 Certification requirements for instructors of specialized subjects

(a) Applicants who seek certification to instruct in specialized subjects must possess the basic qualifications set forth in N.J.A.C. 13:1-4.1 through 13:1-4.4 and, further, must comply with the following requirements:

- 1.-2. (No change.)
- 3. An individual seeking certification as a radar instructor at a commission-approved school or at a law enforcement agency must meet the following requirements:
  - i. Prior completion of a course for radar operators, which shall have included a minimum of eight hours of training consisting of four hours of classroom instruction and four hours of supervised practice training;
  - ii. Two years of experience as a radar operator, with a minimum of 80 hours of hands-on experience; and
  - iii. Successful completion of a commission-recognized course for radar instructors.

**(c)**

**DIVISION OF CONSUMER AFFAIRS**  
**STATE BOARD OF DENTISTRY**

**Dentist of Record; Fee Reimbursement**

**Adopted New Rule: N.J.A.C. 13:30-8.17**

Proposed: September 8, 1987 at 19 N.J.R. 1629(a).  
 Adopted: November 18, 1987, by Joseph A. Galletta, D.D.S., President, New Jersey State Board of Dentistry.

Filed: January 21, 1988 as R.1988 d.81, without change.

Authority: N.J.S.A. 45:6-1 and 45:1-22.

Effective Date: February 16, 1988.

Expiration Date: April 15, 1990.

**LAW AND PUBLIC SAFETY**

**ADOPTIONS**

**Summary of Public Comments and Agency Responses:**

COMMENT: The New Jersey Dental Association supports the proposed new rule and concurs that this measure will afford the consumer greater clarity and accountability with respect to their dental records.

Full text of the adopted new rule follows.

**13:30-8.17 Dentist of record; fee reimbursement**

(a) Each patient shall have a dentist of record who shall remain primarily responsible for assuring the proper implementation of the dental treatment plan on such patient regardless of whether the treatment is rendered by the dentist of record, by another dentist or by a dental hygienist rendering such treatment in conjunction with, in the employ of, at the direction or request of, or under the supervision of such dentist of record.

(b) The name of the dentist of record shall be conspicuously identified on the patient record. If the dentist of record is not identified on the patient record, it shall be presumed that the dentist of record is the owner(s) of the practice in which the patient was treated.

(c) Each dentist or dental hygienist shall sign or initial each entry on the patient record pertaining to the treatment he or she rendered. If no such entry appears on the patient record, it shall be presumed that such treatment was rendered by the dentist of record, unless the latter shall establish, to the satisfaction of the Board, the identity of the individual who rendered such treatment.

(d) In a multi-dentist practice, the dentist of record shall not change unless the subsequent treating dentist acknowledges in writing in the patient record that he or she is currently the dentist of record for the patient. The dentist of record shall be changed when such individual leaves the practice where treatment was provided and the patient elects to continue treatment in the facility in which treatment began.

(e) A new dentist of record shall be presumed to have obtained or reviewed the patient's medical history and dental records, examined the patient, and either developed a new treatment plan or concurred with the continuance of the pre-existing treatment plan.

(f) Any licensee found to have rendered deficient treatment and the owner of the facility in which the licensee rendered the deficient treatment shall be jointly and severally responsible for the reimbursement to the patient of any fees as may be directed by the Board.

**(a)**

**DIVISION OF CONSUMER AFFAIRS  
BOARD OF PSYCHOLOGICAL EXAMINERS**

**Examination Review Procedure, Transcript and Taping of Oral Examination**

**Adopted Amendments: N.J.A.C. 13:42-1.1 and 3.1**

Proposed: December 7, 1987 at 19 N.J.R. 2246(a).  
Adopted: January 11, 1988 by Annette Shteir, Ed.D., President, State Board of Psychological Examiners.  
Filed: January 21, 1988 as R.1988 d.82, **without change**.  
Authority: N.J.S.A. 45:14B-13.  
Effective Date: February 16, 1988.  
Expiration Date: November 3, 1988.

**Summary of Public Comments and Agency Responses:**

No comments received.

Full text of the adoption follows.

**13:42-1.1 Examination review procedure**

(a) (No change.)

(b) A candidate who fails the oral examination of professional practice may request a review of the examination. Such request must reach the Board secretary in writing within 45 days of the date of the letter of notification of examination results. The Board secretary will make the tape of the oral examination available to the candidate at the Board office on a mutually convenient date. Neither the candidate nor an agent of the candidate may tape the Board's copy of the oral examination tape during this or any review of the tape of the oral examination. A transcript of the oral examination, prepared

by a shorthand reporter, will be available to the candidate at the candidate's expense; however, this transcript may be obtained only for use in the appeal process.

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

**13:42-3.1 American Association of State Psychology Boards Exam; required**

(a) (No change.)

(b) All candidates passing the written examination shall then take an oral examination of their professional practice based on a work sample in accord with guidelines to be supplied to the candidate by the Board and as follows:

1. A current work sample representative of the candidate's present practice shall be presented prior to the oral examination. For the purposes of this rule, "current" work sample is defined to mean a work sample either in progress or completed no more than one year prior to submission of the work sample for the oral examination. The dates of client service shall be specifically mentioned on the cover page. Exceptions will be granted for good cause shown.

2.-3. (No change.)

(c) The oral examination shall be taped by the examiners for the purpose of creating a record. The oral examination may not be taped by the candidate.

**NEW JERSEY RACING COMMISSION**

**(b)**

**Thoroughbred Rules  
Horsemen Associations**

**Adopted New Rule: N.J.A.C. 13:70-1.30**

Proposed: August 3, 1987 at 19 N.J.R. 1418(a)  
Adopted: January 7, 1988 by the New Jersey Racing Commission, Bruce H. Garland, Executive Director  
Filed: January 20, 1988 as R.1988 d.75, **without change**.  
Authority: N.J.S.A. 5:5-30  
Effective Date: February 16, 1988  
Expiration Date: February 25, 1990

**Summary of Public Comments and Agency Responses:**

Of the funds allocated to the Horsemen's Benevolent and Protective Association (H.B.P.A.), N.J.A.C. 13:70-1.30(g) and (h) require at least 65 percent be devoted to funding for benevolent programs, with no more than 15 percent of such devoted funds used for the administrative costs and overhead of such programs. From the remaining allocated funds, the Commission and the H.B.P.A. are negotiating for the utilization of an additional five percent of the total allocation for benevolent programs, and 15 percent of the total allocation towards such programs' administrative costs and overhead. This plan under negotiation for use of allocated H.B.P.A. discretionary funds in conjunction with the requirements of this rule is referred to in the following comments and responses as the 70 percent/30 percent guideline.

COMMENT: Counsel for the H.B.P.A. opposed the setting of a 70 percent/30 percent guideline which pertains to benevolent programs and administrative costs. Counsel suggested that an amendment be made whereby any expenditure in excess of an approved line item budget would need further approval from the New Jersey Racing Commission.

RESPONSE: The New Jersey Racing Commission has authorized proposal of an amendment in the near future to the guidelines which would incorporate the suggestion by H.B.P.A. counsel that the Racing Commission have the right of approval for expenditures which would exceed a line item budget approval. However, the Racing Commission believes that 70 percent of the funds available being authorized for benevolent programs is a goal that the thoroughbred horsemen's organization should try to achieve and the adopted rule is valuable for that reason alone. The Racing Commission did not feel placing a limit of 30 percent expenditures on administration was an undue hardship on the thoroughbred horsemen's organization.

COMMENT: The New Jersey Racing Commission was in receipt of a letter from the accounting firm representing the New Jersey H.B.P.A. objecting to the 70 percent/30 percent guideline. On behalf of the

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H.B.P.A., the accountant also felt that the guidelines proposed for travel expenditures should be reconsidered.

**RESPONSE:** The proposed new rule depicts travel expenses as being reasonable if they conform to the New Jersey State Travel Regulations and any excess of that amount may require special justification and/or prior approval. The Commission is preparing an amendment to the rule to deal with the accounting firm representing the H.B.P.A.'s request to change the travel and expense reimbursement guidelines. However, the Commission believes that the rule be adopted at this time while the amendment process takes place.

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

## 13:70-1.30 Horsemen associations

(a) It shall be the intent of this rule to establish guidelines that ensure that funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute must be used to benefit all New Jersey horsemen. Membership in the Horsemen's Benevolent and Protective Association or the Standardbred Breeders' and Owners' Association shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members of the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association are excluded from this rule. However, funds acquired from sources other than the statutory allocation must be kept separate and apart from funds obtained from the statutory allocation.

(d) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall maintain adequate records concerning receipt of and distribution of funds allocated to them by statute. The New Jersey Racing Commission shall have access to all records maintained by the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association which relate directly or indirectly to funds allocated by statute.

(e) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall submit detailed budgets to the Racing Commission by December 15 of each year, identifying the source and use of funds, as well as any surplus or deficit that may result. The budget must also include the actual prior year's expenses in each category for comparison purposes. In addition, quarterly budget reports must be filed with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, as well as projected income and expenses for the remainder of the year.

(f) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall file audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, with the Commission by February 28 for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans and health and life insurance plans, is considered reasonable if the funding is at least 65 percent of the total statutory allocation. Whether or not a program will be considered a benevolent program will be decided upon application to the Racing Commission. Funding below 65 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead of administering these specific benevolent programs may not exceed 15 percent of the total dedicated to such programs.

(h) General administration and overhead expenses are considered reasonable if they are less than 15 percent of the statutory allocation. Funding above 15 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered reasonable if they conform to the New Jersey State Travel Regulations. For expenses in excess of amounts allowed under New Jersey

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State Travel Regulations, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the New Jersey Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If a surplus results at the end of a calendar year, the entire surplus must be applied to funds dedicated to benevolent programs in following years, as may be approved by the Commission.

(k) Violation of these rules may subject the organization to a fine not to exceed \$1,000 per violation.

**NEW JERSEY RACING COMMISSION****(a)****Thoroughbred Rules****Limitations on Entering or Starting Nerved Horses****Adopted Amendment: N.J.A.C. 13:70-20.11**

Proposed: October 5, 1987 at 19 N.J.R. 1788(a).

Adopted: January 7, 1988 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: January 20, 1988 as R.1988 d.77, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 16, 1988.

Expiration Date: February 25, 1990.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The New Jersey Racing Commission received comments on the initial proposal of this amendment at 19 N.J.R. 918(a) from Racing Commission veterinarians defining the proper veterinarian terminology that the Racing Commission should adopt in the proposal.

**RESPONSE:** The New Jersey Racing Commission repropoed the amendment with the recommended changes incorporated. The suggestions from the veterinarians more clearly defined anatomically where horses could be nerved.

**Full text** of the adopted amendment follows.

## 13:70-20.11 Limitations on entering or starting

(a) A trainer shall not enter or start a horse that:

1.-6. (No change.)

(b) Blocking of nerve functions via surgical neurectomy, cryogenic techniques, or any other desensitizing means, whether permanent or temporary, is defined as "nerving" and is subject to the following restrictions in New Jersey:

1. Only posterior digital "nerving" will be permitted on horses to be raced. The procedure must be performed posterior to the first phalanx at a level below the base of the sesamoid bones.

2. Horses that are "nerved" above the area specified in this subsection will not be permitted to race in New Jersey.

3. It shall be the responsibility of the trainer to report all "nerved" horses to the State Veterinarian or Associate State Veterinarian.

4. A list of all "nerved" horses shall be posted on the bulletin board at the entry room by the State Veterinarian.

**(b)****Harness Rules****Horsemen Associations****Adopted New Rule: N.J.A.C. 13:71-1.25**

Proposed: May 18, 1987 at 19 N.J.R. 856(a).

Adopted: January 7, 1988 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: January 20, 1988 as R.1988 d.76, **without change**.

Authority: N.J.S.A. 5:5-30.

Effective Date: February 16, 1988.

Expiration Date: February 25, 1990.

**LAW AND PUBLIC SAFETY**

**ADOPTIONS**

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The New Jersey Racing Commission received comments from counsel representing the New Jersey Standardbred Breeders' and Owners' Association (hereinafter referred to as "S.B.O.A.") regarding the proposed new rule dealing with travel and expense guidelines. It was the S.B.O.A. counsel's recommendation that the travel and expense guidelines should be subject to the internal regulations adopted by the S.B.O.A. Board subject to the approval of the New Jersey Racing Commission.

**RESPONSE:** The proposed new rule depicts travel expenses as reasonable if they conform to the New Jersey State Travel Regulations and any excess of that amount may require special justification and/or prior approval. The Commission is preparing an amendment to the rule to deal with the S.B.O.A.'s request to change the travel and expense reimbursement guidelines. However, the Commission believes that the rule be adopted at this time while the amendment process takes place.

**OFFICE OF ADMINISTRATIVE LAW NOTE:**  
N.J.A.C. 13:71-1.23, modification of penalties, was inadvertently omitted from the New Jersey Administrative Code (see proposal notice at 13 N.J.R. 820(a) and adoption notice at 14 N.J.R. 347(a)). The rule currently appearing at N.J.A.C. 13:71-1.23, smoking prohibited, should be codified as N.J.A.C. 13:71-1.24. Both rules should appear as follows.

**13:71-1.23 Modification of penalties**

The Commission may modify on its own motion any penalty or decision imposed by a racing official pursuant to the rules and regulations as herein contained.

**13:71-1.24 Smoking prohibited**

Smoking is prohibited under the shed row of any barn. Persons found violating this rule will be reported to the judges and shall be subject to a fine of \$25.00 for the first offense, \$50.00 for the second offense and to suspension for the third or subsequent violation.

**Full text of the adopted new rule follows:**

**13:71-1.25 Horsemen associations**

(a) It shall be the intent of this section to establish guidelines that ensure that funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute (N.J.S.A. 5:5-66) are used to finance programs to benefit all New Jersey horsemen and that administrative and overhead costs are reasonably related to such programs.

(b) Funds allocated to the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association by statute must be used to benefit all New Jersey horsemen. Membership in the Horsemen's Benevolent and Protective Association or the Standardbred Breeders' and Owners' Association shall not be a condition for receiving benefits.

(c) Amounts collected as voluntary dues from members of the Horsemen's Benevolent and Protective Association or the Standardbred Breeders' and Owners' Association are excluded from this rule. However, funds acquired from sources other than statutory allocation to these associations must be kept separate and apart from funds obtained from the statutory allocation.

(d) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall maintain adequate records concerning receipt of and distribution of funds allocated to them by statute. The New Jersey Racing Commission shall have access to all records maintained by the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association which relate directly or indirectly to funds allocated by statute.

(e) The Horsemen's Benevolent and Protection Association and the Standardbred Breeders' and Owners' Association shall submit detailed budgets to the Racing Commission by December 15 of each year for the following calendar year, identifying the source and use of funds and any surplus or deficit that may result. The budget must include the actual expenses to date for the current calendar year in each category for comparison purposes. In addition, the Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall file quarterly budget reports

with the Commission 45 days after the close of each quarter. These reports must reflect actual income and expenses to date, and projected income and expenses for the remainder of that year.

(f) The Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association shall file audited financial statements, including balance sheet, income statement and source and use of funds, prepared by a certified public accountant of New Jersey, with the Commission by February 28 of each year for the preceding calendar year.

(g) Funding for benevolent programs, including but not limited to pension plans and health and life insurance plans, is considered reasonable if the funding is at least 65 percent of the total statutory allocation. Whether or not a program will be considered a benevolent program will be decided upon application to the Racing Commission. Funding below 65 percent of the total statutory allocation requires justification satisfactory to the Commission. The administrative costs and overhead of administering these specific benevolent programs must not exceed 15 percent of the total dedicated to such programs.

(h) General administration and overhead expenses are considered reasonable if the expenses are less than 15 percent of the statutory allocation. Funding above 15 percent of the total statutory allocation requires justification satisfactory to the Commission. Within this category, expenses for travel, entertainment, meals and lodging are considered reasonable if they conform to the New Jersey State Travel Regulations. For expenses in excess in amounts allowed under New Jersey State Travel Regulations, the Racing Commission may require special justification and/or prior approval.

(i) Payments to national programs are allowed only to the extent that the New Jersey Horsemen's Benevolent and Protective Association and the Standardbred Breeders' and Owners' Association can clearly show that the payments benefit all New Jersey horsemen, not just members of these organizations.

(j) If a surplus results at the end of a calendar year, the entire surplus must be applied to funds dedicated to benevolent programs in following years, as may be approved by the Commission.

(k) Violation of this section may subject the organization to a fine not to exceed \$1,000.00 per violation.

**(a)**

**Harness Rules**

**Registration of Nerved Horses**

**Adopted Repeal and New Rule: N.J.A.C. 13:71-20.23**

Proposed: November 16, 1987 at 19 N.J.R. 2125(a).

Adopted: January 7, 1988 by Bruce H. Garland, Executive Director, New Jersey Racing Commission.

Filed: January 20, 1988 as R.1988 d.74, **without change.**

Authority: N.J.S.A. 5:5-30.

Effective Date: February 16, 1988.

Expiration Date: February 25, 1990.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The New Jersey Racing Commission received comments on the initial proposal of this new rule at 19 N.J.R. 919(a) from Racing Commission veterinarians defining the proper veterinarian terminology that the Racing Commission should adopt in the proposal.

**RESPONSE:** The New Jersey Racing Commission repropoed the rule with the recommended changes incorporated. The suggestions from the veterinarians more clearly defined anatomically where horses could be nerved.

