

NEW JERSEY REGISTER



THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 21 NUMBER 20

October 16, 1989 Indexed 21 N.J.R. 3205-3330

(Includes adopted rules filed through September 22, 1989)

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EDUCATION, DEPARTMENT OF
NEW JERSEY ARCHIVES & HISTORICAL SOCIETY
INTER-OFFICE

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: AUGUST 21, 1989

See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT SEPTEMBER 18, 1989

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Return of Transmitted Cases Proposed Amendment: N.J.A.C. 1:1-3.3

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.

Authority: N.J.S.A. 52:14F-5(e), (f) and (g).

Proposal Number: PRN 1989-519.

Submit comments by November 15, 1989 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.A.C. 1:1-3.3 was added to the Uniform Administrative Procedure Rules when the OAL revised the rules in 1987 (see 18 N.J.R. 728(a), 18 N.J.R. 1728(a), 19 N.J.R. 715(a)). It provides that a case that was transmitted to the OAL for a hearing shall be returned to the transmitting agency if the transmitting agency so requests in writing. As adopted, the rule requires an initial decision to be entered returning the case. The OAL has determined that an initial decision is not necessary since there is no decisional process involved. The proposed amendment removes this requirement and provides simply that the OAL will return a case to the transmitting agency upon receipt of a written request.

Social Impact

The proposed amendment simplifies the procedure for returning cases to the transmitting agency when such return is requested. Time and effort will not be expended producing an unnecessary initial decision. The resolution of cases returned to agencies may be expedited.

Economic Impact

The proposed amendment should result in savings to the taxpayer because it eliminates unnecessary paperwork involved in the production of an initial decision in a case that is being returned to a transmitting agency. Judicial time can be more productively devoted to contested cases.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses.

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

1:1-3.3 Return of transmitted cases

A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency head so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, [an initial decision shall be entered returning] **the Office of Administrative Law shall return** the case.

BANKING

(b)

DIVISION OF CONSUMER COMPLAINTS, LEGAL AND ECONOMIC RESEARCH Senior Citizen Homeowners Mortgage Loans Proposed New Rules: N.J.A.C. 3:1-17

Authorized By: Mary Little Parell, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9A-24a, 24b, 25.2, 17:12B-48(21), 46:10B-16 et seq.

Proposal Number: PRN 1989-538.

Submit comments by November 15, 1989 to:
Robert M. Jaworski, Deputy Commissioner
Department of Banking
CN 040
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department of Banking proposes to adopt rules to permit lenders greater flexibility in offering reverse mortgage products. At the same time, the Department proposes to restrict the shared appreciation an institution may acquire in a borrower's principal residence incidental to a reverse mortgage loan.

Governor Kean in 1987 created the Task Force Study on Housing Options for Senior Citizens. The task force was created to explore the housing needs of the elderly in this State, beginning with options available to assist elderly homeowners faced with economic pressures which force them to sell their homes.

The task force found that the majority of New Jersey's 922,000 elderly are homeowners, 85 percent of whom have paid off their mortgages. At least 50,000 of New Jersey's elderly are homeowners with incomes of less than \$5,000 a year, creating a phenomenon known as "house-rich and cash-poor." With rising property taxes, these residents find it more and more difficult to maintain their homes. Greater availabilities of reverse mortgage products would assist to remedy this problem by permitting those 60 and older to utilize the equity they have in their homes.

Pursuant to the Senior Citizen Homeowner's Income Security Act, N.J.S.A. 46:10B-16 et seq., lenders are currently able to make reverse direct payment mortgage loans and reverse annuity mortgage loans. The Act gives the Department of Banking authority to promulgate regulations as it deems necessary to effectuate the purposes of the Act, N.J.S.A. 46:10B-21, which authority the Department has to date not exercised.

A reverse direct payment loan is defined in the Act as a mortgage loan paid directly to the borrower in amounts fixed at or before closing of the loan. In contrast, a reverse annuity mortgage loan is a mortgage loan used by the lender to purchase annuities for the benefit of the borrower. The Act limits the loan-to-value ratio permitted for both of these types of loans to 70 percent. Pursuant to these proposed rules, the Department would increase the permissible loan-to-value ratio to 90 percent for reverse direct payment mortgages and 70 percent for reverse annuity mortgages. The ratio is set lower for reverse annuity mortgages because the lender in these transactions immediately advances the total amount to purchase an annuity. In contrast, in a reverse direct payment mortgage, the lender pays the borrower over an extended period of years. Accordingly, the immediate risk to the lender in a reverse annuity mortgage loan is greater, so a greater cushion is needed.

Pursuant to the proposed rules, the permissible term of reverse direct payment mortgage loans would be increased from 10 years to 40 years. Extensions would be permitted if the value of the property allows for same. In the event that the borrower dies before the end of the term, the estate of the borrower would not be liable for any advances not made.

The task force report indicated that consumers would benefit from more reverse mortgage choices and greater competition. In particular, consumers concerned about meeting irregular, unexpected or substantial expenses could benefit from a reverse mortgage loan product offering

more flexible, consumer-activated access to home equity. As an example, the task force listed a line-of-credit reverse mortgage with repayment deferred until the borrower dies, sells or moves.

Consistent with that recommendation, the Department proposes to allow for deferred payment home equity lines of credit. Lenders could provide borrowers of 60 years of age or older with a line of credit secured by the borrower's home which is not repayable until (1) the death of the borrower; (2) the sale of the property securing the loan; (3) the borrower ceases to use the property as a principal residence for a continuous 12-month period; or (4) 20 years. These lines of credit may secure up to 80 percent of the value of the principal residence.

The task force report recognized that the shared appreciation component of a reverse mortgage is complex and potentially costly to the consumer. Most consumers considering a shared appreciation reverse mortgage are initially unfamiliar with this type of transaction. Recognizing this problem, recent additions to the Commentary of Regulation Z require disclosure of this shared appreciation component.

The Department has received several complaints regarding the amount of the shared appreciation component. To remedy this problem, the task force report recommended that the consumer be given greater protection against high loan cost through a reduction in the contractual limit on appreciation sharing throughout the loan term. Consistent with this, the rules limit the shared appreciation component to 25 percent of the appreciation of the residence during the term of the loan. In those instances where the mortgage balance exceeds the proceeds from the sale, shared appreciation is not permitted.

Social Impact

The proposed rules will have the beneficial social impact of permitting lenders greater flexibility in offering reverse mortgage products. As described above, there is a critical need for these products. By allowing greater flexibility, the Department hopes to encourage lenders to enter this market and address the need for reverse mortgage products, as indicated by the Governor's task force.

Economic Impact

The proposed rules will have the positive economic impact of assisting elderly citizens to find the means to maintain their homes after retirement.

The limitation on the shared appreciation component will have a negative impact on lenders currently requiring more than a 25 percent share in the appreciation in the borrower's home. However, the Department deems this limitation necessary to protect elderly borrowers.

Regulatory Flexibility Analysis

Many licensees affected by these rules are small businesses. In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these new rules will not impose any additional reporting requirements on these businesses. Further, the rules do not impose any fees or charges on licensees. As to the limiting compliance requirements, these are not differentiated based upon lender business size in order to protect the interests of eligible consumers and to maintain sound lending practices.

Full text of the proposal follows:

SUBCHAPTER 17. SENIOR CITIZEN HOMEOWNER'S MORTGAGES

3:1-17.1 Definitions

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

"Borrower" means a natural person who is at least 60 years of age. If the property is jointly held by a husband and wife, then they qualify as borrowers if either is at least 60 years of age. If the property is otherwise jointly held, all owners must be at least 60 years of age to qualify as borrowers.

"Insurance company" means an insurance company authorized to transact insurance business in New Jersey.

"Lender" means a bank, savings bank, savings and loan association, credit union, mortgage banker as defined in N.J.S.A. 17:11B-1c or an insurance company, any of which are permitted to make first mortgage loans in this State.

"Mortgage loan" means a loan secured by a first lien on the borrower's principal residence.

"Reverse annuity mortgage" means a mortgage loan used by the lender to purchase annuities for the benefit of the borrower.

"Reverse direct payment mortgage" means a mortgage loan paid directly to the borrower in amounts fixed at or before closing of the loan.

"Shared appreciation" means an additional amount owed by the borrower to the lender when the mortgage loan becomes due and payable or the borrower pays in full, whichever occurs first, equal to a percentage of any net appreciated value of the property during the life of the mortgage loan.

3:1-17.2 Reverse annuity and reverse direct payment mortgage loans

(a) A lender may make reverse annuity mortgage loans or reverse direct payment mortgage loans to borrowers.

(b) A reverse direct payment mortgage shall not be made in an amount exceeding 90 percent of the value of the mortgaged property. A reverse annuity mortgage shall not be made in an amount exceeding 70 percent of the value of the mortgaged property.

(c) A lender shall not make a reverse direct payment mortgage loan or a reverse annuity mortgage loan for a term of more than 40 years. The lender and borrower may agree to extend the term beyond the original term so long as the loan-to-value ratio does not exceed the percentage permitted under (b) above.

(d) Prepayment of a reverse annuity mortgage loan or a reverse direct payment mortgage loan may be made by or on behalf of the borrower at any time without penalty.

(e) Should the borrower die before the final payment of a reverse direct payment mortgage loan, the estate of the borrower shall not be liable for any sums not advanced.

3:1-17.3 Deferred payment home equity lines of credit

(a) A lender authorized under N.J.A.C. 3:1-14 to make revolving credit equity loans may offer revolving mortgage loans to borrowers in accordance with N.J.A.C. 3:1-14 without requiring a minimum installment payment, provided, however, that the entire balance and interest owing shall not be due earlier than:

1. The death of the borrower, or the surviving borrower if there are co-borrowers;
2. The sale of the property securing the loan;
3. The borrower ceases to use the property as a principal residence for a continuous 12-month period; or
4. Twenty years after the date of the initial loan agreement.

(b) A deferred payment home equity line of credit authorized by (a) above shall not be for an amount greater than 80 percent of the value of the secured principal residence. The lender may at any time increase the credit line to reflect increasing property values so long as the credit line is not more than 80 percent of the value of the secured principal residence.

3:1-17.4 Shared appreciation

(a) Any mortgage loan made pursuant to this subchapter may provide for shared appreciation. The percentage of shared appreciation to be paid to the lender, referred to as the appreciation margin, shall be no more than 25 percent.

(b) The amount of shared appreciation shall be computed as follows:

1. If the mortgage balance when the shared appreciation becomes payable is less than the appraised value of the property at the time of loan origination, the lender's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds and multiplying by the appreciation margin;

2. If the mortgage balance is greater than the appraised value at the time of loan origination but less than the adjusted sales proceeds, the lender's share is calculated by subtracting the mortgage balance from the adjusted sales proceeds and multiplying by the appreciation margin; and

3. If the mortgage balance is greater than the adjusted sales proceeds, the lender is entitled to no shared appreciation.

(c) The adjusted sales proceeds equal the sales proceeds (without reduction for any liens on the property) less transfer costs and less any costs of capital improvements incurred by the borrower.

(d) If there has been no sale or transfer involving satisfaction of the mortgage when the lender's shared appreciation becomes payable,

"sales proceeds" for purposes of this section shall be the appraised value as agreed to by the lender and borrower.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Certification of Nursery Teachers

Proposed Amendments: N.J.A.C. 6:11-6.1 and 6.2

Authorized By: Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.

Proposal Number: PRN 1989-533.

Submit comments by November 15, 1989 to:

Irene Nigro, Rules Analyst
State Department of Education
225 West State Street
CN 500
Trenton, NJ 08625

The agency proposal follows:

Summary

Persons have testified in public hearings of the State Board of Education that the certification reforms adopted by the Board in 1984 have produced an anomalous situation in the certification of nursery teachers.

The Board's reforms were intended to increase the supply of new teachers and the quality of their preparation. This goal was achieved in part by increasing the proportion of teachers' preparation that is devoted to academic education and limiting, therefore, the amount devoted to education coursework. These changes not only improved teacher preparation, they also made teaching certificates more accessible to a wider range of talented college graduates.

The State Board did not abandon the concept of professional preparation. On the contrary, it sought to define a common body of professional knowledge while reducing the proliferation of courses, programs and certificates that had obstructed talented applicants, displaced other important aspects of teachers' preparation and generally weakened the status of teacher education.

To this end, a panel of nationally recognized educators, chaired by Ernest Boyer, was convened to recommend the professional study that all beginning teachers ought to be required to complete for their State licenses. This task was undertaken in recognition of the fact that State licensing requirements are aimed at screening persons who lack entry-level capabilities and that licensed teachers, once employed, are responsible as professionals for continuing their education at more specialized levels. The panel recommended a common body of professional knowledge that emphasizes study of curriculum, including reading; student development at all levels; and classroom management.

As a result, each candidate for New Jersey nursery certification must currently acquire:

- a bachelor's degree;
- approximately 60 credits of liberal education;
- an academic major;
- nine credits of behavioral/social sciences;
- approximately 30 credits of professional preparation, including study of the "Boyer Topics" and field experiences; and
- a passing score on the NTE General Knowledge Test.

These requirements are more rigorous than those that they replaced. However, the transition to a common body of professional entry-level knowledge eliminated all distinctions between the requirements for the Nursery Teacher Certificate and those for the Elementary Teacher Certificate. The requirements for these two different certificates are now identical. The proposed amendments would resolve this duplication by eliminating the nursery certificate and by authorizing elementary certified teachers to teach in grades N-8. Teachers who hold a Nursery endorsement will be considered on a case by case basis if they choose to apply for a Nursery-eight license.

The current anomaly results from the fact that the nursery certificate has always been superfluous within New Jersey's overall certification structure. Indeed, although the sole purpose of certification is to regulate

public school employment, the nursery certificate was created at a time when nursery grades were relatively uncommon in public schools. It was interjected mainly in response to the perceived need of private nursery schools for special certification. Therefore, the relationship of the nursery certificate to the broader system of public school certification system was not resolved.

Specifically, the work authorization of the nursery certificate (nursery and kindergarten grades) was permitted to overlap with those of other certificates. Under New Jersey's certificate and job structure, holders of subject certificates are authorized and, therefore, must be trained to teach at all levels in all public schools. A legal decision rendered in 1984 affirmed that these specialists cannot be barred from teaching their individual subjects (for example, art or music) to young children in schools that desire their services.

More relevant is the fact that holders of the Elementary Teaching Certificate are authorized and, therefore, must be trained to teach in all grades, kindergarten through eight. Nursery "specialists" are authorized and trained to teach nursery and kindergarten children while elementary teachers are authorized and trained to teach children in kindergarten. Therefore, the only real effect of the "distinct" nursery certificate is to legally prevent elementary teachers, all of whom are trained to teach in kindergarten, from teaching at the nursery level.

Since the two positions, so defined, are not clearly distinct functionally, neither have certification requirements or training programs ever been very different. The rules that existed before the board's 1984 reforms permitted any teacher holding another instructional certificate to qualify for the Nursery Teacher Certificate simply by completing six credits in any early childhood education course(s). This requirement was more a way of technically distinguishing the certificates than a means of providing essential training for a particular position.

The early childhood and elementary curricula of approved college preparation programs likewise have been very similar. Under both the current and prior requirements, some colleges have always routinely prepared graduates simultaneously for both the elementary and nursery teacher certificates.

It is inappropriate to maintain "distinct" certificates with similar preparation requirements and overlapping authorizations. Some of those who have testified have urged the State Board to resolve this conflict by establishing clear functional boundaries between the nursery and elementary certificates so they do not overlap. For example, the two certificates could be separated by any one of the following grade level distinctions:

- Nursery (N only) and Elementary (K-8); or
- Nursery (N-K) and Elementary (1-8); or
- Nursery (N-1) and Elementary (2-8); or
- Nursery (N-2) and Elementary (3-8); or
- Nursery (N-3) and Elementary (4-8).

Any one of these dividing lines would be artificial. If distinct boundaries were to be established, then substantially different preparation would have to be identified to separate the two certificates. Yet, because the positions would be so similar at the point of separation, any major differences in preparation would have to be contrived. These contrived distinctions would then irrationally prevent teachers from teaching on either side of an arbitrary grade line. For example, the third model listed above would legally require that elementary teachers be trained to understand and teach second graders, but would legally bar them from applying for any position teaching first grade.

Grade levels do not correspond with students' developmental levels. New Jersey once had a system of distinct certificates for grades K-3, 4-6, and 7-8, but it abandoned that system because students in a particular grade level are never all at the same level of development, and it is far from clear that teachers should be specialists in a stage of development rather than in the process of development. Years ago, teacher and administrator organizations urged the abandonment of the K-3, 4-6, and 7-8 developmental certificates. They argued correctly that the distinctions were artificial and, therefore, unfairly obstructed teacher marketability and administrative hiring flexibility—for example, the very best fourth grade teachers could not teach third grade.

The education of young children is extremely important and early childhood educators' desire to be distinguished as professionals is a worthy one. However, neither of these ends is necessarily well served by the maintenance of a distinct certificate. The education of fourth graders is important also, but it does not follow that there must be a fourth grade teaching certificate that is distinct from all others. Nor would fourth grade teachers be more "professional" were the State artificially to bar all other elementary teachers from teaching fourth grade. Nor would fourth grade children benefit educationally from an approach that legally denies them

the opportunity to be taught, for example, by outstanding fifth grade teachers.

State certification requirements are intended to protect the public by setting minimum entry-level standards that individuals must meet in order to apply for jobs. Beyond those minimums, local districts may set supplementary requirements for specific positions within a general category. Most school districts provide teachers with incentives for advanced study and, as noted above, teachers should use these incentives to continue their education at more specialized levels. Districts and professional organizations should create inservice and curriculum development programs. The education of nursery students is extremely important, and its improvement should be pursued through these avenues rather than by the creation of artificial employment barriers.

The amendments to N.J.A.C. 6:11-6.1 and 6.2 would eliminate the Nursery School Endorsement and would expand the authorization of the Elementary Teacher Endorsement to encompass the nursery grades.

Social Impact

The social impact of the proposed amendment is minimal because it represents a technical correction to achieve consistency with previously adopted policies.

Specifically in 1984, the State Board of Education adopted rules that eliminated all differences in the required preparation of elementary and nursery teachers. However, it neglected to eliminate a code reference to the nursery endorsement. Therefore, elementary and nursery teachers seeking to change grade levels have had to apply for and obtain the other certificate, yet are issued that certificate automatically. The proposed amendments would positively affect elementary teaching candidates by allowing the issuance of a single certificate which accurately represents their preparation and qualifications. It would eliminate the need for them to apply to the State for two distinct certificates which have no different requirements. Certification applicants are likely to react positively to the reduction in cost and application procedures that would result from the proposed technical change.

Economic Impact

The proposed amendments would eliminate the need for elementary teacher candidates to pay the cost associated with applying for a second certificate. Such costs include college transcript fees which are established by individual colleges and an issuance fee of \$40.00 which is established by the State Board of Education (see N.J.A.C. 6:11-3.3).

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses. The amendments impact solely upon New Jersey teachers, school districts and on schools operated by the New Jersey Department of Education.

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

6:11-6.1 Authorizations—General

(a) Each teaching endorsement is required for the corresponding teaching assignment. Each endorsement is valid for all levels, except that the [nursery school endorsement is valid in nursery school and kindergartens, and the] elementary endorsement is valid for grades [kindergarten] **nursery** through eight.

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

6:11-6.2 Endorsements and authorizations

(a) Teaching endorsements and authorizations are listed below:
1.-5. (No change.)

6. Elementary education: This endorsement authorizes the holders to serve as elementary school teacher in grades [kindergarten] **nursery** through eight in all public schools. Teachers with elementary endorsements are not permitted to devote more than one half time to teaching art, music, health, home economics, industrial arts, or physical education in the elementary grades. Teachers with elementary endorsements are authorized to teach the common branch subjects such as reading, writing, arithmetic, and spelling in the secondary school;

7.-16. (No change.)

[17. Nursery school: This endorsement authorizes the holder to teach in nursery schools and kindergartens in all public schools;]
18.-30. Recodified to **17.-29**. (No change in text.)

(a)

STATE BOARD OF EDUCATION

Approval of Plans and Specifications and School Space Sizes and Capacity for Private School and State Facilities for Handicapped Pupils

Proposed Amendments: 6:22-1.1, 1.3, 1.4, 1.7 and 2.5

Proposed New Rule: 6:22-1.8

Authorized By: Saul Cooperman, Commissioner, Department of Education, Secretary, State Board of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7A-5, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:33-1 et seq., 18A:46-13, 18A:46-15, 52:27D-121, 52:27D-123, 52:27D-130 and 20 U.S.C. 1401 et seq.

Proposal Number: PRN 1989-425.

Submit comments by November 15, 1989 to:

Irene Nigro, Rules Analyst
State Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

On March 2, 1988, the State Board of Education adopted amendments to N.J.A.C. 6:22 which regulate prekindergarten and kindergarten facilities and space sizes in school buildings. On April 6, 1988, the Board adopted an additional amendment, N.J.A.C. 6:22-1.2, which establishes requirements for the sites on which school facilities are located. In order to clarify the application of these rules to private schools for the handicapped and schools for the handicapped operated by the Department of Human Services, the State Board proposed a reorganization of some of the rules which previously were interwoven within the rules for public school facilities, and amendments to other rules.

The Department proposes to add a separate section, N.J.A.C. 6:22-1.8, which clearly identifies the process which the private schools for the handicapped and schools for the handicapped operated by the Department of Human Services must use to obtain approval for temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of facilities. This separate section is a compilation of the language previously adopted and contained within other sections of N.J.A.C. 6:22 which refer to the schools for the handicapped. The Department also proposed additional amendments regarding the acquisition and disposal of school sites to parallel the public school requirements. Additionally, N.J.A.C. 6:22-2.5(f) is amended to provide an approval process for spaces occupied prior to April 4, 1988 which were not approved for capacity. The schools may choose to meet either the previous standards in the School Capacity Bulletin or the new standards set forth in 6:22-2.5(f) for getting non-approved special education classrooms or spaces other than classrooms approved.

Social Impact

The School Facility Planning Service rules, N.J.A.C. 6:22, through their own specifications or reference to the State Uniform Construction Code, N.J.A.C. 5:23, contain the standards for educationally adequate, healthy and safe school facilities necessary for a thorough and efficient education.

The reorganization of the requirements for the private schools for the handicapped and schools for the handicapped operated by the Department of Human Services into one section, N.J.A.C. 6:22-1.8, will make it easier for school owners and operators, as well as architects and engineers, to locate needed information. The proposed rule will apply to approved private schools for the handicapped, pursuant to N.J.A.C. 6:28-7.2 or 7.3, and schools for the handicapped operated by the Department of Human Services which serve students from the public schools; combined there are 115 such schools in New Jersey. The proposed amendments require the same standards for the schools serving the handicapped as exist for the public schools.

Economic Impact

A review of data about the 115 private school facilities was conducted in January 1989. Of 914 classrooms, 76, or 8.3 percent, did not meet the standard of 40 gross square feet per student. In order to assist the schools with making adjustments, the Department will make site visits to de-

termine the capacity of the 76 classrooms and the schools of which they are a part using 20 net square feet per occupant. New construction costs are not anticipated since the standards can be met by removing unnecessary furniture, reassigning students and/or classes.

Requiring private schools for the handicapped and schools for the handicapped operated by the Department of Human Services to meet the Facilities Planning Service rules as previously set forth in N.J.A.C. 6:22 may result in higher costs to those schools but are necessary to assure a thorough and efficient education and the health, safety and welfare of pupils and staff. The reorganization and amendments clarify application of these rules and may have a slight economic impact, consisting of only minor internal reorganization of classrooms, but not capital construction, if they cannot meet either of the two standards for classrooms or other spaces set forth in N.J.A.C. 6:22-2.5(f).

Regulatory Flexibility Statement

The proposed rule change imposes compliance requirements on private schools for handicapped pupils which are small businesses. The compliance requirements are the same as those for public schools.

The standards for school building design are contained in the State Uniform Construction Code (U.C.C.), N.J.A.C. 5:23 and N.J.A.C. 6:22, facilities code of the State Board of Education. The private schools for the handicapped and schools for the handicapped operated by the Department of Human Services are subject to the same design standards as public schools to assure the health, safety and welfare of the public school students. They cannot, therefore, be exempt from those design standards.

There is no exemption for the following reasons:

1. The U.C.C. provides construction design standards which assure the health, safety and welfare of students.

2. The facilities code of the State Board of Education provides construction design standards necessary for the health, safety and welfare of the public school students as well as the educational adequacy of instructional and support spaces for those students.

3. Federal law requires that facilities for handicapped pupils who are public school students meet State public school standards.

The proposed rule change applies, as indicated above, to private schools for handicapped pupils. These 115 schools serve students from the public schools. All other aspects of the schools' programs are approved by the Department's Division of Special Education pursuant to N.J.A.C. 6:28.

The only compliance requirements of the proposed rule change are related to building design and construction as contained in N.J.A.C. 5:23, the State Uniform Construction Code, and N.J.A.C. 6:22.

The schools will be required under the cited rules to employ either an architect or engineer to complete any design work for new school buildings, additions to existing buildings and renovations/alterations in order to assure compliance with those codes.

Given the status of facilities currently in operation, it is not likely that initial capital costs will have to be borne by the private schools for handicapped pupils. However, changes to or expansions of current facilities may result in capital costs based upon the extent of the changes or expansions. There is no likely annual compliance cost.

The U.C.C. and the Board's facilities code will be applied only when required, that is, for construction, renovation or alterations.

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

6:22-1.1 Approval of plans and specifications

(a) (No change.)

(b) Plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of private school facilities[, including private schools for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28 and State facilities for handicapped pupils,] shall be submitted to the Department of Education, Bureau of Facility Planning Services whenever a review of compliance with this chapter is necessary. An architect or engineer licensed in New Jersey shall submit the plans and specifications on behalf of the district board of education[, governing body of a private school for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28 or the State Department of Human Services] as follows:

1. One set of schematic plans shall be approved before funds are authorized locally via a bond referendum, lease-purchase agreement, gift or any other means of financing building construction, erection,

reconstruction, alteration, conversion or renovation. This set of plans shall be submitted with a project cost estimate, site plan, educational specifications and an updated long-range facility plan[, except that the long-range facility plan shall not be required for private schools for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28 or State facilities for handicapped pupils]. The review for educational adequacy shall take into consideration the suitability of the site; size, location and number of instructional and ancillary spaces; furniture and equipment; circulation patterns; provisions for the handicapped; maintenance, security and energy conservation; and locations of future additions. Room sizes shall meet or exceed minimum acceptable net and gross areas as required in N.J.A.C. 6:22-2.5.

i. (No change.)

2. (No change.)

3. Four sets of signed and sealed final plans and specifications shall be submitted for review and approval after [the architect and district board of education have received] preliminary plan approval. This submission shall include the following:

i. A completed **final application**; [Uniform Construction Code application;]

ii.-vii. (No change.)

4. Bids may be advertised for and received only after the release of final plans from the Department of Education, Bureau of Facility Planning Services. Following approval of said bids by the Bureau, the district board of education may sign contracts and apply to the municipal construction enforcing official for the required building permits. The local municipal construction enforcing official will issue the construction permit, collect 80 percent of the total construction permit fee, perform the required inspections during construction and issue the required certificate of occupancy upon completion of the project. The district board of education [or governing body of a private school for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28] shall send to the New Jersey Department of Education, Bureau of Facility Planning Services a copy of the certificate of occupancy obtained from the local construction agency.

5.-8. (No change.)

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

6:22-1.3 Disposal of land

If an approved school site on which there is an operational school building is to be altered through sale, transfer or exchange of all or part of the total acreage, written application for approval shall be made to the Department of Education, Bureau of Facility Planning Services[, except that this action is not required for private schools for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28 and State facilities for handicapped pupils]. A copy of the application shall be sent to the county superintendent of schools who shall make recommendations to the Bureau, with a copy of the recommendations to the district board of education.

6:22-1.4 Acquisition of existing buildings

A district board of education [and governing body of a private school for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28] planning to acquire any existing building or facility through purchase, gift, lease or otherwise shall comply with all procedures and rules pertaining to the appropriation and use of capital funds as required by N.J.S.A. 18A:20-4 and 18A:20-4.2 and shall also have the building approved in accordance with the rules of this chapter which apply to the construction of a new building.

6:22-1.7 Appeals and hearing process

(a) (No change.)

(b) Requests for variances from the Department of Education requirements as specified in N.J.A.C. 6:22-1.2, [and] N.J.A.C. 6:22-2.4, **N.J.A.C. 6:22-2.5** and the State Uniform Construction Code as specified in N.J.A.C. 5:23[-1.1 et seq.] may be made in writing by the district board of education[, governing body of a private school for handicapped pupils approved by the Department of Education as per N.J.A.C. 6:28 or State Department of Human

Services or its designated representative] to the manager of the Bureau of Facility Planning Services. The manager may approve variances from Department requirements provided the spirit and intent of the standards are observed and the need for the variances is satisfactorily documented. Variations from the State Uniform Construction Code must be acted upon in accordance with N.J.A.C. 5:23[-1.1 et seq].

6:22-1.8 Requirements for Department of Education Approval of Private Schools for Handicapped Pupils and Schools for Handicapped Pupils of the New Jersey State Department of Human Services

(a) This section shall govern review of facilities for private schools for handicapped pupils which are approved or seeking approval pursuant to N.J.A.C. 6:28-7 and schools for handicapped pupils operated by the Department of Human Services. Bureau of Facility Planning Services review is required for the type of work set forth in N.J.A.C. 6:22-1.1(c).

(b) Submission and review of plans and specifications will be conducted as follows:

1. Educational specifications shall be prepared and submitted as per N.J.A.C. 6:22-1.1(a) except that they shall be signed by designated officials of the private schools for handicapped pupils or the State Department of Human Services.

2. An architect registered or an engineer licensed in New Jersey, as required by N.J.A.C. 5:23-2.15, shall submit the plans and specifications for the temporary and permanent construction, erection, reconstruction, alteration, conversion and renovation of facilities to the Bureau of Facility Planning Services on behalf of the private schools for handicapped pupils and the State Department of Human Services for review and subsequent approval for compliance with this chapter. For review and subsequent approval for compliance with the Uniform Construction Code (U.C.C.), N.J.A.C. 5:23, plans and specifications shall be submitted by the private schools for handicapped pupils to the local construction official of the municipality in which the facility will be constructed and by the State Department of Human Services to the Division of Building and Construction, State Department of the Treasury.

3. The plans and specifications shall be submitted to the Bureau of Facility Planning Services as per N.J.A.C. 6:22-1.1(b)1 and 3.

(c) Variances to the State Uniform Construction Code shall be made according to N.J.A.C. 5:23-2.9 through 2.13. Requests for variances to N.J.A.C. 6:22-1.2, 2.4 and 2.5 shall be in writing to the manager, Bureau of Facility Planning Services who may approve them provided the spirit and intent of the standards are observed and the need for variances is satisfactorily documented.

(d) Acquisition of land for a school site shall be according to N.J.A.C. 6:22-1.2(b) and (c).

(e) Disposal of land used as a school site shall be according to N.J.A.C. 6:22-1.3.

(f) Existing buildings to be acquired for use as a school building shall meet the requirements of this subchapter and the State Uniform Construction Code, N.J.A.C. 5:23. The Bureau of Facility Planning Services shall review plans and specifications for compliance with the Uniform Construction Code, N.J.A.C. 5:23, and this chapter.

(g) Appeals and hearings arising from action of the Bureau of Facility Planning Services shall be according to N.J.A.C. 6:22-1.7.

(h) Reviews of plans and specifications of facilities of private schools for handicapped pupils and schools for handicapped pupils operated by the State Department of Human Services shall be done to assure that the design adheres to:

1. School site sizes, N.J.A.C. 6:22-1.2;
2. Enhancements to Uniform Construction Code, N.J.A.C. 6:22-2.3;
3. Educational facility planning standards, N.J.A.C. 6:22-2.4(a) to (h);
4. School space sizes and capacity, N.J.A.C. 6:22-2.5; and
5. N.J.A.C. 5:23, the State Uniform Construction Code.

6:22-2.5 School space sizes and capacity

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

(f) [This section will be applied prospectively to new educational facilities and additions, when changes of use, renovations or alterations are made to existing facilities, and to existing facilities which were never approved according to prior standards or codes.] **Spaces**

(CITE 21 N.J.R. 3212)

occupied but not previously approved prior to April 4, 1988 (the effective date of N.J.A.C. 6:22-2.5), in order to be approved for capacity, must meet the following requirements:

1. Special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services shall be either a minimum of 40 square feet gross per student, as previously set forth in the Department of Education School Capacity Bulletin, or 20 net square feet per student as set forth in N.J.A.C. 6:22-2.5(b); and

2. Spaces, other than special education classrooms in private schools for the handicapped and in schools for the handicapped operated by the Department of Human Services, shall be either the square foot amounts previously set forth in the Department of Education's School Capacity Bulletin or meet the standards set forth in N.J.A.C. 6:22-2.5(b).

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF PARKS AND FORESTRY

Board of Tree Experts

Advertising By Tree Experts

Proposed New Rules: N.J.A.C. 7:3-3

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection, and Stephen
Chisholm, President, Board of Tree Experts.

Authority: N.J.S.A. 13:1B-3; 13:1D-9; 45:1-8; 45:1-9; and
45:15C-1 through 45:15C-10.

DEP Docket Number: 040-89-09.

Proposal Number: PRN 1989-524.

Submit comments by December 15, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection (Department) and the Department's Board of Tree Experts (Board) propose to promulgate a new subchapter at N.J.A.C. 7:3-3 to govern advertising by tree experts and by Certified Tree Experts certified by the Board. The purpose of the proposed new rules is to protect the public from deceptive advertising by uncertified tree experts, and to aid members of the public seeking to employ competent, trustworthy tree experts. The proposed new rules also codify as part of the Department's administrative rules the contractor licensing requirements imposed on Certified Tree Experts by N.J.S.A. 45:1-8 and 45:1-9.

The Board of Tree Experts, established in the Department of Environmental Protection by N.J.S.A. 45:15C-3, issues certification to tree experts meeting the qualifications listed at N.J.S.A. 45:15C-4 and successfully completing an examination administered by the Board pursuant to N.J.S.A. 45:15C-5. Through its supervision of the State's tree experts, the Board strives to set standards of competence and trustworthiness for the tree care profession and to redress instances of violations of professional conduct or professional ethics in the practice of tree care.

The proposed new subchapter codifies as part of the Department's administrative rules the statutory prohibition against an uncertified tree expert representing himself or herself to the public as having received certification from the Board. The proposed new rules also prescribe the manner in which the name and license number of a Certified Tree Expert must appear in any form of advertising. Violations of the proposed subchapter by Certified Tree Experts may result in suspension or revocation of the offender's certificate by the Board. Under the new rules, the Department intends to pursue injunctive relief against uncertified tree experts engaging in deceptive advertising practices.

Proposed N.J.A.C. 7:3-3.5(b) requires Certified Tree Experts who lose their certification by suspension or revocation to change existing forms of advertising so as not to represent that they are still certified. In the

case of advertising on letterhead, business cards, and truck lettering, the Department will require a tree expert whose certificate has been suspended or revoked to either mask or remove any references to certification and the certificate number during the period of suspension or revocation. Tree experts who have engaged in long-term advertising arrangements with newspapers, magazines, or other media must change, if possible, the text of the advertisement following certificate suspension or revocation. In the case of advertisements that can only be changed on a periodic basis, such as telephone listings, any reference to certification must be deleted as soon as possible and not reinstated until the suspension or revocation period has elapsed.

Social Impact

The proposed new rules should have a positive social impact by protecting the public against deceptive advertising practices in the area of tree care. Such protection will assist those members of the public wishing to hire highly qualified tree experts. The proposed new rules should also have a positive social impact on the tree care profession by helping the profession to maintain high standards for professional conduct and professional ethics.

Economic Impact

The Department does not expect the proposed new rules to have a detrimental economic impact on either tree experts or Certified Tree Experts. Although the proposed new rules prescribe the form of advertising for Certified Tree Experts who choose to advertise, they do not require Certified Tree Experts to advertise. Further, requiring a Certified Tree Expert to list his or her name in an advertisement in conformance with the examples in these rules is not expected to significantly increase the cost of the forms of advertising traditionally employed by tree experts. Last, the proposed advertising restrictions will only deny economic benefit to those uncertified tree experts seeking to profit from deceptive advertising practices.

The proposed new rules should have a positive economic impact on members of the public by facilitating the hiring of competent, trustworthy tree experts, thereby minimizing the likelihood of economic loss resulting from negligent or unskilled tree care.

Environmental Impact

The Department expects the proposed new rules to have a positive environmental impact by facilitating the hiring of highly qualified, competent, and trustworthy individuals for the practice of tree care, thereby maintaining or improving the condition of the State's urban forest and natural resources.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act (Act), N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed new rules will not impose significant reporting, recordkeeping, or other compliance requirements on small businesses. Although most tree experts qualify as "small businesses" as defined by the Act, compliance with the proposed advertising restrictions will impose a minimal burden on tree experts choosing to advertise. Further, the proposed advertising guidelines impose regulatory responsibilities on the Department but do not require reporting or recordkeeping by members of the regulated public.

Full text of the proposal follows:

SUBCHAPTER 3. ADVERTISING BY TREE EXPERTS

7:3-3.1 Scope and authority

This subchapter constitutes the rules of the Department of Environmental Protection (Department) and the Department's Board of Tree Experts (Board) governing advertising by tree experts and by Certified Tree Experts certified by the Board under the authority of N.J.S.A. 45:15C-1 through 45:15C-10. The purpose of these rules is to protect the public from deceptive advertising by uncertified tree experts, and to codify as part of the Department's administrative rules the contractor licensing requirements imposed on Certified Tree Experts by N.J.S.A. 45:1-8 and 45:1-9.

7:3-3.2 Construction

This subchapter shall be liberally construed to permit the Department of Environmental Protection and the Board of Tree Experts to effectuate the purposes of N.J.S.A. 45:1-8, 45:1-9, and 45:15C-1 through 45:15C-10.

7:3-3.3 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion, or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:3-3.4 Definitions

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

"Advertising" means the description or presentation of a product or service in some medium of communication in order to induce the public to buy, support, or approve of it, including, but not limited to, telephone listings, letterhead, business cards and lettering on vehicles.

"Board" means the Board of Tree Experts established in the Department of Environmental Protection by N.J.S.A. 45:15C-3.

"Certified Tree Expert" means a natural person meeting the qualifications at N.J.S.A. 45:15C-4 who has received from the Board of Tree Experts, after successful completion of an examination by the Board as provided at N.J.S.A. 45:15C-5, a certificate authorizing him or her to practice as a Certified Tree Expert.

"Department" means the Department of Environmental Protection.

"Tree expert" means a person skilled in the science of tree care who presents himself or herself to the public for compensation as a practicing tree expert, including as an arborist, tree expert, tree specialist, or tree surgeon.

7:3-3.5 Advertising by tree experts

(a) A tree expert who has received a certificate from the Board shall represent himself or herself as a Certified Tree Expert in all forms of advertising relating to tree care, subject to the following:

1. The Certified Tree Expert shall list his or her name and certificate number in the advertisement;

2. The listing of the Certified Tree Expert's name and certificate number in the advertisement shall be worded as follows, except that the instructions in parentheses are to be replaced with the relevant information and the parentheses deleted:

i. (Name of Certified Tree Expert), Certified Tree Expert No. (or #) (certificate number); or

ii. (Name of Certified Tree Expert), N.J. Certified Tree Expert No. (or #) (certificate number); or

iii. (Name of Certified Tree Expert), C.T.E. No. (or #) (certificate number);

3. A Certified Tree Expert shall not advertise in a manner which implies that the name of the business with which he or she is associated bears certification; and

4. All existing forms of advertising shall be changed to conform with the requirements of this section within one year of the effective date of this subchapter, or at the time of renewal for the advertisement, whichever is sooner.

(b) A tree expert who has received a certificate from the Board shall not continue to practice as a Certified Tree Expert, or use such title or any other words, letters, or abbreviations tending to indicate that such person is a Certified Tree Expert, if the Board has suspended or revoked his or her certificate.

1. All existing forms of advertising shall be changed to remove any reference to certification by the Board immediately following the suspension or revocation of a certificate by the Board, and continuing through the period of suspension or revocation.

(c) A tree expert shall not represent himself or herself to the public as having received a certificate from the Board, or assume to practice as a Certified Tree Expert, or use such title or any other words, letters, or abbreviations tending to indicate that such person is a Certified Tree Expert, without having received such certificate.

7:3-3.6 Violations; penalties

(a) The Board may suspend, for a period not to exceed two years, the certificate of a Certified Tree Expert who violates any of the rules in this subchapter, subject to the following:

1. The Board shall mail notice of the cause for the contemplated suspension and the date of hearing thereon to the violator at his or her registered address at least 20 days before the hearing;

2. The Board shall not suspend the violator's certificate until it has afforded the violator the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., on the contemplated suspension; and

3. By majority vote, the Board may reinstate a certificate suspended under this section.

(b) The Board may revoke the certificate of a Certified Tree Expert who violates more than one, or on more than one occasion, any of the rules in this subchapter. More than one violation of any of the rules in this subchapter shall be deemed wrongful conduct in the practice of professional tree care and shall constitute grounds for revocation of the certificate, subject to the following:

1. The Board shall mail notice of the cause for the contemplated revocation and the date of hearing thereon to the violator at his or her registered address at least 20 days before said hearing;

2. The Board shall not revoke the violator's certificate until it has afforded the violator the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., on the contemplated revocation; and

3. By majority vote, the Board may reissue a certificate revoked under this section.

(c) If any person violates any of the rules in this subchapter, the Department may institute a civil action in a court of competent jurisdiction for injunctive relief to prohibit and prevent the violation.

(d) A person violating the provisions of N.J.A.C. 7:3-3.5(c) shall be subject to any penalties prescribed at N.J.S.A. 45:15C-1 et seq.

(a)**DIVISION OF FISH, GAME AND WILDLIFE****Bureau of Shellfisheries****Surf Claims****Proposed Repeal and New Rules: N.J.A.C. 7:25-12**

Authorized By: Christopher J. Daggett, Commissioner,
Department of Environmental Protection.

Authority: N.J.S.A. 13:1B-3 et seq.; 13:1D-9; 23:2B-9; 23:2B-14;
23:4-52; 50:1-5 et seq.; 50:2-6.1 through 50:2-6.3; 50:4-2; and
58:24-1 et seq.

DEP Docket Number: 041-89-09.

Proposal Number: PRN 1989-523.

Submit comments by November 15, 1989 to:

Judeth A. Piccinini, Esq.
Division of Regulatory Affairs
New Jersey Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection proposes to repeal N.J.A.C. 7:25-12 and promulgate a new subchapter governing surf clam preservation as the result of consultation with the Atlantic Coast and Delaware Bay Sections of the New Jersey Shell Fisheries Councils (Council), the Surf Clam Advisory Board, and the Marine Fisheries Council. The proposed new rules make several changes to the current surf clam program as administered by the Division of Fish, Game and Wildlife (Division), but are primarily intended to update and reorganize the surf clam rules to make them clearer and more effective.

The provisions currently at N.J.A.C. 7:25-12.2 and 7:25-12.3 are being removed from the surf clam rules in their entirety. The water quality closures affecting surf clams referred to in these sections are now addressed by rules of the Division of Water Resources at N.J.A.C. 7:12, Shellfish Growing Water Classification.

Substantive changes to the provisions of the existing surf clam rules are as follows:

Proposed N.J.A.C. 7:25-12.9 consolidates the description of areas prohibited for surf clam fishing within one section of the surf clam rules. The prohibited areas delineated in this section refer to areas closed to surf clam fishing for conservation purposes. An area between Absecon Inlet and Great Egg Harbor Inlet, off Atlantic City, has been removed from the conservation zone at former N.J.A.C. 7:25-12.1(d)5 and will be open for harvest, because the surf clams in this area have reached maturity. Specific delineations of areas closed to surf clam fishing because of water quality condemnations have been omitted from the proposed rules, but are incorporated herein by reference to N.J.A.C. 7:12, Shellfish Growing Water Classification.

Proposed N.J.A.C. 7:25-12.10(a) allows the Commissioner of Environmental Protection to set the season quota for the State surf clam harvest, from 250,000 to 700,000 bushels, as a percentage of the State's surf clam resource. The actual season quota established will be approximately 10 percent of the estimated standing stock of surf clams in State waters as determined by the Division through its annual inventory of the surf clam resource occurring within the territorial waters of New Jersey. This method will allow the Commissioner, the Council and the surf clam industry to take advantage of the most recent biological information on the surf clam resource. When the biological data indicates a high abundance of surf clams in State waters, the quota established will be higher, providing an economic benefit for the industry. If the Division determines that the resource is facing a long-term decline, a lower season quota will be established, which will serve to perpetuate the resource and industry until such time as the resource increases. The flexibility of the mechanism for setting the season quota will dampen drastic fluctuations in the abundance of surf clams and reduce the need for severe harvest restrictions in years of short supply. The proposed section will also allow the Commissioner to increase the season quota during the season, should the Division's biological information determine that the resource is capable of supporting additional harvest. The Department will effectuate changes in the season quota by sending notice to vessel license holders and filing notice of the changes with the Office of Administrative Law for publication in the New Jersey Register.

Proposed N.J.A.C. 7:25-12.10(b) retains the current weekly vessel quota of 512 bushels of surf clams, subject to adjustment pursuant to the procedure at proposed N.J.A.C. 7:25-12.10(d).

Proposed N.J.A.C. 7:25-12.10(d) revises the procedure at current N.J.A.C. 7:25-12.1(d)1 through (d)3 for adjusting the weekly vessel quota and season length in years of above-average or below-average harvest rates. Under the proposed section, the Department will still determine the total State surf clam harvest as of December 31 and February 28 of each season. Because the total season quota may vary from year to year under proposed N.J.A.C. 7:25-12.10(a), the harvest totals which trigger adjustments in the weekly vessel quota have been rewritten as percentages of the season quota. Further, the proposed section now allows the Commissioner some flexibility when adjusting the weekly vessel quota. In years when harvest is significantly below average the Commissioner may raise the 512 bushel weekly vessel quota to not more than 768 bushels of surf clams; in years of significantly accelerated harvest the weekly vessel quota may be lowered to not less than 384 bushels of surf clams. The Department will effectuate changes in the weekly vessel quota and the length of the harvest season by sending notice to vessel license holders and filing notice of the changes with the Office of Administrative Law for publication in the New Jersey Register.

Proposed N.J.A.C. 7:25-12.10(d) also allows the Commissioner to take the advice of the Shell Fisheries Councils into account when adjusting the weekly vessel quota and season length for surf clam harvest, consistent with the statutory authorization for this subchapter at N.J.S.A. 50:2-6.1 through 50:2-6.3.

Proposed N.J.A.C. 7:25-12.18 contains new provisions governing transfer of licensed surf clam vessels. Under the proposed section, the transferor of a licensed surf clam vessel may transfer the license to his or her own new surf clam vessel or transfer the rights to the surf clam vessel license to the transferee of the previously licensed vessel. The proposed section requires relicensing of a surf clam vessel within seven calendar days of transfer of ownership. In addition, the proposed section prohibits transfer of a licensed vessel if an enforcement action for a violation of this subchapter is pending against the license holder. The proposed restriction is designed to prevent licensees from transferring a vessel which may be subject to sanctions or confiscation at the conclusion of the enforcement action.

PROPOSALS

Interested Persons see Inside Front Cover

ENVIRONMENTAL PROTECTION

A summary of sections of the proposed new rules follows:
N.J.A.C. 7:25-12.1 to 12.5 contain general information, backgrounds, and definitions.

N.J.A.C. 7:25-12.6 explains the applicability of the surf clam rules.

N.J.A.C. 7:25-12.7 outlines the general control methods used to preserve the surf clam resource, including licensing requirements, notification to the Department of fishing location, restrictions on fishing times, landing methods and restrictions, and dredging restrictions.

N.J.A.C. 7:25-12.8 governs the season for harvest of surf clams from State waters.

N.J.A.C. 7:25-12.9 lists areas in which surf clam fishing is prohibited.

N.J.A.C. 7:25-12.10 outlines the procedure for setting the annual season quota for surf clams and for adjusting the weekly surf clam vessel quota and season length when necessary.

N.J.A.C. 7:25-12.11 contains provisions governing bait clam harvest, including license requirements, harvest locations, reporting requirements, season, fishing times, and weekly bait clam vessel quotas.

N.J.A.C. 7:25-12.12 fixes the landing fee for surf clams.

N.J.A.C. 7:25-12.13 outlines weekly reporting requirements for surf clam harvesters.

N.J.A.C. 7:25-12.14 governs issuance of surf clam vessel licenses.

N.J.A.C. 7:25-12.15 governs issuance of bait clam vessel licenses.

N.J.A.C. 7:25-12.16 sets licensing fees for surf clam vessel and bait clam vessel licenses.

N.J.A.C. 7:25-12.17 addresses renewal of surf clam vessel licenses and bait clam vessel licenses.

N.J.A.C. 7:25-12.18 outlines procedures for transfer of licensed surf clam vessels.

N.J.A.C. 7:25-12.19 explains the procedure for relicensing surf clam vessels after casualty loss.

N.J.A.C. 7:25-12.20 requires license applicants, license renewers, parties transferring licenses, and those submitting weekly catch reports to certify the accuracy and truthfulness of the information contained in the applications or reports.

N.J.A.C. 7:25-12.21 establishes penalties for noncompliance.

Social Impact

It is anticipated that the proposed rule change will have a beneficial social impact on both license holders and the general public. The proposed change in the manner in which the season quota for surf clams is set will increase the flexibility of the harvest program and allow the Department to consider the technical advice of the Shell Fisheries Councils and the Division each year prior to initiating the harvest season. This will result in a more efficient management of the resource, ultimately optimizing its availability.

Economic Impact

A beneficial economic impact on license holders is anticipated as a result of allowing the Commissioner of Environmental Protection to set the Statewide season quota as a percentage of the standing stock of surf clams in State waters. By using the standing stock of surf clams as the reference for setting the season quota, the Department will be able to allow the surf clam fishery to harvest the maximum amount of surf clams possible while perpetuating the resource over the long term. This should result in short-term economic benefit to the fishery in years of abundant surf clam supply and ensure the long-term economic survival of the industry by preserving the resource base.

The new subchapter should also have a beneficial impact on license holders by opening up an additional area, off Atlantic City between Absecon Inlet and Great Egg Harbor Inlet, for surf clam harvest.

No increase in landing fees or licensing fees is proposed at this time.

Environmental Impact

The proposed new subchapter may have a positive environmental impact on the State surf clam resource. Although the proposed new rules will allow the Department to increase the harvest quota under certain circumstances, this increase will only be authorized when the resource is able to support such an increase and, thus, will not adversely impact the resource. The proposed changes in the manner in which the season quota is established will enable the Department to utilize the technical advice of the Shell Fisheries Councils each year, setting the season in a way that will promote the long-term survival of the resource.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., (Act), the Department has determined that the proposed changes will not impose significant reporting, recordkeeping or

other compliance requirements on small businesses. Although most commercial surf clammers are "small businesses" as defined by the Act, the paperwork involved in the license application and weekly reporting requirement will be minimal. Likewise, the Department has determined that compliance with other harvest requirements imposed by the proposed new rules will not be burdensome on small business surf clammers. The Department anticipates that small businesses affected by the proposed rules will not need additional professional services or incur additional capital costs in order to comply with the proposal. Because of the de minimus nature of the proposed compliance requirements, the proposed new subchapter does not contain exemptions or special provisions for affected small businesses.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:25-12.

Full text of the proposed new rule follows:

SUBCHAPTER 12. SURF CLAMS**7:25-12.1 Scope and authority**

This subchapter constitutes the rules of the Department of Environmental Protection governing the protection, conservation, management, and improvement of the surf clam resource in New Jersey, as authorized by N.J.S.A. 50:1-5, 50:2-6.1 through 50:2-6.3, and 23:2B-14.

7:25-12.2 Purpose

The purpose of this subchapter is to regulate the harvest of surf clams from New Jersey waters in order to conserve, protect, manage, and improve the surf clam resource and industry. The surf clam harvest regulatory program includes a limitation on the number of available licenses, a limitation on weekly harvest, a limitation on harvest to specific fishing times and areas, and other control methods as may be necessary.

7:25-12.3 Construction

These rules shall be liberally construed to permit the Department to effectuate the purposes of N.J.S.A. 50:1-5, 50:2-6.1 through 50:2-6.3, and 23:2B-14.

7:25-12.4 Severability

If any section, subsection, provision, clause, or portion of this subchapter, or the application thereof to any person, is adjudged unconstitutional or invalid by a court of competent jurisdiction, such judgment shall be confined in its operation to the section, subsection, provision, clause, portion or application directly involved in the controversy in which such judgment shall have been rendered and it shall not affect or impair the remainder of this subchapter or the application thereof to other persons.

7:25-12.5 Definitions

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

"Approved waters" means waters meeting established sanitary standards for approved shellfish harvesting, as delineated by N.J.A.C. 7:12.

"Bait clams" means surf clams taken from condemned waters, not for human consumption but only for use as bait.

"Bait clam vessel" means a vessel holding a bait clam vessel license issued pursuant to N.J.A.C. 7:25-12.15.

"Bushel" means 1.88 cubic feet of clams within the shell or its equivalent of shucked clams, 3.25 gallons.

"Commissioner" means the Commissioner of the Department of Environmental Protection or his or her designee.

"Condemned waters" means waters not meeting established sanitary standards for approved shellfish harvesting, including waters designated as Prohibited or Specially Restricted, as delineated by N.J.A.C. 7:12.

"Council" means the Atlantic Coast Section and the Delaware Bay Section of the New Jersey Shell Fisheries Council.

"Department" means the Department of Environmental Protection.

"Division" means the Division of Fish, Game and Wildlife in the Department of Environmental Protection.

"Land" means to offload surf clams to shore from a harvesting vessel.

"Licensee" means the holder of a surf clam vessel license or a bait clam vessel license, or his or her agent.

"Person" includes the captain, owner or other person responsible for the operation of a vessel.

"Surf clams" means the species of sea clam *Mactra solidissima*, also known as *Spisula solidissima*. Unless otherwise specified, the term "surf clams" includes bait clams.

"Surf clam vessel" means a vessel holding a surf clam license issued pursuant to N.J.A.C. 7:25-12.14.

"Season quota" means the total amount of surf clams that may be harvested by all license holders from State waters during the annual surf clam harvest season.

"Standing stock" means the amount of the surf clam resource in State waters, measured in bushels, as determined by the annual surf clam inventory conducted by the Division.

"Vessel" includes the captain, owner or other person responsible for the operation of a vessel.

7:25-12.6 Applicability

(a) The rules in this subchapter shall apply to all taking, attempting to take, harvesting, or dredging of surf clams in State waters, except the following:

1. Research, inventory or educational activities involving surf clams conducted under a certificate issued by the Division pursuant to N.J.S.A. 23:4-52 or a permit issued by the Department pursuant to N.J.S.A. 50:2-6.1 for research, inventory or educational purposes;

2. Gathering from beaches of surf clams cast there by the sea, in areas adjacent to approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2 and a clamming license is required as described in N.J.A.C. 7:25-8; and

3. Harvest of surf clams for personal consumption, and not for sale, from areas in approved waters. Such harvest activities are subject to the provisions of N.J.S.A. 50:2-1 through 50:2-5 and 50:4-2 and a clamming license is required as described in N.J.A.C. 7:25-8.

(b) Compliance with this subchapter shall not exempt any person from compliance with shellfish regulations adopted to protect the public health by the Department, under authority of N.J.S.A. 58:24, or by any department of State government or any Federal agency.

7:25-12.7 General control methods

(a) Except as provided at N.J.A.C. 7:25-12.6(a), a person or vessel shall not take, attempt to take, harvest, or dredge for surf clams in any State waters without first obtaining a surf clam vessel license as described in N.J.A.C. 7:25-12.14, or bait clam vessel license as described in N.J.A.C. 7:25-12.15.

(b) The general methods by which the Department shall control the harvest of surf clams from State waters are as follows:

1. The captain of a licensed surf clam vessel or bait clam vessel, or his or her designee, shall notify the Department of the intended fishing location of the vessel each day it fishes in State waters. The notification shall be made by calling the Marine Enforcement Unit, Bureau of Law Enforcement, Division of Fish, Game and Wildlife, Department of Environmental Protection, at (609) 441-3474, prior to fishing in State waters and prior to change of location.

2. Except for bait purposes as provided in N.J.A.C. 7:25-12.11(e), surf clams may be harvested from State waters daily only between 6:00 A.M. and 6:00 P.M. Eastern Standard Time.

3. Any person fishing for surf clams at any time in State waters shall have the vessel's entire harvest of surf clams for that day counted as part of the vessel's weekly quota for surf clams.

4. A person shall not transfer surf clams from a licensed surf clam vessel or bait clam vessel to any other vessel. All surf clams harvested in State waters shall be landed in this State. A person shall not operate a licensed surf clam vessel or bait clam vessel to fish in or land surf clams from both State and Federal waters without first landing all surf clams or bait clams from the fishery (State or Federal) from which they were harvested.

5. All surf clams shall be landed in their shell, except that shucked clams may be landed pursuant to an applicable permit from the New

Jersey Department of Health. If shucked clams are landed, the equivalent weekly harvest limit shall apply to the harvest.

6. A person shall not operate a vessel using more than a single dredge at any time while fishing for surf clams in State waters.

7. All surf clam cages or containers shall be tagged before leaving the vessel with tags furnished by the Division. Tags shall not be removed until the cages or containers are emptied at the processing plant, at which point said tags shall be destroyed and discarded.

7:25-12.8 Season

(a) Except for bait purposes as provided in N.J.A.C. 7:25-12.11, the annual season for taking surf clams in State waters shall begin on November 1 and extend through and including May 31.

(b) If the season quota is harvested before May 31, the Commissioner may terminate the surf clam harvest season before May 31 pursuant to the requirements of N.J.A.C. 7:25-12.10.

7:25-12.9 Prohibited fishing areas

(a) The areas in which surf clams may not be taken are as follows:

1. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12318 (35th Ed., August 11/84), available for inspection at the Nacote Creek Shellfish Office:

i. From the shore on the bay side of Little Beach, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 19.4 minutes W;

ii. Thence seaward 090.5 degrees T one nautical mile to a point, latitude 39 degrees 28.3 minutes N, longitude 74 degrees 17.2 minutes W, LORAN C 9960-X-26958, 9960-Y-43099;

iii. And thence south following the line of the beach one nautical mile offshore to a point, latitude 39 degrees 21.0 minutes N, longitude 74 degrees 23.6 minutes W, LORAN C 9960-X-26983, 9960-Y-43020, (generally marked by a buoy charted as "1" F1 G 4s GONG);

iv. Thence 333 degrees T to latitude 39 degrees 21.5 minutes N, longitude 74 degrees 23.9 minutes W, LORAN C 9960-X-26986, 9960-Y-43026, (generally marked by a buoy charted as R "2" F1 R 2.5s); and

v. Thence 309 degrees T to the light charted as F1 G 4 sec. 29 ft. "7" at the end of the southernmost jetty in Absecon Inlet, latitude 39 degrees 21.8 minutes N, longitude 74 degrees 24.5 minutes W, LORAN C 9960-X-26990, 9960-Y-43029.

2. Those waters enclosed within the following description, as delineated by the Division by reference to the National Oceanic and Atmospheric Administration Nautical Chart 12323 (19th Ed., November 15/80), available for inspection at the Nacote Creek Shellfish Office:

i. The area off Island Beach from a point on the southern boundary of the area closed for shellfishing by N.J.A.C. 7:12 with latitude 39 degrees 52.9 minutes N, longitude 74 degrees 3.6 minutes W, LORAN C 9960-X-26924, 9960-Y-43357;

ii. Thence south following the line of the beach one nautical mile off shore to a point; latitude 39 degrees 45.9 minutes N, longitude 74 degrees 4.5 minutes W, LORAN C 9960-X-26914, 9960-Y-43283;

iii. Thence to the shore 090 degrees T to the abandoned lighthouse with a latitude 39 degrees 45.8 minutes N, longitude 74 degrees 6.4 minutes W; and

3. Those areas closed to shellfishing by N.J.A.C. 7:12.

7:25-12.10 Harvest limitations; surf clam harvest quota and weekly vessel quota

(a) The Commissioner, with the advice of the Council, shall establish annually a season quota of between 250,000 and 700,000 bushels of surf clams. The season quota shall be set at approximately 10 percent of the State's estimated standing stock of surf clams.

(b) The weekly vessel quota for surf clam harvest from State waters shall be 512 bushels, or as modified by the Commissioner with the advice of the Council as provided in (e) below. A licensee or vessel shall not harvest from State waters more than the weekly vessel quota of surf clams per vessel during any week of the season. The week for weekly vessel quota purposes shall begin on Sunday and run through the following Saturday.

(c) By October 1 of each year the Department shall send notice to all license holders by first class mail, and file notice for publication in the New Jersey Register, of the season quota for the upcoming surf clam harvest season.

PROPOSALS

(d) If the Department does not give notice of the season quota for the surf clam harvest season pursuant to (c) above by October 1 of the year, the season quota for the upcoming surf clam harvest season shall be 500,000 bushels.

(e) Based on harvest reporting, the Commissioner, with the advice of the Council, may adjust the season length and weekly vessel quota for surf clams as follows:

1. On or about December 31, the Commissioner will determine the total State surf clam harvest for the season:

i. If less than 20 percent of the season quota has been harvested as of December 31, then the Commissioner may by public notice increase the weekly vessel quota so that the weekly vessel quota does not exceed 768 bushels of surf clams;

ii. If more than 50 percent of the season quota has been harvested as of December 31, then the Commissioner may by public notice reduce the weekly vessel quota so that the weekly vessel quota does not fall below 384 bushels of surf clams; and

iii. If between 20 percent and 50 percent of the season quota has been harvested as of December 31, then the weekly vessel quota will remain 512 bushels until February 28, when the Commissioner will again determine the total State surf clam harvest for the season;

2. On or about February 28, the Commissioner will determine the total State surf clam harvest for the season:

i. If less than 50 percent of the season quota has been harvested as of the time the Commissioner determines the total State surf clam harvest for the season under this paragraph (e)2, then the Commissioner may by public notice increase the weekly vessel quota for the remainder of the season so that the weekly vessel quota does not exceed 768 bushels of surf clams;

ii. If more than 70 percent of the season quota has been harvested as of the time the Commissioner determines the total State surf clam harvest for the season under this paragraph (e)2, then the Commissioner may by public notice reduce the weekly vessel quota for the remainder of the season so that the weekly vessel quota does not fall below 384 bushels of surf clams; and

3. If at any time during the season the Commissioner determines that the season quota has been harvested from State waters, the Commissioner may by public notice:

i. Close the State's waters to any further harvest of surf clams for the remainder of the season; or

ii. Increase the total surf clam season quota and adjust the weekly vessel quota to extend the season.

(f) The Department shall send notice of any change in the weekly vessel quota, season length, or season quota pursuant to (e) above by first class mail to each surf clam vessel license holder, and shall file notice of any such change for publication in the New Jersey Register. All such changes shall be effective when the Department files the notice with the Office of Administrative Law or as specified otherwise in the notice.

7:25-12.11 Bait clams

(a) A person or vessel shall not take, attempt to take, harvest, or dredge for bait clams in any State waters without first obtaining:

1. A bait clam vessel license, N.J.A.C. 7:25-12.15; and

2. A special permit for bait clam harvest from the Division of Water Resources, as described by N.J.S.A. 58:24 and N.J.A.C. 7:12.

(b) Bait clam vessel licensees shall harvest bait clams only in condemned waters, but not in condemned waters located within the prohibited fishing areas delineated at N.J.A.C. 7:25-12.9(a)1 and 2 above.

(c) Bait clam vessel licensees shall report fishing area daily as provided at N.J.A.C. 7:25-12.7(b)1 and file weekly harvest reports as provided at N.J.A.C. 7:25-12.13.

(d) The season for taking bait clams shall extend throughout the year.

(e) The time for taking bait clams shall be as follows:

1. November 1 through May 31: Daily, between 6:00 A.M. and 6:00 P.M. Eastern Standard Time; and

2. June 1 through October 31: Monday through Saturday, between one half-hour before sunrise (Trenton time) and 4:00 P.M. Eastern Standard Time.

(f) The weekly bait clam vessel quota shall be the same number as the weekly surf clam vessel quota set pursuant to N.J.A.C. 7:25-12.10.

(g) A person shall not operate a vessel to take surf clams in the waters of this State for bait and for human consumption on the same day.

7:25-12.12 Landing fees

(a) Licensees shall pay a landing fee of 12.5 cents (\$0.125) for each bushel, or its equivalent, of surf clams or bait clams harvested from the waters of this State.

(b) The Department shall use all money received from surf clam landing fees for the conservation, protection, management, and improvement of the surf clam resource and industry.

7:25-12.13 Weekly reporting

(a) All surf clam vessel licensees and bait clam vessel licensees shall provide to the Division weekly surf clam harvest reports on forms supplied by the Division. Weekly reports shall include the following:

1. The vessel name and New Jersey surf clam vessel or bait clam vessel license number;

2. The dates fished, and for each date fished the fishing time in hours and the number of the New Jersey Inshore Surf Clam Harvest Zone fished;

3. For each surf clam or bait clam landing, the port at which the clams were landed; and

4. The name and signature of the captain of the surf clam vessel or bait clam vessel attesting to the validity of the report (see N.J.A.C. 7:25-12.20).

(b) The week for surf clam and bait clam harvest reporting purposes shall begin on Sunday and run through the following Saturday.

(c) Weekly surf clam or bait clam harvest reports shall be mailed, together with a check or money order for the proper amount of the landing fee, as determined pursuant to N.J.A.C. 7:25-12.12, made payable to the "Treasurer, State of New Jersey," to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(d) Weekly surf clam harvest and bait clam harvest reports shall be submitted to the Division by Saturday, 6:00 P.M. of the week following the week fished.

(e) If a surf clam vessel or bait clam vessel does not fish in State waters during a given week, the licensee shall provide a weekly report to that effect.

(f) The Division will furnish total State surf clam harvest information to all licensees on an annual basis.

(g) Except for the total State surf clam harvest in bushels, information provided on weekly surf clam and bait clam harvest reports is confidential and shall not be available for public inspection.

7:25-12.14 Issuance of surf clam vessel licenses

(a) An applicant for a surf clam vessel license shall be the bona fide owner of the surf clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1.

(b) Except as provided at N.J.A.C. 7:25-12.19, an applicant may apply for a surf clam vessel license if that person had a license in the preceding year or received a license through transfer of ownership of a surf clam vessel as provided at N.J.A.C. 7:25-12.18(b). Applicants shall submit the license for the present year, proof of vessel ownership, and proof of residency as part of the surf clam vessel license application.

(c) Application for a surf clam vessel license shall be made in person by the surf clam vessel owner or agent of the owner to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241
(609) 441-3284

(d) The license year for surf clam vessel licenses shall be the calendar year.

(e) The top and sides of the surf clam vessel shall be marked with the New Jersey surf clam vessel license number in markings at least 18 inches in size, clearly legible, in good repair and with no visual obstruction.

7:25-12.15 Issuance of bait clam vessel licenses

(a) An applicant for a bait clam vessel license shall be the bona fide owner of the bait clam vessel and a resident of New Jersey, as required by N.J.S.A. 50:2-6.1. Applicants shall submit proof of vessel ownership and proof of residency as part of the bait clam vessel license application.

(b) Application for a bait clam vessel license shall be made in person by the bait clam vessel owner or agent of the vessel owner to:

Nacote Creek Shellfish Office
Division of Fish, Game and Wildlife
New Jersey Department of Environmental Protection
P.O. Box 418, Route 9
Port Republic, New Jersey 08241

(c) The license year for bait clam vessel licenses shall be the calendar year.

(d) The top and sides of the bait clam vessel shall be marked with the New Jersey bait clam vessel license number in markings at least 18 inches in size, clearly legible, in good repair and with no visual obstruction.

7:25-12.16 Licensing fees

(a) The annual fee for a surf clam vessel license shall be \$5.00 per gross ton of harvesting vessel, with a minimum fee of \$35.00 per vessel.

(b) The annual fee for a bait clam vessel license shall be \$5.00 per gross ton of harvesting vessel, with a minimum fee of \$35.00 per vessel.

7:25-12.17 Renewal of surf clam vessel licenses and bait clam vessel licenses

(a) Except for casualty loss, as governed by N.J.A.C. 7:25-12.19, surf clam vessel licenses and bait clam vessel licenses shall be renewed annually by payment of the annual license fee on or before December 31. If a licensee has not paid the annual license fee on or before December 31, the Department shall retire that license from the surf clam fishery.

(b) Surf clam vessel and bait clam vessel license renewal is specifically conditioned on the continuing compliance of the licensee with all the requirements of this subchapter and all statutory criteria for vessel licensing and surf clam harvest. The Department shall not renew a surf clam vessel license or a bait clam vessel license for a licensee who by December 31 has not filed the required weekly reports, as specified at N.J.A.C. 7:25-12.13, or paid the required landing fee, as specified at N.J.A.C. 7:25-12.12, for any part of the preceding license year.

7:25-12.18 Transfer of surf clam vessels

(a) A person transferring ownership of a licensed surf clam vessel may:

1. Apply for a new surf clam vessel license for a replacement surf clam vessel, pursuant to N.J.A.C. 7:12-14 and subject to the following:

i. Application for a replacement surf clam vessel license shall be made within one year of the date of vessel transfer;

ii. The applicant shall demonstrate compliance with all rules and statutory criteria applicable to surf clam vessel licensing and surf clam harvest; and

iii. Upon issuance of the license the applicant shall pay the full annual surf clam vessel licensing fee of \$5.00 per gross ton of harvesting vessel, with a minimum fee of \$35.00 per vessel; or

2. Transfer all rights incident to the surf clam vessel license to the transferee of ownership of the surf clam vessel by filing a notarized Statement of Intent with the Department indicating that he or she will waive all the rights and conditions of that license, not apply for a replacement license, and transfer the right to a license with the

vessel to its new owner who shall meet all statutory criteria for licensing, and indicating the person to whom the transfer is being made, subject to the following:

i. The new owner shall, within seven calendar days of the vessel transfer, apply to the Department to relicense the surf clam vessel in his or her name;

ii. The new owner shall demonstrate compliance with all rules and statutory criteria applicable to surf clam vessel licensing and surf clam harvest; and

iii. Upon issuance of the license, the new owner shall pay the full annual surf clam vessel licensing fee of \$5.00 per gross ton of harvesting vessel, with a minimum fee of \$35.00 per vessel.

(b) A person shall not transfer ownership of a licensed surf clam vessel while an enforcement action by the Department for violation of this subchapter is pending. The Department shall deem an enforcement action pending against a license holder from the time it issues a Summons or Notice of Violation to the license holder until such time as a final legal disposition of the enforcement action has been rendered. If the final legal disposition of the enforcement action requires that a monetary penalty be paid or orders a suspension of the surf clam vessel license, the licensee shall not transfer the surf clam vessel license or ownership of the licensed surf clam vessel until the monetary penalty has been paid or the suspension time has run, whichever is later.

7:25-12.19 Casualty loss

(a) A licensed surf clam vessel lost, destroyed or disabled may be replaced within two years of December 31 of the year for which the lost, destroyed, or disabled vessel was licensed. The owner shall file a Statement of Intent with the Department, on or before December 31 of the year for which the lost, destroyed, or disabled vessel was licensed, indicating that the owner intends to replace the vessel.

(b) Application for a replacement surf clam vessel license shall be made pursuant to the procedures at N.J.A.C. 7:25-12.14, upon proof of loss and of replacement of the previously licensed vessel.

7:25-12.20 Signatories; certification

(a) All applicants and licensees shall, upon submission of initial, renewal, or replacement applications, transfer applications, or weekly harvest reports, sign the following certification on the application or report forms:

1. "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 penalties for submitting false, inaccurate or incomplete information and significant criminal penalties, including fines and/or imprisonment, for submitting false, inaccurate or incomplete information or information which I do not believe to be true."

(b) Penalties for false swearing or false reporting may include the penalties set forth in N.J.S.A. 2C:28-3, and the penalties set forth in N.J.A.C. 7:25-12.21.

7:25-12.21 Penalties

Violation of any section of this subchapter, or any license or order issued pursuant to it, shall subject the violator to the penalties set forth in the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 et seq., at N.J.S.A. 23:2B-14. Penalties may include monetary penalties of \$100.00 to \$3,000 for a first violation, and \$200.00 to \$5,000 for any further violations. Penalties may also include confiscation of any vessel or equipment used in committing a violation, and revocation of any license issued under this subchapter and N.J.S.A. 50:2-6.1 through 50:2-6.3. The Department may compromise and settle any claim for a penalty under this subsection in such amount in the discretion of the Department as may appear appropriate and equitable under all the circumstances.

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT**Burden of Proof****Discarded Commercial Chemical Products****Proposed New Rule: N.J.A.C. 7:26-1.13****Proposed Amendment: N.J.A.C. 7:26-8.15**

Authorized By: Christopher J. Daggett, Commissioner,

Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 042-89-09.

Proposal Number: PRN 1989-522.

Submit comments by November 15, 1989 to:

Daren R. Eppley, Esq.

Division of Regulatory Affairs

Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The New Jersey Department of Environmental Protection (Department) is proposing a new rule N.J.A.C. 7:26-1.13, and an amendment to N.J.A.C. 7:26-8.15. The proposed new rule at N.J.A.C. 7:26-1.13 would clarify that, in enforcement actions, persons claiming that they qualify for any exclusion or exemption provided by N.J.A.C. 7:26 or that they are not otherwise subject to N.J.A.C. 7:26 have the burden of demonstrating that they meet all the conditions and terms of the law releasing them from the requirements of N.J.A.C. 7:26. In the case of persons claiming that a material is not a solid waste or is conditionally exempt from the rules, the person so claiming must demonstrate and document that the material is not a solid waste or that the material meets all terms of the law which renders the material conditionally exempt from the rules and must also demonstrate that there is a legal disposition for the material. In addition, the rule would mandate that an owner or operator of a facility claiming to be exempt from N.J.A.C. 7:26 because the facility recycles hazardous waste must be able to demonstrate that the facility meets the definition of a recycling facility at N.J.A.C. 7:26-1.4. This new rule does not relieve the owner or operator from the requirement of a prior showing which is a condition of some exclusions or exemptions.

The proposed amendment at N.J.A.C. 7:26-8.15(a) would change the introductory language of the subsection. The amendment would clarify that materials, items, or discarded commercial chemical products (including their off-specification species, container residues and spill residues) listed in this subsection, manufactured for commercial or manufacturing use, are hazardous waste if and when they are a solid waste as defined at N.J.A.C. 7:26-1.6.

The new rule and amendment are required in order for New Jersey to achieve equivalence with Federal regulations promulgated under the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. The proposed amendment at N.J.A.C. 7:26-8.15 is equivalent to, but broader in scope than, the Federal regulation.

Social Impact

There would be a positive social impact from the proposed new rule and amendment. The new rule would clarify that persons claiming an exclusion or exemption from hazardous waste rules in an enforcement action will have the responsibility for proving their eligibility for such exclusion or exemption. The amendment clarifies that certain discarded commercial chemicals are hazardous waste if they meet the solid waste definition.

Economic Impact

There should be no adverse economic impact from the proposed new rule and amendment. It is a general legal principle that persons claiming an exclusion or exemption from a regulatory scheme have the burden to prove that claim, especially in cases where the claimant has the particular knowledge to substantiate the claim (see *Wigmore, Evidence* §2486 (3d ed.) and 31A C.J.S. *Evidence* §104 et seq. (1964)). This addition will codify that general principle. The amendment will clarify the introductory language of that subsection.

Environmental Impact

There will be a positive environmental impact from the proposed new rule as it will place the responsibility for proving eligibility for an exclusion or exemption in the State's hazardous waste rules on the claimant in enforcement actions.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq., the Department has determined that the proposed amendment at N.J.A.C. 7:26-8.15 will not impose reporting, recordkeeping, or other compliance requirements on small businesses because the amendment is merely a clarification; therefore, no regulatory flexibility analysis is needed.

The proposed new rule will apply to persons in solid and hazardous waste enforcement actions claiming that their material is not a solid waste, that their material is conditionally exempt from regulation, that their facility is a recycling facility, or that they qualify for any exclusion or exemption in N.J.A.C. 7:26. Many "small businesses," as defined in the New Jersey Regulatory Flexibility Act, are likely to be impacted by this rule. In order to comply with this rule, small businesses will, in an enforcement action, have to demonstrate and document their claim that they are not subject to N.J.A.C. 7:26. However, since the claimant has the particular knowledge related to its claimed exemption and, in the ordinary course of business, presumably maintains the documents necessary to substantiate its claim, the Department does not expect this rule to create capital expenditures or compliance costs for small businesses. Furthermore, this rule is simply codifying the general legal principle that persons claiming an exemption from a regulatory scheme have the burden to produce sufficient evidence to substantiate its claim; therefore, no exemption from coverage is provided.

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

7:26-1.13 Burden of proof

(a) **In an enforcement action, persons claiming that they qualify for any exclusion or exemption in N.J.A.C. 7:26 or that they are not otherwise subject to the rules in N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law releasing them from the requirements of N.J.A.C. 7:26.**

(b) **In an enforcement action, persons claiming that a certain material is not a solid waste shall demonstrate and appropriately document that the material is not a solid waste and that there is a legal disposition for the material.**

(c) **In an enforcement action, persons claiming that a certain material is conditionally exempt from N.J.A.C. 7:26 shall demonstrate and appropriately document that they satisfy all terms of the law which renders the material conditionally exempt from N.J.A.C. 7:26 and that there is a legal disposition for the material.**

(d) **In an enforcement action, an owner or operator claiming that they are actually recycling hazardous waste shall demonstrate and appropriately document that the facility meets the definition of a recycling facility at N.J.A.C. 7:26-1.4.**

7:26-8.15 Discarded commercial chemical products, off-specification species, containers, and spill residues thereof

(a) The following [chemicals] **discarded commercial chemical products**, manufactured for commercial or manufacturing use, their off-specification species, or their container residues or spill residues are hazardous waste if and when they are [discarded or intended to be discarded, in lieu of their original intended use] **a solid waste as defined at N.J.A.C. 7:26-1.6:**

1.-7. (No change.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT
Nonhazardous Waste Codes and Manifesting; Use of
X900 Series Codes

Preproposal: N.J.A.C. 7:26-8.13

Authorized By: Christopher J. Daggett, Commissioner,
 Department of Environmental Protection.

Authority: N.J.S.A. 13:1E-1 et seq., particularly 13:1E-6.

DEP Docket Number: 043-89-09.

Preproposal Number: PPR 1989-7.

Take notice that the New Jersey Department of Environmental Protection (Department), pursuant to its authority at N.J.S.A. 13:1E-6(a), will receive preliminary comments on contemplated changes to the Department's rules regarding the manifesting of nonhazardous waste.

Interested parties may submit in writing data, draft rules, opinions, and other comments relevant to the preproposal on or before December 15, 1989 to:

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

The Department is considering proposing amended or new rules to establish specific requirements for the manifesting of nonhazardous waste or to ban the practice of manifesting nonhazardous waste entirely.

Under current State hazardous waste rules, N.J.A.C. 7:26, as mandated by the Federal Resource Conservation and Recovery Act (RCRA), 42 U.S.C. §6901 et seq. (1976), only those wastes specifically designated in the State rules as hazardous under N.J.A.C. 7:26-8 are required to be manifested pursuant to N.J.A.C. 7:26-7.4, and those hazardous wastes must then be identified on the manifest form by one of a list of hazardous waste code numbers in the State rules. However, as a means of independently tracking their nonhazardous waste shipments to hazardous waste facilities, some generators create manifests for wastes not designated as hazardous in the State rules in order to comply with the operating conditions of a hazardous waste facility permit, which requires that all shipments of waste to the facility be accompanied by a manifest. These manifests are then filed with the Department.

The Department has established for its own internal use a series of X900 waste codes for nonhazardous wastes, used to code into the Department's computerized data base manifests submitted for the manifesting of nonhazardous wastes to hazardous waste facilities. These X900 waste code numbers were not intended for use outside of the Department or for use as a code for hazardous wastes. The X900 series was never published in the New Jersey Register, and is not a part of the Department's rules. The three code numbers most often used and their corresponding verbal descriptions are as follows: X900—Chemical Process Liquid, N.O.S. (Not Otherwise Specified); X910—Chemical Process Solid, N.O.S.; and X940—Poison/Pesticide, N.O.S.

Certain hazardous waste generators learned of the X900 series codes and came to use the codes for disposal of nonhazardous wastes at hazardous waste facilities. The Department recognizes that the X900 series codes have been used to code hazardous waste transported to hazardous waste facilities. The Department now advises hazardous waste generators that the X900 codes are to be used for the manifesting of nonhazardous wastes only.

The X900 waste codes shall not be used on manifests to designate hazardous wastes. Hazardous wastes must be identified on manifest forms by the waste code numbers published at N.J.A.C. 7:26-8. If an X900 series code is used to describe a hazardous waste, the manifest is incorrect, and the generator may be liable for penalties for making a false statement on the manifest.

The Department is soliciting comments regarding the use of manifests for nonhazardous wastes. The handling of these manifests creates certain problems for the Department's management of the hazardous waste manifest system, primarily involving the additional work load placed on the Department's staff which must receive, file, and microfilm manifest documents and code the data for computer entry.