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

**13:71-20.23 Registration of nerved horses**

(a) Blocking of nerve functions via surgical neurectomy, cryogenic techniques, or any other desensitizing means, whether permanent or temporary, is defined as "nerving".

(b) Only posterior digital "nerving" will be permitted on horses to be raced. The procedure must be performed posterior to the first phalanx at a level below the base of the sesamoid bones.

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(c) Horses that are "nerved" above the area specified in (b) above will not be permitted to race in New Jersey.

(d) It shall be the responsibility of the owner and/or trainer to report all "nerved" horses to the State or Associate State Veterinarian.

(e) A list of all "nerved" horses shall be posted on the bulletin board at the entry room by the State Veterinarian.

## TRANSPORTATION

### TRANSPORTATION OPERATIONS

#### (a)

#### Restricted Parking and Stopping

#### Routes U.S. 9 in Cape May County and U.S. 9W in Bergen County

#### Adopted Amendment: N.J.A.C. 16:28A-1.7 and 1.61

Proposed: December 7, 1987, at 19 N.J.R. 2253(a).

Adopted: January 7, 1988 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: January 14, 1988 as R.1988 d.71 **without change**.

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

Effective Date: February 16, 1988.

Expiration Date: November 7, 1988.

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) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-11. (No change.)

12. No stopping or standing in Middle Township, Cape May County:

i. Along both sides:

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

(4) From the northerly curb line of the Garden State Parkway Exit 8 to the northerly curb line of 3rd Avenue.

ii. (No change.)

13.-19. (No change.)

(b) (No change.)

16:28A-1.61 Route U.S. 9W

(a) The certain parts of State highway Route U.S. 9W described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in Tenafly Borough, Bergen County:

i. Near side bus stop:

(1) East Clinton Avenue (120 feet);

ii. Far side bus stop:

(1) Greenbrook Sanctuary—Beginning at the northerly curb line of the entrance to Greenbrook Sanctuary and extending 125 feet northerly therefrom.

2. Along the easterly (northbound) side in Tenafly Borough, Bergen County:

i. Far side bus stops:

(1) East Clinton Avenue (105 feet);

(2) Greenbrook Sanctuary—Beginning at the prolongation of the southerly curb line of the entrance to the Greenbrook Sanctuary and extending 125 feet southerly therefrom.

Renumber 2.-7. as 3.-8. (No change in text.)

(b) (No change.)

## TRANSPORTATION

#### (b)

#### No Passing

#### Route N.J. 154 in Camden County

#### Adopted Amendment: N.J.A.C. 16:29-1.18

Proposed: December 7, 1987, at 19 N.J.R. 2253(b).

Adopted: January 7, 1988 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic and Local Road Design, Department of Transportation.

Filed: January 14, 1988 as R.1988 d.72 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-201.1.

Effective Date: February 16, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

16:29-1.18 Route 154

The certain parts of State highway Route 154 within Cherry Hill Township, Camden County described in drawing number HNPZ-110 dated September 2, 1987 shall be designated and established as "No Passing" zones.

OFFICE OF ADMINISTRATIVE LAW NOTE: A map of the no passing zones along New Jersey Route 154, Cherry Hill Township, Camden County was filed with the proposal.

#### (c)

#### Miscellaneous Traffic Rules

#### Drawbridge Usage

#### Routes N.J. 35 in Middlesex County and N.J. 88 in Point Pleasant Borough, Ocean County

#### Adopted Amendment: N.J.A.C. 16:30-9.1

#### Adopted New Rule: N.J.A.C. 16:30-9.2

Proposed: December 7, 1987, at 19 N.J.R. 2254(b).

Adopted: January 7, 1988 by John F. Dunn, Jr., Assistant Chief Engineer, Traffic & Local Road Design, Department of Transportation.

Filed: January 14, 1988 as R.1988 d.70 **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-17, 39:4-198.

Effective Date: February 16, 1988.

Expiration Date: November 7, 1988.

Summary of Public Comments and Agency Responses:

**No comments received.**

Full text of the adoption follows.

16:30-9.1 Route 35

(a) The certain parts of State highway Route 35 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. (No change.)

16:30-9.2 Route 88

(a) The certain parts of State highway Route 88 described in this subsection shall not be used for the purposes described herein. In accordance with N.J.S.A. 39:4-198, authority is granted to erect appropriate signs.

1. No diving, crabbing, fishing or loitering shall be permitted along the Veterans Memorial Bridge for the bridge's entire length within Point Pleasant Borough, Ocean County.

## TREASURY-GENERAL

(a)

## DIVISION OF PENSIONS

## Administration

## Minimum Adjustments

**Adopted Amendment: N.J.A.C. 17:1-1.10**

Proposed: November 16, 1987 at 19 N.J.R. 2129(a).

Adopted: January 11, 1988 by Douglas R. Forrester, Director,  
Division of Pensions.Filed: January 14, 1988 as R.1988 d.68, **with changes** not requiring  
additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:18A-96 et seq.

Effective Date: February 16, 1988.

Expiration Date: June 6, 1988.

**Summary of Public Comments and Agency Responses and  
Reasons for Changes:****No comments received.**

There are no substantive changes made to the new text of the amendment that appeared in the Notice of Proposal. In the Notice of Proposal, it was erroneously indicated that the current text of N.J.A.C. 17:1-1.10(b), which deals with adjustments when withdrawals occur, was to be deleted and replaced with the new text. The Notice should have indicated that the current text of N.J.A.C. 17:1-1.10(c), which deals with adjustments concerning retirements which is also the subject of the proposed new text, was to be deleted and replaced with the proposed new text.

The text of N.J.A.C. 17:1-1.10(b) concerning adjustments to be made regarding withdrawals is not changed by this adoption. The previous text of N.J.A.C. 17:1-1.10(c) concerning adjustments to be made regarding retirements is deleted and replaced with the new adopted text.

Since the Notice of Proposal stated that the amendments would clarify balances in the accounts of retired members, the subject of which is covered in subsection (c), it was clear that no changes were intended with respect to adjustments when withdrawals occur, which is the subject of subsection (b).

**Full text** of the adoption follows (additions to the proposal indicated in boldface with asterisks **\*thus\***; deletions from proposal indicated in brackets with asterisks **\*[thus]\***):

## 17:1-1.10 Minimum adjustments

## (a) (No change.)

**\*[ ]\*(b)** Bad balances of \$50.00 or less in accounts that have been withdrawn will be written off. However, if a withdrawn member can satisfactorily prove with convincing documentation that monies are due from the withdrawn account, such refunds shall be made, notwithstanding the fact that the bad balance had been previously written off.**\*[ ]\***

**\*[(c)** A retired member's annuity saving fund positive balance (i.e., monies due to the member) shall be written off if it results in a corresponding adjustment of the member's monthly retirement allowance of less than \$1.00. A retired member's annuity saving fund **negative balance** (i.e., monies due to the Division of Pensions) shall be written off if it results in a corresponding adjustment of the member's monthly retirement allowance of less than \$4.00.**]\***

**\*[(b)]\*(c)\*** Rules concerning the bad balances in retirement accounts are as follows:

1. No rebates or additional contributions shall be made for retired members if the adjustments involve amounts that range from a positive to a negative \$5.00. All balances within this range will be written off.

2. In the event the positive or negative balance is greater than \$5.00 but produces a monthly retirement adjustment of less than \$1.00, no recalculation or monthly benefits will be computed. Positive balances will be rebated and negative balances will be written off.

**\*[(c)]\*(d)-(e)** (No change.)

## TREASURY-TAXATION

(b)

## DIVISION OF TAXATION

## Litter Control Tax

**Adopted New Rules: N.J.A.C. 18:38**

Proposed: March 2, 1987 at 19 N.J.R. 400(b).

Adopted: January 20, 1988 by John R. Baldwin, Director,  
Division of Taxation.Filed: January 21, 1988 as R.1988, d.85 **with substantive and  
technical changes** not requiring additional public notice and  
comment (See N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-99.1

Effective Date: February 16, 1988

Expiration Date: February 16, 1993

**Summary of Public Comments and Agency Responses:**

The Division met with representatives of the graphic arts industry to provide clarification of the Division's position on the scope of the proposed rule at N.J.A.C. 18:38-3.1(b)12 defining "paper products and household paper." Industry representatives were concerned with the extent of the applicability of this definition and its effect on the printing industry.

The Division's proposed rule at N.J.A.C. 18:38-3.1(b)12 defines "paper products and household paper" as "all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers and magazines." Also listed as litter generating products under a separate category, at N.J.A.C. 18:38-3.1(b)10 are "newsprint and magazine paper stock" which are defined to also exclude magazines and newspapers in their published form.

It is recognized that the Legislature, when compiling this list of litter generating product categories for the Clean Communities and Recycling Act, incorporated most, if not all, of the product categories of litter tax laws enacted in two other states. The State of Washington has had an "annual litter assessment" since May 1971 levying the tax on sales of 13 product categories listed in RCW 70.93.130, including "(7) Newspapers and Magazines;" and "(8) Household paper and paper products." The State of Virginia's "Litter Control Act," Chapter 19, Title 10 Code of Virginia, levies an annual litter tax on persons engaged in the sale of certain enumerated products in 15 categories including "(7) Newspapers and magazines;" and "(8) Paper products and household paper."

Although the Legislature chose to include most if not all of the categories of both the Washington State and Virginia laws, a notable exception is the exclusion of the "Newspaper and magazine" category. In its place, the Legislature substituted the category "Newsprint and magazine paper stock." The Division of Taxation interprets this legislative substitution as providing a specific exclusion for sales of newspapers and magazines.

The Division also takes note that the New Jersey Legislature could have included in the litter generating product list the much more narrow "Household paper and paper product" category of Washington State which restricts the paper product category to paper products "for home or other personal use." The Legislature instead elected to incorporate the much broader category of Virginia's law "Paper products and household paper," which is defined by Virginia regulations to mean "materials or substances made into sheets or leaves from organic or synthetic fibrous material, including products or articles made from sheets or leaves." Virginia Regulation 20.10-201.1. The Division must assume that the Legislature, in opting for Virginia's version of a "paper products" category, intended a very broad interpretation of this litter generating product category, limited only by the newspaper and magazine exclusions for the reasons previously mentioned.

Thus, sales of items such as advertising, leaflets or flyers, brochures, greeting cards, posters, letterhead, books, booklets, catalogs, annual reports, calendars, post cards, programs, envelopes, business forms, labels, bookcovers, etc. all may result in taxable litter control tax receipts.

Printers are held to be manufacturers for purposes of the litter control tax. A manufacturer is "any person who engages in the making, fabricating or processing of any litter generating product." N.J.A.C. 18:38-1.3. Because printers are manufacturers they cannot avail themselves of the deduction for sales of litter generating products by a wholesaler or dis-

## ADOPTIONS

## TREASURY-TAXATION

tributor to another wholesaler or distributor. "The designation wholesaler or distributor does not include a manufacturer." N.J.A.C. 18:38-5.2(a)1.

Though a printer as a manufacturer could not be a wholesaler he could qualify as a "retailer" which is a term not mutually exclusive with "manufacturer" for litter control tax purposes. A "retailer" means every person engaged in the business of selling or exchanging goods for each or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate consumption or use. The "retailer" designation is limited to those persons primarily engaged in the business of making "retail sales." "Primarily" means that more than 50 percent of gross receipts from all sales are "retail sales." "Retail sales" are sales for ultimate consumption or any purpose other than resale. N.J.A.C. 18:38-1.8. Retail sales are taxed at the rate of .000225.

If a printer is also a retailer he may qualify for exclusion from the tax. N.J.A.C. 18:38-5.1 states "Any retailer with less than \$250,000 in annual gross receipts from all sales, both retail sales and wholesale sales, of litter generating products is excluded from registration and filing and payment of the tax."

However, a printer would not be a retailer and, therefore, could not qualify for the exclusion at N.J.A.C. 18:38-5.1, if he is primarily engaged in making wholesale sales. Wholesale sales are sales for resale and are taxed at the rate of .0003.

A second comment from a law firm representing the printing industry suggested that printed materials with a useful life of more than momentary importance be excluded from the "paper products and household paper" definition at N.J.A.C. 18:38-3.1(b)12. The Division responded that the suggested amending language is contrary to the plain and unambiguous language of the statute and does not properly reflect the intent of the legislature.

It was suggested by other representatives of the printing industry that the Division should consider limiting subjectivity to the litter control tax to those sellers of "paper products" that are engaged in activities listed under Standard Industrial Classification Major Group 26—Paper and Allied Products and, by means of amending the "paper products" definition at N.J.A.C. 18:38-3.1(b)12, exclude those sellers of "paper products" engaged in activities listed under Standard Industrial Classification Major Group 27—Printing, Publishing and Allied Industries.

After a thorough review, the Division does not believe that this paper product seller distinction would be administratively practical. The effect of such a distinction would be to add confusion and complexity to a tax that was designed to be a simple, low revenue producing tax intended to fund environmental clean up. The tax is imposed on the gross receipts from sales of certain types of products. The Standard Industrial Classification categorizes business operations, not types of products. Any attempt to classify by type of business operation invariably involves businesses that engage in a variety of operations that overlap categories and create a need for "primary activity test" language in the rule.

A rule attempting to distinguish paper products sold by S.I.C. 26 as opposed to S.I.C. 27 sellers would create a problem for wholesalers and retailers of such products who are also subject to the litter control tax. Would a retail stationery store owner be able to differentiate between his sales of S.I.C. 26 and S.I.C. 27 type paper products in order to properly complete his tax return? This attempt at paper product distinction creates an unworkable, impractical situation right on down the marketing stream.

It must also be said that there is no support for such a distinction in the law. Therefore, the Division, in viewing the intent of the legislature as being very broad in its definition of paper products and the subjectivity of all sellers of litter generating products, cannot support this suggested rule amendment.

A fourth comment to the Division was received from the New Jersey Department of Agriculture regarding the subjectivity of farmers to the litter control tax.

The Division responded that N.J.S.A. 13:1E-94 of the Clean Communities and Recycling Act imposes tax on receipts from the sale of food for human consumption. See N.J.A.C. 18:38-3.1(b)5.i. The tax on such receipts applies to sales made by manufacturers, wholesalers, distributors or retailers. Farming is not considered a manufacturing activity in New Jersey; thus, a farm operator would not incur a litter tax obligation as a manufacturer. In this regard, N.J.A.C. 18:38-1.3 of the litter control tax rules concludes that a manufacturer is a person who makes, fabricates or processes a litter generating product. This clearly does not intend to cover persons involved in the cultivation of land, the raising of livestock, or other farm activities such as those which fall within a farming category under N.J.S.A. 54:32B-8.16 of the Sales and Use Tax Act.

Under N.J.A.C. 18:38-1.3 a farmer or farm operator is not deemed to be a wholesaler or retailer of a litter generating product when the sale receipts are derived from farming. For the purposes of the Litter Control Tax Act a wholesaler is one who buys goods or finished products in comparatively large quantities and who then sells usually in smaller quantities but rarely, if ever, to the ultimate consumer of an individual unit. He sells either to another wholesaler or perhaps to a jobber or to a retailer who will in turn sell to the ultimate consumer.

A retailer is generally a person who buys in small quantities in order to sell the same by single articles or in small quantities to an ultimate consumer.

A farmer or farm operator is only deemed subject to the litter control tax if he also engages in business as a retailer making sales to the ultimate consumer of either nonfood litter generating products or food products not directly grown by him. Of course, a farmer engaged in such retail sales would not have to register, file or pay the tax if the receipts derived from sales of such products were less than \$250,000 annually. N.J.A.C. 18:38-5.1.

The Division has attempted to further clarify its position regarding farmers and similar occupations by expanding the "manufacturers" definition at N.J.A.C. 18:38-1.3 to state "Farmers, ranchers, fishermen and those engaged in similar occupations exclusively involved in the growing, harvesting and producing of raw, unprocessed food products for human or animal consumption are not deemed to be manufacturers."

#### Summary of Changes Between Proposal and Adoption:

N.J.A.C. 18:38-1.2, 18:38-2.1 and 18:38-2.2 have been changed to include the phrase "or into" to clarify that the litter control tax is applicable to sales of litter generating products sold from locations outside New Jersey to points within the State. This amending language merely reflects the original intent of the Division and does not enlarge the scope of those affected by the rule.

The definition of "manufacturer" at N.J.A.C. 18:38-1.3 has been expanded to clarify that a business with manufacturing activity solely outside New Jersey would, if engaged in business in New Jersey, be considered a manufacturer and thus not qualify for the deduction provided in N.J.A.C. 18:38-5.2(a)1. This is not an alteration of the Division's original position and does not impose additional burdens not encompassed in the proposed rule.

The definition of "manufacturer" at N.J.A.C. 18:38-1.3 has also been amended to make it clear that persons exclusively involved in growing, harvesting and producing raw unprocessed food products such as farmers, ranchers and fishermen would not be included as manufacturers. This additional language does not significantly enlarge or curtail the scope of the proposed rule but merely provides clarification for certain food producers.

The definition of "sale" at N.J.A.C. 18:38-1.3 has been amended to explicitly exclude rental or lease transactions. Such transactions were never included as sales for litter tax purposes. This change merely clarifies an existing position.

The definition of "sales within the state" at N.J.A.C. 18:38-1.3 has been expanded to clarify that sellers of litter generating products located outside New Jersey making sales of such products into this State are subject to the tax if they have the required "minimum contacts" or nexus with New Jersey. This additional language merely states a constitutionally allowable position not subject to change by public comment.