The Department is inclined to regulate the use of nonhazardous manifests rather than ban the practice outright. Manifesting of nonhazardous waste reflects a desire on the part of industry to impose RCRA-style controls over wastes which are not designated as hazardous in the formal regulatory scheme, but which certain generators desire to dispose of as hazardous waste as a policy matter whether or not these wastes may present some risk to human health and to the environment. The uniform manifest document, being familiar, may be a convenient way to achieve that goal, and the filing of such manifests with the Department provides information which is useful for planning purposes. The Department wants to encourage the broadest possible comment on the issues raised in this Notice, however, and advises interested parties that the Department has not ruled out the possibility of prohibiting use of the uniform manifest for disposal of nonhazardous wastes.

At the present time, the Department favors the promulgation of new, published codes to replace the X900 series. Promulgation of more specific codes for nonhazardous wastes will facilitate the proper identification and tracking of those nonhazardous wastes which generators choose to send to hazardous waste facilities for treatment, storage, or disposal.

The Department also believes that generators, transporters, and treatment, storage, or disposal (TSD) facilities using the manifest system for nonhazardous waste should be required to meet standards equivalent to those for hazardous waste, and should be liable for penalties for improper manifesting, in order to protect the integrity of the system as a whole. The Department is considering implementation of the following regulatory changes:

1. Publishing new waste codes for nonhazardous wastes, and requiring their use whenever nonhazardous waste is manifested on the uniform hazardous waste manifest;
2. Requiring that once nonhazardous wastes are entered into the manifest system, they are subject to the same handling, transportation, fees, and reporting requirements as are hazardous wastes;
3. Establishing penalties for submission of improperly completed manifest forms to the Department for nonhazardous wastes, which may be similar to penalties for improper manifesting of hazardous wastes;
4. Requiring that TSD facilities that accept manifested nonhazardous waste handle it according to existing standards for hazardous waste, meaning that the nonhazardous waste must undergo a permitted treatment or disposal at a RCRA Subtitle C facility. This rule would maintain enforceability of the current requirement under the Solid Waste Management Act that nonhazardous solid waste either be disposed of in accordance with State-mandated waste flow rules or be treated and disposed of as hazardous waste. Hazardous waste facilities are not required to be part of District Solid Waste Management Plans, and there may be an incentive to route nonhazardous solid waste through such facilities in order to circumvent waste flow rules. Requiring that hazardous waste treatment and disposal standards be applied to nonhazardous waste will remove the financial incentive for circumventing Solid Waste Management Plans.

The Department is soliciting comments on the following issues, as well as on any other issues identified by commenters.

1. How many different codes for nonhazardous wastes should the Department publish? What form should these codes take to best distinguish them from hazardous waste codes?
2. Should manifested nonhazardous wastes have to meet the same transportation, manifesting, and reporting requirements as are required for hazardous wastes?
3. What are appropriate penalties for submitting improperly completed nonhazardous waste manifests to the Department?
4. Should TSD facilities accepting manifested nonhazardous wastes be required to manage those wastes according to standards existing for hazardous wastes? What penalties should there be for failure to do so?
5. Should use of the uniform hazardous waste manifest form for nonhazardous wastes be prohibited? If such a rule is adopted, what penalties should there be for violations?

HUMAN SERVICES**(a)****DIVISION OF MENTAL HEALTH AND HOSPITALS****Community Mental Health Services
Fiscal Administration****Proposed Amendment: N.J.A.C. 10:37-7.8**

Authorized By: Margaret E.L. Howard, Acting Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:9A-1.

Proposal Number: PRN 1989-516.

Submit comments by November 15, 1989 to:

Alan G. Kaufman, Director
Division of Mental Health and Hospitals
13 Roszel Road
Princeton, New Jersey 08540

The agency proposal follows:

Summary

A regulatory provision (N.J.A.C. 10:37-7.8) promulgated by the Department of Human Services for State-funded community mental health agencies currently states: "An independent collection agency, however, should not be used for the purpose of fee collection directly from clients not covered by an insurance program." Recent legislation pertaining to the Department of Health's Uncompensated Care Trust Fund, N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1, section 10(b)(3)), now mandates collection agency efforts for all hospital-operated outpatient mental health programs. These two provisions conflict, and, by law, the legislation prevails over the regulation in such situations. Consequently, the rule is being proposed for amendment at this time.

The purpose of this proposed regulatory amendment is to comply with the recently enacted legislation without altering the standards for services provided at community mental health agencies which are not hospital-operated. Therefore, the amendment has been drafted to provide for an exception to the standard for hospital-operated services. Community mental health agencies which are funded by the Division of Mental Health and Hospitals and not hospital-operated are still precluded from utilizing independent collection agencies.

Social Impact

The legislatively mandated collection agency efforts appear designed to maintain the financial viability of the Department of Health's Uncompensated Care Trust Fund. The social effect of this proposed amendment is to ensure that those individuals capable of paying their fair share for outpatient, hospital-operated mental health services do so, thus enabling the Uncompensated Care Trust Fund to remain financially viable and ensure that truly indigent individuals in New Jersey may receive quality health care services.

All outpatient hospital-operated community mental health services funded by the Division of Mental Health and Hospitals are required by this proposed amendment to utilize collection agencies as required by Department of Health Regulations. Likewise, consumers of those services who do not pay owed fees may be affected by being subject to collection agency action.

Economic Impact

The proposed amendment may have negative economic consequences on those consumers of outpatient, hospital-operated, mental health services who have owed fees to the mental health services and who have not previously been subjected to collection procedures. The amendment may have a positive economic impact on the mental health services which have previously been unable to collect fees from certain clients, and which now may be able to do so, in that they may be rated as more efficient by the Hospital Rate-setting Commission. The hospitals experience no direct economic impact as a result of employing the services of the collection agencies, as such costs are reimbursed through the rate-setting system.

Regulatory Flexibility Statement

The proposed amendment applies only to those hospitals which receive funding from the Division of Mental Health and Hospitals and which are licensed under the Chapter 83 system. Each of these hospitals employs more than 100 full-time employees, and does not qualify as a small

business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

10:37-7.8 Grant/contract-related income

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

(e) An independent collection agency, however, should not be used for the purpose of fee collection directly from clients not covered by an insurance program, **unless the provided service is subject to the authority of the Department of Health regarding such collection action, pursuant to N.J.S.A. 26:2H-1 et seq. (P.L. 1978, c.83) and N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1).** A client does not automatically waive [his/her] his or her right to confidentiality because of payment delinquency.

(f)-(j) (No change.)

(b)**DIVISION OF ECONOMIC ASSISTANCE****General Assistance Manual****General Provisions, Administrative Responsibilities,
Eligibility, Payments, Medical Care, Fiscal
Procedures, Notices and Hearings, Referral to
Other Agency Programs, Legally Responsible
Relatives, Employability Program and Glossary****Proposed Readoption with Amendments: N.J.A.C.
10:85**

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

Authority: N.J.S.A. 44:8-111(d).

Proposal Number: PRN 1989-497.

Submit comments by November 15, 1989 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:85 will expire on January 30, 1990.

N.J.A.C. 10:85 is the compilation of rules and procedures related to the General Assistance (GA) program which primarily assists single adults and childless couples. Responsibility for administration of the program rests with each of the 567 municipalities in the State of New Jersey. For most municipalities, the State reimburses the municipality to the extent of 75 percent of the funds granted to recipients. Accordingly, New Jersey Statutes Annotated (N.J.S.A.) 44:1 and 44:8 provide for State supervision so that the program is uniformly administered throughout the State. The General Assistance Manual (GAM) is the basis of that supervision.

The Department has evaluated the rules contained in N.J.A.C. 10:85 and has found that they are necessary and responsive to the purposes for which they were promulgated in that they serve as a link between the requirements of New Jersey Statutes and the operation of the program. Failure to readopt these rules would leave the GA program without direction.

The GAM has always been the subject of continuing review. Two methods, used singly or in combination, assure continuing responsiveness to changing social and economic conditions. The first is staff review and discussion of case situations and instances in which rules work inappropriately or not at all. The second and more formal review is through the General Assistance Advisory Committee. The committee is composed of members of policy level staff of the Department's Division of Economic Assistance, municipal welfare directors and representatives from client advocacy groups.

Subchapter 1 provides information on the purpose, funding and administration of the GA program. Each municipality in New Jersey, pursuant to Chapters 1 and 8 of N.J.S.A. 44, is required to provide financial and

medical assistance to eligible persons who are ineligible for participation in any other public assistance program. The GA program is administered by the municipality's Director of Welfare.

Subchapter 2 is concerned with GA municipal administrative obligations which include the establishment of a local assistance board, appointment of employees and establishment of a Public Assistance Trust Fund Account. The subchapter provides guidelines for the agency when fraud and/or criminal activity is suspected.

Subchapter 3 details financial and nonfinancial eligibility criteria for the GA program. The subchapter describes the various procedures applicable to special groups of people such as those for which coordination with State institutions is required. Subchapter 3 also establishes the payment standards for income maintenance payments which are the figures from which income is deducted to determine financial eligibility and the amount of the assistance grant. Additionally, subchapter 3 confers eligibility for medical payments upon all those found eligible for income maintenance payments and describes the methods whereby certain people who have medical expenses beyond their ability to pay may have a part of those expenses met by the program even though eligibility for income maintenance payments does not exist. (The rules dealing with medical payments are detailed in subchapter 5.)

Subchapter 4 is concerned with the amount of GA that may be paid under specific conditions and time periods. The subchapter includes procedures for weekly and other non-monthly assistance periods and various emergency and special payment situations.

Subchapter 5 presents rules for the provision of medical assistance. Included are types of medical treatment for which a recipient is eligible to receive and the method of payment for those services.

Subchapter 6 deals with reporting requirements that MWDs are required to comply with in order to qualify for State aid. The subchapter describes procedures required to establish a Public Assistance Trust Fund Account and a Petty Cash Fund Account. The subchapter also delineates fiscal procedures concerning reimbursement of assistance paid to clients who have pending Supplemental Security Income (SSI) applications, instructions on case record retention and procedures for payment of pharmaceutical charges.

Subchapter 7 affirms the MWD's responsibility to provide written notification of denial, reduction or termination of assistance to an individual who applies for or receives GA. The subchapter also establishes procedures concerning an individual's right to request a fair hearing and describes criteria and procedures for convening an emergency fair hearing.

Subchapter 8 briefly summarizes other governmental benefits to which applicants may be entitled. The subchapter outlines referral procedures to county welfare agencies which administer the Aid to Families with Dependent Children (AFDC), Medicaid Only, Home Energy Assistance, Food Stamp, and Refugee Resettlement programs. Referral procedures to Federally administered programs are also described. These include the Veterans Administration program and the Social Security Administration's Retirement, Survivors, Disability and Health Insurance (RSDHI) and SSI programs. Additionally, the subchapter provides referral procedures to the following State agencies: the Department of Health; the Division of Unemployment and Disability Insurance; the Division of Youth and Family Services; the Division of Medical Assistance and Health Services; the Division of Vocational Rehabilitation Services; the New Jersey Commission for the Blind and Visually Impaired; the Division on Aging; the Division of Mental Health and Hospitals; and the Division of Developmental Disabilities.

Subchapter 9 states the requirements for a periodic evaluation of legally responsible relatives (LRRs) in order to obtain support for GA clients. The subchapter provides rules concerning the evaluating of an LRR's capacity to contribute support and standards used to determine the appropriate amount of such contribution.

Subchapter 10 describes the various aspects of the General Assistance Employability Program (GAEP) including work assignments, worksite agreements, worksite locations and activities, scheduling of worksite assignments, program compliance standards and penalties for non-compliance.

Subchapter 11 (Glossary) provides an explanation of acronyms and terms used in the administration of the GA program.

Since January 1985, the following significant revisions to N.J.A.C. 10:85 were adopted:

N.J.A.C. 10:85-1.5(b)6 was amended to allow release of client information to registered municipal accountants during audits.

N.J.A.C. 10:85-2.7(a) was amended to provide updated procedures for reporting criminal offenses to law enforcement authorities.

N.J.A.C. 10:85-3 was amended to provide the criteria used to determine the residence of nursing home patients who move to New Jersey from out-of-State, the availability of benefits from other public assistance programs, the treatment of improper disposal of resources in determining eligibility, and the recovery of overpayments of assistance granted.

N.J.A.C. 10:85-3.1 was amended to clarify eligible unit and household size concepts for assistance grant calculation purposes.

N.J.A.C. 10:85-3.2 and 4.6 were amended to raise to \$100.00 the level at which the municipal welfare agency shall obtain State office approval of travel grants, and make the approval requirement applicable to all such grants, rather than for out-of-State travel only.

N.J.A.C. 10:85-3.2 was also amended to clarify the status of roomers with respect to the concept of household size.

N.J.A.C. 10:85-3.2(f) was amended to clarify the definition of residence as it pertains to placement of a client in residential therapeutic medical facilities.

N.J.A.C. 10:85-3.2(g)9 was amended to include provisions for payment of travel costs related to seeking or training for employment or participating in work-related activities.

N.J.A.C. 10:85-3.3 was amended to emphasize that a client is expected to maximize unearned income currently available as a condition of eligibility for GA. Further amendments to N.J.A.C. 10:85-3.3, concerning treatment of unearned income, included the following: procedures for treatment of income from tips; provisions concerning the treatment of shelter or utilities when provided as in-kind income to a recipient by a person who is obligated to support; and, exclusion from income endorsed Unemployment Insurance Benefit checks which have been returned to the issuing agency for repayment of previous overpayment.

N.J.A.C. 10:85-3.3(f) was amended to redefine the treatment of countable income, household size and eligible units.

N.J.A.C. 10:85-3.3(g) was amended to mandate referral of eligible persons to the Medically Needy Program, administered by the Division of Medical Assistance and Health Services, when appropriate.

N.J.A.C. 10:85-3.4 was amended to stipulate that the municipal welfare agency shall seek a voluntary agreement to repay from a client who has an interest in a pending claim or suit.

N.J.A.C. 10:85-3.4(a) was amended to increase the ineligibility time period in situations involving the abandonment or disposal of a resource for the purpose of qualifying for assistance.

The GA monthly assistance allowance schedules were amended at N.J.A.C. 10:85-4.

N.J.A.C. 10:85-4.6 was amended to specify a two calendar month allowance time frame to provide emergency assistance grants and services for clients who suffer emergent situations. Extensions of additional months were subsequently allowed through emergency rulemaking procedures.

N.J.A.C. 10:85-4.8 was amended to increase the maximum payment for funeral and burial expenses of deceased GA recipients.

N.J.A.C. 10:85-4.8(b) was amended to provide additional information for cases involving the burial of a deceased indigent when no State aid is available.

N.J.A.C. 10:85-5 was amended to update criteria for payment of inpatient hospitalization for GA recipients.

N.J.A.C. 10:85-5.2(f)3 was amended to stipulate that MWDs pay inpatient hospital bills within six months after Division approval of payments unless an extension for good cause has been granted.

N.J.A.C. 10:85-5.3(a) was amended to establish a one year time limit for the submission of bills for medical services and supplies in order for payment to be authorized by the MWD for such care and services.

N.J.A.C. 10:85-5.3(c) was amended to update outpatient service rates for hospitals and independent clinics and to stipulate that outpatient mental health clinic care service payments for GA recipients be limited to the lowest amount charged for such treatment.

N.J.A.C. 10:85-6.3(a)3i was amended to provide fiscal procedures on the preparation and routing of Form GA-12 (General Assistance Program—Statement of Refunds).

N.J.A.C. 10:85-7 was amended to update procedural changes in the fair hearing process, particularly those dealing with the role of the Office of Administrative Law in the conduct of contested hearing cases.

N.J.A.C. 10:85-8.2(c) was amended to delete obsolete material concerning the Medical Assistance to the Aged program and added a reference to the Home Energy Assistance Program.

N.J.A.C. 10:85-8.4(e) was amended to update eligibility information about unemployment and disability insurance benefits.

N.J.A.C. 10:85-8.4(f) was amended to update addresses of the Division of Youth and Family Services District Offices.

N.J.A.C. 10:85-8.4(g)1 was amended to update information concerning the Pharmaceutical Assistance to the Aged and Disabled program administered by the Division of Medical Assistance and Health Services.

N.J.A.C. 10:85-9 amended the monthly income standards schedule which is used to determine the capacity of a legally responsible relative to support a GA client.

N.J.A.C. 10:85-10 was amended to require MWDs to report non-compliance with work registration requirements to the county Food Stamp Office, when appropriate.

N.J.A.C. 10:85-10.1(a) was amended to provide a definition of the term "workfare".

As a result of a continuous review process, the following significant changes are being proposed at this time, as part of the proposed re-adoption of N.J.A.C. 10:85.

N.J.A.C. 10:85-1.2(b) is being amended to clarify that a permanently appointed director of welfare may not be a member of the local assistance board and concurrently hold the position of welfare director.

An amendment at N.J.A.C. 10:85-4.6(a)3i adds utility payments as an item which may be considered for retroactive emergency assistance in order to help prevent a state of homelessness.

At N.J.A.C. 10:85-4.9 text is deleted concerning retroactive adjustment payments for funeral expenses, which are now obsolete due to time limitations.

N.J.A.C. 10:85-5.3(i) is being amended to authorize and describe the payment procedures for laboratory tests necessary for the admission of clients into drug treatment facilities.

N.J.A.C. 10:85-6.5, which contains provisions for clients who are awaiting an eligibility determination for Federal Supplemental Security Income (SSI), has been deleted and rewritten to align GA rules to include changes which are the result of negotiation of a new Interim Assistance Reimbursement (IAR) Agreement between the Social Security Administration and the State of New Jersey. The proposed text delineates fiscal procedures concerning the implementation of the issuance of retroactive SSI initial and post-eligibility benefit awards directly to the MWDs, rather than through the Division of Economic Assistance, and the processing of the balance of the SSI benefit award due the client. The definition of the Interim Assistance period is expanded to include not only the timeframe during the pendency of a client's application for SSI, but also the period during which the client is awaiting reinstatement of terminated or suspended SSI eligibility. The new IAR Agreement also provides for "protective filing" for the client, in that SSA will honor the date the client signs the authorization, which is submitted to SSA by MWDs for reimbursement of SSI initial payment, as the client's SSI eligibility date. Finally, the amount of Interim Assistance to be deducted will be calculated from the calendar date that the client became eligible for SSI rather than the first of that month.

Amendments at 10:85-6.7 update procedures concerning the retention and destruction of case records.

Addresses and telephone numbers of various governmental agencies listed for referral purposes have been updated at N.J.A.C. 10:85-8.

At N.J.A.C. 10:85-8.2(c)4, reference to the now terminated Cuban-Haitian Entrant Program (CHEP) has been deleted.

N.J.A.C. 10:85-8.3 and 8.4 have been revised to provide current information concerning Social Security Administration programs and State agency programs for referral purposes.

At N.J.A.C. 10:85-8.4, the district offices listed for the Division of Youth and Family Services (DYFS) have been replaced with an updated list, as provided by DYFS.

At N.J.A.C. 10:85-11, acronyms and definitions of terms have been revised.

A number of technical changes are also included throughout the text of the proposed amendments as summarized below.

Recent legislative action (P.L. 1989, c.88) changed the name of the Division of Public Welfare (DPW) to the Division of Economic Assistance (DEA). Additionally, as a result of Division reorganization, the Bureau of Local Operations (BLO) and the Bureau of Medical Affairs (BMA) merged to form the General Assistance Program Unit (GAP Unit). These changes have been reflected throughout the proposal.

Grammatical errors in N.J.A.C. 10:85 have been corrected throughout the text.

Revisions in grammar and sentence structure have been included to improve the clarity of the text.

Social Impact

The GA program provides assistance to persons who are categorically ineligible for any other public assistance program. As a program of "last

resort", therefore, the benefits provided by the GA program are as important to society as to the individual recipient, since such assistance may help mitigate social problems such as homelessness. The re-adoption of the entire manual is essential for the efficient and effective administration of the GA program by MWDs.

The social impact of the proposed amendment at N.J.A.C. 10:85-4.6(a)3i will be significant, inasmuch as it will enhance the GA client's ability to cope with the economic realities of living on limited funds by providing emergency assistance payments for past due utility bills and help prevent a state of homelessness.

The proposed amendment at N.J.A.C. 10:85-5.3(i), allowing for authorization of payment of laboratory test charges necessary for participation in residential or methadone outpatient drug treatment programs will aid clients in their rehabilitation efforts; the payment procedures for the laboratory test charges will help MWDs in the processing of such cases.

The proposed amendment at N.J.A.C. 10:85-6.5 constitutes administrative changes for MWDs in handling and processing initial or post-eligibility SSI entitlements awarded to clients receiving GA Interim Assistance.

The proposed amendments throughout N.J.A.C. 10:85-8 updating information, addresses, and telephone numbers of numerous programs and agencies will assist the MWDs in referring clients who may be entitled to other program benefits.

Economic Impact

The proposed re-adoption is essential for the efficient and effective administration of the GA program by the municipal welfare departments. The following figures reflect the monthly average number of GA recipients served and total yearly GA expenditures from Fiscal Year 1987 through Fiscal Year 1989 and estimates for Fiscal Year 1990:

| Fiscal Year | Monthly Average of GA Recipients | Total GA Yearly Expenditures |
|------------------|----------------------------------|------------------------------|
| 1987 | 23,135 | \$35,963,424 |
| 1988 | 20,089 | \$30,915,970 |
| 1989 | 17,837 | \$32,892,852 |
| 1990 (Estimated) | 18,941 | \$35,776,745 |

The State of New Jersey pays 75 percent of the cost of GA payments, while 25 percent is a municipal responsibility. The municipalities are also responsible for all GA administrative costs.

The proposed amendment at N.J.A.C. 10:85-5.3(i), which authorizes payment of laboratory tests necessary for the admission of clients into drug treatment facilities, is expected to have a minimal impact on MWDs and the State.

Regulatory Flexibility Statement

This proposed re-adoption has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed re-adoption imposes no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The rules govern a public assistance program designed to certify eligibility for the General Assistance program to a low-income population by a governmental agency, rather than a private business establishment.

Full text of the proposed re-adoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:85, as amended and supplemented by the New Jersey Register.

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

10:85-1.2 Administration of municipal welfare

(a) (No change.)

(b) Each municipality [must] **shall** have a director of welfare, who has been legally appointed by the local assistance board as the salaried employee responsible for the administration of the municipality's General Assistance program. Appointments to the position of welfare director [must] **shall** be approved by the Division of [Public Welfare] **Economic Assistance** prior to consideration for State aid. (See also N.J.A.C. 10:85-2.2(d).) **The director of welfare shall be the chief executive and administrative officer of the board, but shall not be a member of such board. A permanently appointed director of welfare shall, therefore, not concurrently serve as a member of the local**

assistance board (LAB) and hold the position of welfare director. This provision is not applicable to temporary appointees as set forth at N.J.A.C. 10:85-2.2(d)3ii.

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

(e) Regardless of state financial participation, municipalities [must] shall administer general assistance in conformance with standards, policies, procedures, and [regulations] rules developed by the Division of [Public Welfare] **Economic Assistance**. This requirement shall include adherence to additional policy directives as distributed by official letter signed by the Director of the Division of [Public Welfare] **Economic Assistance**, as well as to the [regulations] rules set forth in this manual.

10:85-1.4 Policy of nondiscrimination

(a) Eligibility for program benefits shall be determined without regard to race, color, sex, religious creed, marital or birth status, national origin, or political beliefs.

1. Purchase of services: The municipality shall not purchase services for beneficiaries of the program from any organization, agency, or [institutions] institution which practices discrimination.

i. (No change.)

ii. Evidence of noncompliance by vendor: If the municipal welfare director should become aware of the employment of discriminatory practices by any vendor with whom general assistance business is conducted, the matter shall be promptly referred to the Director of the Division of [Public Welfare] **Economic Assistance**.

2. Notification of staff: The director of welfare shall inform his/[] or her staff of the policy of nondiscrimination in the administration of the general assistance program.

3. Complaint procedure: Any person seeking or receiving general assistance, who feels that he/[] or her has been discriminated against, shall be given the opportunity to file a complaint.

i. Filing the complaint: The aggrieved person may file his/[] or her complaint directly with the Division of [Public Welfare] **Economic Assistance**, CN 716, Trenton, New Jersey 08625. If a complaint has been filed with the local agency, it shall be forwarded immediately to the Division of [Public Welfare] **Economic Assistance**. All complaints are to be addressed to the attention of the [division director] **Division Director**.

ii. Action by the Director of the Division of [Public Welfare] **Economic Assistance (DEA)**: Upon receipt of a complaint, the director shall take whatever action he/[] or she deems appropriate. This action may include, but is not limited to, the securing of reports from whatever sources may have knowledge pertinent to the situation, and/or referral to the Division on Civil Rights of the Department of Law and Public Safety for investigation, evaluation and recommendation.

iii. (No change.)

iv. Final disposition of the complaint: The Director of the Division of [Public Welfare] **Economic Assistance** shall be responsible for the final disposition of any complaint involving discrimination. In rendering a final decision, the [director] **Director** shall take into consideration relevant decisions or actions on the part of a court or government agency.

v. (No change.)

10:85-1.5 Disclosure of information

(a) (No change.)

(b) Allowable disclosure of information: The municipal welfare department shall release information concerning an applicant or recipient in the following situations only:

1.-4. (No change.)

5. Quality control reviews: Information in connection with a quality control review [or State audit] shall be furnished to authorized representatives of the Division of [Public Welfare] **Economic Assistance**.

6. (No change.)

10:85-1.6 Purpose of the manual

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

(c) Each holder of the manual shall be responsible for maintaining a current and up-to-date manual. The Division of [Public Welfare] **Economic Assistance** shall issue revisions and changes, as necessary;

the manual holder shall insert new material and remove obsolete pages promptly.

1. (No change.)

(d) This manual is a public document and shall be made accessible in the following manner:

1. Available for review: Copies of the manual are available for review in the State office of the Division of [Public Welfare] **Economic Assistance** and in each municipal welfare department for examination and review during regular office hours on normal working days.

2.-4. (No change.)

5. Service organizations: Welfare, social service, and other non-profit organizations shall be furnished with a copy of this manual, at no cost, upon receipt by the Division of [Public Welfare] **Economic Assistance** of an official, written request.

6. Individuals: A current up-to-date copy of the manual, or any part of it, shall be available from the Division of [Public Welfare] **Economic Assistance**, at the cost of printing and mailing, to anyone who requests such in writing.

(e) All supplementary State policy directives shall be routinely sent to those who have been supplied with the manual. A mailing list shall be maintained by the Division of [Public Welfare] **Economic Assistance**.

10:85-2.2 Establishment of local assistance board

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

(c) Certification to the [Bureau of Local Operations (DPW/BLO)] **Division of Economic Assistance (DEA)/General Assistance Program (GAP) Unit (DEA/GAP Unit)**: Each municipality, whether or not applying for State aid, shall submit annually a certification form, Status Report and Request for State Aid for Calendar Year (Form GA-15), to the [DPW/BLO] **DEA/GAP Unit** signed by the municipal clerk and attesting to the appointment of the board members, if any, and the director of welfare. The director of welfare shall be responsible for informing the municipal clerk and other appropriate local officials regarding the required certification, and arranging for the completion of the Status Report and Request and filing same with the [DPW/BLO] **DEA/GAP Unit** on or before March 1 of the year to which the certification applies.

1. Participating municipalities: Prior to January 1 of the next calendar year, three copies of Form GA-15, with necessary instructions, will be distributed by the [DPW/BLO] **DEA/GAP Unit** to welfare [directions] **directors** in municipalities currently participating in the State-aid program.

2. Nonparticipating municipalities: Municipalities which did not receive State aid for the year immediately prior to January 1 will receive instructions and Form GA-15 by [DPW/BLO] **the DEA/GAP Unit** to the municipal clerk.

3. (No change.)

(d) Rules concerning the appointment of the director of welfare are as follows:

1. Power to appoint: Under law, the LAB is solely responsible for the appointment and reappointment of a director of welfare. Appointment [must] shall be by formal action of the board at a regular or special meeting and such action duly recorded in the minutes. All appointments and reappointments to the position of director of welfare require the approval of the [DPW] **DEA** as a condition for receiving State aid (see [paragraph 4 of this subsection] (d)4 below).

2. (No change.)

3. Terms of appointment: The director of welfare shall be appointed for a full term of five years or a temporary term not to exceed 90 days. Appointment for any other period is prohibited.

i. (No change.)

ii. Temporary appointments: In case of a vacancy in the office of director of welfare, one temporary or acting director may be appointed for a term not to exceed 90 days. Such appointment is not subject to extension or renewal.

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

(3) The appointment of a temporary director of welfare is an interim measure to ensure the efficient functioning of the welfare agency until a full-term director can be appointed by the LAB and approved by the [DPW] **DEA**. The LAB is required to notify the

[DPW] DEA immediately, in writing, of the name and address of the temporary designee and the date he[~~he~~]or she has or will take office. If the temporary director is not to be selected for a full five-year term, it is not necessary to submit Form GA-14, [Preliminary Personnel Record] **Request for State Approval of Municipal Welfare Director**.

iii. Reappointments: Reappointment of an incumbent director at the expiration of a current five-year term is solely the responsibility of the LAB. Upon decision of the board to reappoint the incumbent for a full five-year term, the secretary of the LAB will notify the [DPW] DEA. After receipt of [DPW] DEA approval, formal action will be taken at a regular or special board meeting and duly recorded in the minutes. In such case, submittal of another [form] Form GA-14 to the [DPW] DEA is not necessary.

(1) Should the LAB decide not to reappoint the incumbent director, or should he or she decline reappointment, it shall be the responsibility of the board to select promptly a new full-term candidate and to secure approval of the [DPW] DEA (as described in (d)4 below) or to designate a temporary director while a qualified full-term candidate is being sought.

(2) (No change.)

iv. (No change.)

4. Procedure for State approval of new appointees: Formal appointment to the position of director for a full term is valid only after the candidate's qualifications have been submitted to and approved by the [DPW/BLO] DEA/GAP Unit.

i. Submittal of [form] Form GA-14, [Preliminary personnel record] **Request for State Approval of Municipal Welfare Director**: For purposes of securing State approval of a full-term candidate designated by the LAB, the individual shall prepare, in triplicate, [form] Form GA-14, [Preliminary personnel record] **Request for State Approval of Municipal Welfare Director**, which is certified by the secretary of the LAB. The original shall be submitted to the [DPW/BLO] DEA/GAP Unit for approval. Copies will be retained in the board's personnel file and by the candidate. (Form GA-14 is available upon request from the [DPW] DEA.)

ii. After receipt of [form] Form GA-14 by the [DPW/BLO] DEA/GAP Unit, the candidate will be interviewed by a representative of that [bureau] unit. Questions relevant to the candidate's qualifications will be reviewed with the chairperson of the LAB. A written decision regarding the candidate's qualifications and the [DPW/BLO] DEA/GAP Unit's approval or disapproval will be sent to the secretary of the LAB.

iii. While it is preferable that a candidate for the position of full-term director possess all of the requisite education and experience, the LAB, after failure to find a properly qualified person (see(d)2 above), may recommend an otherwise qualified individual. In such instance, the secretary of the LAB shall submit the [preliminary personnel record] **Request for State Approval of Municipal Welfare Director**, accompanied by a letter which includes an account of the efforts made to locate a qualified candidate, the reasons for which the candidate merits consideration, and indication of his[~~he~~]or her intention to take advantage of available opportunities for additional training or study.

iv. If the qualifications of a new candidate for the full-term position of director have been duly approved by the [DPW] DEA prior to the expiration date of the term of the incumbent director, the LAB may formally appoint the candidate for the full term of office without making an initial "temporary appointment."

5. Duties and responsibilities of the director of welfare: The municipal director of welfare is responsible for ensuring equitable and efficient administration of General Assistance within the community, in accordance with standards and policies set forth in this chapter. The director of welfare is accountable to the LAB. His[~~he~~]or her duties and responsibilities include the following:

i.-v. (No change.)

vi. Functioning as liaison officer between the LAB and the [DPW] DEA.

vii. Maintenance and protection of all records and appropriate documents required by the [DPW] DEA.

6. (No change.)

(e)-(f) (No change.)

(g) The LAB shall act as a body in discharging its duties. A board member shall not individually take upon himself[~~he~~]or herself the responsibility for creation of policy, investigation of a client or disclosure of data contained in a case record. Actions taken by the LAB on all matters pertaining to the administration of general assistance shall be discharged by the board at regular or special meetings and recorded in the secretary's minutes. Functions and activities of the LAB include the study of employment possibilities in local industry, health, housing, and social conditions of the community. Analysis of municipal financial needs, insofar as they are related to General Assistance, shall also be a matter of concern to the LAB.

1. (No change.)

2. Duties described: Specific duties of the local assistance board include, but are not limited to, the following:

i. Maintenance and protection of records: The LAB shall provide space within the MWD office for the proper protection and maintenance of all reports, case records and any other materials essential to the administration of general assistance.

(1) Access to case records shall be granted by the LAB, through the director of welfare, only to the following persons: employees of the MWD acting in an official capacity; representatives of another recognized public or private health or welfare agency, organization or institution for the purpose of obtaining information relevant to providing service to a current or former recipient of general assistance or to a member of his[~~he~~]or her family; the client or his[~~he~~]or her representative, in accordance with N.J.A.C. 10:85-7.3(b)5; and authorized representatives of the [DPW] DEA relevant to State audits and quality control review, (see also N.J.A.C. 10:85-1.5(b)[.]).

(2)-(3) (No change.)

ii. (No change.)

(h)-(i) (No change.)

10:85-2.4 Establishment of public assistance trust fund account

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

(c) The municipal welfare director [will] shall arrange for a duplicate check to be issued within five working days of receipt of notification from the client that his[~~he~~]or her assistance check has been lost or stolen, unless extraordinary circumstances are present and a longer period of time is approved by the Division of [Public Welfare] **Economic Assistance**. The client shall complete an affidavit stating that he[~~he~~]or she did not receive or endorse the check. The agency shall file a stop payment order with the bank.

10:85-2.5 Request for State administration

(a) A municipality may request the [DPW] DEA to assume administration of its General Assistance program when the preceding year's public assistance millage exceeds 7.0 mills. For this purpose, the municipality shall submit a written application on or before March 1 of the year in which it is requesting administration.

(b) Detailed information regarding duties of a municipality under State control and fiscal procedures are available upon request from the [DPW] DEA.

10:85-2.7 Reporting criminal offenses to law enforcement authorities

(a) Investigation of new applications or investigations for re-determination of eligibility may indicate to the municipal welfare department that a crime may have been committed. Allegations of the suspected commission of a crime may also be made known through various other sources, for example, phone calls, written communications, verbal communications from individuals, etc. In matters of reporting of criminal offenses, the municipal welfare agency [must] shall, at all times, maintain full compliance with the provisions of N.J.A.C. 10:85-1.5, dealing with basic principles for safeguarding of information.

1. (No change.)

2. Procedures: When the MWD becomes aware of facts that would indicate that one of the above mentioned crimes has been or may have been committed or receives a direct allegation in any form, written, verbal or anonymous, that such a crime has been committed, it shall proceed as follows:

i.-iii. (No change.)

iv. The MWD shall cooperate fully with any subsequent investigation initiated by the law enforcement agency within the limits of the policy and regulations of the Division of [Public Welfare] **Economic Assistance**. An MWD staff member may sign a written complaint only upon a written request from the law enforcement agency, provided his[/or her information of the facts to be stated in such complaint is based upon his[/or her own personal knowledge and belief.

10:85-3.1 Persons eligible for General Assistance

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

(e) Rules concerning eligibility of young people are as follows[.]:

1. Single persons under age 18: Assistance is provided through the AFDC program for [needly] **needy** families with children under age 18 (or in certain situations under age 19 if the child is attending secondary school/vocational training). Therefore, when an unmarried individual under age 18 applies for General Assistance, the MWD shall make every effort to locate the family and refer it and the child to the appropriate county welfare agency.

i. An unmarried, unattached child under the age of 18, although not legally an adult, may in fact be emancipated. That he[/or she is under age 18 is not, of itself, a bar to eligibility for assistance; it is, however, reason for additional action relating to eligibility. The MWD will provide assistance to any such person who applies and is eligible, based on the following action:

(1) (No change.)

(2) If such efforts are not successful within one week of the first grant of assistance or if **no** such efforts are possible, the MWD will immediately refer the case to the appropriate district office of the Division of Youth and Family Services (DYFS).

(A) (No change.)

(B) For all cases under age 16, it is expected that DYFS will act promptly to accept responsibility for services and maintenance. The MWD will continue assistance until the date on which DYFS assumes responsibility. The MWD will notify [DPW/BLO] **DEA/GAP Unit** of any case under age 16 which is still active on the GA rolls 30 days after referral to DYFS.

(C) (No change.)

ii. (No change.)

2.-3. (No change.)

(f) (No change.)

10:85-3.2 Application process

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

(e) Rules concerning verification and sources of evidence are:

1.-3. (No change.)

4. Verification of income and resources:

i. (No change.)

ii. **Unearned income:** All unearned income [must] **shall** be verified by examination of benefit check or by contact with the company or agency granting such benefit. (Note: The Social Security Administration will release information only with written consent of the client.)

(1) For situations of incomplete or inconsistent information about Unemployment/Disability Insurance benefits from the client himself[/or herself, or, where the agency experiences difficulty in securing verification, the MWD may send Form PA-24 (Verification of Unemployment/Disability Insurance) to [DPW] **the DEA**, Attn: Integrity Control Section.

iii.-v. (No change.)

5. (No change.)

(f) **Resident defined:** A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain, a person who did maintain such a home prior to entering a medical facility, or a person who enters a New Jersey medical facility from out of state and qualifies as a resident in accordance with (f)l.iii. below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home

of a friend or relative, in a boarding home or, in accordance with (f)l.iii. below, in a residential medical facility.

1. (No change.)

2. **Nonresidents/transients:** Persons in a municipality who are neither residents nor medical facility patients by the above definitions shall, if otherwise eligible, be granted assistance while in the municipality according to the same standards as for residents.

i. For any person in a municipality who is away from the municipality of his or her customary home and wishes to return but cannot, because of lack of funds, the MWD shall grant sufficient funds to allow the individual to travel to his or her own municipality or to the nearest place at which it has been confirmed that help from nonassistance funds may be expected. Travel costs shall be estimated or ascertained, as appropriate, according to the least expensive method of travel which is appropriate. The travel grant shall be sufficient to allow payment for the fare and such food, clothing, or shelter as may be essential during the trip.

(1) (No change.)

(2) Assistance for travel purposes in any amount over \$100.00 shall be granted only with prior approval from the [DPW] **DEA**.

3.-4. (No change.)

5. **Determination of municipal responsibility:** Municipal welfare directors will attempt to resolve matters of payment responsibility among themselves. Any agreement reached between municipalities will be promptly reduced to written form. In event of dispute or unresolved question, the MWD of the servicing municipality will help the client/applicant complete an affidavit showing the recent residence history of the client/applicant in sufficient detail to establish municipal responsibility. The client/applicant will, as a condition of eligibility, sign under oath, three copies of the affidavit. Form GA-9 is available for this purpose. The MWD of the servicing municipality will, within 30 days of the identification of an unresolved question, send one copy of the affidavit with any appropriate documentation to the alleged chargeable municipality, send one copy, with documentation, to [DPW/BLO] **the DEA/GAP Unit** for determination and retain one copy. The alleged chargeable (respondent) municipality may, within the next subsequent 15 days, supply to [DPW/BLO] **the DEA/GAP Unit** such information and/or documentation as it deems appropriate. Promptly thereafter, the [BLO] **GAP Unit** will render a decision designating as responsible that municipality in which the applicant most recently lived or that municipality which most recently granted assistance to the applicant as a resident, whichever represents the more recent municipality of residence. The municipality so designated may, within 30 days of the [BLO] **GAP Unit** decision, request a hearing by the Bureau of Administrative Review and Appeals, decision of which shall be final.

(g) **Work requirement:** Eligibility for public assistance in New Jersey is directly related to an individual's willingness to work when he or she is able to do so. It is, therefore, a part of the application process to explain the work requirement to the applicant and to record in the case file the reasons for any exemption from this requirement.

1.-2. (No change.)

3. **Exemptions from work requirement:** An individual shall be exempt from the work **requirement** if any of the following exist:

i.-iv. (No change.)

v. **The individual is unemployable:** For purposes of General Assistance, unavailability of employment cannot be the basis of a determination of unemployability. Only persons included in any of the following groups are unemployable:

(1) (No change.)

(2) Persons whose presence is required at home to care for one or more children under age six or for disabled family member(s). No more than one person in a household may be exempt for this reason without written authorization from [DPW/BLO] **the DEA/GAP Unit**;

(3)-(8) (No change.)

(9) Persons determined by the MWD to be unemployable when such determination is supported by any of the following:

(A)-(C) (No change.)

(D) **Written Record of Action** (Form GA-38) from [DPW/BMA] **the DEA/GAP Unit**. Such may be applied for by MWD submission

of such documentary material as the MWD finds appropriate. This may include medical or hospital reports and the MWD's own statement of specific observations and recommendations with reasons. Form PA-5 may be used. Social information submitted should include as a minimum the client's age, education, experience, and general description of applicant, especially as it may relate to employment. The [BMA/DPW] **DEA/GAP Unit** will consider the individual's age, experience, education, vocational training, and work history as well as physical or mental defects, diseases or impairments in determining whether an individual is able to engage in any useful occupation for which he or she has competence or ability to engage in retraining.

(10) (No change.)

4.-9.(No change.)

(h) Persons released from an institution (see also N.J.A.C. 10:85-3.1(f))

1. (No change.)

2. Methods of referral: Referrals for general assistance of persons released or about to be released from State institutions or V.A. hospitals may be made to the MWD by the Bureau of Field Services, Division of [Mental Retardation] **Developmental Disabilities**, by the [Bureau of Transitional Services] **Disability Determination Review Section (DDRS)** of the Division of Mental Health and Hospitals, or by the institution or hospital itself.

i.-ii. (No change.)

3.-7. (No change.)

(i) Procedures for individuals released from a State psychiatric hospital are:

1. If the individual is under care in the institution and plans are to be made to locate a placement for him[/or her, prior to discharge to the community, the [Bureau of Transitional Services (BTS)] **DDRS** in the Division of Mental Health and Hospitals (DMHH) will have the responsibility to contact the municipality where the person was living at the time he[/or she entered the institution.

i. In the event the person indicates that he [/or she wishes to locate in a specific municipality, [BTS] **the DDRS** will make referral to that municipality.

ii. In any event, placement in the community will be the responsibility of the [BTS] **DDRS** worker.

iii. Under the contractual agreement between the [U.S. Department of Health, Education and Welfare] **United States Department of Health and Human Services** and the State of New Jersey, DMHH may be reimbursed for interim assistance it grants to individuals while eligibility for SSI is being determined. If the individual is receiving such interim assistance, [BTS] **the DDRS** will not refer the individual for GA until notified by the Social Security Administration that the client's application for SSI has been denied. The [BTS] **DDRS** worker will notify the MWD that interim assistance is being terminated and GA is now required.

2. The [BTS] **DDRS** worker will fully complete Form GA-1 (Application and Affidavit for **General Assistance**), prior to discharge, for the person needing assistance.

3. The [BTS] **DDRS** worker will arrange for completion of a Social Service Plan and a physician's report or medical abstract and will forward both together with the PA-7 (Report of Findings by Psychiatric Diagnostic Group), PA-12 (Referral by State Mental Institution to Public Assistance Agency) and GA-18 (Certification of Need for Patient Care in Facility Other than Public or Private General Hospital), if applicable, to the MWD.

4. The municipal welfare director or an authorized case worker will receive the material, review it for completeness and determine eligibility for assistance as soon as possible, but shall, in any event, make a decision within 30 days of receipt of such material, pursuant to N.J.A.C. 10:85-7.1(c).

i. If the individual has been referred for SSI by DMHH/[BTS] **DDRS** but is not receiving interim assistance from that agency, prior to granting GA the municipal welfare director or authorized case worker [must] **shall** ensure that the applicant has signed Form GA-30 in accordance with the procedures outlined in N.J.A.C. 10:85-6.5(c).

5. If placement must be made before a final decision as to eligibility can be rendered by the MWD, or the [BTS] **DDRS** worker is not

in a position to have the appropriate material prepared and submitted before discharge to the community, both agencies will retain their respective responsibilities as defined above and shall keep the other agency fully informed of any action taken on behalf of the discharged persons. However, in accordance with N.J.A.C. 10:85-3.3(a), no person shall be denied assistance if in immediate need, if he[/or she is otherwise apparently eligible, because necessary material identified above as coming from the [BTS] **DDRS** has not been completed and submitted.

6. The provision of social services incident to discharge of individuals from the State institution shall be the responsibility of the [BTS] **DDRS** social worker, at least until such time as a decision with respect to SSI eligibility is made or eligibility for GA is determined. Thereafter, either the CWA or MWD will provide social services independently or in conjunction with [BTS] **the DDRS** staff.

7. All disputes shall be referred to the Division of [Public Welfare, Bureau of Local Operations, (DPW, BLO)] **Economic Assistance, General Assistance Program (GAP) Unit (DEA/GAP Unit)** field representative assigned to the specific area wherein the dispute occurs for appropriate resolution. The field representative shall render a decision and notify [BTS] **the DDRS** and MWD within five working days after the dispute has been referred.

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows[.]:

1.-3. (No change.)

4. Room and board living arrangements: When an individual is purchasing a room and board living arrangement, the following shall apply:

i. Residential [Health Care Facility] **health care facility**: When an individual who is in need of extensive personal services on a regular and continuous basis is purchasing a room and board living arrangement in a [Residential Health Care Facility:] **residential health care facility** (licensed by the N.J. Department of Health for purposes other than the care or treatment of drug or alcohol abuse), the monthly assistance payment, including a personal allowance [per month], shall not exceed the rate approved by the New Jersey Department of the Treasury, less any countable income. [when] **When** a rate increase is approved, a public notice to that effect will be published in the New Jersey Register. Information about the current rate may also be obtained by contacting the Division of [Public Welfare] **Economic Assistance**. However, the cost of purchasing such living arrangement shall not exceed the minimum amount which the establishment customarily charges to or for other guests not dependent on public assistance, for the same accommodations and/or services.

ii.-iv. (No change.)

v. Maternity homes: When an eligible individual has been found by the Division of [Public Welfare, Bureau of Medical Affairs (DPW/BMA)] **Economic Assistance, General Assistance Program (GAP) Unit (DEA/GAP Unit)** to be in need of the services provided by a maternity home approved by the Division of Youth and Family Services (DYFS) and the individual is receiving such services, the monthly allowance shall be the rate established by DYFS. The MWD may obtain current rate information by communicating with [DPW/BMA] **the DEA/GAP Unit**. However, the MWD shall not accept responsibility for payment at that rate prior to receipt of a report of affirmative findings from [DPW/BMA] **the DEA/GAP Unit**. Until the report is received, the allowance shall be that for a single individual as given in Schedule I or II, as appropriate, less any countable income. For [DPW/BMA] **the DEA/GAP Unit** approved cases, the DYFS rate shall apply with retroactive adjustment, if necessary, from the date of application or the date of admission to the maternity home, whichever is later.

(1) The submittal to [DPW/BMA] **the DEA/GAP Unit** may be in any appropriate form or format. It [must] **shall** consist of the objective recommendation of the MWD with supporting documentation. The [DPW/BMA] **DEA/GAP Unit** will consider the individual's age, mental and physical health, family circumstances, and other conditions peculiar to the situation. Form PA-5 (Examining Physician's Report) and/or Form PA-6 (Medical-Social Information Report) may be used in presenting the documentation.

5. (No change.)

(g) Medical care: Persons found eligible for General Assistance maintenance payments in accordance with the procedures and standards established in this subchapter (N.J.A.C. 10:85-3) are likewise eligible for medical care (see N.J.A.C. 10:85-5 regarding provision of medical care). In addition, certain other individuals and families are eligible for medical assistance from the MWD or for referral to the county welfare agency.

1. Medically needy: Individuals and families who are ineligible for the General Assistance, AFDC or Refugee Resettlement Program because their income exceeds the standards established for the applicable program may apply to the MWD on a monthly basis for assistance in paying excessive medical costs. The provisions of this subsection are not applicable to the payment of bills for inpatient hospitalization or for medical services rendered to an inpatient. The MWD shall refer to the county welfare agency those persons who appear to be potentially eligible for the Medically Needy Program administered by that agency. Except as stated in (g)li below, any person found eligible under the provisions of that program is not eligible for benefits under this subsection.

i.-ii. (No change.)

iii. Income levels: For the purpose of determining excessive medical costs, the total available monthly income (see (g)liv below) of individuals, couples, or families with children is measured against the appropriate allowance standard. (See N.J.A.C. 10:85-3.1(b) regarding eligible unit concept.) For elderly, blind, or disabled persons, the Medically Needy Program standard applies. For families with children, the AFDC (C and F) standard applies. (See N.J.A.C. 10:82-1.2 for current AFDC standard.) For all others, the General Assistance standard (Schedule I or II as appropriate) applies. [When the AFDC or Medically Needy Program standards are changed, a Public Notice to that effect will be published in the New Jersey Register.] Information about the [current standard] standards may [also] be obtained by contacting the Division of [Public Welfare] Economic Assistance.

iv.-vi. (No change.)

2. (No change.)

3. Inpatient hospitalization: Eligibility for payment of inpatient hospital costs described in N.J.A.C. 10:85-5.2 is limited to situations which exist in (g)3i, ii, and iii below.

i.-iii. (No change.)

iv. Any disputes with respect to the above which cannot be resolved between the parties involved are to be referred to the [Bureau of Local Operations, DPW] General Assistance Program (GAP) Unit, DEA for adjudication.

4. (No change.)

10:85-3.4 Resources

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

(f) The following are not subject to repayment to the MWD: Retroactive Social Security (RSDI) payments, Veteran's benefits, workers' compensation, temporary disability benefits, and SSI payments not repayable to the [DPW] DEA/MWD in accordance with a valid Form GA-30. However, when such monies are received, they shall be recognized as countable income and the client's eligibility shall immediately be redetermined.

1. (No change.)

(g) (No change.)

10:85-4.1 State and local responsibilities

(a) In order to achieve equity among individuals and with other public assistance programs within the State, the State Division of [Public Welfare] Economic Assistance has been given responsibility for establishing, in accordance with State law and regulations, the conditions under which and procedures by which all payments of general assistance are to be made.

1. The standards set forth herein (Schedules I and II below) have been established by the [DPW] DEA as the amounts to which eligible individuals are entitled, less countable income and other available resources.

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

10:85-4.6 Emergency grants

(a) An emergency grant shall be authorized to or for an individual(s) otherwise eligible to receive General Assistance under the [regulations] rules in this manual when circumstances set forth in [(a)1-2] (a)1-3 below exist. In addition, these [regulations] rules shall apply to an emergency (as described in [(a)1-2] (a)1-3 below) which occurred within the 30 calendar days immediately prior to the application for General Assistance if the applicant(s) is determined eligible at the time of application under established procedures and standards.

1.-2. (No change.)

3. Where there is official documentation of a pending eviction, such as a tenancy complaint filed by the landlord, an order from a court for eviction or foreclosure, an actual eviction or foreclosure has occurred, or when prior permanent shelter is no longer available, and the eligible individual(s) demonstrates a lack of realistic capacity to plan for substitute housing as defined in (a)3iii below, emergency assistance shall be authorized in accordance with (a)3i and ii below.

i. Payment may be authorized for three calendar months of retroactive utility, rental or mortgage payments if it will prevent actual eviction or foreclosure.

ii.-iii. (No change.)

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

10:85-4.9 [Retroactive adjustment payments] (Reserved)

[(a) This section on retroactive adjustment payments expires on September 30, 1987. No payments are to be approved for any funeral for which a petition for retroactive payment has not been received by the agency by September 30, 1987.

(b) The agency will make retroactive adjustment payments to funeral directors under the following conditions:

1. The decedent died on or after September 8, 1985.

2. The decedent died before November 1, 1986.

3. The funeral director provided embalming and preparation services.

4. The funeral director submitted, and the agency received, a properly completed and notarized petition on Form PA-11C or substantially similar document on or before the expiration date hereof.

5. The decedent was programmatically eligible for funeral payment; and

i. The agency made or is authorized to make a funeral contribution under prior regulation; or

ii. The agency was not authorized to make a funeral contribution under prior regulation because the decedent's resources in combination with the contributions of others exceeded agency payment limits.

(c) The amounts to be paid are as follows:

1. For funerals for which the agency contributed—\$600.00.

2. For funerals for which the agency did not contribute—the amount by which \$1500 exceeds the total amount paid for funeral and burial, but not more than \$600.00.

(d) Time of payment: The agency will make the retroactive payments as promptly as possible but, in the absence of irregularity, not later than 30 days after the date of receipt of the petition. The agency will reconcile irregularities as promptly as possible and make payment within 30 days after the last irregularity in any petition is reconciled.

(e) Other agency action shall be as follows:

1. The agency will communicate with all funeral directors to whom the agency made funeral payments for decedents who died on or after September 8, 1985, identifying the decedents, and advising of these provisions for retroactive payments.

2. Unless it is known that a retroactive payment cannot be made, the agency will communicate with the funeral director who conducted the funeral of any other person known or believed to have died on or after September 8, 1985 while programmatically eligible, identifying the decedent and advising of these provisions for retroactive payments. If the identity of the funeral director is not known, communication shall be made with others, such as next-of-kin or hospital administrators as indicated, for the information.

3. The agency will supply blank copies of Form PA-11C in reasonable quantity to any funeral director requesting them. It will establish

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procedures for prompt responses to inquiries and processing of petitions.]

10:85-5.1 General provisions

(a) The municipal director of welfare shall authorize payment for medical and hospital care and services to General Assistance recipients and eligible applicants when such care and services are deemed necessary and appropriate. The MWD may seek the advice of [DPW/BMA] the **DEA/GAP Unit** in determining whether particular elements or programs of care or service are necessary and appropriate.

1.-3. (No change.)

10:85-5.2 Inpatient hospital care

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

(d) Expenses not [concerned] **covered**: The MWD shall not authorize payments for any of the following:

1.-9. (No change.)

(e) (No change.)

(f) Payment for hospitalization: Upon certification of hospitalization, the director of welfare shall approve payment as approved by [DPW/BMA] the **DEA/GAP Unit** which shall cover all items listed in (c) above.

1. (No change.)

2. Amount of payment: Payment for hospital services by the municipal department of welfare shall be at the Diagnosis Related Group (DRG) rate if such a rate is applicable. [If a DRG rate is not applicable, payment shall be authorized at the least of the following. (The MWD shall submit all inpatient hospital bills to DPW/BMA for costing before making payments):] **The MWD shall submit all inpatient hospital bills to the DEA/GAP Unit for costing before making payments. If a DRG rate is not applicable, payment shall be authorized at the least of the following:**

i.-iii. (No change.)

3. Reporting requirements: Each month the municipal director of welfare shall submit Form GA-6 (Report of Assistance Commitments) to the Division of [Public Welfare] **Economic Assistance**, recording actual payments to hospitals for inpatient care made from the Public Assistance Trust Fund Account. Starting July 1, 1988, State Aid matching will be available for the payment of inpatient hospital bills for a period not to exceed six months from the date in which the [Bureau of Medical Affairs] **General Assistance Program (GAP) Unit** approval is granted. Payments made after six months from the approval date will be denied General Assistance State Aid matching unless an extension for good cause has been granted. Written requests for extension may be directed to [DPW] the **DEA**.

i. (No change.)

10:85-5.3 Other medical payments

(a) (No change.)

(b) Physicians, dentists and other health care providers: The director of welfare shall authorize payment for services provided by licensed physicians (M.D. or D.O.), dentists and other health care providers including podiatrists, optometrists, pharmacists, opticians, prosthetists and orthotists who have not been deleted for cause from the current list of approved Medicaid providers, unless such services are specifically prohibited under (b)2 below. The [DPW/BMA] **DEA/GAP Unit** will advise all MWDs of deletions from the approved list and of any reinstatements.

1. Amount of payment: The amount of the payment which the MWD shall authorize for any medical product or service shall be the lowest amount for which the service or product or a comparable service or product can be reasonably supplied to the recipient but in no event shall total payment for each service or product be more than the rate indicated as a maximum by [DPW/BMA] the **DEA/GAP Unit**.

i. (No change.)

2.-4. (No change.)

(c) Outpatient facility services are as follows:

1.-3. (No change.)

4. Mental health services: For all mental health services, the payment shall be deemed to cover all services of the provider. It does not cover prescription costs. If the MWD has negotiated a rate with

the mental health agency or provider which is no higher than the rate which would otherwise be payable and which takes into account any funding by the municipality or county, that rate shall be used for all participants receiving services from that provider. In all other instances, payment to hospital-based mental health facilities shall be at the rate regularly charged and payment to all other providers shall be at the Medicaid rate.

1. Partial Care Program (see N.J.A.C. 10:37-5.46 through 5.51): Partial Care is a program serving people who need more than hourly outpatient services and less than inpatient hospitalization. Some clients are served to avoid inpatient hospitalization; for others the program serves as a transition from institutional to community living. Clients usually receive services five days per week. This level of service is reduced as the client becomes more independent. Minimum attendance is one-half day per week. Services offered usually include case management, medication supervision, group therapy, activities of daily living (ADL), socialization, skill development, and prevocational activities. Program participants are divided into two Target Groups:

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

(3) Referral procedures: Proper referral is the responsibility of the mental health agency which seeks payment. It is in two parts:

(A) The agency will, within five working days of the acceptance of an individual for partial care, so notify the MWD in writing. Form PA-14, [Inter-Agency Referral Form] **Referral for Services**, or any substantially similar document may be used for this purpose.

(B) The agency will, within 30 calendar days of the acceptance of an individual for Partial Care, submit Medicaid Form FD-07 to the MWD. The Target Group classification [must] **shall** appear on the form. The MWD will record receipt of the form and send it promptly to [DPW/BMA] the **DEA/GAP Unit** for approval.

(4) Service periods are as follows:

(A) (No change.)

(B) For Target Group I clients the expected term of service is two years from the date of acceptance into this program. For Target Group II clients the expected term of service is one year from the date of acceptance into the program. The MWD will authorize no payments beyond these periods without the specific written authorization of [DPW/BMA] the **DEA/GAP Unit**.

ii. Other mental health services are as follows:

(1) Mental health clinics:

(A) (No change.)

(B) For all other clinics, payment shall be authorized as described in (c)4 above for an initial period of 30 days or until receipt by the MWD of a completed Medicaid Form FD-07, whichever occurs first. The MWD will record receipt of the form and forward it promptly to the [DPW/BMA] **DEA/GAP Unit**. The [DPW/BMA] **DEA/GAP Unit** will return the form indicating any further services which are approved. For services beyond the initial period, payment shall be authorized only for services approved by [DPW/BMA] the **DEA/GAP Unit**.

(2)-(3) (No change.)

(d) (No change.)

(e) Care for the chronically ill: The director of welfare shall authorize payments for patient care and a personal incidental allowance in a skilled nursing home or intermediate care facility [or public medical institution] when a physician certifies that a client has a defect, disease, or impairment (other than psychosis) which necessitates such care, the client is not eligible for Medicaid, and there is no person available who will provide such care without cost to the client.

1. Physician certification (completion of GA-18): Physician certification shall be accomplished by means of Form GA-18, Certification of Need for Patient Care in Facility Other than Public or Private General Hospital. This form [must] **shall** be completed in duplicate, by the attending, or staff physician and the operator or superintendent of the appropriate facility. One copy shall be submitted by the [DPW/BMA] **DEA/GAP Unit** for level-of-care determination and subsequently, filed in the case record and the other copy shall be retained by the nursing home or institution.

i. (No change.)

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2. Maximum fees: Payment to the facility shall not exceed the rates for such facility as established by Medicaid or, for non-Medicaid facilities by [DPW/BMA] the DEA/GAP Unit. The MWD may contact the [DPW/BMA] DEA/GAP Unit to obtain the per diem rate for room, board and nursing care. A personal incidental allowance of \$35.00 per month shall be allowed to the patient.

i. In determining the amount the MWD will be authorized to pay the facility for room, board and nursing care, the Medicaid rate times the number of days of care less the payment by or on behalf of the client shall be used. Each month the MWD will obtain a current bill for all services rendered during the previous month and will submit it to the [DPW/BMA] DEA/GAP Unit for costing prior to payment.

(1) (No change.)

ii. (No change.)

(f) The director of welfare shall authorize payment for physical, occupational, or speech therapy under the conditions and in the amounts indicated in (f)1 through 2 below.

1. Conditions:

i.-iii. (No change.)

iv. The therapy has been approved in advance by [DPW/BMA] the DEA/GAP Unit. Request for [DPW/BMA] the DEA/GAP Unit approval shall be submitted via Form GA-18A with any other documentation which is appropriate and available or is requested by [DPW/BMA] the DEA/GAP Unit. Approvals by [DPW/BMA] DEA/GAP Unit will be made for a maximum of three months. Requests for approval for an additional three-month period shall be made prior to the commencement of the additional period. Such a request [must] shall include a new Form GA-18A if appropriate or a written statement by the supervising physician describing all changes since the previous submittal.

2. Amount of payment: The MWD will authorize no payment for therapy which is available or could have been provided to the client without cost. The amount of payment shall be at the rate established for the service by the Medicaid program. The [DPW/BMA] DEA/GAP Unit will ascertain the rate and indicate it in the notice of approval. Welfare directors in need of rate information before submitting an approval request may communicate with the [DPW/BMA] DEA/GAP Unit.

(g) Miscellaneous services: The director of welfare shall authorize payment for drugs, blood, blood plasma, infusions, hearing aids, prosthetics, oxygen, dental services or dentures, eyeglasses and other visual prosthetics, braces and appliances, if recommended in writing by an appropriately licensed practitioner and if not otherwise available without cost to the patient.

1. Maximum fee: The [DPW/BMA] DEA/GAP Unit will determine an appropriate fee for the services provided as stated in (b)1 above.

2.-3. (No change.)

(h) Persons eligible for Medicare Part B (medical insurance) benefits must have health care services billed to the appropriate carrier [(Prudential Insurance Company or Hospital Services Plan of New Jersey)] (for New Jersey Medicare, the carrier is Medicare/Pennsylvania Blue Shield, Harrisburg, Pennsylvania) by the practitioner or other provider before submitting bills to the MWD for consideration. Recipients eligible for Medicare Part B benefits shall submit the statement, "Explanation of Benefits", from the Medicare carrier before the MWD determines if additional payment may be allowed.

(i) Resident treatment for drug or alcoholic abuse: When the director of welfare authorizes payment for room and board, and personal incidentals in amounts as specified in N.J.A.C. 10:85-3.3(f)4iv, the payment shall be considered as inclusive of all goods and services.

1. When laboratory tests necessary for admission to drug treatment programs are performed by independent laboratories, payment procedures are as follows:

i. For costs incident to admission to methadone maintenance outpatient drug treatment facilities, laboratories will submit their charges on the appropriate Medicaid form and send that form to the responsible MWD for submittal to the DEA/GAP Unit for costing.

ii. For costs incident to admissions to residential drug treatment facilities, servicing MWDs are to advise the facility to provide the laboratory with the GA recipient's case number and the name and

address of the responsible MWD. Laboratories will then submit charges on the appropriate Medicaid form to the responsible MWD for forwarding to the DEA/GAP Unit for costing and processing in customary manner. Where the responsible municipality is also the servicing MWD, laboratory charges should be directed to that MWD.

10:85-5.4 Procedure for payment of medical bills

[Note:] (a) This section does not apply to prescription bills except for medical supplies and equipment in those municipalities which pay prescription charges through Medicaid.

[(a)] (b) Rules concerning determination of Medicaid rate are as follows:

1. MWD responsibility: [the] The MWD shall submit bills received from providers of health services, or requests for authorized fee levels, to the [DPW/BMA] DEA/GAP Unit. Such bills and/or requests should be submitted on official Medicaid vendor voucher forms which all providers servicing Medicaid recipients utilize. The forms [must] shall contain the following: signature of the vendor and client, date, and description of the commodity delivered or service rendered with full Medicaid product and procedure codes. Exception: The signature of the client/designee is not required on bills for residential services such as Long Term Care Facilities (see [(a)] (b) 4 below for requirement of client/designee signature).

i. Bills/requests shall include age of the patient, diagnosis, and whether or not he or she is receiving disability insurance benefits. The signature of the MWD director, preceded by the words "approved by", is required on the bottom or on the reverse side of the Medicaid vendor form. This signature may be affixed either before or after submission to [DPW/BMA] the DEA/GAP Unit for rate approval but prior to payment.

ii. (No change.)

iii. In instances [or] of repeated submission of a Medicaid vendor form showing the same client, same vendor, same commodity or service and same price, the MWD may, for audit purposes, attach a photocopy of the previous rate-approved form to each resubmittal in lieu of submission to [DPW/BMA] the DEA/GAP Unit as required above.

2. State responsibility: It is the responsibility of the [DPW/BMA] DEA/GAP Unit to authorize appropriate rates in accordance with those established by the State Medicaid Program insofar as feasible. [DPW/BMA] The DEA/GAP Unit will return disapproved, any voucher submitted from a provider who has been deleted for cause from the current list of approved Medicaid providers. Such disapproval will prevent State[s,] matching on the payment, but will not eliminate any responsibility for payment which the MWD may have incurred by prior authorization.

i. The [DPW/BMA] DEA/GAP Unit will enter the appropriate fee for each service listed, mark the bill or voucher as approved for amount of payment and return it to the MWD. The MWD shall retain this form in file for audit purposes[;].

3.-4. (No change.)

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

10:85-5.6 Medical care for recipients with chronic renal failure

(a) Most patients with chronic renal failure requiring dialysis or transplantation are eligible for Medicare coverage the first day of the third month following the first dialysis treatment, or immediately upon hospitalization for transplantation. Medicare provides payment for the hospitalization. Medicare Part B [must] shall be purchased to provide payment for 80 percent of the cost of outpatient care, including dialysis treatment. Drugs not prescribed as part of the dialysis treatment are not eligible for payment by Medicare.

1. (No change.)

2. MWD responsibility: When utilization of benefits from other sources leaves a medical cost deficit, the municipal welfare director will determine eligibility for hospitalization payment through General Assistance, if needed, in accordance with N.J.A.C. 10:85-5.2. The MWD will determine eligibility for payment for other medical costs, if needed, in accordance with N.J.A.C. 10:85-5.3 with due regard for the medically needy provisions of N.J.A.C. 10:85-3.3(g)1. Maximum fees will be determined by [DPW/BMA] the DEA/GAP Unit in accordance with N.J.A.C. 10:85-5.3(b)1.

i. (No change.)

10:85-5.8 Pharmaceutical payments through DMAHS

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

(c) Form MC-24, GA prescription claim form[.]: Each MWD will maintain in a secure location a supply of Form MC-24. Forms are available from the Bureau of Management Services, Division of [Public Welfare] **Economic Assistance**. The MWD will enter its four-digit municipality code in the first four of the 10 blocks over "Patient's First Name" on each form upon receipt and record the receipt of the serially numbered forms on a MC-24 Record Log (Form GA-20). In cases which cover the needs of more than one person, the "Person No." blocks on the MC-24 Form must be completed. The number 01 shall apply to adult males; 02 to adult females; the numbers 20, 21, 22, etc. shall apply to children. All person numbers must be recorded by the MWD to ensure that the assigned numbers are applied consistently to the same individual. The MWD will supply forms without charge to pharmacies which provide services to GA recipients, recording on a separate MC-24 Control Log (Form GA-20A), the serial numbers of forms supplied to each pharmacy.

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

10:85-6.3 Public Assistance Trust Fund Account

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account.

1. Calendar-year continuation of Trust Fund Account: A municipality which has received State aid in the year last preceding shall not close out its Public Assistance Trust Fund Account at the end of that calendar year. Municipalities which have filed with the Division of [Public Welfare] **Economic Assistance** reports of commitments (Form GA-6) made by them for assistance during the year last preceding, in anticipation of receiving State aid in succeeding years, shall maintain existing Public Assistance Trust Fund Accounts in order to qualify for State aid. Such accounts and any balance used for public assistance only, exclusive of administrative costs, shall be carried over to the next calendar year.

2. (No change.)

3. Deposit of refunds and receipts: All payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" and duly accounted for on a monthly basis.

i. Preparation of statement of refunds and receipts: Each municipal welfare department is required to prepare Form GA-12, General Assistance Program—Statement of Refunds. Refunds are separated according to items eligible and ineligible for State participation. Form GA-12 shall be prepared as follows:

(1) (No change.)

(2) A copy forwarded to the Bureau of Business Services/Division of [Public Welfare] **Economic Assistance** (BBS/[DPW]DEA) as follows:

(A) With the exception of (B) below, a copy is due every December and is to be submitted with Form GA-6, observing the December deadline for receipt of Form GA-6 by the BBS/[DPW]DEA.

(B) If at any time prior to the December submittal the MWD's reimbursement amount reaches \$500.00, Form GA-12 is to be completed at such time. A copy of the completed Form GA-12 is to be forwarded to the BBS/[DPW]DEA and the original retained by the municipal welfare department. Such submittal does not replace the December deadline for submittal of the final Form GA-12 for the entire calendar year.

(3)-(4) (No change.)

ii. Adjustment of Statement reimbursement: Following the [DPW] DEA's receipt of Form GA-12 at the close of each calendar year, appropriate adjustment is made to State reimbursement for committed refunds received during the year. Failure to submit reports will be deemed sufficient cause to withhold State aid in the future.

(b) Disbursements may be made from the Public Assistance Trust Fund Account only for payment of public assistance costs, exclusive

of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. Types of disbursements authorized: Disbursements from this account are limited to:

i.-ii. (No change.)

iii. Payment to establish or replenish the Public Assistance Petty Cash Fund Account.

NOTE: Disbursements from this account to another municipal account are prohibited without the written approval of the Director, Division of [Public Welfare] **Economic Assistance**.

2. (No change.)

10:85-6.4 Fiscal and statistical reporting requirements

(a) General completion and submittal requirements: Forms described below shall be completed and either submitted to the Division of [Public Welfare] **Economic Assistance**, as indicated, or retained by each municipality approved to receive State aid in the General Assistance Program. Use of the forms described herein is required.

1. Application Register (Form GA-7): Each application shall be entered on the Application Register (Form GA-7) and shall be maintained by the MWD on an updated basis. The Application Register is subject to review by representatives of the Division of [Public Welfare] **Economic Assistance**.

2. Report of Assistance Commitments (Form GA-6): Form GA-6, accompanied by Form GA-6A, will be submitted on a monthly basis to the [DPW]DEA/BBS within 10 days after the end of the assistance month. Cases are to be listed in sequential order according to case number and employability status. Case numbers for all employable cases are to be identified with an "E" prefix and all unemployable cases are to be identified with a "U" prefix. Cases that are classified as employable are to be listed first, followed by the unemployable cases. At the end of each page, totals must be indicated for the number of cases opened, the number of cases closed, the number of single persons aided, family case persons aided, and the commitments reported for each category (Maintenance, Hospitalization, Nursing Home, etc.). On the bottom section of any GA-6 page that lists both "E" prefixed and "U" prefixed cases and on the final page, totals must be segregated for employables and unemployables, and be followed by a combined page total (grand totals on final page).

i. (No change.)

3. (No change.)

10:85-6.5 [Reimbursement of assistance provided to applicants for SSI] **Reimbursement of assistance for cases pending SSI entitlement**

[(a) A contractual agreement between the United States Department of Health, Education, and Welfare and the State of New Jersey provides for reimbursement to the State (that is, Division of Public Welfare) for assistance granted to individuals while eligibility for SSI on the basis of disability, blindness or the attainment of age 65 is being determined. During such time, the SSA/DO may refer such persons to the municipal welfare department for General Assistance.

(b) When the SSA/DO refers an individual to the municipal welfare department, such referral will be made on the form entitled Social Security Referral for Services, two copies of which will be given to the applicant to take to the MWD.

1. Action by municipal welfare department: If the application for General Assistance results in denial, the MWD will file both copies of the referral form in the case record and take no further action. If the application for General Assistance is approved, one copy of the referral form will be retained by the MWD in the case record, and the other returned to the SSA/DO with a letter stating that the individual concerned is receiving General Assistance.

(c) Completion of Form GA-30 and GA-30A: When an individual is about to apply or has already applied for SSI, the municipal welfare department will require that he or she sign Form GA-30, Authorization for Reimbursement of General Assistance from Initial SSI Payment and Form GA-30A, Agreement to Repay Assistance from Initial SSI Payment, before granting assistance. These forms pertain to the applicant's obligation to repay the municipal welfare agency for assistance granted while the applicant's SSI application is being processed. The GA-30 is prepared in quadruplicate and

forwarded to the Social Security Administration as described in (c)1 below. This form authorizes the Social Security Administration to forward the applicant's initial SSI payment to the State Division so that repayment of assistance may be accomplished. A single copy of Form GA-30A is prepared at the time of application and is retained in the case record. This form contains a repayment agreement which is to be enforced in cases in which, for whatever reason, the initial SSI payment is sent directly to the applicant.

1. Routing of Form GA-30: Reimbursement of assistance thus granted is distributed to municipal welfare departments only when the necessary forms are properly completed and routed in accordance with the following provisions:

i. The Form GA-30 shall be prepared in quadruplicate, with the front side of each copy signed by applicant and the reverse side signed by the director of welfare;

ii. The original form shall be promptly submitted to the local SSA/DO by registered mail, so that the first SSI check will be forwarded to the Division of Public Welfare;

iii. The first copy will be sent to the DPW/BBS;

iv. The second copy will be retained by the municipal department of welfare; and

v. The third copy will be given to the SSI applicant.

2. Couples applying for SSI: When both spouses are applying for SSI, separate sets of the GA-30 and the GA-30A must be completed for each individual.

3. In any case in which the retroactive SSI check is sent directly to the client, the MWD will compute the reimbursement due in accordance with (d) below and will seek repayment from the client on the basis of the GA-30A agreement. The GA-30A is to be prepared in duplicate. The client is to receive a copy. The original is to be retained in the agency's file.

(d) Since the initial check received by the municipal welfare department through the Division of Public Welfare will cover both the retroactive and initial SSI awards for one eligible person only, deductions when both spouses are involved shall be computed as follows:

1. Both spouses eligible: When both spouses filed and both are found eligible for SSI, the amount of General Assistance previously granted to each individual is deducted from his/her separate SSI award;

2. One spouse eligible: When both spouses filed and only one is determined eligible, the amount of the eligible person's portion of the General Assistance payment will be deducted from the SSI award.

3. Eligible spouse and essential person: When only one spouse is found eligible and the other spouse is designated as an "essential person", the amount of General Assistance received by both persons will be deducted from the amount of the SSI award.

(e) Rules concerning remittance of balance to clients are:

1. Transmitting letter, Form GA-31: Within five working days of receipt from the Division of Public Welfare of the check covering the SSI award, the municipal welfare department will make the proper deduction for General Assistance expended, excluding any medical payments, since the first day of the first month of SSI eligibility, and shall forward to the client a check equal to the net benefit remaining, if any, together with a letter, Form GA-31, indicating how the amount of the net benefit was computed.

i. The transmitting letter, Form GA-31, shall advise the client of his/her right to appeal in accordance with the provisions of N.J.A.C. 10:85-7.3 and 7.4 should questions arise concerning the computation;

ii. A copy of Form GA-31 shall be forwarded to the Division of Public Welfare.

(f) A reimbursement procedure for repayment to the MWD for medical payments has not yet been developed.]

(a) A contractual agreement between the Social Security Administration (SSA) and the State of New Jersey provides for reimbursement to the State Division of Economic Assistance for assistance granted to individuals while awaiting an initial Supplemental Security Income (SSI) eligibility determination or during the period of time in which a client is awaiting a reinstatement of terminated or suspended SSI eligibility. In such instances, the SSA/District Office (DO) may refer such persons to the MWD for General Assistance.

(b) When the SSA/DO refers an individual to the MWD, such referral will be made on the form entitled Social Security Referral for

Services, two copies of which will be given to the client to take to the MWD.

1. If the application for General Assistance results in denial, the MWD will file both copies of the referral form in the case record and take no further action. If the application for General Assistance is approved, one copy of the referral form will be retained by the MWD in the case record, and the other returned to the SSA/DO with a letter stating that the individual concerned is receiving General Assistance.

(c) When an individual is about to apply, or has already applied for SSI, or is awaiting a reinstatement of terminated or suspended SSI eligibility, the MWD will require that he or she sign Form GA-30, "Authorization for Reimbursement of Initial Supplemental Security Income (SSI) Payment, or Initial SSI Posteligibility Payment (GA-30)—General Assistance", and Form GA-30A, "Agreement to Repay Assistance from Initial SSI Payment", before granting assistance. These forms pertain to the client's obligation to repay the municipal welfare agency for assistance granted during the interim pending the client's SSI initial or posteligibility entitlement. The GA-30 is prepared in triplicate and forwarded to the Social Security Administration as described in (c)1 below. This form authorizes the SSA to forward a client's initial or initial posteligibility SSI benefit award payment directly to the treasurer of a municipality so that repayment of assistance may be accomplished. A copy of Form GA-30A is prepared at the time of application and is retained in the case record. This form contains a repayment agreement which is to be enforced in cases in which, for whatever reason, the initial, or initial posteligibility SSI payment is sent directly to the client.

1. Properly completed and signed GA-30 forms shall be submitted by registered mail to SSA within 24 hours of the date the client signs the authorization form and routed in accordance with the following provisions.

i. Form GA-30 shall be prepared in triplicate, with the front side of each copy signed by the client and the reverse side signed by the director of welfare;

ii. The original form shall be submitted to SSA/DO;

iii. The first copy shall be retained in the MWD files; and

iv. The second copy shall be given to the SSI client.

2. When both spouses are applying for SSI, separate sets of the GA-30 and the GA-30A shall be completed for each individual.

3. In any case in which the retroactive SSI check is sent directly to the client, the MWD will compute the reimbursement due in accordance with (d) below and will seek repayment from the client on the basis of the GA-30A agreement. The GA-30A is to be prepared in duplicate. The client is to receive a copy. The original is to be retained in the agency's file.

(d) Since the initial check received by the municipal treasurer will cover the initial retroactive or initial posteligibility SSI award for one eligible person only, deductions when both spouses are involved shall be computed as follows:

1. When both spouses filed and both are found eligible for SSI, the amount of Interim Assistance previously granted to each individual is deducted from his or her separate SSI award;

2. When both spouses filed and only one is determined eligible, the amount of the eligible person's portion of the Interim Assistance payment will be deducted from the SSI award;

3. When only one spouse is found eligible and the other spouse is designated as an "essential person", the amount of Interim Assistance received by both persons will be deducted from the amount of the SSI award.

(e) Rules concerning remittance of balance of SSI award to clients are:

1. Form SSA-(L)8125, Social Security Administration Supplemental Security Income Notice of Interim Assistance Reimbursement provides the necessary information (SSI eligibility date, payment summary, client's address) to permit distribution of any proceeds due the client from the initial SSI award check, which shall be done as follows:

i. If a month is not listed on the "Payment Summary" segment of the SSA-(L)8125 form, the MWD shall not recoup payment of interim assistance provided for that month.

ii. Form SSA-(L)8125 shall be appropriately completed, signed, dated and mailed to the New York SSA office no later than 30 calendar days after the Municipal Treasurer's receipt of the SSI award check.

iii. If Form SSA-(L)8125 is not received prior to Municipal Treasurer's receipt of the SSI award check, the local SSA/DO shall be promptly contacted to obtain the necessary information to permit distribution of the proceeds due the client from the SSI award check.

(1) Problems encountered in obtaining the necessary information from SSA/DO shall be referred to the DEA/BBS.

(2) Disbursements of SSI funds to which a client is entitled, however, shall not be delayed due to non-receipt of Form SSA-(L)8125.

2. Form GA-31, Repayment of Interim Assistance Authorization (GA-31) General Assistance, delineates distribution of retroactive and initial SSI or initial SSI posteligibility payments and shall be completed and transmitted in accordance with the following provisions:

i. Within 10 working days of the municipal treasurer's receipt of the SSI award check from SSA, the MWD shall deduct any and all Interim Assistance payments provided in addition to Interim Assistance granted by any other MWD who has remitted to the agency by certified mail a copy of a signed GA-30 form for that client.

(1) Interim Assistance shall only be deducted in accordance with the calendar date on which the client became eligible for SSI, as indicated on Form SSA-(L)8125. Proration may be necessary if General Assistance was provided for any days during the month prior to the effective date of SSI eligibility.

ii. Form GA-31 delineating the computation of the client's net benefit and a check equal to the net SSI benefit due the client, if any, shall be forwarded to the client pursuant to the time frame in (e)2i above.

iii. The client has a right to appeal the computation results in accordance with the provisions of N.J.A.C. 10:85-7.3 and 7.4.

3. A copy of the completed Form GA-31 together with a copy of Form SSA-(L)8125, as received from SSA, shall be forwarded to the DEA/BBS immediately following the issuance of Form GA-31 and the net benefit check to the client.

(f) The Certificate of Authority identifies municipal personnel who are authorized to sign documents in conjunction with reporting the receipt and distribution of Interim Assistance Reimbursement received from SSA. The Certificate shall be completed and processed as follows:

1. Names, signatures and titles of the current Director of Welfare and his or her designee(s) (if appropriate) are to be identified on the Certificate;

2. Although the Certificate is to be addressed to the SSA, it is to be mailed to the DEA; and

3. Each newly appointed director (temporary or permanent) shall complete and submit a Certificate of Authority.

10:85-6.6 Establishment of Petty Cash Fund Account

(a) The LAB shall request the municipal governing body to establish a General Assistance Petty Cash Fund for use by the municipal department of welfare, unless the MWD is able to make direct payments to clients from the Public Assistance Trust Fund Account.

1. (No change.)

2. Application procedure: To establish a petty cash fund, Form GA-32, Application to Establish a Petty Cash Fund for Direct Payment of General Public Assistance, must be completed in triplicate, signed and dated by the clerk of the municipality and submitted to the Director of Local Government Services, [P.O. Box 1959] 363 W. State Street, CN 800, Trenton, New Jersey 08625.

i. (No change.)

3. (No change.)

4. Existing petty cash funds: In those municipalities where a general assistance petty cash fund account is already in existence, additional funds may be deposited in order to meet an anticipated increase in expenditures from this account. In order to increase the amount in the account, a new application ([form] Form GA-32) must be completed and submitted to the Director, [Bureau] Division of Local Government Services.

5. (No change.)

10:85-6.7 Retention and destruction of case records

(a) The MWD director shall have the responsibility of determining which case records may be destroyed. In selecting these cases, he[] or she shall follow the procedures set forth in this section and shall not destroy or otherwise dispose of any case record before the expiration of the retention requirement as specified in [subsection (c) of this section] (c) below.

1. (No change.)

2. The file of closed cases will be reviewed annually until the record retention period has expired.

i. Cases which have been closed for a period exceeding that indicated in [subsection] (c) [of this section] below will be removed and destroyed after authorization has been received from the [DPW/BMS] Division of Archives and Records Management ([See subsection (b) of this section] (see (b) below).

(b) Rules concerning request and authorization for records disposal ([form ED-6]) are:

1. Requests for destruction of case records will be submitted [in triplicate on Form ED-6, Request and Authorization for Records Disposal, to the Division of Public Welfare] on Form CR-AA-0005, Request and Authorization for Records Disposal (formerly Form ED-6) to the Division of Archives and Records Management.

i. Supplies of [form ED-6] the Request and Authorization for Records Disposal form may be obtained from the [DPW] DEA/BMS. All copies of the completed form shall be forwarded to [that office] the Division of Archives and Records Management for approval;

ii. A follow-up copy will be returned to the municipal welfare office [and the remaining forms forwarded to the Bureau of Archives and History] by the Division of Archives and Records Management with recommendation for suitable action.

2. The MWD shall not destroy any records until written approval has been received [in writing]. After records are destroyed, the MWD will maintain a list of the names and case numbers of the cases destroyed. This list [must] shall be made available for inspection by representatives of [this Division] the Division of Archives and Records Management upon request.

(c) Cases [are to] shall be selected for destruction in accordance with the following schedule:

| Record | Retention period |
|---|------------------|
| Inactive case records | 6 years |
| Denied cases | 10 years |
| Copies of relief orders or vouchers | 6 years |
| General correspondence not relating to policy or active cases | 3 years |
| Form GA-6, Report of Assistance Commitments | 6 years |
| Form 100, Original Invoice for Expenses | 6 years |

The current year shall not be counted when determining the retention period.

10:85-6.8 Pharmaceutical payments

(a) (No change.)

(b) Each month Blue Cross will provide to [DPW] the DEA, through DMAHS, a detailed statement of pharmacy bills paid for General Assistance recipients. The [DPW] DEA will forward this report to the respective municipal welfare departments. The monthly statement will show:

| Municipal Code | Amount dispensed |
|------------------------------|------------------------|
| Provider (Medicaid I.D. No.) | Number of days' supply |
| Sequential claim No. | Prescription (Rx) No. |
| Recipient No. | Individual Medicaid |
| National Drug Code | Practitioner (IMP) No. |
| Name of Drug | Date of Service |
| Metric quantity | Amount paid |

1.-3. (No change.)

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

10:85-7.3 Local hearing

(a) (No change.)

(b) Request for local hearing: A request for a local hearing may be either oral or written. However, if the request is oral, it shall be the responsibility of the MWD staff to assist the individual in preparing the request in writing.

1.-5. (No change.)

6. Conduct of local hearing:

i.-iii. (No change.)

iv. Report and decision: Within 10 working days following the hearing, the hearing officer will prepare a brief written report. This report shall include a summary of facts presented at the hearing and the findings (decision) of the hearing officer; it will also state the regulation(s) upon which the decision is based. The final sentence on the report shall advise the appellant of the availability of a State fair hearing.

(1) This report and decision will be filed with the Local Assistance Board, a copy mailed to the appellant, and a copy forwarded to the State Division of [Public Welfare] **Economic Assistance's** Bureau of Administrative Review and Appeal (BARA).

7. (No change.)

10:85-7.4 State fair hearing

(a) Request for State fair hearing: Any client who wishes to appeal the decision resulting from a local hearing is entitled to request a State fair hearing within 10 days of the mailing date of the local hearing decision. Such request [must] **shall** be written and may be made to the municipal welfare department or directly to the Division of [Public Welfare] **Economic Assistance**. State fair hearing requests pertaining to inaction or delay (see N.J.A.C. 10:85-7.1(e)2) by the MWD shall be processed as emergency fair hearings in accordance with N.J.A.C. 10:85-7.6, providing the request is made within 15 days of the date of inaction by the MWD.

1. (No change.)

2. Request to State Division of [Public Welfare] **Economic Assistance**: When a request for a State fair hearing is received by the Division of [Public Welfare] **Economic Assistance**, it shall be immediately registered as of that date. The municipal welfare department shall be informed by telephone within one working day of the receipt of the request.

(b) All hearing requests which involve a ["contested" issue] **contested case** shall be transmitted to the Office of Administrative Law (OAL) for a hearing before an Administrative Law Judge (ALJ). Requests for hearings which [do not involve a disputed matter and] do not constitute a contested case, as defined by N.J.A.C. [1:1-1.5 and 1.6] **1:1-2.1**, may be subject to an administrative review by the Division of [Public Welfare] **Economic Assistance** ([DPW]DEA) in accordance with N.J.A.C. 10:6-2.

(c) Responsibilities of the Office of Administrative Law: The OAL shall schedule the contested case hearing and send any necessary notices to the parties. The hearing shall be conducted by an ALJ who shall issue an initial decision.

1. Adjournments: Any adjournment of a scheduled OAL hearing requested by an applicant or recipient and granted by the OAL may not operate to extend the deadlines for a final decision and implementation of the final decision.

2. Disposition by withdrawal or [abandonment] **failure to appear**. If an applicant/recipient or his or her representative fails to appear for a scheduled hearing without proper notice, [a notice of abandonment shall be sent] **and fails to submit an explanation for the non-appearance within 10 days of the scheduled hearing date, an initial decision shall be issued**. The MWD may amend or reverse its decision at any time before or during the OAL hearing, or the hearing may be withdrawn at any time before or during the hearing upon satisfactory clarification or explanation of the matter at issue.

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

(f) Decision by Director, Division of [Public Welfare] **Economic Assistance**: A final administrative hearing decision shall be rendered by the Director of the [DPW] DEA. The applicant or recipient, his or her representative and the MWD shall be notified by mail of any decision or order.

1. Unless otherwise indicated, the decision by the Director of [DPW] DEA shall be effective on the date of issuance.

2.-3. (No change.)

10:85-7.6 Emergency fair hearings

(a) Definition and criteria: An emergency fair hearing is one conducted by the MWD within accelerated time frames. It is in all other respects conducted in accordance with the provisions applicable to other fair hearings. It will be convened when and only when either or both of the following exists:

1. (No change.)

2. The [DPW]DEA/BARA determines that there exists a threat to physical health and safety sufficiently compelling and imminent to require accelerated procedures or the request pertains to failure by the MWD to act on a timely request for a local hearing or inaction by the MWD on an application for assistance.

(b) (No change.)

(c) Decision: The decision of the hearing officer may be announced at the close of the hearing or later but must be made known to the MWD and the appellant before 12 noon of the next working day. The hearing officer will file a written report and decision with the [DPW]DEA/BARA within two working days of the hearing, sending copies to the MWD and to the appellant.

(d) State emergency hearing: An appellant who wishes to appeal the decision in an emergency local fair hearing may do so within two working days of the date on which the appellant receives initial notice of the decision of the local hearing. An emergency State fair hearing may be requested when the MWD fails to process a final decision on an application within 30 days of the date of the application or when immediate assistance is denied and the applicant can demonstrate to the [DPW]DEA/BARA the existence of a threat to physical health and safety.

(e) When it is determined that a request for a hearing should be scheduled as an emergency fair hearing:

1.-2. (No change.)

3. Notice of the time, date and place of the hearing shall be transmitted by telephone to the BARA within one business day after the OAL is notified of the hearing request. BARA shall notify the MWD, the petitioning applicant/recipient or the petitioner's representative of the scheduled hearing by telephone.

4. The ALJ shall file an Initial Decision [by mailgram] with the Director of the [DPW] DEA and the parties no later than the business day following the date of the hearing.

5. The petitioning applicant/recipient, his or her representative or the MWD may, by telephone, make exception or objection to the Initial (mailgram) Decision, to the [DPW] DEA no later than the first business day following the issuance of the Initial Decision.

6. The Director of the [DPW] DEA shall issue a final decision no later than three business days following the date the Initial Decision is received which shall accept, reject or modify the Initial Decision. On the day the final decision is issued, the [DPW] DEA shall notify the MWD, the OAL and the petitioner or the petitioner's representative by telephone of the final decision and any relief ordered shall be provided by the MWD on the day notice of the final decision is received.

10:85-8.2 Referral to county welfare agency

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

(c) County welfare agency programs: Programs administered by the county welfare agency include the following:

1. Aid to [families with dependent children] **Families with Dependent Children** (AFDC): [This program] **The Aid to Families with Dependent Children Program** provides cash benefits to eligible families with children under three segments:

i.-ii. (No change.)

iii. "N" segment—through State funding only to children and both parents when the father is underemployed.

(1) Eligibility requirements: Eligibility requirements for the AFDC program are described in detail in the Public Assistance Manual (N.J.A.C. 10:81) and the Assistance Standards Handbook (N.J.A.C. 10:82). These manuals are available from the Division of [Public Welfare] **Economic Assistance**.

2. Medicaid Only: This Federal/State program offers payment for medical care to persons who qualify for participation in the AFDC or SSI program, but who do not receive cash maintenance payments available under the program for which they qualify. Also eligible are certain persons under age 21 and certain pregnant women, regardless of age, who have income below the AFDC standard but are not eligible for cash AFDC payments.

i. Eligibility requirements: [eligibility] **Eligibility** requirements for the Medicaid Only program are described in detail in the applicable program manual[s] available from the Division of [Public Welfare] **Medical Assistance and Health Services**.

3. Food [stamps] **Stamps:** This Federal program provides eligible households with food stamps which are redeemed at face value for food.

i. Eligibility requirements: Eligibility requirements for this purpose are described in detail in the Food Stamp Manual (N.J.A.C. 10:87), available from the Division of [Public Welfare] **Economic Assistance.**

(1) (No change.)

[4. Cuban/Haitian Entrant Program: This Federal program offers cash benefits and medical care to eligible families who have recently immigrated to the United States from Cuba or Haiti:

i. Eligibility requirements: Eligibility requirements are available from the county welfare agency.]

Renumber existing 5. and 6. as **4. and 5.** (No change in text.)

10:85-8.3 Referral to SSA district office

(a) Referral shall be made to the appropriate Social Security Administration district office when the General Assistance applicant appears eligible for the programs identified in (c) below. **The Social Security Administration may be contacted directly, 24 hours a day, by calling toll free, 800-2345-SSA.**

(b) Referral shall be made via Form PA-14 (Referral for Services). This form shall be given to the client, one copy shall be sent to the SSA district office, and the remaining copy shall be kept on file in the municipal department of welfare. **Referral for SSI benefits shall be made in accordance with (c)3ii below.**

(c) Programs administered by the Social Security Administration include the following:

1. Retirement, Survivors, Disability and Health Insurance (RSDHI):

This Federal program protects workers and their families from loss or stoppage of earnings resulting from retirement at age 62 (or older), death or disability.

i. Eligibility requirements: In order to receive benefits, an [employee must have worked in covered employment for a certain number of quarters. (A quarter is a three month calendar period in which wages of \$50.00 or more were earned.) The amount of quarters necessary to establish entitlement varies according to the type of social security benefit (for example, widow's or children's benefit, retirement, disability, and so forth) being sought.] **employed or self-employed individual must first have accumulated credits for a certain amount of work under Social Security up to a maximum of four credits per year. The amount of earnings required for these credits increases each year as general wage levels rise.**

ii. (No change.)

2. Medicare: [This is a Federal health insurance program available to all individuals over age 65 and those under 65 who either have received Social Security disability benefits for two consecutive years or who are insured under the Social Security system and need dialysis or a kidney transplant due to chronic kidney disease. The dependents of an insured individual are also entitled to Medicare if they require dialysis or kidney transplant. The program has two parts:] **The Medicare program is a Federal health insurance program for individuals 65 or over and certain disabled people. Effective January 1, 1989, the Medicare Catastrophic Coverage Act of 1988 introduced the first changes mandated by the Act which provide new and expanded benefits. There are two parts to the Medicare program—Hospital Insurance (Part A) and Medical Insurance (Part B).**

i. Hospital insurance: **This coverage helps pay for inpatient hospital care, some inpatient care in a skilled nursing facility, home health care, and hospice care.**

(1) The following are eligible for hospital insurance coverage:

(A) Individuals [over] **65 or over** who are entitled to Social Security or Railroad Retirement benefits [are automatically eligible; others may be eligible if they have worked a sufficient number of quarters. Additionally, hospital insurance may be purchased in conjunction with medical insurance by paying a monthly premium];

(B) (No change.)

(C) [An individual or his/her dependent who needs dialysis or kidney transplant, beginning either the first day of the month following two full months of dialysis or immediately upon admission to the hospital for transplant surgery.] **Insured workers and their eligible**

family members who need dialysis treatment or kidney transplant because of permanent kidney failure are also eligible.

(2) Benefits: Medicare **helps to pay[s]** the cost of room and meals in a semiprivate accommodation, regular nursing service **and service** in intensive care, drugs, supplies, appliances, and equipment for:

(A) [90 days of inpatient care in each benefit period;] **Unlimited number of days of inpatient hospital care;**

(B) (No change.)

(C) [Lifetime reserve of 60 inpatient hospital days;] **Blood after the first three pints;**

(D) [One-hundred] **One hundred fifty** days of care in each [benefit period] **calendar year** in a participating skilled nursing facility if the individual's medical condition is determined by the physician as warranting extended care[, and provided the individual has been hospitalized at least three consecutive days and is admitted to a skilled nursing facility for further treatment of a condition for which he/she was hospitalized within 14 days of discharge from the hospital];

(E) [One hundred] **Unlimited** home health visits from a participating home health agency for each [benefit period] **calendar year**, but only if a physician determines that the continuing care needed includes part time skilled nursing care or physical or speech therapy, and individual is confined to his [/or her home [after having been hospitalized for three consecutive days, or the health care is for further treatment of a condition for which individual was hospitalized.];

(F) **Unlimited hospice care for the terminally ill as certified by a physician.**

ii. Medical insurance: **This coverage helps to pay the cost of physician's services and certain other medical items and services not covered by hospital insurance.**

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

(3) Amount of coverage: [Medical insurance pays 80 percent of the reasonable charges exceeding the first \$60.00 in each calendar year, with the exception of laboratory and radiology services which are covered at 100 percent of charge, and home health services which are covered at 100 percent after the first \$60.00 deductible. Additionally, medical insurance pays for physical therapy after an expenditure of \$80.00 each year, and for physician psychiatric services after \$250.00 each year.] **Medical insurance generally pays 80 percent of the Medicare approved amount after a deductible is satisfied each calendar year.**

3. Supplemental Security Income (SSI): This Federal program provides cash benefits to eligible individuals who are **aged (65 or older)** [over 65 years of age], blind, or disabled.

i. Eligibility requirements: In addition to the age or disability requirement, an individual must be a citizen of the United States, [(or) a lawfully admitted alien()] **or a person from a foreign country who is allowed to remain by the Immigration and Naturalization Service** and satisfy certain income and resource standards. (See N.J.A.C. 10:85-3.1(d)1 regarding eligibility for General Assistance to meet immediate need.)

ii. Referral procedures: [Whenever an] **An individual who** appears to be eligible for SSI[, and MWD shall provide the individual with a copy of the pamphlet, How to Apply for SSI (Form GA-191). Such individuals are to] **shall** be referred to the appropriate Social Security Administration district office (SSA/DO). Referrals for blind and disabled individuals shall be made via Form GA-41 (Supplemental Referral Form) which shall be completed in duplicate, **with** the original [shall be] sent to the SSA/DO and a copy retained in the case record. All aged individuals shall be referred via Form PA-14. If a client who appears to be ineligible for SSI requests a referral, this shall also be made via Form PA-14 or GA-41 as deemed appropriate **by the MWD.**

iii. (No change.)

10:85-8.4 Referral to State agencies

(a) Referral shall be made to the appropriate State agency when the General Assistance applicant appears to be eligible for any of the programs identified in this section [and N.J.A.C. 10:85-8.5(a)].

[(b) State agencies which administer or fund programs of cash assistance or services include, but are not necessarily limited to, those identified in subsection (d) of this section and N.J.A.C. 10:85-8.5(b).]
[(c)](b) (No change in text.)

[(d)](c) The New Jersey State Department of Health administers the programs and services described in [(d)](c)2 below.

1. General eligibility requirements: Eligibility requirements vary from program to program; however, many of the programs have no financial eligibility criteria and are given without charge to anyone needing service. In general, persons who are not eligible for medical assistance through the AFDC[,] or Medicaid Only[,] [MAA] (see county welfare agency programs) or through SSI (see SSA programs) programs are eligible for services funded through the Department of Health.

2. Description of programs: The Department of Health administers the following programs:

i. [Visiting homemaker-home health aid service: This is a local nonprofit agency sponsored by the New Jersey Department of Health as a community health agency. A homemaker-home health aide is assigned to work in the home of an individual or family when home life is disrupted by illness, disability or social disadvantage or when the family or individuals within the family are in danger of physical, social, or emotional breakdown because of disorganization or stress with which they are unable to cope effectively. The homemaker-home health aide agency charges a reasonable hourly rate for services plus normal travel expenses. (The homemaker is paid weekly by the agency which, in turn, bills the patient, the patient's family, or another social agency.) Inquiry may be made by phoning the appropriate member agency. A list of these agencies (there is at least one in each county) is available by writing to the Visiting Homemaker Association of New Jersey, Inc., Box 1540, Trenton, New Jersey, 08625.] **Home Health Agencies: Throughout the State of New Jersey there are 65 licensed Home Health Agencies which provide an array of home health services; for example, intermittent skilled nursing care, physical, speech, or occupational therapy and home health aid services. A list of these agencies may be obtained by writing to the Department of Health, Division of Licensing, CN 367, Trenton, NJ 08625.**

ii. (No change.)

iii. Maternal and child health: This program provides maternity services and consultation and a referral network to child health conferences. The program provides follow-up on newborn screening currently PKU, hypothyroidism and risk of hearing impairment. The Women, Infant and Children (WIC) supplementary foods program is also administered under this general program heading as well as Family Planning Services. Complete information on the various services available under this [maternal and child health program] **Maternal and Child Health Program may be found in the Directory of Preventive Health Services** which gives the location of publicly funded Family Planning, Prenatal and Child Health Supervision Services, including those which are WIC sites throughout the State. Copies of the directory may be obtained by writing to the Maternal and Child Health Program, New Jersey State Department of Health, [120 South Stockton Street] **363 W. State Street, CN 364, Trenton, New Jersey 08625.**

iv. (No change.)

[(e)](d) Division of Unemployment and Disability Insurance: This State agency, which is a division of the New Jersey Department of Labor [and Industry], administers the following programs:

1. New Jersey temporary disability insurance program: This program pays cash benefits to a person who cannot work because of sickness or injury not caused by his or her job.

i. Eligibility requirements: A person must have at least 20 base weeks of employment in the 52 weeks immediately preceding the week in which he or she became disabled, in order to have a valid claim. (A base week is one in which a person earned at least [\$41.00] **\$92.00** working for a New Jersey covered employer.)[.] In addition, a physician, dentist, osteopath, chiropractor, or chiroprapist must certify that the claimant is too disabled[,] to continuously do the regular work which he or she was doing immediately before becoming disabled.

ii.-iii. (No change.)

2. State unemployment insurance: This program pays cash benefits to covered workers who have lost their jobs through circumstances beyond their control, or who are working less than full-time because of lack of full-time work.

i. Eligibility requirements: A person must have wages of at least [\$51.00] **\$92.00** in each of 20 weeks, or have earned [\$4,100] **\$5,500** or more during the base year in employment covered by the unemployment compensation law of New Jersey. (A base year is the first 52 of the 53 weeks preceding the date of the filing of the claim.)[.] In addition, the claimant must register for work with the [New Jersey State Training and Employment Service] **Division of Employment and Training**, be able and available for work at all times, make an active search for work, and report to the unemployment office as directed.

ii.-iii. (No change.)

[(f)](e) Division of Youth and Family Services (DYFS): This State agency, which is a division of the New Jersey Department of Human Services, administers foster care, homemaker services, adoption, counseling, residential placement, parole supervision, and child abuse services.

1. (No change.)

2. How to apply for services: Information and application for adoption services may be made at one of the [division's] **Division's** four regional offices. The DYFS regional offices are listed below:

Northern Regional Office
100 Hamilton Plaza
Paterson, N.J. 07505
201-977-4000

Central Regional Office
719 Alexander Rd.
Princeton, N.J. 08540
609-452-7728

[Metropolitan] **Central**
Regional-Newark Office
1180 Raymond Blvd.
18th Floor
Newark, N.J. 07102
201-648-4100

Southern Regional Office
302 North White Horse Pike
P.O. Box 594
Hammonton, N.J. 08037
609-567-0010

Information and application for all other services may be made at the [division's] **DYFS** district office serving the area in which the MWD is located. The DYFS district offices are listed below.

DIVISION OF YOUTH AND FAMILY SERVICES DISTRICT OFFICES

[Northern Region

Bergen District Office
190 Main Street
Hackensack, NJ 07601
201-487-5380

Morris District Office
121 Center Grove Road
Randolph, NJ 07869
201-361-8400

Bayonne District Office
(Southern Jersey City & Bayonne)
5 West 22nd Street
Bayonne, NJ 07002
201-823-5000

Paterson District Office
2 Market Street
Paterson, NJ 07501
201-977-4525

Jersey City District Office
Northern Jersey City
550 Summit Avenue
Jersey City, NJ 07306
201-653-5750

Sussex District Office
200 Woodport Road
Sparta, NJ 07871
201-729-9163

North Hudson District Office
(Municipalities North of
Jersey City)
6033-6045 Kennedy Blvd.
North Bergen, NJ 07047
201-854-7100

Warren District Office
323 Front Street
P.O. Box 126
Belvidere, NJ 07823
201-475-3903

Metropolitan Region

Suburban Essex District Office
123 Cleveland Street
Orange, NJ 07050
201-648-3100

Newark District Office III
1100 Raymond Blvd., Room 101-C
Newark, NJ 07102
201-648-2669

PROPOSALS

Interested Persons see Inside Front Cover.

HUMAN SERVICES

Newark District Office I
1100 Raymond Blvd., Room 305
Newark, NJ 07102
201-648-4200

Newark District Office II
1180 Raymond Blvd., 9th Floor
Newark, NJ 07102
201-648-6150

Atlantic District Office
26 S. Pennsylvania Avenue
Atlantic City, NJ 08401
609-441-3232

Burlington District Office
50 Rancocas Road
Mount Holly, NJ 08060
609-267-7550

Camden District Office
808 Market Street
P.O. Box 738
Camden, NJ 08101
609-757-2700

Cape May District Office
Routes 47 & 9
Social Services Building
P.O. Box 222
Rio Grande, NJ 08242
609-866-1105

Hunterdon District Office
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
201-782-8784

Mercer District Office
1901 N. Olden Avenue
Trenton, NJ 08618
609-984-6300

Middlesex District Office
(New Brunswick)
78 New Street, 2nd Floor
New Brunswick, NJ 08901
201-249-4880

Middlesex District Office
(Perth Amboy)
275 Hobart Street
Perth Amboy, NJ 08861

Long Branch (Monmouth
Family Ctr.)
1 Main Street, 1st Floor
Eatontown, NJ 07724
201-389-2700

Asbury Park (Monmouth
Family Ctr.)
1200 Memorial Drive
Asbury Park, NJ 07712
201-988-4300]

Union District Office
208 Commerce Place, 2nd Floor
P.O. Box 602
Elizabeth, NJ 07201
201-648-4777

Plainfield District Office
700 Park Avenue, 3rd Floor
Plainfield, NJ 07060
201-499-5825

Southern Region

Cumberland District Office
1368 S. Delsea Drive
Vineland, NJ 08360
609-696-6590

Gloucester District Office
251 N. Delsea Drive
Suite 100
Deptford, NJ 08096
609-848-6604

Salem District Office
New Market Street
Salem, NJ 08079
609-935-6350

Central Region

Monmouth Family Center
Kozloski Road
P.O. Box 3000
Freehold, NJ 07728
201-431-6222

Middletown (Monmouth
Family Ctr.)
1 Main Street, 5th Floor
Eatontown, NJ 07724
201-957-0020

Freehold (Monmouth
Family Center)
Kozloski Road
P.O. Box 3000
Freehold, NJ 07728
201-431-6060

Ocean District Office
954 Lakewood Road
Toms River, NJ 08753
201-244-4300

Somerset District Office
78 E. High Street
Somerville, NJ 08876
201-722-2224

NORTHERN REGION

BERGEN DISTRICT OFFICE
60 State Street
Hackensack, NJ 07601
(201) 487-5380

BAYONNE DISTRICT OFFICE
690 Broadway
Bayonne, NJ 07002
(201) 823-5000

JERSEY CITY DISTRICT OFFICE
2815 Kennedy Boulevard
3rd Floor
Jersey City, NJ 07306
(201) 915-3500

NORTH HUDSON DISTRICT OFFICE
8901 Bergen Line Avenue
North Bergen, NJ 07407
(201) 854-7100

MORRIS DISTRICT OFFICE
855 Route 10 East
Randolph Twp., NJ 07801
(201) 927-0931

CENTRAL PASSAIC DISTRICT OFFICE
2 Market Street
Paterson, NJ 07501
(201) 977-4525

SOUTH PASSAIC DISTRICT OFFICE
925 Clifton Avenue
Clifton, NJ 07013
(201) 472-4949

NORTH PASSAIC DISTRICT OFFICE
223 Wanaque Avenue, 2nd Floor
Pompton Lakes, NJ 07442
(201) 831-7405

SUSSEX DISTRICT OFFICE
15 Route 306 North
Newton, NJ 07860
(201) 383-8400

WARREN DISTRICT OFFICE
5 West Washington Avenue
P.O. Box 148
Washington, NJ 07882
(201) 689-7000

CENTRAL REGION—NEWARK

SUB ESSEX-ORANGE DISTRICT OFFICE
240 South Harrison Street
East Orange, NJ 07018
(201) 414-4200

NEWARK CENTRAL DISTRICT OFFICE
1100 Raymond Boulevard,
Room 305
Newark, NJ 07102
(201) 648-4200

NEWARK WEST DISTRICT OFFICE
1180 Raymond Boulevard,
Room 1522
Newark, NJ 07102
(201) 648-2960

**NEWARK NORTH/EAST
DISTRICT OFFICE**
1180 Raymond Boulevard,
9th Floor
Newark, NJ 07102
(201) 648-6150

NEWARK SOUTH DISTRICT OFFICE
1100 Raymond Boulevard,
Room 101-C
Newark, NJ 07102
(201) 648-2400

PLAINFIELD DISTRICT OFFICE
700 Park Avenue
3rd Floor
Plainfield, NJ 07060
(201) 499-5825

UNION DISTRICT OFFICE
208 Commerce Place,
2nd and 3rd Floors
Elizabeth, NJ 07201
(201) 820-3000

**SUB ESSEX-MAPLEWOOD
DISTRICT OFFICE**
2040 Millburn Avenue
Maplewood, NJ 07040
(201) 761-7127

CENTRAL REGION—PRINCETON

HUNTERDON DISTRICT OFFICE
84 Park Avenue, 2nd Floor
Flemington, NJ 08822
(201) 782-8784

MERCER DISTRICT OFFICE
Princess Road
Building 9F
Lawrenceville, NJ 08648
(609) 895-0400

EDISON DISTRICT OFFICE
100 Metroplex Drive
Suite 400
Edison, NJ 08817
(201) 819-7003

MIDDLETOWN DISTRICT OFFICE
225 Highway #35
Red Bank, NJ 07701
(201) 747-7655

HOWELL DISTRICT OFFICE
220 Route 9, Suite 100
Howell, NJ 07731
(201) 577-9210

LONG BRANCH DISTRICT OFFICE
1 Main Street, 1st Floor
Eatontown, NJ 07724
(201) 389-2700

PERTH AMBOY DISTRICT OFFICE

275 Hobart Street, 2nd Floor
Perth Amboy, NJ 08861
(201) 324-1700

EAST BRUNSWICK DISTRICT OFFICE

105 Old Matawan Road
Old Bridge, NJ 08857
(201) 390-2100
(4/12—for 6 months)

ASBURY PARK DISTRICT OFFICE

601 Bangs Avenue
2nd, 3rd & 4th Floors
Asbury Park, NJ 07712
(201) 988-2161

OCEAN DISTRICT OFFICE

954 Route 166
Toms River, NJ 08876
(201) 244-4300

SOMERSET DISTRICT OFFICE

75 Franklin Street
Suite 202
Somerville, NJ 08876
(201) 722-2224

SOUTHERN REGION

ATLANTIC DISTRICT OFFICE

10-14 South New York Avenue
Atlantic City, NJ 08401
(609) 441-3232

BURLINGTON DISTRICT OFFICE

50 Rancocas Road
Mt. Holly, NJ 08060
(609) 267-7550

NORTH CAMDEN DISTRICT OFFICE

808 Market Street
P.O. Box 738
Camden, NJ 08101
(609) 757-2700

SOUTH CAMDEN DISTRICT OFFICE

2 Echelon Plaza
Laurel Road
Suite 210
Voorhees, NJ 08033
(609) 757-2903, 2911, 2921, 2924

SALEM DISTRICT OFFICE

Five Woodstown Road
Salem, NJ 08079
(609) 935-6350

CAMDEN ADOLESCENT SERVICES DO

518 Market Street—Lower Level
Camden, NJ 08101
(609) 757-4603

CAPE MAY DISTRICT OFFICE

Route 47 and 9
Social Services Building
P.O. Box 222
Rio Grande, NJ 08242
(609) 886-1105

CUMBERLAND DISTRICT OFFICE

106 West Landis Avenue
Vineland, NJ 08360
(609) 696-6590

GLOUCESTER DISTRICT OFFICE

251 North Delsea Drive
Suite 100
Deptford, NJ 08096
(609) 848-6604

[(g)](f) Division of Medical Assistance and Health Services: The Division of Medical Assistance and Health Services, which is a division of the New Jersey Department of Human Services, administers the following programs:

1. (No change.)
2. Medicaid program: This program provides purchase of medical care and services rendered to eligible persons.
 - i. Eligibility requirements: To be eligible for Medicaid, an individual must qualify for SSI [(see section 2 of this subchapter)] or for the AFDC, RRP, [CHEP,] or Medicaid Only program. Children under the care of the Division of Youth and Family Services are also eligible for Medicaid benefits.
 - ii. How to apply: Application and inquiry for the AFDC, RRP, [CHEP,] or Medicaid Only programs should be directed to the county welfare agency. Information regarding the SSI program may be obtained from the SSA district office. General information about the Medicaid program is available from the Medicaid District Offices.

Recodify existing (h) through (j) as (g) through (i) (No change in text.)

[10:85-8.5] (j) Division of Mental Health and Hospitals: [(a)] This State agency, which is a division of the New Jersey Department of Human Services, operates four psychiatric hospitals, a child residential treatment center, and an adult diagnostic and treatment center[.].

- 1.-2. (No change.)

3. How to make inquiry: Inquiry regarding type and/or cost of services (if any) may be obtained by directly contacting the appropriate institution. The locations and telephone numbers of the Division's facilities are as follows:

- i. Trenton Psychiatric Hospital, P.O. Box 7500, West Trenton, New Jersey 08628, telephone [396-8261] 633-1500, area code 609;
- ii. (No change.)
- iii. Marlboro [Psychiatric] State Hospital, Station A, Marlboro, New Jersey 07746, telephone 946-8100, area code 201;
- iv. Ancora Psychiatric Hospital, [P.O. Ancora Branch] Spring Garden Road, Hammontown, New Jersey 08037, telephone 561-1700, area code 609;
- v. Arthur Brisbane Child Treatment Center, [Allaire] [(P.O. Box 625, Farmingdale)], New Jersey 07727, telephone 938-5061, area code 201;
- vi. Adult Diagnostic and Treatment Center, 8 Production Way, Avenel, New Jersey 07001, telephone 5[47]74-2250, area code 201.

[(b)](k) **Division of Developmental Disabilities:** The Division of [Mental Retardation] **Developmental Disabilities**, which is a component of the New Jersey Department of Human Services, administers the programs and services [described in paragraph 1 of this subsection:] from regional offices throughout the State.

1. Services available: Specific functional services provided by Field Services of the Division of [Mental Retardation] **Developmental Disabilities** include:

- i.-ii. (No change.)
- iii. Day training for [children over 4½ years] **persons 21 years and younger and adult training programs for persons over age 21** who need a daytime program in training and adjustment;
- iv. (No change.)
- v. Guardianship, a protective service for adults **and eligible orphaned or abandoned children** who have been evaluated as "mentally deficient" and do not have a legal guardian;
- vi. Residential care through purchase of care in a private facility, admission to a State school or guest placement[.]; **and**
- vii. **Foster Grandparent Program, to provide personal care, education and training, and companionship to mentally retarded persons 21 and under (a similar program is available for mentally retarded persons who are 22 and over).**

2.-3. (No change.)

10:85-[8.6 and 8.7] **8.5 and 8.6** (No change in text.)

10:85-11.1 Acronyms

The acronyms used in this manual are as follows:

"AFDC" means [aid to families with dependent children] **Aid to Families with Dependent Children.**

"ALJ" means **Administrative Law Judge.**

"ATP" means authorization to purchase (food stamps); [form] (Form FSP-90[3]6).

["BLO/ISS" means Bureau of Local Operations, Institutional Services Section.]

["CETA" means Comprehensive Employment Training Act.]

["CRA" means Cuban refugee assistance.]

"CWA" means county welfare agency.

"DARM" means **Division of Archives and Records Management.**

"DDD" means **Division of Developmental Disabilities.**

"DDRS" means **Disability Determination Review Section.**

"DEA" means **Division of Economic Assistance.**

"DEA/BARA" means **Bureau of Administrative Review and Appeals, Division of Economic Assistance.**

"DEA/BBS" means **Bureau of Business Services, Division of Economic Assistance.**

"DEA/GAP Unit" means **General Assistance Program Unit, Division of Economic Assistance.**

"DEA/BMS" means **Bureau of Management Services, Division of Economic Assistance.**

"DEA/BQC" means **Bureau of Quality Control, Division of Economic Assistance.**

"DES" means **Division of Employment Security.**

"DHS" means **Department of Human Services.**

"DIB" means **disability insurance benefits.**

"DMHH" means **Division of Mental Health and Hospitals.**

["DPW" means Division of Public Welfare.
 "DPW/BARA" means Bureau of Administrative Review and Appeal, Division of Public Welfare.
 "DPW/BBS" means Bureau of Business Services, Division of Public Welfare.
 "DPW/BLO" means Bureau of Local Operations, Division of Public Welfare.
 "DPW/BMA" means Bureau of Medical Affairs, Division of Public Welfare.
 "DPW/BMS" means Bureau of Management Services, Division of Public Welfare.
 "DPW/BQC" means Bureau of Quality Control, Division of Public Welfare.]
 "DVRs" means Division of Vocational and Rehabilitation Services.
 "DYFS" means Division of Youth and Family Services.
 "EA" means **Emergency Assistance**.
 "EPSDT" means early periodic screening diagnosis and treatment.
 "ES/GAEP" means **Employment Service/General Assistance Employability Program**.
 "FNS" means Food and Nutrition Service, United States Department of Agriculture.
 "FSP" means food stamp program.
 "GA" means general assistance.
 "GAP Unit" means **General Assistance Program Unit**.
 "IM" means income maintenance (county welfare agency programs).
 "INS" means Immigration and Naturalization Service, United States Department of State.
 ["IRP" means Indochinese refugee program.]
 "IRS" means Internal Revenue Service, United States Department of the Treasury.
 "LAB" means **Local Assistance Board**.
 "LRR" means legally responsible relative.
 "MA" means medical assistance (Medicaid).
 ["MAA" means medical assistance for the aged.]
 "MDTA" means Manpower Development and Training Act.
 ["MRT" means medical review team, Bureau of Medical Affairs.]
 "MWD" means municipal welfare department.
 "MWSA" means **Municipal Worksite Agreement**.
 "NJAC" means **New Jersey Administrative Code**.
 "NJES" means **New Jersey Employment Service**.
 "NJSA" means **New Jersey Statutes Annotated**.
 "NJSES" means New Jersey State Employment Service, New Jersey Department of Labor [and Industry].
 "NPA" means nonpublic assistance.
 "OAL" means **Office of Administrative Law**.
 "PA" means public assistance.
 "PAAD" means **Pharmaceutical Assistance to the Aged and Disabled**.
 "RRP" means **Refugee Resettlement Program**.
 "RSDHI" means Retirement, Survivors, Disability and Health Insurance (social security).
 "RSVP" means retired senior volunteer program.
 "SMI" means supplemental medical insurance (Medicare part B).
 "SSA" means Social Security Administration.
 "SSA/DO" means Social Security Administration district office.
 "SSI" means supplemental security income.
 "TDB" means temporary disability benefits.
 "UIB" means unemployment insurance benefits.
 "USDA" means United States Department of Agriculture.
 "VA" means **Veterans Administration**.
 "VISTA" means Volunteers in Service to America.
 "WIC" means special supplemental food program for women, infants, and children.
 ["WIN" means work incentive program.]

10:85-11.2 Definitions

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

...
 "Aid to [families with dependent children] **Families with Dependent Children (AFDC)**" means assistance program administered by county welfare agencies for financially eligible children and parent(s), or parent person(s) where there is death, absence, or incapacity of one or both natural or adoptive parents; or when both parents are in the home and the father is unemployed or underemployed.
 "Appeal" means the process by which an individual exercises his[er] or her right to have an agency action reviewed; a local or State fair hearing.
 ...
 "Application process" means all activity performed by the municipal welfare [board] **department** prior to the official disposition of an application.
 "Authorized representative" means an individual (or agency) whom a client designates orally or in writing to act on his[er] behalf.
 ...
 ["Bonus coupons" means the portion of the food stamp coupon allotment which is in excess of the amount paid by an eligible household for such allotment (or the total coupon allotment when the household is eligible for food stamps with no purchase requirement); the amount of "free" coupons that the household receives.]
 ...
 "Deficit" means the difference between client's adjusted income and the applicable allowance standard [(form GA-19)].
 ...
 ["DPW]DEA (Division of [Public Welfare] **Economic Assistance**)" means the office, within the State Department of Human Services, which is responsible for the supervision of the [general assistance program] **General Assistance Program**.
 ...
 "Eligible unit" means the number of persons applying for assistance as a unit (see N.J.A.C. 10:85-3.1(b)1).
 "Exempt resource" means a resource which is not to be considered in computing extent of need and is not subject to required liquidation.
 ...
 "Fair hearing" means the formal procedure through which a recipient or applicant may protest the municipal welfare [board] **department's** action or inaction.
 ...
 "Household size" means the numbers of related persons living together as a family unit[, without regard to relationship by blood or marriage].
 ...
 "Medicaid" means Federal/State program administered by Division of Medical Assistance and Health Services which provides payment of claims for and evaluation of health services; eligibility is generally limited to persons who are receiving or who are eligible to receive AFDC[, CRA, IRP] or SSI.
 ["Medical assistance for the aged" means State program for eligible individuals 65 years of age or older who can normally maintain themselves and are not eligible for Medicaid, but who are in need of hospitalization, home health care or long-term care and are unable to meet such costs.]
 ...
 "Policy" means guidelines, limited by and consistent with law, which control MWD and Division of [Public Welfare] **Economic Assistance** staff in carrying out public assistance programs.
 ...
 ["Training allowance" means a payment received from WIN, MDTA, CETA, or similar vocational and/or rehabilitation program.]
 ...
 ["Work Incentive Program (WIN)" means program administered by the State Department of Labor and Industry designed to place in employment, or train for employment, appropriate recipients of the AFDC program.]

CORRECTIONS**(a)****THE COMMISSIONER****Inmate Discipline
Chronic Violator****Proposed Amendments: N.J.A.C. 10A:4-6, 6.3 and
6.4**

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

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

Proposal Number: PRN 1989-517.

Submit comments by November 15, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:4-6 modifies the title to delete reference to the Vroom Readjustment Unit, the Administrative Close Supervision Unit, and the Female Inmates at the Edna Mahan Correctional Facility for Women. Proposed amendments within the subchapter delete all references to the VRU Director, the Assistant Superintendent in charge of the Administrative Close Supervision Unit (ACSU) at East Jersey State Prison, and the Superintendent of the Edna Mahan Correctional Facility for Women and replace them with references to the "administrator in charge of the Administrative Close Supervision Unit (ACSU)." The proposed amendment to N.J.A.C. 10A:4-6.3(g) deletes references in the second and third sentences to Classification Committees at specific correctional facilities and replaces them with "The Disciplinary Hearing Officer's/Adjustment Committee's decision shall be referred to the appropriate Institutional Classification Committee (I.C.C.) for review and approval" after the first sentence. The proposed amendment to N.J.A.C. 10A:4-6.4(b) specifically identifies the Assistant Commissioner as the Assistant Commissioner, Division of Adult Institutions.

Social Impact

The proposed amendments will permit reference to be made to Administrative Close Supervision Units (ACSU) and the administrators in charge of such units without having to use the specific names of the units or the exact titles of the administrators.

Economic Impact

The proposed amendments will have no significant economic impact because no additional financial resources are necessary to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, record keeping or other compliance requirements on small businesses. The proposed amendments impact on inmates and the New Jersey Department of Corrections and have no significant effect on small businesses.

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

SUBCHAPTER 6. CHRONIC VIOLATOR [—VROOM
READJUSTMENT UNIT, THE
ADMINISTRATIVE CLOSE SUPERVISION
UNIT, AND THE FEMALE INMATES AT
THE EDNA MAHAN CORRECTIONAL
FACILITY FOR WOMEN]

10A:4-6.3 Procedures for designation of a chronic violator

(a) Disciplinary charges lodged against an inmate during the time he or she is currently serving a 30 day term for other disciplinary violations shall be given directly to the [Vroom Readjustment Unit (VRU) Director, the Assistant Superintendent in charge of the Administrative Close Supervision Unit (ACSU) at East Jersey State

Prison or the Superintendent of the Edna Mahan Correctional Facility for Women] **administrator in charge of the Administrative Close Supervision Unit (ACSU)**. A copy of each charge shall be given to the inmate within 48 hours unless there are exceptional circumstances.

(b) The [VRU Director, the Assistant Superintendent in charge of the ACSU or the Edna Mahan Correctional Facility for Women Superintendent] **administrator in charge of the Administrative Close Supervision Unit (ACSU)** shall be responsible for ordering that each charge be investigated [.] and [He or she] **the administrator** shall review each charge and investigation to personally obtain all relevant information.

(c) If after review of all the reports and personal interviews with reporting staff that is deemed necessary to clarify facts or circumstances, the [VRU Director, the Assistant Superintendent in charge of the ACSU or the Edna Mahan Correctional Facility for Women Superintendent] **administrator in charge of the Administrative Close Supervision Unit (ACSU)** concludes that the inmate would pose a serious threat to persons or to the security or orderly operation of the Unit or correctional facility if released from lockup, [he or she] **the administrator** shall schedule the case for a due process hearing before the Department's Disciplinary Hearing Officer.

(d)-(f) (No change.)

(g) If after review of all reports and testimony, the Disciplinary Hearing Officer/Adjustment Committee concludes that the inmate cannot safely be released from lockup at the expiration of [his or her] **the inmate's** 30 day term, the inmate shall be designated a chronic violator. [At VRU, the Disciplinary Hearing Officer's decision shall be referred to the Unit's Special Classification Committee for review and approval. At ACSU and at the Edna Mahan Correctional Facility for Women, the] **The Disciplinary Hearing Officer's/Adjustment Committee's** decision shall be referred to the **appropriate** Institution Classification Committee (I.C.C.) for review and approval. The inmate shall remain in Disciplinary Detention until, at a subsequent hearing, the Disciplinary Hearing Officer determines that the inmate has demonstrated that he or she will control his or her behavior and will refrain from repetitive acts of assault or destruction of property.

(h)-(i) (No change.)

10A:4-6.4 Appeal procedure

(a) (No change.)

(b) Prior to rendering a decision on the appeal, the Assistant Commissioner, **Division of Adult Institutions**, shall confer with the [VRU Director, the Assistant Superintendent in charge of the ACSU, or the Edna Mahan Correctional Facility for Women Superintendent] **administrator in charge of the Administrative Close Supervision Unit (ACSU)** concerning the inmate's conduct. Alternative means for control and treatment shall be explored and utilized, if available and feasible. The inmate shall be notified of the **decision** of the Assistant [Commissioner's decision] **Commissioner, Division of Adult Institutions**, and the reasons therefor within five working days.

INSURANCE**(b)****DIVISION OF ADMINISTRATION****Administrative Orders and Declarations****Proposed Amendment: N.J.A.C. 11:1-5.2**

Authorized By: Kenneth D. Merin, Commissioner, Department
of Insurance.

Authority: N.J.S.A. 17:1-8.1; 17:1C-6(e); 17:29C-1 et seq.;
17:37A-26.

Proposal Number: PRN 1989-548.

Submit comments by November 15, 1989 to:

Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 W. State Street
CN-325
Trenton, New Jersey 08625-0325

The agency proposal follows:

Summary

The proposed amendment makes necessary changes in the cancellation and non-renewal provisions of fire and casualty insurance policies issued by the New Jersey Insurance Underwriting Association (the "FAIR Plan"), established pursuant to N.J.S.A. 17:37A-1 et seq. The proposed amendment was recommended by the Board of Directors of the FAIR Plan so as to permit important changes in the language of the policies it issues. If adopted, the proposed amendment will provide greater flexibility to the FAIR Plan to include policy language concerning cancellation and non-renewal provisions.

The proposed amendment further will improve administration of the FAIR Plan insurance policies, and will clarify language to provide for a better understanding of the policy terms by policyholders.

Social Impact

The proposed amendment is expected to have a positive social impact in that it is designed to encourage the owners of property to maintain properties insured by the FAIR Plan in better condition; to protect insured property and the public from loss or injury resulting from the dilapidated condition of buildings; and to encourage the prompt payment of municipal taxes.

Economic Impact

The proposed amendment will impact the FAIR Plan and the owners of property it insures. It will have a positive economic impact on the FAIR Plan in that it will authorize the FAIR Plan to include policy language broadening the scope of its authority to cancel or non-renew insurance policies that demonstrate an extraordinary risk of loss. The FAIR Plan is a mechanism by which properties in distressed areas of the State are afforded full access to necessary insurance coverage, but which in the past has been subsidized by a surcharge on all property insurance policies. To the extent that losses from extra hazardous properties are reduced, the savings will reduce the surcharge paid by all policyholders.

The proposed amendment will further impact the owners of properties insured by the FAIR Plan in that they will be required to undertake reasonable loss control or risk management measures in order to maintain insurance coverage on their properties in order to continue to qualify for insurance. The kinds of measures required, for example, protecting unoccupied buildings or rental units against trespass, are not unreasonable; are consistent with many municipal property maintenance codes; and serve to protect the general public from injury occurring in unsafe properties, and to reduce the risk of conflagration.

Regulatory Flexibility Statement

The proposed amendment does not require a regulatory flexibility analysis since it does not impose any reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendment provides authority to the FAIR Plan to provide policy language and administrative procedures with respect to cancellation and non-renewal of property insurance policies. The FAIR Plan is a statutorily created insurance mechanism.

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

- 11:1-5.2 Notice of cancellation and nonrenewal of fire and casualty coverage
 - (a) (No change.)
 - 1.-3. (No change.)
 - (b) Provisions of policies to be effective on or after July 1, 1987, which are issued by any company doing business in New Jersey and provide for less than 30 days' notice of cancellation and nonrenewal shall be null and void, with the following exceptions:
 - 1.-2. (No change.)
 - 3. Provisions in New Jersey FAIR Plan policies for five days notice to the insured and [ten] **10** days notice to the mortgagee with respect to any of the following properties or in any of the following circumstances:
 - i.-iii. (No change.)
 - iv. The insured has been indicted for or convicted of arson or burning with intent to defraud, or there is evidence of incendiarism or attempt threat by the insured or representative of the insured [, absent a clear showing of special mitigating circumstances in an unusual case].

- v. Buildings which have an exceptional degree of hazard, such as fire ruins or dilapidated condition [, not contemplated by the applicable rating plans, as approved by the Commissioner].

- vi. Buildings which have any of the following conditions existing: (1)-(3) (No change.)

- (4) Failure to pay property taxes for [two years] **two quarters**.

- vii. Building with [at least 65 percent] **any** of the rental units in the building unoccupied and [at least 25 percent of said unoccupied rental units which are] left unprotected against trespass. A rental unit will be deemed to be unprotected against trespass when an entrance door to such unit or an exterior door to a hall, stairway, or other common passage leading to such unit is missing, unlocked, not capable of being locked, or otherwise unsecured, or when a door or window in such unit which is accessible to entry has not been replaced or boarded up [within two days after the insured has been notified to replace or board up the door or window]. **If the owner remedies the condition that left the unit or units unprotected against trespass and so notifies the association within the 15-day time period for appeal to the association as provided by N.J.A.C. 11:1-5.3(c), then the association shall rescind the notice of cancellation and the insurance shall continue without lapse.**

- viii.-x. (No change.)

(a)

**DIVISION OF FINANCIAL EXAMINATIONS
High-Risk Investments by Domestic Insurers
Reproposed New Rules: N.J.A.C. 11:2-24**

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, N.J.S.A. 17:1C-6 and N.J.S.A. 52:14B-1 et seq.

Proposal Number: PRN 1989-535.

Submit comments by November 15, 1989 to:
Verice M. Mason, Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
CN 325
Trenton, New Jersey 08625

The agency reproposal follows:

Summary

Pursuant to N.J.S.A. 17:24-1 et seq. and 17B:20-1 et seq., a domestic insurance company is permitted to put its capital, surplus and other funds, or any part thereof, in certain investments. Although these statutes in some cases place general quantitative limitations on the various permitted investments, there are no qualitative limitations on admitted investments of questionable quality, that is, high-risk investments.

High-risk (high yield) investments constitute a category of the insurance company investment portfolio in which there has been significant innovation and proliferation in recent years. However, there is no adequate historical record with which to project the behavior of such investments throughout different types of economic cycles. The New Jersey Department of Insurance (hereafter "Department") is concerned, therefore, that negative changes in economic conditions and other market variables could adversely affect domestic insurers having a high concentration of these investments in their portfolios.

Currently, there is no adequate monitoring system to detect insurers who may have exceeded prudent investment standards regarding the level of risk assumed on high-risk investments. Accordingly, the Department has concluded that limitations on the percentage of total admitted assets that a domestic insurer may prudently invest in, or otherwise acquire or loan upon high-risk investments are reasonable, necessary and required in order to carry out the Department's responsibilities under relevant statutory law.

Proposed new rules were published in the April 3, 1989 New Jersey Register at 21 N.J.R. 838(a) which establish a limitation in the amount of 20 percent of admitted assets on the aggregate amount of high-risk investments held by an insurer (whether it be a life/health insurer or a property/casualty insurer, or whether the insurer is domestic, foreign or alien) and a limitation of five percent of admitted assets on the non-bond

portion. Comments received by the Department regarding the proposed new rules are summarized below.

COMMENT: Many commenters who happen to be issuers of high-risk investments objected to the proposed new rules in the belief that these investments have been a reliable source of long term capital, and that if the rules are adopted the issuers will have to look elsewhere for growth capital and pay higher interest rates to attract new investors, thereby hurting the company and, ultimately, the New Jersey economy. In addition, they countered that real estate and commercial loans have much higher default rates and lower returns, than do high yield bonds.

RESPONSE: The purpose of the proposed new rules is neither to prohibit insurers from acquiring high yield investments nor to prohibit issuers from using them for their own financial objectives. Rather, it is to prevent future undue concentrations of these investments in insurers' portfolios that could undermine their solvency during an economic downturn or other unforeseeable event. Currently, there are no New Jersey domiciled insurers which approach the 20 percent limit mandated by the proposed new rules. Hence, these insurers have considerable leeway to acquire more high yield investments without violating the requirements contained in the proposed new rules.

Since high yield bonds do not have an adequate historical record with which to judge their default rates, it is not clear that they are more safe as an investment than real estate or commercial loans.

COMMENT: Several commenters focused on the proposed new rules' reference to futures and options contracts as high yield investments and agreed with the Department that certain futures and options strategies might increase price risk and create speculative elements of the type that the proposed new rules are designed to control. However, they believed many other strategies may be designed to "hedge," or manage, risk prudently. They also offered what they considered a workable definition of "hedging."

RESPONSE: The Department agrees that only those options and futures contracts that are used for speculative objectives should be considered high-risk investments, and the repropoed new rules reflect that concern.

COMMENT: A few commenters objected to the proposed new rules on the basis that the Department has no statutory authority over the investments of non-domestic insurers and that the legislature did not restrict investments in bonds. In addition, they believed the proposed new rules are contrary to N.J.S.A. 17B:20-6, which only allows the Commissioner to "impose reasonable and temporary additional restrictions" on investments and provides for a "departmental hearing" on the matter.

RESPONSE: After due consideration of the issue, the Department has eliminated the application of the proposed new rules to foreign and alien insurers, and the repropoed new rules reflect same.

Although the legislature has not restricted insurer investments in bonds regarding limits of a specific quantity, the Commissioner does have authority, indeed the responsibility, to restrict insurer investments in bonds of questionable quality in order to protect New Jersey policyholders.

N.J.S.A. 17B:20-6 is inapplicable to the proposed new rules because that provision (regarding life/health insurers) addresses the situation where temporary restrictions, in the judgment of the Commissioner, are necessary in the case of any individual insurer or insurers. These proposed new rules provide a continuing requirement for all insurers and the proposed new rules, unlike N.J.S.A. 17B:20-6, do not respond to "investment conditions generally or the financial condition or investment portfolio content of any particular insurer or insurers," but to the general economy and the inherent speculative nature of high-risk investments themselves.

COMMENT: One commenter suggested that "original cost" of futures and options would be the total initial margin and premiums paid to take positions.

RESPONSE: The Department agrees with the commenter that the original cost of future contracts would equal the total initial margin and the original cost of options would equal the premiums paid for the contracts, and the repropoed new rules reflect this fact.

COMMENT: One commenter suggested that a regulatory mechanism is already in place to guard against any perceived evil inherent in high yield investments: the Mandatory Securities Valuation Reserve (MSVR).

RESPONSE: The Department is exercising its authority over domestic insurer investments, and believes that the interests of New Jersey policyholders require an explicit limit of high-risk, high yield investments held by these insurers. Moreover, the MSVR is only applicable to life/health insurers, while the proposed new rules are applicable to both life/health and property/casualty insurers.

COMMENT: One commenter suggested that, for greater clarity in defining what is a high-risk investment, the Department should rephrase "securities of subsidiary and non-subsidiary insolvent companies" to make clear what it means by "insolvent," and that the Department should also rephrase "cash balances in depository institutions which are not federally insured" so as to make clear which depository institutions are the subject of the proposed new rules.

RESPONSE: The Department agrees with the commenter's concerns, and the repropoed new rules reflect same.

COMMENT: One commenter suggested that New Jersey's proposed rules would look at the aggregate holdings of an insurer (as opposed to investments in one entity having a limit), instead of promoting diversification.

RESPONSE: The Department is concerned with the concentration of high yield investments held by an insurer in one entity, and the repropoed new rules provide that the amount of investments held by an insurer in one entity as a percentage of an insurer's admitted assets should be limited to two percent.

COMMENT: One commenter, as did another, stated that the definition of high-risk investments contained in the proposed new rules should include only those mutual funds which have as a principal objective investment in below investment grade securities. In addition, the commenter suggested that annual identification of rating organizations acceptable to the Commissioner should be the regulatory practice, with provision for insurers to petition for others.

Also, the commenter was of the belief that requiring only one qualified rating entity to classify an investment as below investment grade (by using the conjunction "or") is the lowest common denominator and, therefore, may be too restrictive and not in the best interests of New Jersey policyholders.

Lastly, the commenter, as did others, expressed concern over defining the value of a high risk investment in terms of the greater of admissibility (admitted asset) versus carrying value. This may force an insurer to liquidate at the wrong time.

RESPONSE: The Department agrees that only those mutual funds which have a significant amount of their assets invested in below-investment grade securities should be defined as high-risk investments, and the repropoed new rules reflect that those funds which invest more than 20 percent of their assets in below-investment grade securities should come within the scope of the high-risk investment limitations contained in these repropoed new rules.

Although the Department will not identify on an annual basis those rating organizations acceptable to the Commissioner, the repropoed new rules do identify the rating organizations that will be acceptable to the Commissioner for the purposes of this subchapter.

The Department believes that the speculative nature of securities in general justifies reliance upon one agency's assessment of their credit quality.

Determining value based upon the greater of statutory value or original cost also has the intended effect of restraining an insurer from underestimating the value of a high-risk investment whose statutory asset value decreases below original cost, thereby underestimating, in the opinion of the Department, the concentration of these investments as a percentage of admitted assets. However, the Department recognizes the consequence of premature liquidation of assets and the repropoed new rules provide for the Commissioner's approval to exceed the limitations to remedy this and other kinds of situations.

COMMENT: One commenter queried why the proposed new rules placed no restrictions on stocks or equities.

This commenter also suggested, as did another commenter, that the proposed new rules do not address the ability of an insurer to invest 20 percent of its admitted assets in high risk investments issued by one entity.

The commenter also suggested, as did others, that the Department clarify the applicability of "depository institutions" and "federally insured deposits" to the proposed new rules.

The commenter, as did another, offered the suggestion that below-investment grade securities be defined as those securities not rated in the top four, instead of rated in the bottom five generically lettered rating classifications.

The commenter also objected to the catchall definition of high-risk investment in that it gives the commissioner too broad a degree of discretion to determine other high-risk investments and the term could be subject to broad interpretation.

RESPONSE: The Department proposed these new rules because it was concerned about the concentration in insurer portfolios of investments with questionable quality, and it is generally agreed that stocks or equity

securities would not be susceptible to such a determination unless they represent the securities of an insolvent company.

The Department agrees with the commenter that the proposed new rules should address (as the repropoed new rules do address) the situation where an insurer, although not violating the proposed new rules once effective, has a very high concentration of high risk investments in one entity. The repropoed rules place an investment limitation of two percent of admitted assets in one entity.

The Department has clarified the proposed new rules' applicability to cash deposits in institutions which are not Federally insured, and the repropoed new rules reflect this clarification so that only those deposits in U.S. institutions will be considered when assessing the quality of the investments.

The Department agrees that below-investment grade bonds should be defined as those securities which are not rated in the top four generic letter rating classifications of qualified agencies, and the repropoed new rules reflect this clarification.

The ability to add (or delete) certain kinds of investments to the list of high risk investments is necessary to protect New Jersey policyholders given the dynamic nature of the financial markets, and any action by the Commissioner must be carried out pursuant to the Administrative Procedures Act (see N.J.S.A. 52:14B-1 et seq.).

COMMENT: One commenter asserted that only statement value is relevant, not original cost. Reduced book value is the amount at risk, not original cost. Using original cost in the determination of value could result in the insurer being penalized twice on one write down—once for statement purposes and again in an inflated value for high-risk percentage calculations.

In addition, the commenter believed the catchall definition of "high risk" is too vague. What categories will or will not be included?

RESPONSE: The Department believes that original cost is relevant in assigning a dollar value to high risk investments for the purpose of the proposed new rules because an insurer that suffered a write down in stated value and a reduced credit quality rating would have the unintended freedom to hold even more high risk investments. However, the repropoed new rules do provide for the Commissioner's approval to exceed the limitations to remedy this and other kinds of situations.

Because the financial community is quite adept at designing new and more sophisticated financial instruments, the Department must be able to regulate these new instruments if they have speculative qualities and are not adequately secured.

COMMENT: Regarding separate account assets, one commenter suggested that the proposed rules should not apply to variable life contracts that have guaranteed elements.

RESPONSE: If the insured's high-risk investment in the separate account is guaranteed by the insurer, it follows that it too must be subject to the proposed new rules because the insurer's guarantee of return affects the value of its admitted assets. The repropoed new rules do, however, clarify that the guarantee of the separate account to which this subchapter applies relates to the guarantee of investment performance.

COMMENT: One commenter suggested that the list of high risk investments contained in the proposed new rules include only those bonds that have defaulted as to payment of principal or interest.

The commenter also suggested that "high risk investment" should not be defined to include investment-grade debt securities, whatever the financial condition of their issuers (insolvent companies included).

Lastly, the commenter stated that the term "insolvent," for the purposes of the proposed new rules, should be defined.

RESPONSE: The Department agrees that the term "defaulted bonds," for the purpose of this subchapter, means those that are delinquent as to principal, or interest, and the repropoed new rules reflect this clarification.

The Department agrees with the commenter that investment grade securities issued by insolvent companies should not fall within the scope of the proposed new rules, and the repropoed new rules reflect this clarification.

The Department agrees with the commenter that the term "insolvent" should be defined for the purposes of this subchapter, and the repropoed new rules reflect this concern.

Agency Initiated Changes

Because property/casualty insurers have a liability structure distinct from that of life/health insurers, the overall limit on high yield investments held by property/casualty insurers should be a lower ratio to admitted assets, (that is, 10 percent) than is currently provided in the proposed new rules.

In sum, the Department repropoed these new rules which establish a limitation in the amount of 20 percent of admitted assets on the aggregate amount of high-risk investments held or guaranteed by a domestic life/health insurer and a limitation of five percent of admitted assets on the non-bond portion unless the insurer obtains approval from the Commissioner to exceed such limitations. The repropoed new rules also establish a limitation in the amount of 10 percent of admitted assets on the aggregate amount of high-risk investments held by a domestic property/casualty insurer and a limitation of five percent of admitted assets on the non-bond portion, unless the insurer obtains approval from the Commissioner to exceed such limitations.

In addition, the repropoed new rules limit the amount of high-risk investments by an insurer in any one entity to two percent of admitted assets.

Also, the repropoed new rules clarify the Department's intentions with regard to the types of investments to which the repropoed new rules shall apply.

N.J.A.C. 11:2-24.1 sets forth the purpose and scope of the repropoed new rules.

N.J.A.C. 11:2-24.2 provides the definitions of terms used throughout this subchapter.

N.J.A.C. 11:2-24.3 establishes the limitations in high-risk investments for domestic life/health and property/casualty insurers.

N.J.A.C. 11:2-24.4 excludes from the provisions of this subchapter high-risk investments in separate account assets not guaranteed by the insurer.

N.J.A.C. 11:2-24.5 provides for annual certification by insurers of compliance with this subchapter.

N.J.A.C. 11:2-24.6 provides for penalties for failure to comply with the provisions of this subchapter.

Social Impact

The repropoed new rules will ensure that prudent management of high-risk investments will remain a central element of insurance company investment practices. In addition, the requirements contained in the repropoed new rules will assist the Department of Insurance in carrying out its statutory and regulatory function of protecting policyholders in this State.

Economic Impact

The procedural and substantive requirements of the repropoed new rules will not result in any significant adverse economic impact upon domestic insurers. The repropoed new rules simply require domestic insurers to limit their holdings of investments of questionable quality, despite the high-yield attractions these high-risk investments may possess. Insurers will, however, be required to annually certify to the Department that they are in compliance with the provisions of the repropoed new rules.

The Department does not expect to incur any significant additional expense as a result of the repropoed new rules.

Regulatory Flexibility Analysis

Some domestic insurers affected by the repropoed new rules may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The reporting requirements imposed upon insurers, including small businesses, are that they file with the Department an annual certification of compliance with the repropoed new rules. The compliance requirements are, essentially, that the imposed limits on high-risk investment be honored. None of the requirements is expected to cause insureds or small businesses to incur capital costs or retain professional services. To provide for uniform and consistent applicability, and to avoid granting any advantage to domestic insurers who are small businesses, no differential treatment is accorded to them by the repropoed new rules.

Full text of the repropoal follows:

SUBCHAPTER 24. HIGH-RISK INVESTMENTS BY INSURERS

11:2-24.1 Purpose: scope

(a) The purpose of this subchapter is as follows:

1. To protect the interests of the insurance-buying public by establishing limitations on the amount of high-risk investments which an insurer can hold; and
2. To implement the insurance laws of New Jersey by regulating the acts and practices of insurers with respect to the concentration of high-risk investments.

(b) This subchapter applies to all domestic insurers subject to the insurance laws of this State.

11:2-24.2 Definitions

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

"Admitted assets" means the total amount of assets recognized on a statutory accounting basis as of the last day of the most recently concluded annual statement year. Admitted assets includes, in the case of life/health insurers, any investments in separate accounts wherein investment performance is in whole or in part guaranteed by the insurer, but excludes all other investments in the separate account.

"Aggregate amount" of high-risk investments means the aggregate value of bond and non-bond investments therein.

"Below-investment grade bond" means that the investment has been determined not to be in one of the top four generic lettered rating classifications by a securities rating agency listed in this section, or that the investment has been identified in writing by such a rating agency to be of below-investment grade quality, or that the investment has been determined to be below-investment grade (as indicated by a "no*" or "no**" rating) by the Securities Valuation Office of the National Association of Insurance Commissioners.

"Below-investment grade short-term obligation" means that the short-term investment has been determined to be in the bottom category of rating classification for short-term investments (excluding a classification for default) by a securities rating agency listed in this section or has been identified in writing by such a rating agency to be of below-investment grade quality.

"Commissioner" means the New Jersey Commissioner of the Department of Insurance.

"High-risk investment" means an admitted investment in the following types of assets:

1. Below-investment grade bonds and shares in mutual funds that invest more than 20 percent of their assets in below-investment grade bonds;
2. Below-investment grade short-term obligations and shares in money market mutual funds that invest more than 20 percent of their assets in below-investment grade short-term obligations;
3. Bonds in default as to the payment of principal or interest;
4. Insurers' stock and debt investments in insolvent subsidiaries and stock investments in insolvent nonsubsidiary companies;
5. Cash balances in the United States which are maintained at depository institutions which are not Federally insured;
6. Receivers' certificates;
7. Options and futures contracts not specifically used for hedging purposes as defined by the rules of the United States Commodities Futures Trading Commission; and
8. Any other invested assets determined by the Commissioner by rule to be inadequately secured and to have investment qualities and characteristics wherein the speculative elements are significant.

"Insolvent" means, in the case of subsidiaries, negative net worth and, in the case of nonsubsidiaries, that so designated by a court of competent jurisdiction.

"Insurer" means a domestic insurance company authorized to transact the business of insurance in this State.

"Securities rating agency" means:

1. Standard & Poor's; and
2. Moody's.

"Value" of high-risk bond and non-bond investments means the greater of either:

1. The value of such investments recognized on a statutory accounting basis, excluding the value of separate account assets wherein investment performance is not guaranteed in whole or in part by the insurer in the case of life/health insurers, as of the last day of the most recently concluded annual statement year; or
2. The original cost of such investments, provided that the original cost of futures and options contracts subject to the provisions of this subchapter equals the total initial margin and premiums, respectively, paid to take a position in such contracts.

11:2-24.3 High-risk investment limitations

(a) The aggregate amount of high-risk investments held or guaranteed in whole or in part by an insurer subject to Title 17B of the Revised Statutes is not to exceed 20 percent of its admitted assets and the non-bond portion of high-risk investments held or guaranteed in whole or in part by the insurer is not to exceed five percent of its admitted assets unless approved by the Commissioner.

(b) The aggregate amount of high-risk investments held by an insurer subject to Title 17 of the Revised Statutes is not to exceed 10 percent of its admitted assets and the non-bond portion of high-risk investments held by the insurer is not to exceed five percent of its admitted assets, unless approved by the Commissioner.

(c) The aggregate amount of high-risk investments held or guaranteed in whole or in part by an insurer subject to Titles 17 or 17B of the Revised Statutes in any one entity is not to exceed two percent of its admitted assets.

(d) An insurer who has been authorized or admitted to do business in this State prior to, on or after the effective date of this subchapter, and who already exceeds the limitations contained in this section, shall within three years from the effective date, or within a reasonable time not to exceed five years if approved by the Commissioner for good cause, comply with such investment limitations, except that during the applicable period the insurer shall not invest its funds in, or otherwise acquire or loan upon, directly or indirectly, any new high-risk investments unless within the limitations set forth in this section; provided, however, that newly formed domestic insurers authorized to do business in this State more than two years after the effective date of this subchapter shall comply with such limitations immediately upon receiving such authorization.

11:2-24.4 Separate account assets excluded

This subchapter does not apply to high-risk investments made for separate accounts established pursuant to N.J.S.A. 17B:28-1 et seq., unless the investment performance of such investments is guaranteed in whole or in part by the insurer.

11:2-24.5 Annual certification

Concurrent with the annual statement filing required by N.J.S.A. 17:23-1 and N.J.S.A. 17B:21-1, each insurer shall file a certification with, and on a form provided by, the Department that the insurer is in compliance with this subchapter.

11:2-24.6 Penalties

Failure to comply with this subchapter may result in the imposition of sanctions by the Department including, but not limited to, sanctions pursuant to N.J.S.A. 17:33-2 and N.J.S.A. 17B:21-2.

(a)

OFFICE OF THE COMMISSIONER

Automobile Insurance Coverage Selection Form

Proposed Amendments: N.J.A.C. 11:3-15.3, 15.5 and 15.7

Proposed Repeal: N.J.A.C. 11:3-15.8

Proposed New Rule: N.J.A.C. 11:3-15.9

Proposed Recodification: N.J.A.C. 11:3-15.9 and 15.10

Authorized By: Kenneth D. Merin, Commissioner, Department of Insurance.

Authority: N.J.S.A. 39:6A-23; 17:1C-6(e) and P.L. 1988 c.119.

Proposal Number: PRN 1989-536.

Submit comments by November 15, 1989 to:

Verice M. Mason
Assistant Commissioner
Department of Insurance
Division of Legislative and Regulatory Affairs
CN 325
20 West State Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

N.J.S.A. 39:6A-23, as amended by P.L. 1988, c.119 (effective January 1, 1989), provides that no new automobile insurance policy can be issued unless the application for a policy is accompanied by a written notice identifying and containing a Buyer's Guide and Coverage Selection Form. The Buyer's Guide must contain a brief description of all available policy coverages and benefit limits, and identify the coverages which are mandatory and which are optional under State law, together with all options offered by the insurer. The statute also requires that the Commissioner of Insurance promulgate standards for the written notice and Buyer's Guide required to be provided. The Department adopted new rules and amendments to implement this statutory mandate, effective February 21, 1989.

Prior to the enactment of P.L. 1988, c.119, and since 1984, written notice identifying and containing a Buyer's Guide and Coverage Selection Form had been required. However, since P.L. 1988, c.119 makes significant changes to the private passenger automobile insurance laws concerning coverages, options and rate credits, the written notice, including the Buyer's Guide and Coverage Selection Form, was substantially amended. The Commissioner recognizes that the current (amended) Coverage Selection Form and certain related rules in the New Jersey Administrative Code need to be amended and updated to recognize that many auto insurance policyholders now are renewing for a second time under the new policy, with the "lawsuit threshold," \$500.00 basic comprehensive and collision deductibles, and other reforms. For six-month policyholders the transition period is already over, and, by the end of December 1989, all policyholders will have gone through the transition.

The proposed amendments, new rule and repeal generally address six issues in the manner noted below:

1. The requirement for the Transmittal Letter (N.J.A.C. 11:3-15.5(c)) is proposed for deletion effective December 31, 1989, consistent with the terms of the current rule.

2. The wording of the "Lawsuit Threshold" question on the Coverage Selection Form is proposed for amendment to better achieve the statutory purpose of providing the insured with necessary information from which to make an informed judgment. Accordingly, the proposed amendment to N.J.A.C. 11:3-15.7(h)2 and (j) will assure the accuracy of the calculations by insurers and JUA servicing carriers and the uniformity of the calculations among them. The proposed amendment provides more needed detail.

3. The premium rate credit on the comprehensive and collision ("physical damage") deductibles is proposed for deletion from the Form (see N.J.A.C. 11:3-15.7(h)6 and 7). This is because those deductible choices, like liability coverage choices, are too numerous to provide rate credits for each and every choice without destroying the basic purpose of the Form—to transmit information in an understandable manner for the average consumer. The law does not mandate rate credits for each and every possible option, and the Appellate Division's opinion in *Emmer v. Merin* (Docket No. A-2661-88T1F, Decided June 7, 1989) supports the Commissioner's authority to be selective in his presentation of information as long as he is consistent with the purpose of the law.

During the transition year, there was an obvious rate credit which should have been shown—comparing the "new" basic \$500.00 deductibles with the "old" basic \$200.00 collision and \$100.00 comprehensive deductibles. For second time renewals, however, there is no such obvious basis for comparison unless one compared each and every option against the basic \$500.00 deductible. The Commissioner believes that to do so would be confusing to the consumer and would make the form needlessly long.

4. N.J.A.C. 11:3-15.8 is proposed for repeal to delete reference to the Transmittal Letter and related requirements (see paragraph 1 above).

5. Proposed new rule N.J.A.C. 11:3-15.9 addresses the requirements concerning the use of the Coverage Selection Form. The current rule appears to go beyond the statutory mandate by requiring the use of a signed Coverage Selection Form for all coverage changes (see N.J.A.C. 11:3-15.5(b)). Under the proposed new rule, a signed Coverage Selection Form is necessary only to effect a new policy or for certain coverage changes upon renewal. Additionally, the new rule enables an insurance company or NJAFIUA servicing carrier to require the receipt of a signed Coverage Selection Form for all coverage changes upon renewal. As part of this new rule, insurance companies and NJAFIUA servicing carriers are required to provide to consumers a clear and simple notice concerning the proper use of the Coverage Selection Form.

6. The definition of "insurance company" is clarified to include the NJAFIUA in accordance with law and present practice.

Social Impact

The social impact of the proposed amendments and new rule will be to provide the public with the updated and necessary information identified in the Summary of this Notice. In doing so, the Department will be fulfilling its mandate under the law.

Insurance companies and NJAFIUA servicing carriers will be providing to their policyholders and prospective policyholders accurate, current information, thus decreasing the incidences of consumer confusion and misunderstanding ultimately manifested by telephone calls and letters to the company and its agents or the servicing carrier. The proposed amendments and new rule concerning the "Lawsuit Threshold" question and the use of the Coverage Selection Form should greatly clarify for insurance companies and NJAFIUA servicing carriers their current obligations.

The proposed new rule concerning the use of the Coverage Selection Form will provide the consumer with clarificatory information on how to make coverage changes.

There will be no social impact upon the Department of Insurance.

Economic Impact

The economic impact on insurance companies and NJAFIUA servicing carriers will be the result of the requirement to amend the current Coverage Selection Form at their cost.

Costs associated with preparing and using the Transmittal Letter will disappear since this form will no longer be necessary.

To the extent that the proposed amendments and new rule provide the consumer with accurate current information, they will be more able to make informed choices about how to spend their insurance dollars.

There will be no economic impact on the Department of Insurance.

Regulatory Flexibility Analysis

The proposed amendments and new rule will affect insurers authorized to write private passenger automobile coverage in New Jersey and NJAFIUA servicing carriers. It is the Department's belief that most, if not all, such insurers or servicing carriers are not "small businesses" as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, it is possible that some such insurers and servicing carriers are small businesses, as so defined, and, accordingly, a regulatory flexibility analysis is provided below (see N.J.S.A. 52:14B-19).

The reporting, recordkeeping and other compliance requirements being proposed are essentially those as are identified in the proposed rules and amendments. Since all insurance companies authorized to sell private passenger automobile coverage in New Jersey and NJAFIUA servicing carriers already are required to prepare and transmit to policyholders and applicants a Coverage Selection Form, professional services other than those already utilized will likely not be required. These services include those of a professional printer.

The initial capital costs should be less than the previous Coverage Selection Form since the Form need only be modified. Annual costs of compliance are not a relevant factor since the currently proposed changes need only be made initially.

The proposed new rules are applicable to all insurers authorized to sell private passenger automobile insurance and JUA servicing carriers, without exception based on size or any other characteristic, since the statutory provision being implemented requires universal application.

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

11:3-15.3 Definition

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

"Insurance company" means any person, corporation, association, partnership, company and any other legal entity issuing a contract of insurance, **including the New Jersey Automobile Full Insurance Underwriting Association (NJAFIUA).**

11:3-15.5 Content of written notice

(a) (No change.)

(b) The written notice shall include the Coverage Selection Form as it appears in this subchapter. [An insurance company shall effect coverage changes pursuant to this subchapter only upon receipt of an original signed Coverage Selection Form.]

[(c) For a limited period of time, and for policy renewals only, the written notice shall include the Transmittal Letter as it appears in this subchapter. The Transmittal Letter shall accompany six-month policy renewals issued January 1, 1989 through June 30, 1989, and one-year policy renewals issued January 1, 1989 through December 31, 1989. The Transmittal Letter shall not be included thereafter.]

11:3-15.7 Minimum standards for Coverage Selection Form

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

(f) The Coverage Selection Form shall include the range of premium rate differences as indicated by this subchapter. Each insurance company or NJAFIUA servicing carrier shall determine the numbers for use in these sections. **When the numbers on the Coverage Selection Form change for any reason, including, but not limited to, rate changes, a new Coverage Selection Form with the current numbers shall be printed.**

(g) (No change.)

(h) The text of the Coverage Selection Form follows:

2. Lawsuit Threshold

Do you accept the basic limit on the right to sue if injured in an auto accident?

Yes. I want the Lawsuit Threshold.

No. I want No Threshold. My bodily injury liability premium will be _____% to _____% higher if I select the No Threshold option, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium will be \$_____ to \$_____ higher on each _____ renewal of my policy if I select the No Threshold option. I understand that I can contact my company or my insurance producer for specific details.

[The additional cost of the No Threshold option is determined by calculating the No Threshold rate as a percentage increase relative to the comparable (verbal) Lawsuit Threshold rate. For example, if the Lawsuit Threshold rate is \$52 and the No Threshold rate is \$112, then the percentage increase for the No Threshold option is 115% and the dollar increase is \$60.]

(Note: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual".)

Note: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

6. Do you choose "collision" coverage?

No. I do not wish to be covered for collision damage.

Yes, with the basic \$500 deductible. [This premium is _____% to _____% lower than the collision premium with the \$200 deductible, which was the basic deductible under prior law.]

7. Do you choose "comprehensive" coverage? (Note: If appropriate, use the term "other than collision" coverage throughout this section.)

No. I do not wish to be covered for comprehensive damage.

Yes, with the basic \$500 deductible. [This premium is _____% to _____% lower than the comprehensive premium with the \$100 deductible, which was the basic deductible under prior law.]

(i) (No change.)

[(j) Insurers shall be required to calculate the percentage and dollar change in premium arising from the selection of the No Threshold option in the following manner:

1. The Percentage Change Calculation: The percentage increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by calculating the No Threshold rate as a percentage increase relative to the comparable (verbal) Lawsuit Limit rate. The low end of the percentage range shall be produced by calculating the percentage increase in the bodily injury liability premium of a policy with a \$500,000 split or single limit when the motorist goes from the (verbal) Lawsuit Threshold option to the No Threshold option. The high end of the percentage range shall be produced by making the same calculation using a policy with basic limits. In both calculations, Territory 1 rates shall be used.

2. The Dollar Change Calculation: The dollar increase in the bodily injury liability premium arising from the selection of the No

Threshold option shall be determined by subtracting the (verbal) Lawsuit Limit rate from the comparable No Threshold rate. The range shall be produced by calculating the dollar change at basic limits for that territory with the lowest basic limit (verbal) Lawsuit Threshold rate. In addition, the dollar change for a \$500,000 split or single limit policy also is to be determined for whatever territory has the highest basic limit (verbal) Lawsuit Threshold rate. These two figures will be the low and the high end of the dollar range, respectively. Because the range of the possible additional dollar cost will depend upon both territory and bodily injury liability loss limits, insurers shall be permitted to use round numbers to represent the approximate range of the cost increase. For example, if the smallest rate increase was \$56 and the largest \$305, the insurer may use the range \$50 to \$300 on its Coverage Selection Form.]

(j) Insurance companies and NJAFIUA servicing carriers shall be required to calculate the percentage and dollar change in premium (or rate) arising from the selection of the No Threshold option as indicated in (j)1 through 4 below. In these calculations, premium (or rate) shall include any expense fee, but shall not include any policy constant or RMEC.