In N.J.A.C. 18:38-3.1(b)5.i. the words "excepting beverages specifically enumerated within this subchapter as litter generating products" have been added to clarify that the exclusionary treatment afforded to certain food and beverage sales for on premises consumption does not extend to beverages explicitly subjected to the tax under the Act, that is, beer, malt beverages, distilled spirits, soft drinks, carbonated waters and wine. Beverages not specifically enumerated as litter generating products such as coffee, tea, milk, juice, etc., receive the same treatment as all other food for human consumption. This change is not considered a change so substantial as to require reproposal because it clarifies the proposed rule and does not expand the scope of the rule.

N.J.A.C. 18:38-3.1(b)10 has been amended to clarify that the sale of all newsprint commonly used to manufacture newspapers was intended to be subjected to the tax, including newsprint manufactured from recycled paper. This amending language merely reflects an additional example and does not alter the scope of the proposed rule.

N.J.A.C. 18:38-5.1 has been amended to make it clear that those manufacturers primarily making retail sales (but not manufacturers primarily making wholesale sales) can qualify for the \$250,000 exclusion

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specified in this subchapter. This is explanatory language intended to clarify and not enlarge or curtail the scope of the rule.

**Full text** of the adoption follows (additions indicated in boldface with asterisks **\*thus\***; deletions indicated in brackets with asterisks **\*[thus]\***).

CHAPTER 38  
LITTER CONTROL TAX

## SUBCHAPTER 1. GENERAL PROVISIONS

## 18:38-1.1 Effective date

The litter control tax is imposed pursuant to N.J.S.A. 13:1E-99.1 (P.L. 1985, c.533), cited as the Clean Communities and Recycling Act. The Act was signed into law January 21, 1986 and became effective April 21, 1986.

## 18:38-1.2 Nature of tax

The litter control tax is an excise tax on the privilege of engaging in business in New Jersey as a manufacturer, wholesaler, distributor or retailer of litter-generating products measured by the gross receipts from sales of such products within **\*or into\*** New Jersey.

## 18:38-1.3 Definitions

The following words and terms, when used in this **\*[sub]\***chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Distributor" means a wholesaler. The "wholesaler or distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales.

"Engaged in business in the state" means the participation in any commercial activities in New Jersey with the object of gain, benefit or advantage to the taxpayer or to another person or class, directly or indirectly.

"Gross receipts" means all receipts, of whatever kind and in whatever form, derived from sales of litter-generating products, without any deduction therefrom on account of any item of cost, expense or loss. Gross receipts are reportable on the accrual basis and not as collections are made. New Jersey sales and use tax collections are not includable as gross receipts.

"Manufacturer" means any person who engages in the making, fabricating or processing of any litter-generating product<sup>[.]</sup> **\*regardless of whether the manufacturing activity occurs within or outside New Jersey. Farmers, ranchers, fishermen and those engaged in similar occupations exclusively involved in the growing, harvesting and producing of raw, unprocessed food products for human or animal consumption are not deemed to be manufacturers.\***

"Retailer" means every person engaged in the business of selling or exchanging goods for cash or barter or any consideration on the assumption that the purchaser of such goods has acquired the same for ultimate consumption or use. The "retailer" designation is limited to those persons primarily engaged in the business of making retail sales. "Primarily" means that more than 50 percent of gross receipts from all sales are retail sales. "Retailer" also includes all restaurants that sell any meal or food prepared and ready to be eaten for consumption off the premises of the restaurant. "Retailer" does not include those persons that make an isolated or occasional sale of a litter-generating product who are not regularly engaged in the business of making sales at retail where such litter-generating product was obtained by the person making the sale, through purchase or otherwise, for his own use.

"Retail sales" are sales for ultimate consumption or any purpose other than resale.

"Sale" means any transfer of title or possession or both, exchange, or barter of tangible personal property, conditional or otherwise, in any manner or by any means whatsoever for a consideration or any agreement therefor. **\*\*Sale" does not include a rental or lease transaction.\***

"Sales within the state" means all retail sales by taxpayers engaged in business within New Jersey without regard to the in-state or out-of-state destination of the litter-generating products sold, and all wholesale sales by taxpayers engaged in business within New Jersey

of litter-generating products for use and consumption within New Jersey. It shall be presumed that all wholesale sales of litter-generating products sold within the state are for use and consumption within the state unless the taxpayer shows that the products are shipped out-of-state for out-of-state use. **\*Additionally, "sales within the state" or "sold within New Jersey" means all sales of litter-generating products from points outside New Jersey having a New Jersey destination made by every manufacturer, wholesaler, distributor and retailer having nexus with New Jersey without regard to the state in which title passes or delivery takes place.\***

"Wholesaler" means any person who sells litter-generating products for the purpose of resale to another wholesaler or a retailer or both, but does not include manufacturers. The "wholesaler or distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales.

"Wholesale sales" are sale for resale.

## SUBCHAPTER 2. TAX IMPOSITION AND TAX RATES

## 18:38-2.1 Tax imposed on persons engaged in wholesale sales

A litter control tax at the rate of 3/100 of 1 percent (.0003) is imposed on gross receipts from wholesale sales of litter-generating products sold within **\*or into\*** New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. "Wholesale sales" are sales for resale.

## 18:38-2.2 Tax imposed on persons engaged in retail sales

A litter control tax at the rate of 2.25/100 of 1 percent (.000225) is imposed on gross receipts from retail sales of litter-generating products sold within **\*or into\*** New Jersey by each person engaged in business in the State as a manufacturer, wholesaler, distributor or retailer of such litter-generating products. "Retail sales" are sales for ultimate consumption or any purpose other than resale.

## 18:38-2.3 Suspension of tax

The litter control tax shall not be due and payable if, and as long as, any State of New Jersey or Federal law, or any rule or regulation adopted pursuant thereto, requiring a deposit on, or establishing a refund value for, any litter-generating products shall be in effect.

## 18:38-2.4 Expiration of tax

The litter control tax shall expire on December 31, 1991. Such expiration shall not affect any obligation, lien or duty to pay taxes which may be due with respect to the imposition of any levy, or interest or penalties which may accrue by virtue of any assessment, which may be made with respect to taxes levied for any taxable year or part of a taxable year, prior to January 1, 1992, nor shall this expiration affect the legal authority to assess and collect the taxes imposed pursuant to **\*[N.J.A.C. 18:38-3]\* \*N.J.S.A. 13:1E-99.1\***, or penalties and interest as would accrue thereon, nor shall such expiration invalidate any assessment or affect any proceeding for the enforcement thereof.

## SUBCHAPTER 3. MEASURE OF TAX

## 18:38-3.1 Sales of litter-generating products

(a) Litter-generating products means the 15 categories of products listed in (b) below which meet any of the following conditions:

1. They are produced, distributed or purchased in disposable containers, packages or wrappings; or
2. They are not usually sold in packages, containers or wrappings but are commonly discarded in public places; or
3. They are of an unsightly or unsanitary nature commonly thrown, dropped, discarded, placed or deposited by a person on public property, or on private property not owned by him.

(b) It is presumed that all products in the categories listed below satisfy at least one of the conditions stated in (a) above and qualify as a litter-generating product.

1. Beer and other malt beverages—means beer, lager beer, ale, stout, porter and all similar fermented malt beverages having an alcoholic content of 1/2 of 1 percent or more by volume.

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### 2. Cigarettes and tobacco products:

i. Cigarettes means any roll for smoking made wholly or in part of tobacco, or any other substance or substances other than tobacco, irrespective of size, shape or flavoring, the wrapping or cover of which is made of paper or any substance or material, excepting tobacco.

ii. Tobacco products mean all products containing tobacco, except cigarettes, including cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco, fine-cut and other chewing tobaccos, shorts, scraps, and cuttings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking.

### 3. Cleaning agents and toiletries:

i. Cleaning agents means all soaps, detergents, solvents, or other cleaning substances used for cleaning buildings, places, persons, animals, or other things.

ii. Toiletries means all substances such as soap, powder, cologne, perfume, cosmetics, toothpaste, etc., used in connection with personal dressing or grooming.

4. Distilled spirits means any beverage which contains alcohol obtained by distillation.

### 5. Food for human or pet consumption:

i. Food for human consumption means any substance, the chief general use of which is for human nourishment. It includes sales of meals, beverages or other prepared food by restaurants, taverns, snack bars, mobile vending operators, vending machines and other similar establishments for consumption off the premises where sold. Food and beverages **\*(excepting beverages specifically enumerated within this subchapter as litter-generating products)\*** sold by such establishments for consumption on the premises are deemed not to be sold in a taxable manner unless served on or with disposable plates, cups, utensils or other paper or plastic products.

ii. Food for pet consumption means any substance the chief general use of which is for pet nourishment.

(1) "Pet" means any domesticated animal which is not a productive animal. "Productive animal" means an animal which is raised for its meat, for the edible products which it produces, for its fur, wool or skin, for breeding purposes or for farm work. The following are examples of productive animals: dairy cows, poultry, swine, sheep, food fish, rabbits, and other game animals raised for meat or fur, chinchillas and minks; also, cows and bulls held for breeding purposes, stallions, brood mares and plow horses.

6. Glass containers sold as such means articles made wholly or in substantial part of processed silicates which can be, or are, used to hold other things within themselves, and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state.

7. Groceries means all nonperishable edible products, except drugs, sold by persons in a place of business engaged in selling food for off premises consumption.

8. Metal containers sold as such means articles made wholly or in substantial part of materials such as iron, steel, tin, aluminum, copper, zinc, lead, silver or like substances and any alloys thereof and which can be, or are, used to hold other things within themselves and sold in an empty state for the purpose of resale or transfer in a filled or partially filled state.

9. Motor vehicle tires means all tires, regardless of composition, designed for use on any vehicle propelled otherwise than by muscular power including motorcycles, motor driven lawn and garden equipment and construction equipment and including trailers, semi-trailers, house trailers, or any other type of vehicle drawn by a motor-driven vehicle.

### 10. Newsprint and magazine paper stock:

i. Newsprint means machine-finished paper made from ground wood and chemical pulp **\*or recycled paper in whole or in part\*** as commonly used to manufacture newspapers but shall not mean newspapers in their published form.

ii. Magazine paper stock means the paper commonly used to manufacture periodical publications but does not include magazines in their published form.

11. Drugstore sundry products means all products, goods, or articles, except newspapers, magazines and drugs, whether prescrip-

tion or nonprescription, sold by persons in a place of business selling drugs at retail.

i. "Drugs" means substances or products appearing in the latest listing of United States Pharmacopoeia or National Formulary the chief general use of which is as medicine for treating disease, healing, or relieving pain, but excluding devices, apparatus, instruments, prostheses and the like.

ii. "Place of business" for purposes of this category means any location, department or division even though it be a part of a larger business physically, operationally, and in its books and records. Thus, a department store which consists of a drug department and a clothing department, each with its own space and having separate employees, cash registers and accounting records would not be subject to the litter control tax on sales of its clothing department merely because it was located in the same building under the same ownership as the drug department.

12. Paper products and household paper means all items of tangible personal property made or substantially derived from paper including all paper products for home or other personal use but does not include newspapers and magazines.

i. "Newspaper" is a printed publication issued at regular intervals, usually daily or weekly, and which contains news, editorial comment, feature articles and advertisements.

ii. "Magazine" is a printed publication issued periodically, at least four times a year and is usually bound with a paper cover and contains many and miscellaneous articles on a variety of topics.

13. Plastic or fiber containers made of synthetic material and sold as such means articles which can be, or are, used to hold other things within themselves and which are made of synthetically produced ethylene derivatives, resins, waxes, adhesives, or polymers or by synthesis of fiber materials with adhesives, polymers, waxes, resins, or other materials, but not including any container which is routinely reused, has a useful life of more than one year and is ordinarily sold empty at retail. It includes containers made of paper, pasteboard, or cardboard in which the container material consists of fibrous substances synthesized with other materials. Synthetic material means that produced by synthesis which is the process of making or building up by a composition or union of simple parts or elements as distinguished from the process of extraction or refinement.

14. Soft drinks and carbonated waters means all beverages, whether carbonated or noncarbonated, except alcoholic beverages, including fruit juices, milk, carbonated water and all mixtures or dilutions of nonalcoholic beverages, but does not include non-carbonated water.

15. Wine means all wines whether known as **\*["]\*dry wines,\*["\*] "]\*sweet wines,\*["\*] "]\*still\*["]\* wines or \*["]\*fortified\*["]\* wines and any artificial or imitation wine or compound sold as wine, and any fruit juice containing 1/2 of 1 percent or more of alcohol by volume, and any other beverage containing alcohol produced by the fermentation of the natural sugar content of fruits or other agricultural products containing sugar, which beverage contains 1/2 of 1 percent or more of alcohol by volume, including vermouth and cider.**

## SUBCHAPTER 4. TAX COMPUTATION

### 18:38-4.1 Tax computation methods

(a) Litter control tax liability may be computed by any manufacturer, wholesaler, distributor or retailer subject to the tax using any one of three tax computation methods: general method, total sales method, or percentage of sales method.

1. The general method of tax computation follows:

i. The tax is computed using the general method by applying the tax rate as stated in N.J.A.C. 18:38-2.1 to gross receipts from all wholesale sales of litter-generating products within New Jersey and applying the tax rate stated in N.J.A.C. 18:38-2.2 to gross receipts from all retail sales of litter-generating products within New Jersey sold during the calendar year.

ii. Use of the general method requires the taxpayer to separately account for his sales of each of the 15 categories of litter-generating products to properly substantiate his gross receipts subject to tax.

2. The total sales method of tax computation follows:

## TREASURY-TAXATION

i. The tax is computed using the total sales method by applying the tax rate stated in N.J.A.C. 18:38-2.1 to gross receipts from all wholesale sales of all products, both litter-generating and non litter-generating, within New Jersey and applying the tax rate as stated in N.J.A.C. 18:38-2.2 to gross receipts from all retail sales of all products, both litter-generating and non litter-generating, within New Jersey sold during the calendar year.

Example: The XYZ Liquor Store is a retail establishment in New Jersey with total retail sales of \$1,000,000 for all products sold in New Jersey from April 21, 1986 through December 31, 1986. The owner of the XYZ Store having reviewed the list of litter-generating products is aware that most, if not all, of his sales involve litter-generating products and, therefore, elects to pay the tax using the Total Sales Method of computation. His total tax due for the calendar year 1986 would be:  $\$1,000,000 \times .000225 = \$225.00$  tax due. The low amount of his tax liability, \$225.00 supports his use of this method rather than separately accounting for sales of litter-generating products and using the general method of computation.

ii. Use of the total sales method requires the taxpayer to account for total sales of all products in New Jersey but does not require separate accounting for sales of litter-generating products.

3. The percentage of sales method of tax computation follows:

i. The tax is computed using the percentage of sales method by applying the tax rate as stated in N.J.A.C. 18:38-2.1 to that proportionate amount of gross receipts from wholesale sales of all products within New Jersey which properly reflects wholesale sales of litter-generating products within New Jersey and applying the tax rate as stated in N.J.A.C. 18:38-2.2 to that proportionate amount of gross receipts from retail sales of all products within New Jersey which properly reflects retail sales of litter-generating products within New Jersey sold during the calendar year.

Example: The ABC Auto Supply Store is a retail establishment in New Jersey with total retail sales of \$2,000,000 for all products sold in New Jersey from April 21, 1986 through December 31, 1986. ABC's owner, upon review of the list of litter-generating products, is aware that while his store does sell many litter-generating products, such as motor vehicle tires, cleaning agents, paper products, etc., he also sells many products not listed. He may, therefore, elect to compute his tax due using the Percentage of Sales Method and relieve him of much of the expense of recordkeeping needed for the General Method of computation. He can substantiate that the proper proportionate amount of his total sales that can be attributed to sales of litter-generating products is \$500,000. His total tax due for the calendar year 1986 would be  $\$500,000 \times .000225 = \$112.50$  tax due.

ii. The percentages of sales must reflect the portion of total retail sales and total wholesale sales represented by sales of litter-generating products in those sales categories. The percentages must be determined from actual sales data from a sample period of at least one month within the return period which is representative of the taxpayer's sales activity during the entire period covered by the return. This percentage is computed by dividing the gross receipts from sales of litter-generating products by the gross receipts from total sales for the sample period.

Example: This sampling procedure should be applied to both retail sales and wholesale sales:

(1) Select a sample period of one month that is indicative of sales of litter-generating products for the entire calendar year.

(2) Review all sales invoices for that sample period.

(3) Distinguish between litter-generating product sales and non-litter-generating product sales for the sample period.

(4) Total all litter-generating product sales and divide litter-generating product sales by total sales for the sample period. This will result in the proper proportionate amount of total sales that can be attributed to litter-generating product sales expressed as a percentage.

(5) Multiply the total gross sales of all products for the entire calendar year by this percentage to get the proper proportionate amount of total sales attributed to sales of litter-generating products.

(6) Multiply the product obtained in step 5 by the proper tax rate to determine the tax due for the calendar year.

iii. A taxpayer electing to determine his litter control tax liability by using the percentage of sales method would not be required to separately account for his total sales of litter-generating products.

## ADOPTIONS

However, he would be required to maintain such records to substantiate the proportionate amounts used.

## 18:38-4.2 Optional tax rate use

The litter control tax may be computed by using the wholesale tax rate for all sales subject to the tax rather than separately accounting for retail sales and wholesale sales and using the applicable tax rate.