1. The Percentage Change Calculation: The percentage increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by calculating the No Threshold rate as a percentage increase relative to the comparable Lawsuit Threshold rate. The low end of the percentage range shall be produced by calculating the percentage increase in the bodily injury liability premium of a policy with a \$250,000/\$500,000 split limit or a \$500,000 single limit when the motorist goes from the Lawsuit Threshold option to the No Threshold option. This calculation shall be made for the territory with the highest basic limit Lawsuit Threshold rate, and shall assume business usage by a youthful, unmarried male principal operator. The high end of the percentage range shall be produced by making the same type of calculation using a policy with basic limits for the territory with the lowest basic limit Lawsuit Threshold rate, and shall assume personal usage by an age 30-64, married male principal operator.

2. The Dollar Change Calculation: The dollar increase in the bodily injury liability premium arising from the selection of the No Threshold option shall be determined by subtracting the Lawsuit Threshold rate from the comparable No Threshold rate. The low end of the dollar range shall be produced by calculating the dollar change using a policy with basic limits for the territory with the lowest basic limit Lawsuit Threshold rate, and shall assume personal usage by an age 30-64, married male principal operator. The high end of the dollar range shall be calculated using a \$250,000/\$500,000 split limit or a \$500,000 single limit policy for the territory with the highest basic limit (verbal) Lawsuit Threshold rate, and shall assume business usage by a youthful, unmarried male principal operator. Because the range of the possible additional dollar cost will depend upon territory, bodily injury liability loss limits, and other factors, insurers shall be permitted to use round numbers to represent the approximate range of the cost increase. For example, if the smallest dollar rate increase was \$56.00 and the largest \$305.00, the insurer may use the range \$50.00 to \$310.00 on its Coverage Selection Form.

3. Premium Basis for Single Limit Liability Coverage: For single limit liability coverage, the percentage range and dollar range calculations that are described above shall be based upon the applicable bodily injury liability rate. These calculations shall not be made on the basis of a combined rate containing a charge for bodily injury liability, personal injury protection (PIP), and property damage liability.

4. Insurance companies and NJAFIUA servicing carriers shall submit to the Division of Public Affairs, New Jersey Department of Insurance, CN 325, Trenton, New Jersey 08625, within seven days of its first use, a copy of the Coverage Selection Form prepared pursuant to this subsection together with:

i. An example showing the calculation of the high and low values for the percentage and dollar change ranges;

ii. Data about the insurance company's territorial rates to confirm that the highest and lowest basic limit Lawsuit Threshold rates have been used in the example. The filing of a rating page showing a list of basic limit rates by territory shall be sufficient;

iii. Data about the insurance company's increased limits liability rating, vehicle usage, and type of driver factors to confirm that the proper relativities have been used in the example. The filing of the appropriate rating pages shall be sufficient; and

iv. For those insurance companies offering only single limit liability coverage, an explanation of the procedure used to develop the bodily injury liability rate from which the percentage and dollar change amounts have been determined. This explanation shall include an example of the calculation methodology.

(k) (No change.)

11:3-15.8 [Minimum standards for Transmittal Letter] (Reserved)

(a) The purpose of the Transmittal Letter is to alert policyholders to two major policy changes which will occur upon renewal: the new tort threshold options, and the basic \$500.00 collision and comprehensive deductibles. The Transmittal Letter is not intended to be a substitute for the Buyer's Guide, but is intended to call the public's attention to the Buyer's Guide.

(b) The text material contained in (e) below shall be included in the Transmittal Letter in its entirety. In addition, an insurance company or NJAFIUA servicing carrier may include its name and may, provided that the additional information enhances the purpose of the Transmittal Letter as stated in (a) above, provide more information regarding:

1. The new tort threshold;
2. Collision or comprehensive deductibles; and/or
3. Other policy changes occurring upon renewal.

(c) The Transmittal Letter shall be a separate document.

(d) The Transmittal Letter type size shall be at least 12 point.

(e) The text of the Transmittal Letter follows:

SPECIAL NOTICE:

Major changes are being made in your policy as it renews in 1989.

Please review the changes now and decide what you want your policy to cover.

If you do not act now, your policy will change automatically as required by the New Jersey law enacted in September, 1988.

Please read the New Jersey Auto Insurance Buyer's Guide and complete, sign and return the Coverage Selection Form.

Pay special attention to Item 2, the Lawsuit Threshold.

There are new threshold options which determine when a lawsuit seeking damages for pain and suffering may be filed by you, your spouse or children living with you who are not covered by name by another auto insurance policy.

The right to sue will no longer be based on the amount of the injured party's medical bills. Upon prior law, your choice was between a \$200 medical expense threshold or a \$1,950 "higher" threshold. Under the new law, the options available to you are different.

The Buyer's Guide explains the new threshold options. Please make your choice by completing Item 2. Otherwise, the law will automatically assign to you the Lawsuit Threshold.

Also, if you carry collision or comprehensive (also known as "other than collision" coverage), pay special attention to Items 6 and 7. The "basic" deductibles are now \$500 for both collision and comprehensive coverages, instead of the previous \$200 deductible for collision and \$100 for comprehensive.

Please complete items 6 and 7. Otherwise, if you had small deductibles previously, they will by law become \$500 deductibles automatically when your policy renews.

Please return the completed form as soon as possible.

(f) The text of the Transmittal Letter may be modified to use the words "comprehensive" or "other than collision", as appropriate.

(g) The insurance company or NJAFIUA servicing carrier may, at its discretion, send an abbreviated Transmittal Letter without reference to collision and comprehensive coverages to its renewals which do not carry those coverages.]

11:3-15.9 Use of Coverage Selection Form

(a) For all new policies, an NJAFIUA servicing carrier, an insurance company or an insurance producer with the company's binding authority shall receive a signed Coverage Selection Form indicating the prospec-

tive insured's coverage choices. Coverage shall not become effective until the signed Coverage Selection Form is received from the insured.

(b) For all policy renewals, the insurance company or NJAFIUA servicing carrier shall provide its Coverage Selection Form to the insured with the notice of renewal. Coverage may be renewed with or without the signed Coverage Selection Form from the insured in accordance with the requirements of (b)1i through iv below.

1. An insurance company or NJAFIUA servicing carrier may require the receipt of a signed Coverage Selection Form for any coverage change; provided, however, that an insurance company or NJAFIUA servicing carrier shall require the receipt of a signed Coverage Selection Form before effecting any of the following coverage changes:

- i. The election of the "No Threshold" option;
- ii. Changing from the "No Threshold" option to the "Lawsuit Threshold" option;
- iii. Where the insured desires collision or comprehensive deductibles other than \$500.00; or
- iv. Where the insured desires to change to the \$500.00 deductible for collision or comprehensive coverage.

(c) With every notice of renewal, an insurance company or NJAFIUA servicing carrier shall provide to an insured a clear and simple notice explaining the use of the Coverage Selection Form consistent with the requirements of this section.

Recodify N.J.A.C. 11:3-15.9 and 15.10 as 15.10 and 15.11 (No change in text.)

LABOR

(a)

DIVISION OF WORKPLACE STANDARDS

Boilers, Pressure Vessels and Refrigeration

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

12:90

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

Authority: N.J.S.A. 34:1-20, 34:1-47, 34:1A-3(e) and 34:7-18.

Proposal Number: PRN 1989-537.

Submit comments by November 15, 1989 to:

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

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:90 will expire on December 17, 1989. The Department of Labor has reviewed the rules proposed for readoption, and has determined them to be necessary, reasonable and proper for setting forth standards for the licensing and operation of boilers, pressure vessels and refrigeration units. The Department proposes that the existing chapter be readopted with some technical changes.

The chapter was originally filed and became effective prior to September 1, 1969. Amendments were filed and became effective March 11, 1976. Chapter 90 was repealed and a new Chapter 90 adopted effective December 17, 1984. Subsequent amendments were made at the subchapter and section levels.

The chapter provides an indispensable set of standards governing the licensing of engineers and the protection of life and property in the use of boilers, pressure vessels and refrigeration units. Some technical changes in terminology have been made in an effort to more accurately describe current equipment and procedures. Likewise, references to certain codes have been updated to make citations accurate. The chapter consists of eight subchapters.

Subchapter 1 sets forth general provisions, including the purpose and scope. Subchapter 2 provides the definitions used throughout the chapter.

Subchapter 3, Administration, addresses such topics as licenses for boilers, power generating plants, and refrigeration systems, and outlines the duties of licensed persons.

Subchapter 4 concerns various types of boilers, and discusses their inspection and registration.

Subchapter 5 addresses unfired pressure vessels, their design, criteria, inspection and registration.

Subchapter 6 discusses refrigeration systems. Subchapter 7 addresses the licensing of operating engineers and firemen. Subchapter 8 lists the standards and publications referred to in the chapter.

Social Impact

The proposed readoption will enable the Department to continue to help protect the lives of those who operate and are affected by boilers, pressure vessels and refrigeration units. By maintaining strict licensing and enforcement procedures, the Department can help eliminate accidents caused by human error and equipment failure.

Economic Impact

The Department does not foresee any significant economic impact on employers or the general public as a result of this proposed readoption. Individuals who require licenses will have to pay a license fee, but such fees are minimal. Additionally, operators and owners of equipment will experience some costs in maintaining the equipment in accordance with the standards established by the Department, but these costs are necessary to insure that the equipment is safe for operation.

The Department will experience some economic impact as a result of the licensing procedures set forth in the proposed readoption, but these costs are expected to be absorbed by the existing budget.

Regulatory Flexibility Analysis

The proposed readoption imposes some reporting, recordkeeping and compliance requirements on businesses, some of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Department feels that it is necessary to apply these safety standards to all boiler, pressure vessel and refrigeration unit operators and owners, as it is imperative to impose and enforce uniform standards. The compliance, recordkeeping and reporting requirements will not impose an undue burden on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:90.

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

12:90-2.1 Definitions

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

... **“Examiner” means an individual identified as a member of the examining board pursuant to N.J.S.A. 34:1-38.1.**

... **“Fireman” means a boiler operator.**

... **“Long boom crane” means a hoisting machine with a boom length of over 99 feet.**

... **“Mechanical Inspection Bureau” means the bureau established pursuant to N.J.S.A. 34:1-38.1 et seq. (1917) and is synonymous with the Office of Boiler and Pressure Vessel Compliance.**

... **[“Secondhand boiler or pressure vessel” means a boiler or pressure vessel which has changed both location and ownership since the last certificate of inspection.]**

... **[“Shall” means a mandatory requirement.]**

...

12:90-3.2 Right of entry

(a) For the purpose of examination or inspection of any boiler, pressure vessel, refrigeration system, power plant or other equipment, the [commissioner] **Commissioner** may enter such premises at all reasonable hours in accordance with N.J.S.A. 34:1-15.

(b) **Any person, corporation or firm violating any provision of this section shall, for each offense, be liable for a penalty of \$50.00 pursuant to N.J.S.A. 34:1-16.**

12:90-3.3 Equipment requiring a licensed operator

(a) No person shall operate the equipment listed below without the appropriate license as specified in N.J.A.C. 12:90-3.4 through 3.8.

1.-3. (No change.)

4. Any refrigerating system using a refrigerant which is either flammable or toxic and rated over [six] **24** tons of refrigerating capacity;

5. Any hoisting machine with a boom **length** exceeding 99 feet [in length]; or

6. (No change.)

12:90-3.4 Licenses for high pressure boilers

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

Table 3.4
Licenses for High Pressure Boilers

| Boiler | | Chief | Shift |
|------------------|---------------------|---|---|
| horsepower over | horsepower not over | Engineer's License (1) | Engineer's License |
| 3,000 [and over] | | 1-A gold seal 1st class engineer | 1-C blue seal 3rd class engineer |
| 1,000 | 3,000 | 1-B red seal 2nd class engineer | 1-C blue seal 3rd class engineer |
| 500 | 1,000 | 1-C blue seal 3rd class engineer | black seal boiler operator in charge |
| 100 | 500 | black seal boiler operator in charge | black seal boiler operator in charge |
| 6 | 100(2) | — | boiler operator special |

Notes to Table

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

(c) **A fireman's special license for electric, coil or waste heat boilers may be issued for unlimited horsepower use, and may not be used for the operation of other types of boilers.**

12:90-3.5 Licenses for low pressure boilers

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

(c) **A person with a low pressure license may operate low pressure boilers of unlimited horsepower.**

12:90-3.7 Licenses for power generating plants
(a)-(b) (No change.)

Table 3.7
Licenses for Power Generating Plants

| Power Generating Plant Prime Mover | | Chief Engineer's License (1) | Shift Engineer's License | Boiler Operator's License |
|---------------------------------------|------------------------|---|--|---|
| horsepower over | horsepower not over | | | |
| | 500 and over | 1-A gold seal 1st class engineer | 1-C blue seal 3rd class engineer | black seal boiler operator in charge |
| 100 | 500 | 1-B red seal 2nd class engineer | 1-C blue seal 3rd class engineer | black seal boiler operator in charge |
| 6 | 100 | 1-C blue seal 3rd class engineer | 1-C blue seal 3rd class engineer | black seal boiler operator in charge (2) |

Notes to Table

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

12:90-3.8 Licenses for refrigeration systems
(a)-(b) (No change.)

Table 3.8
Licenses for Refrigeration Systems

| Refrigeration Plant Capacity | | Chief Engineer's License (1)(2) | Shift Engineer's License (2) |
|---------------------------------|---------------|---|---|
| tons over | tons not over | | |
| 300 and over | | 2-A gold seal 1st class engineer | 2-C blue seal 3rd class engineer |
| 65 | 300 | 2-B red seal 2nd class engineer | 2-C blue seal 3rd class engineer |
| 24 | 65 | 2-C blue [class] seal 3rd class engineer | 2-C blue [class] seal 3rd class engineer |

Notes to Table

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

12:90-3.9 Chief engineer and scope of certain licenses
(a)-(b) (No change.)

(c) The engineer designated as chief engineer shall be permitted to serve as chief engineer in one plant location only **and must be a full-time employee of the company responsible for the operation of the boilers, power generating or refrigeration systems.**

(d)-(j) (No change.)

12:90-3.10 Duties of licensed persons

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

(c) Each licensed person shall remain on the premises and shall determine how long he can stay away from his equipment and not jeopardize the safe operation of a low pressure heating boiler.

(d) The length of time during which a licensed person can properly be away from the equipment of [(b) and] (c) above varies according to its nature, size and load conditions.

(e) (No change.)

12:90-4.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of steam or hot water boilers, except as provided in [(b)] (c) below.

(b) **Vessels used for dual purposes shall satisfy the requirements of the most stringent standards of the ASME Code to which either of its uses is identified. The vessel shall also meet all of the requirements of both sections of the ASME Code to satisfy its use as a dual purpose vessel.**

[(b)](c) This subchapter shall not apply to:

1.-2. (No change.)

3. Any steam or hot water boiler having less than 10 square feet of heating surface;

4.-6. (No change.)

12:90-4.2 Compliance with referenced standards

(a) Boilers, water heaters, and similar equipment shall be constructed, installed, maintained, altered, repaired and inspected in accordance with the standards referenced in (b) and (c) below.

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code—198[3]6 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-9. (No change.)

(c) The National Board Inspection Code—198[3]7 is adopted as the safety standard under this subchapter and shall apply according to the provisions thereof, except that the following sections shall not apply:

1.-2. (No change.)

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

12:90-4.5 Low pressure boilers

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

(e) When low pressure boilers are connected to a common header, the connections from each boiler having a manhole opening shall be fitted with two stop valves having adequate free-blow drains [The free-blow drains] which shall be located between the stop valves.

1.-2. (No change.)

12:90-4.7 Steam boiler blowdown tanks and receivers

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

(e) Centrifugal type separators:

1. Centrifugal type separators shall be built and stamped in accordance with the ASME Code and may be used as provided in (e)2 [through (e)4 below] and (e)3.

2.-3. (No change.)

[4. Separators may be used as provided in Figure 4.7(f)1 or Figure 4.7(f)2, an open blowoff system, or the rules for boiler blowoff

equipment of the National Board. The inlet line shall extend to within six inches of the bottom of the open receiver.]

(f) (No change.)

12:90-4.8 Welded repairs and alterations to boilers

(a) Welded repairs and alterations to boilers shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—198[3]7 edition.

(b)-(g) (No change.)

12:90-4.9 Qualification authorized repair firms

(a) This section shall apply to the procedures required to obtain [approval as a New Jersey authorized repair firm] **a New Jersey R symbol as a New Jersey authorized repair firm.**

(b) A letter of application shall be addressed to the Office of Boiler and Pressure Vessel Compliance by a responsible officer of the firm requesting repair authorization. The letter of **application shall identify the New Jersey address and location of the repair firm to be considered for authorization, and** shall include evidence that an authorized inspection agency has agreed to provide inspection service as required.

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

(i) **Repair shops shall be located within jurisdictional New Jersey.**

[(i)](j) Nothing herein shall be intended to prohibit repair by an appropriate qualified ASME authorized shop or National Board repair firm or to require additional qualification of such shop under these rules.

12:90-4.12 Fee for shop inspection

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

(d) In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.

12:90-4.14 Registration of boilers

(a) Boilers shall be registered with the Office of Boiler and Pressure Vessel Compliance, **and a State boiler inspection certificate shall be issued.**

(b) Every boiler approved for use in the State shall be assigned a registration number, which shall be located in the upper left-hand corner of the boiler certificate.

[(c)] This number shall be stamped directly on the boiler drum near the manufacturer's stamping in letters at least ¼ inch high.

(d)[1. This number shall [also] be attached to the front of the boiler in such a manner as to be plainly visible.

[(e)](c) The State boiler inspection certificate shall be properly framed and posted in the boiler room, engine room, engineer's office, or plant office and be readily available for examination.

(d) Damaged, altered, defaced or lost certificates must be replaced by request through the Office of Boiler and Pressure Vessel Compliance for replacement. The fee for replacement shall be \$8.00.

SUBCHAPTER 5. UNFIRED PRESSURE VESSELS

12:90-5.1 Scope of subchapter

(a) This subchapter shall apply to the design, construction, inspection, installation, repair and alteration of unfired pressure vessels, except as provided in [(b)](c) below.

(b) Vessels used for dual purposes must satisfy the requirements of the most stringent standards of the ASME Code to which either of its uses is identified. The vessel must also meet all of the requirements of its use as a dual purpose vessel.

[(b)](c) This subchapter shall not apply to:

1.-5. (No change.)

6. Any unfired pressure vessel [with a nominal water capacity of 120 gallons or less] **that does not exceed a design pressure of 300 psi and a design temperature of 210 degrees Fahrenheit** containing water with air under pressure, the compression of which serves only as a cushion; and

7. (No change.)

12:90-5.2 Compliance with referenced standards

(a) (No change.)

(b) The applicable sections of the ASME Boiler and Pressure Vessel Code-198[3]6 are adopted as safety standards under this subchapter and shall apply according to the provisions listed below.

1.-7. (No change.)

(c) The National Board Inspection Code—198[3]7 is adopted as a safety standard under this subchapter and shall apply according to the provisions thereof, except that the following section shall not apply:

1.-2. (No change.)

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

12:90-5.4 Class I unfired pressure vessels

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

(d) Class I unfired pressure vessels may **also** be stamped and registered as designated by the National Board.

12:90-5.6 Class III unfired pressure vessels

(a) Unfired pressure vessels [designed] **designated** as Class III unfired pressure vessels [shall fall into one of three groups identified as:

1. New Jersey Standard;

2. New Jersey Special; or

3. New Jersey Approved.]

may in the future be either new or used non-code pressure vessels and will be identified as New Jersey Approved Pressure Vessels meeting the requirements of N.J.A.C. 12:90-5.9.

12:90-5.7 Class III unfired pressure vessels—New Jersey Standard

(a) [This section shall apply to a procedure to obtain approval for a code vessel as a Class III unfired pressure vessel known as a New Jersey Standard.

(b) A New Jersey Standard unfired pressure vessel shall be:

1. Constructed in accordance with ASME Code;

2. Inspected by a New Jersey authorized inspector; and

3. When approved, stamped New Jersey Standard.]

Pressure vessels identified as New Jersey Standard shall retain their identification through their life period. No additional fabrication of this standard shall be allowed.

12:90-5.8 Class III unfired pressure vessels—New Jersey Special

[(a)] This section shall apply to a procedure to obtain approval for a non-code vessel as a Class III unfired pressure vessel known as a New Jersey Special.] **Pressure vessels identified as New Jersey Special shall retain their identification through their life period. No additional fabrication to this classification shall be allowed.**

[(b)] To expedite handling of a request for non-code construction review, all materials shall be gathered and submitted, in as complete a form as possible, by the user.

(c) When it is necessary to defer filing of some material, such omission shall be prominently noted in the letter of application.

(d) All written material shall be in the English language.

(e) All letters of application shall be accompanied by payment of \$500.00 for each non-code design. Additional fees shall not be required for identical or essentially similar designs, submitted for a single project but shall be repetitive for each user-application of the design.

(f) Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey certified number.

(g) Reference to conformance to the ASME Code shall be deleted where such appears on the form. The completed form, in duplicate, together with a facsimile of the stamping shall be filed for registry.

(h) Compliance with (i) through (l) below shall be required to establish ASME Code equivalency.

(i) Drawings, fully descriptive of the vessel, with special attention to clarity of weld details and nozzles and other openings, shall be submitted.

(j) Identification of materials within ranges of chemical and physical characteristics shall match with those listed in the appropriate section of the ASME Code.

(k) Should non-classified material impose an impediment to ASME Code stamping, the applicability of the material for the use intended shall be fully justified and the reasons for not using the ASME Code classified materials set forth.

(l) Impediment to ASME Code compliance shall be noted.

(m) Full computations shall be provided using appropriate formulae as required by the pertinent applicable section of the ASME

Code. Case interpretations, where used, shall be referenced. Where ASME Code formulae do not apply, the rationale of alternate methods of computation shall be clearly demonstrated.

(n) Evidence of appropriate welding procedures and operators' tests shall be supplied.

(o) All material shall be reviewed by a New Jersey registered professional engineer, who shall verify its equivalency to the basic requirements of the ASME Code. The "specifically assigned inspector" shall have a New Jersey certificate of competency and shall perform a shop inspection as required by the pertinent section of the ASME Code.

(p) The user's letter of application shall briefly outline the nature of the substance to be contained by the vessel, proposed pressure and temperature conditions and pressurizing medium.

(q) All of the foregoing material shall be forwarded to the Office of Boiler and Pressure Vessel Compliance by the user of the vessel with a letter requesting that New Jersey Special classification be assigned, if warranted.

(r) When approved, the unfired pressure vessel shall be stamped New Jersey Special.] **Pressure vessels identified as New Jersey Special shall retain their identification through their life period. No additional fabrication to this classification shall be allowed.**

12:90-5.9 Class III unfired pressure vessels—New Jersey Approved

(a) (No change.)

(b) [An unfired pressure vessel, to be eligible for classification as New Jersey approved, shall be a used vessel since provisions for new vessels are included under the Class I and New Jersey Special unfired pressure vessel classifications. The history of the used vessel shall accompany the initial request by the owner of the plant in which the vessel is in service or is intended to be placed in service.

(c) [The application for a New Jersey Approved unfired pressure vessel shall [comply with N.J.A.C. 12:90-5.8(b) through (g).] **meet the following requirements:**

1. **To expedite handling of a request for non-code construction review, all materials shall be gathered and submitted, in as complete a form as possible, by the user;**

2. **When it is necessary to defer filing of some material, such omission shall be prominently noted in the letter of application;**

3. **All written material shall be in the English language;**

4. **All letters of application shall be accompanied by payment of \$500.00 for each non-code design. Additional fees shall be required for designs submitted for a single project and shall be repetitive for each user-application of the design;**

5. **Following final inspection and test, the manufacturer shall complete an appropriate manufacturers' data report form. This form shall be certified by the New Jersey authorized inspector who will identify his New Jersey certified number; and**

6. **Reference to conformance to the ASME Code shall be deleted where such appears on the form. The completed form, in duplicate, together with a facsimile of the stamping, shall be filed for registry with the Office of Boiler and Pressure Vessel Compliance.**

Recodify existing (d) through (n) as (c) through (m) (No change in text.)

12:90-5.11 Design criteria

(a) (No change.)

(b) Impervious graphite materials may be used in the fabrication of heat exchangers under the New Jersey [Special] **Approved** classification pending acceptance of this material under the ASME Code.

(c) Manufacturers desiring to fabricate vessels utilizing impervious graphite materials shall be required to substantiate the design of such vessels and the composition of the graphite material under the New Jersey [Special] **Approved** classification.

12:90-5.12 Welded repairs and alterations to unfired pressure vessels

(a) Welded repairs and alterations to unfired pressure vessels shall comply with:

1.-2. (No change.)

3. The National Board Inspection Code—198[3]7 edition.

(b)-(e) (No change.)

12:90-5.13 Inspection of unfired pressure vessels

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

(d) [Shell and tube heat exchangers, jacketed vessels and other type vessels which may be subject to differential pressures shall be shop inspected by an authorized inspector.

(e) Vessels exempted from ASME Code inspection by this section shall be stamped with the "UM" symbol, or as otherwise provided for construction other than Class I pressure vessel.

(e) Shell and tube heat exchangers, jacketed vessels and other type vessels which may be subject to differential pressures shall be shop inspected by an authorized inspector.

12:90-5.14 Fee for shop inspection

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

(d) [The fee includes the actual travel expenses of the inspector] **In addition to the inspection fee, the travel expenses of the inspector shall be paid at the time of the inspection.**

12:90-5.15 Registration of unfired pressure vessels and fees

(a) (No change.)

(b) [No original registration or registration fee shall be required for vessels stamped National Board, since registration is forwarded to the Office of Boiler and Pressure Vessel Compliance by the National Board.] **Unfired pressure vessels registered with the National Board need not be registered with the Office of Boiler and Pressure Vessel Compliance if the owner has been provided with a legible copy of the original National Board registered manufacturers' data report and retains it on file for the life of the unit.**

(c) (No change.)

(d) In instances other than [(a) or] (b) or (c) above, the data reports of the manufacturer, in duplicate, with a registration fee of \$2.00 for each unfired pressure vessel, shall be forwarded to the Office of Boiler and Pressure Vessel Compliance for registration.

1. (No change.)

2. If reports are not filed, the unfired pressure vessel shall be subject to **State** inspection and State inspection fees **shall be assessed.**

12:90-6.1 Scope of subchapter

(a) (No change.)

(b) This subchapter shall not apply to:

1.-2. (No change.)

3. Systems using refrigerants of nonflammable and nontoxic nature of 18 tons refrigerating capacity or less; [and]

4. Systems using refrigerants of nonflammable and nontoxic nature requiring 36 driving horsepower or less[.]; and

5. Systems using refrigerants of a nontoxic and nonflammable nature of 15 psig or less, regardless of capacity.

12:90-6.3 Relief devices

(a) (No change.)

(b) A relief device shall also be installed to relieve from the vapor space of the liquid receiver, condenser, and other pressure vessels in the system.

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

12:90-6.4 Inspection of refrigeration systems

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

(e) Damaged, altered, defaced or lost certificates must be replaced by request through the Office of Boiler and Pressure Vessel Compliance. The fee for replacement shall be \$7.50.

SUBCHAPTER 7. LICENSING OF OPERATING ENGINEERS AND FIREMEN

12:90-7.2 Application for licenses

(a) The application shall be typewritten or neatly and legibly printed in ink. **Only one application may be submitted at a time.**

(b)-(d) (No change.)

(e) An application for a license shall be made on forms provided by the Office of Boiler and Pressure Compliance. **Only one classification or change of grade may be requested per application.**

(f)-(p) (No change.)

12:90-7.5 Eligibility for low pressure boiler operator's license

(a) To be eligible for a low pressure boiler operator's examination, the applicant shall:

1. (No change.)
 2. Have had intensive training for 30 full working days [by a licensed operator and have written verification of such training from the instructor or the employer that the applicant was given such training.] **in a program established by the Chief Engineer and approved by the Office of Boiler and Pressure Vessel Compliance, prior to the start of the training period. A log shall be established with the licensed operator doing the training, which shall be one-on-one, and the trainee shall have written verification of such training from the chief engineer.**
- (b) (No change.)

12:90-7.6 Eligibility for high pressure boiler operator's license

(a) To be eligible for a high pressure boiler operator in charge examination, the applicant shall:

1. (No change.)
2. [Have had at least six weeks experience in lieu of the normal three months experience, provided he is given intensive training during the period by the licensed operator and have written verification of such training from the chief engineer that applicant was given such training.] **Have had intensive training for six weeks in a program established by the Chief Engineer and approved by the Office of Boiler and Pressure Vessel Compliance, prior to the start of the training period. A log shall be established with the licensed operator doing the training, which shall be one-on-one, and the trainee shall have written verification of such training from the chief engineer.**

(b) If the applicant has had six months experience as a licensed low pressure fireman, the six week period referenced in (a) above may be reduced to 30 calendar days.

(c) (No change.)

12:90-7.7 Eligibility for third grade steam engineer's license

(a) (No change.)

(b) Experience obtained outside the State of New Jersey may be considered if the applicant has served[.]

[1. At] **at least two years as a [fireman] boiler operator of high pressure boilers of over 1,000 horsepower.**

[2. One year as an assistant to an engineer in the operation of equipment of comparable size as specified in (a) above.]

12:90-7.8 Eligibility for third grade refrigeration engineer's license

(a) To be eligible for a third grade refrigeration engineer's (2-C) examination, the applicant shall have had at least:

- 1.-3. (No change.)
4. Six months experience as an operator of a nontoxic refrigeration [system] unit of at least 250 tons capacity and three months experience as an assistant to the licensed operator of flammable or toxic refrigeration system[.]; or
5. Six months experience as an operator of a nontoxic refrigeration [system] unit of at least 250 tons capacity and satisfactory proof of completion of sufficient education in the operation of a flammable or toxic refrigeration system in an educational program approved by the Division of Vocational Education of the New Jersey Department of Education.

12:90-7.10 Eligibility for long boom crane operator's license

(a) (No change.)

(b) At least three months of the experience of (a) above shall be documented as being [on long boom] cranes **with boom length of over 99 feet.**

12:90-7.12 Eligibility for first grade engineer's license

(a) To be eligible for a first grade engineer's examination in any classification, the applicant shall have:

1. (No change.)
2. A second grade license[, which he has held for two years, and] **with two years subsequent practical experience as an operating engineer in a plant requiring supervision by a first grade engineer[.]; or**
3. Experience of an equivalent amount [or] **for grade [under] or classification from some other jurisdiction.**

12:90-7.13 Other eligibility considerations

(a) (No change.)

(b) When an applicant's **operating engineer[ing]** experience and training warrants, the Office of Boiler and Pressure Vessel Compliance may determine the classification and grade of license most suitable.

(c) The Office of Boiler and Pressure Vessel Compliance may consider an applicant's experience of an equivalent amount for grade or classification from some other jurisdiction.

12:90-7.14 Examinations

(a) Examinations shall be held on the first Wednesday of each month at Trenton, and at various other times and places throughout the State when warranted, **and shall be conducted by an examiner.**

(b) (No change.)

(c) Failure to appear for the examination shall be considered sufficient cause to [discard] **void** the application, unless a satisfactory explanation is given for [the failure] **failing** to appear.

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

12:90-7.15 Granting of license

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

(f) License merely bearing the impression of the seal of the Department of Labor shall be issued as special licenses and are limited to the operation of equipment specified on the face thereof. Special licenses may be issued to operators of non-conventional boilers, such as, but not limited to, electric, coil, or [boilers,] waste heat [boilers,] or **conventional** high pressure boilers of **over six to 100 horsepower.** These licenses may be transferred to similar equipment when approved following written request by the applicant or employer.

(g) Duplicate licenses for part-time employment may be issued at the discretion of the [commissioner] **Commissioner.**

1.-3. (No change.)

4. A Chief Engineer may not request a duplicate part-time license for secondary location employment.

12:90-7.16 Re-examination

(a) The applicant may not be re-examined for a period of at least three months, but may be allowed one re-examination, without additional charge, within[g] six months of the original examination. If again unsuccessful, the applicant may request an additional examination, provided that the request is accompanied by a fee of \$7.50.

(b) Upon failing the examination for the third time, an applicant who wishes to retake the examination shall wait three months prior to reapplication, at which time a new application form shall be fully completed.

12:90-7.19 Renewal of license

(a) (No change.)

(b) A license may be renewed within [30] **60** days prior to the date of its expiration.

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

(e) An altered, defaced or otherwise mutilated license shall be [renewed] **replaced** only after review by the Office of Boiler and Pressure Vessel Compliance. Photostats, photographs or reproduction of a license shall have no status and shall not be recognized. **A fee of \$5.00 shall be submitted for a replacement license.**

12:90-7.20 Employment of unlicensed person

(a) Employers shall immediately [notify the] **request permission from the Office of Boiler and Pressure Vessel Compliance, in writing, if for any reason of emergency it becomes necessary to employ an unlicensed person temporarily for a period not to exceed 15 days explaining fully the circumstances.**

(b) Continuation requests for emergency operating permission must be received in the Office of Boiler and Pressure Vessel Compliance prior to the expiration date of the granted permission.

(c) Late requests for continuation are subject to penalties which must be satisfied prior to permission being granted.

[(b)](d) The Office of Boiler and Pressure Vessel Compliance shall again be notified when a licensed person is employed, giving the name, address, and license classification, grade and number of such employee.

12:90-8.1 Documents referred to by reference

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

1. ASME—198[3]6, Boiler and Pressure Vessel Code
2. BOCA—198[4]7, Basic National Mechanic Code
3. NBBPVI—198[3]7, National Board Inspection Code.
- 4.-5. (No change.)

LAW AND PUBLIC SAFETY

(a)

STATE BOARD OF MEDICAL EXAMINERS

Preparation of Patient Records, Access to or Release of Information; Confidentiality, Transfer or Disposal of Records

Proposed Repeal and New Rule: N.J.A.C. 13:35-6.5

Authorized By: New Jersey Board of Medical Examiners,

Michael B. Grossman, D.O., President.

Authority: N.J.S.A. 45:9-2.

Proposal Number: PRN 1989-527.

Submit comments by November 15, 1989 to:

Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

The proposed repeal of existing N.J.A.C. 13:35-6.5 and substitution of a new rule are intended to provide Board licensees with a specific articulation of the appropriate standards for the creation, maintenance and transfer of patient records. Additionally, the proposed rule sets forth disclosure standards, providing mechanisms to assure confidentiality and to shield patients from record release which might be harmful to their best interests.

The rule also makes clear that a failure to release the record because of nonpayment of fees is professionally unacceptable when there is a medical need for the record.

Social Impact

The proposed new rule with its enhanced specificity concerning standards for the creation, maintenance, transfer and disposition of records, is designed to address the concerns which have been raised to the Board of Medical Examiners in the past. Both licensees and their patients should benefit, since their obligations and rights are more clearly spelled out.

Economic Impact

The economic impact foreseen for licensees includes the slight extra care required to provide an accurate professional record of health care, since licensees are directed to respond with specificity to requests for information about a particular medical situation, rather than to simply copy the entirety of documentation of a patient's care when that is beyond the scope of the actual request. The licensee must distinguish between a request for a copy of the patient record (in which case the proposed rule authorizes a reasonable charge), versus a request to prepare a comprehensive medical report.

The economic impact on consumers cannot be predicted, but the Board does not expect any increase in medical costs because of the proposed rule, other than a possible charge for photocopying. The Board does anticipate substantial benefit to consumers, because they will more clearly understand and effectuate their rights to have promptly transmitted an accurate account of the professional services they have received. Consumers will also benefit in that factors unrelated to their medical conditions will not be disclosed to employers and will therefore be less likely to adversely and irrationally affect their job opportunities.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., physicians are deemed "small businesses" within the meaning of the statute, the following statement is applicable:

The proposed requirements relate to the maintenance, disclosure, and transfer of patient records as well as proper response to requests for

information regarding a patient's medical history. Since they mandate discreet and efficient handling of patient records, the rules must be uniformly applicable to all licensees, without differentiation as to size of practice. In any case, the preparation and keeping of patient records has been required for many years; the proposed rule is more specific as to the content of entries but requires no greater amount of recordkeeping. It does spell out steps to be followed as to billing and insurance claims, but these are within the norm of ordinary office procedures and should create no burden. The requirement of a newspaper announcement when a licensee ceases to practice imposes minor costs; except for that advertisement, however, no additional services beyond those of the licensee's regular office staff will be needed in order to comply with the new rule.

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

[13:35-6.5 Preparation of patient records and release thereof

(a) A patient record shall be prepared by all licensees and registrants of this Board and shall be maintained for seven years from date of last entry.

(b) Copies of all pertinent objective data and papers pertaining to a given patient, as well as a copy of the licensee's record or a summary report of such record shall be furnished to the patient or a designated licensee or duly authorized representative within 30 days of a written request by the patient or duly authorized representative. A reasonable charge may be made for such service.

(c) With respect to the non-objective records of a licensee or registrant, a partial record may be supplied where, in the reasonable exercise of professional judgement, the licensee or registrant believes that furnishing to or review by the patient of such records would be deleterious to the patient's best interests.]

13:35-6.5 Preparation of patient records, access to or release of information; confidentiality, transfer or disposal of records

(a) The following terms shall have the following meanings unless the context in which they appear indicates otherwise:

"Authorized representative" means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

"Examinee" means a person who is the subject of professional examination where the purpose of that examination is unrelated to treatment and where a report of the examination is to be supplied to a third party.

"Licensee" means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of treatment or a consultation relating to treatment.

(b) Licensees shall prepare contemporaneous, permanent professional treatment records. Licensees shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry. To the extent applicable, professional treatment records shall reflect:

1. The dates of all treatments;
2. The patient complaint;
3. The history;
4. Findings on appropriate examination;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or medical impression;
8. Treatment ordered, including specific dosages and strengths of medications if prescribed, administered or dispensed; and
9. The identity of the treatment provider if the service is rendered in a setting in which more than one provider practices.

(c) Licensees shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. Within 30 days of receipt of a request from a patient or an authorized representative, the licensee shall provide a copy of the professional treatment record, and/or billing records as may be requested. The record shall include all pertinent objective data including test results and x-rays, as applicable, and subjective information.

2. The licensee may elect to provide a summary of the record, so long as that summary adequately reflects the patient's history and treatment.

3. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the professional treatment record or a summary thereof, the licensee may refuse to provide such information. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

- i. The patient's attorney;
- ii. Another licensed health care professional; or
- iii. The patient's health insurance carrier.

4. The licensee may require a record request to be in writing and may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

5. If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensee shall provide a transcription at no cost to the patient.

6. The licensee shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

(d) Licensees shall maintain the confidentiality of professional treatment records, except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Medical Examiners or the Office of the Attorney General, or by a demand for statement in writing under oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All x-ray films and reports maintained by the licensee, including those prepared by other health care professionals, shall also be provided.

2. The licensee shall release information as required by law or regulation, such as the reporting of communicable diseases or gunshot wounds or suspected child abuse, etc., or when the patient's treatment is the subject of peer review.

3. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

4. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger.

(e) Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the licensee shall:

1. Secure and maintain a current written authorization, bearing the signature of the patient or an authorized representative;
2. Assure that the scope of the release is consistent with the request; and

3. Forward the records to the attention of the specific individual identified or mark the material "Confidential."

(f) Where a third party or entity has requested examination, or an evaluation of an examinee, the licensee rendering those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third

party relating to the examinee shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request, to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;

2. Forward the report to the individual entity making the request, in accordance with the terms of the examinee's authorization; if no specific individual is identified, the report should be marked "Confidential"; and

3. Not provide the examinee with the report of an examination requested by a third party or entity unless the third party or entity consents to its release, except that should the examination disclose abnormalities or conditions not known to the examinee, the licensee shall advise the examinee to consult another health care professional for treatment.

(g) (Reserved)

(h) If a licensee ceases to engage in practice and it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients can obtain treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;

2. Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and

3. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records.

(a)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Elimination of Wagering

Proposed Amendment: N.J.A.C. 13:70-29.19

Authorized By: New Jersey Racing Commission,

Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1989-528.

Submit comments by November 15, 1989 to:

Charles K. Bradley, Deputy Director

New Jersey Racing Commission

CN 088

200 Woolverton Street

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would allow track associations, with the approval of the Racing Commission, to bar certain horses from place and show wagering. In the event the Commission grants approval, the track associations would have to notify the public that wagering will not be permitted on the particular horse requested to be barred from wagering.

Social Impact

The proposed amendment would have some effect on the general public at the racetracks since it will prohibit place and show wagering on a particular horse. There are certain horses whose past performances are superior to the quality of other horses with which they are competing. This causes minus pools to the track associations. It appears that a few bettors bet large sums of money on these horses to show and, pursuant to the New Jersey Racing Commission rules, the track associations must pay out a minimum of five cents on a dollar for these wagers. Several of the track associations feel that they may be put in a position in which the races that these outstanding horses are in have to be run as non-betting events unless there are means to bar the horse from wagering.

Economic Impact

The racing associations have petitioned the Racing Commission to bar certain horses from place and show wagering. The Racing Commission rules mandate that wagers must be paid off at five cents on a dollar, or a minimum of \$2.10 pay-out per \$2.00 bet. Several track associations have lost considerable amounts of money by having to pay out this money since the commissions for the race do not offset the amount of money that track associations must pay out. For example, in the past five years Garden State Park has had minus pools in excess of \$900,000. This creates a financial hardship to the racetracks especially since the track associations' attendance and handle are declining. The proposed amendment should substantially alleviate this hardship. There will be no economic impact on horse owners, since they race for purses independent of wagering. In races where wagering is eliminated, there will be an economic impact on prospective bettors; however, the substance such impact is too speculative to project.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The track associations regulated by this rule each employ more than 100 people and are not, therefore, small businesses under the Act.

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

13:70-29.19 [Discretion; manager of mutuel department]

Elimination of wagering

(a) With the approval of the [mutuel manager of the association;] **Racing Commission, or its designee, race tracks will be permitted to eliminate place and show wagering on any particular horse or entry in any race. Among the factors to be considered will be the quality of the horse or horses for which the elimination of wagering is sought compared to the quality of the other horses in the race. The request to eliminate place or show wagering shall be made prior to the printing of the program. Once the program is printed, elimination of wagering will not be permitted unless the following occurs:**

1. If less than six **wagering** interests qualify horses to start in a race, the [said manager] **mutuel director** shall be permitted to [prohibit] **eliminate** show wagering on that race.
2. If less than five **wagering** interests qualify horses to start in a race, the [said manager] **mutuel director** shall be permitted to [prohibit] **eliminate** both place and show wagering on that race.
3. If **two or less** [than three] **wagering** interests qualify horses to start in a race, the [said manager] **mutuel director** shall be permitted to [prohibit] **eliminate** wagering on that race.
- [4. The said manager shall determine what pools shall be permitted in sweepstakes.]

(b) **The decision to eliminate wagering in (a)1 through 3 above shall be made prior to the opening of mutuel windows for that day's business unless there is a change in the number of wagering interests qualified to start. If a change in the number of wagering interests qualified to start occurs after wagering has begun, the decision to eliminate wagering shall be made immediately at the time the number of wagering interests qualified to start changes.**

(c) **New Jersey race tracks may adjust the pari-mutuel pools to eliminate certain forms of wagering on all interstate simulcasts consistent with the pari-mutuel decisions made by the sending track associations in conformance with that state's rules and regulations. Notice of the decision to make adjustments shall be provided to the Racing Commission or its designee prior to accepting wagers on the event.**

(d) **In all cases where wagering is eliminated, race tracks shall inform the public through notification in the program, advertisements, public address system or any other means available.**

(a)

NEW JERSEY RACING COMMISSION**Harness Rules****Elimination of Wagering****Proposed Amendment: N.J.A.C. 13:71-27.18**

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1989-526.

Submit comments by November 15, 1989 to:

Charles K. Bradley, Deputy Director
New Jersey Racing Commission
CN 088, 200 Woolverton Street
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment would allow track associations, with the approval of the Racing Commission, to bar certain horses from place and show wagering. In the event the Commission grants approval, the track associations would have to notify the public that wagering will not be permitted on the particular horse requested to be barred from wagering.

Social Impact

The proposed amendment would have some affect on the general public at the racetracks since it will prohibit place and show wagering on a particular horse. There are certain horses whose past performances are superior to the quality of other horses with which they are competing. This causes minus pools to the track associations. It appears that a few bettors bet large sums of money on these horses to show and, pursuant to the New Jersey Racing Commission rules, the track associations must pay out a minimum of five cents on a dollar for these wagers. Several of the track associations feel that they may be put in a position in which the races that these outstanding horses are in have to be run as non-betting events unless there are means to bar the horse from wagering.

Economic Impact

The racing associations have petitioned the Racing Commission to bar certain horses from place and show wagering. The Racing Commission rules mandate that wagers must be paid off at five cents on a dollar, or a minimum of \$2.10 pay-out per \$2.00 bet. Several track associations have lost considerable amounts of money by having to pay out this money since the commissions for the race do not offset the amount of money that track associations must pay out. For example, in the past five years Garden State Park has had minus pools in excess of \$900,000. This creates a financial hardship to the racetracks especially since the track associations' attendance and handle are declining. The proposed amendment should substantially alleviate this hardship. There will be no economic impact on horse owners, since they race for purses independent of wagering.

In races where wagering is eliminated, there will be an economic impact on prospective bettors; however, the substance of such impact is too speculative to project.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The track associations regulated by this rule each employ more than 100 people and are not, therefore, small businesses under the Act.

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

13:71-27.18 [Discretion; manager of mutuel department]

Elimination of wagering

(a) With the approval of the [mutuel manager of the association;] **Racing Commission, or its designee, race tracks will be permitted to eliminate place and show wagering on any particular horse or entry in any race. Among the factors to be considered will be the quality of the horse or horses for which the elimination of wagering is sought compared to the quality of the other horses in the race. The request**

to eliminate place or show wagering shall be made prior to the printing of the program. Once the program is printed, elimination of wagering will not be permitted unless the following occurs:

1. If less than six wagering interests qualify horses to start in a race, the [manager of the pari-mutuel department] **mutuel director** shall be permitted to [prohibit] **eliminate** show wagering on that race.

2. If less than five wagering interests qualify horses to start in a race, the [said manager] **mutuel director** shall be permitted to [prohibit] **eliminate** both place and show wagering on that race.

3. If two or less [than three] wagering interests qualify horses to start in a race, [and both of the horses qualified are coupled as an entry,] the [said manager] **mutuel director** shall be permitted to [prohibit] **eliminate** wagering on that race.

[4. The said manager shall determine what pools shall be permitted in sweepstakes.]

(b) The decision to eliminate wagering in (a)1 through 3 above shall be made prior to the opening of mutuel windows for that day's business unless there is a change in the number of wagering interests qualified to start. If a change in the number of wagering interests qualified to start occurs after wagering has begun, the decision to eliminate wagering shall be made immediately at the time the number of wagering interests qualified to start changes.

(c) New Jersey race tracks may adjust the pari-mutuel pools to eliminate certain forms of wagering on all interstate simulcasts consistent with the pari-mutuel decisions made by the sending track associations in conformance with that state's rules and regulations. Notice of the decision to make adjustments shall be provided to the Racing Commission or its designee prior to accepting wagers on the event.

(d) In all cases where wagering is eliminated, race tracks shall inform the public through notification in the program, advertisements, public address system or any other means available.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping

Routes U.S. 9 in Ocean County; N.J. 20 in Bergen County; U.S. 30 in Camden County; N.J. 49 in Cumberland County; N.J. 77 in Cumberland County; U.S. 206 in Sussex County; U.S. 9W in Bergen County; N.J. 161 in Passaic County; U.S. 322 in Gloucester County; and N.J. 91 in Middlesex County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.10, 1.21, 1.34, 1.41, 1.57, 1.61, 1.85, 1.93, and 1.110

Authorized By: Robert A. Innocenzi, Acting Commissioner,
Department of Transportation.

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

Proposal Number: PRN 1989-521.

Submit comments by November 15, 1989 to:

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

The agency proposal follows:

Summary

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; N.J. 91 in North Brunswick Township, Middlesex County; N.J. 49 in the City of Bridgeton, Cumberland County; U.S. 206 in Andover Township, Sussex County; U.S. 322 in Glassboro Borough, Gloucester County; and "no parking bus stop" zones along Routes N.J. 20 in East Rutherford Borough, Bergen County; U.S. 30 in Magnolia Borough,

Camden County; N.J. 77 in Bridgeton City, Cumberland County; and U.S. 9W in Englewood Cliffs Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes U.S. 9, N.J. 91, N.J. 49, U.S. 206, N.J. 161 and U.S. 322, and "no parking bus stop" zones along Routes N.J. 20, U.S. 30, N.J. 77, and U.S. 9W was warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.10, 1.21, 1.34, 1.41, 1.57, 1.61, 1.85, 1.93 and 1.110 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; N.J. 91 in North Brunswick Township, Middlesex County; N.J. 49 in the City of Bridgeton, Cumberland County; U.S. 206 in Andover Township, Sussex County; U.S. 322 in Glassboro Borough, Gloucester County; and "no parking bus stop" zones along Routes N.J. 20 in East Rutherford Borough, Bergen County; U.S. 30 in Magnolia Borough, Camden County; N.J. 77 in Bridgeton City, Cumberland County; and U.S. 9W in Englewood Cliffs Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

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

Regulatory Flexibility Statement

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

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

16:28A-1.7 Route U.S. 9

(a) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-18. (No change.)

19. No stopping or standing in Little Egg Harbor Township, Ocean County[, along the west side, between a point 200 feet north of Railroad Avenue to a point 200 feet south of Railroad Avenue.]:

i. **Along the west side:**

(1) **Between a point 200 feet north of Railroad Avenue to a point 200 feet south of Railroad Avenue.**

ii. **Along both sides:**

(1) **Beginning at the northerly curb line of Giffordtown Road and extending to a point 150 feet north of the northerly curb line of Gale Road. Except in approved Bus Stop areas.**

20. (No change.)

(b) (No change.)

16:28A-1.10 Route 20

(a) The certain parts of State highway Route 20 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-2. (No change.)

(b) The certain parts of State highway Route 20 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. (No change.)
2. Along (Paterson Plank Road) the eastbound (southerly) side in the Borough of East Rutherford, Bergen County.
 - i. Mid-block bus [stop] stops:
 - (1) (No change.)
 - (2) **Murray Hill Parkway—Beginning 200 feet of the westerly curb line and extending 135 feet westerly therefrom.**

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

- (a) (No change.)
- (b) The certain parts of State Highway Route U.S. 30 described in this subsection shall be designated and established as “no parking” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:
 1. In Magnolia Borough [along Route U.S. 30 northbound on the easterly sides thereof at:], **Camden County:**
 - i. [Warwick Road (Far side) beginning at the westerly curb line of Warwick Road and extending 160 feet westerly therefrom.] **Along the northbound (easterly) side:**
 - (1) **Far side bus stop:**
 - (A) **Warwick Road—Beginning at the westerly curb line of Warwick Road and extending 160 feet westerly therefrom.**
 - ii. **Along the (White Horse Pike) eastbound (southerly) side:**
 - (1) **Near side bus stops:**
 - (A) **Marion Road—Beginning at the westerly curb line of Marion Road and extending 120 feet westerly therefrom.**
 - (B) **Monroe Avenue—Beginning at the westerly curb line of Monroe Avenue and extending 105 feet westerly therefrom.**
 - (2) **Far side bus stops:**
 - (A) **Evesham Road—Beginning at the easterly curb line of Evesham Road and extending 100 feet westerly therefrom.**
 - iii. **Along the (White Horse Pike) westbound (northerly) side:**
 - (1) **Near side bus stops:**
 - (A) **Monroe Avenue—Beginning at the westerly prolonged curb line of Monroe Avenue and extending 105 feet easterly therefrom.**
 - (B) **Evesham Road—Beginning at the easterly curb line of Evesham Road and extending 105 feet easterly therefrom.**
 - (C) **Warwick Road—Beginning at the easterly curb line of Warwick Road and extending 105 feet easterly therefrom.**

1. In Magnolia Borough [along Route U.S. 30 northbound on the easterly sides thereof at:], **Camden County:**

- i. [Warwick Road (Far side) beginning at the westerly curb line of Warwick Road and extending 160 feet westerly therefrom.] **Along the northbound (easterly) side:**
 - (1) **Far side bus stop:**
 - (A) **Warwick Road—Beginning at the westerly curb line of Warwick Road and extending 160 feet westerly therefrom.**
 - ii. **Along the (White Horse Pike) eastbound (southerly) side:**
 - (1) **Near side bus stops:**
 - (A) **Marion Road—Beginning at the westerly curb line of Marion Road and extending 120 feet westerly therefrom.**
 - (B) **Monroe Avenue—Beginning at the westerly curb line of Monroe Avenue and extending 105 feet westerly therefrom.**
 - (2) **Far side bus stops:**
 - (A) **Evesham Road—Beginning at the easterly curb line of Evesham Road and extending 100 feet westerly therefrom.**
 - iii. **Along the (White Horse Pike) westbound (northerly) side:**
 - (1) **Near side bus stops:**
 - (A) **Monroe Avenue—Beginning at the westerly prolonged curb line of Monroe Avenue and extending 105 feet easterly therefrom.**
 - (B) **Evesham Road—Beginning at the easterly curb line of Evesham Road and extending 105 feet easterly therefrom.**
 - (C) **Warwick Road—Beginning at the easterly curb line of Warwick Road and extending 105 feet easterly therefrom.**

2.-29. (No change.)

16:28A-1.34 Route 49

- (a)-(c) (No change.)
- (d) The certain parts of State highway Route 49 described in this subsection are designated and established as “no stopping or standing” during certain hours zones where parking is prohibited as specified. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established zones:
 1. In the City of Bridgeton, Cumberland County:
 - i. **No stopping or standing during certain hours:**
 - (1) **Along the southerly side:**
 - (A) **From the intersection of West Avenue to the intersection of Lawrence Street between the hours of 7:00 A.M. to 3:00 P.M. Monday through Friday.**

16:28A-1.41 Route 77

- (a) (No change.)
- (b) The certain parts of State highway Route 77 described in this [section] 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 southbound side in] **In the City of Bridgeton[:], Cumberland County:**
 - i. [Far side bus stop: Washington Street (85 feet).] **Along the southbound side:**
 - (1) **Far side bus stop:**
 - (A) **Washington Street (85 feet).**
 - ii. **Along (Pearl) northbound (easterly) side:**
 - (1) **Far side bus stop:**
 - (A) **Washington Street—Beginning at the northerly curb line of Washington Street and extending 100 feet northerly therefrom.**

(2) **Near side bus stop:**

- (A) **Irving Avenue—Beginning at the southerly curb line of Irving Avenue and extending 105 feet southerly therefrom.**
- iii. **Along (Pearl) southbound (westerly) side:**
 - (1) **Near side bus stops:**
 - (A) **Irving Avenue—Beginning at the northerly curb line of Irving Avenue and extending 105 feet northerly therefrom.**
 - (B) **Washington Street—Beginning at the northerly curb line of Washington Street and extending 105 feet northerly therefrom.**
- 2.-4. (No change.)
- (c) (No change.)

16:28A-1.57 Route U.S. 206

- (a) The certain parts of State highway Route U.S. 206 described in this subsection shall be designated and established as “no stopping or standing” zones:
 - 1.-25. (No change.)

26. **In Andover Township, Sussex County:**

- i. **Along both sides:**
 - (1) **For the entire length within the corporate limits of Andover Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation. Signs to be posted only in areas where an official township resolution has been submitted.**
- (b)-(c) (No change.)

16:28A-1.61 Route U.S. 9W²

- (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 [hereby] granted to erect appropriate signs at the following established bus stops:
 - 1.-3. (No change.)

4. Along the **northbound** (easterly) [(northbound)] side in Englewood Cliffs Borough, Bergen County:

- i.-ii. (No change.)
- iii. **Mid-block bus stop:**
 - (1) **Charlotte Place—Beginning at a point 520 feet north of the northerly curb line of Charlotte Place and extending 135 feet northerly therefrom.**
- 5.-8. (No change.)
- (b) The certain parts of State highway Route U.S. 9W described in this [section] subsection [shall be] **are** designated and established as [“no parking”] “**no stopping or standing**” zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-199].
 - i.-iii. (No change.)
 - iv. **Along both sides:**
 - (1) **Clifton Avenue—Beginning at the southerly curb line of Van Houten Avenue to Olga Terrace between the hours of 7:00 A.M. and 9:00 A.M. and 4:00 P.M. to 6:00 P.M. daily.**
 - (b) (No change.)

16:28A-1.85 Route 161

- (a) The certain parts of State highway Route 161 described in this [section] subsection are designated and established as “no [parking] stopping or standing” zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1. **No stopping or standing in [Clinton] Clifton City, Passaic County:**

- [i. Along the northbound side:
 - (1) From a point 115 feet south of the center line of Olga B. Terrace to a point 115 feet north of the center line of Olga B. Terrace;
 - (2) From the center line of St. James Place to a point 115 feet north of the center line of St. James Place.
 - (3) From a point 122 feet north of the northerly curb line of Kowal Street to a point 128 feet south of the southerly curb line of Kowal Street.
- ii. **Along the southbound side:**
 - (1) From a point 120 feet north of the center line of Sunnycrest Avenue to a point 120 feet south of the center line of Sunnycrest Avenue.]

i. Along both sides:

(1) Clifton Avenue—Beginning at the southerly curb line of Van Houten Avenue to Olga Terrace between the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M.

[iii.]ii. (No change in text.)

(b) (No change.)

16:28A-1.93 Route U.S. 322

(a) The certain parts of State [Highway] highway Route U.S. 322 described in this subsection [shall be] **are** designated and established as "no stopping or standing" zones[:] **where stopping or standing is prohibited at all times.**

1.-3. (No change.)

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

i. Along both sides:

(1) [From Length Road to Girard Road including all ramps, bridges, and connections under the jurisdiction of the Commissioner of the Department of Transportation.] **For the entire length within the corporate limits of the Borough of Glassboro including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.**

16:28A-1.110 Route 91

(a) The certain parts of Route 91 described in this subsection are designated and established as "no stopping or standing" zones where stopping or standing is prohibited.

1. No stopping or standing in North Brunswick Township, Middlesex County:

(1) (No change.)

(2) **From How Lane to Orchard Street.**

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Mid-Block Crosswalks

Route N.J. 15 in Sussex County

Proposed New Rule: N.J.A.C. 16:30-10.10

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34.

Proposal Number: PRN 1989-520.

Submit comments by November 15, 1989 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 new rule will establish a "mid-block crosswalk" along Route N.J. 15 in Lafayette Township, Sussex County for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and establishment of a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device.

Based upon a request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of a mid-block crosswalk was warranted.

The Department therefore proposes new rule N.J.A.C. 16:30-10.10 based upon the request from local government and the traffic investigation.

Social Impact

The proposed new rule will establish a mid-block crosswalk along Route N.J. 15 in Lafayette Township, Sussex County for the safe and

efficient flow of traffic, the enhancement of safety, the well-being of the populace and to provide a designated area for pedestrians to safely cross the roadway at other than an area which is controlled and directed by a police officer or a traffic control device. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the appropriate striping and signage along the roadway. Motorists who violate the rule will be assessed the appropriate fine.

Regulatory Flexibility Statement

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

Full text of the proposed new rule follows:

16:30-10.10 Route N.J. 15

(a) The certain parts of State highway Route 15 described in this subsection shall be designated as a mid-block crosswalk.

1. In Lafayette Township, Sussex County:

i. From a point 1,320 feet north of the northerly curb line of Meadow Road to a point 10 feet northerly therefrom.

(b)

DIVISION OF TRANSPORTATION ASSISTANCE

Railroad Transportation; Public Hearings

Federal Grant Programs to Provide Transportation Services to Elderly and/or Handicapped People

Proposed Repeals: N.J.A.C. 16:50 and 16:52

Authorized By: Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-17, 18 and 24 and 52:14B-4.

Proposal Number: PRN 1989-530.

Submit comments by November 15, 1989 to:

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

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66 (1978), the Department of Transportation (NJDOT) proposes to repeal N.J.A.C. 16:50, Railroad Transportation—Public Hearings, and N.J.A.C. 16:52, Federal Grant Program to Provide Transportation Services to Elderly and/or Handicapped People.

The rules were reviewed by the staff of NJ Transit, in compliance with the Department's ongoing rulemaking review procedures. This review and analysis revealed that the rules were no longer the responsibility of NJDOT since enabling legislation transferred said responsibility to NJ Transit. Therefore, the rules as presently codified in the New Jersey Administrative Code under N.J.A.C. 16:50 and 52, respectively, are no longer necessary, adequate or responsive to the purposes for which they were originally promulgated.

Social Impact

The proposed repeals will comply with the requirements of Executive Order No. 66 (1978) in that the Department has removed rules and regulations no longer needed for the purposes they were promulgated. The public will be pleased to see the obsolescence of programs no longer required.

Economic Impact

The proposed repeals will not have any economic impact on the public, since the functions and responsibilities have been transferred. The Depart-

ment will incur direct and indirect costs for personnel and rulemaking requirements.

Regulatory Flexibility Statement

The proposed repeals do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily repeals rules which are no longer necessary or under the jurisdiction of NJDOT.

Full text of the chapters proposed for repeal can be found in the New Jersey Administrative Code at N.J.A.C. 16:50 and 52.

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS**

Autobuses; Mirrors

Proposed Amendments: N.J.A.C. 16:53-3.40 and 6.11

Authorized By: Robert A. Innocenzi, Acting Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 52:14B-1 et seq.

Proposal Number: PRN 1989-525

Submit comments by November 15, 1989 to:

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

The agency proposal follows:

Summary

On May 1, 1989, the Department proposed new rules as N.J.A.C. 16:53, Autobuses, which appear at 21 N.J.R. 1098(a) and were adopted at 21 N.J.R. 2051(b). The Department has discovered an error in the text of N.J.A.C. 16:53-3.40(b) and 6.11(c) as published in notices of proposal and adoption in the New Jersey Register.

The text as appears gives the appearance that a video camera was mandatory and not an optional item as was the Department's intent, considering the cost factor involved in procuring such an item.

The Department therefore proposes to amend the text to change "shall" to "may" in N.J.A.C. 16:53-3.40(b) and 6.11(c), thus making the need for a video camera optional.

Social Impact

The proposed amendments will cause the need for a video camera in the autobus specifications to be optional rather than mandatory. The motor carriers will be pleased that the Department has relieved the added expenses which would occur.

Economic Impact

The Department will incur direct and indirect costs associated with the rulemaking procedures. There would be no economic impact on the motor carriers, unless they elect to purchase video cameras, which are optional.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments make optional a requirement erroneously proposed and adopted as mandatory.

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

16:53-3.40 Mirrors

(a) (No change.)

(b) [A] **If desired**, a video camera designed to view the exterior rear, in addition to rear view mirrors, [shall] **may** be installed so that the camera is inoperable while the vehicle is in a forward motion.

16:53-6.11 Mirrors

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

(c) [A] **If desired**, a video camera designed to view the exterior rear, in addition to rear view mirrors, [shall] **may** be installed so that the camera is inoperable while the vehicle is in a forward motion.

(b)

NEW JERSEY TRANSIT CORPORATION

**Use or Occupancy of NJ TRANSIT-Owned Property
Proposed Readoption with Amendments: N.J.A.C.
16:77**

Authorized By: New Jersey Transit Corporation, S. Thomas
Gagliano, Executive Director.

Authority: N.J.S.A. 27:25-5(e), (h), (k) and (0); and 27:25-7(b).

Proposal Number: PRN 1989-531.

Submit comments by November 15, 1989 to:

Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Market St. and McCarter Highway
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT proposes to fulfill this responsibility is through the issuance of permits for certain fees to use its railroad right of way for various types of occupations. Permits are license agreements for the use and occupancy of railroad property by a utility or private entity. The readoption of this chapter, which expires January 21, 1990 pursuant to Executive Order No. 66 (1978), will establish guidelines, procedures and fees pursuant to which NJ TRANSIT will operate its use or occupancy program.

Social Impact

The readoption of this chapter will have a minimal social impact on the citizens of New Jersey as a whole but will specifically impact on the utilities and individuals who presently or may in the future occupy and use NJ TRANSIT property. Those parties affected will have to pay the fees as increased by the readoption of this chapter. The fee increases are detailed in the rule amendments.

Economic Impact

The proposed increased fees will have a positive impact on NJ TRANSIT. More revenues will be available to reduce the deficits of its bus and rail operations. In addition, the impact on the users, especially the major utility companies, is considered minimum and it is anticipated that it can be borne by the parties in the ordinary course of business. Besides the administrative and permit fees, the costs of application and meeting the permit conditions must be borne by the applicant/permittee. These costs vary based upon the nature of the use or occupancy of NJ TRANSIT-owned property.

Regulatory Flexibility Analysis

Based on a review of NJ TRANSIT's current permits, almost no small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., will be impacted by the proposed readoption with amendments. If any are affected, the compliance requirements consist of applying for a permit under N.J.A.C. 16:77-1.2, meeting the N.J.A.C. 16:77-1.3 permit conditions, and payment of the appropriate administrative and permit fees. Compliance with the permit conditions will involve both capital costs and, probably, the engaging of professional services (for example, engineers and attorneys). The amount of such costs depends upon the nature of the project and the permittee's internal staff resources. Given the historic lack of small business applicants/permittees, NJ TRANSIT has not provided different requirements for such entities. In addition, no apparent correlation exists between the need for compliance with these rules to ensure the safe and proper use of NJ TRANSIT-owned property and the business size of an applicant/permittee.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:77.

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

16:77-1.1 Definitions

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

“Longitudinal occupation” means any occupation of NJ TRANSIT-owned property other than a direct crossing over or under railroad tracks and right-of-way as defined under [Item 15] N.J.A.C. 16:77-1.6.

“Messenger wires” means any support wire which carries no current signal or communication transmission and shall be considered as part of the wires or cables supported and no charge shall be assessed therefor.

16:77-1.2 Permit applications

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

(e) Upon the applicant’s request and proper NJ TRANSIT approval, NJ TRANSIT will notify the applicant of its decision regarding the issuance of a permit. If NJ TRANSIT approves the application after being reviewed by the involved jurisdiction, a permit will be sent to the applicant for completion. It shall be the applicant’s responsibility to complete the permit and return it to NJ TRANSIT with the designated fee(s). No permit shall be issued unless the designated fee(s), for use and occupancy of NJ TRANSIT-owned property, [has] have been collected, as provided in N.J.A.C. 16:77-1.6. In addition to the above, the applicant shall reimburse the party operating over the affected property for costs related to their review of the applicant’s plans and specifications, if applicable.

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

16:77-1.3 Permit conditions

(a) The permittee shall provide the indemnification and insurance required by NJ TRANSIT.

1. (No change.)

(b)-(n) (No change.)

16:77-1.4 Administrative fees

(a) Administrative fees will be charged as follows:

1. Wire and cable crossings and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. Not exceeding 300 volts to one individual service [\$100.00] **\$125.00**
 - ii. All other transverse crossings [\$200.00] **\$250.00**
 - iii. All longitudinal occupations and any agreement regardless of voltage, not less than [\$400.00] **\$500.00**
2. Pipe and sewer crossings, and longitudinal occupations over or under NJ TRANSIT-owned property:
 - i. Pipe not exceeding 3 inches inside diameter to one individual service [\$100.00] **\$125.00**
 - ii. All other transverse crossings [\$200.00] **\$250.00**
 - iii. All longitudinal occupations and any agreement regardless of size of pipe, not less than [\$400.00] **\$500.00**
3. All surface drainage not contained within a pipe occupying NJ TRANSIT property [\$400.00] **\$500.00**
4. Short term or occupancy:
 - i. Application for the use or occupancy of track, trains, or property which will require the alteration of track usage or train schedules [\$250.00] **\$315.00**
 - ii. Application for the use or occupation of NJ TRANSIT-owned property not covered by (a)4i.] above [\$100.00] **\$125.00**
5. Any application for any type of permit by a municipality [\$100.00] **\$125.00**
6. Additional fees
 - i. All occupations requiring engineering reviews will be assessed an additional fee as compensation to NJ TRANSIT Rail Operations.
 - ii. In addition, when railroad personnel or services are utilized by the permittee, reimbursement to NJ TRANSIT Rail Operations or

other involved jurisdictions will be made within 30 days of receipt of billing.

16:77-1.5 Permit fees: general conditions

(a) Long term use or occupancy permit fees are subject to the following conditions:

1. The permit fee equals the annual occupancy rate multiplied by the estimated duration of occupancy in years, not to exceed 20 years and no less than one year unless otherwise described within this schedule.

2. The minimum annual permit fee under any application shall be [\$100.00] **\$125.00**.

3. Any permit generating an annual occupancy fee of less than the minimum per annum fee of \$125.00 will be assessed an annual document maintenance fee of \$50.00. This fee is in addition to the calculated annual occupancy fee. Document maintenance fees will be paid in advance for the same number of years as the prepaid occupancy fee.

[3.]4. Should the facility be terminated at any time less than the estimated years of occupancy, the fees collected are not subject to a refund [for any permit less than estimated years of occupancy. (Minimum 1 year—Maximum 20 years).

[4.]5. NJ TRANSIT reserves the right to consider additional fees [or] for crossings in excess of 200 feet. When increased preparation costs are incurred, the increases will be passed on to the permittee.

[5.]6. Any occupation of NJ TRANSIT property other than transverse track crossings will be charged as a longitudinal crossing based on the lineal foot of the occupation.

[6.]7. Fees are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot width. For all crossings in excess of 200 linear feet, a per foot charge at the applicable 30 foot rate will be assessed, that is, the annual fee for a 300 L.F. transverse occupancy, with an annual occupancy fee of \$120.00 for the first 200 L.F., would be calculated as follows: (300 feet–200 feet) (\$120.00 divided by 30)+\$120.00=fee.

[7.]8. All fees for occupancies encased as a group or otherwise bundled or joined together will be calculated as if they were individual occupations.

[8.]9. Should the facility be modified during the term of the permit, new permit, or supplement to the existing permit, the associated increase in fees will be [required] charged. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

[9.]10. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

[10.]11. Drainage discharge onto NJ TRANSIT property shall be calculated as if it were contained in a circular pipe and the fees shall be in accordance with the transverse occupation fee schedule, under pipes and sewers.

(b) An annual occupancy fee for attachments will be charged as follows when higher rates are not fixed:

1. Attachments of aerial wires and cables to poles or other structures of NJ TRANSIT-[Owned] owned facilities used in wire line construction:

- i. Up to and including 32,500 volts for each attachment to NJ TRANSIT-[Owned] owned cross-arms or brackets [\$5.00] **\$7.00**
- ii. Up to and including 32,500 volts for each attachment to (licensee’s) permittee’s cross-arms or brackets when they are attached to a NJ TRANSIT-owned facility [\$4.00] **\$5.00**
- iii. Wires over 32,500 volts attached to the NJ TRANSIT-owned cross-arms or brackets [\$10.00] **\$12.00** per attachment
- iv. Wires over 32,500 volts and attached to (licensee’s) permittee’s cross-arms or brackets when those brackets are attached to NJ TRANSIT-owned facilities [\$8.00] **\$10.00** per attachment

2. Attachments of aerial wires and cables to buildings or other structures:

i. Each wire or cable attached to railroad bridges or structures, including railroad or highway bridges [\$10.00] **\$12.00** per attachment

3. Attachments of cable terminals to poles, buildings, or structures including highway bridges, railroad bridges owned by NJ TRANSIT.

i. Each cable terminal, loading coil, transformer, or like device is subject to special consideration in each case, but not less than [\$36.00] **\$45.00**.

4. Pipeline carried along NJ TRANSIT-owned property on bridges or other supports are subject to special consideration in each case if permitted by current New Jersey Department of Transportation specifications.

5. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property are subject to special consideration in each case.

(c) An annual occupancy fee for guy wire crossings and overhanging cross-arms and power wires and cables of transmission lines outside of NJ TRANSIT-owned right-of-way will be calculated as follows:

1. Each guy wire crossing NJ TRANSIT-owned property but not anchored thereon [\$5.00] **\$7.00**

2. Cross-arms overhanging NJ TRANSIT-owned property from poles located outside thereof, one or more cross-arms on any pole [\$3.00] **\$5.00**

3. Power wires and cables overhanging NJ TRANSIT-owned property from poles located outside thereof shall be calculated at the rates specified in N.J.A.C. 16:77-1.6(b) and (c). "Permit fees: transverse occupations" and on a pro-rated basis, depending upon the number of overhanging wires, excluding the neutral, ground static or lighting wires.

(d) In any event, if a permit fee is determined to be less than the minimum [\$100.00] **\$125.00** annual fee, the duration of the permit will be extended to whatever multiple is necessary to achieve the minimum fee.

(e) Occupation charges for overhead or underground conveyors, pipe bridges, pedestrian tunnels, or any other facilities not covered by this section will be subject to special consideration.

(f) The minimum permit fee under any agreement where a miscellaneous use of occupancy is involved, not previously defined, shall be [\$100.00] **\$125.00**. The applicant may be subject to possible charges which may result from expenses incurred by NJ TRANSIT's subsidiaries or involved jurisdictions. (NOTE: Permit fees for miscellaneous use or occupancy of NJ TRANSIT-owned property will be determined and charged on an individual basis because of the various types of requests.)

(g) All permits will be charged a fee in accordance with this section; however, at no time shall any fee for an existing occupancy be less than the fee established by the previous owner(s) unless there has been a significant reduction in the occupancy. The discount in the fee shall be calculated as a ratio between the old occupancy and fee to the new configuration and fee. Any increase in occupancy shall warrant an increase in the existing fee.

(g)(h) Short-term use on occupancy fees are subject to the following conditions:

1. The permit fee equals the annual occupancy rate pro-rated for the estimated duration of occupancy.

2. The minimum permit fee under any application shall be [\$100.00] **\$125.00**.

3. Should the facility be terminated at any time less than the estimated period of occupancy, the fees collected are not subject to a refund.

4. At no time shall [the] a short-term use and/or occupancy fee be less than the estimated annual fee for the same use covered under the long-term fee schedule.

5. Should the facility be modified during the term of the permit, a new permit and fee will be required. If a new permit is approved, an amount proportionate to the time remaining on the superseded permit will be credited toward the new fee.

6. In the event the facility goes beyond its paid estimated life, a new fee will be assessed in accordance with the fee schedule rates in effect at that time.

(h)(i) NJ TRANSIT may negotiate lower permit fees when requested to do so by any municipal applicant acting on its own behalf.

16:77-1.6 Permit fees, transverse occupation

(a) All fees in this section are based on a minimum right-of-way width of 30 feet with a fee applicable up to a 200 foot width. For

all crossings in excess of 200 feet, a per foot charge at the applicable 30 foot rate will be assessed (see example N.J.A.C. 16:77-1.5(a)7).

(b) Aerial and underground wire (power and communication) crossings not exceeding 200 feet in length will be charged an annual occupancy fee as follows:

1. Power:

i. All crossings up to but not exceeding 6,900 volts [\$100.00] **\$125.00**

ii. Over 6,900 volts but not exceeding 32,500 volts [\$180.00] **\$225.00**

iii. Over 32,500 volts but not exceeding 50,000 volts [\$300.00] **\$375.00**

iv. Over 50,000 volts but not exceeding 345,000 volts [\$400.00] **\$500.00**

v. Over 345,000 volts but not exceeding 500,000 volts [\$600.00] **\$750.00**

vi. Over 500,000 volts [\$800.00] **\$1,000.00**

vii. Ducts or pipes carrying conductors NO CHARGE

viii. Manholes (each) [\$50.00] **\$65.00**

(NOTE: Attachments of wires, cables, etc. to bridges, buildings, poles or structures of railroad subject to special consideration in each case. Crossings of right-of-way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe, under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.)

2. Communication:

i. Telephone and other communication cables (not including composite coaxial cables):

1. Cable containing not more than 500 pairs [\$100.00] **\$125.00**

2. Cable containing 501 to 1100 pairs [\$175.00] **\$220.00**

3. Cable containing 1101 to 1800 pairs [\$250.00] **\$315.00**

4. Cable containing over 1800 pairs [\$400.00] **\$500.00**

ii. Composite coaxial cables and coaxial television cables containing not more than [4] four conductors [\$150.00] **\$185.00**

iii. All cables containing over four conductors shall be at a rate of [\$20.00] **\$25.00** for each additional conductor.

3. Fiberoptics:

i. All fiberoptics installations will be charged through a negotiated fee. [(NOTE: Crossings of right-of-way by pipe type cable consisting of one or more high voltage cables encased in a steel pipe, under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand should be subject to special consideration and each case handled individually.)]

(c) Poles, towers, guys, and anchors and spare ducts or pipes will be charged an annual fee as follows:

1. Single wooden pole (per pole) [\$25.00] **\$30.00**

2. All other supporting structures other than the auxiliary facilities and appurtenances listed in (c)3, 4, 5, 6, 7 and 8 below [\$50.00] **\$60.00**

3. Each brace, stub pole, or anchor [\$25.00] **\$30.00**

4. Each guy anchored on or crossing NJ TRANSIT-[Owned] owned railroad property [\$ 5.00] **\$7.00**

5. All towers, if not included in a longitudinal occupation shall be assessed per tower leg at [\$30.00] **\$40.00**

6. Each span guy wire crossing [\$25.00] **\$30.00**

7. Spare or unoccupied ducts or pipes, each (when the duct shall be occupied in the future by a cable, the annual fee shall govern and the [\$25.00] **\$30.00** charge cease) [\$25.00] **\$30.00**

8. Guys, stubs, anchors, and push or pull braces required by specification for the support of a crossing pole on NJ TRANSIT-owned right-of-way at the request of the NJ TRANSIT-owned shall be considered as part of the crossing pole and no charge made therefore.

(NOTE: The above charges in (c)1-8 are in addition to the wire and cable occupation charges provided in (b)1-3 above.)

(d) Annual permit occupancy fees for pipes and sewer crossings not exceeding 200 feet in length will be calculated as follows:

1. Circular lines carrying no pressure:

i. Pipes up to and including 12 inches ID .. [\$100.00] **\$125.00**

ii. Pipes over [122] 12 inches and not exceeding 24 inches ID [125.00] **\$170.00**
 iii. Pipes over 24 inches and not exceeding 60 inches ID will be charged at a rate of [3.00] **\$5.00** per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of [150.00] **\$185.00**.

iv. Pipes over 60 inches ID will be charged at a rate of [2.00] **\$2.50** per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of [300.00] **\$375.00**

2. Circular lines under pressure and carrying non-flammable, non-explosive, or non-combustible supporting materials, except coal and water slurry:

i. Pipes up to and including 12 inches ID **\$150.00**
 [i.]ii. Pipes [up to and including] over 12 inches but not exceeding 24 inches ID [100.00] **\$190.00**

[ii.]iii. Pipes over 24 inches ID and not exceeding 60 inches ID will be charged at a rate of [5.00] **\$7.00** per inch of ID over the first 24 inches. This rate is in addition to a minimum fee of [120.00] **\$190.00**

[iii.]iv. Pipes over 60 inches ID will be charged at a rate of [3.00] **\$5.00** per inch of ID over the first 60 inches. This rate is in addition to a minimum fee of [250.00] **\$400.00**

3. Circular lines under pressure and carrying flammable, explosive, or combustible supporting materials, except coal and water slurry:

i. Pipe not exceeding three inches inside nominal diameter-minimum charge for any one crossing [150.00] **\$185.00**

ii. Pipe over three inches inside nominal diameter and not exceeding 12 inches inside diameter-minimum charge for any one crossing [200.00] **\$250.00**

iii. Pipe over 12 inches inside diameter and not exceeding 24 inches inside diameter shall be charged at a rate of [9.00] **\$12.00** per inch of ID over the first 12 inches. This rate is in addition to a minimum charge for any one crossing of [200.00] **\$250.00**

iv. Pipe exceeding 24 inches in diameter shall be charged at a rate of [10.00] **\$13.00** per inch of ID over the first 24 inches. This is in addition to a minimum charge for any one crossing of [320.00] **\$400.00**

4. Charges for non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.

5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

6. Pipe lines carried over NJ TRANSIT-owned property or other support[s] structures are subject to special consideration in each case, if permitted by NJ TRANSIT current specifications.

7. Manholes (each) [50.00] **\$60.00**

8. Charges for attachments of pipes to bridges, buildings, or structures of the NJ TRANSIT-owned property are subject to special consideration in each case.

9. Where pipe or pipes are encased in a protective pipe of larger diameter, no charge shall be made for the protective encasement.

16:77-1.7 Permit fee: longitudinal occupations

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

(c) The following charges cover the complete transmission line occupation and additional charges are not to be made unless there are attachments to NJ TRANSIT-owned facilities. For the purpose of determining voltage, guy wires, messengers and grounded conductors shall be considered as zero voltage. All other conductors shall be rated at voltage to other conductors, whichever is higher.

1. Aerial wires:

i. Transmission line, highest voltage not exceeding 6,900 volts [1,000] **\$1,250** per circuit per mile

ii. Transmission line over 6,900 volts up to but not including 32,500 volts [1,800] **\$2,250** per circuit per mile

iii. Transmission line over 32,500 volts, up to and including 50,000 [2,500] **\$3,125** per circuit per mile

iv. Transmission line, 50,000 volts and over. The fee will be based on a negotiated rate.