## SUBCHAPTER 5. EXCLUSIONS AND DEDUCTIONS

## 18:38-5.1 Exclusions

Any retailer with less than \$250,000 in annual gross receipts from all sales, both retail sales and wholesale sales, of litter-generating products is excluded from registration and filing and payment of the tax. When annual gross receipts from all sales of litter-generating products are \$250,000 or more, a retailer is subject to the tax on total annual gross receipts from all sales of litter-generating products including the initial \$250,000 of sales of such products. For purposes of this section, the "retailer" designation is limited to those persons **\*including manufacturers\*** primarily engaged in the business of making retail sales. "Primarily" means that more than 50 per cent of gross receipts from all sales are retail sales.

## 18:38-5.2 Deductions

(a) The following sales of litter-generating products shall be considered as deductions:

1. A sale of a litter-generating product by a wholesaler or distributor to another wholesaler or distributor. For purposes of this section, the "wholesaler or distributor" designation is limited to those persons primarily engaged in the business of making wholesale sales. "Primarily" means that more than 50 percent of gross receipts from all sales are wholesale sales. The designation "wholesaler or distributor" does not include a manufacturer.

2. A sale of a litter-generating product by a company to another company owned wholly by the same individuals or companies.

3. A sale of a litter-generating product by a wholesaler or distributor owned cooperatively by retailers to those retailers.

## SUBCHAPTER 6. REGISTRATION

## 18:38-6.1 Registration requirements

(a) Every person subject to the litter control tax is required to register with the Division on Form CIS-1, Application for Registration, on or before October 1, 1986.

(b) Any person commencing or opening a new place of business subsequent to October 1, 1986 is required to register with the Division on Form CIS-1, Application for Registration, within 30 days after the commencement or opening of such business.

(c) Any person who is registered under any law administered by the Division or who is subject to and files returns under any of these laws is not required to register as required by (a) and (b) above.

## SUBCHAPTER 7. RETURN FILING, TAX PAYMENT, AND RECORD RETENTION

## 18:38-7.1 Initial filing and tax payment

Every person subject to the litter control tax for the 1986 taxable year, or any part thereof, is required to file, under oath, a litter control tax return, and pay the full amount of the tax due thereon, on or before March 15, 1987. The 1986 taxable year extends from April 21, 1986 through December 31, 1986.

## 18:38-7.2 Annual filing and tax payment

Every person subject to the litter control tax is required to file, under oath, a litter control tax return, and pay the full amount of tax due thereon, on or before March 15 of each year for the preceding calendar year's tax liability.

## 18:38-7.3 Litter control tax return

A litter control tax return, Form LT-5, must be filed, as required by N.J.A.C. 18:38-7.1 and 18:38-7.2, with the Division, indicating the dollar value of sales within the State of litter-generating products.

## 18:38-7.4 Record retention

All records and other supporting documentation used in completing the LT-5 Litter Control Tax return, must be retained and made

**ADOPTIONS**

**OTHER AGENCIES**

available for examination on request by the Division of Taxation or its authorized representatives for at least three years following the filing of a return.

**SUBCHAPTER 8. DISPOSITION OF REVENUES**

18:38-8.1 Revenues deposited in Clean Communities Account  
Litter control tax revenues, and penalties and interest derived from the imposition of the litter control tax, will be deposited in the Clean Communities Account, a nonlapsing, revolving fund in the Department of Treasury administered by the Department of Environmental Protection.

**OTHER AGENCIES**

**(a)**

**DELAWARE RIVER BASIN COMMISSION  
Comprehensive Plan and Water Code  
Water Conservation Performance Standards for  
Plumbing Fixtures and Fittings**

Adopted: January 13, 1988 by the Delaware River Basin  
Commission, Susan M. Weisman, Secretary.  
Filed: January 20, 1988 as R.1988 d.80.  
Effective Date: January 13, 1988.

Full text of the adoption follows.

NO. 88-2

A RESOLUTION to amend the Comprehensive Plan and Water Code of the Delaware River Basin in relation to water conservation performance standards for plumbing fixtures and fittings.

WHEREAS, the installation of water-saving plumbing fixtures and fittings can save substantial quantities of water; about two-thirds of the interior residential use of water is for water closet (toilet) flushing and bathing, and, in many cases, use of water-saving fixtures and fittings can cut this use in half; and

WHEREAS, a number of national associations have endorsed the use of water-saving fixtures and fittings: both the Building Officials and Code Administrators International (BOCA) and the National Association of Plumbing-Heating-Cooling Contractors incorporate principles that embody water conservation in their model plumbing codes; and

WHEREAS, the Water Conservation Advisory Committee, recognizing the benefits associated with the use of water-saving fixtures and fittings, recommended on April 10, 1987 that the Commission adopt a set of water conservation performance standards for plumbing fixtures and fittings that would apply in the Delaware River Basin; and

WHEREAS, the Commission held a public hearing on October 28, 1987 regarding this proposed amendment and has received and considered testimony from water users and other interested parties; now therefore

BE IT RESOLVED by the Delaware River Basin Commission:

1. The Comprehensive Plan and Article 2 of the Water Code of the Delaware River Basin is hereby amended by the addition of a new subsection 2.1.5 to read as follows:

2.1.5. Water conservation performance standards for plumbing fixtures and fittings

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) for sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) for shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) for water closets and associated flushing mechanism, maximum volume shall not exceed an average of three and one-half gallons of water, but no more than four gallons per flushing cycle, when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M;

(iv) for urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1990.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1989. In the absence of such regulations, municipalities within the Pennsylvania portion of the Basin that have not adopted regulations to enforce water conservation performance standards for plumbing fixtures and fittings shall be required to adopt regulations that comply with the provisions of (a) by January 1, 1990.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) Manufacturers shall certify that their plumbing fixtures and fittings comply with the water conservation performance standards specified in subsection (1). Such certification shall be based on independent test results.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission. An initial review shall be completed within one year of the effective date of this regulation. This initial review shall consider the revision of subsection (1)(a)(iii) to require that effective January 1, 1990, maximum volume for water closets shall not exceed one and six-tenths gallons (six liters) per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M or ANSI A112.19.6M.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under Section 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(6) This regulation shall be effective immediately.

OFFICE OF ADMINISTRATIVE LAW NOTE: These rules are not subject to codification and will not appear in the New Jersey Administrative Code.

# MISCELLANEOUS NOTICES

## ENVIRONMENTAL PROTECTION

### DIVISION OF WATER RESOURCES

(a)

#### Amendment to the Northeast and Upper Raritan Water Quality Management Plans

##### Public Notice

Take notice that an amendment to the Northeast and Upper Raritan Water Quality Management (WQM) Plans has been submitted for approval. This amendment would provide for new wastewater treatment facilities to serve the proposed Bertrand Island and Atkins-Morris developments. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Borough of Mount Arlington. The Borough of Mount Arlington will be designated as the Wastewater Management Agency for the facilities it agrees to serve as co-permittee.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast and Upper Raritan WQM Plans. All information dealing with the aforesaid WQM Plans and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(b)

#### Amendment to the Cape May County Water Quality Management Plan

##### Public Notice

Take notice that Cape May County has submitted for approval an amendment to the Cape May County Water Quality Management (WQM) Plan to expand the Township of Lower Municipal Utilities Authority sewer service area to include the North Cape Convalescent Center, Lot 1.02, Block 742.01 located in the Township of Lower.

This notice is being given to inform the public that a plan amendment has been proposed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Cape May County Planning Board, Cape May Court House, New Jersey 08210, and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held,

the public comment period in this notice shall automatically be extended to the close of the public hearing.

(c)

#### Amendment to the Tri-County Water Quality Management Plan

##### Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the expansion of the sewer service area of the Mount Laurel Municipal Utilities Authority to include a proposed residential development on Block 508, Lot 4, Mount Laurel Township. There are wetlands on the project site. However, disturbance to the wetlands will be minimal and the wetlands will be protected by a wetlands conservation easement.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to George Horzepa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment. This request must state the nature of the issues to be raised at the proposed hearing and must be submitted within 30 days of the date of this public notice to Mr. Horzepa at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall automatically be extended to the close of the public hearing.

(d)

### DIVISION OF ENVIRONMENTAL QUALITY

#### Reporting Requirements for SARA, Title III, Section 312

##### Public Notice

Take notice that, pursuant to Section 312 of the Federal Superfund Amendments and Reauthorization Act of 1986 (SARA), signed into law by President Reagan on October 17, 1986, manufacturing facilities (SIC codes 20-39) must complete inventory reports of hazardous substances produced, used, or stored on site. The New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.) also has inventory reporting requirements.

The New Jersey Department of Environmental Protection (NJDEP) has developed a survey form that will meet the inventory reporting requirements of both the New Jersey and the Federal Community Right to Know programs. Instructions for completion of the form have also been prepared. The survey and instructions are included in this issue of the New Jersey Register for review by any interested parties.

Manufacturing facilities in the State will be sent copies of the survey form and the instructions for its completion by the Department. The Federal law requires that the survey must be completed and returned to the NJDEP by March 1, 1988, and annually on that date thereafter. The New Jersey statute provides 90 days from receipt for the completion and return of the survey. In this first reporting year, the NJDEP plans to enforce the 90 day requirement, but recommends that covered facilities complete the survey as soon as possible.

After completing the survey, facilities must make five copies and distribute as follows:

1. The signed original to NJDEP. (The mailing address is at the lower right hand corner of the front page of the survey.);
2. One copy to the local fire department;
3. One copy to the local police department;

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4. One copy to the local emergency planning committee. (For assistance in obtaining the address of the local emergency planning committee, call the New Jersey State Police, Office of Emergency Management at 609-882-2000.);

5. One copy to the county lead agency. (See Appendix C of the instructions for the address.); and

6. Keep one copy for the facility's files.

New Jersey has compiled a list of substances subject to reporting under the State's Worker and Community Right to Know law, the New Jersey Right to Know Hazardous Substance List. The list is available for review at county lead agencies (Appendix C, Instructions) and State depository libraries (Appendix D, Instructions). Single copies of the list are available by sending a self-addressed 9x12 envelope marked FIRST CLASS with \$1.95 postage affixed. Send it to NJDEP, RTK Program, CN-405, Trenton, NJ 08625. All substances regulated under the New Jersey law which appear on the Environmental Hazardous Substance List (N.J.A.C. 7:1G-2.1) or the U.S. Department of Transportation's Hazardous Materials Table (N.J.A.C. 7:1G-4.1) must be reported at a "zero" threshold.

This list does not include all of the substances subject to reporting requirements under the Federal law. Any substance subject to the U.S. Occupational Safety and Health Administration's Hazard Communication Standard (29 CFR 1910.1200) is reportable under SARA, Title III Community Right to Know inventory reporting if it is present on site in a quantity greater than 10,000 pounds. If any Extremely Hazardous Substance (April 22, 1987 Federal Register 13397-13410) is present on site in a quantity greater than the threshold planning quantity or 500 pounds, whichever is less, this must also be reported.

Questions regarding the Community Right to Know reporting requirements of both Federal and State programs should be directed to the Bureau of Hazardous Substances Information at 609-292-6714.

**INSTRUCTIONS FOR COMPLETION OF THE COMMUNITY RIGHT TO KNOW SURVEY**

PLEASE READ THESE INSTRUCTIONS CAREFULLY. THEY HAVE BEEN WRITTEN AS CLEARLY AS POSSIBLE AND EXAMPLES ARE PROVIDED FOR YOUR REVIEW. IF YOU HAVE QUESTIONS AFTER READING THESE INSTRUCTIONS, PLEASE CALL THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION (NJDEP), BUREAU OF HAZARDOUS SUBSTANCES INFORMATION AT 609/292-6714.

READ ALL INSTRUCTIONS FIRST!

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APPENDIX A—Sample Community Right to Know Survey

APPENDIX B—Definitions of hazard categories

APPENDIX C—County Lead Agencies

APPENDIX D—Additional information sources

General Information

On August 29, 1983 the New Jersey Worker and Community Right to Know Act (N.J.S.A. 34:5A-1 et seq.) was signed into law. It established a procedure for the disclosure of hazardous substance information and guaranteed public access to that information.

On October 16, 1986 the federal Superfund Amendments and Reauthorization Act of 1986 (SARA) (PL 99-499) was signed into law. Title III—Emergency Planning and Community Right to Know established a procedure, similar to New Jersey's, for disclosure of and public access to hazardous substances information.

The mechanism for hazardous substances information disclosure is inventory surveys to be completed by the regulated community (industry). The surveys call for general administrative information about the reporting facilities and chemical specific information about their inventories of hazardous substances used, produced, or stored on site. These inventories can be valuable tools to industry, communities, government, and citizens for establishing priorities in planning, monitoring, emergency response, regulatory actions, and personal decision making.

The COMMUNITY RIGHT TO KNOW SURVEY has been developed, by the New Jersey Department of Environmental Protection

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(NJDEP), to meet the inventory reporting requirements of both the State and federal programs. SURVEY COMPLETION IS MANDATORY. NONCOMPLIANCE WILL RESULT IN PENALTIES. After completing the survey, make five (5) copies and distribute as follows:

1. The signed original to NJDEP. (The mailing address is at the lower right hand corner of the front page of the survey.)
2. One copy to your local fire department.
3. One copy to your local police department.
4. One copy to your local emergency planning committee. (See Appendix D.)
5. One copy to your county lead agency. (See Appendix C.)
6. Keep one copy for your files.

Hazardous Substances Subject to Inventory Reporting

The New Jersey Right to Know Act requires that you report from two defined lists of substances. They are the Environmental Hazardous Substance List (N.J.A.C. 7:1G-2.1) and the U.S. Department of Transportation's Hazardous Materials Table (N.J.A.C. 7:1G-4.1). All substances regulated under the New Jersey law must be reported at a "zero" threshold. In other words, any quantity present on site must be reported.

Under the federal law, SARA Title III, reporting is required for all substances that must have a material safety data sheet (MSDS) prepared in accordance with the requirements of the U.S. Department of Labor, Occupational Safety and Health Administration's (OSHA) Hazard Communication Standard (29 CFR 1910.1200). These substances must be reported if they exceed a threshold of 10,000 pounds.

In addition, special reporting requirements (40 CFR 370.20) are established for extremely hazardous substances (40 CFR 355, Appendix A & B), a group of more than 400 compounds that have been designated by the U.S. Environmental Protection Agency as having exceptional hazards. These substances must be reported if they exceed their threshold planning quantity or 500 pounds, whichever is less.

Since reporting thresholds for the different substances vary, NJDEP recommends that facilities use the "zero" threshold for all substances to ensure compliance.

A list of many of the compounds that must be reported under both the state and federal programs is available for general reference and review. You can obtain a copy of the list from any state depository library (Appendix D), county lead agency (Appendix C) or by sending a self-addressed 9 x 12 envelope marked FIRST CLASS, with \$1.95 postage on it. Send it to NJDEP, RTK Program, CN-405, Trenton, NJ 08625. Requests without a prepaid envelope will not be honored. When you receive the list and review it you will note that every substance has one or more "Source Numbers" assigned, any substance with source numbers 3 or 6 is regulated under the New Jersey program and must be reported at the "zero" threshold.

Reporting Exemptions

SARA Title III exempts all research laboratories. Under the NJ Right to Know law there is not an automatic exemption for research and development laboratories. Instead, any laboratory that feels it qualifies for an exemption must apply to the NJ Department of Environmental Protection. The Department will review all exemption applications and make decisions regarding each laboratory's claim. Call the NJDEP at 609/292-6714 to request an R & D exemption application.

Under the federal program, certain production processes and uses exempt some substances from inventory reporting (Federal Register, October 15, 1987, p. 38374), and certain small quantities of substances are exempt from reporting (Federal Register, October 15, 1987, p. 38366). BUT, any substance regulated under the New Jersey Community Right to Know program must be reported regardless of process, use, or quantity.

Completing the Front Page

All the information requested on the front page must be supplied! Print or type all responses.

Mailing Label—Each survey has a preprinted label which contains a mailing address, the New Jersey Employer Identification Number (NJEIN), 11 digits; the Standard Industrial Classification (SIC) code, 4 digits; and the County/Municipal code, each 2 digits. Please make any changes to the mailing address on the label, but do not mark over the top row of identifying numbers.

Box A—It is important for State records to know the actual facility location(s). Surveys may be mailed to corporate headquarters or financial accounting offices because mailing labels are generated from the New Jersey Department of Labor's unemployment insurance records. There-

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fore, the surveys may not be sent directly to the actual facility site, especially if there are multiple facilities. You can correct this and assist NJDEP in developing an accurate mailing list by supplying the actual address of each facility location. Please note that for each facility location you must complete a separate survey. (See Box E for a definition of "Facility".) Be certain to photocopy enough blank forms to meet the requirement of one survey per facility.

**Box B**—If you are required to prepare or maintain material safety data sheets (MSDSs) for any substances that you produce, use, or store at your facility, then you must check YES. If your answer is NO, you still must complete the rest of the front page and the Facility Identification and Site Location information at the top of the inventory page (second side of the survey form).

**Box C**—Provide the maximum number of employees, full and part time, that worked at the facility at any one time, in the previous calendar year.

**Box D**—Briefly describe the main function or operations of the facility, such as, "manufacturing textiles—dyeing and finishing cotton fabrics" or "retail—gasoline service station".

**Box E**—Enter the number of facilities in New Jersey. A facility is defined as "buildings, equipment and contiguous area at a single location used for the conduct of business". As stated in the instructions for "Box A", a separate survey must be completed for each facility in New Jersey.