2. Aerial and underground cables:

i. Telephone communication cables (not including composite coaxial cables):

(1) Cable containing not more than 1,100 pairs [1,000.00] **\$1,250** per cable per mile

(2) Cable containing 1,101 to 1,800 pairs [1,800.00] **\$2,250** per cable per mile

(3) Cable containing over 1,800 pairs: The fee will be negotiated at a rate not less than [1,800.00] **\$2,250** per cable mile.

(4) For underground communication cables the minimum charge is [2,000.00] **\$2,500** per cable per mile.

ii. Composite coaxial cable and coaxial television cables are subject to negotiation but not less than [2,500] **\$3,125** per mile

iii. Underground power cables:

(1) When cable is buried in an open trench and covered with soil: Minimum charge [1,500.00] **\$1,800** per circuit per mile

(2) When cable is buried in an open trench and surrounded with from 6 to 12 inches of thermal sand:

Minimum charge [2,500.00] **\$3,125** per circuit per mile

(3) When cable is encased in a steel pipe under inert oil pressure and/or further encased in a larger steel pipe and the space between the pipes filled with compacted sand: [5.00] **\$7.00** per inch of nominal diameter of the largest pipe per 100 feet of occupation or fraction thereof with a minimum charge of [2,500.00] **\$3,125** per mile.

iv. Spare or unoccupied ducts or pipes, each per mile [300.00] **\$375.00**

v. Manholes, splicing chambers on pull boxes, each when these structures are necessary for longitudinal occupation

NO CHARGE

vi. An additional charge shall be made for use of NJ TRANSIT-owned property duct lines based on the value of the facility.

(NOTE: Charges shown under [iv., v., vi.] (c)2iv, v and vi above are in addition to the charges shown under (c)2[.] to iii[.] inclusive.)

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

(f) An annual occupancy fee for pipes and sewers will be charged as follows:

1. Circular lines carrying no pressure: [2.00] **\$2.50** minimum charge per inch of inside nominal diameter or fraction thereof per 100 feet of occupation or fraction thereof.

2. Circular lines under pressure and carrying non-flammable, non-explosive, and non-combustible supporting materials, except coal and water slurry: [2.50] **\$3.00** minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

3. Circular lines under pressure and carrying flammable, explosive, and combustible supporting materials, and coal and water slurry: [5.00] **\$7.00** minimum charge per inch of inside nominal diameter per 100 feet of occupation or fraction thereof.

4. Charges of non-circular pipes shall be determined by the diameter of a circular pipe having an equivalent cross-sectional area.

5. Charges for pipe tunnels or other special underground construction shall be subject to special consideration.

16:77-1.8 Automatic annual fee increases

All of the fees set forth in this subchapter shall be increased five percent each year on the anniversary date of the readoption of these rules rounded up to the nearest five dollars (\$5.00).

TREASURY-GENERAL

(a)

STATE INVESTMENT COUNCIL

Common Pension Fund D; International Government and Agency Obligations; Common and Preferred Stocks and Issues Convertible into Common Stock of International Corporations; Purchase and Sale of International Currency

Proposed New Rules: N.J.A.C. 17:16-46, 47, 48 and 49

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1989-529.

Submit comments by November 15, 1989 to:

Roland M. Machold
Administrative Practice Officer
Division of Investment
349 West State Street
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules were approved by the State Investment Council at its July 20, 1989 meeting. The proposed new rules provide for establishment of a new Common Pension Fund D; facilitate international diversification of fixed income and equity investments; and provide for the ability to hedge currency risk.

International diversification is designed to improve returns and add stability to the pension funds.

Social Impact

While the proposed new rules broaden the investment alternatives available for the State's pension funds, no actual social impact will occur.

Economic Impact

The proposed new rules will have no direct economic impact, but will facilitate international investment diversification which should provide a reduction of total portfolio risk for the State's pension funds, while offering opportunity for improved rates of return. Better returns would favorably affect the level of State and municipal contributions over the long term.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed rules would not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules govern State investments.

Full text of the proposal follows:

SUBCHAPTER 46. COMMON PENSION FUND D

17:16-46.1 Definition

(a) Pursuant to P.L. 1970, Chapter 270, there is hereby created in the Division of Investment, Department of the Treasury, a common trust fund, to be known as Common Pension Fund D. The following participating funds may invest in said Common Pension Fund D:

1. Police and Firemen's Retirement System;
2. Public Employees' Retirement System;
3. Teachers' Pension and Annuity Fund; and
5. Judicial Retirement System of New Jersey.

17:16-46.2 Permissible investments

The Common Pension Fund D shall be a fund created for the purpose of investing in international debt securities, international corporate common stocks or securities convertible into such stock, currencies and currency futures and options which are approved for investment under N.J.A.C. 17:16-47, 48 and 49, and in the State of New Jersey Cash Management Fund. Said Common Fund shall be composed of units of ownership of unlimited quantity. All units of ownership shall be represented by a certificate prepared by and issued by the Director of the Division of Investment. Each such certificate may represent one or more units of ownership. All units of ownership shall be purchased by cash payments or in kind. All units shall be purchased by the participating fund for the principal valuation price determined by these rules. At the outset of said Common Fund, all initial purchases shall be made for a principal valuation price of \$1,000 per unit.

17:16-46.3 Certificates of ownership

(a) All certificates of ownership of units shall contain the following information:

1. The number of units purchased;
2. The purchaser;
3. The aggregate principal valuation price for the number of units purchased;
4. The date of purchase;

5. The serial number of the certificate; and
6. The principal valuation price per unit purchased.

17:16-46.4 Units of participation

Each unit of participation shall represent an equal beneficial interest in the fund and no unit shall have priority or preference over any other.

17:16-46.5 Valuation

Upon each valuation date, as defined in N.J.A.C. 17:16-46.16, there shall be a valuation for every investment in the Common Fund in the method provided for in this subchapter. The valuation shall be for the principal value per outstanding unit and the income value per outstanding unit.

17:16-46.6 Date of valuation

The valuation shall be determined at the opening of business of the first business day of each quarter, and shall be based on market prices and accruals as of the close of the previous day, in every case converted into United States dollars as provided in N.J.A.C. 17:16-46.7.

17:16-46.7 Method of valuation

(a) The Director of the Division of Investment shall use the following method of valuation of investments:

1. Where there have been recorded sales or bid and asked prices of an investment in the Common Fund on recognized exchanges in foreign countries approved by the State Investment Council, the last recorded sales price, if there has been a recorded sale, shall be used, unless on a day subsequent to such sale, there shall have been recorded bid and asked prices, in which event the mean of the most recent of such bid and asked prices shall be used; or

2. If there have been no such recorded sales, the mean of the most recent such recorded bid and asked prices shall be used.

(b) For the purpose of this section, recorded sales and bid and asked prices shall be those appearing in newspapers of general circulation published in the City of New York, the City of London, England, in standard financial periodicals, or those established by a recognized pricing service.

(c) In the case of a stock where a dividend has been declared and not as yet paid and the amount of such dividend has been included as income, such amount shall be deducted from the value of the stock as determined in (a) unless such value has been based on an ex-dividend valuation.

(d) An investment purchased and awaiting payment against delivery shall be included for valuation purposes as a security and the cost thereof recorded as an account payable.

(e) An investment sold but not delivered pending receipt of proceeds shall be valued at the net sales price.

(f) For the purposes of valuation of an investment, with the exception of investments sold but not delivered, it shall not be necessary to deduct from the value ascertained by this section, brokers' commission or other expenses which would be incurred on a sale thereof.

(g) For the purposes of valuing securities, all values determined under this section shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date.

17:16-46.8 Valuation of units

(a) The following method shall be used in determining the principal value per unit:

1. To the valuation of investments determined as provided in N.J.A.C. 17:16-46.7, there shall be added:

- i. Uninvested cash principal;
- ii. The value of any rights or stock dividends which may have been declared but not received as of the valuation date when the security has been valued ex-right and ex-dividend;

- iii. Such portion as shall constitute principal of any extraordinary or liquidating dividend which may have been declared but which is unpaid as of the valuation date when the particular security has been valued ex-dividend; and

- iv. Temporary investments which shall be valued at cost. The yield on these temporary investments shall not be accrued, but shall be included in income monthly as paid.

2. There shall be deducted from the sum so ascertained all expenses chargeable to principal due or accrued. The net principal value thus determined shall be divided by the number of existing units in order to ascertain the principal value of each unit.

(b) All valuations established for items (a) i through iv above shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date.

17:16-46.9 Admission date

(a) No admission to or withdrawal from the Common Fund shall be permitted except on the basis of the principal unit value determined as described in N.J.A.C. 17:16-46.8 and no participation shall be admitted to or withdrawn from the Common Fund except on a valuation date or within 15 days thereafter; however, in the event that an admission or withdrawal occurs within the 15 day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal.

(b) All admissions or withdrawals shall be made by cash payments or in kind. The price for purchasing units, except for original units issued by the Common Fund, shall be the principal valuation per unit as determined on each valuation date pursuant to N.J.A.C. 17:16-46.8. Dividends and interest earned shall be retained within the Common Fund, but may be distributed in whole or in part to the participatory pension funds, at the direction of the State Investment Council.

17:16-46.10 Admendmentments

This subchapter may be amended from time to time by the State Investment Council. Any amendment adopted by the council shall be binding upon all participating trusts and beneficiaries thereof. An amendment shall become effective, unless otherwise provided for therein, on the date it becomes effective under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq.

17:16-46.11 Distribution of realized appreciation

(a) Each year, subsequent to the receipt of audited financial statements for the prior fiscal year, the State Investment Council shall consider the realized appreciation in the Common Fund per unit. The Council may, in its sole discretion, choose any or all of the following options:

1. Declare as income to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made, the percentage of such appreciation of principal declared to be income shall be deducted from the total principal in the Common Fund and added to income in the Common Fund prior to the next regular monthly valuation. Following such declaration, the amount declared as income shall be treated and distributed as income to the participating funds monthly or quarterly in cash and/or units;

2. Declare as capital gains to the participating funds such percentage of said realized appreciation of principal as it may deem prudent. When such declaration is made, the percentage of such appreciation of principal declared shall be deducted from the total principal in the Common Fund and distributed monthly or quarterly in cash and/or units; and/or

3. Retain any or all realized appreciation for future investments within the Common Fund.

17:16-46.12 Limitations

(a) The Common Pension Fund D shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, particularly N.J.A.C. 17:16-47, 48 and 49, except for the conditions as to classification of funds contained in N.J.A.C. 17:16-5.

(b) In the event that any rule contains a limitation of the assets of any pension and annuity group fund which may be invested either in one issue or a class of issues, that limitation shall be construed to apply to the combined assets of all of the pension funds and shall not restrict the total common pension fund investment in such asset or assets to those limitations for any individual pension fund. Not more than five percent of the book value of the assets of any pension and annuity group fund shall be invested in units of Common Pension Fund D.

17:16-46.13 Liquidation

The Director, Division of Investment, subject to the approval of the State Investment Council and the State Treasurer, may, upon two months' notice, liquidate the aforementioned Common Fund. In the event of such liquidation, the owners of the units shall share proportionately, according to units owned, in each investment held by the Common Fund. When such proportionate distribution is impracticable in the judgment of the Director, he or she may instead distribute on liquidation, cash or temporary investments held by the Common Fund. Distribution upon liquidation shall occur within 15 days after a valuation date and shall be based upon the principal value per unit determined upon such valuation date. No liquidation will be effectuated without the approval by the State Investment Council of a plan of distribution of the assets of the Common Fund.

SUBCHAPTER 47. INTERNATIONAL GOVERNMENT AND AGENCY OBLIGATIONS

17:16-47.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund, except the Consolidated Police and Firemen's Pension Fund, in obligations which are the direct obligations of sovereign governments or the sovereign's agencies whose obligations are unconditionally guaranteed as to principal and interest by the sovereign's full faith and credit or international agencies whose obligations are directly backed by the collective credit of regional countries.

1. The Director shall submit a list of international governments, their agencies, and international agencies to the Council for its approval. Such list may be amended or enlarged from time to time subject to "Approved List of International Governments and Agencies."

2. The Director shall only select issues of international government and agency obligations from the "Approved List" to be recommended for purchase by the pension and annuity group.

17:16-47.2 Limitations

(a) Not more than five percent of the book value of the assets of any pension and annuity group fund shall be invested in international government and agency obligations.

(b) Not more than one percent of the assets of any pension and annuity group fund shall be invested in international government and agency obligations, whether direct or guaranteed, of any one issuer.

(c) All international government and agency obligations must be rated Aaa/AAA by Moody's Investor's Service Inc. and/or Standard & Poors' Corporation and/or have equivalent ratings.

(d) The total amount of debt issues purchased or acquired of any one issuer on the approved list shall not exceed two percent of the outstanding debt of the issuer, and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.

17:16-47.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained a prospectus or circular describing the issue.

(b) In the case of an issue not registered with the Securities and Exchange Commission, the Director shall obtain, in addition to the requirements of (a) above:

1. Such other documents or opinions which the Attorney General may require; and

2. A written approving opinion from the Attorney General to the effect that all such documents and opinions received by the Director are satisfactory as to form and substance.

17:16-47.4 Approved list of international government and agency obligations bonds

(a) The following sovereign governments and their respective agencies, backed by the full faith and credit of the sovereign, are approved for investment by Common Fund D subject to maintaining the credit standards set forth in this subchapter:

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-GENERAL

| | | |
|-----------|-------------|----------------|
| Australia | France | Sweden |
| Austria | Japan | Switzerland |
| Belgium | Netherlands | United Kingdom |
| Finland | Norway | West Germany |

(b) The following international agencies which are backed by the direct credit support of the collective regional countries are approved for investment by Common Fund D subject to maintaining the credit standards set forth in this subchapter:

INTERNATIONAL AGENCY

| |
|--|
| African Development Bank |
| Asian Development Bank |
| Eurofina |
| European Coal & Steel Community |
| European Economic Community |
| European Investment Bank |
| Inter-American Development Bank |
| International Bank for Reconstruction & Development (World Bank) |
| Nordic Investment Bank |

MOODY'S/S&P

| |
|---------|
| Aaa/AA+ |
| Aaa/AAA |

SUBCHAPTER 48. COMMON AND PREFERRED STOCKS AND ISSUES CONVERTIBLE INTO COMMON STOCK OF INTERNATIONAL CORPORATIONS

17:16-48.1 Permissible investments

(a) Permissible investments include stock issued by a company or bank incorporated or organized under the laws of the countries listed on the Approved List of International Government and Agency Obligations set forth in N.J.A.C. 17:16-47.4.

(b) Regular dividends, either cash or stock, must have been paid on the common stock for five years next preceding the date of purchase of securities under this subchapter (including dividends paid by predecessor companies) from earnings equal to or greater than the dividend paid. This requirement may be waived by the State Investment Council.

(c) Long-term debt shall not be more than 60 percent of total capital in the latest year.

(d) Current assets must be equal to or greater than current liabilities in the latest year.

(e) The Director shall submit a list of common stocks to the Council for its approval. Such list may be amended or enlarged from time to time subject to the Council's approval and shall be designated the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations".

(f) The Director shall only select issues of common stocks from the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations" to be purchased by the pension funds.

(g) Notwithstanding the above restrictions, the Director may:

1. Exercise the conversion privileges in the common stock of any security acquired under this subchapter;

2. Purchase the preferred stock, whether convertible or not, of a company, the stock of which qualifies for investment and is on the "Approved Common and Preferred Stock Convertible Securities List of International Corporations"; and

3. Purchase the convertible issue of a company, the common stock of which qualifies for investment and is on the "Approved Common and Preferred Stock and Convertible Securities List of International Corporations".

17:16-48.2 Applicable funds

(a) The following funds may invest in common and preferred stock of international corporations pursuant to this subchapter:

1. Police and Firemen's Retirement System;
2. Public Employees' Retirement System;
3. State Police Retirement System;
4. Teachers' Pension and Annuity Fund; and
5. Judicial Retirement System of New Jersey.

17:16-48.3 Limitations

(a) The book value of the total investment in common and preferred stock of international corporations for any one pension fund shall not exceed two percent of the book value of such fund.

(b) Not more than one percent of the book value of any fund shall be invested in the common and preferred stock of any one corporation.

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed five percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

SUBCHAPTER 49. PURCHASE AND SALE OF INTERNATIONAL CURRENCY

17:16-49.1 Permissible investments

Subject to the limitations contained in this subchapter, the Director may enter into foreign exchange contracts for the currency of any of the countries listed on the Approved List of International Government and Agency Obligations Bonds or any other currency in which the obligations of those countries on the Approved List are denominated.

17:16-49.2 Limitations

(a) The following limitations apply to those investments permitted under N.J.A.C. 17:16-49.1:

1. The foreign exchange contract must be for the purpose of hedging the international portfolio; and
2. A minimum of 75 percent of the total portfolio's book value will at all times be hedged.

17:16-49.3 Definitions

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

"Foreign exchange contracts" means forward contracts, to sell or buy a specified amount of a specified foreign currency at a rate fixed at the time of the transaction but with delivery at a specified future time, entered into with any U.S.-Canadian-chartered commercial bank having total assets of at least \$2,000,000,000 or its equivalent in Canadian dollars (qualified bank); any U.S. broker-dealer (or subsidiary or affiliate thereof) having a net capital of at least \$100,000,000 (qualified broker); or any other foreign exchange counterparty approved by the State Investment Council.

"Hedging" means combining a long position in an asset with a short position in the hedging instrument in order to offset fluctuations in the value of the underlying asset.

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Classification of Bidders

Proposed Amendments: N.J.A.C. 17:19-1.1 through 2.6

Proposed Repeal: N.J.A.C. 17:19-2.8 through 2.14

Proposed Repeal and New Rule: N.J.A.C. 17:19-2.7

Authorized By: Thomas H. Bush, Director, Division of Building and Construction, Department of Treasury.

Authority: N.J.S.A. 52:35-1 et seq., specifically 52:35-11.

Proposal Number: PRN 1989-504.

Submit written comments by November 15, 1989 to:

Thomas H. Bush, Director
 Division of Building and Construction
 CN 235
 Trenton, NJ 08625-0235

The agency proposal follows:

Summary

When the rules for the classification and prequalification of construction bidders were last revised in 1985, certain new procedures, defined in great detail, were added in an effort to establish a means of ensuring

that construction vendors bidding on State projects were qualified and capable of carrying out the contract requirements. While the resultant classification system has proved essentially sound over the four years of its application, the Division now proposes to amend certain rules in order to correct redundancies, deficiencies and ambiguities, to develop a more responsive and sufficiently specific set of rules to administer, and to refine the existing classification system in an effort to promote greater vendor eligibility for and participation in the State's construction bidding programs. Specifically, one primary intent is to cease use of a single (project) rating which has proved to be an arbitrary and unnecessarily restrictive practice at odds with the fundamental goal of increased participation in the bidding process. Also, these modifications reflect a deliberate effort to extract references to "prequalification" and to emphasize the Division's statutory responsibilities to "classify" bidders. The proposed repeal of certain rules is a result of realization that, while these rules are fundamentally sound and workable, they should, as a matter of practicality and propriety, exist and be promulgated as internal Divisional procedures, thereby permitting prompt enactment of the frequent upgrading and refining of its programs, procedures and forms as necessary to respond to the changes in methodologies and terminologies that perpetually occur within the construction industry.

A summary of each of the proposed amendments, repeals and new rules follows:

N.J.A.C. 17:19-1.1 adds "Classification" and "Questionnaire" to the list of defined terms.

N.J.A.C. 17:19-2.1 is amended to correct the redundant and misplaced list of statements required to accompany a submitted Questionnaire. The list is properly and necessarily contained in the instructional text of GSA-27 Questionnaire form. Also, reference to the single (project) classification rating is removed.

N.J.A.C. 17:19-2.2 is amended to provide more precise and concise language and to drop items deemed unnecessary from the list of required submittals.

N.J.A.C. 17:19-2.3 is amended to provide more precise and concise language in general and to remove specific text regarding Joint Ventures that is redundant to N.J.A.C. 17:19-2.2.

N.J.A.C. 17:19-2.4 amends the title to present the broader process of responsibility determination and removes language relative to performance ratings which will be promulgated as internal Divisional policies and procedures and made available to all prospective bidders.

N.J.A.C. 17:19-2.5 amends the title for conformance to the subject of the text and provides more concise language relative to the actual process of classification.

N.J.A.C. 17:19-2.6 is amended to remove the detailed listing of class codes and trade classifications from these rules due to their specificity and technicality. The Division will update and publish the list of coded classifications as an integral element of the Questionnaire and as Divisional policy to permit prompt revisions as industry changes occur.

N.J.A.C. 17:19-2.7 is repealed and replaced with a new rule that was text formerly contained within N.J.A.C. 17:19-2.11. The repeal of this rule is in recognition of the arbitrary and highly restrictive nature of the rule when applied without sufficient analysis of very current information, an arduous and labor-intensive task considered unsupportable. The Division will continue to apply the more effective and accepted measure of aggregate rating limits which is more readily and directly related to bonding capacity.

N.J.A.C. 17:19-2.8 through 2.10 and 17:19-2.12 through 2.14 are repealed to place the detailed text and mathematical formulas in the more appropriate context of internal Divisional policy to be promulgated and made available to all applicants for classification, as necessary. More specifically, N.J.A.C. 17:19-2.8 is repealed with the evaluation criteria now identified in the proposed revision of N.J.A.C. 17:19-2.6 entitled "Classification" and embodied in the GSA-27 Questionnaire. The step-by-step methodology for evaluating the criteria is deleted from these rules to provide the Division with a more adaptable system that promotes quality assurance and ensures the integrity of the Division's bidding program. N.J.A.C. 17:19-2.9 is repealed since it is a restatement of N.J.S.A. 52:35-7. N.J.A.C. 17:19-2.10 is repealed to correct a redundancy of the text to N.J.S.A. 52:35-4. Specific text regarding the appeal hearing process has been included as N.J.A.C. 17:19-2.4(e). N.J.A.C. 17:19-2.12 is repealed since it is defined in the text of the proposed revisions of N.J.A.C. 17:19-2.4 and 17:19-2.5. N.J.A.C. 17:19-2.13 is repealed since the subject is covered in the proposed text of these rules addressing "Responsibility Determination" and is an established, integral part of the Division's bidding procedures, which are in conformance to statutorily-

defined bonding requirements for State contracts. N.J.A.C. 17:19-2.14 is repealed as it is redundant to and better defined in N.J.A.C. 17:19-3.

N.J.A.C. 17:19-2.11 is repealed but the basic text appears as new rule N.J.A.C. 17:19-2.7.

Social Impact

The proposed revision of the rules regarding the classification of bidders will directly affect all prospective bidders and applicants for classification by providing greater opportunity for participation in the State's bidding processes. It can be expected that a broader base of active participation will result in more vendors being contracted, which will promote new opportunity for vendors and their employees.

Economic Impact

The modifications to the classification system are expected to promote greater competition for the State's public works contracts. Greater competition typically results in greater construction efficiency and economy.

Regulatory Flexibility Analysis

The proposed modification of the classification rule pertaining to the elimination of the single (project) rating would favorably affect all potential construction bidders interested in the State's public works projects, including the more than 2,500 construction vendors currently classified with the Division plus an indeterminate number of currently unclassified and unidentified vendors which will choose to participate in bidding in the future. The recision of the single rating will reduce the level of effort necessary to obtain and maintain classification. Nearly all currently classified vendors are categorized as small business enterprises. Expectations are that there will be no appreciable change in the current ratio and no unfavorable impact to small businesses or large.

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

SUBCHAPTER 1. GENERAL PROVISIONS

17:19-1.1 Definitions

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

"Classification" means the process and product of assigning specific construction categories or trades and the maximum aggregate workload level(s) which define the eligibility of prospective bidders as determined by the Division.

"Director" means the Director of the Division of Building and Construction (hereinafter referred to as DBC) in the Department of the Treasury.

"Person" means any individual, copartnership, association, corporation or joint stock company, their lessees, trustees, assignees or receivers appointed by any court whatsoever.

"Public work" means any public building or other public betterment, work or improvements constructed, repaired or improved wholly or in part at the expense of the public.

"Questionnaire" means the Contractor's Financial Statement and Experience Questionnaire, GSA 27.

SUBCHAPTER 2. RULES

17:19-2.1 Statements required from prospective bidders; contents

[(a)] Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as [DBC-36R] **GSA-27** (Contractor's Financial Statement and Experience Questionnaire). The [DBC-36R] **GSA-27** shall fully describe and establish the financial ability, responsibility, plant and equipment, organization, ownership and prior experience of the prospective bidder and shall be used by the Division of Building and Construction (DBC) in [prequalifying] **classifying** prospective bidders pursuant to N.J.S.A. 52:35-1. et seq.

[(b)] Each DBC-36R shall contain:

1. A statement as to financial status which statement shall show current assets and current liabilities, and which shall include verifications of lines of credit extended by lending institutions and the cash surrender value of relevant life insurance policies;

2. A statement as to plant and equipment, which shall give complete details as to cost, age, conditions and book value;

3. A statement as to organization, which shall demonstrate the adequacy of such organization (officers and key management personnel) to undertake a project in the classification desired;

4. A statement as to prior experience, which shall show the number of years the prospective bidder has been engaged in the contracting business and shall further disclose his experience over that period. In such statement, the applicant may demonstrate the experience of officers, managers and key personnel prior to their affiliation with applicant, which information shall be considered by the DBC;

5. A statement as to past performance, which shall give an accurate and complete record of work completed in the past five years, giving the names of the projects, type of work, location, contract price and the name of the owner and of the architect/engineer in charge for the owner. This statement shall also disclose any labor problems experienced, any failure to complete a contract on schedule, any failure to meet contractual Affirmative Action requirements, any penalties imposed by reason of any contract undertaken within the said five year period. The prospective bidder shall explain any of the above problems, failures or penalties encountered during the past five years, and what steps have been taken to avoid the recurrence of such problems, failures or penalties;

6. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and Federal laws and regulations;

7. A statement as to bonding capacity, which shall be from a surety authorized to issue bid, performance and payment bonds in the State of New Jersey to the applicant contractor, and shall indicate single and aggregate bonding limits as well as the trades for which the bonding limits apply;

8. A statement setting forth any other pertinent material and facts that will justify the classification and ratings requested by the contractor.

(c) The DBC-36R shall also contain the following statement:

The statute governing classification of bidders provides:

"Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000.00 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, co-partnership, association or corporation, to such fine or undergo imprisonment, not exceeding six months, or both." (N.J.S.A. 52:35-9)

(d) It shall be the responsibility of the contractor to demonstrate and provide any and all supportive material to justify a classification and rating applied for.]

17:19-2.2 Joint [Venture statement] Ventures

(a) Where [two or more] **multiple** contractors, each with a valid [classifications and ratings, purpose] **classification, propose** to form a Joint Venture for [purposes] **the purpose** of bidding on one or more [projects] **project(s)**, the venturers shall jointly submit a [statement to the Division which shall:

1. Be] **Statement of Joint Venture (DBC Form 606) and a statement from an authorized surety denoting the bonding capacity of the Joint Venture (see N.J.A.C. 17:19-2.3). These statements shall be received by the Division no less than five calendar days prior to the bid opening date set for the project on which [they propose] the Joint Venture proposes to bid[.];**

[2. State the classifications and ratings of the individual venturers;

3. Describe the purpose, structure and resources of the Joint Venture, and be supplemented by any other information requested by the Division;

4. Include a statement from an authorized surety of the bonding capacities of the individual venturers and the bonding capacity of the Joint Venture; and

5. Be signed by each of the venturers.] **Failure to provide the statements in the prescribed form and time may be cause for rejection of the bid as nonresponsive.**

17:19-2.3 Statements from an authorized surety

[(a) Any contractor proposing to submit bids on a public works project which requires a performance bond or a payment bond, or both, shall cause to be submitted with its DBC-36R (see N.J.A.C. 17:19-2.1(b)7.) a statement of the contractor's bonding capacity. The statement shall be contained on a standardized form prepared by the DBC and shall be from a surety authorized to issue bid bonds, performance bonds, and payment bonds in the State of New Jersey. This statement shall be used by the DBC in calculating the applicant's single project rating and aggregate rating, pursuant to N.J.A.C. 17:19-2.7 and 17:19-2.8.

(b) A contractor who does not provide] (a) **Any bidder failing to submit** a statement of bonding capacity [from an authorized surety] **with the completed Questionnaire** shall not be eligible to bid on any projects for which a bond is necessary[,] but may be eligible to bid on any project for which a bond is not required[.], [within the rating limits described in N.J.A.C. 17:19-2.7 and 17:19-2.8.

(c) In the event that a contractor] (b) **If a bidder** obtains the required bonding statement subsequent to being classified and rated under [(b)] (a) above, the [contractor] **bidder** may apply for [a conversion of its] **an amended** classification [and ratings]. Such a [conversion] **classification** shall be a prerequisite to the [receipt by the contractor of any plans, specifications, proposals and associated documents for the preparation] **submission** of a competitive bid on a project requiring [a] bid, performance or payment [bond] **bonds**.

[(d) Where two or more contractors holding valid classifications and ratings propose to form a Joint Venture for the purpose of bidding on a project, the Joint Venture shall submit with its Joint Venture Statement (see N.J.A.C. 17:19-2.2) a statement from an authorized surety of the Joint Venture's bonding capacity.]

17:19-2.4 [Performance ratings] Responsibility determination

(a) For [any contractor] **bidders** proposing to submit bids on public work, a [performance rating shall be determined. The rating shall be based on a scale of one through ten, with ten as the best, and with five as the minimum satisfactory grade] **determination as to responsibility shall be accomplished by the DBC**.

[(b) For any applicant who has no prior public work experience with the State of New Jersey, the performance rating shall be based on an evaluation of the applicant's references and past experience on private sector projects, as identified in the applicant's DBC 36R form (N.J.A.C. 17:19-2.1(b)5).] (b) A **"responsible" bidder is one which can perform the contracted work as agreed to by the contract parties. A determination of "responsibility" refers to the apparent ability of the bidder to successfully carry out the requirements of a contract. Factors affecting a bidder's responsibility include:**

1. **Financial resource;**
2. **Technical qualifications;**
3. **Experience;**
4. **Organization and facilities to carry out the work;**
5. **Resources needed to meet completion schedules;**
6. **Satisfactory performance record for completion of contracts;**
7. **Accounting and auditing procedures adequate to control property, funds and other assets;**
8. **Civil rights compliance; and**
9. **Satisfactory record of integrity.**

(c) [For any] **Any applicant [who] which** has no prior public works experience with the State of New Jersey[, a performance rating shall be based on the project evaluations done for those State projects, as follows:

1. A project evaluation shall be made for each prime contractor on a public works project. The evaluation shall be made by no less than two persons employed by the State and directly involved in the management, supervision or inspection of the project. The evaluators for a given project shall be appointed by the Director or his designee.

2. Project evaluations shall be presented on a standardized form (DBC-67) prepared by the DBC and shall be filed with the DBC within 30 days of final completion of the contractor's work on the project. Where necessary, interim evaluations may also be prepared and filed as required.

3. While the Director may establish special evaluation criteria for special projects, in general a project evaluation shall be based on but not limited to the following factors:

- i. Schedule adherence, including job planning, manning and sub-missions;
- ii. Workmanship;
- iii. Supervision;
- iv. Subcontractor performance;
- v. Compliance with specified materials and procedures;
- vi. Cooperation with other prime contractors;
- vii. Completion of punch list items and prompt furnishing of closeout documents;
- viii. Timely and cooperative processing of change orders; and
- ix. Affirmative Action compliance.

4. A contractor's performance rating shall be calculated as the average of the various project evaluations.

(d) The performance ratings of contractors shall be updated as State work is completed and as these contractors bid on other projects.

(e) A contractor shall be notified of a project evaluation or performance rating which would adversely affect the contractor's single project rating, aggregate project rating or ultimate classification. The contractor shall be afforded an opportunity to respond to such adverse evaluation or rating.

(f) Where a contractor receives a project evaluation or a performance rating significantly below five, and where the contractor's performance exhibits a disregard for the standards of the contract, the DBC may institute suspension or debarment proceedings against that contractor, pursuant to N.J.A.C. 17:19-3.1, et seq.] **shall be evaluated on the applicant's financial resources, technical qualifications, organization and facilities, accounting and auditing procedures, integrity, references and experience on previous contracts.**

(d) Upon rendering an affirmative finding of responsibility, the DBC shall classify a bidder. Prospective bidders deemed responsible and classified shall be sent a notice of classification by registered mail within a period of eight calendar days following receipt of a satisfactorily completed Questionnaire.

(e) If a contractor objects to its assigned classification or a bidder objects to the classification of any other bidder, a hearing may be requested pursuant to N.J.S.A. 52:35-4. In the case of a contractor objecting to its own classification, the request must be made in writing to the Director within 15 calendar days after the date of the classification notice. In the case of a bidder objecting to the classification of another bidder, the request must be submitted to the Director in accordance with N.J.S.A. 52:35-4 and within three calendar days after the bid opening or at least three calendar days prior to the proposed date of contract award, whichever date is earlier. If a contractor or bidder remains dissatisfied, an appeal may be made pursuant to N.J.S.A. 52:35-6. The appeal hearing shall be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq.

17:19-2.5 [Bidders to be Classified] Scheduled re-classification

(a) Upon receipt of the completed DBC-36R, the Director or his designee shall classify the applicant as to the trade, character, and the dollar value of the public work on which the applicant shall be qualified to submit bids. Classifications will be based on the information contained in and with the DBC-36R and on the contractor's performance rating. Applicants shall be classified as to the trades listed in N.J.A.C. 17:19-2.6; as to the dollar value of individual State projects for which they may bid pursuant to the Single Project Rating Limit on N.J.A.C. 17:19-2.7; and as to the dollar value of total projects on which they may work at any given time pursuant to the Aggregate Rating Limit in N.J.A.C. 17:19-2.8.

(b) Where classification or rating of a contractor is based on a DBC-36R, the classification of rating shall be effective for a period of seven months from the date of the financial data disclosed in the DBC-36R. Prior to the expiration of the classification or rating, a contractor may apply in writing for a single seven month extension of its classification or rating, or both, without filing a new DBC-36R.]

(a) **Bidders shall re-classify every seven months in order to remain**

eligible to bid on public work. However, prior to the expiration of the classification, a bidder may apply, in writing, for a single seven month extension of classification without filing a new Questionnaire.

1. In applying for an extension, the [contractor] bidder shall submit a signed affidavit stating that the applicant's financial and bonding status has not so substantially changed since its last submission of a [DBC-36R] Questionnaire that a change of classification [or rating] would be warranted. The Division of Building and Construction may verify this statement and request additional documentation before an extension is granted;

2. The Division shall grant or deny the extension [in a timely fashion upon] **no later than 10 calendar days following** receipt of the written extension request;

3. No more than one extension may be granted [and, thereafter,] **per classification period. Thereafter,** a [contractor] bidder shall submit an updated [DBC-36R] Questionnaire in order to continue its [pre-qualified] classification;

4. The extension of a classification [or rating] shall be effective for a period of seven months from the expiration date of the preceding rating period which was based upon the submission of a [DBC Form 36R] GSA-27.

[(c)](b) Where a [contractor] bidder has not been granted an extension or where an extension period is expiring, the [contractor] bidder shall file an updated [DBC-36R] Questionnaire with the DBC. Based on this [DBC-36R] Questionnaire, the DBC shall reclassify the [contractor] bidder, as appropriate.

[(d)](c) Where, in the course of a seven month classification period, the financial, corporate or bonding status of a [contractor] bidder changes so substantially as to warrant a change of classification [or rating], the [contractor] bidder shall forthwith notify the [Division] DBC in writing [including the] **and include a submission of a revised [DBC Form 36R] Questionnaire.**

1. With this notice, the [contractor] bidder may also request a change of classification [or rating].

2. The DBC shall review the request for revision and issue a decision no later than [20] **eight calendar days** from the date of the receipt of the request.

3. Any change of classification [or rating] shall be effective only for the remainder of the original seven month period.

17:19-2.6 [Trade classifications] Classification

(a) [In order to be classified for a given trade, a contractor must have successfully completed at least two projects in that trade within the previous five years. These projects may have been either public projects or private sector projects, or a combination of the two.] **The DBC will assign an aggregate classification to each prospective bidder based on the information provided in the completed Questionnaire and the factors delineated in N.J.A.C. 17:19-2.4.**

(b) [The trades for which an applicant may request prequalification are as follows:

- C007 General Construction
(Single Prime)
- C008 General Construction
(Multiple Primes)
- C009 General Construction/
Alterations & Additions
- C010 Partitions/Ceilings
- C011 Doors & Hardware
- C012 Windows
- C013 Siding & Gutters
- C014 Carpeting
- C015 Flooring/Tile
- C016 Millwork
- C017 Insulation
- C018 Acoustical
- C019 Concrete/Foundation
- C020 Guniting
- C021 Demolition
- C022 Fencing
- C023 Solar Installation Passive

PROPOSALS

Interested Persons see Inside Front Cover

TREASURY-GENERAL

- C024 Historical Renovation
- C029 Structural Steel & Ornamental Iron
- C030 Plumbing
- C031 Oil & Gas Burners
- C032 Refrigeration
- C033 Boilers (New/Repair)
- C034 Service Station
- C039 HVAC
- C040 Solar Installation Active
- C041 Insulation/Mechanical
- C042 Incinerators
- C043 Control Systems
- C044 Balancing & Testing of Environmental Systems
- C047 Electrical
- C048 Communication System
- C049 Fire Alarm/Signal Systems
- C050 Security/Intrusion Alarms
- C054 Site Work
- C055 Sewage & Water Treatment
- C056 Sewer Piping & Storm Drains
- C057 Landscape Constr.
- C058 Underground Water & Utilities
- C059 Road Constr. & Paving
- C060 Athletic Fields/Tracks/Courts
- C061 Storage Tanks
- C062 Pumping Stations
- C063 Waste Disposal
- C064 Parking Control Systems
- C068 Roofing—Built Up
- C069 Roofing—Metal
- C070 Roofing—Tile/Slate/Shingles
- C071 Roofing—Membranes
- C072 Roofing—Urethane
- C073 Caulking & Waterproofing
- C077 Painting—General
- C078 Painting—Tanks/Steel Structures/Elevated Structures
- C079 Painting—Historical Sites
- C080 Sandblasting
- C083 Bulkhead & Docks
- C084 Jetty & Breakwater
- C085 Dredging
- C086 Pile Driving
- C089 Prefab Bldgs.
- C090 Prefab Music/Sound/Clean Rooms
- C091 Relocatable Bldgs.
- C093 Asbestos Removal/Treatment
- C094 Waste Removal Toxic/Hazardous
- C097 Prison Equipment Systems
- C098 Energy Management Systems
- C099 Elevators
- C100 Test Labs
- C101 Test Borings
- C102 Well Drilling

- C104 Food Service Equipment
- C105 School Library Furniture
- C106 Lab Furniture/Equipment
- C107 Seating—Auditorium Bleachers

(c) A contractor who is prequalified in trades C007, General Construction (Single Prime), and C008, General Construction, (Multiple Prime), shall also be deemed prequalified for the following trades:

| | | | |
|------|------|------|------|
| C009 | C016 | C054 | C089 |
| C010 | C017 | C057 | C090 |
| C011 | C018 | C059 | C097 |
| C012 | C019 | C062 | C104 |
| C013 | C021 | C073 | C105 |
| C014 | C022 | C077 | C106 |
| C015 | C023 | C080 | C107 |

(d) A contractor who is prequalified in trades C007, General Construction (Single Prime), and C008, General Construction (Multiple Prime), shall also be eligible to bid upon contracts including the following specialty trades but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

| | | |
|------|------|------|
| C020 | C068 | C072 |
| C034 | C069 | C091 |
| C060 | C070 | C099 |
| C061 | C071 | |

(e) A contractor who is prequalified in trade C009, General Construction/Alterations & Additions, shall also be deemed prequalified for the following trades:

| | | | |
|------|------|------|------|
| C010 | C016 | C022 | C077 |
| C011 | C017 | C023 | C080 |
| C012 | C018 | C054 | C089 |
| C013 | C019 | C057 | |
| C014 | C020 | C058 | |
| C015 | C021 | C073 | |

(f) A contractor who is prequalified in trade C009, General Construction/Alterations & Additions, shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

| | | |
|------|------|------|
| C034 | C069 | C072 |
| C061 | C070 | C091 |
| C068 | C071 | C099 |

(g) A contractor who is prequalified in trade C030, Plumbing, shall also be deemed prequalified in trade C041.

(h) A contractor who is prequalified in trade C030, Plumbing, shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

| | | | | |
|------|------|------|------|------|
| C055 | C056 | C058 | C062 | C104 |
|------|------|------|------|------|

(i) A contractor who is prequalified in trade C039, HVAC, shall also be deemed prequalified for the following trades:

| | | |
|------|------|------|
| C031 | C033 | C041 |
| C032 | C040 | C042 |

(j) A contractor who is prequalified in trade C039, HVAC, shall also be eligible to bid upon contracts including the following specialty trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

C043

(k) A contractor who is prequalified in trade C047, Electrical, shall be deemed prequalified for the following trades:

| | | |
|------|------|------|
| C048 | C049 | C050 |
|------|------|------|

(l) A contractor who is prequalified in trade C047, Electrical, shall also be eligible to bid upon contracts including the following trades, but shall be required to engage a subcontractor who is prequalified in the specialty trades listed:

C043

C064

(m) For each trade classification, the Director or his designee shall give each applicant a single project rating and an aggregate rating based upon an analysis of the completed DBC-36R. The single project rating shall be the dollar amount of the largest project for that trade or trades for which the contractor qualifies. The aggregate rating shall be the total amount of work which the contractor is permitted to perform at any one time in all trades combined.] **Any request from an approved applicant to adjust its classification amount for a specific project must be supported by a bonding certification for the requested (or greater) amount and be received by the DBC at least 20 calendar days prior to the date scheduled for bid opening.**

17:19-2.7 [Single project rating limit] **Special classification requirements**

(a) A contractor's single project rating shall limit the size and type of project for which a contractor is eligible. The single project rating shall be based on three factors:

1. The dollar value of the single largest project completed by the applicant within the past five years;
2. The contractor's performance rating as described in N.J.A.C. 17:19-2.3; and
3. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.3.

(b) In no event shall a contractor's single project rating for any project requiring a bond exceed the contractor's single project bonding capacity.

(c) Where a contractor's performance grade is at least 5.0, the contractor shall be assigned a single project rating limit of 1.5 times the dollar value of the largest project completed by the contractor within the last five years, but not to exceed the contractor's bonding capacity for any project requiring a bond.

(d) However, where a contractor's performance rating is greater than 5.0, the contractor may be assigned a single project rating up to three times the dollar value of its largest completed project within the past five years, but not to exceed the contractor's bonding capacity for a project requiring a bond. In such a case, the specific increase in a contractor's single project rating shall be based on the magnitude of the contractor's performance rating and on the nature, volume and dollar value of the projects which resulted in that performance rating.

(e) Where a contractor has not provided a formal statement of bonding capacity from an authorized surety pursuant to N.J.A.C. 17:19-2.2, that contractor's single project rating shall be 1.5 times its largest completed project within the past five years, irrespective of whether its performance rating exceeds 5.0. Further, that contractor may only bid on projects for which a bond is not required.

(f) When the contractor's performance rating is less than 5.0, the Director may reject the application or assign a prequalification rating less than that provided for in (c) above, based on all factors relevant to the contractor's ability to perform.

(g) Where two or more contractors, each holding valid classifications and ratings from the DBC, propose to form a Joint Venture for the purpose of bidding on a project, the single project rating of the Joint Venture shall be the sum of the individual single project ratings of the venturers, but not to exceed the bonding capacity of the Joint Venture.

(h) Where a project evaluation report is received by the Division which would significantly and adversely affect a contractor's existing single project rating, the DBC shall recalculate the contractor's rating and issue an amended rating for use during the remainder of the contractor's seven month rating period (see N.J.A.C. 17:19-2.5).

(i) Where a contractor objects to a single project rating limit, or any amended rating, issued by the DBC the contractor shall be afforded an opportunity for a hearing pursuant to N.J.A.C. 17:19-2.10.]

(a) **The Director may establish appropriate and special classification requirements for a given project as may be dictated by the unique or specialized nature of the work to be performed on that project.**

(b) **The Director may establish appropriate and special requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformance with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously classified bidders and will be appropriately published.**

[17:19-2.8 Aggregate rating limit

(a) A contractor's aggregate rating shall limit the dollar value of State contracts which the contractor may perform at any given time. The aggregate rating limit shall be based on four factors:

1. The contractor's net current assets reported in its DBC-36R;
2. Any lines of credit available to the contractor;
3. The contractor's bonding capacity, as described in N.J.A.C. 17:19-2.3; and
4. The contractor's performance rating as described in N.J.A.C. 17:19-2.4.

(b) Net current assets shall be determined according to generally accepted accounting principles, but may not include:

1. Any assets not in the name of the contractor;
2. Any past due accounts;
3. Any fixed assets or other assets which either are not liquid or are not readily convertible to cash;
4. Securities which are not readily saleable;
5. Securities which have been pledged;
6. The cash surrender value of a life insurance policy on the contractor unless that value is verified in writing from the insurance company; and
7. Lines of credit available to the contractor.

(c) In no event may a contractor's aggregate rating exceed the contractor's aggregate bonding capacity, for projects requiring a bond.

(d) Where a contractor's performance rating is at least 5.0, the contractor's aggregate rating shall be calculated as follows:

1. Multiply the contractor's net current assets to the following table:

| Net Current Assets | Multiplier |
|--------------------|------------|
| \$1-10,000 | 6 |
| \$10,001-20,000 | 8 |
| \$20,001-80,000 | 10 |
| \$80,001-and over | 12 |

2. To the figure obtained above, add any verified, valid line of credit from a responsible lending institution available to the contractor. The total, up to the contractor's bonding capacity, is the aggregate rating limit for projects requiring a bond.

(e) However, where a contractor's performance grade exceeds 5.0, the contractor may be assigned an aggregating rating for projects requiring bonds, which is up to 140 percent of the total obtained in (d)2 above, but not to exceed its bonding capacity.

(f) Where a contractor has not provided a bonding statement as required in N.J.A.C. 17:19-2.3, the contractor's aggregate rating shall be equal to the total obtained in (d)2 above, irrespective of whether the contractor's performance grade exceeds 5.0. Further, the contractor may bid only on projects which do not require any bond.

(g) When the contractor's performance rating is less than 5.0, the Director may reject the application or assign a prequalification rating less than that provided for in N.J.A.C. 17:19-2.7(d), based on all factors relevant to contractor's ability to perform.

(h) Where two or more contractors, each holding valid classifications and ratings from the DBC, propose to form a Joint Venture for the purpose of bidding on a project, the aggregate rating of the Joint Venture shall be the sum of the individual aggregate ratings of the venturers, but not to exceed the bonding capacity of the Joint Venture.

(i) Where a project evaluation report is received by the DBC which would significantly and adversely affect the contractor's existing aggregate rating, the DBC shall recalculate the contractor's rating and

shall immediately notify the contractor of the amended rating and its intended use during the remainder of the contractor's rating period (see N.J.A.C. 17:19-2.4).

(j) Where a contractor objects to an aggregate rating limit, or any amended rating, issued by the DBC, the contractor shall be afforded an opportunity for a hearing pursuant to N.J.A.C. 17:19-2.10.

(k) Upon adoption of these rules, in the event that the procedures described herein produce an aggregate rating for a contractor which is less than the contractor's existing aggregate rating, the Director shall consider an extension of the existing rating through June 30, 1985 providing that the following conditions are met:

1. The contractor shall have at least three performance evaluations on file for projects completed in the past three years with none less than 5.0 or the equivalent;

2. The contractor shall have maintained a continuous classification for a period not less than three years immediately preceding the adoption of these rules;

3. The contractor shall not have experienced any reductions in ratings for whatever reason, during the three year period immediately preceding the adoption of these rules; and,

4. The contractor shall make written application and affirmation of these facts to the Director no later than 45 days following the effective date of these rules.

17:19-2.9 Rejection of bid upon subsequent development affecting bidder's responsibility

The Director may reject any bid, and deny an award to a contractor at any time prior to the actual award of a contract, where there have been developments subsequent to the latest classification of such bidder which, in the opinion of the Director would substantially affect the rating and qualifications of the bidder. Prior to taking any such action, the Director shall notify the bidder and afford him an opportunity, pursuant to N.J.A.C. 17:19-2.10, to present information which might tend to substantiate the existing rating and qualification of the contractor.

17:19-2.10 Classification notice; settlement conferences; hearing

(a) The Director shall notify an applicant of the trade classifications, single project rating and aggregate rating assigned to the contractor no later than eight days from the receipt by the DBC of the applicant's DBC 36-R or Joint Venture Statement, or any additional information requested by the DBC, whichever date is later.

(b) A contractor objects to the reclassification or rating assigned to it or a bidder who objects to the classification or rating of any other bidder on a contract, may request a settlement conference before an impartial Review Committee. A request for review shall:

1. In the case of a contractor who objects to its own classification, be made in writing to the Director no later than 15 days after the date of the classification notice;

2. In the case of a bidder who objects to the classification or rating of any other bidder, be made in writing to the Director with a copy to the contractor whose classification or rating is being challenged, no later than three working days from the date of the bid opening or three working days prior to the proposed date of the contract award, whichever date is sooner; and

3. State with specificity the basis for the objection to the classification or rating and the reason which might warrant a revision.

(c) Upon receipt of a request for a settlement conference, the Director shall appoint a Review Committee. The members of the Committee shall include the State official who issued the challenged classification and such other individuals as determined appropriate by the Director.

(d) The Review Committee shall meet with the contractor and any objector not later than 10 days from the receipt of the request for review. The Committee shall receive the presentation of the contractor and any objector, review the information and attempt to seek a settlement of any differences between the contractor, any objectors and the Division.

(e) If the parties agree upon a settlement of the matter, the terms of the settlement shall be reduced to writing and signed by the parties and by the members of the Review Committee within 10 days from the date of the Committee's meeting.

(f) During the course of any settlement conferences, the contractor whose classification is subject to review shall be eligible to bid on State projects, at the ratings in effect prior to filing of the objections. If there is a change in rating as a result of the conference, the revised ratings shall become effective upon the date of execution of the agreement.

(g) In the event that the contractor remains dissatisfied with the classification, the contractor may request a hearing before the Board of Review, pursuant to N.J.S.A. 52:35-5 and 6.

1. The Board shall consist of the Director of the Division of Building and Construction or his designee; the Attorney General or an assistant or deputy assigned by the Attorney General; and the Secretary of State or an assistant or deputy designated by the Secretary of State.

2. The hearing shall be conducted as a contested case pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1-1 et seq.

17:19-2.11 Special prequalification requirements

(a) The Director may establish appropriate and special prequalification requirements for a given project as may be dictated by the unique or specialized nature of the work to be performed on that project.

(b) The Director may establish appropriate and special prequalification requirements for a given trade classification as may be necessary in order to ensure that bidders are in conformity with the latest technical or safety developments in that trade. Notice of any such special requirements will be duly given to all previously prequalified contractors and will be appropriately published.

17:19-2.12 Effective dates and effect of classifications and ratings

(a) A classification or rating resulting from the filing of a DBC-36R shall be effective for seven months from the date of the financial data contained in the DBC-36R.

(b) The extension of a classification or rating, resulting from the filing of an affidavit pursuant to N.J.A.C. 17:19-2.5(b), shall be effective for seven months from the expiration date of the preceding rating period which are based upon the submission of a DBC Form 36R.

(c) The revision or amendment of a classification or rating, resulting from an administrative review or an application for revision, shall be effective only for the unexpired remainder of the existing seven month period.

(d) In order to be an eligible bidder for a project, a contractor must have been assigned by the DBC a valid classification and rating which is appropriate to the project and which is effective as of the date of the bid opening for the project. Any classification or rating which, as of the date of the bid opening, either has expired or has not yet been assigned, shall not be valid for that bid.

(e) Where a question arises as to whether a bid for a project is within a bidder's existing classification or rating limits, the bid shall be opened provisionally, and if it appears that the bid is at variance with the contractor's trade classification or dollar value ratings, the bid shall be rejected.

17:19-2.13 Award of contracts exceeding aggregate rating limits

(a) A contractor may not be awarded a contract which, when added to the uncompleted portions of any other currently held contracts from whatever source, would exceed the contractor's aggregate rating limit. For example, the purposes of determining the dollar value of currently held contracts, contracts from the State of New Jersey, from other governmental jurisdictions and from the private sector shall be counted.

(b) Where there is a question of whether a contractor's aggregate rating limit can accommodate a given award, the contractor's bid for that contract shall be opened in the normal course, and the contractor's eligibility shall thereafter be computed.

(c) A contractor shall include with each bid a statement of the current value and status of its outstanding contracts, and whether the award of the given contract would exceed its aggregate rating limit. Whether a contractor is eligible for a given award shall be

determined based on the dollar value of the given contract, the contractor's aggregate rating limit as of the bid opening date.

1. However, where a contractor provides with its bid clear and convincing evidence that its outstanding balance of contracts will be within its aggregate rating limit by the time the bid project is scheduled to begin, the Director may accept the contractor's bid on that condition. The Director shall base this determination on the complexity of the bid project, the duration of the bid project and the risk that the State will encounter if the bid is accepted.

(d) Where a contractor successfully bids for two or more contracts which, either in combination with each other or in combination with the uncompleted portions of other currently held contracts, would exceed the contractor's aggregate rating limit, the contractor shall be awarded only those contracts which in combination fall within the contractor's aggregate rating limit, as follows:

1. Contracts shall be considered for that contractor in chronological order of the bid opening dates; and,

2. Where a given contract award would exceed the contractor's aggregate limit, the contractor shall not be eligible for that award.

(e) As a contractor completes existing contracts or discrete portions thereof, the contractor's eligibility for new contracts within its existing aggregate rating shall be adjusted accordingly.

17:19-2.14 Removal of bidder from approved list

Where the Director determines that a prospective bidder is unqualified to submit bids on any public work, he shall so notify the prospective bidder of the proposed debarment, suspension or disqualification. In such circumstances, the contested case hearing provisions of N.J.A.C. 17:19-3.1, et seq. shall be followed.]

(a)

DIVISION OF BUILDING AND CONSTRUCTION Debarment, Suspension and Disqualification of Person(s)

Proposed Amendment: N.J.A.C. 17:19-3.2

Authorized By: Thomas H. Bush, Director, Division of Building and Construction, Department of Treasury.

Authority: N.J.S.A. 52:27-1 et seq.

Proposal Number: PRN 1989-518.

Submit comments by November 15, 1989 to:

Thomas H. Bush, Director
Division of Building and Construction
CN 235
Trenton, New Jersey 08625-0235

The agency proposal follows:

Summary

Effective October 19, 1988, Executive Order No. 189 established specific prohibitions on State vendor activities relative to conflicts of interest and other unlawful procurement practices. This amendment is proposed to add these specific prohibitions to the existing list of 13 causes for debarment of persons by the Division of Building and Construction and thereby ensure that the intent and force of the Executive Order is promulgated in accordance with the language of the Order.

Social Impact

The proposed amendment will have a beneficial social impact in that it further stipulates and clarifies those acts which can render a vendor liable for debarment and thus ineligible for all State public works contracts. The effective operation of State procurement processes requires a maximum level of integrity, and this amendment promotes the continuance of propriety and the conformance to requisite standards.

Economic Impact

The proposed amendment is intended to prevent abuse of the established procurement rules and regulations. In effect, this amendment will assure that the State's procurement programs are conducted in a fair and open market which should, in turn, produce enhanced competition.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as defined under the Regu-

latory Flexibility Act, N.J.S.A. 52:14B-16 et seq., not otherwise imposed by Executive Order No. 189. As that Order provides for no compliance differentiation based upon business size, none can be provided under this amendment.

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

17:19-3.2 Causes for debarment of a person(s)

(a) In the public interest, the Division of Building and Construction shall debar a person for any of the following causes:

1.-13. (No change.)

14. Making any offer or agreement to pay or to make payment of, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family as defined by N.J.S.A. 52:13D-13i, of any such officer or employee, or any partnership, firm, or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

15. Failure by a vendor to report to the Attorney General and to the Executive Commission on Ethical Standards in writing forthwith the solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee;

16. Failure by a vendor to report in writing forthwith, or failure to obtain a waiver from the Executive Commission on Ethical Standards, for the undertaking of, directly or indirectly, any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or the selling of any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he or she is employed or associated or in which he or she has an interest within the meaning of N.J.S.A. 52:13D-13g;

17. Influencing or attempting to influence or cause to be influenced, any State officer or employee or special State officer or employee in his or her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

18. Causing or influencing or attempting to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his or her official position to secure unwarranted privileges or advantages for the vendor or any other person.

OTHER AGENCIES

(b)

NEW JERSEY TURNPIKE AUTHORITY

Control of Traffic on the New Jersey Turnpike Limitations on Use of Turnpike

Proposed Amendment: N.J.A.C. 19:9-1.9

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

Authority: N.J.S.A. 27:23-1 et seq., specifically 27:23-29; P.L. 989, c. 36.

Proposal Number: PRN 1989-549.

Submit comments by November 15, 1989 to:

Frank B. Holman, Executive Director
New Jersey Turnpike Authority
P.O. Box 1121
New Brunswick, New Jersey 08903

The agency proposal follows:

Summary

In 1949, the New Jersey Division of Motor Vehicles adopted rules pertaining to the law requiring use of "Out-of-Service" signs on school buses, N.J.S.A. 39:4-128.2. The Motor Vehicle Code stated that when an in-service school bus is stopped for the purpose of discharging or collecting passengers all traffic must come to a full stop.

The New Jersey Division of Motor Vehicle's driver manual, issued in 1956, stated specifically that school buses traveling on the New Jersey Turnpike display "Out-of-Service" signs. Since 1956, the Authority's Toll Collection manual also set forth the "Out-of-Service" sign requirement. The New Jersey Turnpike Authority formally adopted a traffic regulation which required the use of "Out-of-Service" signs, which is codified at N.J.A.C. 19:9-1.9(a)25.

However, the New Jersey Legislature has re-examined the need for the "Out-of-Service" sign law and determined to repeal same (see P.L. 1989, c. 36). The State of New Jersey and all other toll roads connecting with the New Jersey Turnpike do not require "Out-of-Service" signs on school buses. In the interest of uniformity regarding school bus travel and in response to the Legislature's action, the Authority has determined to delete its regulation pertaining to "Out-of-Service" signs on school buses in its entirety and recodify N.J.A.C. 19:9-1.9(a)26 as (a)25.

Social Impact

The proposed amendment will have a neutral social impact on the public as the public is familiar with the rules regarding school buses and the amendment will promote uniformity regarding school bus travel on the eastern seaboard.

Economic Impact

No direct economic impact on the general public is expected to result. School bus manufacturers and operators will no longer have to fabricate and install "Out-of-Service" signs.

Regulatory Flexibility Statement

The proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment deletes, pursuant to a statutory repeal, a Turnpike prohibition against school buses not displaying "Out-of-Service" signs.

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

19:9-1.9 Limitations on use of turnpike

(a) Use of the New Jersey Turnpike and entry thereon by the following is prohibited:

1.-24. (No change.)

[25. Buses which are designated as school buses which do not conspicuously display, front and rear, "Out-of-service" signs as in accordance with the requirements prescribed by the State Board of Education.]

[26.]**25.** (No change in text.)

(b) (No change.)

(a)

ELECTION LAW ENFORCEMENT COMMISSION

Report Form A-3

Proposed Amendment: N.J.A.C. 19:25-10.8

Authorized By: Election Law Enforcement Commission,

Frederick M. Herrmann, Ph.D., Executive Director.

Authority: N.J.S.A. 19:44A-6.

Proposal Number: PRN 1989-534.

Submit comments by November 15, 1989 to:

Gregory E. Nagy, Esq.

Election Law Enforcement Commission

National State Bank Building, 12th Floor

CN 185

Trenton, New Jersey 08625-0185

The agency proposal follows:

Summary

The Election Law Enforcement Commission (hereafter, "the Commission") proposes to amend N.J.A.C. 19:25-10.8, short form for certain continuing political committees. This rule permits continuing political committees expending \$2,500 or less in a calendar year to file a one-time certification (Form A-3) in lieu of four quarterly reports (Form R-3) during the calendar year.

The Commission proposes to amend subsection (a) by changing the date of the filing of the Form A-3 from September 15 to January 15. The Commission also proposes to change the period of time for which the Form A-3 is effective from a 12-month period starting on July 1st and ending June 31st to a calendar year (that is, January 1st to December 31st). Use of a calendar year period of time is consistent with the calendar year period of time provided in the statutory definition of "continuing political committee" (see N.J.S.A. 19:44A-3(n)(2)).

The Commission believes that use of a calendar year period will be less complex for continuing political committees.

The Commission proposes to amend subsection (b) by raising from \$1,000 to \$2,500 the amount that may be expended by a continuing political committee filing the Form A-3. This change brings subsection (b) in conformity with the existing standard in subsection (a). Also, the text of subsection (b) has been altered to clarify the filing obligations that arise if a continuing political committee exceeds \$2,500 in expenditures during a calendar year for which it has filed the Form A-3. In that event, the continuing political committee must file a full quarterly report (Form R-3) on the filing date provided in N.J.A.C. 19:25-10.3 for the calendar year quarter in which the \$2,500 figure was exceeded. That quarterly report must contain all contribution and expenditure information for prior calendar year quarters, if any. Further, the continuing political committee must file quarterly reports (Form R-3) for the remaining calendar year quarters on the filing dates provided in N.J.A.C. 19:25-10.3.

Social Impact

The proposed amendment affects reporting requirements of relatively small continuing political committees that are expending \$2,500 or less in a calendar year. The substantive changes from the existing rule concern the period of time covered by the short form report (Form A-3), which would change from a July 1st through June 31st period to a calendar year, and concern the date of the filing of the Form A-3, which changes from July 15 to January 15. These substantive changes will make compliance with reporting requirements of smaller continuing political committees easier, and easier for the public to understand. In relying previously on a 12-month period beginning on July 1, the Commission had thought this period of time would coincide better with the terms of office of political party committee officers who are elected at June primary elections. However, the Commission now believes use of anything other than a calendar year may be contrary to N.J.S.A. 19:44A-3(n)(2), and is unduly complex.

Economic Impact

The Commission does not anticipate any significant economic impact. Any costs imposed on affected committees by the amended rule will be of a minor administrative nature.

Regulatory Flexibility Statement

The proposed amendment does not impose any requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amended rule affects political committees.

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

19:25-10.8 [Short form for certain continuing political committees]

Report Form A-3

(a) A continuing political committee may satisfy its **quarterly** reporting obligation for [the 12-month period commencing July 1] a **calendar year** if it files with the [commission] **Commission** no later than [September 15] **January 15** of that **calendar** year a certified statement (Form A-3) to the effect that the total amount to be expended in that [12-month period] **calendar year** shall not exceed \$2,500.

(b) In the event a continuing political committee files with the [commission] **Commission** a certified statement (**Form A-3**) pursuant to (a) above, and total expenditures in fact exceed [\$1,000] **\$2,500** during the calendar year for which the statement was filed, the

continuing political committee must [commence filing quarterly reports as of the date expenditures exceed \$1,000, and the first quarterly report must include all contributions received and all expenditures made, incurred or authorized during the calendar year.]:

1. File a quarterly report (Form R-3) on the date relevant to the quarter in which \$2,500 of expenditures was exceeded as set forth in N.J.A.C. 19:25-10.3, and that quarterly report must include all contributions received and all expenditures made from the beginning of the calendar year; and

2. File on the dates provided in N.J.A.C. 19:25-10.3 quarterly reports for the remainder of the calendar year.

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

HEALTH

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

State Sanitary Code—Chapter III

Veterinary Public Health

Proposed Readoption: N.J.A.C. 8:23

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairperson, and Molly Joel Coye, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1989-539.

A public hearing concerning Subchapters 1, 2 and 4 of this proposal will be held on November 13, 1989 at 1:00 P.M. at:

Health and Agriculture Building
Commissioner's Conference Room, 8th Floor
John Fitch Plaza
Trenton, New Jersey

Submit written comments by November 15, 1989 to:

Annette M. Hirsch, R.N., M.P.H.
Chief, Biological Services Program
CN 364
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 8:23 expires on December 17, 1989. The department has reviewed the rules and determined them to be necessary, reasonable, and proper for the purpose for which they were originally promulgated. In order to avoid expiration of N.J.A.C. 8:23, readoption of these rules without change is now being proposed.

N.J.A.C. 8:23-1.1, Importation of dogs; certification requirements, addresses importing dogs from other states and requires a veterinarian's certification that the dog has been free of communicable diseases and, where applicable, has been vaccinated against rabies. It also requires notifying the local board of health in whose jurisdiction the imported dog resides.

N.J.A.C. 8:23-1.2, Reporting of cases of rabies in animals, requires veterinarians and all persons having knowledge of any domestic or other animal affected by rabies to notify the board of health or person designated for this purpose.

N.J.A.C. 8:23-1.3, Transportation of quarantined animals, requires that permission be granted from local health departments having jurisdiction or, in the case of out-of-State, from the State Department of Health, for translocation of an animal under quarantine because of rabies. These rules have remained viable because rabies is constantly present in other states.

N.J.A.C. 8:23-1.4, Quarantine, testing and transportation of quarantined birds of psittacine family, requires that quarantine be imposed on a flock of psittacine birds whenever a human case of psittacosis is diagnosed, where exposure is known or suspected to have come from a particular psittacine bird or flock of birds, or where a sick bird from a particular flock of birds is clinically diagnosed as having psittacosis.

Prior to 1983, psittacine birds under quarantine because they were suspected to have psittacosis were required to undergo a 45 day treatment regime and could not be offered for sale until completion of the quaran-

tine period. Since laboratory testing was not required by rule, confirmation or negation of the disease by laboratory analysis was discretionary. The now required laboratory tests, which demonstrate that the bird(s) are negative for psittacosis, permits early release from quarantine.

N.J.A.C. 8:23-1.5, Records of dealers in birds of the psittacine family, establishes the length of time dealers in psittacine birds must retain these records and the information to be retained.

N.J.A.C. 8:23-1.6, Herd testing program, requires that dairy cows be free of brucellosis in order to use or sell their milk within New Jersey. The rule requires testing be done as approved by the Department of Health.

N.J.A.C. 8:23-2.1, Importation of rabbits, designates the time frame for importing and releasing rabbits in this State.

N.J.A.C. 8:23-2.2, Permit, requires the person importing rabbits into this State to obtain a permit from the appropriate agency and delineates the information to be contained on the permit.

N.J.A.C. 8:23-3, Kennels, Pet Shops, Shelters and Pounds, regulates these animal facilities for sanitary operations and for the control of diseases transmissible from animal to man. The readoption of these rules is an important factor in the maintenance of public health in the State of New Jersey.

N.J.A.C. 8:23-4.1, Sale or distribution of live turtles, prohibits the sale of turtles in New Jersey to control the spread of Salmonella contamination and provides a waiver if turtles are sold for food, research or other zoological purposes.

N.J.A.C. 8:23-5, Animal Control Officer Certification, regulates the training and certification process for individuals who have the responsibility of enforcing state and local laws governing the control of animals in a municipality. The readoption of these rules will assure the availability of a uniformly trained group of officials who can interpret and enforce the rules and ordinances regarding animal control.

Social Impact

N.J.A.C. 8:23-1, 2, and 4, Chapter III of the State Sanitary Code, are designed to control the vectors of disease, identify the presence of disease and prevent the spread of zoonotic diseases. For example, rabies is enzootic, or constantly present, in other states. While the disease exists primarily in wildlife, the spillover effect to domestic animals poses a serious threat to the health and safety of the human population. The rules addressing importation, the health certification, reporting of rabies cases, quarantine, and transportation of quarantined animals are viable rules necessary to control rabies and other zoonosis.

Psittacosis is a disease spread from birds to man and its presence in a psittacine flock poses a serious health problem in a community. The rules addressing psittacines, bird quarantine, and removal of suspected birds from sale protects the community and interrupts the transmission of this disease. Testing of suspected birds permits early identification of diseased birds and allows prompt identification of the source or sources to prevent further distribution of diseased birds from within or outside of the State.

N.J.A.C. 8:23-3 is designed to aid in the control of disease, particularly those diseases transmissible from animals to man, and to support the humane handling of animals in kennels, pet shops, shelters and pounds. N.J.A.C. 8:23-5 provides for the certification of animal control officers in the municipalities in New Jersey, and assures a minimum uniform standard of training and performance.

N.J.A.C. 8:23-1 through 5 all serve to decrease social costs which may occur without regulation in these areas.

Economic Impact

There are no serious economic impacts resulting from the implementation of these rules, with the exception of a nominal cost to the consumer as a requirement of N.J.A.C. 8:23-1.1 for veterinarian services in providing an examination, rabies vaccination and health certificate for dogs brought into the state and a minimal cost for laboratory testing for psittacosis as requirement of N.J.A.C. 8:23-1.4.

Psittacine birds known to have been exposed or suspected of having psittacosis must either be treated for as long as 45 days or be destroyed. Laboratory testing provides prompt determination of the absence of psittacosis resulting in early release from quarantine. This is an economic advantage to the purveyor, since the sale of birds can be resumed. The cost of testing is negligible, in comparison to the cost of destruction or withholding from sale for the extensive quarantine period.

The economic impact of this chapter cannot be readily defined in specific terms, due to the variety of businesses affected by the rules, which include pet shops, kennels, shelters and pounds. While there are certain necessary costs such establishments incur as part of their efforts to comply

with the rules in this chapter, such costs may also be considered good business practice. There are no fees or charges assessed by the rules in this chapter. There may be costs to municipalities as a result of the requirement at N.J.A.C. 8:23-5.5 that only certified animal control officers be hired; however, the costs for the approved certification course are nominal and do not recur.

Regulatory Flexibility Analysis

This chapter imposes performance and design requirements on pet shops, kennels, pounds, importers of certain birds and municipal governments, some of which can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Many, if not most, of the businesses regulated could be classified as small businesses; therefore, for this reason and for reasons of public health, the Department does not consider it appropriate to establish differential requirements for small businesses.

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:23.

(a)

**HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Standard Costs Per Case**

Proposed Amendment: N.J.A.C. 8:31B-3.22

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with the approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and
26:2H-18d.

Proposal Number: PRN 1989-543.

Submit comments by November 15, 1989 to:
Pamela S. Dickson, Assistant Commissioner
Hospital Reimbursement, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Labor Market areas are used to account for differing compensation patterns related to non-physician direct patient care costs. The current areas were determined by the U.S. Department of Labor with modifications by the New Jersey Department of Health for areas containing the fewest hospitals.

Current regulations recognize the 11 areas used for rate setting in 1988. The only change now proposed would allow use of these areas in years subsequent to 1989 rather than in 1989 only.

Social Impact

Retaining existing Labor Market areas will cause no change in State-wide impact because it represents no change in the designations currently used.

Economic Impact

Retaining the current Labor Market Areas will cause no change in economic impact to patients, Chapter 83 hospitals, or payers because the proposed amendment will alter the Procedural and Methodological Regulations to allow continuation of current reimbursement methodology and practice.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full time employees and therefore does not fall into the category of small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

- 8:31B-3.22 Standard costs per case review
 - (a)-(c) (No change.)
 - (d) Determination of labor equalization factor to calculate [statewide] **Statewide** standard costs per case:
 - 1. (No change.)
 - 2. [For 1989 rate setting purposes, the] Labor Market areas recognized in 1988 rate setting at N.J.A.C. 8:31B-3.22(d)3 will be used **for rate setting in subsequent years.**
 - 3.-7. (No change.)
 - (e) (No change.)

(b)

**HOSPITAL REIMBURSEMENT
Reasonable Direct Cost Per Case
Emergency Room Patients**

Proposed Amendment: N.J.A.C. 8:31B-3.23

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-18.4 et seq. (P.L. 1989, c.1).

Proposal Number: PRN 1989-547.

Submit comments by November 15, 1989 to:
Scott Crawford, Director
Health Care for the Uninsured Program, 8th Floor
New Jersey Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 8:31B-3.23 is designed to implement section 12 (N.J.S.A. 26:2H-18.15) of P.L. 1989 c.1 (N.J.S.A. 26:2H-18.4 et seq.), which called for an adjustment of a hospital's schedule of rates to ensure that nonemergent services received by emergency room patients are reimbursed at a rate appropriate for primary care. This adjustment would guarantee that a multi-level pricing system for emergency room services would be used by all Chapter 83 hospitals.

The multi-tiered emergency room pricing system would be established in the following manner:

1. The Hospital Rate Setting Commission will approve rates set according to a uniform methodology for calculating the primary care rate and a nonprimary care rate for hospital emergency rooms. These rates are intended to reimburse for direct patient care costs of patients not admitted as inpatients. Costs of ER patients who are admitted as inpatients are allocated to the inpatient rates, and are not intended to be reimbursed through this methodology. Indirect costs are also not intended to be addressed through this methodology and will continue to be reimbursed in the customary manner.

The emergency room cost of the hospital (for patients not admitted) which will be used to establish rates will be specific to the institution and the two rates will be determined by the following formulas:

Step 1: $TC = (P)(C_1) + (E)(C_2)$

- where TC = the total hospital specific emergency room charges to patients not admitted;
- P = the number of estimated primary care visits in the emergency room;
- C₁ = charge per primary care visit;
- E = the estimated number of nonprimary care visits in the emergency room of patients not admitted; and
- C₂ = charge per nonprimary care visit.

The sum of the estimated number of primary care visits in the emergency room, P, and the estimated number of nonprimary visits, E, is specific to the institution and equals the total annual visits to the hospital's emergency room of patients not admitted. The total visits will be an actual, hospital-specific number taken from the most recent, reliable data reported by the hospital. The number of estimated primary care visits (P) and the estimated number of nonprimary care visits (E) will be determined by the Department using one month's data supplied by the hospital (see below regarding reporting requirements).

Step 2: C/TC = cost/charge ratio
 $(C/TC)(C_1)$ = primary care direct patient care rate
 $(C/TC)(C_2)$ = nonprimary care direct patient care rate

where C = base year direct patient care cost of patients not admitted.

A constraint on the primary care rate is that it cannot exceed 50 percent of the emergency room rate that would have been set under the methodology in effect prior to January 1, 1990.

The primary care rate and the nonprimary care rate represent the hospital specific average prices for services rendered in the emergency room. During the first year of these regulations, both rates will be calculated from one month's (February 1990) data provided to the Department by April 1, 1990 from the State's acute care hospitals. The Department will issue forms by December 15, 1989 to collect the data needed for the calculations. The Department will refine the rate calculations annually to reflect changes, or more accurate data, regarding the primary/nonprimary patient mix.

New rates will be issued July 1, 1990 which will cover services rendered since January 1, 1990. In addition, hospitals must implement two-level (at least) charging on January 1, 1990, using CPT criteria (see below). These charges will be part of the basis for setting of rates.

The primary care rate and the nonprimary care rate must meet Commission approval.

2. The criteria for patient selection into a primary care category will be based on levels one (minimal), two (brief) and three (limited) of the five emergency department levels of service as defined by (the most recent edition of) the Physicians' "Current Procedural Terminology" (CPT), which is jointly published by the American College of Emergency Physicians and the American Medical Association. Only visits meeting such criteria will be reimbursed as primary. Other levels of service will be reimbursed at the nonprimary rate. NOTE: This means all hospitals will have to implement, at a minimum, coding to reflect CPT levels one, two, and three for all emergency room patients starting January 1, 1990.

3. At reconciliation, the rates for all primary care services provided in the emergency room would be reconciled to a single primary care rate, approved by the Commission; and the rates for all nonprimary care services would be reconciled to a single nonprimary care rate approved by the Commission. Using actual volume and case-mix data, this reconciliation shall be constrained to generate revenue equal to that which would have been realized under the single-price emergency room methodology in effect prior to January 1, 1990.

If adopted, these amendments will become operative on January 1, 1990 and remain in place for two years. The Department plans to adopt a revised methodology which will become effective January 1, 1992.

Social Impact

The amendment provides hospitals with the parameters for a more appropriate payment schedule for emergency room visits that will differentiate between primary and nonprimary care visits. Such a change in the payment rates would give hospitals an incentive to more appropriately triage the persons who present in the emergency room.

Uninsured, self-pay individuals will pay a more reasonable price for primary care services received in the emergency room and a higher price (on average) for nonprimary care services received in that same setting.

Hospitals are barred from refusing to provide emergency room services to a patient not requiring the services on an emergency basis. At the same time, hospitals will have the ability to direct patients to more appropriate sites of care.

Economic Impact

The proposed amendment leaves some features of existing multi-tiered pricing systems in place while imposing a uniform definition for pricing primary care services provided in the emergency room. For hospitals which have already established a multi-tiered pricing system, implementing the amendment should result in little to no increase in the administrative hospital costs. For those hospitals without a multi-tiered pricing system, implementation of the amendment is relatively straightforward. In both cases, major administrative costs will be seen in the time involved in training hospital staff in the use of the (new) coding system for emergency room visits.

There is the added economic impact of a multi-tiered emergency room pricing system on the Uncompensated Care Trust Fund. Emergency room care is more expensive than hospital clinic or private physician visits. Given the tendency of the uninsured population to utilize emergency

rooms for primary care services, this population as well as the Trust Fund, are being overcharged for their care. The amendment would allow for more equity in the pricing system used for care delivered in an emergency room setting.

Regulatory Flexibility Statement

The proposed amendment affects only those hospitals whose rates are set by the Hospital Rate Setting Commission. There are no hospitals subject to the rule with fewer than 100 full-time employees. Therefore, the amendment has no impact on any institution which would qualify as a small business pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.23 Reasonable direct cost per case
 (a)-(d) (No change.)

(e) **Emergency room patients:**

1. The Department will propose and the Commission approve a primary care rate and a nonprimary care rate for hospital emergency rooms. These rates are intended to reimburse for direct patient care costs of emergency room patients not admitted as inpatients. Costs of emergency room patients admitted as inpatients are allocated to the inpatients rates, and will not be reimbursed through this methodology. Indirect costs will not be addressed through this methodology and will continue to be reimbursed in the customary manner.

2. The base year emergency room cost of the hospital (for patients not admitted) which will be used to establish rates will be specific to the institution and the two rates will be determined by the following formulas:

Step 1: $TC = (P)(C_1) + (E)(C_2)$

where TC = the total hospital specific emergency room charges to patients not admitted;
 P = the number of estimated primary care visits in the emergency room;
 C_1 = charge per primary care visit;
 E = the estimated number of nonprimary care visits in the emergency room of patients not admitted; and
 C_2 = charge per nonprimary care visit.

The sum of the estimated number of primary care visits in the emergency room, P , and the estimated number of nonprimary visits, E , is specific to the institution and equals the total annual visits to the hospital's emergency room of patients not admitted. The total visits will be an actual, hospital specific number taken from the most recent, reliable data reported by the hospital. The number of estimated primary care visits (P) and the estimated number of nonprimary care visits (E) will be determined by the Department using one month's data supplied by the hospital.

Step 2: C/TC = cost/charge ratio
 $(C/TC)(C_1)$ = primary care direct patient care rate
 $(C/TC)(C_2)$ = nonprimary care direct patient care rate

where C = base year direct patient care cost of patients not admitted.

3. A constraint on the primary care rate is that it cannot exceed 50 percent of the emergency room rate that would have been set under the methodology in effect prior to January 1, 1990.

4. Any increase in the nonprimary care rate may not be solely for the purpose of replacing the revenue differential resulting from the reduced rates for primary care provided in the emergency room, but must reflect the emergent nature of the service as well.

5. The primary care rate and the nonprimary care rate represent the hospital specific average prices for services rendered in the emergency room. During 1990, both rates will be calculated from one month's (February 1990) data provided to the Department by April 1, 1990 from the State's acute care hospitals. The Department will issue forms by December 15, 1989 to collect the data needed for the calculations. The

Department will refine the rate calculations annually to reflect changes, or more accurate data, regarding the primary/nonprimary patient mix.

6. New rates will be issued for July 1, 1990, which will cover services rendered since January 1, 1990. In addition, hospitals will implement two-level (at least) charging on January 1, 1990, using CPT criteria. These charges will be part of the basis for setting of rates.

7. The primary care rate and the nonprimary care rate must meet Commission approval.

8. After January 1, 1990, all emergency room patients shall be coded by the hospital as needing primary care or non-primary care. Primary care shall be defined as those categories described in the Physician's Current Procedural Terminology as either minimal service, brief service or limited service. Non-primary care shall be defined as those categories described in the Physician's Current Procedural Terminology as either intermediate service, extended service, or comprehensive service. (See Physician's Current Procedural Terminology, American Medical Association, P.O. Box 10946, Chicago, Illinois 60610.)

9. Emergency room visits of patients not admitted as inpatients shall be reconciled to the rates set as described in this section. In addition, however, in at least 1990, hospital approved revenue for these services shall be adjusted at reconciliation to the amount that would have been reimbursed under the methodology in effect prior to January 1, 1990. The Department shall propose a different methodology for reconciliation of 1991 emergency room visits if it deems it appropriate.

10. Hospitals shall not refuse to provide services to any patient for the reason that such patient does not require services on an emergency basis.

(a)

HOSPITAL REIMBURSEMENT Procedural and Methodological Regulations Reasonable Indirect Patient Care Costs Proposed Amendment: N.J.A.C. 8:31B-3.24

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and
26H:2H-18d.