**Box F**—If available, provide the Dun and Bradstreet number for your business.

**Box G**—Provide the name, title, and telephone number of the facility owner/operator or authorized representative. This individual must be someone who can be contacted to verify and/or clarify information that has been reported on the survey form. The official must sign and date the form.

**Box H**—Police and fire information must be provided. Be certain to find out which local police and fire departments have jurisdiction over the facility, so that you will be providing correct information.

**Box I**—Provide the name, title, and phone numbers of the person assigned as the contact in case of an emergency situation at the facility, such as, a fire or a spill. The facility phone number should be where the person can be reached during the regular working day and the emergency contact phone number should be where the person can be reached before and after regular working hours. If your facility has assigned alternate emergency contacts, you do not need to provide that information on the survey form. Please give only the lead or main contact.

**Completing the Inventory Page**

If you have no substances regulated under the OSHA Hazard Communication Standard (Box B, front page), you still must provide the "Facility Identification and Site Location" information requested at the top of the inventory page (second side of the survey form). Also, give the year for the "Reporting Period" (top right, inventory page).

Please print or type all responses.

Photocopy this sheet, if you need additional forms.

All the CODES are contained on page 7.

**Chemical Description**

**Substance Name**—Provide the chemical name of the hazardous substance you are reporting or the generic group that the substance is contained in, such as, paint, waste oil, or compressed gases. **DO NOT PROVIDE TRADE NAMES.**

**CAS Number**—This is the Chemical Abstracts Service number, a unique numerical identifier of individual chemical substances. The RTK Hazardous Substance List provides the CAS numbers, and many material safety data sheets also provide these numbers. Provide the CAS NUMBER WHEREVER APPLICABLE.

**DOT Number**—This is a four digit number used by the U.S. Department of Transportation as an identifier of hazardous materials. Individual substances or groups of substances (e.g., pesticides or paints) are assigned a number to serve as an identifier of type of hazard in an emergency situation. If the substance you are reporting has no DOT number, leave the line blank.

**Substance Number**—Refers to the number assigned in the Right to Know Hazardous Substance List, a reference document prepared jointly by the New Jersey Departments of Environmental Protection and Health. If you are not using this list to provide inventory information or you are reporting a substance that is not on the list, leave the line blank.

**Percent**—If you are reporting a hazardous component of a material, fill in the appropriate code for the percentage range of the component in the product. If you are reporting a substance in its pure state be certain to enter the appropriate code. (Codes, page 7.)

**State**—Provide the code for the physical state of the substance. (Codes, page 7.)

**Trade Secret**—Check this box if you are claiming a trade secret. If the substance is on the New Jersey list, call the NJDEP at 609/292-6714 to request a trade secret application.

If the substance is in a quantity greater than 10,000 pounds, or is an Extremely Hazardous Substance in excess of 500 pounds or its threshold planning quantity, whichever is less, you must also supply trade secret documentation that will be reviewed by the USEPA. The draft regulations can be found in the October 15, 1987 Federal Register, p. 38312-38337. For more information, call the USEPA at 1-800/535-0202.

**Hazards**

The U.S. Environmental Protection Agency has established five (5) hazard categories for reportable substances. These are based on the U.S. Occupational Safety and Health Administration's twenty-three (23) categories, developed for the Hazard Communication Standard. Appendix B explains how the original OSHA categories fit into the EPA's new categories. Provide all applicable hazard codes for each reportable substance. (Codes p. 7.)

**Inventory**

**Maximum Daily**—For each hazardous substance that you are reporting, estimate in pounds the greatest amount present at your facility on any single day during the reporting period. Regardless of physical state (i.e., gas, liquid, or solid), the substance must be reported in pounds. Provide the appropriate inventory range code. (Codes, page 7.)

**Average Daily**—For each hazardous substance that you are reporting, estimate in pounds the average amount present at your facility on any single day during the reporting period. Regardless of physical state (i.e., gas, liquid, or solid), the substance must be reported in pounds. Provide the appropriate inventory range code. (Codes, page 7.)

**Days Onsite**—Provide the number of days that the hazardous substance was onsite at the facility during the reporting period. Note, you must supply an actual number. There are no codes for this reporting requirement.

**Storage Codes and Locations**

**Container**—If a hazardous substance is present in different containers, provide an individual report for each type of storage container. (Codes, page 7.)

**Conditions**—For each hazardous substance that you are reporting provide the appropriate codes for both "Pressure" and "Temperature". (Codes, page 7.) You will be entering two code numbers for "Conditions".

**Location(s)**—For each hazardous substance that you are reporting, provide a brief narrative description of its onsite location. If the substance is found commonly throughout the site or a majority of the site you may report it as "ubiquitous".

**Confidential Location Information Sheet**

All the information on the Community Right to Know Survey is available to the public, but under Title III, Section 324, an owner/operator may request that substance location information be withheld from the public. You should enter the word CONFIDENTIAL in the "Location" section of the inventory page, and complete a "Confidential Location Information Sheet" (included in this mailing with the Community Right to Know Survey).

For any substances that you report the "Location" as confidential, you must complete a "Confidential Location Information Sheet". Provide the substance name, the CAS number, the DOT number, and the Substance number of each chemical you are claiming as having a confidential location. Enter all the appropriate storage codes and locations. This page will not be released to the public.

**CODES**

STORAGE CONDITION CODES	PERCENTAGE CODES
PRESSURE	61 Unknown
01 Ambient pressure	60 100%
02 Greater than ambient pressure	59 90 to 99%
03 Less than ambient pressure	58 80 to 89%
TEMPERATURE	57 70 to 79%
04 Ambient temperature	56 60 to 69%
05 Greater than ambient temperature	55 50 to 59%
06 Less than ambient temperature	54 25 to 49%
but not cryogenic (freezing conditions)	53 10 to 24%
07 Cryogenic conditions	52 1 to 9%
(less than -200 C)	51 0.1 to 0.9%

**MISCELLANEOUS NOTICES**

**CONTAINER CODES**

- 50 Above ground tank
- 49 Below ground tank—steel
- 48 Tank inside building
- 47 Steel drum
- 46 Can
- 45 Carboy
- 44 Silo
- 43 Fiber drum
- 42 Bag
- 41 Box
- 40 Cylinder
- 39 Bottles or jugs (glass)
- 38 Bottles or jugs (plastic)
- 37 Tote bin
- 36 Tank wagon
- 35 Railcar
- 34 Other (describe)
- 33 Below ground tank—fiberglass
- 32 Plastic drums

**INVENTORY RANGE**

- (In pounds)
- 20 Greater than 10 million
- 19 1,000,001 to 10 million
- 18 500,001-1 million
- 17 250,001-500,000
- 16 100,001-250,000
- 15 50,001-100,000
- 14 10,001-50,000
- 13 1,001-10,000
- 12 101-1,000
- 11 11-100
- 10 1-10
- 09 less than 1

**PHYSICAL STATE**

- S—Solid
- L—Liquid
- G—Gas

**HAZARD CATEGORIES**

- 70 Fire hazard
- 69 Sudden release of pressure
- 68 Reactive
- 67 Immediate (acute) health hazard
- 66 Delayed (chronic) health hazard

**APPENDIX B  
DEFINITIONS OF HAZARD CATEGORIES**

“Hazard Category” means any of the following:

- (1) “Fire hazard,” including “flammable,” “combustible liquid,” “pyrophoric,” and “oxidizer” (as defined under 29 CFR 1910.1200);
- (2) “Sudden release of pressure,” including “explosive” and “compressed gas” (as defined under 29 CFR 1910.1200);
- (3) “Reactive,” including “unstable reactive,” “organic peroxide,” and “water reactive” (as defined under 29 CFR 1910.1200);
- (4) “Immediate (acute) health hazard,” including “highly toxic,” “toxic,” “irritant,” “sensitizer,” “corrosive,” (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect usually occurs rapidly as a result of short term exposure and is of short duration; and
- (5) “Delayed (chronic) health hazard,” including “carcinogens” (as defined under 29 CFR 1910.1200) and other hazardous chemicals that cause an adverse effect to a target organ and which effect generally occurs as a result of long term exposure and is of long duration.

For further information on assigning Hazard Categories, review material safety data sheets (MSDSs), contact product manufacturers, or call the USEPA at 1-800/535-0202.

**APPENDIX C  
COUNTY LEAD AGENCIES**

County	Address	Telephone
Atlantic	Health Officer Atlantic County Health Department 201 South Shore Road Northfield, N.J. 08225	609 645-7700 X4371
Bergen	Director Bergen County Dep't of Health Services 327 E. Ridgewood Avenue Paramus, N.J. 07652	201 599-6170
Burlington	Public Health Coordinator Burlington County Health Department Raphael Meadow Health Center Woodlane Road Mount Holly, N.J. 08060	609 265-5513
Camden	Public Health Coordinator Camden County Department of Health 1800 Pavilion Building West 2101 Ferry Avenue Camden, N.J. 08104	609 757-8600

**ENVIRONMENTAL PROTECTION**

Cape May	Public Health Coordinator Cape May County Department of Health Crest Haven Complex Cape May Court House, N.J. 08210	609/465-1208
Cumberland	Health Officer Cumberland County Health Department 790 East Commerce Street Bridgeton, N.J. 08302	609/451-8000 X374
Essex	Essex County Dep't of Health and Rehab Environmental Health Office P.O. Box 500 Cedar Grove, N.J. 07009	201/228-8319
Gloucester	Public Health Coordinator Gloucester County Health Department Carpenter Street and Allens Lane Woodbury, N.J. 08096	609 853-3428
Hudson	Hudson Regional Health Commission 215 Harrison Avenue Harrison, N.J. 07029	201 485-7001
Hunterdon	Director of Health Hunterdon County Health Department Administration Building Flemington, N.J. 08822	201 788-1351
Mercer	Mercer County Clerk 209 South Broad Street P.O. Box 8068 Trenton, N.J. 08650	609 989-6464
Middlesex	Director Middlesex County Health Department 417 Dennison Street Highland Park, N.J. 08904	201 238-3870
Monmouth	Public Health Coordinator Monmouth County Health Department Route 9 and Campbell Court Freehold, N.J. 07728	201 431-7456
Morris	Morris County Clerk Hall of Records Building Court Street Morristown, N.J. 07960	201 829-8310
Ocean	Environmental Health Coordinator Ocean County Board of Health CN 2191 Toms River, N.J. 08754	201 341-9700
Passaic	Industrial Hygienist Paterson Department of Health 176 Broadway Paterson, N.J. 07505	201 881-3914
Salem	Public Health Coordinator Salem County Department of Health RD #2, Box 346 Woodstown, N.J. 08098	609 769-2126
Somerset	Somerset County Clerk P.O. Box 3000 North Bridge and High Streets Somerville, N.J. 08876	201 231-7000
Sussex	County Health Director Sussex County Health Department RD #3, Box 140-A Newton, N.J. 07860	201 948-4545
Union	Bureau Chief Union County Dept of Eng & Planning Bureau of Environmental Affairs County Admin Bldg, Elizabeth Plaza Elizabeth, N.J. 07207	201 527-4215
Warren	Public Health Coordinator Warren County Health Department 29 Willow Street Washington, N.J. 07882	201 454-1152

**ENVIRONMENTAL PROTECTION**

**MISCELLANEOUS NOTICES**

**APPENDIX D**

**DIRECTORY OF ADDITIONAL INFORMATION SOURCES**

For assistance in completing the Community Right to Know survey, to obtain an R & D exemption application, a Trade Secret application, or a 30 day extension, call the New Jersey Department of Environmental Protection at 609/292-6714.

For information on federal reporting requirements under SARA Title III or to receive copies of the federal regulations and other materials related to SARA Title III, call the U.S. Environmental Protection Agency at 1-800/535-0202.

For assistance in obtaining the address of your local emergency planning committee, call the New Jersey State Police, Office of Emergency Management at 609/882-2000.

To obtain a copy of the New Jersey Right to Know Hazardous Substance List, please send a self-addressed 9 x 12 envelope with \$1.95 postage affixed to it and marked **FIRST CLASS**. Send to NJDEP, RTK Program, CN-405, Trenton, NJ 08625.

The New Jersey Right to Know Hazardous Substance List is available for your reference at the county lead agencies (Appendix C) and at the state depository libraries listed below.

**DEPOSITORY LIBRARIES FOR NEW JERSEY DOCUMENTS**

**College Libraries**

- Camden County College, Blackwood, NJ
- Drew University, Madison, NJ
- Fairleigh Dickinson University, Rutherford, NJ
- Glassboro State College, Glassboro, NJ
- Jersey City State College, Jersey City, NJ
- Montclair State College, Upper Montclair, NJ
- Monmouth College, West Long Branch, NJ
- County College of Morris, Dover, NJ
- Kean College of New Jersey, Union, NJ
- Ocean County College, Toms River, NJ
- Princeton University, Princeton, NJ

- Ramapo College of New Jersey, Mahwah, NJ
- Richard Stockton State College, Pomona, NJ
- Rider College, Lawrence Township, NJ
- Rutgers, the State University:
  - Alexander/Sci. Med. New Brunswick, NJ
  - Kilmer Area, Piscataway, NJ
  - Douglass College, New Brunswick, NJ
  - College of Arts and Sciences, Newark, Newark, NJ
  - Law School, Newark, Newark, NJ
  - College of Arts and Sciences, Camden, Camden, NJ
- Seton Hall University, South Orange, NJ
- Seton Hall University, Law School, Newark, NJ
- Trenton State College, Ewing, NJ
- William Paterson College of New Jersey, Wayne, NJ
- Salem Community College, Penns Grove, NJ

**County Libraries**

- Atlantic County Library, Mays Landing, NJ
- Burlington County Library, Mount Holly, NJ
- Camden County Library, Echelon Urban Complex, Voorhees, NJ
- Cape May County Free Library, Cape May Court House, NJ
- Cumberland County Library, Bridgeton, NJ
- Monmouth County Library, Freehold, NJ
- Morris County Free Library, Whippany, NJ
- Ocean County Library, Toms River, NJ
- Somerset County Library, Somerville, NJ
- Sussex County Library, Newton, NJ

**Public Libraries**

- |                    |                   |                  |                |
|--------------------|-------------------|------------------|----------------|
| Bloomfield, NJ     | Hackensack, NJ    | Paterson, NJ     | Wayne, NJ      |
| Cherry Hill, NJ    | Jersey City, NJ   | Phillipsburg, NJ | Woodbridge, NJ |
| East Brunswick, NJ | Linden, NJ        | Plainfield, NJ   | Woodbury, NJ   |
| East Orange, NJ    | New Brunswick, NJ | Ridgewood, NJ    |                |
| Elizabeth, NJ      | Newark, NJ        | Trenton, NJ      |                |

DEJ-094  
1/88

State of New Jersey  
DEPARTMENT OF ENVIRONMENTAL PROTECTION



COMMUNITY RIGHT TO KNOW SURVEY

to satisfy requirements under SARA, Title III, Section 312  
and New Jersey Community Right to Know

NJEIN SIC COUNTY/  
MUNICIPALITY

12345600000-2345-7777-03/01/88 1. XYZ INCORPORATED 2. 77 PINE ST 3. ANYVILLE, N J 4. 5. 07440 6. MU:	<b>IMPORTANT: A separate survey must be completed for each facility.</b> <b>(A) FACILITY LOCATION</b> If the facility location is different than the mailing address on the label, enter facility address below. <u>XYZ Incorporated</u> <u>1 Main Street</u> <u>Anyville, New Jersey 08700</u> Check here if you would like your survey mailed to above address <input checked="" type="checkbox"/>
---	--

Indicate changes to mailing address on label

<b>(B)</b> Is any substance or material covered by the OSHA Hazard Communications Standard present at this facility? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<b>(C)</b> Number of employees at facility: <u>25</u>
<b>(D)</b> Briefly describe the nature of the operations or business conducted at this facility: <u>Assembly of machine parts</u>	<b>(E)</b> Number of facilities in New Jersey <u>1</u>
<b>(F)</b> Dun and Bradstreet No. <u>999999999</u>	

**(G) CERTIFICATION OF OWNER/OPERATOR OR AUTHORIZED REPRESENTATIVE** — I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document, and that based on my inquiry of those individuals responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete.

Signature Robert Smith Date 1/6/88 Phone Number (609) 555-5555  
 Name (Print) Robert Smith Title President

**(H) POLICE AND FIRE DEPARTMENT**  
 Enter the respective phone numbers, names and addresses (including Zip Code) of your local fire and police departments in the spaces below.

POLICE DEPT. Phone Number <u>(609) 555-5554</u> Name <u>Anyville South Station</u> Address <u>2 Main Street</u> Municipality <u>Anyville, NJ</u> Zip Code <u>08700</u>	FIRE DEPT. Phone Number <u>(609) 555-5556</u> Name <u>Nearby Police</u> Address <u>3 Main Street</u> Municipality <u>Nearby, NJ</u> Zip Code <u>08700</u>
---	--

**(I) EMERGENCY CONTACT**  
 Name John Brown Title Environmental Specialist  
 Facility Phone Number (609) 555-5557 Emergency Contact Phone Number (609) 555-5558

<b>NOTE: Make copies of both sides of this survey!</b> The law requires that you send a copy to your County Lead Agency (see list in instructions), Local Emergency Planning Committee and your local fire and police departments.	Return original to: NJDEP — RTK SURVEY CN 405 Trenton, NJ 08625-0405
--	---

IMPORTANT! Read all instructions before completing.  
 Photocopy this sheet, if you need additional forms.  
 Please print or type all responses.