Proposal Number: PRN 1989-544.

Submit comments by November 15, 1989 to:

Pamela S. Dickson, Assistant Commissioner
Health Planning and Resources Development, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Two changes are proposed to the indirect reimbursement methodology. The first deals with reimbursement of medical insurance and the second redefines the year used to calculate adjusted admissions.

Medical insurance is currently reimbursed at base-year cost inflated to rate year dollars by a proxy. The current methodology does not account for changes in the cost of medical insurance due to increases and decreases in number of employees.

It is assumed that the number of employees is directly related to volume of patients. Therefore, the Department proposes that Medical Insurance be reimbursed on a volume variable basis. However, unlike the four cost centers currently reimbursed on a volume variable basis, the unit price for medical insurance will be each hospital's base-year cost per adjusted admission rather than a peer group standard cost. A hospital-specific unit price is proposed because variation among hospital unit costs is greater than acceptable for standard pricing.

The second proposed change to the indirect methodology defines the adjusted admissions used to calculate standards as base year rather than 1986 adjusted admissions.

Social Impact

This proposed amendment will improve the ability of hospitals to provide health benefits for needed employees. It will also allow unit prices for medical insurance and the four indirect cost centers that are reimbursed at a peer group standard to be calculated off new base years.

Economic Impact

Overall, this amendment will provide hospitals with revenue which more closely approximates the price of employee medical insurance. It will permit hospitals with constant volume to obtain revenue approximating their medical insurance costs. Hospitals with decreasing volume will no longer be guaranteed their indirect costs for medical insurance benefits regardless of number of employees. Hospitals with increasing volume will have the ability to provide medical insurance benefits for the additional employees necessary to support care for an increased number of patients.

If total patient care in New Jersey remains at the base year volume, there will be no overall economic impact other than more accurate reflection of input prices of employee medical insurance benefits. If Statewide patient care volume increases or decreases, there will be a parallel increase or decrease in payments to hospitals for medical insurance premiums. For example, the 1988 base year unit cost of approximately \$90.00 paid on 1,375,000 adjusted admissions amounts to \$123,750,000. If 1990 volume grew five percent, to 1,443,750 adjusted admissions, payments would increase to \$129,937,500. The opposite would occur if patient volume decreases by five percent to 1,306,250 adjusted admissions resulting in \$117,562,500 in medical insurance reimbursement.

Changing the year of the adjusted admissions used to calculate indirect payment rates will allow unit prices per adjusted admission to be calculated from a new base year. Without this change, unit prices from the 1988 base year would be calculated using 1986 adjusted admissions, which would result in increases or decreases in unit prices not reflective of base year experience.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full-time employees and therefore do not fall into the category of small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, [employee health insurance,] malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of overhead mark-up factors.

1.-3. (No change.)

4. The adjusted admissions used to calculate these peer group standards will be [1986] ***base year*** adjusted admissions.

5. (No change.)

6. The hospital-specific unit cost of purchased health insurance for employees will be determined by dividing the base year expenditures recorded as the Policy Fringe Benefit (PFB) Termed Medical Insurance by the base year amount of adjusted admissions. This amount will be adjusted by the hospital's economic factor and reimbursed on a volume variable basis.

[6.]7. (No change in text.)

[7.]8. (No change in text.)

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

(a)

**HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Capital Facilities**

Proposed Amendment: N.J.A.C. 8:31B-3.27

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and
26H:2H-18d.

Proposal Number: PRN 1989-545.

Submit comments by November 15, 1989 to:

Pamela S. Dickson, Assistant Commissioner
Health Planning and Resources Development, Room 604
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Dodge Report, which was used to determine the construction cost per bed, is no longer being published. In order to calculate the Capital Facilities Formula Allowance for each hospital, Statewide bed construction costs per bed will be determined by the Division of Health Facilities of the Department of Health. Without this amendment, the calculation of the Capital Facilities Allowance under Option I would not be possible.

Social Impact

The amendment will provide hospitals with the proper estimate of the money a hospital needs towards a down payment on future Capital Facilities, thereby promoting future solvency.

Economic Impact

The amendment will allow Hospitals to continue to utilize a valuable budgeting and forecasting tool in determining present and future capital facilities financing needs.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. All of these hospitals employ more than 100 full-time employees and therefore do not fall into the category of small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.27 Capital Facilities

(a) Capital facilities as defined in N.J.A.C. 8:31B-4.42, shall be included in the Preliminary Cost Base in the following manner:

1. Building and fixed equipment:
 - i.-iii. (No change.)
 - iv. The Capital Facilities Formula Allowance is calculated as follows:
 - (1) (No change.)
 - (2) The number of target beds is multiplied by an estimated current construction cost per bed. This amount shall be the average construction cost per square foot multiplied by gross square feet per bed, determined [in the Dodge Construction System Costs adjusted for location of the hospital] **by the New Jersey Department of Health, Division of Health Facilities, based on Statewide costs per bed (as updated annually).**[¹]
 - (3)-(4) (No change.)
 - v.-vii. (No change.)
 2. (No change.)

[¹Dodge Construction Systems Cost, McGraw Hill Cost Information Systems, 1221 Avenue of the Americas, New York, New York 10020]

(b)

**HOSPITAL REIMBURSEMENT
Procedural and Methodological Regulations
Notification Appeal and Review**

Proposed Amendment: N.J.A.C. 8:31B-3.51

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with the approval of the Health Care
Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5B and
26H:2H-18d.

Proposal Number: PRN 1989-542.

Submit comments by November 15, 1989 to:

Pamela S. Dickson, Assistant Commissioner
Hospital Reimbursement, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

Several changes have been made to the rule on notification appeal and review. This rule has been framed more generically. A reference to specific years has been deleted. New language has been inserted allowing hospitals to appeal under the Accept option any Hospital Rate Setting Commission-approved continuing adjustments not captured in a base year because they were approved between the base year and the first year of implementation.

Social Impact

This amendment will facilitate the appropriate review for possible adjustment to rebased rates of hospital costs approved by the Hospital Rate Setting Commission relative to a previous base year.

Economic Impact

The economic impact of the proposed amendment will be least when the time between base year and first year of implementation is shortest. Precise quantification is not possible due to the uncertainty of HRSC approval of continuous adjustments during the time period.

Regulatory Flexibility Statement

The proposed amendment applies only to the hospitals that have rates established by the Hospital Rate Setting Commission. Each of these hospitals employs more than 100 full time employees and therefore does not fall into the category of small business, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

8:31B-3.51 Notification appeal and review

- (a) (No change.)
- (b) Notification by hospitals: Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing, of their decision to:
 1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate; Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient case costs. The amount will be fixed and included as an indirect cost in the mark-up factor. Rates accepted will also include an increase in direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 and the operating margin as described in N.J.A.C. 8:31B-3.38. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

- i.-viii. (No change.)
- ix. [1987-1988] Commission-approved continuing adjustments that were not captured in the base year because they were approved between the base year and the initial year of implementation.
- x.-xi. (No change.)
- 2. (No change.)

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of Extension of Comment Period Health Care for the Uninsured Program

N.J.A.C. 8:31B-4.37 and 7.3

Take notice that the Department of Health has extended to October 20, 1989 the period for written comment on the proposed amendments to N.J.A.C. 8:31B-4.37 and 7.3 published in the August 21, 1989 New Jersey Register at 21 N.J.R. 2448(a).

Submit written comments by that date to:
Scott Crawford, Director
Program for the Uninsured, 8th Floor
CN 360
New Jersey Department of Health
Trenton, New Jersey 08625

(b)

HOSPITAL REIMBURSEMENT

Diagnosis Related Groups (DRG) List Regulation

Proposed Amendment: N.J.A.C. 8:31B-5.3

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specially 26:2H-5b and 26:2H-18d.

Proposal Number: PRN 1989-546.

Submit comments by November 15, 1989 to:
Pamela Dickson, Assistant Commissioner
Health Planning and Resources Development, Room 601
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

In response to the concern of the industry to maintain currency of the data collected for prospective reimbursement, through the Diagnosis Related Group (DRG) classification, the Department is proposing amendments to the present New York State GROUPER Version 6.0. Through the utilization of 64 new DRGs, the GROUPER will be updated to the New York State GROUPER Version 7.0. The new DRGs are reflective of some DRG refinements, as developed by Yale University, which more clearly identify those patients having comorbid conditions along with the principal diagnosis. New York State has also evaluated the Version 6.0 GROUPER, beyond the Yale DRG refinements, and incorporated these revisions into Version 7.0 GROUPER for non-Federal patients.

Additional DRGs have been added to 19 Major Diagnostic Categories, which will separate those patients having a major complication or comorbidity from the patients having less severe conditions. Three new DRGs were created to further define those obstetrical patients who have diagnoses, complications and/or procedures during pregnancy or childbirth which would classify them as high risk, thus providing a more appropriate rate structure to be utilized. A new DRG has been added to include babies who have reached 28 days of age, are less than one year, and are referred to a community hospital setting for purposes of weight gain following tertiary care. A DRG for adults transferred to a community hospital setting for aftercare from tertiary care, such as a trauma center, has also been added.

The high and low outlier trim points will be set statistically, as was done for GROUPER Version 6.0.

Social Impact

New Jersey hospitals have been on the DRG prospective reimbursement system since 1982. The concept of the DRG classification and the associated length of stay for each DRG have been the basis for the payment rate since that time. This proposed amendment is only a further refinement of the DRG classification, to keep it current. Thus, there should be no adverse social impact for the consumer, provider, payer or other interested parties.

Under the proposed amendment, New Jersey hospital rates will be based on the most current grouping of patients. Keeping the system current is a priority of the Department and a commitment made to the hospital industry and payers. Moving to this more current GROUPER will allow New Jersey rates to be established on the better-defined DRGs.

Economic Impact

The Statewide economic impact of the proposed amendment is budget neutral. Use of the version 7.0 GROUPER simply assigns patients to the most appropriate diagnostic category, but neither increases nor decreases the total dollars in the reimbursement system. The use of this more current version should result in individual patients receiving a bill which more closely resembles their use of hospital services than does the current version of the GROUPER.

Regulatory Flexibility Statement

These proposed amendments apply to hospitals which have rates established by the Hospital Rate Setting Commission. Each of these hospitals employ more than 100 full time employees and, therefore, are not considered in the small business category as defined in N.J.S.A. 52:14B-16 et seq.

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

8:31B-5.3 Listing of Diagnosis Related Groups.

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

(c) A table of Diagnosis Related Groups follows:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (001)-(035) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (530) CRANIOTOMY W MAJOR CC | NA | NA |
| (531) NERVOUS SYSTEM PROCEDURES EXCEPT CRANIOTOMY W MAJOR CC | NA | NA |
| (532) TIA, PRECEREBRAL OCCLUSION, SEIZURE & HEADACHE W MAJOR CC | NA | NA |
| (533) OTHER NERVOUS SYSTEM DISORDERS W MAJOR CC | NA | NA |
| (736)-(739) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 02: DISEASES AND DISORDERS OF THE EYE

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (036)-(048) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (534) EYE PROCEDURES W MAJOR CC | NA | NA |
| (535) EYE DISORDERS W MAJOR CC | NA | NA |
| (736) (No change.) | | |

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MAJOR DIAGNOSTIC CATEGORY 03: DISEASES AND DISORDERS OF THE EAR, NOSE, MOUTH AND THROAT

| | OUTLIER LOW | TRIM POINT HIGH |
|---|----------------|--------------------|
| (049)-(074) (No change.) | | |
| (168)-(169) (No change.) | | |
| (185)-(187) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (536) ENT & MOUTH PROCEDURES EXCEPT MAJOR HEAD & NECK W MAJOR CC | NA | NA |
| (537) ENT & MOUTH DISORDERS W MAJOR CC | NA | NA |
| (735)-(736) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 04: DISEASES AND DISORDERS OF THE RESPIRATORY SYSTEM

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (075)-(102) (No change.) | | |
| (468) (No change.) | | |
| (475)-(477) (No change.) | | |
| (538) MAJOR CHEST PROCEDURES W MAJOR CC | NA | NA |
| (539) RESPIRATORY PROCEDURES EXCEPT MAJOR CHEST W MAJOR CC | NA | NA |
| (540) RESPIRATORY INFECTIONS INFLAMMATIONS W MAJOR CC | NA | NA |
| (541) RESPIRATORY DISORDERS EXCEPT INFECTIONS, BRONCHITIS & ASTHMA W MAJOR CC | NA | NA |
| (542) BRONCHITIS & ASTHMA W MAJOR CC | NA | NA |
| (631)-(632) (No change.) | | |
| (736) (No change.) | | |
| (740) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 05: DISEASES AND DISORDERS OF THE CIRCULATORY SYSTEM

| | OUTLIER LOW | TRIM POINT HIGH |
|---|----------------|--------------------|
| (103)-(145) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (543) CIRC DISORDERS EXCEPT AMI, ENDOCARDITIS, CHF & ARRHYTHMIA W MAJOR CC | NA | NA |
| (544) CHF & CARDIAC ARRHYTHMIA W MAJOR CC | NA | NA |
| (545) CARDIAC VALVE PROCEDURE W MAJOR CC | NA | NA |
| (546) CORONARY BYPASS W MAJOR CC | NA | NA |
| (547) OTHER CARDIOVASCULAR PROCEDURES W PUMP W MAJOR CC | NA | NA |
| (548) OTHER CARDIOTHORACIC PROCEDURES W PUMP W MAJOR CC | NA | NA |
| (549) OTHER CARDIOVASCULAR PROCEDURES W/O PUMP W MAJOR CC | NA | NA |
| (550) NON-MAJOR CARDIOVASCULAR PROCEDURES W MAJOR CC | NA | NA |
| (736) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 06: DISEASES AND DISORDERS OF THE DIGESTIVE SYSTEM

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (146)-(167) (No change.) | | |
| (170)-(184) (No change.) | | |
| (188)-(190) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (551) GASTROENTERITIS W MAJOR CC | NA | NA |
| (552) DIGESTIVE SYSTEM DISORDERS EXCEPT GASTROENTERITIS W MAJOR CC | NA | NA |
| (553) DIGESTIVE SYSTEM PROCEDURES EXCEPT HERNIA PROCEDURES W MAJOR CC | NA | NA |
| (554) HERNIA PROCEDURES W MAJOR CC | NA | NA |
| (736) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 07: DISEASES AND DISORDERS OF THE HEPATOBILIARY SYSTEM AND PANCREAS

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (191)-(208) (No change.) | | |
| (468) (No change.) | | |
| (476)-(477) (No change.) | | |
| (555) PANCREAS, LIVER & OTHER BILIARY TRACT PROCEDURES W MAJOR CC | NA | NA |
| (556) CHOLECYSTECTOMY AND OTHER HEPATOBILIARY PROCEDURES W MAJOR CC | NA | NA |
| (557) HEPATOBILIARY AND PANCREAS DISORDERS W MAJOR CC | NA | NA |
| (736) (No change.) | | |
| (741) (No change.) | | |

MAJOR DIAGNOSTIC CATEGORY 08: DISEASES OF MUSCULOSKELETAL SYSTEM AND CONNECTIVE TISSUE

| | OUTLIER LOW | TRIM POINT HIGH |
|--|----------------|--------------------|
| (209)-(213) (No change.) | | |
| [(214) BACK & NECK PROCEDURES W CC | 4 | 48 |
| (215) BACK & NECK PROCEDURES W/O CC | 2 | 23] |
| (216)-(256) (No change.) | | |
| (468) (No change.) | | |
| (471) (No change.) | | |
| (476)-(477) (No change.) | | |
| (558) MAJOR MUSCULOSKELETAL PROCEDURES W MAJOR CC | NA | NA |
| (559) OTHER MUSCULOSKELETAL PROCEDURES W MAJOR CC | NA | NA |
| (560) MUSCULOSKELETAL DISORDER EXCEPT MEDICAL BACK & FRACTURE OF FEMUR W MAJOR CC | NA | NA |
| (561) MEDICAL BACK W MAJOR CC | NA | NA |
| (736) (No change.) | | |

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Interested Persons see Inside Front Cover

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|--|-------------|-----------------|---|-------------|-----------------|
| (755) BACK & NECK PROCEDURES W SPINAL FUSION W CC | NA | NA | (571) MALE REPRODUCTIVE PROCEDURES W MAJOR CC | NA | NA |
| (756) BACK & NECK PROCEDURES W SPINAL FUSION W/O CC | NA | NA | (536) (No change.) | | |
| (757) BACK & NECK PROCEDURES W/O SPINAL FUSION W CC | NA | NA | MAJOR DIAGNOSTIC CATEGORY 13: DISEASES AND DISORDERS OF THE FEMALE REPRODUCTIVE SYSTEM | | |
| (758) BACK & NECK PROCEDURES W/O SPINAL FUSION W/O CC | NA | NA | | OUTLIER LOW | TRIM POINT HIGH |
| MAJOR DIAGNOSTIC CATEGORY 09: DISEASES OF THE SKIN, SUBCUTANEOUS TISSUE AND BREAST | | | (353)-(369) (No change.) | | |
| | OUTLIER LOW | TRIM POINT HIGH | (468) (No change.) | | |
| (257)-(284) (No change.) | | | (477) (No change.) | | |
| (468) (No change.) | | | (572) FEMALE REPRODUCTIVE DISORDERS W MAJOR CC | NA | NA |
| (476)-(477) (No change.) | | | (573) NON-RADICAL FEMALE REPRODUCTIVE PROCEDURES W MAJOR CC | NA | NA |
| (562) MAJOR SKIN & BREAST DISORDERS W MAJOR CC | NA | NA | (736) (No change.) | | |
| (563) OTHER SKIN DISORDERS W MAJOR CC | NA | NA | MAJOR DIAGNOSTIC CATEGORY 14: PREGNANCY, CHILDBIRTH AND THE PUERPERIUM | | |
| (564) SKIN & BREAST PROCEDURES W MAJOR CC | NA | NA | | OUTLIER LOW | TRIM POINT HIGH |
| (736) (No change.) | | | (370)-(384) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 10: ENDOCRINE, NUTRITIONAL AND METABOLIC DISEASES | | | (468) (No change.) | | |
| | OUTLIER LOW | TRIM POINT HIGH | (477) (No change.) | | |
| (285)-(301) (No change.) | | | (650) HIGH RISK CESAREAN SECTION W CC | NA | NA |
| (468) (No change.) | | | (651) HIGH RISK CESAREAN SECTION W/O CC | NA | NA |
| (476)-(477) (No change.) | | | (652) HIGH RISK VAGINAL DELIVERY W STERILIZATION AND/OR D & C | NA | NA |
| (565) ENDOCRINE, NUTRITIONAL & METABOLIC PROCEDURES EXCEPT LOWER LIMB AMP W MAJOR CC | NA | NA | (736) (No change.) | | |
| (566) ENDOCRINE, NUTRITIONAL & METABOLIC DISORDERS W MAJOR CC | NA | NA | MAJOR DIAGNOSTIC CATEGORY 15: (No change.) | | |
| (735)-(736) (No change.) | | | MAJOR DIAGNOSTIC CATEGORY 16: DISEASES AND DISORDERS OF THE BLOOD AND BLOOD FORMING ORGANS AND IMMUNITY | | |
| (740) (No change.) | | | | OUTLIER LOW | TRIM POINT HIGH |
| (753) COMPULSIVE NUTRITION DISORDER REHABILITATION | NA | NA | (392)-(399) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 11: DISEASES AND DISORDERS OF THE KIDNEY AND URINARY TRACT | | | (468) (No change.) | | |
| | OUTLIER LOW | TRIM POINT HIGH | (476)-(477) (No change.) | | |
| (302)-(333) (No change.) | | | (574) BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL DISORDERS W MAJOR CC | NA | NA |
| (468) (No change.) | | | (575) BLOOD, BLOOD FORMING ORGANS & IMMUNOLOGICAL PROCEDURES W MAJOR CC | NA | NA |
| (476)-(477) (No change.) | | | (736) (No change.) | | |
| (567) KIDNEY & URINARY TRACT PROCEDURES EXCEPT KIDNEY TRANSPLANT W MAJOR CC | NA | NA | (742) (No change.) | | |
| (568) RENAL FAILURE W MAJOR CC | NA | NA | MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY DIFFERENTIATED MALIGNANCY AND OTHER NEOPLASMS NEC | | |
| (569) KIDNEY & URINARY TRACT DISORDERS EXCEPT RENAL FAILURE W MAJOR CC | NA | NA | | OUTLIER LOW | TRIM POINT HIGH |
| (736) (No change.) | | | (400)-(414) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 12: DISEASES AND DISORDERS OF THE MALE REPRODUCTIVE SYSTEM | | | (473) (No change.) | | |
| | OUTLIER LOW | TRIM POINT HIGH | (576) ACUTE LEUKEMIA W MAJOR CC | NA | NA |
| (334)-(352) (No change.) | | | (577) MYELOPROLIF DISORDERS OF POORLY DIFF NEOPLASMS W MAJOR CC | NA | NA |
| (468) (No change.) | | | (578) LYMPHOMA & NON-ACUTE LEUKEMIA, W MAJOR CC | NA | NA |
| (477) (No change.) | | | | | |
| (570) MALE REPRODUCTIVE DISORDERS W MAJOR CC | NA | NA | | | |

| | | |
|---|-------------|-----------------|
| (579) PROCEDURES FOR LYMPHOMA, LEUKEMIA, MYELOPROLIF DISORDERS W MAJOR CC | NA | NA |
| (735)-(736) (No change.) (742) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND PARASITIC DISEASES (SYSTEMIC) | | |
| | OUTLIER LOW | TRIM POINT HIGH |
| (415)-(423) (No change.) | | |
| (580) SYSTEMIC INFECTIONS & PARASITIC DISORDERS W MAJOR CC | NA | NA |
| (581) SYSTEMIC INFECTIONS & PARASITIC DISORDERS PROCEDURES W MAJOR CC | NA | NA |
| (736) (No change.) (742) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 19-20: (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 21: INJURY, POISONING, AND TOXIC EFFECTS OF DRUGS | | |
| | OUTLIER LOW | TRIM POINT HIGH |
| (439)-(455) (No change.) (468) (No change.) (476)-(477) (No change.) | | |
| (582) INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC | NA | NA |
| (583) PROCEDURES FOR INJURIES EXCEPT MULTIPLE TRAUMA W MAJOR CC | NA | NA |
| (736) (No change.) (752) (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 22: (No change.) | | |
| MAJOR DIAGNOSTIC CATEGORY 23: SELECTED FACTORS INFLUENCING HEALTH STATUS AND CONTACT WITH HEALTH SERVICES | | |
| | OUTLIER LOW | TRIM POINT HIGH |
| (461)-(467) (No change.) (633)-(635) (No change.) | | |
| (636) INFANT AFTERCARE FOR WEIGHT GAIN, AGE 28 DAYS TO ONE YEAR | NA | NA |
| (736) (No change.) (754) TERTIARY AFTERCARE | NA | NA |
| MAJOR DIAGNOSTIC CATEGORY 24-25: (No change.) | | |

(a)

**PUBLIC HEALTH COUNCIL
Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health
Cardiovascular Disease Services; Health Services for Older Adults**

Proposed Amendments: N.J.A.C. 8:52-6.3 and 6.4

Authorized By: Public Health Council, Milton Prystowsky, M.D., Chairperson.

Authority: N.J.S.A. 26:1A-1 et seq.

Proposal Number: PRN 1989-540.

Submit comments by November 15, 1989 to:

Dennis P. McDonough, M.P.H.
Chief, Health Aid Services Program
Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The Public Health Council is proposing amendments to N.J.A.C. 8:52, Recognized Public Health Activities and Minimum Standards of Performance for Local Boards of Health in New Jersey. The proposed amendments are in the areas of cardiovascular disease services (N.J.A.C. 8:52-6.3) and health services for older adults (N.J.A.C. 8:52-6.4).

The proposed change in the cardiovascular disease service standard provides for an adjustment of the current percentage of the high risk population to be screened by local health agencies from five percent to one percent. This adjustment is based on the broadening of the definition for the term "high risk population" in the 1989 Adult Health Services Guidelines. With a wider population base beginning at 18 years of age, the rule change from five percent to one percent does not alter the actual number of individuals to be screened during a one year time period.

The amendment to the health services for older adults rules proposes an adjustment of the current percentage of non-institutionalized elderly to receive a yearly health needs assessment by local health agencies from three percent to one percent. This adjustment is based on the 1989 Adult Health Services Guidelines, which emphasize a more complete and comprehensive health needs assessment be performed on each elderly person seen by local health agencies. Instead of focusing on volume, the approach, after three years of practical implementation, has been diverted to more comprehensive assessments of a lesser number of persons.

The 1989 Adult Health Guidelines upon which these proposed amendments are based were reviewed and approved by the Adult Health Services Review Committee which consists of State Health Department, Program Personnel, New Jersey Health Officers Association representation and local health agency Nursing Directors and Health Educators. These guidelines were presented before the Public Health Council and were endorsed for publication and distribution to the 114 local health departments throughout the State. The Department advised the Public Health Council that these amendments to the current rules were needed to establish consistency and continuity with the 1989 guidelines.

Social Impact

The proposed amendments will have no adverse impact on the health of the general public or the overall functioning of local health agencies. The percentage adjustment for cardiovascular disease services will not result in fewer individuals being screened, since the population base has been expanded to include younger age groups. With respect to the health services for older adults, the percentage adjustment will reduce the overall number of health needs assessments, while increasing the comprehensiveness and completeness of the need assessments performed. It will also have a positive impact for the local health agencies in that the rules and guidelines will be consistent.

Economic Impact

The proposed amendments will not have an economic impact. No additional funds are necessary for implementation.

Regulatory Flexibility Statement

The proposed amendments will have no impact upon reporting, recording, or compliance requirements for small businesses; therefore, a regu-

latory flexibility analysis is not required. These amendments pertain to local health agencies or, boards of health, which are governmental agencies, and to the private agencies with which boards contract for services, such as the Visiting Nurses' Associations. The amendments proposed will not change the net effect of the requirements upon these entities.

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

8:52-6.3 Cardiovascular disease services

(a) The local board of health shall provide cardiovascular disease control services according to the Department of Health "Adult Health Services Guidelines" and shall:

1. Provide hypertension screening services yearly to [five] **one** percent of the high risk population;
- 2.-5. (No change.)

8:52-6.4 Health services for older adults

(a) The local board of health shall provide for a health program at locations selected by the health department which identifies the health needs of adults age 65 and older, and shall:

1. Provide health needs assessments on [three] **one** percent of the non-institutionalized elderly in accordance with "Guidelines for Health Services for Older Adults" contained in the Adult Health Services Guidelines (available at the New Jersey Department of Health);
- 2.-6. (No change.)

(a)

DIVISION OF ALCOHOLISM AND DRUG ABUSE Intoxicated Driving Program/Intoxicated Driver Resource Center

Proposed Repeals: N.J.A.C. 8:66

Proposed New Rules: N.J.A.C. 8:66

Authorized By: Molly Joel Coye, M.D., M.P.H., Commissioner,
Department of Health.

Authority: N.J.S.A. 39:4-50 et seq., specifically 39:4-50(F).

Proposal Number: PRN 1989-541.

Submit comments by November 15, 1989 to:

David G. Evans, Esq.
Chief, Intoxicated Driving Program
CN 365
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Health is responsible for establishing rules governing the administration of the program for evaluation and referral of persons convicted of operating a vehicle or vessel under the influence of alcohol or drugs. In developing the proposed rules, the Department obtained the recommendations of the county Intoxicated Driver Resource Centers, the Attorney General, and various experts on alcohol and drug problems.

The Operating a Vehicle or Vessel Under the Influence laws, N.J.S.A. 39:4-50, N.J.S.A. 12:7-34.19 et seq. and 12:7-46 et seq., requires that all persons convicted under the laws or under the Refusal to Submit to a Chemical Test laws, N.J.S.A. 39:4-50.4(a) and N.J.S.A. 12:7-57, must satisfy the evaluation, referral, program and fee requirements of the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program and the County Intoxicated Driver Resource Centers. This affirms the public policy that all persons convicted of driving under the influence of alcohol or drugs should be required to receive a thorough evaluation to detect an alcohol or drug problem and treatment, if necessary, and receive information on alcohol and drug problems and their relation to driving and health.

FUNCTIONS OF THE INTOXICATED DRIVER RESOURCE CENTERS

The counties, in cooperation with the Division of Alcoholism, established the Intoxicated Driver Resource Centers by late 1984. The functions of the Intoxicated Driver Resource Centers include evaluation, education, referral to treatment, and treatment monitoring. Failure to

attend the program or comply with the recommended treatment or education will result in a return to the sentencing court, which may result in a mandatory two day term of imprisonment in a county jail and an indefinite license suspension.

Upon conviction of driving under the influence, an offender has his or her license suspended and is fined or otherwise sentenced. The court clerk fills out an "MF-1" form (the report of conviction) and sends it to the Division of Motor Vehicle Services, who sends the MF-1 form to the Intoxicated Driving Program in the Department of Health. The Intoxicated Driving Program sends the offender a form letter scheduling him or her to appear at the Intoxicated Driver Resource Center in the offender's county of residence. (The Intoxicated Driving Program provides scheduling services for the Intoxicated Driver Resource Centers, data base management, and monitoring of the Intoxicated Driver Resource Centers.)

A person convicted of a first offense is required to serve a period of detention at the Intoxicated Driver Resource Center for a period of at least twelve hours to be served in intervals of six hours per day for two consecutive days. The Intoxicated Driver Resource Center charges a per diem fee to the convicted person.

Detention at a county Intoxicated Driver Resource Center for a minimum of 12 and a maximum of 48 hours is mandatory for all first offenders.

A first offender coming to an Intoxicated Driver Resource Center will receive an introduction to the functions of the Intoxicated Driver Resource Center. The offender is informed of the fee requirement when he receives the scheduling notice from Intoxicated Driving Program. If an offender does not pay the fee upon attendance at the Intoxicated Driver Resource Center, he or she must be returned to court.

After the introduction, the Intoxicated Driver Resource Center conducts its initial evaluation, which consists of a standardized questionnaire. The rest of the person's stay at the Intoxicated Driver Resource Center is spent in attendance at education sessions and group and individual counseling.

At the end of a person's stay at the Intoxicated Driver Resource Center, he or she is evaluated and, if treatment is determined to be appropriate, a treatment plan will be developed. If treatment is appropriate, he or she will be monitored by the Intoxicated Driver Resource Center for up to one year, if necessary, although 16 weeks is the usual treatment time.

For a second offense of driving under the influence, a person must be imprisoned, for at least 48 consecutive hours in addition to other penalties. The imprisonment can be at a jail, a special residential 48 hour Intoxicated Driver Resource Center, or an inpatient treatment program. The location of the sentence is a matter of judicial discretion.

If the judge puts the offender in jail or treatment, the offender still has to comply with Intoxicated Driver Resource Center/Intoxicated Driving Program requirements. Such persons will go to an Intoxicated Driver Resource Center after jail or treatment and must satisfy the screening, evaluation, referral, and program requirements of Intoxicated Driving Program/Intoxicated Driver Resource Center.

All third offenders go to jail for 90-180 days, or to residential treatment in lieu of jail, at the discretion of the judge. They cannot go to an Intoxicated Driver Resource Center in lieu of jail or residential treatment. However, after jail or residential treatment they still must comply with the Intoxicated Driving Program/Intoxicated Driver Resource Center program. The Intoxicated Driver Resource Centers have the responsibility to follow up to ensure that these third offenders complete alternative treatment programs required by the court under N.J.S.A. 39:4-51, and that they have satisfied other Intoxicated Driving Program/Intoxicated Driver Resource Center program requirements before relicensure.

Out of state residents can return to New Jersey to complete the IDP/IDRC program, or they can comply in their home states in a comparable program. Those complying in their home states are informed on how to comply and are sent a packet of materials.

REGULATORY HISTORY

The proposed rulemaking serves the dual purpose of both repealing the existing rules and simultaneously presenting updated rules.

Pursuant to N.J.S.A. 26:2B-9.1 (P.L. 1984, c.243), the Bureau of Alcohol Countermeasures, now called the Intoxicated Driving Program, was transferred from the Department of Law and Public Safety to the Department of Health, in accordance with N.J.S.A. 26:2B-9.1 and the State Agency Transfer Act, N.J.S.A. 52:14D, which provides that all rules and regulations shall stay in effect when there is such a transfer. Due to the transfer, the Department of Health and the Office of Administrative Law determined that these rules should be recodified and placed into Title

8 of the Administrative Code, where all other Department of Health rules are codified. This was done on January 3, 1989.

The Department recodified N.J.A.C. 13:20-31 as follows:

| Old Citation | New Citation | Old Citation | New Citation |
|--------------|--------------|--------------|--------------|
| 13:20-31.1 | 8:66-1.1 | 13:20-31.4 | 8:66-1.4 |
| 13:20-31.2 | 8:66-1.2 | 13:20-31.5 | 8:66-1.5 |
| 13:20-31.3 | 8:66-1.3 | 13:20-31.6 | 8:66-1.6 |

The rules promulgated while the program was in the Division of Motor Vehicle Services thus continued in effect, with no gap in coverage.

Social Impact

The proposed rules are intended to enhance the development of the Intoxicated Driving Program/Intoxicated Driver Resource Center system for evaluation and referral, and to clarify the powers of the Intoxicated Driving Program/Intoxicated Driver Resource Center system by expanding the standards on the conduct of the program and the obligations of clients. The program provides close local monitoring of the clients by professionals trained and certified in alcoholism and drug counseling. It enhances judicial effectiveness in monitoring treatment of intoxicated drivers by providing the courts with better evaluations of offenders.

Economic Impact

The evaluation and referral to treatment of persons convicted of driving under the influence reduces the societal cost of intoxicated driving. It reduces law enforcement costs, medical and disability costs, and insurance costs.

The Intoxicated Driving Program/Intoxicated Driver Resource Centers program is self-supporting, through mandated client fees.

Regulatory Flexibility Analysis

The rules do place recordkeeping and reporting requirements on the agencies and programs which provide treatment services to Intoxicated Driving Program/Intoxicated Driver Resource Centers. Most of these agencies and programs may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are necessary to protect the public safety and health.

Full text of the proposal follows:

CHAPTER 66 INTOXICATED DRIVING PROGRAM

SUBCHAPTER 1. INTOXICATED DRIVING PROGRAM/INTOXICATED DRIVER RESOURCE CENTER

8:66-1.1 Purpose and Scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol or drug involvement in connection with the operation of a motor vehicle or vessel. The chapter applies to all county Intoxicated Driver Resource Centers, all approved treatment programs, and the Department of Health, and all individuals convicted in New Jersey of a drug or alcohol offense related to the operation of a motor vehicle or vessel.

8:66-1.2 Definitions

"Alcohol abuser" means any person who chronically, habitually, or periodically consumes alcoholic beverages to the extent that such use substantially injures his health or substantially interferes with his social or economic functioning in the community on a continuous basis, or he or she has lost the power of self control with respect to the use of such beverages. The Diagnostic and Statistical Manual on Mental Disorders (DSM III) of the American Psychiatric Association shall be used as a guide in evaluating this definition.

"Alcohol Safety Institute" (ASI) means the designation of clients not referred to treatment after being evaluated at the Intoxicated Driver Resource Center.

"Alcohol or drug related offense" means a conviction by a court or a finding by Division of Motor Vehicles of driving under the influence, pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-34.19 et seq. or N.J.S.A. 12:7-46 et seq. or refusal to take a chemical test, pursuant to N.J.S.A. 39:4-50.4(a) et seq., or N.J.S.A. 12:7-57 et seq., a Fatal Accident Settlement Stipulation, or drug use while driving or as a passenger in a motor vehicle or boat pursuant to N.J.S.A.

39:4-51(a) or possessing drugs in a motor vehicle pursuant to N.J.S.A. 39:4-49.1 et seq.

"Approved treatment agency" means an agency approved by the Intoxicated Driving Program for the education, rehabilitation and treatment of clients.

"Blood alcohol concentration" means the percentage of alcohol per milliliter of a person's blood.

"Cancellation" means that a previous suspension has been rescinded and removed from the driver's abstract by the Division of Motor Vehicles.

"Chemical test" means a method of analyzing and determining the presence of alcohol or drugs or their metabolites in the human body.

"Client" means a person who has been convicted of alcohol or drug related offense or other person who is referred or is otherwise within the jurisdiction of the Intoxicated Driving Program/Intoxicated Driver Resource Center program.

"Counselor" means a person certified by the State of New Jersey or another state to counsel alcohol abusers or drug abusers, or a person with five years continuous experience in the treatment of alcohol or drug abusers.

"Conditional restoration" means the restoration of a driver's license on the condition that all requirements will be satisfactorily completed.

"Didactic" means group education using lectures, group interaction or audio visual aides.

"Drug abuser" means a person who is using a controlled dangerous substance or other drug and who is in a state of psychic or physical dependence, or both, arising from the use of that controlled substance on a continuous basis. Drug abuse is characterized by behavioral and other responses, including but not limited to, a strong compulsion to take the substance on a recurring basis in order to experience its psychic effects, or to avoid the discomfort of its absence. The Diagnostic and Statistical Manual on Mental Disorders of the American Psychiatric Association (DSM III) may be used as a guide in evaluating persons under this definition.

"First offender" means a person who is convicted once, pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-34.19 or N.J.S.A. 12:7-46 et seq. within the statutory time period, or is convicted of a refusal to take a chemical test in conjunction with one of the above offenses.

"First offender program" means the program administered by county Intoxicated Driver Resource Centers for evaluation and referral for first offenders which may also be used to evaluate other offenders or referrals for evaluation.

"Intoxicated driving program" means the unit within the Division of Alcoholism and Drug Abuse responsible for administering the state post-conviction evaluation and referral program for persons convicted of alcohol or drug related offenses.

"Incapacitated" means the condition of a person who is:

1. Unconscious, as a result of the use of alcohol or drugs, or whose judgment is so impaired that the person is incapable of realizing and making a rational decision with respect to his need for treatment;
2. In need of substantial medical attention; or
3. Likely to suffer substantial physical harm (N.J.S.A. 26:2B-7)

"Inpatient Treatment" means treatment within a residential treatment facility.

"Intensive outpatient treatment" means outpatient treatment for a client who meets the criteria for inpatient treatment and who is required by the Intoxicated Driver Resource Center/Intoxicated Driving Program, in lieu of inpatient treatment, to attend more than the normal 16 sessions of outpatient treatment within a 16 week period.

"Intoxicated" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or drugs.

"Intoxicated Driver Resource Center" (IDRC) means the personnel and facilities approved by the Intoxicated Driving Program: which determine, on the basis of an evaluation instrument and counselor evaluation and other information, the extent, if any, of a client's alcohol or drug related problem and which monitor and report on referrals to approved treatment programs.

"Multiple offender" means a client with three or more intoxicated driving related offenses.

"New law client" means those clients arrested for a violation of N.J.S.A. 39:4-50 et seq. after October 4, 1984.

"Old law client" means those clients arrested for a violation of N.J.S.A. 39:4-50 et seq. before October 4, 1984.

"Out of state" means an out of state resident who is convicted in New Jersey of an alcohol or drug related driving offense.

"Outpatient treatment" means non-residential treatment.

"Recidivist" means a client who has been convicted of an alcohol or drug related driving offense and who has completed the Intoxicated Driver Resource Center/Intoxicated Driving Program or its predecessor, and who has been convicted again of an alcohol or drug related driving offense.

"Refusal offense" means a conviction under N.J.S.A. 39:4-50.4(a) or N.J.S.A. 12:7-57.

"Repeater" means a client with two alcohol or drug related offenses.

"Restoration" means driving privileges have been restored after suspension.

"Roster" means a list of clients scheduled to attend an Intoxicated Driver Resource Center.

"Second offender" means a person convicted of two offenses of N.J.S.A. 39:4-50 or N.J.S.A. 12:7-46 or N.J.S.A. 12:7-34.19 within the statutory time period, or two offenses of refusal to take a chemical test under N.J.S.A. 39:4-50.4(a) et seq. or N.J.S.A. 12:7-57 et seq.

"Second offender program" means the Intoxicated Driver Resource Center program for second offenders.

"Self help group" means a peer support group.

"Treatment" means a structured intervention into a client's drinking or drug use, care for alcohol or drug abuse or related problems.

"Z client" means a New Jersey licensed driver convicted of an alcohol or drug-related offense in another state or country who has been ordered to attend alcohol or drug abuse education, evaluation or treatment.

**SUBCHAPTER 2. ACTIONS SUBSEQUENT TO
CONVICTION FOR N.J.S.A. 39:4-50 OR
N.J.S.A. 39:4-50.4(a) OR N.J.S.A. 12:7-57 ET
SEQ. OR N.J.S.A. 12:7-34.19 ET SEQ. OR
N.J.S.A. 12:7-46 ET SEQ.**

8:66-2.1 Notification and evaluation

(a) The Intoxicated Driving Program shall be notified of every conviction for violation of N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50a and N.J.S.A. 12:7-54; N.J.S.A. 12:7-34.19 and N.J.S.A. 12:7-46 and 12:7-57 through (b) the Bureau of Violation Records of the Division of Motor Vehicle Services.

(b) The Intoxicated Driving Program shall schedule persons who have been convicted as described in (a) above, for an interview and evaluation at an appropriate Intoxicated Driver Resource Center.

(c) The Intoxicated Driver Resource Center shall take the following types of actions:

1. Evaluate and interview all persons referred to the Intoxicated Driver Resource Center by the Intoxicated Driving Program; and
2. Refer a person to an appropriate treatment program upon completion of detention at the Intoxicated Driver Resource Center based upon the evaluation instrument, counselor evaluations, the driving record, blood alcohol concentration and other relevant information, the Intoxicated Driver Resource Center.

8:66-2.2 Failure of client to appear or comply

(a) Failure on the part of the client to appear at an Intoxicated Driver Resource Center shall result in a suspension of New Jersey driving privileges, and, if appropriate, referral to the court of conviction for the imposition of a jail sentence and other penalties.

(b) Failure on the part of the client to comply with the course of action or fee schedule required by the Intoxicated Driver Program/Intoxicated Driver Resource Center or the course of action at an approved treatment agency shall result in suspension of New Jersey driving privileges, and, if appropriate, referral to the court of conviction and imposition of a jail sentence and other penalties.

8:66-2.3 Authorized referrals to the Intoxicated Driving Program

(a) The Intoxicated Driving Program may receive referrals in writing from courts, Motor Vehicle licensing authorities, highway safety agencies, law enforcement agencies, physicians, or client family members, health agencies or social service agencies regarding persons who are posing a public danger by alcohol and/or drug abuse while driving. After consultation with the Division of Motor Vehicle Services, the Intoxicated Driving Program may schedule an interview with the individual at an appropriate Intoxicated Driver Resource Center or the office of the Intoxicated Driving Program for evaluation and appropriate action under N.J.S.A. 8:66-1.3(a). A copy of the referral document will be given to the client at the time of the interview. Client failure to attend the interview or any ordered treatment or referral under this chapter shall result in a request by the Intoxicated Driving Program to the Division of Motor Vehicles to suspend the client's driver's license.

(b) The Intoxicated Driving Program may receive referrals from any Motor Vehicle Services hearing or investigation in which it is determined that alcohol or drugs may have been involved in the operation of a motor vehicle or vessel, independent of court findings reported to the Division as a result of court action for an alcohol or drug related offense.

(c) The Intoxicated Driving Program may refer a licensee who is referred as a result of a Motor Vehicle Services hearing to a treatment or a rehabilitation program.

8:66-2.4 Fees

(a) Fees shall be paid in accordance with N.J.S.A. 39:4-50 et seq. A fee of \$80.00 shall be payable to the Division of Alcoholism and Drug Abuse, from every person each time the person is required to satisfy the requirements of a program of alcohol or drug education or rehabilitation under the provisions of this section. A fee of \$50.00 per day shall be payable to the Intoxicated Driver Resource Center for first offenders. A fee of \$75.00 per day shall be payable to the Intoxicated Driver Resource Center for second offenders. These fees are owed and due upon conviction, if the conviction is after October 9, 1986, and upon referral or evaluation to Intoxicated Driver Resource Center/Intoxicated Driving Program Unit if the conviction was prior to October 9, 1986.

8:66-2.5 Authorized license actions; appeal

(a) The Intoxicated Driving Program may recommend to the Driver Improvement and Control Services Bureau of the Division of Motor Vehicle Services and to the sentencing court the following types of license actions:

1. Full restoration of New Jersey driving privileges upon termination of a court imposed suspension;
2. Imposition of conditions in order to retain driving privileges;
3. Referral to the sentencing court of any person who fails to comply with the program or fee requirements; or
4. Suspension of the driver's license if he or she fails to comply with the Intoxicated Driving Program/Intoxicated Driver Resource Center program or fee requirements.

(b) When any action against a driver's license is recommended by the Intoxicated Driving Program, the Driver Improvement and Control Services Bureau and the court will afford the individual all the rights guaranteed to him under the applicable State law and the Division of Motor Vehicle Services regulation on administrative hearings.

8:66-2.6 Conflict of interest

The county freeholders, through the county counsel or solicitor, shall be responsible for initial enforcement of penalties for conflict of interest, in accordance with county conflict of interest standards, on the part of the Intoxicated Driver Resource Center. A letter is required to be provided from the county counsel or solicitor who shall notify the Intoxicated Driving Program in writing that the Intoxicated Driver Resource Center treatment referral process is not in conflict of interest. Should there be a change in the treatment referral process, it shall be approved by the county counsel or solicitor and a new letter provided to Intoxicated Driving Program prior to initiating the change. If an Intoxicated Driver Resource Center wishes to employ staff who are also working for an approved treat-

ment program, a procedure to avoid conflict of interest shall be established by the Intoxicated Driver Resource Center and approved by the county counsel or solicitor.

8:66-2.7 Intoxicated Driver Resource Center Income and Expenditure Report

(a) At the beginning of each calendar year, each Intoxicated Driver Resource Center shall submit an income and expenditure report to the Intoxicated Driving Program, which shall include information on:

1. Salary and fringe;
2. Rental costs for office;
3. Supplies;
4. Travel;
5. Maintenance of building;
6. Equipment purchase and rental;
7. Telephone;
8. Computer-data processing;
9. Printing and copying;
10. Security;
11. Staff training;
12. Subcontractors;
13. Fee collections; and
14. Other expenses.

8:66-2.8 Curriculum

(a) The information provided in the Intoxicated Driver Resource Center curriculum shall be approved by the Intoxicated Driving Program.

(b) Suggestions for changes to the curriculum shall be submitted in writing to the Chief of the Intoxicated Driving Program.

(c) The Chief of the Intoxicated Driving Program shall have authority to alter and approve the curriculum after consultation with the Intoxicated Driver Resource Center Directors.

8:66-2.9 Confidentiality of computer data base

Access to all Intoxicated Driver Resource Center computer data files shall be limited to intoxicated Driver Resource Center or Intoxicated Driving Program personnel, through a coding mechanism.

8:66-2.10 Data collection

The Intoxicated Driver Resource Centers shall file monthly data reports with the Intoxicated Driving Program.

SUBCHAPTER 3. ATTENDANCE AND SCHEDULING AT AN INTOXICATED DRIVER RESOURCE CENTER

8:66-3.1 Scheduling

All initial scheduling shall be done by the Intoxicated Driving Program or an Intoxicated Driver Resource Center. If scheduling is done by the Intoxicated Driving Program, the Intoxicated Driver Resource Center shall advise the Intoxicated Driving Program of the number of clients they wish to routinely schedule.

8:66-3.2 Scheduling clients convicted of refusal to take a chemical test

Offenders who are convicted of refusing a chemical test, but who are not convicted of intoxicated driving, are required to participate in the Intoxicated Driving Program/Intoxicated Driver Resource Center program of education, evaluation, and referral to any education or treatment program. The Intoxicated Driving Program shall refer the driver to an Intoxicated Driver Resource Center in accordance with N.J.S.A. 39:4-50.4(a) et seq. or N.J.S.A. 12:7-57 et seq. for this program.

8:66-3.3 Rescheduling

(a) Upon or after the initial scheduling of a client for attendance at the Intoxicated Driver Resource Center, a first rescheduling may be granted by the Intoxicated Driver Resource Center upon client request.

(b) A second rescheduling may be granted for the following reasons only:

1. Health emergency, either personal or family;
2. Death in the family within ten days prior to scheduled appointment;

3. Documented work emergency; or

4. Family emergency.

(c) The reasons or instances in (b) 1-4 above shall be proved by documentation, such as a physician's letter, obituary notice or a letter from an employer.

(d) Persons who fail to attend without having been excused by the IDRC Director shall be found in non-compliance and shall have their license suspended and/or be referred to the sentencing court for additional penalties.

8:66-3.4 48 hour detainment of second offenders who have been in jail or treatment

(a) A person convicted for a second offense pursuant to N.J.S.A. 39:4-50 et seq. or N.J.S.A. 12:7-46 or 12:7-34.19 et seq. shall be imprisoned at a jail or workhouse and Intoxicated Driver Resource Center or inpatient program for at least 48 consecutive hours and satisfy the other program requirements.

(b) A second offender sentenced by the court to imprisonment or inpatient treatment for at least 48 hours shall be scheduled for a 12 hour Intoxicated Driver Resource Center in his or her county of residence.

(c) A second offender who goes to inpatient treatment after sentencing but before scheduling at an Intoxicated Driver Resource Center shall not be given credit for detention unless approval is given by the court.

(d) A person sentenced to a 48 hour Intoxicated Driver Resource Center shall be scheduled there, or if such a facility is not available, referred to an appropriate facility for 48 hours.

8:66-3.5 Transfers from one county to another prior to initial attendance at an Intoxicated Driver Resource Center

(a) A client may be transferred from one county to another. The recipient Intoxicated Driver Resource Center shall not be responsible for any administrative client details until a transfer form is received. A transfer form shall be sent by the transferring Intoxicated Driver Resource Center and shall include: The original abstract from the Intoxicated Driving Program, the record of the conviction (MF-1 form), the original scheduling notice from Intoxicated Driving Program and a noncompliance form, if one has been issued. If a client has a new address, it shall be noted. Upon receipt of the transfer documents, the recipient county shall become responsible for all administrative procedures. Once the transferring Intoxicated Driver Resource Center transfers client records, it shall no longer process any documents pertaining to the client but shall send them to the recipient Intoxicated Driver Resource Center.

(b) The Intoxicated Driver Resource Center transferring the client shall note on the roster, opposite the name of the client, the Intoxicated Driver Resource Center to which the client has been transferred. The Intoxicated Driver Resource Center receiving the client shall add the client's name to its roster and indicate the Intoxicated Driver Resource Center from which the client was transferred. The transferring Intoxicated Driver Resource Center shall forward all client records (maintaining a copy) to the receiving Intoxicated Driver Resource Center with a brief statement of the reason for the transfer. The receiving Intoxicated Driver Resource Center shall be responsible for collection of fees, treatment monitoring, and follow up, to include maintenance of client records. Once the client has been evaluated and referred, he remains in the control of the receiving Intoxicated Driver Resource Center.

8:66-3.6 Second offender treatment scheduling

If a 48 hour program sends a second offender to treatment, the Intoxicated Driver Resource Center in the client's home county shall monitor treatment. All client records shall be sent to the monitoring county.

SUBCHAPTER 4. EVALUATION AND TREATMENT PROCEDURES

8:66-4.1 Evaluation procedures

(a) The evaluation instrument shall be distributed to each client at the beginning of the session on the first day of attendance at an Intoxicated Driver Resource Center.

(b) The client shall finish and return the evaluation instrument at the time requested. The test score shall be entered on the client screening evaluation scoring sheet in the space provided. Any observations by staff, which may be helpful to the counselor's evaluation, may be noted on this sheet.

(c) Referrals to ASI shall be so noted on the roster. Referrals to treatment or self help shall also be noted on the roster. If a client is referred to a treatment program, a packet shall be prepared for transmittal to the treatment program which shall include the following information:

1. The court's record of the conviction (MF-1 card);
2. Driver abstract;
3. Client screening evaluation scoring sheet;
4. Agreements to participate in treatment;
5. Records release authorization form;
6. Answer sheet to the questionnaire; and
7. Autobiographical statement.

(d) The records release authorization form shall be filled out to allow information to be released to the court, and the Division of Alcoholism and Drug Abuse, the treatment program, the Division of Motor Vehicle Services, the Intoxicated Driver Resource Centers, and the client's attorney. In addition, the client may authorize any other persons to receive protected information by so indicating on the form.

8:66-4.2 Criteria for client referral to treatment

(a) The purpose of Intoxicated Driver Resource Center screening is to identify clients who may be alcohol or drug abusers or who need a structured intervention into their alcohol or drug use.

(b) A referral to treatment or for further evaluation shall take into consideration the following facts as relevant to a client's need for treatment or further evaluation:

1. The client is a repeat offender;
2. A blood alcohol concentration of .15% or higher, as evidenced by the client's arrest record if he or she pled guilty, or if convicted at trial with a blood alcohol concentration of .15% or higher. Blood alcohol concentration shall only be used to refer where other supporting information exists that indicates a need for treatment;
3. A counselor's evaluation of answers on the evaluation instrument, based on the definition of alcohol or drug abuser;
4. Any prior outpatient or inpatient treatment for alcohol or drug abuse;
5. Any prior self help group attendance for an alcohol or drug abuse problem;
6. Poor driving record. A poor driving record by itself may not be an indication of a serious alcohol or drug abuse. However, a motor vehicle or boat accident, accidents in conjunction with a driving under the influence or intoxicated boating, careless driving, reckless driving, or persistent motor vehicle violations over a period of years may be supporting evidence of a problem;
7. Counselor interview and observations. All counselor observations and data used to determine treatment appropriateness shall be documented. They may include symptoms of alcohol or drug abuse including voluntary admission by the client that an alcohol or drug problem exists. A counselor's evaluation based on documented observations and data that a client is an alcohol or drug abuser (as defined herein) is sufficient to refer a client to treatment;
8. Outside information. The Intoxicated Driver Resource Center/Intoxicated Driving Program staff may receive information from outside sources such as a client's family, treatment facilities counselors or physicians. Such information may be utilized if the source of the information is disclosed to the client and he is given the opportunity to review and comment on the information;
9. A positive result on a chemical test for controlled substances or alcohol.

8:66-4.3 Evaluation approval

(a) Any Intoxicated Driver Resource Center/Intoxicated Driving Program initial evaluation and referral to treatment shall be approved by a counselor.

(b) If a counselor decides not to refer a client who meets any of the above criteria in N.J.A.C. 8:66-4.2(b), then documentation must be provided to support the nonreferral.

8:66-4.4 Evaluation of client progress

The progress of the client shall be evaluated by the treatment program on a continuous basis during treatment. Clients who continue to abuse alcohol/drugs or otherwise fail to comply with program requirements shall be reported to the Intoxicated Driving Program by the Intoxicated Driver Resource Center. Treatment programs shall make a record of the responses of the client to treatment. A client who may be in need of additional treatment options, such as, family counseling, detoxification, intensive outpatient or inpatient treatment may be assigned to such treatment, with approval from the Intoxicated Driver Resource Center. The treatment options shall be acceptable in lieu of, in whole or in part, the 16 weeks of required treatment.

8:66-4.5 Determining levels of treatment

(a) Outpatient treatment is appropriate for clients who are alcohol or drug abusers.

(b) Inpatient treatment is appropriate for clients who are alcohol or drug abusers, who are experiencing physical dependence on alcohol or drugs, and/or who have had previous outpatient failure.

(c) Intensive outpatient is appropriate for clients who meet the criteria for inpatient treatment but who are required by the Intoxicated Driver Resource Center/Intoxicated Driving Program to attend intensive outpatient treatment in lieu of inpatient treatment. Such clients must attend more than 16 treatment sessions within 16 weeks.

(d) Self-help groups are appropriate for clients under the following circumstances:

1. A self help group may be used as a treatment source if the client has been in the self help group for a minimum of three months and is currently active; or
2. Self help groups may also be used for clients in addition to inpatient or outpatient treatment.

8:66-4.6 Chemical testing

Chemical testing of clients may be required and utilized by the Intoxicated Driver Resource Center/Intoxicated Driving Program or approved treatment programs as a condition of license restoration, to monitor treatment, or to evaluate the client. Such testing may be required on an announced or unannounced basis. Chemical tests for alcohol in the breath may also be used when performed by an operator qualified under State law. All clients shall receive prior notice that chemical testing may be required. Measures shall be taken to protect the chain of custody of all blood or urine specimens and all testing shall be performed by a State licensed laboratory in accordance with State rules. The Intoxicated Driver Resource Center/Intoxicated Driving Program or approved treatment programs may request that state licensed laboratories examine blood and urine specimens from clients to detect the presence of controlled substances or alcohol in accordance with State rules. A client's refusal to submit to a chemical test in accordance with this section shall be considered noncompliance.

8:66-4.7 Chain of custody for chemical testing

- (a) Specimen collection shall be done as follows:
1. Upon arrival at the collection site, if the client has not been identified to the collector, the client's identification shall be checked;
 2. The specimen shall be collected in a manner which will ensure that the client does not contaminate or alter it;
 3. Upon collecting the specimen, the person supervising the collection shall be immediately given the specimen container and shall quickly seal it;
 4. The collector and the client shall initial the container and lid labels to indicate agreement that it contains the client's specimen. The date, time, location of collection, and type of specimen shall also be written on the container label and a chain of custody form or log book shall be filled out.

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(b) If testing is done at a treatment program or Intoxicated Driver Resource Center, or Intoxicated Driving Program, it shall be performed in a secure location with limited access to avoid tampering.

(c) Specimen transportation shall be done as follows:

1. A specimen shall be kept in a secure location such as a locked refrigerator or room until it is transported or tested;

2. Each person who handles the specimen shall sign the chain of custody form a log book;

3. A log book or chain of custody form shall accompany each shipment of specimens to record the persons handling the specimen or other pertinent information; and

4. If the specimen is transported to a laboratory, it shall be sent in a sealed container. Registered, first class, special delivery, commercial mail or personal delivery are acceptable means of transportation.

(d) Specimen analysis and reporting shall be done as follows:

1. Upon delivery to the laboratory, all specimens shall be logged on an internal control form. Laboratory personnel who receive the specimens shall sign for their receipt, and note in writing whether seals are intact or the containers are damaged. The label of each container shall then be compared to that on the chain of custody form. Any discrepancies shall be recorded and investigated. New specimens shall be obtained if there are any discrepancies that cannot be accounted for.

2. All specimens shall be kept in air-tight containers and not be exposed to anything that might contaminate the specimen. Containers shall be given a unique identifying number to link the container, chain of custody form, and the test result together for reporting purposes. A log of all transfers of any quantity of the specimen shall be kept as an additional precaution.

3. Any weight, volume, color or other changes in the specimen due to analysis shall be explained in the record.

4. All laboratory personnel who are in the chain of custody shall sign the necessary form or log book noting time, date, location, and action taken regarding the specimen.

5. The initial test shall be an immunoassay. The test result shall be confirmed by a method of equal or greater sensitivity. A second immunoassay is acceptable.

6. The following drugs may be tested for:

- i. Marijuana;
- ii. Cocaine;
- iii. Opiates;
- iv. Phencyclidine; and
- v. Amphetamines.

7. The positive levels for the test results are in nanograms per milliliter (ng/ml) and are as follows:

- i. Marijuana—100 ng/ml;
- ii. Cocaine—300 ng/ml;
- iii. Opiates—300 ng/ml;
- iv. Phencyclidines—25 ng/ml;
- v. Amphetamines—1,000 ng/ml.

8. All drug test results will be reported in accordance with state rules. Intoxicated Driver Resource Center/Intoxicated Driving Program and approved treatment programs are authorized to receive drug test results.

8:66-4.8 Referral procedures

(a) The Intoxicated Driver Resource Center shall provide each client referred to treatment with a list of approved treatment programs within their county. The list shall reflect the following items:

1. Name of program;
2. Location;
3. Dates/times of operation of any Intoxicated Driver Resource Center client group sessions;
4. Type of treatment and type of counseling (i.e. group, individual and number of self help group meetings required, and if family involvement is required);
5. Cost per session (indicate if there is a sliding fee scale or third party payment available and the minimum and maximum fees and any nontreatment fees such as chemical testing); and
6. Notice of chemical testing at the treatment programs;

(b) Clients shall choose a program from the list and sign the appropriate form indicating that he/she was shown the list and selected a program.

(c) If the Intoxicated Driver Resource Center chooses a program for the client it shall be because it would substantially benefit the client in his present state or condition.

(d) When a specific modality or program is recommended it shall be noted on the appropriate form with the reason for recommendation. This will provide the client with a quality evaluation and at the same time, reduce the potential for a conflict of interest. All clients shall sign the form to indicate that they understand the content.

(e) Intoxicated Driver Resource Centers shall not make direct referrals to a self help group following evaluation unless the client can demonstrate that he is currently actively participating in the self help group. All other treatment appropriate clients shall be referred to self help groups by a treatment program as an addition to treatment. Referrals to self help groups shall not be made simply because the patient says he cannot afford another form of treatment.

(f) All clients referred to treatment shall sign a records release authorization prior to leaving the Intoxicated Driver Resource Center. The form shall be completed to allow the Intoxicated Driver Resource Center, the Intoxicated Driving Program, the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicle Services, the client's attorney and the treatment program to exchange information.

(g) If a client refuses to sign the form, the Intoxicated Driver Resource Center shall inform the client that such refusal shall be considered noncompliance. If the client continues to refuse to sign, the client shall be considered noncompliant for refusing to sign the Records Release Authorization form necessary to complete program requirements.

(h) The client's refusal to sign the form shall not interfere with any lawful right of the above agencies to communicate.

SUBCHAPTER 5. TREATMENT PROGRAM APPROVAL REQUIREMENTS**8:66-5.1 Approved treatment programs**

(a) In order for a county treatment program to be approved, the county shall apply to that county's Intoxicated Driver Resource Center Program and the Division of Alcoholism and Drug Abuse's Intoxicated Driving Program. Only the Intoxicated Driving Program has the authority to approve a treatment program; however, the county's comments on the quality of the program are encouraged. If a county believes that a treatment program should not be approved or should be removed from the approved list, the county may notify the Division of Alcoholism in writing. It is the responsibility of Intoxicated Driver Resource Center Director to evaluate each treatment program after an annual site visit.

(b) The Chief of the Intoxicated Driving Program on a temporary basis may waive the approval criteria and approve any treatment program in or out of the state. This approval shall not exceed four months and shall be approved in the best interest of a client.

(c) All approved treatment programs will be required to report to the Division of Alcoholism and Drug Abuse through the Divisions prescribed reporting system.

8:66-5.2 Treatment program approval criteria

(a) Every treatment program, in order to be approved, must provide the following information to the Intoxicated Driving Program and to the county Intoxicated Driver Resource Center:

1. A statement that it will abide by the Division of Alcoholism and Drug Abuse Rules and Regulations;
2. A statement that the treatment will be performed, or supervised, by a Certified Alcoholism or Drug Abuse Counselor, or a person with 5 years full time experience in the treatment of alcohol or drug abuse;
3. A fee schedule, including any sliding fee schedule, and whether fees can be paid by health insurance;
4. A statement that the program will adhere to professional standards of care and ethics, and to any applicable State and Federal laws;

5. The address, telephone number, hours of operation and contact person for each office location;

6. A written description of treatment philosophy, program requirements, and treatment curriculum;

7. A signed affiliation agreement; and

8. A statement regarding the use of chemical testing as a requirement of treatment or evaluation.

(b) The county Intoxicated Driver Resource Center Director shall ensure that the physical plant is conducive to treatment modality proposed by the applying treatment agency, taking into account the room size, (group, or individual counseling) location, (availability to public transportation), and number of existing programs in proximity to the applicant.

(c) Applications shall be processed by Intoxicated Driving Program within 60 days from receipt. County Intoxicated Driver Resource Center Directors shall provide Intoxicated Driving Program staff with their comments within three weeks. The Intoxicated Driving Program will deny approval to agencies who do not meet the requirements of this chapter. The Intoxicated Driving Program shall indicate the reasons for denial and shall accept reapplication, if the agency eliminates the obstacles to nonapproval.

8:66-5.2 Affiliation agreements

In order to be approved to treat Intoxicated Driver Resource Center/Intoxicated Driving Program clients, a treatment program shall sign an affiliation agreement, which must be approved by the Intoxicated Driving Program, with the county Intoxicated Driver Resource Center.

8:66-5.3 Intensive outpatient treatment program

(a) If client is determined by the Intoxicated Driver Resource Center/Intoxicated Driving Program to be appropriate for intensive outpatient treatment, he or she will be required to follow the treatment program or be in non-compliance.

(b) If not referred by the Intoxicated Driver Resource Center/Intoxicated Driving program a client may decide to attend an approved intensive outpatient treatment program with the approval of the Intoxicated Driver Resource Center/Intoxicated Driving Program.

SUBCHAPTER 6. TREATMENT PROGRAM OPERATIONAL REQUIREMENTS

8:66-6.1 Intake evaluation

(a) Each Intoxicated Driver Resource Center client shall receive an individual intake evaluation, preferably with his/her counselor of record. The purpose of the intake is to make an independent evaluation of the client's needs in treatment.

(b) The treatment program shall conduct an independent evaluation of the client's need for treatment. Any testing tool utilized must be noted in the evaluation. The information packet received from the Intoxicated Driving Program shall also be utilized. Clients shall be advised that failure to participate in treatment will result in license suspension and a minimum two day jail sentence. The treatment agency shall establish a contract with the client regarding the treatment plan. The client shall sign a records release authorization during the intake process. The form shall be completed to allow the Intoxicated Driver Resource Center, the Intoxicated Driving Program, the Division of Alcoholism and Drug Abuse and the Division of Motor Vehicle Services, the client's attorney, and the treatment program to exchange information.

(c) The treatment program shall report the result of the treatment evaluation of the client and the client's progress in treatment to the Intoxicated Driver Resource Center/Intoxicated Driving Program, as appropriate.

8:66-6.2 Client intake form

The client intake form and the results of the evaluation by the treatment program shall be sent to the Intoxicated Driver Resource Center within seven working days after the intake with the records release authorization. The client's full name, address and phone number, driver license number, the evaluation, the counselor's signature, name of program and the date shall be included in the material sent to the Intoxicated Driver Resource Center.

8:66-6.3 Length of treatment

The minimum length of treatment for outpatient shall be 16 sessions, one session per week. Each session shall be a minimum of one hour. The Intoxicated Driver Resource Center may require a mixture of outpatient, intensive outpatient and/or inpatient, self help, and chemical testing for a total time of one year from the date treatment commences.

8:66-6.4 Failure to comply with treatment requirements

(a) Once the client has been accepted for treatment, any failure to comply with the treatment program shall be reported by the treatment program to the Intoxicated Driver Resource Center in writing within seven working days. Failure to comply with the treatment program shall include, but not be limited to:

1. Failing to attend specific meetings;
2. Failing to comply with the treatment contract;
3. Failing to participate in individual and group counseling; or
4. Failing to attend self help group meetings.

8:66-6.4 Treatment plan

The Primary purpose of a treatment plan is to educate the client and, if necessary, to reduce resistance and break denial patterns. The long range goal is to have the client accept his or her problem and take full advantage of treatment sources and support systems available. A secondary purpose of treatment is to educate the client about alcohol and drug abuse and driving. The treatment plan should include a series of exercises that will require the client to actively participate in the treatment process. The exercises should help the client examine his or her drinking and/or drug use patterns and eliminate rationalizations about this behavior. The exercises should also concentrate on life style activities and personal problems associated with client drinking and/or drug use pattern.

8:66-6.5 Self help group involvement

The treatment plan for clients shall include some exposure to a self help group. This should be accomplished by requiring a specified number of monitored meetings, having someone from a self help group do a presentation, or educating the client about group purposes and functions. Meetings are not to be substituted for individual or group sessions during the 16 week minimum period.

8:66-6.6 Determining number of self help group meetings per week

If a client is referred to self help in lieu of other treatment by the Intoxicated Driver Resource Center or Intoxicated Driving Program, one meeting per week is the minimum, two per week is the maximum number of meetings that can be required. If the maximum is required, there must be documentation to support the decision. If the client is sent to a self help group as an adjunct to outpatient treatment, the maximum shall be one meeting per week, unless the client consents to more.

8:66-6.6 Objections to being sent to self help group

Some self help groups are based on religious or spiritual principles. Upon a written petition to the Intoxicated Driver Resource Center or Intoxicated Driving Program by the client stating his objection to a referral to such a self help group, the Intoxicated Driver Resource Center or Intoxicated Driving Program shall place the person in a self help program that is not based on religious or spiritual principles or to out-patient or other treatment.

8:66-6.7 Monitoring the attendance of clients sent to self help groups

(a) Clients sent to self help groups will be monitored by the Intoxicated Driving Program/Intoxicated Driver Resource Center or treatment program using the Intoxicated Driving Program attendance card system or some other system to monitor attendance.

(b) All clients referred to self help groups shall assume the responsibility of inquiry as to who in the group has Intoxicated Driving Program attendance cards.

8:66-6.8 Family involvement

Each client may be requested to have one counseling session with a member of his/her family or a "significant other". The counselor may make every effort, with the client's consent, to involve the family in the treatment process, including one session on family aspects of

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alcohol and drug abuse. If necessary, marriage and family counseling shall be available to the client and can be substituted for regular group sessions. If family or "significant others" refuse to attend, this is not non-compliance on the part of the client. Self help group information should also be made available.

8:66-6.9 Client transfers from one treatment program to another

Client transfers from one treatment program to another are permitted, if approved by the Intoxicated Driver Resource Center, and if a client is in compliance and a conflict between a program and a client has progressed to the point that treatment is jeopardized. Other valid reasons, such as change of address, or to make more suitable arrangements between clients and programs, may be honored. Credit for successful prior treatment shall be given by the receiving Intoxicated Driver Resource Center. There shall be a presumption of credit for time served if the client was in compliance and was successful in treatment and this is documented. Transfer of records shall be channeled through the Intoxicated Driver Resource Center office. The Intoxicated Driver Resource Center who received the fee and provided the evaluation is responsible for administration and follow-up of client monitoring.

8:66-6.10 Treatment monitoring of third plus offenders

All third and subsequent offenders shall be sent to treatment for a full year.

8:66-6.11 Final client treatment release and evaluation

(a) In releasing a client from treatment, the counselor is making a professional judgment about the client's drinking/drug behavior. The client should be in control of his problem. For most clients, this will mean abstinence, for others who are not alcohol or drug abusers this will mean the ability for the client to make rational decisions regarding drinking/drug use and driving.

(b) The following criteria shall be considered by the treatment program counselor to support the counselor's professional judgment:

1. Client cooperation during treatment;
2. Development of positive attitude;
3. Achievement of abstinence;
4. Quality of involvement in treatment or self help group;
5. Family involvement in treatment;
6. Participation in group interaction;
7. Change of behavior patterns related to drinking/drug use;
8. Significant life style changes;
9. Reduction of alcohol/drug intake;
10. Improvement of self image;
11. Use of support systems;
12. Positive observations by family members, other clients, and other counselors; and
13. Chemical test results where available.

8:66-6.12 Client treatment procedures

(a) Both the Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate, and the treatment program must conclude that the client is treatment appropriate before treatment is to commence. If the treatment program after performing a proper evaluation under these Rules, indicates the client does not need treatment or needs an alternate treatment referral, the client shall be referred back to the Intoxicated Driver Resource Center/Intoxicated Driving Program for further evaluation and if appropriate, referral.

(b) If a convicted intoxicated driver or licensed driver is sent to treatment by the Intoxicated Driver Resource Center or by Intoxicated Driving Program, he or she must successfully complete a minimum of 16 weeks of treatment. Each session shall consist of one session per week which shall last no less than one hour in duration. The requirement of treatment within a 16 week period can be waived by the Intoxicated Driver Resource Center director to meet the extraordinary circumstances of the client, upon a written petition from the client and with the approval of the Intoxicated Driving Program (for example, if the client has an out-of-State work assignment or is attending an out-of-State educational institution). The requirement of 16 sessions of treatment cannot be waived.

(c) If the treatment program decides that the client needs additional treatment beyond 16 sessions, the program shall state its

reasons in writing to the Intoxicated Driver Resource Center or Intoxicated Driving Program as appropriate and receive written approval from the Intoxicated Driver Resource Center or Intoxicated Driving Program, as appropriate, before commencing any additional treatment. The client shall receive written notice regarding the request for the extension and may submit comments regarding the appropriateness of the decision to the Intoxicated Driver Resource Center or the Intoxicated Driver Program, as appropriate, within 10 days of this notice.

(d) If a client is not able to safely resume driving after a year of continuous treatment, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall report this to the Division of Motor Vehicle Services.

(e) All clients referred to treatment shall contact the treatment program within 10 working days of the referral. Treatment agencies must report to the Intoxicated Driver Resource Center or Intoxicated Driving Program as appropriate that the client has commenced treatment within 30 days of the initial contact.

8:66-6.13 Unauthorized use of intoxicated driving program cards

(a) The Intoxicated Driver Resource Centers and Intoxicated Driving Program and approved treatment programs use computer cards generated by the Intoxicated Driving Program to monitor attendance of Intoxicated Driver Resource Center/Intoxicated Driving Program clients at self help groups. Such cards shall remain the property of the Intoxicated Driving Program. Any other person, organization, public or private, who uses the cards to monitor self help group attendance without the written permission of the Chief of the Intoxicated Driving Program or who uses the cards in an unauthorized manner may be reported by the Intoxicated Driving Program to the Office of the Attorney General for investigation.

(b) Prior to sending a client to a self help group, an Intoxicated Driving Program self help group agreement form shall be executed. The client shall bring the form to the self help group as proof that he or she is a client.

8:66-6.14 Treatment costs

The Intoxicated Driver Resource Center or Intoxicated Driving Program shall not be responsible for any treatment or treatment agency evaluation costs for clients.

8:66-6.15 Treatment programs

Each Intoxicated Driver Resource Center shall update its approved treatment lists quarterly and shall send a copy of the list to the Intoxicated Driving Program.

8:66-6.16 Treatment prior to conviction

The Intoxicated Driver Resource Center may give credit for time served in treatment after arrest, if the treatment was at an approved facility; such time served does not exempt offenders from Intoxicated Driver Resource Center detention requirements.

SUBCHAPTER 7. CLIENT CONDUCT**8:66-7.1 Intoxication at the Intoxicated Driver Resource Center**

(a) If a client appears to be under the influence of alcohol or drugs upon arrival or during the Intoxicated Driver Resource Center session, the Intoxicated Driver Resource Center may implement the following procedure:

1. Evaluate the client to see if he or she is incapacitated or intoxicated as defined herein;

2. If the client is incapacitated, the Intoxicated Driver Resource Center may call the police, Service Force, or Emergency Medical Service and have the client removed to a hospital or other facility for detoxification. After detoxification, the client may be processed through the Intoxicated Driver Resource Center. The fact that the client was under the influence shall be noted in the client's file and used as part of the counselor's evaluation;

3. If the client is not incapacitated, but is intoxicated, the Intoxicated Driver Resource Center shall admit the client or reschedule the client. The fact that the client was under the influence shall be noted in the client's file and shall be used as part of the counselor's evaluation;

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4. All persons who appear to be under the influence of alcohol or drugs (clients or non-clients) and drive a vehicle away from the Intoxicated Driver Resource Center may be reported to the police; and

5. Intoxicated clients who are disruptive should be asked to leave the Intoxicated Driver Resource Center and shall be found in non-compliance.

8:66-7.2 Improper client conduct at Intoxicated Driver Resource Center or Intoxicated Driving Program

Improper conduct, such as being threatening or disruptive or purposely not completing forms or providing relevant information shall be considered non-compliance.

SUBCHAPTER 8. CLIENT NON-COMPLIANCE PROCEDURES

8:66-8.1 Failure to attend the Intoxicated Driver Resource Center/Intoxicated Driving Program or pay the required fees

(a) A notice of noncompliance shall be mailed to the client's address on the record of conviction or the client's most recent address if the client has notified the Intoxicated Driver Resource Center/Intoxicated Driving Program of a change of address.

(b) If there is no reply, or if the client remains in noncompliance, the Intoxicated Driver Resource Center/Intoxicated Driving Program, within 10 working days of mailing the notice of non-compliance, may issue a noncompliance report:

1. A copy of the report shall be mailed to the client.

2. If the client is a new law offender, a copy of the report shall be mailed to the court of conviction with a copy of the original notice of noncompliance.

(c) If the noncompliance is not resolved within 30 calendar days after issuance of the noncompliance report, a copy of the non-compliance report and supporting documents shall be mailed to the Intoxicated Driving Program. The Intoxicated Driving Program shall request that the Division of Motor Vehicle Services suspend the client's license.

8:66-8.2 Failure to contact treatment facility

(a) When the Intoxicated Driver Resource Center/Intoxicated Driving Program has been notified that a client has not contacted the treatment facility by the contact date, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures of N.J.A.C. 8:66-8.1 (a)-(c) and shall, for New Law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.

8:66-8.3 Failure to comply with the treatment program

(a) Upon receipt of a Client Treatment Release form indicating that the client did not comply with the treatment program requirements, the Intoxicated Driver Resource Center/Intoxicated Driving Program shall follow the procedures in N.J.A.C. 8:66-8.1 (a)-(c) and shall, for New Law clients, in addition to the other documents, mail a copy of the treatment agreement to the court of conviction.

8:66-8.4 Other noncompliance

If the client is in noncompliance for any reason, the Intoxicated Driver Resource Center/Intoxicated Driving Program will follow the procedures in N.J.A.C. 8:66-8.1 (a)-(c) and shall, for New Law clients, mail any necessary documents to the court of conviction.

8:66-8.5 Failure to follow noncompliance procedures

The failure of Intoxicated Driver Resource Center/Intoxicated Driving Program to follow the noncompliance procedures shall not relieve a client of noncompliance.

8:66-8.6 Conditional restoration of a client after a finding of noncompliance by a court

(a) A client referred to treatment who is subsequently found in noncompliance by the court shall satisfactorily complete two consecutive months of treatment before the Intoxicated Driving Program shall be notified by the Intoxicated Driver Resource Center to restore conditionally.

(b) A multiple offender who was found in noncompliance by a court shall satisfactorily complete three consecutive months of treatment before the Intoxicated Driving Program is notified to conditionally restore. However, at the discretion of the Intoxicated Driver Resource Center director, program completion may be required.

(c) The Intoxicated Driver Resource Center shall receive written notice from the treatment facility of satisfactory performance before notifying the Intoxicated Driving Program to restore conditionally.

8:66-8.7 Noncompliance with treatment

The treatment programs shall notify the Intoxicated Driver Resource Center/Intoxicated Driving Program of any noncompliance in writing within seven working days. The Intoxicated Driver Resource Center shall notify the courts and the Intoxicated Driving Program utilizing the noncompliance report.

8:66-8.8 Proof of mailing; change of address

The Intoxicated Driving Program provides a certified mailing list with every roster sent to the Intoxicated Driver Resource Centers. The Intoxicated Driver Resource Centers shall use this as proof of mailing in cases of noncompliance to the original scheduling notice. Intoxicated Driver Resource Centers are responsible for keeping a record of rescheduling notices so that the notices can be sent to court to prove noncompliance. In all cases, copies of the certification of mailing should be sent to the courts along with reports of non-compliance when appropriate. All Intoxicated Driver Resource Centers/Intoxicated Driving Program letters, notices or other correspondence shall be sent to client's address on the record of conviction or to the most recent address provided to the Intoxicated Driver Resource Centers/Intoxicated Driving Program. It shall be the client's responsibility to keep the Intoxicated Driver Resource Centers/Intoxicated Driving Program informed as to his current address. Upon a change of address, the client shall notify both the Intoxicated Driving Resource Center and the Intoxicated Drivers Program in writing within 10 days.

SUBCHAPTER 9. MISCELLANEOUS OFFENDERS

8:66-9.1 Multiple offenders

(a) Prior to restoration of a driver's license, a client shall be evaluated by the Intoxicated Driver Resource Center/Intoxicated Driving Program, and if treatment is complete, the client may conditionally have his or her license restored providing:

1. His or her suspension period is satisfied; and

2. He or she has successfully completed three months of approved treatment requirements and agrees to complete the remainder of any ordered treatment plan.

(b) If treatment completion took place more than a year before the request to restore the driver's license, documentation and an update by a counselor is required, or reevaluation may be required by the Intoxicated Driver Resource Center at an approved facility, or the reevaluation may be done by the Intoxicated Driver Resource Center itself.

8:66-9.2 Out-of-State offenders

(a) Out of State residents will be given the opportunity by the Intoxicated Driving Program to complete program requirements and programs in their home state or in New Jersey. Clients who choose New Jersey will be scheduled in the normal fashion. If a client chooses to participate in his home state, the Intoxicated Driving Program will provide the client with a blank certificate of detention and instructions on program compliance.

(b) New Jersey residents convicted out of state (referred to as "Z" clients) will be referred to the Intoxicated Driving Program by the Division of Motor Vehicle Services, other state Intoxicated Driving Programs, probation authorities, foreign countries, or attorneys. Once appropriate documentation is received, the "Z" client shall be referred to a county Intoxicated Driver Resource Center. Any client who has not as yet been scheduled at the local Intoxicated Driver Resource Center, must call the out of state desk or Z desk at the Intoxicated Driving Program. No out of state or Z clients can be admitted to the Intoxicated Driver Resource Center without Intoxicated Driving Program approval.