Reporting Period: January 1 - December 31, 89

**FACILITY IDENTIFICATION AND SITE LOCATION**

NJEIN 12345600000  
 Facility Name XYZ Incorporated

Street Address 1 Main Street  
 City Anyville State NJ Zip 08700

CHEMICAL DESCRIPTION	HAZARDS	Inventory (Ranges)	STORAGE CODES AND LOCATIONS
Substance Name <u>Acetylene</u> CAS No. <u>74-86-2</u> DOT No. <u>1001</u> Substance No. (if available) <u>0015</u> Percent <u>60</u> State <u>G</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	(Enter for all that apply.) <u>70, 69, 67.</u>	(Enter Code) Max. Daily <u>12</u> Avg. Daily <u>12</u> Days Onsite <u>100</u> (Actual Number)	(Enter Codes, except Location(s); supply narrative.) Container <u>48</u> Conditions <u>02, 04</u> Location(s) <u>Assembly room in gear shop, back wall</u>
Substance Name <u>Adhesives</u> CAS No. <u>-</u> DOT No. <u>1133</u> Substance No. (if available) <u>2067</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>79, 69, 67.</u> <u>66.</u>	Max. Daily <u>11</u> Avg. Daily <u>10</u> Days Onsite <u>190</u> (Actual Number)	Container <u>34-Tubes</u> Conditions <u>01, 04</u> Location(s) <u>Storage room of package shop</u>
Substance Name <u>GASOLINE</u> CAS No. <u>6006-61-9</u> DOT No. <u>1203</u> Substance No. (if available) <u>0957</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>70, 69, 67.</u> <u>66.</u>	Max. Daily <u>14</u> Avg. Daily <u>13</u> Days Onsite <u>365</u> (Actual Number)	Container <u>49</u> Conditions <u>01, 04</u> Location(s) <u>Rear yard of vehicle maintenance shop</u>
Substance Name <u>Gasoline</u> CAS No. <u>6006-61-9</u> DOT No. <u>1203</u> Substance No. (if available) <u>0957</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>70, 69, 67.</u> <u>66.</u>	Max. Daily <u>11</u> Avg. Daily <u>10</u> Days Onsite <u>250</u> (Actual Number)	Container <u>46</u> Conditions <u>01, 04</u> Location(s) <u>Front yard of maintenance shop</u>
Substance Name <u>Petroleum Oil</u> CAS No. <u>-</u> DOT No. <u>1270</u> Substance No. (if available) <u>2651</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>70, 69, 67.</u> <u>66.</u>	Max. Daily <u>12</u> Avg. Daily <u>11</u> Days Onsite <u>365</u> (Actual Number)	Container <u>47</u> Conditions <u>01, 04</u> Location(s) <u>Rear section of gear shop, products room</u>
Substance Name <u>Sulfuric Acid</u> CAS No. <u>7664-93-9</u> DOT No. <u>1831</u> Substance No. (if available) <u>1761</u> Percent <u>54</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>68, 67.</u>	Max. Daily <u>11</u> Avg. Daily <u>11</u> Days Onsite <u>50</u> (Actual Number)	Container <u>39</u> Conditions <u>01, 04</u> Location(s) <u>Assembly room in gear shop, bench area</u>
Substance Name <u>Trichloroethylene</u> CAS No. <u>79-21-6</u> DOT No. <u>1710</u> Substance No. (if available) <u>1890</u> Percent <u>60</u> State <u>L</u> Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	<u>69, 67, 66.</u>	Max. Daily <u>12</u> Avg. Daily <u>11</u> Days Onsite <u>365</u> (Actual Number)	Container <u>47</u> Conditions <u>01, 04</u> Location(s) <u>Rear section of gear shop, product room</u>

See Instruction Booklet for codes.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION



**IMPORTANT!** Read all instructions before completing.

Photocopy this sheet, if you need additional forms.

Please print or type all responses.

Reporting Period: January 1 - December 31, \_\_\_\_

**FACILITY IDENTIFICATION AND SITE LOCATION**

NJEIN \_\_\_\_\_

Street Address \_\_\_\_\_

Facility Name \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

CHEMICAL DESCRIPTION	HAZARDS	Inventory (Ranges)	STORAGE CODES AND LOCATIONS
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	(Enter for all that apply.) _____, _____, _____ _____, _____	(Enter Code) Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	(Enter Codes, except Location(s); supply narrative.) Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ DOT No. _____ Substance No. (if available) _____ Percent _____ State _____ Trade Secret <input type="checkbox"/> (Code) (Code) (Check if Claiming)	_____, _____, _____ _____, _____	Max. Daily _____ Avg. Daily _____ Days Onsite _____ (Actual Number)	Container _____ Conditions _____ Location(s) _____ _____

See Instruction Booklet for codes.

**IMPORTANT!** Read all instructions before completing.  
 Photocopy this sheet, if you need additional forms.  
 Please print or type all responses.

Reporting Period: January 1 - December 31, \_\_\_\_

**FACILITY IDENTIFICATION AND SITE LOCATION**

NJEIN \_\_\_\_\_  
 Facility Name \_\_\_\_\_

Street Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

CONFIDENTIAL LOCATION INFORMATION SHEET	STORAGE CODES AND LOCATIONS
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____
Substance Name _____ CAS No. _____ - _____ - _____ DOT No. _____ Substance Number (if available) _____	Container _____ Conditions _____ Location(s) _____ _____

See Instruction Booklet for codes.

ENVIRONMENTAL PROTECTION

MISCELLANEOUS NOTICES

**DIVISION OF WATER RESOURCES**

**(a)**

**Amendment to the Sussex County Water Quality Management Plan**

**Public Notice**

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would provide for new wastewater treatment facilities to serve the proposed Bertrand Island and Atkins-Morris developments. In addition, as part of this amendment, a Wastewater Management Plan will be adopted to provide a plan for addressing the wastewater management needs of the Borough of Mount Arlington. The Borough of Mount Arlington will be designated as the Wastewater Management Agency for the facilities it agrees to serve as co-permittee.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Water Resource Management Program, 57 High Street, Newton, New Jersey 07860; and the NJDEP, Division of Water Resources, Bureau of Water Resources Management Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Sussex County Board of Chosen Freeholders will hold a public meeting on the proposed Sussex County WQM Plan amendment. The public meeting will be held on Tuesday, February 23, 1988 at 8:30 P.M. in the Freeholders Meeting Room of the Sussex County Administration Complex at Don Bosco College, Plotts Road, Newton, New Jersey.

Interested persons may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and Mr. George Horzempa, Bureau of Water Resources Management Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

**HEALTH**

**(b)**

**MATERNAL AND CHILD HEALTH**

**Availability of Grants**

**Establishment of New Jersey SIDS (Sudden Infant Death Syndrome) Center**

Take notice that, in compliance with P.L. 1987, ch. 7, the Department of Health hereby publishes notice of the availability of the following grant:

**Name of Grant Program:** MCH—New Jersey SIDS Center (Grant Program No. 80-52-MCH).

**Purpose for which the grant program funds will be used:** Establish a Statewide SIDS Center including public and professional educational programs, referral for SIDS related services, 24 hour telephone hotline, and in cooperation with State Medical examiner and other State medical schools and pediatric centers, will function as technical advisory center and offer necessary services to potential SIDS victims, their families, and families affected by SIDS.

**Amount of money in the grant program:** The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified below to determine whether the funds have been awarded and to receive further information.

**Group or entities which may apply for the grant program:** Any medical school in New Jersey which has the appropriate licensed staff to provide services for SIDS families and cooperate with the State Medical examiner and other health care providers to arrange services for SIDS families on a statewide basis.

**Qualifications needed by an applicant to be considered for the grant:** Any licensed health care facility in conjunction with a State medical school which has the following components may be considered:

1. Apnea Center
2. Bereavement/Grief counseling staff
3. SIDS counseling personnel
4. Neonatologists, pediatricians and pediatric pathologists with training in diagnosis and management of SIDS.

**Procedures for eligible entities to apply for grant funds:**

1. Contact Office of Director for Program referral, Department of Health.
2. Contact Program.
3. Submit Letter of Intent to Program.
4. Prepare Health Service Grant Application.

**For information contact:**

Maternal and Child Health Services  
Office of Director  
120 South Stockton Street, CN 364  
Trenton, NJ 08625  
609-292-5656

**Deadline by which applications must be submitted:** Letter of intent due to funding program by July 1 for January 1 grants; January 1 for July 1 grants.

**Date by which applicant shall be notified whether they will receive funds:** Applicant will be notified 30 days prior to start date of grant.

**HUMAN SERVICES**

**(c)**

**INSTITUTIONAL, RESIDENTIAL, AND SUPPORT SERVICES UNIT**

**Availability of Grants**

**Specialized Residential Health Care Facility Demonstration Project**

Take notice that in compliance with P.L. 1987, c.7, which supplements Title 52 of the Revised Statutes, the Department of Human Services announces the following availability of funds.

**Name of Program:** Funds are available to develop a Specialized Residential Health Care Facility Demonstration Project.

**Purpose:** The purpose of the grant program is to develop a program, within an existing Residential Health Care Facility, providing expanded on-site services to young adults with serious mental health problems.

**Amount of money in the program:** The amount of money made available to the Department to operate the program is \$326,151 for the period of February 1, 1988 through July 31, 1990.

**Organizations which may apply for funding under this program:** Eligible entities are licensed Residential Health Care Facilities.

**Qualifications:** Qualifications needed by an applicant to be considered for the grant program are as follows: The facility is licensed by the Department of Health as a Residential Health Care Facility; the operator/owner is willing to serve young adults with serious mental health problems who may also have a drug and/or alcohol problem; and the owner/operator will commit adequate space for special activities and staff.

**Procedure:** In order to apply for funds, Residential Health Care Facility owners/operators must submit an application. Applications have been sent to all facilities licensed by the Department of Health.

**Address:** Submit applications, questions, or other requests to:

Barbara DeLorenzo, Project Director  
Specialized Residential Health Care Facility  
Demonstration Program  
NJ Department of Human Services  
CN 700  
Trenton, NJ 08625  
(609) 984-9332

**Deadline:** Applications must be postmarked on or before March 1, 1988. Hand delivered applications must be received no later than 4:30 P.M. on March 1, 1988.

**Date by which applicants shall be notified of approval or disapproval:** Applicants will be notified of the selected facility on or about April 1, 1988.

MISCELLANEOUS NOTICES

LAW AND PUBLIC SAFETY

**LAW AND PUBLIC SAFETY**

**(a)**

**DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
Issuance of Identification Cards by County Clerks  
Notice of Correction: N.J.A.C. 13:2-40.5**

Take notice that an error appears in the New Jersey Administrative Code at N.J.A.C. 13:2-40.5, Identification card; form. The adopted rule appeared in the October 5, 1987 issue of the New Jersey Register at 19 N.J.R. 1824. The front side of the identification card found at N.J.A.C. 13:2-40.5 should appear in the New Jersey Administrative Code as follows:

13:2-40.5 Identification card; form

The identification card shall be 3½ inches wide by 2½ inches high in size, with black print on goldenrod basket weave safety paper containing a hidden Seal of New Jersey and the words State of New Jersey on its front side which is only visible under ultraviolet light, in the following form:

Photo  
1½" x 1½"

(FRONT SIDE)

) STATE OF NEW JERSEY  
) COUNTY OF  
) IDENTIFICATION  
) CARD NO.  
) —THIS IS TO CERTIFY THAT—  
)  
)  
) —WHO RESIDES AT—  
)  
)  
) HAS FURNISHED TO THE UNDER-  
) SIGNED SATISFACTORY EVIDENCE  
) OF HAVING ATTAINED THE AGE OF  
) 21 YEARS.

HGT. WGT.

HAIR EYES

DATE OF  
BIRTH

ATTEST: \_\_\_\_\_  
County Clerk or duly authorized deputy

Date of Issuance

Holder's  
Signature \_\_\_\_\_

# 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 January 4, 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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT DECEMBER 21, 1987**  
**NEXT UPDATE: SUPPLEMENT JANUARY 19, 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. 325 and 392	February 17, 1987	19 N.J.R. 1589 and 1676	September 8, 1987
19 N.J.R. 393 and 430	March 2, 1987	19 N.J.R. 1677 and 1758	September 21, 1987
19 N.J.R. 431 and 476	March 16, 1987	19 N.J.R. 1759 and 1858	October 5, 1987
19 N.J.R. 477 and 586	April 6, 1987	19 N.J.R. 1859 and 1926	October 19, 1987
19 N.J.R. 587 and 672	April 20, 1987	19 N.J.R. 1927 and 2086	November 2, 1987
19 N.J.R. 673 and 794	May 4, 1987	19 N.J.R. 2087 and 2224	November 16, 1987
19 N.J.R. 795 and 898	May 18, 1987	19 N.J.R. 2225 and 2324	December 7, 1987
19 N.J.R. 899 and 1006	June 1, 1987	19 N.J.R. 2325 and 2510	December 21, 1987
19 N.J.R. 1007 and 1120	June 15, 1987	20 N.J.R. 1 and 124	January 4, 1988
19 N.J.R. 1121 and 1258	July 6, 1987	20 N.J.R. 125 and 220	January 19, 1988
19 N.J.R. 1259 and 1352	July 20, 1987	20 N.J.R. 221 and 320	February 1, 1988
19 N.J.R. 1353 and 1474	August 3, 1987	20 N.J.R. 321 and 434	February 16, 1988
19 N.J.R. 1475 and 1588	August 17, 1987		

**N.J.A.C. CITATION**

**ADMINISTRATIVE LAW—TITLE 1**

1:1-14.1	Media coverage of public hearings
1:1-14.5	Ex parte communications and agency heads
1:30-1.2, 2.8	Use of appendices

**PROPOSAL NOTICE (N.J.R. CITATION)**

**DOCUMENT NUMBER**

**ADOPTION NOTICE (N.J.R. CITATION)**

20 N.J.R. 127(a)			
19 N.J.R. 1761(b)	R.1988 d.78	20 N.J.R. 385(a)	
19 N.J.R. 675(a)			

**Most recent update to Title 1: TRANSMITTAL 1987-6 (supplement December 21, 1987)**

**AGRICULTURE—TITLE 2**

2:71-2.4, 2.5, 2.6	Jersey Fresh Logo program
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19 N.J.R. 2327(b)

**Most recent update to Title 2: TRANSMITTAL 1987-8 (supplement November 16, 1987)**

**BANKING—TITLE 3**

3:1-1.1	Maximum interest rate on first mortgages on residences with one to six units
3:1-14	Revolving credit equity loans
3:2-1.1, 1.2, 1.3, 1.4	Advertising by financial institutions
3:6-4	Banks and savings banks: action upon detection or discovery of crime
3:6-9	Capital stock savings bank: change in control
3:10-8, 9	Banks and savings banks: mortgage loan practices
3:11-12	Commercial loans by savings banks
3:13-2.2, 4.3, 4.4	Bank holding companies: financial filings
3:18-10	Secondary mortgage loan licensure
3:23-2.1	Secondary mortgage loan licensure
3:27-6, 7	Savings and loan associations: mortgage loan practices
3:38-4, 5, 7	Mortgage bankers and brokers: loan practices
3:42	Pinelands Development Credit Bank: procedural rules

19 N.J.R. 2089(a)			
19 N.J.R. 1594(a)			
19 N.J.R. 1355(a)			
19 N.J.R. 1595(a)	R.1988 d.28	20 N.J.R. 183(a)	
19 N.J.R. 1762(a)			
19 N.J.R. 1356(a)			
19 N.J.R. 1679(b)			
20 N.J.R. 127(b)			
19 N.J.R. 1929(a)	R.1988 d.36	20 N.J.R. 183(b)	
19 N.J.R. 1929(a)	R.1988 d.36	20 N.J.R. 183(b)	
19 N.J.R. 1358(a)			
19 N.J.R. 1360(a)			
20 N.J.R. 128(a)			

**Most recent update to Title 3: TRANSMITTAL 1987-6 (supplement October 19, 1987)**

**CIVIL SERVICE—TITLE 4**

4:1-16.1-16.6, 24.2	Repeal (see 4A:8)
4:1-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)
4:2-16.1, 16.2	Repeal (see 4A:8)
4:2-17, 18, 20, 26	Repeal (see 4A:6-1, 2, 3, 4, 5)
4:3-16.1, 16.2	Repeal (see 4A:8)
4:3-17, 20	Repeal (see 4A:6-1, 2, 3, 4, 5)
4:4	Repeal (see 4A:6-6)

19 N.J.R. 1363(a)			
19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)	
19 N.J.R. 1363(a)			
19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)	
19 N.J.R. 1363(a)			
19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)	
19 N.J.R. 1764(a)	R.1988 d.11	20 N.J.R. 67(a)	

**Most recent update to Title 4: TRANSMITTAL 1987-4 (supplement November 16, 1987)**

**PERSONNEL—TITLE 4A**

4A:6-1, 2, 3, 4, 5	Leaves, hours of work, employee development
4A:6-1.3, 1.10	Sick leave: leave without pay
4A:6-6	Awards Program
4A:8	Layoffs

19 N.J.R. 1764(a)	R.1988 d.13	20 N.J.R. 54(a)	
20 N.J.R. 133(a)			
19 N.J.R. 1774(a)	R.1988 d.11	20 N.J.R. 54(a)	
19 N.J.R. 1363(a)			

**Most recent update to Title 4A: TRANSMITTAL 1987-2 (supplement November 16, 1987)**

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:11-3.5	Relocation assistance: scheduling of payments	19 N.J.R. 1930(a)	R.1988 d.41	20 N.J.R. 185(a)
5:12-1.1, 2.1, 2.4	Homelessness Prevention Program: eligibility for temporary assistance	19 N.J.R. 1777(a)		
5:13	Limited dividend and nonprofit housing corporations and associations	19 N.J.R. 1861(a)	R.1988 d.49	20 N.J.R. 256(a)
5:14-1.1-1.4, 2.1-2.3, 3.1-3.23, 4.1-4.6	Neighborhood Preservation Balanced Housing Programs	19 N.J.R. 589(a)		
5:19	Continuing care retirement communities: disclosure requirements	19 N.J.R. 597(a)	R.1988 d.60	20 N.J.R. 256(b)
5:23	Uniform Construction Code	20 N.J.R. 223(a)		
5:23-2.23	UCC: use and occupancy of buildings undergoing alteration	20 N.J.R. 223(b)		
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)		
5:23-3.2	Uniform Construction Code: commercial farm buildings	19 N.J.R. 1778(a)		
5:23-3.2	Commercial farm building subcode: public hearings	19 N.J.R. 1862(a)		
5:23-3.18	Energy Subcode: checkmetering in multifamily buildings; lighting efficiency in existing buildings	19 N.J.R. 1862(b)	R.1988 d.50	20 N.J.R. 268(a)
5:23-9.1, 9.2	UCC interpretations: Plumbing Subcode and manufactured housing	20 N.J.R. 224(a)		
5:80-21	Housing and Mortgage Finance: single family loans	18 N.J.R. 2238(a)	R.1978 d.517	20 N.J.R. 70(a)
5:80-26	Housing resale and rental affordability control	19 N.J.R. 802(a)		
5:92-1.3, 6.1	Council on Affordable Housing: rehabilitation component and credits	19 N.J.R. 1863(a)		
5:92-5.14	Council on Affordable Housing: low and moderate income split	19 N.J.R. 1597(a)	R.1988 d.27	20 N.J.R. 71(a)
5:92-12.11	Council on Affordable Housing: rental surcharge	19 N.J.R. 1597(a)		
5:92-16	Council on Affordable Housing: accessory apartments	19 N.J.R. 2089(b)	R.1988 d.84	20 N.J.R. 385(b)
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly	19 N.J.R. 1686(a)		
5:100-2.5	Failure to report suspected abuse or exploitation of institutionalized elderly: extension of comment period	19 N.J.R. 2090(a)		

Most recent update to Title 5: TRANSMITTAL 1987-10 (supplement December 21, 1987)

**DEFENSE—TITLE 5A**

Most recent update to Title 5A: TRANSMITTAL 1 (supplement May 20, 1985)

**EDUCATION—TITLE 6**

6:3-2	Transfer of pupil records	20 N.J.R. 133(b)		
6:20-3.1	Reproposed: Determining tuition rates for sending and receiving districts	19 N.J.R. 2329(a)		
6:22-1.1-1.7, 2.1-2.5, 3.1, 3.4	School facility planning services	20 N.J.R. 3(a)		
6:28-11	Special education pilot project	20 N.J.R. 14(a)		
6:64	County and local library services	19 N.J.R. 1931(a)	R.1988 d.67	20 N.J.R. 386(a)

Most recent update to Title 6: TRANSMITTAL 1987-11 (supplement December 21, 1987)

**ENVIRONMENTAL PROTECTION—TITLE 7**

7:1C-1.2, 1.5	90-day construction permits: fee structure for treatment works approvals	20 N.J.R. 135(a)		
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: hazardous substances and materials	19 N.J.R. 438(a)	R.1988 d.89	20 N.J.R. 387(a)
7:1G-2.1, 2.2, 4.1, 4.2, 5.4	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(a)		
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: assessment of civil administrative penalties for nondisclosure of information	19 N.J.R. 703(a)	R.1988 d.90	20 N.J.R. 388(a)
7:1G-3.2, 5.2, 7	Worker and Community Right to Know: extension of comment period	19 N.J.R. 2234(b)		
7:3-2	Management of privately-owned woodlands: approved foresters list	20 N.J.R. 137(a)		
7:6-3.10	Water-skiing on Lake Hopatcong	20 N.J.R. 138(a)		
7:7-2.1, 2.3	Coastal Permit Program: CAFRA exemptions; waterfront development	19 N.J.R. 807(a)		
7:7-2.2	Coastal wetlands maps for Gloucester County	19 N.J.R. 2090(b)		
7:7A	Freshwater Wetlands Protection Act rules	19 N.J.R. 2330(a)		
7:7A-8.1	Freshwater Wetlands Protection Act rules: correction	20 N.J.R. 22(a)		
7:7E-3.41, 3.46, 7.14, 8.11	Hudson River waterfront development	20 N.J.R. 139(a)		
7:7F	Shore Protection Program	19 N.J.R. 2091(a)	R.1988 d.43	20 N.J.R. 186(a)
7:8	Storm water management	19 N.J.R. 2227(a)		
7:9-1	Sewer systems and wastewater treatment plants	19 N.J.R. 2227(b)		
7:10-10.2, 11.2, 15	Safe Drinking Water Program fees	20 N.J.R. 142(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:10-16	Maximum Containment Levels (MCLs) for hazardous contaminants in drinking water	19 N.J.R. 2228(a)		
7:10-16.13, 16.14, 16.15	Hazardous contaminants in drinking water: pre-proposal concerning short-term action levels, sampling response levels, and unregulated and total volatile organics	19 N.J.R. 2231(a)		
7:11-1	Use of Water Supply Authority property	19 N.J.R. 1274(a)		
7:11-2.2, 2.3, 2.9, 2.13	New Jersey Water Supply Authority rates and charges	20 N.J.R. 144(a)		
7:13-7.1	Redelineation of Hackensack River in Oradell	19 N.J.R. 1935(a)		
7:13-7.1(b)	Redelineation of Jumping Brook in Neptune	19 N.J.R. 2233(a)		
7:13-7.1(d)	Redelineation of Raritan River and Peters Brook: repropose	19 N.J.R. 167(b)	R.1988 d.79	20 N.J.R. 391(a)
7:13-7.1(d)	Redelineation of Big Bear Brook, Mercer County	19 N.J.R. 1933(a)		
7:13-7.1(d)	Redelineation of Carter's Brook, Middlesex County	19 N.J.R. 1933(b)		
7:13-7.1(d)	Redelineation of Lawrence, Ireland, Mae, Harry's and Oakeys brooks in Mercer and Middlesex counties	19 N.J.R. 1934(a)		
7:14A-5.12	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:14A-6.4	Groundwater monitoring parameters for hazardous waste facilities	19 N.J.R. 1863(b)		
7:14A-8	NJPDES permit program: public notice and comment	19 N.J.R. 1864(a)	R.1988 d.59	20 N.J.R. 269(a)
7:14A-11.1	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:22-3.4, 3.6-3.11, 3.13, 3.32, 4.4, 4.6-4.11, 4.13, 4.32, 5.11	Wastewater Treatment Financing Program	19 N.J.R. 1600(a)		
7:22-9	Wastewater treatment: contract awards to small, female, and minority-owned businesses	19 N.J.R. 1604(a)		
7:25-1	Shellfishing license program	19 N.J.R. 2358(a)		
7:25-6	1988-89 Fish Code	19 N.J.R. 1385(a)	R.1988 d.15	20 N.J.R. 72(a)
7:25-18.5	Drifting and anchored gill net seasons: netting mesh in staked gill net fishery	19 N.J.R. 1609(a)		
7:26-1.4, 8.2, 8.3, 8.5, 8.12, 8.14, 9.4, App. A, 12.1, 12.5, 12.12	Hazardous waste management	19 N.J.R. 1936(a)		
7:26-1.4, 9.8-9.11, 9.13, App. A, 12.3	Hazardous waste management: closure and post-closure financial assurance	19 N.J.R. 2349(a)		
7:26-1.9, 12.2, 17	Hazardous waste management: public access to records and information	19 N.J.R. 1869(a)	R.1988 d.57	20 N.J.R. 273(a)
7:26-2.13	Solid waste facilities: recordkeeping	19 N.J.R. 171(a)	R.1988 d.73	20 N.J.R. 393(a)
7:26-2.13	Recordkeeping at solid waste facilities: extension of comment period for proposal at 19 N.J.R. 171(a)	19 N.J.R. 2364(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Hunterdon, Morris, Ocean and Warren counties	19 N.J.R. 1142(a)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: Cumberland and Gloucester counties	19 N.J.R. 1481(a)		
7:26-8.14	Ethylene bisdithiocarbamic acid (EBDC) production	19 N.J.R. 1938(a)		
7:26-12.2	Hazardous waste facilities: application signatories	19 N.J.R. 11(b)	R.1988 d.56	20 N.J.R. 276(a)
7:26-14.1, 14A	Resource Recovery and Solid Waste Disposal Facility Loans	19 N.J.R. 828(a)		
7:27-16.1, 16.3	Stage II recovery of gasoline vapors	19 N.J.R. 1938(b)	R.1988 d.44	20 N.J.R. 186(a)
7:29B	Determination of noise from stationary sources	19 N.J.R. 1483(a)	R.1988 d.58	20 N.J.R. 278(a)
7:29B	Determination of noise from stationary sources: extension of comment period	19 N.J.R. 2092(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program	19 N.J.R. 1687(a)		
7:31-1, 2, 3, 4	Toxic Catastrophe Prevention Act program: extension of comment period	19 N.J.R. 2092(b)		
7:30	Pesticide Control Code	19 N.J.R. 1611(a)	R.1988 d.9	20 N.J.R. 75(a)
7:36	Green Acres Program	19 N.J.R. 2358(b)		
7:45	Delaware and Raritan Canal: State Park review zone	20 N.J.R. 23(a)		

**Most recent update to Title 7: TRANSMITTAL 1987-12 (supplement December 21, 1987)**

**HEALTH—TITLE 8**

8:31B-3.7, 3.17, 3.27, 3.51, 3.55, 3.73, 4.42	Hospital reimbursement for existing capital indebtedness	19 N.J.R. 1145(a)	R.1988 d.24	20 N.J.R. 77(a)
8:31B-3.24, 3.51, 3.71, 3.73	Hospital reimbursement: indirect costs	19 N.J.R. 1147(a)	R.1988 d.25	20 N.J.R. 82(a)
8:31B-3.38	Apportionment of full financial elements	19 N.J.R. 1279(a)		
8:31B-4.38	Hospital reimbursement: uncompensated care coverage for outpatient dialysis	19 N.J.R. 2092(c)		
8:31B-4.62	Hospital reimbursement: outpatient HealthStart maternal and pediatric care	19 N.J.R. 2365(a)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:33E-1.1, 1.2, 1.3	Certificate of Need: cardiac diagnostic facilities	19 N.J.R. 1282(a)		
8:33E-2.2, 2.3, 2.4	Certificate of Need: cardiac surgery centers	19 N.J.R. 1283(a)		
8:33F-1.2, 1.4	Back-up and acute hemodialysis treatment: annual inpatient admissions for applicant hospital	19 N.J.R. 2093(a)	R.1988 d.88	20 N.J.R. 393(b)
8:33G-3.11	Long-term care beds for former psychiatric hospital patients	19 N.J.R. 614(a)		
8:43E-1	Certificate of Need policy manual for health care facilities and services	19 N.J.R. 1872(a)	R.1988 d.21	20 N.J.R. 86(a)
8:43E-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43E-2	Psychiatric inpatient beds: adult open acute	19 N.J.R. 1873(a)	R.1988 d.22	20 N.J.R. 86(b)
8:43E-3	Psychiatric inpatient screening beds	19 N.J.R. 1875(a)	R.1988 d.20	20 N.J.R. 88(a)
8:43E-4	Children's acute psychiatric beds	19 N.J.R. 1876(a)	R.1988 d.19	20 N.J.R. 88(b)
8:43E-4	Child and adolescent acute psychiatric beds	19 N.J.R. 2094(a)	R.1988 d.87	20 N.J.R. 394(a)
8:43E-5	Intermediate adult and special psychiatric beds	19 N.J.R. 1877(a)	R.1988 d.18	20 N.J.R. 89(a)
8:43G-1	Repeal (see 8:43I-1)	19 N.J.R. 2365(b)		
8:43I-1	Hospital Policy Manual	19 N.J.R. 2365(b)		
8:61-2	Retrovir (AZT) reimbursement program	19 N.J.R. 2067(a)	R.1988 d.6	20 N.J.R. 89(b)
8:65-7.14	Controlled substances: Schedule III and IV prescription refills	19 N.J.R. 1612(a)		
8:65-7.14	Schedules III and IV prescription refills: withdrawal of proposal	20 N.J.R. 32(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 641(a), 880(a), 1314(a), 1644(b), 2279(a), 2402(a))	19 N.J.R. 13(a)		
8:71	Interchangeable drug products (see 19 N.J.R. 1312(b), 1644(a), 2278(b), 2400(a))	19 N.J.R. 615(a)	R.1988 d.32	20 N.J.R. 191(a)
8:71	Interchangeable drug products (see 19 N.J.R. 2279(b), 2401(a))	19 N.J.R. 1488(a)	R.1988 d.31	20 N.J.R. 190(a)
8:71	Interchangeable drug products	19 N.J.R. 1878(a)	R.1988 d.33	20 N.J.R. 191(b)
8:71	Interchangeable drug products	20 N.J.R. 146(a)		

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**HIGHER EDUCATION—TITLE 9**

9:5-1.1	Independent student status	19 N.J.R. 2372(a)		
9:6A	State college personnel system	19 N.J.R. 1613(a)	R.199 d.14	20 N.J.R. 89(a)
9:7	Student Assistance Board: scholarship and tuition aid programs	20 N.J.R. 33(a)		
9:7-2.3	Student assistance and foreign nationals	19 N.J.R. 2101(a)		
9:7-2.6	Independent student status	19 N.J.R. 2101(b)		
9:7-3.2	1988-89 Tuition Aid Grant Award Table	20 N.J.R. 147(a)		
9:7-9.9, 9.11, 9.12	Congressional Teacher Scholarship Program	19 N.J.R. 2102(a)		
9:9-1.12, 1.13, 1.16	Repayment of student loans: nonconverted accounts	19 N.J.R. 1619(a)		
9:11-1.1, 1.7, 1.8, 1.22, 1.23	EOF grant awards for approved part-time enrollment	19 N.J.R. 2373(a)		
9:11-1.3, 1.4	Educational Opportunity Fund: eligible non-citizens: independent student status	19 N.J.R. 2234(c)		
9:11-1.7	Equal Opportunity Fund grants: graduate awards	19 N.J.R. 1879(a)		
9:11-2	Martin Luther King Physician-Dentist Scholarship Program	19 N.J.R. 2374(a)		

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**HUMAN SERVICES—TITLE 10**

10:4	Communication with communities regarding development of group homes	19 N.J.R. 1976(a)		
10:4	Communication with communities regarding development of group homes: extension of comment period	20 N.J.R. 149(a)		
10:8	Personal needs allowance for indigent persons in State and county institutions	19 N.J.R. 617(a)		
10:44A	Licensed community residences for developmentally disabled	20 N.J.R. 149(b)		
10:49-1.3-1.6, 3	HealthStart: comprehensive maternity and pediatric care services	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:49-1.4	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:49-3.20	HealthStart Pediatric Care Registration: correction to HCPC codes	_____	_____	20 N.J.R. 401(a)
10:50-1.1-1.5, 2.3-2.8, 3.1, 3.2	Livery service for ambulatory Medicaid patients	19 N.J.R. 2103(a)		
10:51-1.6, 1.11, 1.16, 1.18, 3.5, 3.10, 3.14, 5.14, 5.18	Pharmacy Manual: payment limits for Medicaid and PAAD reimbursement	19 N.J.R. 2203(a)	R.1988 d.48	20 N.J.R. 288(a)
10:51-5.6	Pharmaceutical Assistance to Aged and Disabled: income limits	19 N.J.R. 2375(a)		
10:52-1.6, 1.8	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:52-1.7	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:53-1.5, 1.7	Outpatient hospital services for Medically Needy	19 N.J.R. 1388(a)		
10:53-1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
10:54-1.1, 1.2	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:58-1.2, 1.3	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:61-2.4, 2.5	Independent laboratories: standardized claim form	19 N.J.R. 1779(a)		
10:64-1.4, 2.1, 2.2, 2.5, 2.6, 3.5	Hearing aid providers: standardized claim form	19 N.J.R. 1779(a)		
10:66-1.3, 1.6	HealthStart	19 N.J.R. 1978(a)	R.1988 d.62	20 N.J.R. 278(b)
10:66-3	Family planning services provided by independent clinics	19 N.J.R. 2376(a)		
10:69A-1.2, 6.2, 6.6, 6.10	PAAD income limits	19 N.J.R. 2375(a)		
10:69C	Statewide Respite Care Program	19 N.J.R. 1712(a)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only computation amounts and income eligibility standards	Emergency (expires 3-4-88)	R.1988 d.55	20 N.J.R. 207(a)
10:81-8.22, 14.20	PAM: extension of Medicaid benefits to certain employed persons	19 N.J.R. 2206(a)	R.1988 d.47	20 N.J.R. 291(a)
10:81-11.7	Child support enforcement program	19 N.J.R. 1879(b)		
10:82-2.6	Initial eligibility in AFDC	19 N.J.R. 1781(a)	R.1988 d.38	20 N.J.R. 193(a)
10:82-4.15	Lump sum income and AFDC eligibility	19 N.J.R. 1782(a)	R.1988 d.40	20 N.J.R. 193(b)
10:85-1.5	General Assistance Program audits	19 N.J.R. 2376(b)		
10:85-3.5	GAM: monthly case reviews	19 N.J.R. 2111(a)		
10:85-4.6	Emergency Assistance in GA program	19 N.J.R. 1715(a)	R.1988 d.26	20 N.J.R. 96(a)
10:85-4.8	GAM: funeral and burial expenses	19 N.J.R. 1619(b)	R.1988 d.39	20 N.J.R. 194(a)
10:85-5.3	General Assistance Manual: deadline for medical bills	20 N.J.R. 162(a)		
10:85-6.3	General Assistance Program statement of refunds: preparation of Form GA-12	19 N.J.R. 2377(a)		
10:86	AFDC Work Incentive Program	20 N.J.R. 162(b)		
10:87-5.9	Food Stamps eligibility: income exclusion and utility allowance payments	19 N.J.R. 1986(a)		
10:87-11.21, 11.28	Liability for overissuance of food stamp benefits	20 N.J.R. 162(c)		
10:89-2.2, 2.3, 3.2, 3.3, 3.4, 3.6, 4.1	Home Energy Assistance program	19 N.J.R. 2208(a)	R.1988 d.46	20 N.J.R. 291(b)
10:100-3.7	Chargeable CWA for funerals and burials	20 N.J.R. 163(a)		
10:100, App. A	Supplemental Security Income payment levels	Emergency (expires 3-4-88)	R.1988 d.54	20 N.J.R. 208(a)
10:123-3.2	Residential health care facilities and boarding homes: personal needs allowance of residents	20 N.J.R. 225(b)		