(c) If an out of state or Z client is rescheduled at the local Intoxicated Driver Resource Center, then Intoxicated Driver Resource Center personnel should place an OS (out-of-State resident) or Z (State resident convicted in another state) clearly next to their name on reschedule rosters, noncompliance forms, compliance or treatment completion forms.

8:66-9.3 New Jersey residents convicted in a foreign state

New Jersey resident/licensees convicted abroad (in non-compact nations, provinces or territories) of alcohol or drug-related driving violations shall be required to participate in the Intoxicated Driving Program/Intoxicated Driver Resource Center Program as a condition of continued New Jersey licensure.

8:66-9.4 New Jersey clients who move out-of-State

If a New Jersey resident attends an Intoxicated Driver Resource Center, and pays the fee and is referred to treatment, but then moves out of state, the Intoxicated Driver Resource Center shall be responsible for continued monitoring. All treatment entry, program and completion reports shall be handled by the Intoxicated Driver Resource Center and the case closed and data entered per normal procedure on satisfactory program completion.

8:66-9.5 Intoxicated boaters

Intoxicated boaters are not required to complete the mandatory two day jail sentence for noncompliance with Intoxicated Driver Resource Center/Intoxicated Driving Program requirements; however, they are required to comply with all other Intoxicated Driver Resource Center/Intoxicated Driving Program requirements.

(a)

**DRUG UTILIZATION REVIEW COUNCIL
List of Interchangeable Drug Products
Proposed Amendments: N.J.A.C. 8:71**

Authorized By: Drug Utilization Review Council, Sanford Luger, Chairman.

Authority: N.J.S.A. 24:6E-6(b).

Proposal Number: PRN 1989-532.

A public hearing concerning the proposed amendments will be held on November 8, 1989 at 2:00 P.M. at the following address:

Auditorium, First Floor
Department of Health
Health-Agriculture Bldg.
Trenton, NJ 08625-0360

Submit written comments by November 15, 1989 to:

Thomas T. Culkin, PharmD, MPH
Executive Director
Drug Utilization Review Council, Room 108
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360
609-984-1304

The agency proposal follows:

Summary

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

For example, the proposed loperamide capsules could be used as a less expensive substitute for Imodium, a branded prescription medicine. Similarly, the proposed probenecid/colchicine tablets could be substituted for the more costly branded product, ColBenemid.

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

will decide whether any of these proposed generics will work just as well as their branded counterparts.

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

Social Impact

The social impact of the proposed amendments would primarily affect pharmacists, who would need to either place in stock, or be prepared to order, those products ultimately found acceptable.

Many of the proposed items are simply additional manufacturers for products already listed in the List of Interchangeable Drug Products. These proposed additions would expand the pharmacist's supply options.

Physicians and patients are not adversely affected by these amendments because the statute (N.J.S.A. 24:6E-6 et seq.) allows either the prescriber or the patient to disallow substitution, thus refusing the generic substitute and paying full price for the branded product.

Economic Impact

The proposed amendments will expand the opportunity for consumers to save money on prescriptions by accepting generic substitutes in place of branded prescriptions. The full extent of the saving to consumers cannot be estimated because pharmacies vary in their prices for both brands and generics.

Some of the economies occasioned by the amendments accrue to the State through the Medicaid, Pharmaceutical Assistance to the Aged and Disabled Program, and prescription plan for employees. A 1988 estimate of average savings per substituted Medicaid prescription was \$7.31. However, the number of prescriptions that will be newly substituted due to these proposed amendments cannot be accurately assessed in order to arrive at a total savings.

Regulatory Flexibility Statement

The proposed amendments impact many small businesses; specifically, over 1500 pharmacies and several small generic drug manufacturers which employ fewer than 100 employees.

However, there are no reporting or recordkeeping requirements for pharmacies, and small generic drug manufacturers have minimal initial reports, and no additional ongoing reporting or recordkeeping requirements. Further, these minimal requirements are offset by the increased economic benefits accruing to these same small generic businesses due to these proposed amendments.

Full text of the proposed amendments follows:

| | |
|--|-------------|
| Albuterol tabs 2, 4 mg | Amer. Ther. |
| Albuterol tabs 2, 4 mg | Copley |
| Albuterol tabs 2, 4 mg | Lemmon |
| Albuterol tabs 2, 4 mg | Superpharm |
| Aspirin ER tabs 800 mg | Sidmak |
| Betamethasone sod. phos. inj 4 mg/ml | Steris |
| Betamethasone valerate lotion 0.1% | Clay-Park |
| Brompheniramine maleate inj 10 mg/ml | Steris |
| Brompheniramine maleate inj 100 mg/ml | Steris |
| CPM/PE/PPA/phenyltoloxamine ped. syrup | LuChem |
| CPM/PE/PPA/phenyltoloxamine syrup | LuChem |
| Chlordiazepoxide/amitrip. 5/12.5, 10/25 | Par |
| Chlorpheniramine maleate inj 100 mg/ml | Steris |
| Chlorpheniramine maleate inj. 10 mg/ml | Steris |
| Clindamycin caps 75, 150 mg | Biocraft |
| Clonidine/chlorthal. tabs 0.1, 0.2, 0.3 mg | Cord |
| Corticotropin for inj. 40 U/vial | Steris |
| Cyclobenzaprine tabs 10 mg | Par |
| Cyclobenzaprine tabs 10 mg | Superpharm |
| Diazepam inj. 5 mg/ml | Steris |
| Dimenhydrinate inj. 50 mg/ml | Steris |
| Diphenhydramine inj. 10 mg/ml, 50 mg/ml | Steris |
| Disopyramide ER caps 100, 150 mg | Chelsea |
| Divalproex EC tabs 125, 250, 500 mg | Par |
| Doxepin caps 10, 25, 50, 75, 100, 150 mg | Lederle |
| Edetate disodium inj. 150 mg/ml | Steris |
| Erythromycin EC tabs 250, 333 mg | Upjohn |
| Erythromycin topical soln 2% | Clay-Park |
| Fenoprofen tabs 600 mg | Barr |
| Fluocinonide soln 0.05% | Copley |
| Fluocinonide soln 0.05% | Thames |

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| | | | |
|---|-------------|--|-------------|
| Fluorometholone ophth susp 0.1% | Iolab | Phenylephrine/pyrilamine/CP tannates sol | Mikart |
| Furosemide inj. 10 mg/ml | Steris | Phenylephrine/pyrilamine/CP tannates tab | Mikart |
| Gentamicin ophth soln 0.3% | Iolab | Pilocarpine ophth soln 0.5, 1, 2, 3, 4, 6% | Iolab |
| Gentamicin sulfate inj. 40 mg/ml | Steris | Potassium Cl ER tabs 10 mEq | Adria |
| Glycopyrrrolate inj. 0.2 mg/ml | Steris | Probenecid tabs 500 mg | Zenith |
| Haloperidol tabs 0.5, 1, 2, 5, 10, 20 mg | Chelsea | Probenecid/colchicine tabs 500 mg/0.5 mg | Zenith |
| Hydrocodone/PPA 2.5/12.5 liquid | LuChem | Procainamide inj. 100 mg/ml, 500 mg/ml | Steris |
| Hydrocodone/PPA 5/25 liquid | LuChem | Procaine HCL inj. 1%, 2% | Steris |
| Hydrocodone/pseudoephedrine 5/60 liquid | LuChem | Promazine HCl inj. 50 mg/ml | Steris |
| Hydrocodone/pseudoephedrine/guaiifen. liq | LuChem | Promethazine HCl inj. 25 mg/ml, 50 mg/ml | Steris |
| Iodinated glycerol elixir 60 mg/5 ml | PharmBasics | Quinidine gluconate ER tabs 324 mg | Mutual |
| Lactulose syrup 10 g/15 ml | Duphar B.V. | Quinine sulfate tabs 260 mg | Zenith |
| Loperamide caps 2 mg | Cord | Salsalate tabs 500, 750 mg | Mutual |
| Loxapine caps 5, 10, 25, 50 mg | Cord | Sulfacet./prednisolone 10%/0.2% oph. sol | Iolab |
| Metoclopramide syrup 5 mg/5 ml | Roxane | Sulfanilamide vaginal cream 15% | Clay-Park |
| Metoclopramide tabs 5 mg | Invamed | Sulindac tabs 150, 200 mg | Amer. Ther. |
| Minocycline caps 50, 100 mg | W-C | Sulindac tabs 150, 200 mg | Danbury |
| Morphine sulfate inj. 15 mg/ml | Steris | Sulindac tabs 150, 200 mg | Mutual |
| Naloxone inj. 0.4 mg/ml | Steris | Sulindac tabs 150, 200 mg | Par |
| Neomycin and polmyxin B for irrigation | Steris | Timolol maleate tabs 5, 10, 20 mg | Quantum |
| Neomycin, polymyxin, dexameth. ophth susp | Iolab | Trimethobenzamide inj. 100 mg/ml | Steris |
| Nystatin oral tabs 500,000 U. | Mutual | Verapamil ER tabs 240 mg | Invamed |
| Oxazepam caps 10, 15, 30 mg | Zenith | Verapamil tabs 40, 80, 120 mg | Invamed |
| Oxycodone/APAP tabs 5/500 | Roxane | | |

RULE ADOPTIONS

AGRICULTURE

(a)

STATE AGRICULTURE DEVELOPMENT COMMITTEE Acquisition of Development Easements Criteria for Evaluating Development Easement Applications

Adopted Amendments: N.J.A.C. 2:76-6.2 and 6.16

Proposed: August 7, 1989 at 21 N.J.R. 2152(a).

Adopted: September 22, 1989 by the State Agriculture
Development Committee, Arthur R. Brown, Jr., Chairman.

Filed: September 22, 1989 as R.1989 d.537, **with a substantive
change** not requiring additional public notice and comment
(see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 4:1C-5f.

Effective Date: October 16, 1989.

Expiration Date: July 31, 1994.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Conservation Foundation commented that the unweighted special considerations under the prioritization criteria system should receive point values in order to make clearer their impact on an application's rank.

RESPONSE: The special considerations are unweighted to allow an application to benefit from factors less readily quantifiable, yet also important, in assessing long-term agricultural viability. The history of their use demonstrates that they are not intended to move a lower-ranked application to a high priority, but rather to provide an opportunity for county and State recognition of factors which cannot be comprehensively addressed in the weighted criteria.

COMMENT: The New Jersey Conservation Foundation recommended that special consideration of contributions which reduce the SADC's cost-share be combined with the "relative best buy" statutory criterion.

RESPONSE: While these two items are related, they evaluate distinct aspects of potential easement purchase costs. The relative best buy calculation addresses overall public cost, while the special consideration indicated refers to state cost-share percentage only.

COMMENT: The New Jersey Conservation Foundation recommended combining the proposed geographic distribution consideration with the consideration given a county's first application, suggesting the two considerations overlap.

RESPONSE: These considerations are different, and apply at different points in time. While the "first application" consideration may be applied only one time per county, geographic distribution would be modified each time new easement purchases are approved.

COMMENT: The Burlington County Agriculture Development Board (CADB) commented in opposition to the proposed consideration of the geographic distribution of funds under "special considerations."

RESPONSE: While the SADC fully supports the concern that quality applications be approved, the Committee finds that incorporating a view toward Statewide program involvement does not frustrate this intent. The SADC feels that as an unweighted consideration, this criterion demonstrates appropriate significance relative to the score available under weighted criteria. The SADC also notes that previous discussion with CADBs revealed strong Statewide support for this proposed amendment.

COMMENT: The New Jersey Farm Bureau commented in support of the easement purchase program, noting that the purpose of the proposed rule change was to give the Farmland Preservation Program greater flexibility as supported by the farm community.

RESPONSE: The SADC agrees, also noting that the proposed changes reflect substantial prior farm community and other public input.

COMMENT: The Somerset County Agriculture Development Board (CADB) questioned the meaning of the phrase "on a par with" in the explanation of how the three statutory criteria are evaluated.

RESPONSE: This language indicates the level of consideration, not its weight. An application's score is based on its total competitiveness as determined overall by prioritization criteria (with a total possible score of 90) and the two other statutory criteria.

COMMENT: The Morris County Agriculture Development Board felt that local financial support should be evaluated under the unweighted special considerations, since statutory authority does not mandate financial support and questions exist about municipal ability to bond.

RESPONSE: The assignment of points under this criterion does not require municipal funds to be raised through bonds; no specific source of community financial support is stipulated. Also, other demonstrations of support allow an application to achieve a nearly maximum score even without points for community financial support.

Summary of Changes Upon Adoption:

In response to the body of public comment received on the proposed rule amendment, the State Agriculture Development Committee adopted a change in the definition of "project area" found in N.J.A.C. 2:76-6.2, Definitions and referenced in N.J.A.C. 2:76-6.16, Criteria for evaluating development easement applications, clarifying the meaning of "application" therein. This more accurate language reflects no deviation from current practices, but will resolve potential differences in interpretation, and brings the definition into closer conformity with the amended criteria.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***):

2:76-6.2 Definitions

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

...

"Project area" means an area identified by a board or the Committee which is located within an ADA and is comprised of one or more development easement purchase applications ***approved by the board and received by the Committee***, lands where development easements have already been purchased, other permanently deed restricted farmlands, farmland preservation programs and municipally approved programs.

2:76-6.16 Criteria for evaluating development easement applications

(a) The evaluation shall be based on the merits of the individual application, the application's contribution to the respective project area's ranking relative to other project areas and available funds.

The weight factor assigned to each criterion identifies the relative importance of the specific criterion in relation to the other criteria.

(b) The criteria listed in (c), (d), (e) and (f) below shall be combined to demonstrate the degree to which the purchase would encourage the survivability of the municipally approved program in productive agriculture.

(c) (No change.)

(d) The boundaries and buffers criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i. The type and quality of buffers, including:

(1) Compatible uses as follows:

(A)-(D) (No change.)

(E) Streams (perennial) and wetlands:

(F)-(J) (No change.)

(2) (No change.)

ii.-iii. (No change.)

(e) The local commitment criterion (weight 20) is as follows:

1. (No change.)

2. Factors to be considered are as follows:

i.-v. (No change.)

vi. Community financial support for the project area.

(f) (No change.)

(g) Factors which determine the degree of imminence of change of the land from productive agriculture to nonagricultural use criterion are as follows:

1.-2. (No change.)

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COMMUNITY AFFAIRS

(h) Factors which determine the relative best buy criterion are as follows:

1.-2. (No change.)

(i) Special considerations are as follows:

1. Factors of positive special consideration by the committee are as follows:

i. A contribution to reduce the committee's percent cost share of the negotiated development easement value;

ii. The first application(s) in the county to receive the committee's preliminary approval which ultimately results in the purchase of the development easement(s); and

iii. Geographical distribution among counties.

2. Factors of positive special consideration by the committee and the board are as follows:

i. Historic contributions;

ii. Environmental contributions;

iii. Uniqueness of the agricultural operation; and

iv. Any other considerations which the committee deems appropriate.

3. Items of negative special consideration by the committee and the board are as follows:

i. Any division of the property compromising the applicant's agricultural operation.

Filed: September 13, 1989 as R.1989 d.526, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13B-4.

Effective Date: October 16, 1989.

Expiration Date: June 1, 1990.

Summary of Public Comments and Agency Responses:

Comments were received from several advocacy groups for the populations served by rooming and boarding houses. Their concern was that the proposed amendment would have infringed upon the right of residents not to be evicted without due process. In response, the Department wishes to point out (1) that it has the statutory right to make rules concerning eviction that are at variance with N.J.S.A. 2A:18-61.1 et seq. and has already made one exception from that statute, the provision for removal by direction of the Bureau, because of its statutory obligation to make rules that protect the health, safety and welfare of all residents while promoting a homelike atmosphere in rooming and boarding houses and (2) that, under the rule as proposed, no eviction by unilateral action of an owner or operator would have been permitted. Nevertheless, the Department understands the concern that the proposed rule change might have been interpreted by some as implying that the Bureau would give some sort of pro forma approval to unilateral evictions, even though this was certainly not the intention. The amendment has therefore been re-drafted to be limited to the giving of notice to the Bureau in a situation, as described in N.J.A.C. 5:27-3.5, in which a resident must be removed in order to be more appropriately placed in another facility and to protect the rights of other residents.

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

5:27-3.3 Harassment; fraud; eviction without due cause

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

(c) Unless otherwise directed or authorized by the Bureau, no licensee shall cause any resident to be evicted from any rooming or boarding house except for good cause, as defined in N.J.S.A. 2A:18-61.1 et seq., and except in accordance with the procedural requirements of N.J.S.A. 2A:18-61.1 et seq.

1. A licensee may bring to the attention of the Bureau any situation in which the licensee believes that a directive from the Bureau, pursuant to this subsection, is necessary in order to facilitate appropriate placement of a resident, in accordance with N.J.A.C. 5:27-3.5(b), and to protect the right of all residents to a safe, healthful and decent living environment, in accordance with N.J.A.C. 5:27-3.1(a)12.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Notice of Administrative Correction

Classification, Services and Compensation

Designation of SES Positions: State Service

N.J.A.C. 4A:3-2.2

Take notice that the Department of Personnel has discovered an error in the text of N.J.A.C. 4A:3-2.2, Designation of SES positions: State service. As adopted by the Department (see R.1988 d.416), and as subsequently corrected by a Notice of Administrative Correction published in the May 15, 1989 New Jersey Register at 21 N.J.R. 1331(a), N.J.A.C. 4A:3-2.2(b) should read: "An SES position shall only report to a department head, higher level unclassified position, or another SES position." Unfortunately, this rule text, as reflected in the prior Notice of Administrative Correction, was published with errors in the 7-17-89 update to the New Jersey Administrative Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

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

4A:3-2.2 Designation of SES positions: State service

(a) (No change.)

(b) An SES position shall only report to a department head, [another] higher level unclassified position, or [higher level] another SES position.

(c) (No change.)

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Rooming and Boarding House Standards

Bureau Authorization to Evict Residents

Adopted Amendment: N.J.A.C. 5:27-3.3

Proposed: January 17, 1989 at 21 N.J.R. 93(a).

Adopted: September 12, 1989 by Anthony M. Villane, Jr.,

D.D.S., Commissioner, Department of Community Affairs.

(c)

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Developer Agreements

Adopted Amendment: N.J.A.C. 5:92-8.4

Proposed: May 15, 1989 at 21 N.J.R. 1185(c).

Adopted: September 18, 1989 by the New Jersey Council on

Affordable Housing, Arthur J. Maurice, Chairman.

Filed: September 22, 1989 as R. 1989 d.534, without change.

Authority: N.J.S.A. 52:27D-301 et seq., specifically 52:27D-307.

Effective Date: October 16, 1989.

Expiration Date: June 16, 1991.

Summary of Public Comments and Agency Responses:

COMMENT: The formula determining the maximum amount of developer contribution is rigid and grounded upon undisclosed assumptions. No reference or explanation is offered for the six percent figure used nor is any guidance provided to assess construction prices.

RESPONSE: In determining development costs, 25 percent of the house price should be allocated for land and land improvement costs. Out of the 25 percent, approximately 10 percent would be for the raw land.

The six percent figure, while lower than the 10 percent, allows for two factors. Number one, the lots which were allowed previous to the increased density will now be worth less per unit because of the increased density. (A one acre lot is worth more than a quarter lot.) Secondly, there must be some incentive for developers to utilize this option. Thus, the six percent figure appears to strike a balance. The developer is able to make a profit with a financially feasible project, yet significant dollars can be raised for the municipality.

Additionally, the six percent figure is an evolutionary percentage that resulted from prior developers' renegotiated settlements. In reviewing such agreements, there were two common elements, the number of increased market units and the proposed selling price of the market units. When these two factors were multiplied by a particular percentage, a negotiated monetary amount resulted. Based on a review of the agreements at the Council, six percent has evolved as the common denominator. At least one settlement specifically used the six percent figure prior to COAH's adoption of such guidelines.

Flexibility in the formula is the selling price of the market unit which varies from community to community and from region to region. The selling price is based on the developer's assessment of the real estate market at the time the agreement is being structured.

COMMENT: The rule should be amended so that the developer contributions may also be utilized for other municipal costs and expenses associated with low/moderate income housing as provided for in Regional Contribution Agreements.

RESPONSE: Developer contributions may be utilized for all costs directly attributable to the construction and provision of the low and moderate income housing.

COMMENT: There should be no further change in the Council's substantive rules which would result in a modification of the presumptive inclusionary requirement of six dwelling units per acre and a 20 percent set-aside.

RESPONSE: The current rule does permit further deviations from the standard of six dwelling units per acre and a 20 percent set-aside, but this deviation permits more flexibility in developing housing. Nothing in this rule deviates from providing the requisite realistic opportunity. Rather, the rule sets forth more specific standards and guidelines regarding the previously adopted rule.

Full text of the adoption follows:

5:92-8.4 Vacant sites

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

(d) All agreements, including those contemplated in (e), (f) and (g) below, that vary from the presumptive requirements of a 20 percent set-aside and a gross density of six units per acre, as set forth in (c) above, must satisfy the following conditions:

1.-4. (No change.)

(e) All agreements where the market units are single family detached dwellings may provide that, in exchange for an increase over existing density, the developer either: construct low and moderate income units as part of an inclusionary development; or pay a voluntary fee to be utilized by the municipality for an RCA or municipally constructed low and moderate income housing or rehabilitation. The developer's expense in either case must bear a reasonable relationship to the increase in density, such that the agreement does not violate the test in (d)1 through 3 above. For single family detached dwellings, the fee negotiated may not be in excess of the following formula:

Total number of additional market units resulting from the bonus density multiplied by the projected selling price of the market units multiplied by six percent. For purposes of this section, the projected selling price shall be defined as the price at time of construction.

(f) In agreements where the market units are multi-family dwellings, the Council may permit deviations from the presumptive requirements of a 20 percent set-aside:

1.-3. (No change.)

4. In cases where the agreement includes a developer's fee in lieu of the construction of low and moderate income units on the site, the fee shall be consistent with the current, average internal subsidization that would have been required to provide low and moderate income units on the site.

Renumber 4.-5. as 5.-6. (No change in text.)

(g) In agreements that contain a fee in return for increased commercial/industrial square footage, increased commercial/industrial lot coverage and/or increased commercial/industrial impervious coverage, the fee negotiated must bear a reasonable relationship to the additional commercial/industrial consideration to be received.

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Notice of Administrative Correction

List of Diagnosis Related Groups

N.J.A.C. 8:31B-5.3

Take notice that the Office of Administrative Law has discovered an error in the text of N.J.A.C. 8:31B-5.3, List of Diagnosis Related Groups. Diagnostic Related Group 742 Bone Marrow Transplant, part of Major Diagnostic Category 18: Infectious and Parasitic Diseases (Systemic), proposed and adopted at 21 N.J.R. 138(a) and 2088(a), respectively, was not reproduced in the New Jersey Administrative Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus):

8:31B-5.3 List of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Groups follows:

...

**MAJOR DIAGNOSTIC CATEGORY 18: INFECTIOUS AND
PARASITIC DISEASES (SYSTEMIC)**

| | OUTLIER LOW | TRIM POINT HIGH |
|---|----------------|--------------------|
| (415)-(423) (No change.) | | |
| (736) (No change.) | | |
| (742) BONE MARROW TRANSPLANT | 11 | 81 |

...

(b)

ALCOHOLISM AND DRUG ABUSE

Controlled Dangerous Substances

Addition to Schedule I: N.J.A.C. 8:65-10.1(b)3

1-[1-(2-Thienyl)cyclohexyl]pyrrolidine

CDS Number: 7473

Effective Date: September 14, 1989.

Authority: N.J.S.A. 24:21-3.

Take notice that, effective September 14, 1989, the controlled dangerous substance 1-[1-(2-thienyl)cyclohexyl]pyrrolidine has been placed in Schedule I. This action has been taken pursuant to N.J.S.A. 24:21-3(c), which provides that once a controlled substance has been scheduled under Federal Law, and notice is given to the Commissioner of Health, the Commissioner shall similarly schedule the substance after 30 days following publication in the Federal Register of a final order scheduling the substance.

A final order scheduling the substance 1-[1-(2-thienyl)cyclohexyl]pyrrolidine was published in the Federal Register on July 6, 1989 (see 54 FR 28414). Publication of this notice also serves to amend N.J.A.C. 8:65-10.1(b)3, by adding the drug 1-[1-(2-thienyl)cyclohexyl]pyrrolidine to Schedule I.

INSURANCE

(c)

DIVISION OF ADMINISTRATION

**Annual Publication of Insurer Profitability
Information**

Adopted New Rules: N.J.A.C.11:1-26

Proposed: August 7, 1989 at 21 N.J.R. 2181(a).

Adopted: September 22, 1989 by Kenneth D. Merin,
Commissioner, Department of Insurance.

Filed: September 25, 1989 as R.1989 d.538, **without change**.

Authority: N.J.S.A. 17:1C-6, 17:1-8, and 17:1-8.1.

Effective Date: October 16, 1989.

Expiration Date: February 3, 1991.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Insurance is adopting N.J.A.C. 11:1-26 to authorize and direct the annual publication of a report on insurer profitability. The rules were proposed on August 7, 1989 at 21 N.J.R. 2181(a).

The adopted rules direct the annual compilation and publication of a report on the profitability of insurers conducting business in New Jersey. The rules further direct that copies be delivered to designated officials, and provide that copies be available for members of the general public upon request. These rules authorize the Department to charge a reasonable fee to those requesting a copy of the report.

The rules further authorize the Commissioner to issue orders to obtain information from insurers to supplement or update information generally available from the National Association of Insurance Commissioners (NAIC), information on file with the Department, and information available from other recognized publishers of financial information.

Seven public comments were received.

COMMENT: One commenter stated that while it agreed with the goal of providing information about the insurance market, determining appropriate measures of profitability in the insurance industry was a difficult task. The commenter further expressed a concern about the format and content of the report to be published specifically regarding the treatment of policyholder dividends. The commenter stated that the format of the report should not identify policyholder dividends as insurer profit.

RESPONSE: While the Department understands the commenter's concern about what measures of profitability will be used, it notes that reasonable measures have been developed and are generally accepted, for example, those used by the NAIC in developing its annual report of profitability for insurers nationwide. The format of the report is to be developed and need not be determined at this time. Policyholder dividends will be afforded appropriate consideration in these measurements.

COMMENT: One commenter noted that although the general intent of the rules was stated, it was unable to determine the specifics of the report from the proposed rules. It further expressed concerns about the factors used to measure profitability. It noted that unusual results sometimes appear in calendar year state premium data caused by retrospective rating plan adjustments, audit changes or the movement of large risks from one carrier to another. It further noted that as a large, national insurer its method of reporting losses and allocating reserves by state likewise might result in significant year-to-year fluctuations. It suggested the use of a multi-year combined format to ameliorate these fluctuations.

The commenter further related other factors that affect profitability as determined for a single company in a single state for a single year, and expressed concern that fluctuations may convey a wrong impression. The commenter concluded that rather than publish the report called for in the rules, the Department should publicize the names of companies in serious financial condition over a period of years and which may be on the edge of insolvency.

RESPONSE: The purpose of the rules is to provide that the Department compile and publish an annual report on insurer profitability, and to set certain parameters regarding that report such as the time of issuance and general contents. The rules further provide for distributing the report, including authority to charge for copies, and further provide authority to obtain information if necessary to supplement or clarify information generally available. The Department is aware of the factors that result

in year-to-year fluctuations for an individual company in individual states, and anticipate such factors being considered in development of an appropriate format to convey accurate information. The commenter's suggestion to use a multi-year format will be given careful consideration. With regard to the comment that the Department should simply publicize the names of companies on the edge of insolvency, the Department disagrees and notes that the information to be compiled and published is generally available from published sources, but currently not reported in a convenient format.

COMMENT: One commenter expressed a concern that the measure of profitability may vary significantly from year to year due to significant losses from a single event, for example, a hurricane impacting the results of homeowners insurance for a single year. It suggested that the report should consider using a historical perspective, or excluding certain lines.

RESPONSE: As stated above, the precise format for the report has not been determined. The suggestion of this commenter and others are welcomed and will be considered.

COMMENT: One commenter questioned the need for the rules, noting that the Department already has authority to audit company operations and determine the financial status of an insurer. It expressed a concern about the duty of the insurer to provide information, questioning what data might be required for what lines of insurance, the due date of the report, etc.

RESPONSE: As stated in the response to a previous comment, the purpose of the rules is to provide that the Department regularly compile and publish this report. Internal Department reports about insurer solvency are not generally published, nor currently compiled and reported in summary fashion.

The Department anticipates that the report may be compiled solely from data available on the NAIC computer system, when that system is completed. In the meantime, the rules authorize the Commissioner to order information be submitted in order to supplement or clarify information otherwise available.

COMMENT: One commenter stated that what consumers care about in the marketplace is the price they must pay for their insurance. It suggested rather than compile and publish the report set forth in these rules that the Department simply publish rate comparisons and evaluations of the service levels of insurers writing in the New Jersey market. The commenter further expressed a concern that the rules required another report to be filed by insurers, which would increase the cost of doing business.

RESPONSE: The Department currently publishes lists of rate comparisons for several lines of insurance; it anticipates continuing to do so. As stated above, these rules simply provide authority to obtain supplemental or clarifying information pending completion of the NAIC computer system, after which the Department anticipates this authority will not be needed.

COMMENT: One commenter opposed adoption of the rules since the report would apparently be based on the national profitability of companies that do business in New Jersey. It suggested that the report contain information on profitability by line of insurers licensed and writing insurance in New Jersey. It noted that other states would be interested in this information.

RESPONSE: The gist of this comment appears to be that the commenter suggests that the report set forth the profitability by line of insurance based solely on New Jersey premiums, losses and expenses. This is in fact the primary interest of the Department, although national profitability data is useful for comparison. This comment will be considered in determining the content and format of the report.

COMMENT: One commenter supported the general idea of the rules, but expressed a concern over any additional information required to be developed by the companies. It stated that the information is available in the Annual Statements filed with the Department by all licensed companies. It further stated that the test of profitability includes not only premiums and losses, but consideration of expenses and acquisition costs.

RESPONSE: As stated in response to the previous comment, the Department anticipates that the report will be compiled primarily from the NAIC computer data system when it is completed. Authority to order additional information be filed is necessary until that time. All the factors stated by the commenter are considered in measuring profitability of insurers.

Full text of the adoption follows:

SUBCHAPTER 26. ANNUAL PUBLICATION OF INSURER PROFITABILITY INFORMATION

11:1-26.1 Purpose and scope

(a) This subchapter authorizes and directs the Department to compile and publish annually summary data on the profitability of insurers authorized to do business in New Jersey.

(b) This subchapter further authorizes the Commissioner to issue Orders directing insurers to submit data necessary to supplement or update information otherwise available that is necessary to prepare the annual report on insurer profitability.

11:1-26.2 Definitions

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

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Insurer" means any person, firm, association, corporation or partnership by the Commissioner to conduct the business of property-casualty insurance in New Jersey.

"NAIC" means the National Association of Insurance Commissioners.

"Total rate of return" means underwriting return and investment return on both reserves plus capital and surplus, related as a percentage to capital and surplus.

11:1-26.3 Annual report of insurer profitability

(a) The Department shall compile and publish annually a report on the profitability of insurers conducting business in New Jersey. The report shall be published within 60 days of the Department's receipt of annual profitability reports issued by the NAIC, but not later than September 15th of each year.

(b) The report shall contain aggregated or summary information that may be derived from reports issued by the NAIC, other recognized publishers of financial information, data on file with the Department, and data supplied as required from insurers pursuant to N.J.A.C. 11:1-26.4.

(c) The report shall be formatted so as to provide information on insurer profitability, including total rate of return, in a manner understandable to the public, and may include summary data by line of insurance, or by kind of insurer. It may further include such comparisons with data from prior years, with countrywide data, or with data of other states as may be desirable.

(d) The report shall be prepared in a manner so as to prevent the unauthorized disclosure of any privileged information on file with the Department pursuant to N.J.S.A. 17:23-6.

(e) The Department shall deliver a copy of the report to the Governor, the Senate President and the Assembly Speaker, and shall further make available copies for members of the general public upon request.

1. The Department may condition delivery of a copy of the report to a person requesting it upon payment of a reasonable fee pursuant to N.J.S.A. 17:1-8.

2. The amount of the fee shall be determined each year based upon the costs of producing the report, including costs of compilation, publication and distribution.

11:1-26.4 Orders to obtain information; penalties

(a) The Commissioner may from time to time issue Orders directing insurers to provide information to supplement or update information generally available or filed with the Department which is reasonably necessary to prepare the annual report of insurer profitability.

(b) The terms of any Order issued in accordance with (a) above shall allow the insurer at least 30 days from date of mailing to respond.

(c) A copy of any Order issued pursuant to (a) above shall be mailed to all insurers required to respond at their mailing address currently on file with the Department in accordance with N.J.A.C. 11:1-25.

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(d) The terms of any Order issued pursuant to (a) above may exempt from compliance any insurer whose market share is so small as to render any information derived of negligible value.

(e) The terms of any Order issued pursuant to (a) above may provide that penalties as provided by law may be imposed upon insurers which fail to respond within the time provided by the Order, or which fail to provide accurate information.

(a)**DIVISION OF THE NEW JERSEY REAL ESTATE COMMISSION****Contracts of Sale, Leases and Listing Agreements Agreement to Honor****Adopted Amendment: N.J.A.C. 11:5-1.16**

Proposed: August 21, 1989 at 21 N.J.R. 2438(b).

Adopted: September 26, 1989 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Filed: September 26, 1989 as R.1989 d.539, **without change**.

Authority: N.J.S.A. 45:15-6.

Effective Date: October 16, 1989.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

11:5-1.16 Contracts of sale, leases and listing agreements

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

LABOR**(b)****DIVISION OF WORKPLACE STANDARDS****Safety and Health Standards for Public Employees****Readoption: N.J.A.C. 12:100**

Proposed: August 7, 1989 at 21 N.J.R. 2224(a).

Adopted: September 22, 1989 by Charles Serraino, Commissioner, Department of Labor.

Filed: September 22, 1989 as R.1989 d.536, **without change**.

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

Effective Date: September 22, 1989.

Expiration Date: September 22, 1994.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 12:100.

LAW AND PUBLIC SAFETY**(c)****DIVISION OF MOTOR VEHICLES****Emergency Vehicle Equipment****Readoption with Amendments: N.J.A.C. 13:24****Adopted Repeal: N.J.A.C. 13:20-3**

Proposed: August 21, 1989 at 21 N.J.R. 2460(a).

Adopted: September 26, 1989 by Glenn R. Paulsen, Director of the Division of Motor Vehicles.

Filed: September 27, 1989 as R.1989 d.542, **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. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.

Effective Date: September 27, 1989, Readoption; October 16, 1989, Amendments and Repeal.

Expiration Date: September 27, 1994, N.J.A.C. 13:24; December 18, 1990, N.J.A.C. 13:20.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the August 21, 1989 New Jersey Register at 21 N.J.R. 2460(a). A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. The period for public comment was extended by the August 24, 1989 media advisory until September 24, 1989.

The New Jersey Division of Motor Vehicles received numerous comments with regard to the proposal. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, Trenton, New Jersey 08666. The comments were carefully reviewed and considered by the Division.

COMMENT: Several commenters filed comments requesting that the rules be modified to permit the use of multi-colored lights on various authorized emergency vehicles (police vehicles, fire department and rescue vehicles and ambulances). It was requested that blue, amber and red lights be allowed on fire department and rescue vehicles; that red and blue lights be permitted on police vehicles; that multi-colored lights be allowed on the rear of ambulances; and that a single flashing clear light be allowed on ambulances facing to the front, as well as a single flashing amber light on ambulances facing to the rear, for use during emergency operation of the vehicles. The primary reason which most of these commenters cited to justify the need for multi-colored lights to be permitted on the above-mentioned vehicles is the contention that the use of such lighting increases the safety of both the emergency vehicle personnel and the motoring public by calling the attention of the public to the emergency vehicle sooner than if only red lights are utilized, thus enabling the public to yield the right of way to an emergency vehicle more quickly and to observe an emergency vehicle stopped on a high speed roadway at the scene of a fire or accident more quickly. One such commenter mentioned a police department study conducted many years ago comparing red and blue lights under various weather and traffic conditions which concluded that blue lights are clearly more visible and easily discernible under certain conditions than red lights. The commenter contends that both red and blue lights should be permitted on emergency vehicles in the interest of safety, and that the least important factor in mandating the color of emergency lights is the purpose of enabling people to identify whether a vehicle is police, fire, first aid, emergency management, etc. Another commenter on this subject requested that a single clear front facing flashing light and a single amber rear facing light be permitted on ambulances since federal specifications followed by many ambulance manufacturers (a draft copy of which was enclosed by the commenter) provide for such lights. Permitting the use of such lights would avoid the necessity of modifying such lights when an ambulance is used in New Jersey. The commenter also mentioned a Federal government funded test which showed that a flashing clear light is an improvement over flashing red lights in terms of increasing the visibility of an ambulance to oncoming vehicles during daylight hours.

RESPONSE: The Division's response to these commenters is that although two emergency light studies/tests were mentioned in the foregoing comments, and although a draft copy of the above referenced Federal specifications was supplied by a commenter, the Division has not been supplied with copies of any study/test results which definitively and positively establish that the use of a combination of various color lights on an emergency vehicle is superior to the use of only red lights in terms of driver recognition of an emergency vehicle. In the absence of being furnished any such definitive evidence, the Division will refrain from modifying its rules as requested by these commenters with regard to the use of multi-colored lights by an emergency vehicle while it is being driven on an emergency basis. It must be emphasized that the Division is keenly concerned with the safety of both emergency vehicle personnel and the motoring public, and the Division remains receptive to reconsideration of this issue in the future if it is furnished copies of study/test results which definitively and positively establish that the use of multi-colored lights on such vehicles is superior to the use of only red lights with regard to driver recognition of such vehicles.

With regard to the use of multi-colored lights on an emergency vehicle while it is stationary, the Division's rules (N.J.A.C. 13:24-4.1(b)) permit police vehicles to be equipped with flashing amber lights displayed to the

rear of the vehicle as part of its roof-mounted emergency light bar while the vehicle is stationary. This would appear to address the concerns of some of these commenters with regard to police vehicles parked on a high speed roadway at the scene of an accident or emergency. The Division perceives it appropriate to expand N.J.A.C. 13:24-4.1(b) to permit any authorized emergency vehicle (including fire department vehicles and ambulances which qualify as authorized emergency vehicles) to be equipped with flashing amber lights facing to the rear of the vehicle as part of its roof-mounted emergency light bar (or centered between the two rear-facing red upper corner lights on ambulances) for use while the vehicle is stationary. To avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes between proposal and adoption contrary to N.J.A.C. 1:30-4.3, the Division has adopted N.J.A.C. 13:24-4.1(b) as it was originally proposed in the New Jersey Register. However, the Division intends to propose to amend N.J.A.C. 13:24-4.1(b) following adoption of this readoption and repeal to allow any authorized emergency vehicle to be equipped with rear-facing flashing amber lights as part of its roof-mounted emergency light bar (or centered between the two rear-facing red upper corner lights on ambulances) for use while the vehicle is stationary.

One commenter had two comments with regard to the Division's proposal which are summarized below, along with the Division's responses:

COMMENT: The Division should change N.J.A.C. 13:24-5.2 to provide that blue emergency warning light permits be issued to volunteer firefighters through the chief of the fire department rather than by the mayor of the municipality being served by the volunteer fire company.

RESPONSE: The Division cannot make the requested change to the rule in question. N.J.S.A. 39:3-54.11 mandates in part that blue emergency warning light identification cards (permits) be issued by the mayor or chief executive officer of a municipality recognizing and being served by a volunteer fire company to the volunteer fire company's members in good standing. Since the issuance of blue emergency warning light identification cards (permits) is governed by statute as set forth above, and since N.J.A.C. 13:24-5.2 accurately reflects the statutorily mandated permit issuance procedure, the Division cannot make the change to that rule which the commenter has requested.

COMMENT: With regard to N.J.A.C. 13:25-5.3, when a volunteer firefighter trades his vehicle for another one, there should be an easier way to transfer the blue emergency warning light identification card (permit); perhaps another form could be used to notify the Director of Motor Vehicles of the vehicle transfer.

RESPONSE: The citation heading of N.J.A.C. 13:24-5.3 was printed as N.J.A.C. 13:25-5.3 in the notice of proposal due to a typographical error, thus accounting for the commenter's reference to the latter citation.

The commenter apparently objects to the fact that N.J.A.C. 13:24-5.3 provides that upon the sale, transfer or disposal of any vehicles for which a blue emergency warning light identification card (permit) has been issued, the identification card (permit) is immediately deemed cancelled and must be surrendered to the Division by the permit holder within 10 days. The commenter apparently would prefer that under such circumstances the Division be notified of the sale, transfer or disposal but that the permit remain valid and the permit holder be allowed to retain same.

The Division does not agree with this comment. The authority to display a blue emergency warning light or lights on a vehicle for which a permit has been issued terminates upon the sale, transfer or disposal of that vehicle. Thus, a blue emergency warning light identification card (permit) issued for such a vehicle must be deemed cancelled and must be surrendered to the Division within 10 days of the cause of cancellation because it is no longer valid. The Division cannot perceive any legitimate reason which would justify allowing a permit to remain in circulation which describes a vehicle as being eligible to be equipped with blue emergency warning lights when in fact that vehicle is no longer eligible to be equipped with such lights.

Although the commenter refers to the "transfer" of a blue emergency warning light identification card (permit), such permits are non-transferable pursuant to N.J.A.C. 13:24-5.2(e). A permit transfer is not allowed because the permit is unique as to the person to whom it has been issued and as to the vehicles which it describes.

Another commenter had numerous comments with regard to the proposal which are summarized below, along with the Division's responses:

COMMENT: Dropping the red light and siren permit requirement for some emergency vehicles will hopefully not cause a problem. Many emergency vehicles utilize unauthorized lights, causing confusion and

accidents. Enforcement is needed in this area, since changing regulations without proper enforcement is self-defeating.

RESPONSE: The Division does not perceive that the discontinuance of the red light and/or siren permit requirement for ambulances which fall within the definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 will "cause a problem". Red light permits are not required for any of the vehicles specified in N.J.A.C. 13:24-2.1(a)1 to 4, and this has not resulted in any problems of which the Division is aware.

With regard to the commenter's request for increased enforcement action against vehicles utilizing unauthorized lights, on-the-road enforcement of this State's motor vehicle laws is the responsibility of State, county and local police. The Division's rules also provide for permit cancellation or revocation in those circumstances set forth in N.J.A.C. 13:24-2.7(b).

COMMENT: The use of emergency lights is a problem area because there seems to be many interpretations of the use of lights. An ambulance using only running lights is confusing. A fire engine returning from a call using lights is also confusing, and such lights should not be used at such a time if there are no firefighters hanging off the side of the vehicle.

RESPONSE: With regard to the commenter's complaint that the use of emergency lights is a problem area, several of the Division's rules specify when such lights may be used. N.J.A.C. 13:24-2.8(h) sets forth red light usage requirements, while N.J.A.C. 13:24-5.5 pertains to the use of blue emergency warning lights. These rules should serve to eliminate the "many interpretations" of the use of emergency lights to which the commenter refers.

With regard to ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1, such vehicles may use red lights in accordance with N.J.A.C. 13:24-2.8(h). Siren usage requirements for such vehicles are set forth in N.J.A.C. 13:24-2.3.

With regard to the commenter's complaint about the use of emergency lights on fire engines returning from an emergency call, N.J.S.A. 39:4-92.1 specifically permits the use of a flashing red light by a fire department vehicle returning to its fire station from an emergency call. Since such a use of emergency lights is specifically permitted by N.J.S.A. 39:4-92.1, the Division's rule concerning this subject (N.J.A.C. 13:24-2.8(h)) simply reflects a statutorily permitted use of red lights. Therefore, the Division cannot change its rule regarding the use of emergency lights by fire engines returning from an emergency call as requested by the commenter because such a change would be contrary to a statutorily permitted use of such lights.

COMMENT: Please refer to New Jersey Senate Bill 3688 (S-3688). The use of flashing headlights is a problem.

RESPONSE: S-3688, a bill currently pending before the New Jersey Legislature, would allow an authorized emergency vehicle to be equipped with a mechanism for use only during daylight hours that will cause its headlights to flash on and off in rapid succession or that will alternate the flashing of the white headlights. If the commenter takes issue with the substance of S-3688, he should address his concerns to the legislative sponsors of that bill rather than to the Division since the bill is a legislative rather than administrative matter.

COMMENT: The word "contiguous" in N.J.A.C. 13:24-5.5(a)1 will assist volunteer squads greatly.

RESPONSE: The Division perceives that the commenter is in favor of a volunteer firefighter or volunteer first aid or rescue squad member being able to utilize blue lights on a motor vehicle owned by him or by a member of his household when responding to an emergency call at great distance from the municipality where the blue light permit was issued. The Division concurs with this sentiment. N.J.A.C. 13:24-5.5(a)1 allows the use of such lights in both the municipality where the blue light permit was issued or in a municipality contiguous to the issuing municipality. The Division plans to propose to amend N.J.A.C. 13:24-5.5 in the future to delete any geographic limitation as to where such lights may be utilized by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call.

COMMENT: Members of volunteer first aid squads should be permitted to use red lights and sirens on their private vehicles when responding to an emergency.

RESPONSE: Current law (N.J.S.A. 39:3-54.7 et seq.) permits an active member of a volunteer first aid squad to utilize blue emergency warning lights on a motor vehicle owned by him or by a member of his household when responding to an emergency. Since blue is the color specified by law for display on such vehicles, the commenter's suggestion must be rejected.

One commenter had three comments with regard to the Division's proposal which are summarized below, along with the Division's responses:

COMMENT: The terms "Chief" and "First Assistant Chief" should be deleted from N.J.A.C. 13:24-2.5 with regard to volunteer fire company personnel eligible for red light permits, to be replaced by the term "Chief Officer" (but still with a limit of two permits per company).

RESPONSE: The Division cannot make the requested change. The terms "Chief" and "First Assistant Chief" set forth in N.J.A.C. 13:24-2.5(a) are in accord with the language contained in the statutory provision concerning this subject (N.J.S.A. 39:3-54.15). Accordingly, the Division's use of the terms "Chief" and "First Assistant Chief" in its rule is statutorily correct and will not be changed.

COMMENT: N.J.A.C. 13:24-2.7 should be changed to allow local fire departments to recommend the revocation of a red light permit. If a Chief or First Assistant Chief of a volunteer fire company is removed or resigns from such position and fails to surrender the red lights permit to the Division, the fire department would be unable to obtain additional permits.

RESPONSE: The Division does not perceive it to be necessary to make this change to its rule. A volunteer fire company is always free to notify the Division any time its Chief or First Assistant Chief resigns or is removed from such position. N.J.A.C. 13:24-2.7(c) provides that cancelled or revoked permits must be surrendered to the Division within 10 days of cancellation or revocation of the permit, and the Division will make appropriate inquiries if it is advised by a volunteer fire company that one of its red light permit holders is no longer Chief or First Assistant Chief.

COMMENT: The Division should be required, in each section of the rules which refers to a permit expiration date, to send notices of impending expiration to the permit holders. A four year permit period of validity is not easily tracked.

RESPONSE: The Division has not changed its rules in this regard, and deems a four year period of permit validity to be appropriate. However, the Division is exploring the possibility of advising permit holders of the impending expiration of same, although it is not certain at this point whether such a procedure will be implemented.

Another commenter's input is summarized below, along with the Division's response:

COMMENT: The Division should consider an amendment to the rules in order to allow for direct approval by a fire district as opposed to the municipality concerning the issuance of permits for blue/red lights. A fire district is a totally autonomous municipal entity and should be the coordinating governing body relative to the issuance of permits.

RESPONSE: With regard to the issuance of blue light permits, N.J.S.A. 39:3-54.11 mandates that such permits are to be issued by the mayor or chief executive officer of a municipality recognizing and being served by a volunteer fire company or a volunteer first aid or rescue squad. Since the issuance of blue light permits is governed by N.J.S.A. 39:3-54.11, the Division's regulation providing for the issuance of such permits by the mayor or chief executive officer (N.J.A.C. 13:24-5.2(d)) simply reflects the statutorily mandated permit issuance procedure. Therefore, the Division cannot change its rules regarding the issuance of blue light permits as requested by this commenter because such a change would be contrary to the statutorily mandated permit issuance procedure.

With regard to the issuance of red light permits, given the commenter's recommendation that a fire district should be the coordinating governing body relative to the issuance of permits, the Division presumes that the commenter is concerned with the red light permit issuance procedure as it pertains to an applicant who is an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company. N.J.S.A. 39:3-54.18 mandates that permits are to be issued to such applicants by the mayor or chief executive officer of a municipality recognizing and being served by a volunteer fire company. Since the issuance of a red light permit to the chief or first assistant chief of a volunteer fire company is governed by N.J.S.A. 39:3-54.18, the Division's regulation providing for the issuance of such permits by the mayor or chief executive officer (N.J.A.C. 13:24-2.4) simply reflects the statutorily mandated permit issuance procedure for such applicants. Therefore, the Division cannot change its rules regarding the issuance of red light permits to the chief or first assistant chief of a volunteer fire department because such a change would be contrary to the statutorily mandated permit issuance procedure for such applicants.

Another commenter had three comments with regard to the proposal which are summarized below, along with the Division's responses:

COMMENT: Many fire officers have permanently mounted red lights on their own private vehicles. The Division's rules would require that these red lights be portable and/or have a magnetic base. This represents an unnecessary and impractical requirement being imposed by the Division upon fire officers.

RESPONSE: The Division perceives its rule (N.J.A.C. 13:24-2.8(c)) regarding the mounting of red lights on a vehicle owned by a chief or first assistant chief of a volunteer fire company to be appropriate. N.J.S.A. 39:3-54.15 permits the Division to determine the type of such lights to be utilized on such vehicles, and the Division has done so through its rule requiring the use of magnetic base removable lights. The Division does not regard the requirement as impractical and is aware of no compelling reason to change its regulation.

COMMENT: The Division's rules should allow the use of permanently mounted blue lights. If an individual has a permit to display a blue light, what difference does it make whether the light is permanently mounted or portable? Permanently mounted blue lights cause no hardship on the State of New Jersey, do not interfere with the driving ability of the operator and, in some cases, may be safer than portable lights since permanently mounted lights do not require the operator to place a blue light on the roof while driving the vehicle to an emergency scene.

RESPONSE: The Division cannot make the requested change to its rule regarding this subject (N.J.A.C. 13:24-5.4(b)), which provides that blue lights shall be temporarily attached, removable lights) because such a change would be contrary to the statute which pertains to this subject (N.J.S.A. 39:3-54.9). The statute in question, N.J.S.A. 39:3-54.9, provides that blue emergency warning lights shall be "temporarily attached, removable lights." Thus, the Division's regulation specifying that such lights be temporarily attached, removable lights simply reflects a statutorily mandated requirement. Accordingly, the Division is unable to make the requested change to N.J.A.C. 13:24-5.4(b).

COMMENT: The Division's rules require that the blue emergency warning light be used only in the municipality where the identification card was issued or in a municipality contiguous to the issuing municipality. This requirement is not practical. An emergency call may require volunteer personnel responding to it to travel to other municipalities outside the geographical area of the municipality in which the permit was issued. The Division should take into consideration the geographical areas that many volunteers must respond to.

RESPONSE: The Division agrees with this comment. To avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes between proposal and adoption contrary to N.J.A.C. 1:30-4.3, the Division has adopted the regulation in question (N.J.A.C. 13:24-5.5(a)1) as it was originally proposed in the New Jersey Register. However, the Division plans to propose to amend N.J.A.C. 13:24-5.5 following adoption of this readoption and repeal to delete any geographical limitation as to where such blue lights may be utilized by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call.

Numerous commenters filed separate comments regarding the following subject as summarized below, along with the Division's response:

COMMENT: The Division's rule regarding the mounting of blue lights by volunteer firefighters should be changed. Many volunteer firefighters have blue lights mounted inside or on top of their vehicles. A provision which renders such mounted blue lights useless would place an unnecessary financial burden on the volunteer firefighters because replacement lights would have to be purchased. This would place a burden on individuals who faithfully serve their community.

RESPONSE: The Division regrets any expenses incurred by volunteer firefighters who must modify their motor vehicles in some manner to comply with the Division's rule regarding where blue emergency warning lights may be placed on a vehicle (N.J.A.C. 13:24-5.4(a)). However, the Division cannot change its rule regarding this subject as requested by the commenters because such a change would be contrary to the statute which specifies where such lights may be placed on a motor vehicle (N.J.S.A. 39:3-54.10). The Division's rule, N.J.A.C. 13:24-5.4(a), simply reflects the statutory requirements of N.J.S.A. 39:3-54.10 as to where such lights may be placed on a vehicle. The Division cannot establish by regulation additional locations on a vehicle where such lights may be placed because such additional locations are not specifically permitted by the controlling statute (N.J.S.A. 39:3-54.10).

Another commenter's input is summarized below, together with the Division's response:

COMMENT: The rules should be changed to permit an individual who is a volunteer firefighter to obtain a blue light permit if he does not have a vehicle registered in his name but uses a vehicle registered to a direct family member such as a father, mother, brother, sister, wife or husband. Many young volunteer firefighters utilize a vehicle registered to their father, and many other volunteer firefighters utilize their "family car" which is registered to their wife. The Division's blue light permit application form states that the vehicle must be registered in the person's name who is applying for the permit.

RESPONSE: The Division's rule (N.J.A.C. 13:24-5.1(a)) provides in part that an active member in good standing of a volunteer fire company may display blue lights on a motor vehicle owned by him or by a member of his household if he has been issued an identification card (permit) for such lights pursuant to N.J.A.C. 13:24-5. Thus, the vehicle intended to display such lights must be owned by either the volunteer firefighter or by a member of his household, which is in accordance with New Jersey law (N.J.S.A. 39:3-54.7). The Division will not change N.J.A.C. 13:24-5.1(a) because it accurately reflects the statutory requirement set forth in N.J.S.A. 39:3-54.7 as to those vehicles on which such lights may be displayed. Division blue light permit applications currently in use accurately reflect the statutory requirement.

Another commenter offered input which is summarized below, together with the Division's response:

COMMENT: The Division should give additional thought to its rule (N.J.A.C. 13:24-2.8(b)) which requires police vehicles that display roof mounted red lights to be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open. Such lights frequently become inoperative due to vibration and wear and tear in the trunk. It is recommended that police vehicles be required to have auxiliary lights to be used when the trunk is open and obscures the light bar, but that the type of such lights be left up to the municipality. It is believed that Chevrolet police cars currently have a permanent mounted red light that flashes when the trunk is open. If Ford or Chrysler put them in next year, this issue will be moot.

RESPONSE: The Division agrees that some type of special lighting on police vehicles which provides additional warning in the event the vehicle's trunk obscures the roof lights when open is desirable. Although interior trunk-mounted flashing red emergency lights would seem to remedy this situation, the Division is concerned as to whether police departments would be able to meet the mandatory requirement that police vehicles purchased on or after January 1, 1990 be equipped with such lights. Accordingly, the Division has changed N.J.A.C. 13:24-2.8(b) to delete the reference to the vehicle purchase date and to characterize the presence of such lights in a police vehicle as permissive rather than mandatory to avoid imposing a potential hardship on this State's police departments in the event that such lights are difficult to obtain from some police vehicle manufacturers. The Division will continue to consider whether some other type of lighting equipment designed to supplement roof-mounted lights which are obscured when the vehicle trunk is open would be appropriate.

Several comments by another commenter are summarized below, followed by the Division's responses:

COMMENT: The Division should change N.J.A.C. 13:24-2.3 to clarify when siren use is appropriate in conjunction with the use of red lights on ambulances. When sirens are used, flashing red lights should be used. However, the use of red lights does not necessarily mean that sirens should also be used.

RESPONSE: The Division finds N.J.A.C. 13:24-2.3 to be sufficiently clear with regard to siren use, and the rule has not been changed. N.J.A.C. 13:24-2.3(a) provides that an authorized emergency vehicle may be equipped with a siren, whistle or bell to be utilized when such vehicle is operated in response to a fire or emergency call. The Division does not perceive that further clarification as requested by the commenter in conjunction with red light usage is necessary.

COMMENT: The Division should add clarifying language to N.J.A.C. 13:24-2.4 to reinforce that a red light and/or siren permit is not required for authorized emergency vehicles. This might reduce the number of inquiries as to which vehicles need such permits.

RESPONSE: The Division perceives no need for such additional language, and N.J.A.C. 13:24-2.4 has not been changed. N.J.A.C. 13:24-2.1(b) indicates that a red light permit is not required for "those vehicles set forth in (a)1 to 4 above", and N.J.A.C. 13:24-2.1(a)1 specifically refers to "an authorized emergency vehicle." N.J.A.C. 13:24-2.2(b)

sets forth that an authorized emergency vehicle may be equipped with flashing red lights and that a permit is not required for such lights. N.J.A.C. 13:24-2.3(a)1 indicates that a permit is not required for an authorized emergency vehicle equipped with a siren, whistle, or bell. In sum, the foregoing provisions amply indicate that a red light and/or siren permit is not required for authorized emergency vehicles, and the requested changes to N.J.A.C. 13:24-2.4 do not appear necessary.

COMMENT: The Division should clarify what those first aid personnel allowed to display red lights and/or sirens on their vehicles pursuant to permit as set forth in N.J.A.C. 13:24-2.5(a)3 should do with regard to mounting such lights. If such individuals fall within the red light mounting requirements of N.J.A.C. 13:24-2.8(e), then the language used in that provision should be more clear.

RESPONSE: The Division does not believe that such additional clarification of N.J.A.C. 13:24-2.8(e) is necessary. A vehicle owned by, or leased by or for, a captain or principal assistant of a volunteer first aid or rescue squad is eligible for a red light permit pursuant to N.J.A.C. 13:24-2.5(a)3. N.J.A.C. 13:24-2.8(e) sets forth red light mounting requirements for all vehicles displaying a red light pursuant to a permit except for those vehicles specified in subsections (c) and (d) of that section. Since vehicles owned or leased by a captain or principal assistant of a volunteer first aid or rescue squad are not covered by either N.J.A.C. 13:24-2.8(c) or (d), red light mounting requirements for such vehicles is clearly covered by N.J.A.C. 13:24-2.8(e), and no modification of that section appears warranted.

Another commenter's input is summarized below, followed by the Division's responses:

COMMENT: The Division's rule (N.J.A.C. 13:24-4.1(b)) allowing law enforcement vehicles to be equipped with flashing amber lights displayed to the rear of the vehicle as part of its roof-mounted emergency light bar for use when the vehicle is stationary should be extended to other emergency vehicles, such as fire department equipment or ambulances.

RESPONSE: The Division concurs that N.J.A.C. 13:24-4.1(b) should be broadened to include any authorized emergency vehicle. To avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes contrary to N.J.A.C. 1:30-4.3, the Division has adopted N.J.A.C. 13:24-4.1(b) as it was originally proposed in the New Jersey Register. However, the Division intends to propose to amend N.J.A.C. 13:24-4.1(b) following adoption of this readoption and repeal to broaden it so that it will pertain to any authorized emergency vehicle.

COMMENT: The Division's rule (N.J.A.C. 13:24-2.8(b)) regarding the equipping of police vehicles with interior trunk-mounted flashing red emergency lights if the trunk obscures the vehicles' roof-mounted red lights when open should apply to all emergency vehicles. Police vehicles should not be treated differently from other emergency vehicles.

RESPONSE: The Division agrees that N.J.A.C. 13:24-2.8(b) should be broadened to include all authorized emergency vehicles. To avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes contrary to N.J.A.C. 1:30-4.3, the Division intends to propose to amend N.J.A.C. 13:24-2.8(b) following adoption of this proposal so that it would apply to any authorized emergency vehicle.

Another commenter's input is summarized below, together with the Division's responses:

COMMENT: Additional thought should be given to the economic impact these rules will have upon municipalities required to modify police cars, fire trucks and ambulances currently equipped with blue, amber and clear lights to comply with the rules. The cost and number of vehicles involved should be taken into consideration.

RESPONSE: The purpose of these rules is not to impose a financial burden upon municipalities. Rather, as set forth in the Social Impact statement published as part of this proposal, the rules are intended to "promote highway safety by identifying the various types, colors and uses of emergency warning lights and sirens which may be displayed or used in this State, the types of vehicles on which they may be displayed or used and the individuals who may apply for permits to display or use the various types and colors of emergency lights. Thus, the public and this State's law enforcement officials will be better informed as to the types of vehicles or persons permitted to exhibit and use emergency warning lights and sirens."

COMMENT: The Division should change N.J.A.C. 13:24-2.8(c) to allow the placement of red lights on the front of the vehicle by the grill.

RESPONSE: The Division cannot make the suggested change to its rule. N.J.S.A. 39:3-54.16 is controlling as to the placement of red lights on a motor vehicle owned by a chief or first assistant chief of a volunteer fire company, and the mounting which the commenter seeks is not

provided for by that statute. Since the red light mounting requirements set forth in N.J.A.C. 13:24-2.8(c) simply reflect the statutory mounting requirements imposed by N.J.S.A. 39:3-54.16, and since that statute does not provide for the mounting requested by the commenter, the Division's rule will not be changed.

COMMENT: The red lights permitted to be used by a fire chief on a vehicle owned by him should not have to be a magnetic removable light. Such a light may not go on the windshield column and may not be manufactured.

RESPONSE: The Division's rule (N.J.A.C. 13:24-2.8(c)) regarding the mounting of red lights on a vehicle owned by a chief of a volunteer fire company appears appropriate and has not been changed. N.J.S.A. 39:3-54.15 permits the Division to determine the type of such lights to be utilized on such vehicles, and the Division has done so through its rule mandating the use of magnetic base removable lights. The Division is not aware of any difficulty in obtaining such lights.

COMMENT: The Division should change N.J.A.C. 13:24-2.9 with reference to a removable siren on the center of the roof of a fire chief's vehicle which is subject to removal at the conclusion of the emergency. The statutory intent was not that a fire chief would have to remove such warning device between fire calls.

RESPONSE: The Division will not change this rule. The only mounting of sirens permitted on vehicles owned by a chief or first assistant chief of a volunteer fire company pursuant to N.J.S.A. 39:3-54.17 is under the hood of the motor vehicle, and that is the only mounting of sirens on such vehicles permitted by N.J.A.C. 13:24-2.9(b)1, which simply reflects the requirements of the aforementioned statute. Neither the Division's rule nor the aforementioned controlling statute permit the type of mounting to which the commenter refers.

COMMENT: Government vehicles such as snow plows and other highway service trucks should not be required to obtain permits for the installation of flashing amber lights. Such permits should not expire after four years, since towns usually keep their trucks longer than that. Such a permit and application represent unnecessary paperwork—who will enforce such a regulation against State, county and local snow plows, etc.?

RESPONSE: The Division believes it appropriate, in light of N.J.S.A. 39:3-50, that the vehicles bearing governmental registration set forth in N.J.A.C. 13:24-4 be subject to the flashing amber light permit application and issuance procedure. The Division believes the use of such lights warrants that a permit be issued. The fact that the rules provide for permit expiration after a period of four years appears reasonable and the Division perceives no valid reason to change the four year provision. On-the-road enforcement of this State's motor vehicle laws is within the purview of State, county and local police.

COMMENT: County vehicles used by a medical examiner to respond to scenes of death are equipped with flashing red lights and sirens. Loss of such lights and sirens as a result of the proposed amendments will delay response time to scenes of death. Such a medical examiner has a statutory duty to immediately go to the dead body and take charge of the same, and delayed response will lengthen the time before a traffic accident scene can be cleared. Therefore, N.J.A.C. 13:24-2.1 and 13:24-2.2 should be changed to provide that a vehicle used by a county medical examiner to respond to the scene of death may utilize red lights, and that a red light permit is not needed under such circumstances for a vehicle bearing governmental registration being operated by the county medical examiner or his representative.

RESPONSE: The Division shares the concerns expressed by the commenter regarding this subject, and some amendment of N.J.A.C. 13:24-2 to accommodate this situation appears appropriate. To avoid the necessity of republishing this proposal in the New Jersey Register due to substantive changes contrary to N.J.A.C. 1:30-4.3, the Division has adopted N.J.A.C. 13:24-2.1 and N.J.A.C. 13:24-2.2 as they were originally proposed in the New Jersey Register. However, the Division will propose to amend N.J.A.C. 13:24-2 following adoption of this readoption and repeal to address the concerns raised by this commenter with reference to red lights on county vehicles used by a medical examiner.

Summary of changes between Proposal and Adoption:

Technical changes are located in N.J.A.C. 13:24-5.3. Due to a typographical error, the citation for this provision was erroneously printed in the Division's proposal which was published in the New Jersey Register as N.J.A.C. 13:25-5.3. Therefore, to correct the typographical error, the Division has changed N.J.A.C. 13:25-5.3 to 13:24-5.3. In addition, the codification of this single paragraph as "(a)" has been deleted as inappropriate.

A substantive change is located in N.J.A.C. 13:24-2.8(b). That provision concerns equipping authorized emergency vehicles used for police or law enforcement purposes with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open. The proposed rule contained a mandatory requirement that such vehicles be equipped with such lights if purchased on or after January 1, 1990. The Division is concerned as to whether police departments would be able to meet the mandatory requirement for vehicles purchased after the date in question. Accordingly, the Division has changed N.J.A.C. 13:24-2.8(b) to delete the reference to the vehicle purchase date and to characterize the presence of such lights in a police vehicle as permissive rather than mandatory. The Division has taken this action to avoid imposing a potential hardship on this State's police departments in the event that such lights are difficult to obtain from some police vehicle manufacturers.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks *thus*; deletions from proposal shown in brackets with asterisks *[thus]*).

CHAPTER 24

EQUIPMENT FOR EMERGENCY VEHICLES AND OTHER SPECIFIED VEHICLES

SUBCHAPTER 1. DEFINITIONS

13:24-1.1 Words and phrases defined

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

"Authorized emergency vehicle" means a vehicle of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, when operated in response to an emergency call. Any vehicle which is licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad which has been certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter when operated in response to an emergency.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Flashing light" means a lamp with an intermittent or revolving action.

"Service vehicle" means any vehicle bearing commercial or governmental registration that is used to perform some type of maintenance or repair function within the confines of public roadways or any vehicle used to transport or escort overdimensional loads on public roadways.

"Wrecker" means any vehicle bearing commercial or governmental registration designed and used to tow other vehicles with at least two wheels of the towed vehicle off the ground and includes flatbed trucks designed and used to retrieve and transport other vehicles on a flat bed.

SUBCHAPTER 2. RED EMERGENCY LIGHTS; SIRENS

13:24-2.1 Red lights on vehicles

(a) No vehicle equipped with a red light, when such light is visible from directly in front of the vehicle, may be used on any street or highway, with the following exceptions:

1. An authorized emergency vehicle;
2. An authorized school bus;
3. A frozen dessert truck as defined in N.J.S.A. 39:4-128.3;
4. An omnibus equipped in accordance with N.J.S.A. 39:3-54(b);

or

5. A vehicle authorized by a permit issued by the Director.

(b) A red light permit is not required for those vehicles set forth in (a)1 to 4 above.

13:24-2.2 Flashing lights on vehicles

(a) No vehicle shall be equipped with and no person shall use upon any vehicle any flashing lights except as a means for indicating right

or left turns or for the purpose of warning of the presence of a vehicular traffic hazard; provided, however, that a vehicle may be equipped with flashing lights of a type approved by the Director if it falls into one of the categories of vehicles set forth in N.J.A.C. 13:24-2.1(a)1 to 5 or as otherwise provided in this chapter.

(b) An authorized emergency vehicle as defined in N.J.S.A. 39:1-1 and this subchapter may be equipped with flashing red lights. A permit is not required for such red lights.

(c) A red light permit is not required for a school bus which is equipped with flashing red lights.

(d) A frozen dessert truck as defined in N.J.S.A. 39:4-128.3 shall be equipped with flashing red lights in accordance with N.J.S.A. 39:4-128.5, and such lights must be used in accordance with N.J.S.A. 39:4-128.6. A permit is not required for such red lights.

(e) An omnibus as defined in N.J.S.A. 39:1-1 may be equipped with flashing red lights in accordance with N.J.S.A. 39:3-54(b) to be used for the purpose set forth in that subsection. A permit is not required for such red lights.

13:24-2.3 Siren, whistle or bell on vehicles

(a) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell with the following exceptions:

1. An authorized emergency vehicle may be equipped with a siren, whistle or bell to be utilized when such vehicle is operated in response to a fire or emergency call. Police vehicles may also use a siren, whistle or bell in the pursuit of an actual or suspected violator of the law. A permit is not required for an authorized emergency vehicle equipped with such siren, whistle or bell.

2. A vehicle authorized by a permit issued by the Director may be equipped with a siren to be utilized for answering a fire or emergency call.

3. A theft alarm signal device which is installed so that it cannot be used by the driver as an ordinary warning signal may be installed on any vehicle in accordance with N.J.S.A. 39:3-69.

13:24-2.4 Permit applications

(a) Requests for permits authorizing the use of red lights and/or sirens pursuant to this subchapter are to be made to the Director by the mayor or chief executive officer in the municipality in which the applicant's service is being provided; except that Emergency Management personnel shall apply for such permits in accordance with the procedures set forth in N.J.A.C. 13:24-3, and organizations eligible for such permits pursuant to N.J.A.C. 13:24-2.5(a)4 shall make application directly to the Division of Motor Vehicles.

(b) Applications for permits authorizing the use of red lights and/or sirens pursuant to this subchapter may be obtained from, and completed applications must be submitted to, the Division of Motor Vehicles.

(c) A permit issued by the Division of Motor Vehicles pursuant to this subchapter will be forwarded to the applicant via the official who made the request, as specified in (a) above.

13:24-2.5 Eligibility for permit

(a) Applicants for permits authorizing the use of red lights and/or sirens pursuant to this subchapter may be considered eligible only if the vehicle intended to display the red lights and/or sirens is:

1. Owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company; provided, that no more than two permits will be issued to any one volunteer fire company;

2. Owned by, or leased by or for, a chief of police of a municipality or a police captain or first assistant to the chief of police of a municipality, where such municipality does not provide that person with a vehicle for police purposes; provided, that no more than two permits will be issued to any police department meeting these conditions; and provided further, that applicants must be full time police officials;

3. Owned by, or leased by or for, a captain or principal assistant of a volunteer first aid or rescue squad; provided, that no more than two permits will be issued to any one volunteer first aid or rescue squad;

4. Owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment and operated by an employee thereof only for the purpose of demonstration or delivery, when such operation is in compliance with the terms of the permit; or

5. Owned or leased by those Emergency Management personnel set forth in N.J.A.C. 13:24-3.1 or 3.2.

(b) Except as may otherwise be provided by rule, no applicants other than those set forth in (a) above shall be eligible for red light and/or siren permits pursuant to this subchapter.

13:24-2.6 Possession and exhibition of permit

A permit issued pursuant to this subchapter must be in the possession of the operator at all times when the red lights and/or sirens are displayed on the vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-2.7 Permit cancellation or revocation

(a) Permits issued pursuant to this subchapter shall remain valid for a period of four years, unless cancelled or revoked, and shall be nontransferable.

(b) The Director may cancel or revoke a permit issued pursuant to this subchapter for any of the following reasons, or for any other reasonable grounds:

1. Expiration or termination, for any reason, of term of office or contract which entitled the holder to the permit;

2. The sale, transfer, destruction or termination of lease of the vehicle for which the permit was issued;

3. A violation of any of the conditions applying to such permit as stated in this subchapter; and/or

4. Upon the operator of the vehicle being convicted of any violation of the Motor Vehicle Traffic Laws involving the use of the lights or sirens.

(c) Cancelled or revoked permits for red lights or sirens must be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cancellation or revocation of the permit.

(d) A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

13:24-2.8 Red light mounting and use requirements

(a) There is no limit as to the number of red lights which may be mounted on an authorized emergency vehicle; provided, that no red lights shall be mounted on the vehicle's interior front dashboard nor shall red lights be used in place of the vehicle's regular headlights.

(b) All authorized emergency vehicles used for police or law enforcement purposes *[purchased on or after January 1, 1990]* that display roof mounted red lights *[shall]* ***may*** be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open.

(c) Red lights placed on a vehicle owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company pursuant to a permit issued by the Director in accordance with this subchapter shall be mounted only on the exterior of the vehicle and shall consist of not more than two magnetic base type removable lights.

1. If one red light is used on such a vehicle, it shall be mounted on:

- i. The center of the roof of the vehicle; or
- ii. The left windshield column.

2. If two red lights are used on such a vehicle, they shall be mounted on:

- i. Either side of the roof at the front of the vehicle directly behind the top of the windshield; or
- ii. Each windshield column.

(d) There is no limit as to the number of red lights which may be mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment

for which a permit has been issued by the Director pursuant to N.J.A.C. 13:24-2.5(a)4 permitting the display of such lights when the vehicle is being operated by an organization employee only for the purpose of demonstration or delivery; provided, that no red lights shall be mounted on the vehicle's interior front dashboard nor shall red lights be used in place of the vehicle's regular headlights.

(e) Except for those vehicles specified in (c) and (d) above, vehicles equipped with a red light pursuant to a permit issued by the Director in accordance with this subchapter shall display one magnetic base type removable light. The red light shall not be mounted on the vehicle's interior front dashboard and shall not be used in place of the vehicle's regular headlights.

(f) Vehicles operated by Emergency Management personnel shall comply with the red light mounting and use requirements of N.J.A.C. 13:24-3.

(g) Any mounting of red lights not provided for by this subchapter is prohibited.

(h) Red lights shall only be used when the vehicle is being operated in response to a fire or emergency call; provided, however, that red lights mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment for which a permit has been issued by the Director pursuant to N.J.A.C. 13:24-2.5(a)4 may only be used when such vehicle is being operated by an organization employee for the purpose of demonstration or delivery. Police vehicles may also use red lights in the pursuit of an actual or suspected violator of the law. Fire department vehicles may also use red lights while returning from an emergency call. Ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1 may also use red lights when transporting a person to a hospital on an emergency basis.

13:24-2.9 Siren mounting requirements

(a) A siren may be mounted at any location on an authorized emergency vehicle.

(b) A vehicle authorized by a permit issued pursuant to this subchapter to utilize a siren shall comply with the following provisions:

1. The siren must be mounted under the hood of the vehicle; except that a vehicle for which a permit has been issued authorizing the use of a siren, other than a vehicle owned by and registered in the name of an active chief of a volunteer fire company or the first assistant chief of a volunteer fire company, may mount a removable siren on the center of the roof of the vehicle for use while responding to an emergency call provided it is removed at the conclusion of the emergency.

(c) Vehicles operated by Emergency Management personnel shall comply with the siren mounting and use requirements of N.J.A.C. 13:24-3.

SUBCHAPTER 3. SPECIAL EMERGENCY MANAGEMENT REGULATIONS

13:24-3.1 Municipal Emergency Management Coordinator applications

(a) Municipal Emergency Management Coordinators may apply for a red light and/or siren permit for a vehicle or vehicles which they own or lease.

(b) An applicant pursuant to this section shall submit a letter of request on official stationery, signed by the mayor or chief executive officer of a municipality, together with a completed application, to the County Emergency Management Coordinator requesting approval to place a red light and siren on the Municipal Emergency Management Coordinator's vehicle or vehicles.

(c) Upon approval of the County Coordinator, the letter of request and all three copies of the application shall be forwarded to the State Office of Emergency Management for approval by the Director of that Office.

(d) If approved, the Director of the State Office of Emergency Management will send the application to the Director of the Division of Motor Vehicles for final approval and issuance of the permit.

13:24-3.2 County Emergency Management Coordinator applications

(a) County Emergency Management coordinators and Deputy County Emergency Management Coordinators may apply for a red light and/or siren permit for a vehicle or vehicles which they own or lease.

(b) In the case of the application of the County Emergency Management Coordinator or Deputy County Emergency Management Coordinator, the application shall be signed by the director of the board of chosen freeholders for that county and the letter of request and all three copies of the application forwarded to the State Office of Emergency Management for approval.

(c) If approved, the Director of the State Office of Emergency Management will send the application to the Director of the Division of Motor Vehicles for final approval and issuance of the permit.

13:24-3.3 Application contents

(a) The application is to contain:

1. The name and address of the owner of the vehicle or vehicles for which the permit is to be issued and, if applicable, the name and address of the lessee of the vehicle or vehicles for which the permit is to be issued. The owner or lessee must be the Municipal Emergency Management Coordinator or the County Emergency Management Coordinator or Deputy County Emergency Management Coordinator.

2. The following vehicle information must be given:

i. The registration number, make, model, year and vehicle identification number of the vehicle or vehicles on which the emergency warning devices are to be mounted.

13:24-3.4 Period of validity; cancellation of permit

(a) The permit is valid only during the term of office of the holder or for a period of four years, whichever period is shorter, and is nontransferable.

(b) At the expiration or upon termination of the term of office of a County or Municipal Emergency Management Coordinator or a Deputy County Emergency Management Coordinator, or upon the sale, transfer, disposal or termination of lease of any vehicles for which the permit was issued, the permit shall be surrendered to the State Office of Emergency Management.

(c) The State Office of Emergency Management shall forward a surrendered permit to the Division of Motor Vehicles for cancellation.

13:24-3.5 Mounting regulations

(a) Any siren permitted by this subchapter must be mounted under the hood or in the center of the roof of the vehicle.

(b) Any red light permitted by this subchapter must be a portable light with a removable magnetic-type base.

(c) The red light may be affixed to the vehicle only at such times when the vehicle is being operated in response to an emergency.

(d) Any red light permitted by this subchapter may only be mounted on the roof of the vehicle. Mounting on the interior front dashboard, fenders or at any other location of the vehicle is prohibited.

(e) At the conclusion of the emergency the red light must be removed.

13:24-3.6 Use regulations

(a) The red light and/or siren may be used only under the following conditions:

1. The vehicle is being operated by the Municipal Emergency Management Coordinator or County Emergency Management Coordinator or Deputy County Emergency Management Coordinator in response to an actual emergency.

13:24-3.7 Possession and exhibition of permit

The permit must be in the possession of the operator at all times when the vehicle is being operated and the red light and/or siren is displayed on the vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-3.8 Revocation of permit

(a) The Director of Motor Vehicles may in his or her discretion revoke any permit issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 4. FLASHING AMBER LIGHT PERMIT

13:24-4.1 Persons eligible

(a) Owners or lessees of the following type vehicles may be considered eligible for amber light permits.

1. Wreckers, bearing commercial or governmental registration:
 - i. (No change.)
2. Service vehicles bearing commercial or governmental registration:
 - i. A flashing amber light may be used where such warning light activation is necessary for the protection of the public or service vehicle personnel.
3. (No change.)

(b) Notwithstanding any other provisions of this subchapter, police or law enforcement vehicles may be equipped with flashing amber lights which are displayed to the rear of the vehicle as part of its roof-mounted emergency light bar while the vehicle is stationary. A flashing amber light permit is not necessary when amber lights are mounted and used on police or law enforcement vehicles in such a manner. Such amber lights on police or law enforcement vehicles must be controlled by a switch separate from the red lights.

13:24-4.2 Application procedure

(a) Application for a flashing amber light permit pursuant to this subchapter must be made in writing to the Division of Motor Vehicles.

(b) The application for vehicles not bearing governmental registration, after completion, is to be signed by the chief law enforcement official in the municipality in which the service is being provided, and returned to the Division of Motor Vehicles.

(c) The application for vehicles bearing governmental registration, after completion, is to be signed by the chief official of the governmental agency which owns or leases the vehicles, and returned to the Division of Motor Vehicles.

(d) Amber light permits issued pursuant to this subchapter shall be valid for a period of four years, unless cancelled or revoked, and shall be nontransferable.

13:24-4.3 Possession and exhibition

A permit issued pursuant to this subchapter must be in the possession of the operator at all times when the flashing amber lights are displayed on the vehicle, and must be exhibited upon request of any law enforcement official.

13:24-4.4 Revocation

The Director may in his or her discretion revoke any permit issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

13:24-4.5 Termination of employment

Termination of the type of employment or service for which the permit was issued automatically and immediately cancels the permit and invalidates the authority for such a light, and the permit must

be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.

SUBCHAPTER 5. BLUE EMERGENCY WARNING LIGHTS

13:24-5.1 Blue emergency warning lights restricted

(a) An active member in good standing of a volunteer fire company or a volunteer first aid or rescue squad may display a blue emergency warning light or lights on a motor vehicle owned by him or her or by a member of his or her household if he or she has been issued an identification card (permit) for such light or lights pursuant to this subchapter and is in compliance with the provisions of this subchapter.

(b) An identification card (permit) issued pursuant to this subchapter must be in the possession of the operator at all times when the blue light or lights are displayed on a vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-5.2 Identification card (permit) application procedure

(a) An applicant for a permit pursuant to this subchapter shall complete an application form prescribed by the Division of Motor Vehicles.

(b) The applicant shall submit his or her completed application to the mayor or chief executive officer of the municipality recognizing and being served by the applicant's volunteer fire company or volunteer first aid or rescue squad. Upon approving a permit application for blue emergency lights, the mayor or chief executive officer shall sign and forward the application to the Division of Motor Vehicles.

(c) Upon receipt of a permit application for blue emergency lights which has been submitted in accordance with (b) above, the Division of Motor Vehicles shall forward an identification card (permit) signed by the Director, listing each vehicle described in the permit application to the mayor or chief executive officer of the municipality.

(d) The mayor or chief executive officer of the municipality shall countersign the identification card (permit) and issue it to the applicant.