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**CORRECTIONS—TITLE 10A**

10A:3-4.1	Off-duty carrying of firearms: peace officer titles	20 N.J.R. 42(a)		
10A:4-9.18	Inmate discipline: suspending sanctions	19 N.J.R. 1717(b)	R.1988 d.61	20 N.J.R. 294(a)
10A:9-4.5	Inmate classification: increasing custody status	19 N.J.R. 1782(b)	R.1988 d.30	20 N.J.R. 194(b)
10A:9-4.5	Reduction of inmate custody status	19 N.J.R. 2235(a)		
10A:10-6.3, 6.6	International transfer of inmates	19 N.J.R. 1620(a)	R.1988 d.29	20 N.J.R. 194(c)
10A:16-11	Special medical unit	20 N.J.R. 163(b)		
10A:17-2, 5, 6	Social services: Volunteer Service Program; religion; institutional chaplaincy	20 N.J.R. 167(a)		
10A:71-3.2, 3.4, 3.18-3.23, 3.25-3.28, 3.30, 3.43, 6.9	Parole Board rules	19 N.J.R. 1396(b)		

**Most recent update to Title 10A: TRANSMITTAL 1987-8 (supplement December 21, 1987)**

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11:1-1.1	Organization of department	Exempt	R.1988 d.1	20 N.J.R. 99(a)
11:1-8.1, 9, 12.1, 12.3, 12.4, 12.6, 14, 18, 19	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:1-25	Official department mailing list: address information	19 N.J.R. 2236(a)	R.1988 d.64	20 N.J.R. 294(b)
11:2-1.1-1.6, 19.1-19.5	Repeal (see 11:17-3.1-3.5, 5.7)	20 N.J.R. 237(a)		
11:3-22.3	Submission of automobile coverage option survey	19 N.J.R. 2237(a)	R.1988 d.65	20 N.J.R. 295(a)
11:4-2	Replacement of life insurance policy	19 N.J.R. 1286(a)		
11:4-16.6	Basic hospital expense coverage	20 N.J.R. 172(a)		
11:4-18.3, 18.5, 18.10	Individual health policies: loss ratio standards	19 N.J.R. 1620(b)		
11:4-19	Optional coverage for pregnancy and childbirth benefits	20 N.J.R. 43(a)		
11:4-28	Group coordination of health care benefits	19 N.J.R. 845(a)		
11:5-1.23	Full cooperation among real estate brokers and waiver of cooperation	19 N.J.R. 1621(a)	R.1988 d.69	20 N.J.R. 402(a)
11:5-1.23	Real estate licensee's obligation to disclose certain information concerning a property and to submit to a seller all written offers: pre-proposal	19 N.J.R. 2238(a)		
11:5-1.25	Sale of interstate real properties: advertisements	19 N.J.R. 1718(a)		
11:5-1.27	Real estate brokers pre-licensure course	19 N.J.R. 1051(a)		
11:12-1.3	Repeal (see 11:17-1, 2, 5)	20 N.J.R. 225(c)		
11:17-1, 2, 5	Insurance producer licensing	20 N.J.R. 225(c)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:17-3.1-3.5, 5.7	Insurance producer licensing: professional qualifications	20 N.J.R. 237(a)		
11:18	New Jersey Medical Malpractice Reinsurance Recovery Fund Surcharge: pre-proposed new rules	20 N.J.R. 242(a)		

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12:60	Prevailing wages for public works	19 N.J.R. 345(b)		
12:100-4.2	Public employee safety and health: exposure to benzene	19 N.J.R. 2239(a)	R.1988 d.86	20 N.J.R. 403(a)
12:100-5.2, 6.2, 7	Public employees and exposure to toxic and hazardous substances	19 N.J.R. 267(a)	Expired	
12:110	Public employee occupational safety and health	19 N.J.R. 1941(a)	R.1988 d.42	20 N.J.R. 195(a)
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12A:9-1	Services to small businesses and women and minority businesses	19 N.J.R. 2378(a)		
12A:12-2	Local Development Financing Fund	19 N.J.R. 2381(a)		
12A:12-3	Tourism Matching Grant Program	20 N.J.R. 172(b)		
12A:50-1	Cogeneration: reporting by non-utility generators	19 N.J.R. 2383(a)		

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13:1-4.6	Police training: instruction in radar operation	19 N.J.R. 2123(a)	R.1988 d.83	20 N.J.R. 403(b)
13:2-40.5	ABC county ID cards: correction			20 N.J.R. 425(a)
13:3-3.4, 3.5, 3.6	Amusement games: preproposal concerning player fees and value of prizes	20 N.J.R. 44(a)		
13:21-11.13	Temporary registration of motor vehicles	20 N.J.R. 176(a)		
13:21-21	Auto body repair facilities	19 N.J.R. 1624(c)		
13:27-3, 4	Architectural practice: definitions	19 N.J.R. 1783(b)		
13:27-5.8	Architects and certified landscape architects: licensing examination fees	19 N.J.R. 2123(b)		
13:29-5	Board of Accountancy: Quality Enhancement Program	19 N.J.R. 2240(a)		
13:30-8.17	Designation of dentist of record for patient in multi-dentist facility	19 N.J.R. 1629(a)	R.1988 d.81	20 N.J.R. 403(c)
13:33-1.41	Ophthalmic dispensers and technicians: Board of Examiners fees	19 N.J.R. 2242(a)	R.1988 d.66	20 N.J.R. 295(b)
13:35-1.5	Participation in medical residency programs	19 N.J.R. 2243(a)		
13:35-3.11	Post-graduate training of graduates of foreign medical schools	19 N.J.R. 1534(a)	R.1988 d.7	20 N.J.R. 102(a)
13:35-6.7	Medical examiners board: prescribing of amphetamines and sympathomimetic amine drugs	19 N.J.R. 1786(a)		
13:35-8	Hearing aid dispensers	19 N.J.R. 1949(a)		
13:36-1.6	Board of Mortuary Science fees	20 N.J.R. 177(a)		
13:36-2.1	Qualification as mortuary science intern	19 N.J.R. 2245(a)		
13:39	Board of Pharmacy rules	19 N.J.R. 1952(a)		
13:39	Board of Pharmacy rules: extension of comment period	20 N.J.R. 244(a)		
13:40-5.1	Corner markers and ultimate user of land survey	19 N.J.R. 1631(a)	R.1988 d.45	20 N.J.R. 203(a)
13:42-1.1, 3.1	Board of Psychological Examiners: oral examination process	19 N.J.R. 2246(a)	R.1988 d.82	20 N.J.R. 404(a)
13:42-1.2	Board of Psychological Examiners: application, examination and licensure fees	19 N.J.R. 1632(a)	R.1988 d.12	20 N.J.R. 102(b)
13:44C	Practice of audiology and speech-language pathology	20 N.J.R. 244(b)		
13:45A-12	Sale of dogs and cats	19 N.J.R. 853(a)		
13:45A-25.1	Sellers of health club services: registration fee	19 N.J.R. 1967(a)	R.1988 d.23	20 N.J.R. 103(a)
13:46-8.3, 8.12, 8.13	Boxing rules	19 N.J.R. 1787(a)	R.1988 d.17	20 N.J.R. 103(b)
13:46-12.13	Boxing show hygiene	19 N.J.R. 1886(b)	R.1988 d.8	20 N.J.R. 103(c)
13:47-6.20, 7.17	Legalized games of chance: unaffiliated organizations; unlicensed games	20 N.J.R. 249(a)		
13:47C-2.1	Meat, poultry, fish and shellfish sold by net weight	19 N.J.R. 1787(b)	R.1988 d.35	20 N.J.R. 204(a)
13:47C-2.5	Weights and measures: ready-to-eat foods	19 N.J.R. 2124(a)		
13:70-1.30	Thoroughbred racing: horsemen associations	19 N.J.R. 1418(a)	R.1988 d.75	20 N.J.R. 404(b)
13:70-20.11	Thoroughbred racing: entering or starting nerved horses	19 N.J.R. 1788(a)	R.1988 d.77	20 N.J.R. 405(a)
13:70-20.11	Thoroughbred racing: correction to proposal concerning nerved horses	19 N.J.R. 2124(b)		
13:70-29.53	Thoroughbred racing: trifecta wagering	19 N.J.R. 2385(a)		
13:71-1.25	Harness racing: horsemen associations	19 N.J.R. 856(a)	R.1988 d.76	20 N.J.R. 405(b)
13:71-20.23	Harness racing: nerving and registration of nerved horses	19 N.J.R. 2125(a)	R.1988 d.74	20 N.J.R. 406(a)
13:71-23.8	Harness racing: competition by respiratory bleeders	20 N.J.R. 250(a)		
13:71-27.50	Harness racing: trifecta wagering	19 N.J.R. 2385(b)		
13:75-1.6	Violent crimes compensation: eligibility of claims	19 N.J.R. 1967(b)		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
13:76-1.3, 3.1, 3.2, 5.1	Arson investigation training	19 N.J.R. 1788(b)		
13:77	Equitable distribution of forfeited property to law enforcement agencies	19 N.J.R. 1534(b)	R.1988 d.63	20 N.J.R. 296(a)

Most recent update to Title 13: TRANSMITTAL 1987-12 (supplement December 21, 1987)

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14:10-1.16	Uniform system of accounts for telephone companies	19 N.J.R. 1789(a)	R.1988 d.10	20 N.J.R. 103(d)
14:11-6	Interest on fuel clause overrecoveries	19 N.J.R. 1967(c)		
14:18-3	Cable TV: pre-proposal for telephone service standards	19 N.J.R. 2125(b)		

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14A:3-7	Individual electric metering in residential buildings: repeal	19 N.J.R. 2247(a)		
14A:3-7, 9	Repeal (see 5:23-3.18)	19 N.J.R. 1862(b)	R.1988 d.50	20 N.J.R. 268(a)
14A:6-2	Business Energy Improvement Program	20 N.J.R. 250(b)		
14A:12-1.3, 1.4, 1.5, 1.7	Energy cost savings contracts with municipal governments and local school boards	20 N.J.R. 174(a)		
14A:22-1.2, 2.1, 3.1, 3.2, 3.8, 4.1, 5.1, 8.1	Commercial and apartment conservation service program	19 N.J.R. 2247(b)		

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15:10-6	Voting accessibility for elderly and handicapped	19 N.J.R. 2249(a)		
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Most recent update to Title 15: TRANSMITTAL 1987-1 (supplement February 17, 1987)

**PUBLIC ADVOCATE—TITLE 15A**

Most recent update to Title 15A: TRANSMITTAL 1987-1 (supplement April 20, 1987)

**TRANSPORTATION—TITLE 16**

16:25	Utility accommodation on highway rights-of-way	19 N.J.R. 1064(a)		
16:25A	Soil erosion and sediment control on DOT projects	19 N.J.R. 2126(a)		
16:28-1.10, 1.18, 1.120	Speed rates along U.S. 46 in White Township, Route 34 in Matawan, and Route 38 in Burlington County	19 N.J.R. 1968(a)	R.1988 d.37	20 N.J.R. 204(b)
16:28-1.25	Speed rates on Route 23 in Wayne	20 N.J.R. 45(a)		
16:28-1.25, 1.79, 1.80	Speed limits along Routes 23 and 94 in Hamburg, Route 172 in New Brunswick	19 N.J.R. 1887(a)	R.1988 d.3	20 N.J.R. 104(b)
16:28-1.57	School zones along U.S. 30 in Lindenwold and Laurel Springs	19 N.J.R. 2211(a)	R.1988 d.51	20 N.J.R. 299(a)
16:28-1.76	Speed rate on Route 15 in Morris and Sussex counties	19 N.J.R. 1839(a)	R.1988 d.2	20 N.J.R. 104(a)
16:28-1.79	Speed limits on Route 94 in Sussex County	20 N.J.R. 177(b)		
16:28A-1.7, 1.61	Parking restrictions along U.S. 9 in Middle Township and U.S. 9W in Tenafly	19 N.J.R. 2253(a)	R.1988 d.71	20 N.J.R. 407(a)
16:28A 1.9, 1.33, 1.51, 1.93	Restricted parking along Routes 17 in Lyndhurst, 47 in Millville, 168 in Bellmawr, and U.S. 322 in Glassboro	20 N.J.R. 45(b)		
16:28A-1.11, 1.33, 1.61	No parking zones along Routes 21 in Newark, 47 in Franklin, and U.S. 9W in Alpine	19 N.J.R. 1888(a)	R.1988 d.5	20 N.J.R. 105(a)
16:28A-1.15, 1.19	No parking zones along Route 23 in Pequannock and Route 28 in Garwood	19 N.J.R. 1889(a)	R.1988 d.4	20 N.J.R. 105(b)
16:28A-1.22	Restricted parking along Route 31 in Washington Borough	20 N.J.R. 46(a)		
16:28A-1.25, 1.33, 1.34, 1.100	Restricted parking on Routes N.J. 35 in Seaside, N.J. 47 in Glassboro, N.J. 49 in Salem, and N.J. 50 in Upper Township	19 N.J.R. 2127(a)	R.1988 d.52	20 N.J.R. 299(b)
16:28A-1.25, 1.36, 1.38	Restricted parking along Routes 35 and 71 in Monmouth County, and Route 57 in Warren County	20 N.J.R. 178(a)		
16:28A-1.57	Restricted parking along U.S. 206 in Somerset County	20 N.J.R. 179(a)		
16:29-1.18	No passing zones along Route 154 in Cherry Hill	19 N.J.R. 2253(b)	R.1988 d.72	20 N.J.R. 407(b)
16:30	Pre-proposal: Exclusive bus lane on Routes 3 and 495	19 N.J.R. 1421(b)		
16:30-4.2	Bicycle restrictions along Route 88 in Point Pleasant	19 N.J.R. 2254(a)		
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16:31-1.24	No left turn on Route N.J. 82 in Union	19 N.J.R. 2128(a)	R.1988 d.53	20 N.J.R. 300(a)
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17:2-7.1	Public Employees' Retirement System: transfer of service credit	19 N.J.R. 2386(a)		

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17:5-6.1	State Police Retirement System: transfer of service credit	20 N.J.R. 47(b)		
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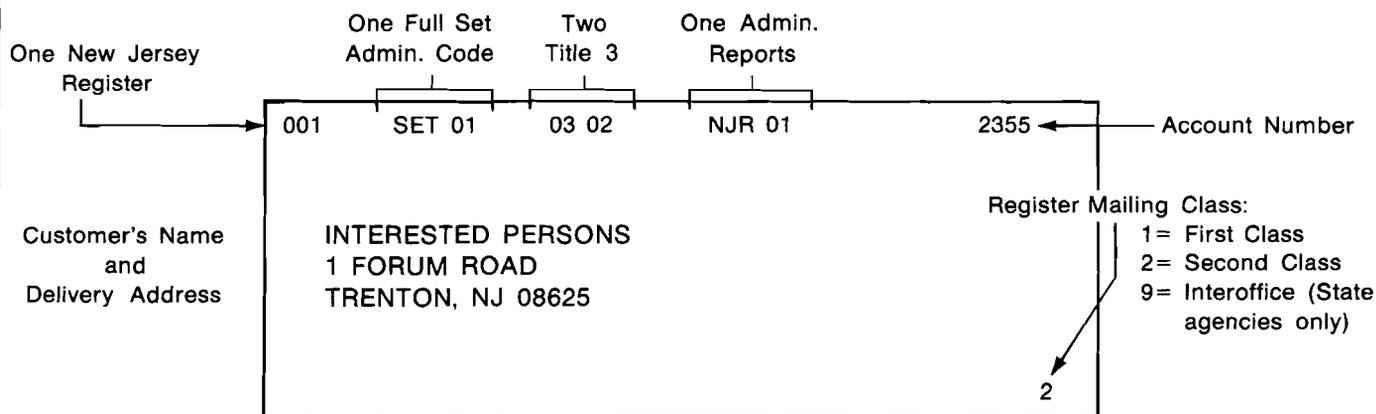
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