(e) Identification cards (permits) issued pursuant to this subchapter shall remain valid for a period of four years, unless cancelled or revoked, and shall be nontransferable.

*[13:25-5.3]**13:24-5.3* Surrender of identification cards (permits)

*[(a)]*When a person to whom an identification card (permit) has been issued pursuant to this subchapter ceases to be an active member in good standing of a volunteer fire company or volunteer first aid or rescue squad, or upon the sale, transfer or disposal of any vehicles for which the permit was issued, the identification card (permit) shall automatically and immediately be deemed cancelled and shall be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.

13:24-5.4 Mounting; specifications

(a) No more than two blue emergency warning lights may be installed on a vehicle.

1. If one blue light is used, it shall be mounted on:
 - i. The center of the roof;
 - ii. The left windshield column; or
 - iii. The front of the vehicle so that the top of the light is no higher than the top of the vehicle's headlights.
2. If two blue lights are used, they shall be mounted on:
 - i. Either side of the roof at the front of the vehicle directly behind the top of the windshield; or
 - ii. Each windshield column.

(b) The blue lights shall be temporarily attached, removable lights of the flashing or revolving type, and shall not exceed seven and one-half inches in diameter.

(c) The lights shall have a blue lens and shall be equipped with a lamp of not more than 51 candlepower as measured without a lens. The lights shall be controlled by a switch installed inside of the vehicle.

13:24-5.5 Use of blue emergency warning lights.

- (a) A blue emergency warning light shall only be used:
1. In the municipality where the identification card (permit) was issued, or in a municipality contiguous to the issuing municipality;

2. While the vehicle is responding to a fire or emergency call; and
3. On a motor vehicle owned by the identification card (permit) holder or by a member of his or her household.

13:24-5.6 Revocation

The Director may in his or her discretion revoke any identification card (permit) issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

SUBCHAPTER 6. SPECIAL AMBER IDENTIFICATION LIGHTS (LICENSED PRIVATE DETECTIVE BUSINESSES)

13:24-6.1 Permit eligibility

Vehicles owned or leased by licensed private detective businesses under contractual agreement to provide community security services in planned developments as defined in N.J.S.A. 40:55D-1 et seq. are eligible for special amber identification light permits in accordance with the procedures set forth in this subchapter to enable them to be equipped with and display such a light.

13:24-6.2 Application procedure

(a) Application for a special amber identification light permit pursuant to this subchapter must be made in writing to the Division of Motor Vehicles.

(b) The application, after completion by the applicant, is to be signed by the chief law enforcement official in the municipality in which the permit will be used. Thereafter, the application should be submitted by the applicant to the Division together with:

1. A copy of the vehicle registration;
2. A copy of the contractual agreement referred to in N.J.A.C. 13:24-6.1; and
3. A \$25.00 check or money order made payable to the New Jersey Division of Motor Vehicles as authorized by N.J.S.A. 39:3-54.14.

(c) Special amber identification light permits issued pursuant to this subchapter shall be valid for a period of four years or until the termination of the contract, whichever period is shorter, and shall be nontransferable.

13:24-6.3 Mounting; specifications

(a) No more than one special amber identification light may be mounted on a vehicle pursuant to this subchapter. Such light shall be mounted on:

1. The center of the roof of the vehicle;
2. The left windshield column; or
3. The front of the vehicle so that the top of the light is no higher than the top of the vehicle's headlights.

(b) A special amber identification light mounted on a vehicle pursuant to this subchapter shall not exceed seven and one-half inches in diameter, shall have an amber lens and shall be equipped with a lamp of not more than 51 candlepower as measured without a lens. The light shall be controlled by a switch installed inside of the vehicle.

13:24-6.4 Possession and exhibition

A permit issued pursuant to this subchapter must be in the possession of the operator at all times when the special amber identification light is displayed on the vehicle, and must be exhibited upon the request of any law enforcement official.

13:24-6.5 Revocation

The Director may in his or her discretion revoke any permit issued pursuant to this subchapter at any time for noncompliance with the terms of the permit or the conditions of its issuance or for any other reasonable grounds. A permit holder may object to cancellation or revocation by requesting a hearing. A request for a hearing shall be

in writing and shall be received by the Director within 10 days of the notice of cancellation or revocation. A request for hearing shall state all the reasons for the permit holder's objection to cancellation or revocation. The Director shall determine whether to grant a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

13:24-6.6 Termination of employment

Termination of the type of employment or service for which the permit was issued, or the sale, transfer, disposal or termination of lease of the vehicle for which the permit was issued, automatically and immediately cancels the permit and invalidates the authority for such a light, and the permit is to be surrendered to the Division of Motor Vehicles by the permit holder within 10 days of the cause of cancellation.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS Board of Medical Examiners Rules

Readoption with Amendments: N.J.A.C. 13:35

Proposed: August 7, 1989 at 21 N.J.R. 2226(b).

Adopted: September 13, 1989 by the Board of Medical Examiners, Michael B. Grossman, D.O., President.

Filed: September 21, 1989 as R.1989 d.532, with a **substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:9-2.

Effective Date: September 21, 1989, Readoption; October 16, 1989, Amendments.

Expiration Date: September 21, 1994.

The State Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed readoption of rules with amendments, N.J.A.C. 13:35, relating to the practice of medicine. The official comment period ended on September 6, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on August 7, 1989 at 21 N.J.R. 2226(b). Announcements were also forwarded to the Trenton Times, the Star Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, the New Jersey Society of Anesthesiologists, the New Jersey Association of Osteopathic Physicians and Surgeons, various hospitals, medical schools, professional groups, practitioners, and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

COMMENT: The New Jersey Podiatric Medical Society pointed out that a literal reading of the proposed amendment to N.J.A.C. 13:35-6.9(a) would lead to the result that practitioners, other than those with a plenary license, would have to be legally licensed to practice both chiropractic and podiatry in order to be considered physicians for purposes of the rule.

RESPONSE: The Board has changed the sentence in question to clarify that it refers to a license in either discipline.

COMMENT: The New Jersey Podiatric Medical Society also noted that N.J.A.C. 13:35-6.3, which concerns the countersigning of orders and prescriptions of unlicensed physicians, makes no provision for the podiatric intern or resident. The Society suggests that the section be amended to include the podiatric trainee.

RESPONSE: The Board accepts the concept that podiatrists can countersign for their residents. A proposal for specific inclusion of podiatric trainees will be referred for consideration to the appropriate Board committee.

COMMENT: The president of the New Jersey Chapter of the American Physical Therapy Association approved the minor modifications in N.J.A.C. 13:35-6.14, the rule concerning delegation of physical modalities to unlicensed personnel, but would prefer that it further restrict the specific tasks that may be delegated to unlicensed aides. The New Jersey State Nurses Association also commented on this provision, reiterating

its position that hands-on care must be performed by licensed personnel. The Nurses Association stated that even the simplest of modalities carry with them potential for harm, and that various professional licensees are available to perform any procedure that would be ordered by a physician.

RESPONSE: The Board believes that this rule is sufficiently specific and is working well. No problems with it which would warrant change have come to the attention of the Board.

COMMENT: Diane Erwin of the Nurse-Midwifery Liaison Committee voiced the dissatisfaction of the Committee with the rules as they now stand, but stated that the Committee is continuing to work with the Board in an ongoing attempt to amend them. It is hoped that these joint efforts will result in a more current practice standard as well as a more comprehensive utilization of nurse-midwifery services.

RESPONSE: The Board expects to amend the nurse-midwifery provision in the near future. As the Liaison Committee stated, formulating amended rules is a painstaking and time-consuming process; it was not possible to develop a set of comprehensive amendments in time for this readoption.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:35.

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

13:35-1.2 Fifth Pathway

(a) The Board shall accept application for licensure from an applicant who does not meet the usual statutory prerequisites for educational background, in the following circumstances to be known as the Fifth Pathway:

1. The applicant has completed the entirety of the academic curriculum in residence at a medical school in a foreign country located outside of the United States, Puerto Rico or Canada or in a school-authorized clinical training program;

2. The medical school was approved throughout the applicant's period of education by the government of the country of domicile to confer the degree of Doctor of Medicine and Surgery or its equivalent, and was listed in the World Health Organization Directory;

3. The applicant has satisfactorily completed all the requirements for a matriculated student of that foreign medical school to receive a diploma, except for internship and/or social service;

4. The applicant has achieved a passing score on a screening examination acceptable to the Educational Commission on Foreign Medical Graduates (ECFMG) even though not eligible for ECFMG certification; and

5. The applicant has had his or her academic record reviewed and approved by a medical school approved by the Liaison Committee on Medical Education, which school has accepted the applicant in a one-academic-year program of supervised clinical training under its direction, and the applicant has satisfactorily completed that program as evidenced by receipt of a certificate issued by the sponsoring medical school.

(b) The applicant meeting the requirements in (a) shall thereafter be deemed by the Board to be eligible to enter a graduate training program approved by the Accreditation Council for Graduate Medical Education (ACGME) or the American Osteopathic Association (AOA). Upon satisfactory completion of the three years of postgraduate training required by N.J.A.C. 13:35-3.11, the applicant may apply for licensure in this State.

13:35-1.3 Postgraduate training

Postgraduate training shall be taken under the auspices of a hospital or hospitals accredited for such training by the Accreditation Council for Graduate Medical Education (ACGME) or by the American Osteopathic Association (AOA) or by the American Podiatric Medical Association (APMA), as applicable to the profession. The program shall further be acceptable to the Board, which shall take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

13:35-1.4 Military service in lieu of M.D. or D.O. internship or postgraduate training

The Board may grant a license to practice medicine and surgery to any person who shall furnish proof, satisfactory to the Board, that such person has fulfilled all of the formal requirements established by law, and who has served at least two years in active military service in the United States Army, Air Force, Navy, Marine Corps, Coast Guard of the U.S. Public Health Service as a commissioned officer and physician and surgeon in a medical facility which the Board determines constitutes the substantial equivalent of the approved internship or residency training program required by law; provided, however, that such military service actively occurred subsequent to graduation from an approved medical school.

13:35-1A.11 Clerkship program approvals: effective date; limited waiver provision; no new applications

This rule shall apply to all clinical training programs, as defined in N.J.A.C. 13:35-1A.1, taking place in New Jersey on or after January 1, 1983. However, the Board recognizes that, prior to the adoption of this rule, it has granted to a number of foreign medical schools permission to sponsor modest clinical programs which were not required to meet the explicit standards now set forth herein, and which permission reserved all rights of the Board respecting the ultimate evaluation of the adequacy of any such program. No new applications for clinical clerkship programs shall be accepted.

13:35-2.1 Approved colleges of podiatry

An applicant for podiatric licensure shall have graduated from a college or colleges of podiatry approved during the entire course of the applicant's training by the American Podiatric Medical Association and approved by the Board.

13:35-2.2 Podiatry internship or postgraduate work

The applicant for licensure shall have successfully completed an internship or postgraduate program fully approved by the American Podiatric Medical Association in a duly licensed clinic, hospital or institution acceptable to the Board, which shall take into account the standards adopted by the Advisory Graduate Medical Education Council (AGMEC).

13:35-2.3 Military service in lieu of internship in podiatry

The Board may grant a license to practice podiatry to any person who shall furnish proof, satisfactory to the Board, that such person has fulfilled all of the formal requirements established by the Podiatric Practice Act, N.J.S.A. 45:5-1 et seq., and has served at least two years in active military service in the United States Army, Air Force, Navy, Marine Corps, Coast Guard or the United States Public Health Service as a commissioned officer and podiatrist in a medical facility which the Board determines constitutes the postgraduate training program required by law; provided, however, that such military service actively occurred subsequent to graduation from an approved school of podiatry.

13:35-2.4 Requirements for approval of colleges of chiropractic

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

(h) Requirements for admission: Prior to commencing a course of study in the approved school of chiropractic, the student shall have successfully completed academic study in an accredited school or college of arts and sciences as required by the Chiropractic Practice Act, N.J.S.A. 45:9-41.1 et seq.

(i)-(j) (No change.)

(k) An applicant for chiropractic licensure shall have graduated from an approved school(s), institution(s), or college(s) of chiropractic approved during the entire course of the applicant's training by the Council on Chiropractic Education or other Federally recognized accrediting agency having prior approval of the Board. Board approval of a college's accreditation shall be effective for a period not to exceed five years. Renewed approval may be sought prior to the end of that period. However, any graduate of a chiropractic college who was a bona fide student in good standing enrolled at a school which, prior to March 18, 1988, was approved by the Board, shall upon proof of satisfaction of all other statutory prerequisites, be deemed eligible to sit for the licensure examination in this State.

13:35-2.5 Standards concerning testing and diagnostic centers

(a) The performance of physical examinations accompanying diagnostic testing procedures on human beings is included within the practice of medicine. Such services are presently being offered to the public in both stationary and mobile facilities which are not in all circumstances regulated by the Department of Health. It is essential for a meaningful interpretation of test data that the underlying tests be administered competently and appropriately as determined and supervised by a licensed physician. The purpose of this rule is to define and establish minimum medical standards of operation for these centers, clinics or facilities which provide or purport to provide activities such as physical examinations and/or laboratory testing procedures, which are presently regulated by the Medical Practice Act, N.J.S.A. 45:9-1 et seq. and the Bio-Analytical Laboratory and Laboratory Directors Act, N.J.S.A. 45:9-42.1 et seq.

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

(d) The licensed physician in charge of and responsible for the supervision and direction of the AHTC or the Center shall, prior to the operation of the facility, submit for approval of the Board of Medical Examiners a copy of the licensing application previously approved by the Department of Health, proof of current licensure of physician in charge and, if applicable, facility license pursuant to the New Jersey Clinical Laboratory Improvement Act, N.J.S.A. 45:9-42.26 et seq.

(e) (No change in text.)

13:35-2.6 Midwife and Certified Nurse Midwife Practice

(a) A midwife licensed by the Board of Medical Examiners, other than as a Certified Nurse Midwife, shall be considered a lay midwife and shall perform only the functions expressly set forth by law: that is, attend a woman in childbirth without the use of any medications or surgical procedures.

(b)-(d) (No change.)

13:35-2.7 Qualifications

(a) A Certified Nurse Midwife shall demonstrate the following qualifications in order to be registered by the Board:

1.-4. (No change.)

13:35-3.1 Federation licensing examination (FLEX)

(a) (No change.)

(b) Flex examination for medical licensure in New Jersey, may be taken as a complete unit, that is, a consecutive three-day two component examination or a candidate may take one component of the FLEX examination at a time as long as such candidate takes and passes component one first.

(c) A candidate who attains a score of 75 or over in both Component I and Component II shall be adjudged to have successfully passed the examination, and the Executive Director of the Board shall be authorized to issue a certificate of medical licensure in New Jersey to the successful candidate who has met all other requirements of law for medical licensure in this State.

(d) (No change.)

13:35-3.2 Endorsement; Federation Licensing Examination

The Board shall grant without examination a license to practice medicine and surgery to any person who shall furnish proof that he or she can fulfill the requirements of law relating to applicants for admission by examination provided that satisfactory proof is presented by such applicant of licensure by FLEX examination to practice medicine and surgery in another state, territory or possession of the United States, or another country, with a FLEX weighted grade of 75 or better in an examination taken prior to June 1985, or thereafter a score of 75 or better in each of the two Components of the new FLEX examination, both Components of which were passed within a five year period.

13:35-3.3 Endorsement of sister-state M.D. or D.O. after extended practice or specialty board or national board certifications or by any combination of national boards and FLEX examinations; also, podiatry board endorsement and chiropractic endorsement

(a) The Board may grant without examination, at its discretion, a license to practice medicine and surgery to any person who shall

furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination who shall further furnish proof of any of the following:

1. Certification of either the National Board of Medical Examiners or Osteopathic Examiners that the applicant has attained a passing score in said examination; or

2. Licensure by non-FLEX written plenary examination taken in English prior to December 31, 1972 in a sister state, followed by proof of active engagement in the reputable practice of medicine and surgery for three or more years in all such other state or states; or

3. Licensure by non-FLEX plenary examination in English in a sister state, and proof of certification as a diplomate of any of the specialty boards approved by the A.M.A. or the A.O.A.; or

4. (No change.)

(b) The Board shall grant without examination a license to practice podiatry to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination who shall furnish proof of certification of the National Board of Podiatric Medical Examiners certifying that the applicant has attained a passing score in said examination.

(c) The Board shall grant a license to practice chiropractic, by endorsement, to any person who shall furnish proof of satisfaction of the requirements of law relating to applicants for admission by examination who shall furnish proof of:

1. Certification of the National Board of Chiropractic Examiners certifying that the applicant has attained a passing score in said examination; and

2. Passing a clinical examination administered under the authority of this Board.

13:35-3.4 Examination in FLEX Component Two after proof of passing the first two parts of National Boards of Medical or Osteopathic Examiners

An applicant who provides certification of passing the first two parts of the National Board of Medical Examiners or of Osteopathic Examiners examination as applicable and who satisfies the requirements of law relating to admission by examination, shall be permitted to take FLEX Component II alone. Such applicant, upon attaining a passing score of 75 or better in the FLEX examination Component II, shall be granted a license to practice medicine and surgery. The license herein to be granted shall be a FLEX examination license.

13:35-3.5 Endorsement; certified nurse midwives

The Board shall grant a license to practice midwifery so long as authorized by law and registration to practice as a certified nurse midwife to such person who shall furnish proof of satisfaction of the requirements of law and N.J.A.C. 13:35-2.6 relating to applicants for admission by examination, and furthermore provide with the application certification by the American College of Nurse-Midwives, or other evidence to the Board's satisfaction, that the person has been licensed to practice midwifery and has been certified as a nurse-midwife in a sister state where such license was granted by examination with a grade average of 75 percent or over.

13:35-3.6 Bioanalytical laboratory director license, plenary or specialty, granted to physicians

(a) The Board shall grant to any person licensed in this State to practice medicine and surgery a plenary license to direct and supervise a registered bioanalytical laboratory, without examination, provided that:

1. Such person is certified in clinical pathology by a specialty board approved by the A.M.A. or the A.O.A.; or

2. Such person, is certified in anatomical pathology or is Board-eligible, and can demonstrate to the satisfaction of the Board, following a personal appearance, appropriate training, including completion of a residency program in pathology in a laboratory or laboratories acceptable to the Board, and not less than three full years of post graduate general bioanalytical laboratory experience in a laboratory or laboratories acceptable to the Board.

(b) The Board shall grant to any person licensed in the State to practice medicine and surgery, a specialty license in one or more of the following fields: toxicological chemistry, microbiology, cytogenetics, biochemical genetics, clinical chemistry, and such other

specialties as may be hereafter authorized by law, without examination, provided that such person is certified by a national accrediting board in one of the above specialties, which board requires a doctorate degree plus experience, such as the American Board of Pathology, the American Osteopathic Board of Pathology, the American Board of Medical Microbiology, the American Board of Clinical Chemistry, the American Board of Bioanalysis and the American Society of Cytogenetics, or any other national accrediting board recognized by the Board of Medical Examiners. The specialty license shall authorize the licensee to perform and supervise only those tests which are within the scope of the specific specialty license issued by the Board.

(c) (No change.)

13:35-3.7 Limited exemption from licensure

(a) (No change.)

(b) "Exemption" means the exercise of discretion granted to the State Board of Medical Examiners of New Jersey pursuant to law to permit a physician unlicensed in the State of New Jersey to engage in the limited practice of medicine and surgery under the conditions set forth in said statute without being in violation of the Medical Practice Act, N.J.S.A. 45:9-1 et seq.

(c) As of the effective date of this rule, August 1, 1983, any physician employed or to be employed under an exemption from licensure must:

1. Satisfy all statutory and regulatory requirements, preceding licensure as required by law and N.J.A.C. 13:35-6.3;

2.-3. (No change.)

(d) (No change.)

13:35-3.8 Administrative processing of license application

(a) In the case of candidates who are graduates of professional schools or colleges approved by the Board and whose required documents (for example, complete application form, diploma, transcript and license in foreign countries, with attested translations thereof (if not in English) by an official translator approved by the Board) are in possession of the Board and apparently authentic, the Executive Director of the Board shall be authorized to admit such candidate to the licensing examination.

(b) (No change.)

13:35-3.9 Postponement of or absence from examination; transfer or refund of fee

(a) An application for examination for any category of license may be postponed and transferred, along with the fee already paid, upon written request of the applicant, from the examination for which the applicant was scheduled, but only to the next subsequent examination. Any request for a transfer of fee must be supported by a reason accepted as valid by the Board. Request for transfer of fee and postponement of examination must be made prior to the first day of the examination.

(b) When an applicant has withdrawn from, or has failed to appear at, a scheduled examination, the Board may, at its discretion, authorize the refund of the paid examination fee. A request for refund must be made no later than 30 days after the scheduled date of the examination and must present good cause of an unusual personal nature. The Board shall review the particular circumstances of each case in determining the appropriateness of refund.

(c) No later than 90 days prior to the scheduled date of the next examination subsequent to the examination whose fee was transferred, an applicant whose request for postponement and transfer was granted pursuant to (a) above, shall submit to the Board notice of intention to take the said examination and to apply the transferred fee, along with any additional fee required by the then current fee schedule.

13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by American national accrediting agencies

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

(g) The applicant shall demonstrate satisfaction of all other requirements of law.

(h) (No change.)

(i) An applicant who has successfully completed the full medical curriculum in a foreign medical school approved by the Board of Medical Examiners pursuant to law but who has completed clinical training in the United States in a program not specifically approved by the Board, must demonstrate prior licensure in a sister-state and compliance with all other provisions of this section and of law, and may then be licensed in this State by endorsement. An applicant from a program specifically disapproved by the Board or conducted outside of an available approved-program procedure, shall not be eligible under this subsection.

(j) A graduate of a foreign medical school satisfying each of the above subsections, as pertinent, but who has been licensed in a sister-state with a F.L.E.X. grade of less than 75, may be eligible for endorsement of license in this State upon demonstration of good and reputable clinical practice in the sister-states for no less than 10 years, and compliance with all other requirements of law. Proof of good and reputable practice shall include, but not necessarily be limited to:

1.-3. (No change.)

(k) (No change.)

13:35-4.1 Major surgery; qualified first assistant

(a) A major surgical procedure is one with a substantial hazard to the life, health or welfare of a patient. By way of example, but not limitation, a major surgical procedure includes:

1.-3. (No change.)

(b) A major surgical procedure shall be performed by a duly qualified surgeon with a duly qualified assisting physician who may be a duly qualified surgical resident in a training program approved by the Educational Council of the American Medical Association or the American Osteopathic Association, except in matters of dire emergency.

(c) A duly qualified surgeon, duly qualified assistant physician, and duly qualified resident shall be determined by the hospital credentials committee in conjunction with the chairman or chief of the appropriate committee in conjunction with the chairman or chief of the appropriate department or division consistent with the requirements of law or applicable rule.

(d) (No change.)

13:35-4.2 Termination of pregnancy

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

(e) Fifteen weeks through 18 weeks LMP: After 14 weeks LMP and through 18 weeks LMP, a D & E procedure may be performed either in a licensed hospital or in a licensed ambulatory care facility (referred to herein as LACF) authorized to perform surgical procedures by the Department of Health. The physician may perform the procedure in an LACF which shall have a Medical Director who shall chair a Credentials Committee. The Committee shall grant to operating physicians practice privileges relating to the complexity of the procedure and commensurate with an assessment of the training, experience and skills of each physician for the health, safety and welfare of the public. A list of the privileges of each physician shall contain the effective date of each privilege conferred, shall be reviewed at least biennially, and shall be preserved in the files of the LACF.

(f) Nineteen weeks through 20 weeks LMP: A physician planning to perform a D & E procedure after 18 weeks LMP and through 20 weeks LMP in an LACF shall first file with the Board a certification signed by the Medical Director that the physician meets the eligibility standards set forth in (f)1 through 7 below and shall comply with its requirements.

1.-2. (No change.)

3. The procedure shall be done in a location which is designated by the Department of Health as a licensed ambulatory care facility (LACF) authorized to perform surgical procedures as in (e) above. The LACF shall be licensed by the Department of Health as an ambulatory care facility authorized to perform surgical procedures. The facility shall be in current and good standing at all times when surgical procedures are performed there. The LACF shall have a written agreement with an ambulance service assuring immediate transportation of a patient at all times when a patient has been

admitted for surgery and until the patient has been discharged from the recovery room.

4.-7. (No change.)

(g) After 20 weeks: A physician may request from the Board permission to perform D & E procedures in an LACF after 20 weeks LMP. Such request shall be accompanied by proof, to the satisfaction of the Board, of superior training and experience as well as proof of support staff and facilities adequate to accommodate the increased risk to the patient of such procedure.

(h) (No change.)

13:35-6.3 Countersigning of orders and prescriptions of unlicensed physicians

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

...
 "Unlicensed physician" shall mean any unlicensed graduate of a medical school such as, but not limited to, an intern or resident who is engaged in an approved program or a person possessing an exemption pursuant to law.

(b) A doctor's order written for a patient's care by an unlicensed person engaged in an intern or residency training program in a hospital or institution approved by the Board, or the doctor's order written by a person exempted from the prohibitory provisions of the Medical Practice Act pursuant to law shall be countersigned within 24 hours by a physician possessing a current unrestricted license to practice medicine and surgery in this State.

(c) (No change.)

13:35-6.4 Prohibition of kickbacks, rebates or receiving payment for services not rendered

(a) It shall be unprofessional or unethical conduct for any licensee or registrant of the State Board of Medical Examiners to:

1.-2. (No change.)

3. Receive directly or indirectly from any person, firm or corporation any fee, gift commission, rebate, free saleable products, anything of value or any form of compensation for purchasing or prescribing or promoting the sale of any drug, commodity or product;

4.-5. (No change.)

13:35-6.6 Requirements for issuing prescriptions for and dispensing all medications; special requirements for prescribing or dispensing controlled drugs

(a) (No change.)

(b) Physicians and podiatrists shall provide the following on all prescriptions:

1.-6. (No change.)

7. Prescriber's D.E.A. number when required for the prescribing of Controlled Dangerous Substances as scheduled under the Controlled Dangerous Substance Act of 1970. *Each prescription for a Controlled Dangerous Substance shall be written in a separate prescription blank;

8.-11. (No change.)

*NOTE: A practitioner must be separately and concurrently registered with the State Department of Health and the Federal Drug Enforcement Administration.

(c)-(i) (No change.)

13:35-6.8 Prescribing, administering or dispensing amygdalin (laetrile)

(a) The prescription or administration of amygdalin (laetrile) is a medical procedure which may only be performed by a physician licensed to practice medicine and surgery in the State of New Jersey, or a physician duly licensed to practice medicine and surgery in another state provided the practitioner does not open an office or place for the practice of his profession in this State.

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

13:35-6.9 Referral for radiological services

(a) "Physician" shall mean a physician possessing a plenary license to practice medicine and surgery and practitioners legally licensed to practice chiropractic *[and]* *or* podiatry.

(b) A physician possessing a plenary license to practice medicine and surgery who provides diagnostic radiological services for other physicians possessing a plenary license to practice medicine and surgery shall, upon the request of a chiropractic or podiatric physician, provide diagnostic radiological services to such chiropractic or podiatric physician without discrimination on the basis of classification of license, provided the diagnostic radiological services requested pertain to skeletal areas of the body.

(c) (No change.)

13:35-6.11 Excessive fees

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

(c) Factors which may be considered in determining whether a fee is excessive, include, but are not limited to, the following:

1.-3. (No change.)

Renumber existing 5. to 8. as 4. to 7. (No change in text.)

(e) (No change.)

13:35-6.12 Excessive fee review committees

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

(f) The Board may, as warranted, conduct such further inquiry or investigation as may be necessary or, after a prima facie finding, institute formal action after notice and hearing thereon and further order restitution and/or impose disciplinary sanctions upon such licensee in accordance with the provisions of the Medical Practice Act, N.J.S.A. 45:9-1 et seq. and the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq.

13:35-6.13 Fee schedule

(a) The following fees shall be changed by the Board of Medical Examiners:

1.-7. (No change.)

8. Athletic Trainer (registration)

| | |
|--|------------|
| i. Temporary registration or authorized registration without examination | 60.00 |
| ii. Examination | (reserved) |
| iii. Re-examination | (reserved) |
| iv. Registration fee after examination | 60.00 |
| v. Biennial registration | 60.00 |
| vi. Reinstatement fee | 25.00 |
| vii. Endorsement | 60.00 |

9.-11. (No change.)

13:35-6.14 Delegation of physical modalities to unlicensed physician aides

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

(d) A physician may direct the administration of the physical modality by the unlicensed assistant only where the following conditions are satisfied.

1. (No change.)

2. The doctor shall determine all components of the precise treatment to be given at the present therapy session, including type of modality to be used, extent of area to which it shall be applied, dosage or wattage, etc., length of treatment, and any other factors peculiar to the risks of that modality such as strict avoidance of certain parts of the body or of static placement of the applicator. This information shall be written on the patient's chart and made available at all times to the assistant carrying out the instructions. The doctor shall assure that the aide administering the treatment is identified in the patient chart on each such occasion.

3. The doctor shall ascertain a satisfactory level of education, competence and comprehension of the particular assistant, who shall be at least 18 years of age, to whom instruction has been given by the doctor as to modalities used in that office. The doctor shall prepare and maintain a written document certifying as to the instructions given to each assistant, and both doctor and assistant shall sign it.

4.-5. (No change.)

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

13:35-7.1 Standards and scope

(a) (No change.)

(b) The chiropractic diagnosis or analysis shall be based upon a pertinent chiropractic examination limited to the spine and contiguous musculoskeletal structures, height and weight and the vital signs which include pulse, respiration, blood pressure, and temperature, and an adequate history which will enable the chiropractic physician to determine either that chiropractic care is appropriate or that it is not appropriate. Should the evaluation indicate abnormality not generally recognized as treatable by chiropractic methods, the chiropractic physician shall refer the patient to a physician holding a plenary license, preferably a physician of the patient's choice.

1.-2. (No change.)

(c) The chiropractic physician shall prepare and maintain a proper patient record, including progress notes:

1. (No change.)

2. The record shall contain a working evaluation enabling the chiropractic physician either to establish a regimen of chiropractic treatment or to determine that the patient should be referred to a physician holding a plenary license or a podiatrist or a dentist.

(d) (No change.)

(e) Upon acceptance of a petition which satisfies the requirements of (b) above, the Department shall file a notice of the petition within 15 days of receipt of the petition with the Office of Administrative Law for publication in the New Jersey Register.

(f) Within 30 days following receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b).

(g) The Department's notice of action may include:

1. A statement denying the petition;

2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the New Jersey Register; or

3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a certain date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(h) The procedures outlined in this section to petition the Department for the promulgation, amendment or repeal of a rule shall apply to all Department rules, except in those cases where a special or alternative petition procedure is specifically designated.

TRANSPORTATION

(a)

THE COMMISSIONER**Organization of the Department of Transportation
Procedure for Filing a Rulemaking Petition****Adopted New Rule: N.J.A.C. 16:1A-1.3**

Proposed: August 7, 1989 at 21 N.J.R. 2233(b).

Adopted: September 12, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: September 12, 1989 as R.1989 d.525, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 52:14B-4.

Effective Date: October 16, 1989.

Expiration Date: June 16, 1994.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.

16:1A-1.3 Procedure for filing a rulemaking petition

(a) Unless otherwise provided in Title 16 of the New Jersey Administrative Code, this section shall constitute the Department of Transportation's rules regarding the disposition of all requests for rulemaking under N.J.S.A. 52:14B-4(f).

(b) Any interested person may petition the Department of Transportation for the promulgation, amendment or repeal of any rule of the Department of Transportation. Such petition shall be in writing, signed by the petitioner and must state clearly and concisely:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request;
4. The petitioner's interest in the request, including any relevant organization, affiliation or economic interests;
5. The statutory authority under which the Department of Transportation may take the requested action; and
6. Existing Federal and State statutes and rules which the petitioner believes may be pertinent to the request.

(c) The petition shall be addressed to the Commissioner, Department of Transportation, ATTN: Administrative Practice Officer, 1035 Parkway Avenue, CN 600, Trenton, New Jersey 08625.

(d) Any document submitted to the Department of Transportation that is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further departmental action.

(b)

**DIVISION OF CONSTRUCTION AND MAINTENANCE
ENGINEERING SUPPORT****Maintenance Support****Outdoor Advertising Tax Act Rules****Adopted Amendments: N.J.A.C. 16:41A-1.1, 2.2, 2.4,
2.5, 2.9, 2.10, 2.11, 3.1, 3.2, 3.5, 3.15, 3.19, 3.20,
4.2, 4.4, 5.2, 5.4, 6.1, 6.4, and 7.1**

Proposed: August 7, 1989 at 21 N.J.R. 2237(a).

Adopted: September 7, 1989, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Filed: September 20, 1989 as R.1989 d.531, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52 and 54:40-52 et seq.

Effective Date: October 16, 1989.

Expiration Date: February 19, 1990.

Summary of Public Comments and Agency Responses:**No comments received.****Full text** of the adoption follows.

CHAPTER 41A

OUTDOOR ADVERTISING TAX ACT RULES

16:41A-1.1 Definitions

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

"Administrator" means the Administrator of Outdoor Advertising, New Jersey Department of Transportation.

"Directional sign" means any sign not exceeding two square feet in area intended to direct or point toward a place, or one that points out the way to a place which the Administrator determines not to be adequately designated by official signs.

"Outdoor Advertising Section" means the New Jersey Department of Transportation Outdoor Advertising Section of the Bureau of Maintenance Support.

"Permit" means a certificate, issued by the Outdoor Advertising Section granting permission to erect a sign at the location described thereon.

ADOPTIONS

TRANSPORTATION

16:41A-2.2 Application and fee

A license may be obtained by filing an application for an outdoor advertising license with the Outdoor Advertising Section accompanied by the annual fee of \$200.00.

16:41A-2.4 Renewal

(a) An application for renewal is to be filed with the Outdoor Advertising Section before March 31, each year.

(b) Any licensee not intending to remain in the business of outdoor advertising beyond the expiration date of its license, must notify the Outdoor Advertising Section to that effect not later than March 15 preceding its expiration.

16:41A-2.5 Bond for nonresidents

(a) An applicant for a license who does not reside in this State or which is a foreign corporation not authorized to do business in this State, is required to file with his, her or its application, a bond running to this State in the sum of \$2,000, satisfactory to the Administrator of Outdoor Advertising and with surety approved, conditioned upon the observing and fulfilling by the applicant of all the provisions of the law.

(b) (No change.)

16:41A-2.9 Notice; hearing

(a) Whenever, it is determined by the Administrator of Outdoor Advertising that any person has committed a violation or offense as stated in N.J.A.C. 16:41A-2.8, Revocation or N.J.A.C. 16:41A-3.2, Standards for permit issuance, such person will be given a written notice stating the violation or offense and within 30 days he must:

1.-3. (No change.)

(b) Thereafter, the Administrator of Outdoor Advertising shall grant an informal or formal hearing.

(c) An informal hearing shall be held within 30 days of receipt of such request unless an extension of time is required for good cause.

(d) The filing of a protest and request for a hearing does not abate any penalties due, nor stay the right of the Administrator of Outdoor Advertising to remove any signs, space, advertisements and advertising structures within 30 days of the giving of notice, unless the licensee furnishes security of the kind in the amount satisfactory to the Administrator of Outdoor Advertising.

(e) If the protester requests only a formal hearing, the Administrator of Outdoor Advertising shall transmit the matter to the Office of Administrative Law within 30 days of receiving the request.

16:41A-2.10 Nature of hearings

(a) An informal hearing before the Administrator of Outdoor Advertising is in the nature of a conference, with or without representation. Within 15 days of the informal hearing, the Administrator of Outdoor Advertising shall issue a decision.

(b) Within 30 days of receipt of the informal decision, a protester may appeal the decision by requesting the Administrator of Outdoor Advertising to transmit the matter to the Office of Administrative Law for a formal hearing. All formal hearings shall be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

16:41A-2.11 Removal of signs or spaces

(a) (No change.)

(b) In the event any person fails to remove any advertising structure or other object used or to be used for the display of outdoor advertising within 30 days of the mailing of notice, the Commissioner of Transportation shall order the immediate removal of the same and may recover from such owner or person, in addition to any other penalties provided by law, double the cost of removal or the sum of \$50.00 whichever is greater (see N.J.A.C. 16:41A-8.1, Penalties).

(c) Whenever the power of removal is exercised, the Commissioner of Transportation may, without further notice to the owner of the unlawful structure, deputize any person or persons to enter upon private property, without liability, to effect said removal.

16:41A-3.1 When required

(a) Any person, whether required to be licensed or not, before erecting, maintaining, or using any outdoor advertising structure or other objects for the display of outdoor advertising matter on real property within public view, shall apply to and obtain from the Outdoor Advertising Section a permit for the same. A permit is required for any sign not on the premises where business is conducted.

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

16:41A-3.2 Standards for permit issuance

(a) The issuance of new permits is prohibited in certain areas and under certain conditions. An application for a permit to erect a sign will not be granted if:

1. It would injuriously affect adjacent property, where such adjacent property will be affected by the substantial impairment of light, air, scenery, terrain or view. Proper notification from such adjacent property owner will be considered by the Outdoor Advertising Section;

2. It would injuriously affect any public interest. In the determination of whether the issuance of a permit would adversely affect any public interest, the Outdoor Advertising Section, in addition to other factors, will consider any public sentiment as expressed by the governing authorities and agencies of the United States, State of New Jersey, county and municipality within whose boundaries the application is made.

3.-13. (No change.)

16:41A-3.3 Application for permit

(a) An application for a permit is to be made on a New Jersey Department of Transportation application for Outdoor Advertising Permit and filed with the Outdoor Advertising Section accompanied by the required fee (see N.J.A.C. 16:41A-6.1, Basis of permit fees).

(b) (No change.)

16:41A-3.15 Renewal of permit and application

(a) (No change.)

(b) An application for a renewal permit is to be made by returning the Outdoor Advertising Invoice with appropriate annual fee before March 31.

(c) (No change.)

16:41A-3.19 Notice and hearings

In cases where it is determined by the Administrator of Outdoor Advertising that any person has committed a violation or offense as stated in N.J.A.C. 16:41A-3.2, Standards for permit issuance, see N.J.A.C. 16:41A-2.9 for procedures on notice and hearings.

16:41A-3.20 Removal of signs or spaces

(a) (No change.)

(b) In the event any person shall fail to remove any advertising structure or other object used or to be used for the display of outdoor advertising within 30 days of the mailing notice, the Commissioner of Transportation shall order the immediate removal of the same and may recover from the owner or person, in addition to any other penalties provided by law, double the cost of removal or the sum of \$50.00 whichever is greater (see N.J.A.C. 16:41A-2.11 for other penalties).

(c) Whenever the power of removal is exercised, the Commissioner of Transportation may, without further notice to the owner of the unlawful structure, deputize any person or persons to enter upon private property, without liability, to effect said removal.

16:41A-4.2 Application

An application for a conditional permit is to be made by completing an Application for an Outdoor Advertising Permit and submitting it to the Outdoor Advertising Section accompanied by the required fee as indicated in N.J.A.C. 16:41A-6.1.

16:41A-4.4 Renewal

(a) (No change.)

(b) A conditional permit may be renewed by returning the New Jersey Department of Transportation Outdoor Advertising Invoice

to the Outdoor Advertising Section with the appropriate fee before March 31.

(c) (No change.)

16:41A-5.2 Application

Application for a No Fee Permit is to be made on an Application for Outdoor Advertising Permit which may be obtained from the Outdoor Advertising Section.

16:41A-5.4 Renewal

A No Fee Permit may be renewed by returning the Department of Transportation Outdoor Advertising Invoice by March 31.

16:41A-6.1 (No change in rule text.)

Double-Faced, Back to Back or V-Type Signs: Twice the permit fee.

¹⁻². (No change.)

³. Semi-Annual Fee: For permit issued between October 1 and March 31.

16:41A-6.4 Refunds

No refund shall be made after an application for a permit has been filed with the Outdoor Advertising Section.

16:41A-7.1 Exempt advertisements

(a) No permit is required for the erection, use or maintenance of any sign, advertising structure, object, or other device which is to be used solely for any of the following purposes; provided, that such sign, structure, object or other device is not owned by a licensee under the Act, and such exempt advertisement is not in violation of the provisions of N.J.S.A. 54:40-60:

1.-2. (No change.)

3. Any cautionary, informative, or directory sign, signal or device erected on any public highway in the interest of public safety, convenience or health, when permission has been given therefor by the public authority having jurisdiction of such public highway and when written evidence of such permission has been submitted to the Outdoor Advertising Section either in the form of a direct communication from such public authority or by a copy of a letter granting such permission.

4.-8. (No change.)

(a)

**DIVISION OF PROCUREMENT
CONSTRUCTION SERVICES
Classification of Contractors
Definitions**

Adopted Amendment: N.J.A.C. 16:44-1.1

Proposed: August 7, 1989 at 21 N.J.R. 2240(a).
Adopted: September 7, 1989 by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: September 15, 1989 as R. 1989 d.530, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 14A:1-1 and 14:15-2.
Effective Date: October 16, 1989.
Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:44-1.1 Definitions

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

...
"Pre-qualification Committee" means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this subtitle. The Committee shall be composed of five voting members, selected at the discretion of the Commissioner of Transportation.

tation. A Deputy Attorney General shall serve as a non-voting member for the committee. The Manager, Construction Services shall serve as Staff and Secretary to the committee. The committee consists of:

1. Assistant Commissioner for Finance and Administration, (Chair);
2. Assistant Commissioner for Construction and Maintenance (Deputy State Transportation Engineer);
3. Director, Division of Procurement;
4. Director, Office of Civil Rights/Contract Compliance;
5. Director, Division of Construction and Maintenance Engineering Support; and
6. Non-voting members as follows:
 - i. A Deputy Attorney General; and
 - ii. The Manager, Construction Services, Procurement Division, shall be a non-voting member of the Pre-qualification Committee, and serve as Secretary. The Pre-qualification Committee will delegate to the Manager, Construction Services, Procurement Division, the authority to sign renewal of pre-qualification applications for the Committee which will increase by three steps in dollar values without change in work scope and any decreases in dollar value without change in work scope.

(b)

**DIVISION OF PROCUREMENT
CONSTRUCTION SERVICES
Receipt of Bids
Verification**

Adopted Amendment: N.J.A.C. 16:44-5.5

Proposed: August 7, 1989 at 21 N.J.R. 2239(a).
Adopted: September 7, 1989, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.
Filed: September 15, 1989 as R.1989 d.529, **without change**.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.
Effective Date: October 16, 1989.
Expiration Date: May 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:44-5.5 Verification

- (a) The Office of Construction Services, Procurement Division shall separate all proposals from the other required documents and calculations verified.
- (b) The extensions and additions are to be checked; errors, if any, corrected; and the actual total price certified as being correct. Copies of the certified printed calculations shall be distributed as follows:
- 1.-5. (No change.)
 - (c)-(e) (No change.)

OTHER AGENCIES

(c)

**CASINO CONTROL COMMISSION
Equal Employment Opportunity
Employment Goals for Minority and Female Workers
Adopted Amendments: N.J.A.C.19:53-1.5**

Proposed: July 3, 1989 at 21 N.J.R. 1823(a).
Adopted: September 14, 1989, by the Casino Control Commission, Walter N. Read, Chair.
Filed: September 14, 1989 as R.1989 d.528, **without change**.
Authority: N.J.S.A. 5:12-63(c); 5:12-69; 5:12-134 and 5:12-135(a) and (b).

Effective Date: October 16, 1989.
 Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Resorts International Hotel, Inc. (Resorts), a licensed casino operator, submitted a comment objecting generally to the manner in which the Commission utilizes employment goals to measure compliance with its equal employment opportunity and affirmative action requirements. The Claridge at Park Place, Inc. (Claridge), and Adamar of New Jersey, Inc. (TropWorld), also licensed casino operators, submitted comments which joined in Resorts' objection.

Resorts complains that the Commission applies the minimum employment goals established by N.J.A.C. 19:53-1.5(e) to each employment category when these goals are based upon statistics that represent the percentages of minority and women workers in the overall workforce. It argues that this use of the employment goals is improper, and the Commission should either apply these goals only to the overall workforce of each casino, or develop statistics by individual employment category to judge equal employment opportunity and affirmative action compliance by casino licensees.

RESPONSE: The comments of Resorts, Claridge and TropWorld do not address the instant proposal. They do not argue that the rule without the amendments would be preferable to the amended rule. Nor do they challenge the accuracy of the statistics which serve as the basis for the proposed amendments.

Instead, Resorts, Claridge and TropWorld are complaining about the manner in which the Commission enforces compliance with equal employment opportunity and affirmative action requirements. These complaints are not responsive to the instant proposal. Resorts, Claridge and TropWorld are effectively requesting the Commission to change its system of enforcement. Such a request should be incorporated into a formal petition for rulemaking and submitted to the Commission in accordance with N.J.S.A. 5:12-69(c) and N.J.A.C. 19:42-8.1(b).

Full text of the adoption follows.

19:53-1.5 Affirmative action requirements for applicants and licensees

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

(e) Where this chapter requires an applicant or a licensee to adopt employment goals for minority workers and female workers, those goals shall be the minimum employment goals for the county in which the applicant's or licensee's plant, distribution center, or ser-

vice area is primarily located; and if the applicant or licensee has plants, distribution centers, and service areas located in more than one county, the goals for each plant, distribution center, and service area workforce shall be the minimum goals of the county in which it is located. In cases in which an applicant or licensee, or affected minority worker or female worker submits a request to the commission in writing for a determination of what employment goals should apply for an applicant or licensee, the commission shall determine the proper minimum employment goals. Any such minimum employment goal determination by the commission shall be binding. The minimum employment goals for each county, which goals are based on the most recent county workforce statistics provided by the New Jersey Department of Labor, Division of Planning and Research are as follows:

| County | Minority Percentage | Female Percentage |
|------------|---------------------|-------------------|
| Atlantic | 20 | 45 |
| Bergen | 9 | 42 |
| Burlington | 14 | 42 |
| Camden | 16 | 42 |
| Cape May | 8 | 44 |
| Cumberland | 21 | 45 |
| Essex | 41 | 46 |
| Gloucester | 10 | 40 |
| Hudson | 38 | 44 |
| Hunterdon | 2 | 40 |
| Mercer | 19 | 46 |
| Middlesex | 12 | 42 |
| Monmouth | 11 | 42 |
| Morris | 7 | 42 |
| Ocean | 6 | 40 |
| Passaic | 24 | 43 |
| Salem | 15 | 40 |
| Somerset | 8 | 42 |
| Sussex | 3 | 40 |
| Union | 24 | 43 |
| Warren | 3 | 40 |

(f) (No change.)

EMERGENCY ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Increased Income Deductions, Maximum Coupon Allotments and Maximum Income Eligibility Limits

Adopted Emergency Amendments and Concurrent Proposed Amendments: N.J.A.C. 10:87-12.1, 12.2, 12.3, 12.4 and 12.7

Emergency Amendment Adopted: September 15, 1989, by William Waldman, Acting Commissioner, Department of Human Services.

Gubernatorial Approval (N.J.S.A. 52:14B-4(c)): September 19, 1989.

Emergency Amendment Filed: September 22, 1989 as R.1989 d.533.

Authority: N.J.S.A. 30:4B-2; the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.); 7 CFR 273.9(a) and 273.9(d)(6), (7), and (8); and 7 CFR 273.10(e)(4).

Emergency Amendments Effective Date: September 22, 1989.

Emergency Amendments Operative Date: October 1, 1989.

Emergency Amendments Expiration Date: November 21, 1989.

Concurrent Proposal Number: PRN 1989-556.

Submit comments by November 15, 1989 to:

Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

These amendments were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency amendments are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted amendments become effective upon acceptance for filing, prior to the emergency expiration date, by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Human Services is required by the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et seq.), and Federal regulations to revise maximum allowable net and gross income eligibility standards to reflect the annual Federal adjustment of the poverty income guidelines issued by the United States Department of Health and Human Services. The "165 percent of poverty level" used when determining separate household status for elderly or disabled individuals is also revised.

Additionally, the Department is required by Federal regulations to revise maximum coupon allotments (7 CFR 273.10(e)(4)) and increase the standard deduction (7 CFR 273.9(d)(7)) and the shelter deduction (7 CFR 273.9(d)(8)) to reflect the annual Federal adjustment of those amounts which takes into account changes in the cost of living. The standard deduction is being increased to \$112.00. The maximum shelter deduction is being increased to \$177.00.

The Department is also updating the uniform telephone allowance to \$15.00 and adjusting the utility allowances (7 CFR 273.9(d)(6)) to reflect an increase, over the past 12 months, in the average cost of services, fuel and utilities. The heating utility allowance (HUA), which can be utilized by households who are responsible for their heating costs, is \$182.00. The standard utility allowance (SUA), which is for use by households that are not responsible for their heating costs but who are responsible for a major utility expense, is \$112.00. These are annualized amounts and will be effective through September 1990.

Social Impact

The increase in the income eligibility standards will increase the number of households eligible to participate in the program and receive food stamp benefits. The increase in the standard deduction, shelter deduction, SUA and HUA, and maximum coupon allotments will result in an increase in the amount of food stamp benefits households are entitled to receive.

The uniform telephone allowance is being reduced by \$3.00 in order to conform with instructions issued by the United States Department of Agriculture. The decrease, however, will have minimal impact on the benefits which households receive.

Economic Impact

The net effect of the increase in the standard deduction, shelter deduction, SUA and HUA, and maximum coupon allotments will be an increase in benefits for food stamp recipients. The decrease in the uniform telephone allowance will be offset by other increased deductions and by the increase in coupon allotments.

The increased income eligibility limits will expand the number of households eligible to receive food stamp benefits. These changes will not have a significant adverse impact on the Department and local agencies administering the program but will bring additional Federal funds into the State for those households participating in this Federally funded program.

Regulatory Flexibility Statement

The emergency and concurrent proposed amendments have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments impose no reporting, record keeping or other compliance requirements on small businesses. A regulatory flexibility analysis is not required, inasmuch as the rules govern a public assistance program designed to certify eligibility for Aid to Families with Dependent Children program to a low-income population by a governmental agency, rather than a private business establishment.

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

10:87-12.1 Income deduction table

TABLE I
Income Deductions

| | |
|-----------------------------|----------------------------|
| Standard Deduction | [\$106.00] \$112.00 |
| Shelter Deduction | [\$170.00] \$177.00 |
| Dependent Care Deduction | \$160.00 |
| Uniform Telephone Allowance | [\$18.00] \$15.00 |
| Standard Utility Allowance | [\$101.00] \$112.00 |
| Heating Utility Allowance | [\$163.00] \$182.00 |

10:87-12.2 Maximum coupon allotment table

TABLE II
Maximum Coupon Allotment (MCA)

| Household Size | MCA | |
|------------------------|--------|------------|
| 1 | [\$90] | 99 |
| 2 | [165] | 182 |
| 3 | [236] | 260 |
| 4 | [300] | 331 |
| 5 | [356] | 393 |
| 6 | [427] | 472 |
| 7 | [472] | 521 |
| 8 | [540] | 596 |
| 9 | [608] | 671 |
| 10 | [676] | 746 |
| Each Additional Member | [+68] | +75 |

10:87-12.3 Maximum allowable net income standards

TABLE III
Maximum Allowable Net Income

| Household Size | Maximum Allowable Income | |
|------------------------|--------------------------|-------------|
| 1 | [\$481] | 499 |
| 2 | [645] | 669 |
| 3 | [808] | 839 |
| 4 | [971] | 1009 |
| 5 | [1135] | 1179 |
| 6 | [1298] | 1349 |
| 7 | [1461] | 1519 |
| 8 | [1625] | 1689 |
| 9 | [1789] | 1859 |
| 10 | [1953] | 2029 |
| Each Additional Member | [+164] | +170 |

10:87-12.4 Maximum allowable gross income standards

TABLE IV
Maximum Allowable Gross Income

| Household Size | Maximum Allowable Income | |
|------------------------|--------------------------|-------------|
| 1 | [\$626] | 648 |
| 2 | [838] | 869 |
| 3 | [1050] | 1090 |
| 4 | [1263] | 1311 |
| 5 | [1475] | 1532 |
| 6 | [1687] | 1753 |
| 7 | [1900] | 1974 |
| 8 | [2112] | 2195 |
| 9 | [2325] | 2416 |
| 10 | [2538] | 2637 |
| Each Additional Member | [+213] | +221 |

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

TABLE VII
165 Percent of Poverty Level

| Household Size | Maximum Allowable Income | |
|------------------------|--------------------------|-------------|
| 1 | [\$794] | 823 |
| 2 | [1063] | 1103 |
| 3 | [1333] | 1384 |
| 4 | [1602] | 1664 |
| 5 | [1872] | 1945 |
| 6 | [2141] | 2225 |
| 7 | [2411] | 2506 |
| 8 | [2680] | 2786 |
| 9 | [2950] | 3067 |
| 10 | [3220] | 3348 |
| Each Additional Member | [+270] | +281 |

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING & SAFETY PROGRAMS
Miscellaneous Traffic Rules
Lane Usage
Route U.S. 1 in Mercer County
Adopted Emergency New Rule and Concurrent Proposed New Rule: N.J.A.C. 16:30-3.6

Emergency New Rule Adopted: September 14, 1989, by Robert A. Innocenzi, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21 and 39:4-6.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)): September 21, 1989.

Emergency New Rule Filed: September 22, 1989 as R. 1989 d.535.

Emergency New Rule Effective Date: September 22, 1989.

Emergency New Rule Expiration Date: November 21, 1989.

Concurrent Proposal Number: PRN 1989-557.

Submit comments by November 15, 1989 to:

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

This new rule was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B(c) as implemented by N.J.A.C. 1:30-4.5). Concurrently, the provisions of this emergency new rule are being proposed for re-adoption in compliance with the normal rule making requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted new rule becomes effective upon acceptance for filing, prior to the emergency expiration date, by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

The agency emergency adoption and concurrent proposal follows:

Summary

This new rule will establish "cars only shoulder lanes" along Route U.S. 1 in the Township of West Windsor, Mercer County, for the safe and efficient flow of traffic, the reduction of traffic congestion and the well-being of the populace. Initiated by the Department of Transportation in the interest of reducing severe peak hour congestion and improving the overall operation and safety, the Department's Bureau of Traffic Engineering and Safety Programs analyzed traffic conditions and recommended the use of the shoulder lanes.

The engineering analysis which consisted of traffic counts, field observation and helicopter surveillance revealed that the major traffic congestion along Route U.S. 1 was caused by the high traffic build up during the hours of 7:00 A.M. to 9:00 A.M. and 4:00 P.M. to 6:00 P.M., Monday through Friday, when motorists were enroute to and returning from work. As an interim measure to the establishment of additional lanes to relieve the congestion in approximately two years, the use of the shoulder lanes was considered the best alternative and most cost effective way to afford immediate relief of the congestion along Route U.S. 1 during the hours depicted in the engineering analysis.

The Department has, therefore, adopted as an emergency rule N.J.A.C. 16:30-3.6, Lane usage along Route U.S. 1 in West Windsor Township, Mercer County, along with a concurrent proposed new rule in accordance with the request from the local government and the Department's engineering analysis.

Social Impact

The new rule will establish shoulder lane usage along Route U.S. 1 in Mercer County for the safe and efficient flow of traffic, the reduction of traffic congestion, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs advising the motoring public.

Regulatory Flexibility Statement

This emergency rule does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public.

Full text of the emergency adoption and concurrent proposal follows:

16:30-3.6 Route U.S. 1

(a) The certain parts of State highway Route U.S. 1 described in this subsection shall be designated and established as "cars only shoulder lanes" exclusively for the use of passenger vehicles only, except for the ingress and egress of vehicles to and from various establishments and side streets in the area:

1. In the Township of West Windsor, Mercer County:

i. Northbound—From a point 130 feet north of the curb line of the northbound jughandle (opposite the Nassau Park Driveway) to

a point 290 feet north of the northerly curb line of Alexander Road; cars only may use shoulder from 7:00 A.M. to 9:00 A.M., Monday through Friday.

ii. Southbound—From a point 330 feet north of the northerly curb line of Alexander Road to a point 1300 feet north of the northerly curb line of the Nassau Park Driveway; cars only may use shoulder 4:00 P.M. to 6:00 P.M., Monday through Friday.

PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT Uniform Construction Code Notice of Effective Date of Model Codes

Take notice that the 1989 supplements to the BOCA National Building Code/1987, the BOCA National Mechanical Code/1987 and the National Standard Plumbing Code/1987 are now available. The effective date for the use of these model codes in New Jersey is hereby set at November 1, 1989, pursuant to the State Uniform Construction Code Act (N.J.S.A. 52:27D-123b) which provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." Proposed amendments containing all necessary technical and editorial changes will be published in the New Jersey Register.

EDUCATION

(b)

STATE BOARD OF EDUCATION Notice of Public Testimony Session November 15, 1989

Take notice that the following agenda items are scheduled for Notice of Proposal in the November 6, 1989 New Jersey Register and are, therefore, subject to public comment. Pursuant to the policy of the New Jersey State Board of Education, a public testimony session will be held for the purpose of receiving public comment on Wednesday, November 15, 1989 from 4:00 P.M. to 6:00 P.M. in the State Board Conference Room, Department of Education, 225 West State Street, Trenton, New Jersey.

To reserve time to speak call Celeste Carpiano (609) 292-0739 by 12:00 noon Friday, November 10, 1989.

RULE PROPOSALS:

N.J.A.C. 6:68, State Library Assistance Programs

N.J.A.C. 6:29, Health, Safety and Physical Education

Please note: Publication of the above items is subject to change depending upon the actions taken by the State Board of Education at the October 4, 1989 monthly public meeting.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF WATER RESOURCES Public Notice Amendment to the Sussex County Water Quality Management Plan

Take notice that on July 14, 1989, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the "Water Quality Management Planning and Implementation Process" Regulations (N.J.A.C. 7:15-3.4), an amendment to the Sussex County Water Quality Management Plan was adopted by the Department. This amendment will adopt a Wastewater Management Plan (WMP) for the Borough of Branchville. That document allows for the delineation of an on-site groundwater disposal system service area which includes Selective Insurance Company of America and Franklin Mutual Insurance Company, the delineation of an individual subsurface sewage disposal system service area, the formation of a septic wastewater management district, and a wastewater treatment facility for treating the backwash from treatment of the Borough's potable water supply. The Borough of Branchville will be designated as the Wastewater Management Agency.

(d)

DIVISION OF WATER RESOURCES Notice of Public Hearing on the Proposed Amendment to the Northeast Water Quality Management Plan

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been submitted for approval. A Wastewater Management Plan for the Borough of Franklin Lakes has been prepared. That document allows for the expansion of the Urban Farms Shopping Center Treatment Plant and establishes a sewer service area for that facility. The Borough of Franklin Lakes will be designated as the Wastewater Management Agency.

This notice is being given to inform the public that a nonadversarial public hearing will be held by the New Jersey Department of Environmental Protection (NJDEP) on the above mentioned plan amendment. The hearing will be held on Thursday, November 30, 1989, from 7 P.M. to 10 P.M. at the Borough of Franklin Lakes Municipal Building, De Korte Drive, Franklin Lakes, New Jersey. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Borough of Franklin Lakes Municipal Building and at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 9:00 A.M. and 4:00 P.M., Monday through Friday. It is also available for inspection between 7:00 P.M. and 8:30 P.M. on Mondays at the Municipal Building.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted by Friday, December 15, 1989. 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.

TREASURY-TAXATION

(e)

DIVISION OF TAXATION Sales Tax Treatment of Purchases with United States of America I.M.P.A.C. Visa Credit Cards

Take notice that the Federal government has announced a new program to provide unique Visa credit cards to certain authorized Federal employees. The card will be used to order and pay for supplies and services under \$25,000. The Visa credit cards are readily identifiable, indicating on their face "United States of America I.M.P.A.C. for official use only." I.M.P.A.C. stands for International Merchant Purchase Authorization Card. The face of the card also contains the name of the Federal employee authorized to use the card and is embossed with the statement "U.S. Govt. Tax Exempt." Thus the copy of the transaction slip maintained by the merchant will have the necessary proof that the purchase was made for official government purposes and paid for by the Federal government and, therefore, exempt from sales tax.

It is recognized that on purchases made with the United States of America I.M.P.A.C. Visa credit card, the Federal government is the direct purchaser (through its employee/agent) and direct payer of record. Since the legal incidence of the tax is on the Federal government, the purchases would be exempt from New Jersey sales and use tax. Payments for these credit card purchases are made directly from a Federal government account, not an employee account. N.J.S.A. 54:32B-9.

Accordingly, the use of the United States of America I.M.P.A.C. Visa credit card by Federal employees to purchase supplies and services tax exempt for the Federal government is approved. The Visa card transaction slips maintained by the vendor stating "U.S. Govt. Tax Exempt" is sufficient proof to document the Federal government tax exempt purchase.

TREASURY-GENERAL

(a)

OFFICE OF THE TREASURER

Charitable Organization

Application for Public Employee Charitable Fund-Raising Campaign and Campaign Steering Committee

Take notice that Feather O'Connor, Treasurer, State of New Jersey, pursuant to the Public Employee Charitable Fund-Raising Act, P.L. 1985, c.140 and N.J.A.C. 17:28-3.2(b)1, announces that the Department of the Treasury will be accepting applications via the DIVISION OF CONSUMER AFFAIRS until December 1, 1989 from charitable fund-raising organizations wishing to participate in the State Employees' Charitable Fund-Raising Campaign for 1990-1991 and the Campaign Steering Committee.

For the purposes of this notice, "Charitable Fund-Raising Organization" shall mean a voluntary not-for-profit organization which receives and distributes voluntary charitable contributions. A charitable fund-raising organization shall be eligible to participate on the Steering Committee and in the 1990-1991 Campaign if it meets the following requirements:

(a) The organization is exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code;

(b) The organization qualifies for tax deductible contributions under Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code;

(c) The organization is not a private foundation as described in Section 509 of the Internal Revenue Code;

(d) The organization is incorporated under or subject to the provisions of Title 15 of the Revised Statutes or Title 15A of the New Jersey Statutes and the "Charitable Fund-Raising Act of 1971," P.L. 1971, c.469 (C. 45:17A-1 et seq.);

(e) The organization demonstrates to the satisfaction of the State Treasurer that a significant portion of funds raised in each of its two fiscal years preceding its application to participate in a campaign consist of individual contributions from citizens of the State;

(f) The organization shall have raised at least \$60,000 and distributed that sum among at least 15 charitable agencies in each of its two fiscal years preceding its application to participate in a State campaign.

Copies of the following application may be received from DIVISION OF CONSUMER AFFAIRS, CHARITIES REGISTRATION or the information requested therein may be submitted along with a cover letter.

Completed applications or requests for application forms should be addressed to:

Anne Mallett
Charities Registration
Division of Consumer Affairs
P.O. Box 254
(located at 1100 Raymond Blvd.—Rm. 518)
Newark, NJ 07102

Applications can also be requested by calling (201) 648-4704.

The application form follows:

APPLICATIONS*

1. Name of organization and name under which it intends to conduct charitable fund-raising campaigns among public employees.

2. Address for organization and addresses of any organization offices within state.

3. Names and addresses of officers, directors, trustees and executive personnel of organization.

4. Place and date organization was formed.

5. Has organization received tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code? Yes ___ No ___ Please attach a copy of your IRS letter of determination.

6. Is organization a private foundation as defined in Section 509(a) of the Internal Revenue Code? Yes ___ No ___

7. Date on which fiscal year of organization ends.

8. Has organization registered as a charitable fund-raising organization pursuant to N.J.S.A. 45:17A-1 et seq.? Yes ___ No ___ Section qualified under ____.

Explanation:

9. Does the organization qualify for tax deductible contributions pursuant to Section 170(b)(1)(A)(vi) or (viii) of the Internal Revenue Code? Yes ___ No ___ Section qualified under _____. Please attach a copy of your IRS letter of determination.

10. Provide the names and addresses of charitable agencies affiliated with your organization for the purpose of directly sharing in funds raised by the organization from charitable fund-raising campaigns among public employees.

11. Please attach a copy of the organization's charter and all amendments thereto.

12. Please submit and certify the following financial data for each of the two fiscal years preceding this application:

(a) Amount of funds raised;

(b) What percentage of those funds consisted of individual contributions from citizens of New Jersey;

(c) Names and addresses of charitable agencies to which those funds were distributed and how much to each.

*Please note: Charitable fund-raising organizations which were found eligible by the State Treasurer to participate on the Campaign Steering Committee for the 1990-1991 Campaign, shall be required only to submit to the State Treasurer via CONSUMER AFFAIRS, CHARITIES REGISTRATION their most recent financial information specified in question 12 above. (N.J.A.C. 17:28-2.8(e)). However, we are requesting that an updated list of Directors, Trustees, Officers and Campaign chairpersons also be included.

Statement of Ownership, Management and Circulation (Required by 39 U.S.C. 3685) 1A. Title of Publication: NEW JERSEY REGISTER. 1B. Publication number: 03006069. 2. Date of filing: September 25, 1989. 3. Frequency of issue: Semimonthly. A. Number of issues published annually: 24. B. Annual subscription price: \$75 controlled circulation; \$150 first class. 4. Location of known office of publication: New Jersey Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, NJ 08625. 5. Location of general business offices of the publisher: New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 6. Names and addresses of publisher, editor, managing editor. Publisher: New Jersey Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Editor: Norman Olsson, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. Managing Editor: Anthony Miragliotta, New Jersey Office of Administrative Law, CN 301, Trenton, NJ 08625. 7. Owner: Office of Administrative Law, State of New Jersey, CN 301, Trenton, NJ 08625. 8. Known bondholders, mortgagees, or other security holders owning or holding one percent or more of total amount of bonds, mortgages or other securities: None. 9. Purpose, function, and nonprofit status of this organization and the exempt status for Federal income tax purposes: Has not changed during preceding 12 months. 10. Average

number of copies each issue during preceding 12 months. A. Total no. copies printed: 3,398. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,477 controlled; 290 first class. C. Total paid circulation: 2,767. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 469. E. Total distribution (sum of C and D): 3,236. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 162. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,398. Actual number of copies of a single issue published nearest to filing date. A. Total no. copies printed: 3,450. B. Paid circulation. 1. Sales through dealers and carriers, street vendors and counter sales: None. 2. Mail subscription: 2,510 controlled; 307 first class. C. Total paid circulation: 2,817. D. Free distribution by mail, carrier, or other means, samples, complimentary, and other free copies: 473. E. Total distribution (sum of C and D): 3,290. F. Copies not distributed. 1. Office use, leftover, unaccounted, spoiled after printing: 160. 2. Returns from news agents: None. G. Total (sum of E and F should equal net press run shown in A): 3,450. 11. The statements made by me above are correct and complete: Norman Olsson, Editor.

REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the September 5, 1989 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.1989 d.1 means the first rule adopted in 1989.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT AUGUST 21, 1989

NEXT UPDATE: SUPPLEMENT SEPTEMBER 18, 1989

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

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| 5:80-9.13 | Housing and Mortgage Finance Agency: notice of rent increases | 21 N.J.R. 2160(a) | | |
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| 5:92-8.4 | Council on Affordable Housing: developer agreements | 21 N.J.R. 1185(c) | R.1989 d.534 | 21 N.J.R. 3295(c) |
| 5:92-12 App. | Uniform deed restrictions and liens: controls on affordability | 21 N.J.R. 1988(a) | R.1989 d.527 | 21 N.J.R. 3091(a) |
| 5:92-18 | Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan | 21 N.J.R. 1186(a) | | |
| 5:100 | Ombudsman for institutionalized elderly: practice and procedure | 21 N.J.R. 1510(a) | | |

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| 5:100 | Ombudsman practice and procedure: extension of comment period | 21 N.J.R. 1995(a) | | |

Most recent update to Title 5: TRANSMITTAL 1989-8 (supplement August 21, 1989)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

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| 6:8-9 | Elementary and secondary school summer sessions | 21 N.J.R. 2441(c) | | |
| 6:11-4.3, 8.2, 8.4, 8.5 | Certification of bilingual and ESL teachers | 21 N.J.R. 2721(a) | | |
| 6:11-5.1-5.7, 7.2 | Provisional certification of first-year teachers | 21 N.J.R. 2717(a) | | |
| 6:11-10.4, 10.10, 10.11, 10.14 | Certification of school business administrators | 21 N.J.R. 2915(a) | | |
| 6:20-2 | Local district bookkeeping and accounting | 21 N.J.R. 2919(a) | | |
| 6:20-2A | Double entry bookkeeping and GAAP accounting | 21 N.J.R. 2919(a) | | |
| 6:21 | Pupil transportation | 21 N.J.R. 2724(a) | | |
| 6:24-5.4 | Tenure charges against persons within Human Services, Corrections and Education | 21 N.J.R. 1939(b) | | |
| 6:26 | Repeal (see 6:8-9) | 21 N.J.R. 2441(c) | | |
| 6:27 | Repeal (see 6:8-9) | 21 N.J.R. 2441(c) | | |
| 6:29-9.2, 9.3, 9.5, 9.6 | Substance abuse control and education | 21 N.J.R. 1603(a) | R.1989 d.480 | 21 N.J.R. 2784(b) |
| 6:31 | Bilingual education | 21 N.J.R. 2443(a) | | |
| 6:39-1 | Statewide assessment of pupil proficiency in core studies | 21 N.J.R. 1605(a) | R.1989 d.479 | 21 N.J.R. 2786(a) |
| 6:70 | Library network services | 21 N.J.R. 1940(a) | | |

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| 7:2-11.12 | Designation of West Pine Plains to Natural Areas System: extension of comment period | 21 N.J.R. 2240(b) | | |
| 7:4A | Historic Preservation Grant Program | 21 N.J.R. 958(c) | R.1989 d.492 | 21 N.J.R. 2958(a) |
| 7:5C | Endangered Plant Species Program | 21 N.J.R. 2847(a) | | |
| 7:10 | Safe Drinking Water Act | 21 N.J.R. 1945(a) | R.1989 d.514 | 21 N.J.R. 3098(a) |
| 7:13-7.1(d) | Redelineation of Bound Brook within South Plainfield and Edison | 20 N.J.R. 3051(b) | R.1989 d.501 | 21 N.J.R. 2962(a) |
| 7:14A-4.7 | Hazardous waste management: polychlorinated biphenyls (PCBs) | 21 N.J.R. 1047(a) | | |
| 7:14A-12.22, 12.23 | Sewer connection ban exemptions | 21 N.J.R. 2240(c) | | |
| 7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15 | Underground storage tank systems | 21 N.J.R. 2242(a) | | |
| 7:14B-13 | Underground Storage Tank Improvement Fund loan program | 21 N.J.R. 2265(a) | | |
| 7:15 | Statewide water quality management planning | 20 N.J.R. 2198(a) | R.1989 d.517 | 21 N.J.R. 3099(a) |
| 7:15-3.4 | Correction to proposed new rule | 20 N.J.R. 2478(a) | | |
| 7:19-6.10(c), (d)2 | Reduction of privilege to withdraw water: notice of rule invalidity | _____ | _____ | 21 N.J.R. 2786(b) |
| 7:22A-1, 2, 3, 6 | Sewage Infrastructure Improvement Act grants | 21 N.J.R. 1948(a) | | |
| 7:25-1.5, 24 | Leasing of Atlantic Coast bottom for aquaculture | 21 N.J.R. 1482(b) | R.1989 d.502 | 21 N.J.R. 2963(a) |
| 7:25-2.20 | Higbee Beach Wildlife Management Area | 21 N.J.R. 2849(a) | | |
| 7:25-6 | 1990-1991 Fish Code | 21 N.J.R. 1775(b) | | |
| 7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1 | Hazardous waste management: polychlorinated biphenyls (PCBs) | 21 N.J.R. 1047(a) | | |
| 7:26-3A | Regulated medical wastes | 21 N.J.R. 2109(a) | R.1989 d.506 | 21 N.J.R. 2967(a) |
| 7:26-5 | Hazardous and solid waste management: civil administrative penalties and adjudicatory hearings | 21 N.J.R. 2734(a) | | |
| 7:26-6.5 | Interdistrict and intradistrict solid waste flow: Bergen County | 21 N.J.R. 1486(b) | | |
| 7:26-8.2, 12.3 | Radioactive mixed wastes | 21 N.J.R. 1053(a) | | |
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| 7:27A-3 | Air pollution control: civil administrative penalties and adjudicatory hearings | 21 N.J.R. 729(a) | | |
| 7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5 | Delaware and Raritan Canal State Park review zone rules | 21 N.J.R. 828(a) | | |
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| 8:31-30 | Health care facility construction: plan review fee (recodify as 8:31-1) | 21 N.J.R. 2447(a) | | |
| 8:31A-9.1 | SHARE hospital reimbursement: labor proxies | 21 N.J.R. 2922(a) | | |
| 8:31B-3.66 | Hospital reimbursement: adjusted admission fee ceiling | 21 N.J.R. 1606(a) | R.1989 d.472 | 21 N.J.R. 2787(a) |
| 8:31B-3.73 | Hospital reimbursement: rates adjustment and reconciliation | 21 N.J.R. 1606(b) | R.1989 d.471 | 21 N.J.R. 2787(b) |
| 8:31B-4.15 | Hospital reimbursement: uniform uncompensated care add-on | 21 N.J.R. 1487(a) | R.1989 d.491 | 21 N.J.R. 2991(a) |
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| 8:31B-4.38-4.40 | Hospital reimbursement: uncompensated care | 21 N.J.R. 2449(a) | | |
| 8:31B-4.62 | Hospital reimbursement: MICU services | 21 N.J.R. 2453(a) | | |
| 8:31B-5.3 | Diagnosis Related Groups: administrative correction | _____ | | 21 N.J.R. 3297(a) |
| 8:31B-7.9 | Uncompensated Care Trust Fund cap | 21 N.J.R. 1487(b) | R.1989 d.490 | 21 N.J.R. 2992(a) |
| 8:31B-7.10 | Uncompensated Care Trust Fund: debt recovery through tax rebate and refund set-off | 21 N.J.R. 2923(a) | | |
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| 8:33F | End-Stage Renal Disease (ESRD) services: certification of need | 21 N.J.R. 2923(b) | | |
| 8:33L-1.2, 2.1, 2.2, 2.4, 2.6, 2.7 | Home health agency services | 21 N.J.R. 2455(a) | | |
| 8:39-29.4 | Licensed nursing homes: non-prescription medications | 21 N.J.R. 1607(a) | | |
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| 8:42A-13.3 | Alcoholism treatment facilities: administrative corrections | _____ | _____ | 21 N.J.R. 3172(a) |
| 8:43B-1-17 | Hospital licensing standards (repeal) | 21 N.J.R. 2925(a) | | |
| 8:43B-18 | Anesthesia (recodify to 8:43G-6) | 21 N.J.R. 2925(a) | | |
| 8:43E-3 | Adult closed acute psychiatric beds: certification of need | 21 N.J.R. 1785(a) | | |
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| 8:43G-3 | Hospital licensure: compliance with mandatory rules and advisory standards | 21 N.J.R. 1608(a) | | |
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| 8:43G-12 | Hospital licensure: emergency department | 21 N.J.R. 1613(a) | | |
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| 8:43G-18 | Hospital licensure: nursing care | 21 N.J.R. 1624(a) | | |
| 8:43G-20 | Hospital licensure: employee health | 21 N.J.R. 2173(a) | | |
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| 8:43G-33 | Hospital licensure: social work | 21 N.J.R. 1631(a) | | |
| 8:52-4.6 | Local boards of health: basic educational program concerning HIV infection | 21 N.J.R. 2696(a) | | |
| 8:59 | Worker and Community Right to Know Act rules | 21 N.J.R. 1253(a) | | |
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| 8:65-10.1 | Controlled Dangerous Substances: addition to Schedule I | _____ | _____ | 21 N.J.R. 3297(b) |

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| 8:70-1.5 | Interchangeable drug products: substitution of unlisted generics | 20 N.J.R. 2623(a) | | |
| 8:71 | Interchangeable drug products (see 21 N.J.R. 755(b), 1429(b)) | 20 N.J.R. 3078(a) | R.1989 d.379 | 21 N.J.R. 2108(a) |
| 8:71 | Interchangeable drug products (see 21 N.J.R. 2107(c)) | 21 N.J.R. 662(a) | R.1989 d.487 | 21 N.J.R. 2996(a) |
| 8:71 | Interchangeable drug products | 21 N.J.R. 1488(a) | R.1989 d.488 | 21 N.J.R. 2996(b) |
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| 9:9-11.1 | Guaranteed Student Loan Program: institution compliance | 21 N.J.R. 1962(a) | R.1989 d.519 | 21 N.J.R. 3173(a) |
| 9:11-1.5 | Educational Opportunity Fund: eligibility for undergraduate grants | 21 N.J.R. 1489(a) | R.1989 d.468 | 21 N.J.R. 2788(a) |
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| 10:36-3 | State psychiatric facilities: transfers of involuntarily committed patients | 21 N.J.R. 2751(a) | | |
| 10:38 | Interim Assistance Program for discharged psychiatric hospital clients | 21 N.J.R. 2280(a) | | |
| 10:39 | Community residences for mentally ill: licensure standards | 21 N.J.R. 1995(b) | | |
| 10:45 | Guardianship services for developmentally disabled persons | 21 N.J.R. 607(a) | | |
| 10:49-1.1 | Medicaid eligibility: administrative correction | _____ | _____ | 21 N.J.R. 2789(a) |
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| 10:52-1.2 | Bed reserve in long-term care facilities | 21 N.J.R. 1634(a) | | |
| 10:53-1.2 | Bed reserve in long-term care facilities | 21 N.J.R. 1634(a) | | |
| 10:63 | Long Term Care Services Manual | 21 N.J.R. 2752(a) | | |
| 10:63-1.13, 1.16 | Bed reserve in long-term care facilities | 21 N.J.R. 1634(a) | | |
| 10:63-1.16 | Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients | 21 N.J.R. 2773(a) | | |
| 10:63-3.9-3.12 | Reimbursement of long-term care facilities: fixed property and movable equipment | 20 N.J.R. 2560(a) | | |
| 10:63-3.10 | Reimbursement of long-term care facilities under CARE Guidelines: correction | 20 N.J.R. 2968(a) | | |
| 10:65 | Medical Day Care Program | 21 N.J.R. 1794(a) | R.1989 d.504 | 21 N.J.R. 3005(a) |
| 10:66-1.5 | Independent clinic providers: prior authorization for mental health services | 21 N.J.R. 1794(b) | R.1989 d.503 | 21 N.J.R. 3005(b) |
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| 10:70-3.4 | Medicaid program: newborn care | 21 N.J.R. 965(a) | | |
| 10:72-3.4 | Medicaid program: newborn care | 21 N.J.R. 965(a) | | |
| 10:72-6.1, 6.3 | New Jersey Care: presumptive eligibility for prenatal medical care | 21 N.J.R. 1791(a) | R.1989 d.498 | 21 N.J.R. 2998(a) |
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| 10:81-11.6 | Child Support Program: incentive payment methodology | 21 N.J.R. 663(a) | R.1989 d.465 | 21 N.J.R. 2789(b) |
| 10:82 | Assistance Standards Handbook; AFDC Program | 21 N.J.R. 1811(a) | R.1989 d.497 | 21 N.J.R. 3014(a) |
| 10:85-3.3 | General Assistance: income and eligibility | 21 N.J.R. 836(b) | | |
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| 10:87-12.1, 12.2, 12.3, 12.4, and 12.7 | Food Stamp Program: Tables I, II, III, IV, and VII | Emergency (expires 11-21-89) | R.1989 d.533 | 21 N.J.R. 3316(a) |
| 10:91 | Commission for the Blind and Visually Impaired: operations and procedures | 21 N.J.R. 2753(a) | | |
| 10:95 | Repeal (see 10:91) | 21 N.J.R. 2753(a) | | |
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| 10:141-1.4 | Charity Racing Days for Developmentally Disabled: distribution of proceeds | 21 N.J.R. 610(a) | R.1989 d.494 | 21 N.J.R. 3016(a) |

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| 10A:17-8 | Recreation and leisure time activities | 21 N.J.R. 665(a) | R.1989 d.470 | 21 N.J.R. 2793(a) |
| 10A:22-4 | Expungement or sealing of inmate records | 21 N.J.R. 2852(a) | | |
| 10A:31 | Adult county correctional facilities | 21 N.J.R. 2853(a) | | |

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| 11:3-25.4 | Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period | 21 N.J.R. 2208(a) | | |
| 11:3-29 | Automobile insurance personal injury protection: medical fee schedules | 21 N.J.R. 842(b) | | |
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| 11:4-32 | Health service corporations: notice of increased rates | 21 N.J.R. 973(b) | R.1989 d.522 | 21 N.J.R. 3173(c) |
| 11:4-33 | Life insurers: excess interest reserve adjustment | 21 N.J.R. 1308(a) | R.1989 d.523 | 21 N.J.R. 3175(a) |
| 11:4-34 | Long-term care insurance | 21 N.J.R. 1964(a) | | |
| 11:5-1.16 | Real estate contracts: "agreement to honor" provision | 21 N.J.R. 2438(b) | R.1989 d.539 | 21 N.J.R. 3299(a) |
| 11:5-1.28 | Approval real estate schools: pre-proposal | 21 N.J.R. 1641(a) | | |
| 11:13-1.2, 1.3 | Farm-owners insurance | 21 N.J.R. 1641(b) | | |
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