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See the Register Index for Subsequent Rulemaking Activity.

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

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

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RULE PROPOSALS

BANKING

(a)

DIVISION OF EXAMINATIONS

Governmental Unit Deposit Protection Act Rules

Proposed Amendments: N.J.A.C. 3:1-4.2, 4.7, 4.8, 4.9 and 4.10

Authorized By: Jeff Connor, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:9-43.

Proposal Number: PRN 1990-316.

Submit comments by July 18, 1990 to:
Robert M. Jaworksi
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its rules regarding the Governmental Unit Deposit Protection Act, N.J.S.A. 17:9-41 et seq. (the "Act"), to provide additional protections for governmental deposits made under the Act. In addition, the Commissioner is given authority to take specific action to protect these governmental deposits. These rules concern only deposits made by governmental units, and do not concern deposits made by consumers.

N.J.S.A. 17:9-44 requires every public depository having public funds on deposit to maintain eligible collateral of at least five percent of the average balance of public funds on deposit. Pursuant to these proposed amendments, the public depository must seek approval of the Commissioner or a designated employee before the collateral is substituted or withdrawn. A fee of $25.00 must accompany each such request. Additionally, a $25.00 fee for filing a biannual certified statement by the public depository is being proposed.

In addition, these proposed amendments require the public depository to maintain the collateral in a custodial depository which is not related to the public depository. This is intended to ensure that the Commissioner has a perfected security interest in the collateral for the protection of the governmental units making the deposits. Each custodial depository, including a Federal Home Loan Bank, must have a resolution on file with the Department authorizing such depository to hold securities as collateral for public funds.

In the event a public depository fails to meet its minimum regulatory capital requirements, or meets the criteria set forth in N.J.S.A. 17:16J-2(a), the Commissioner is given authority under these proposed amendments to (1) require the public depository to pledge marketable securities only, and to pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund; and (2) issue a limited certificate which prohibits the public depository from accepting deposits not insured by the appropriate Federal insurance fund. Section 2(a) refers to depositories with a ratio of capital stock, surplus, undivided profits, and reserves to total assets which is declining to the extent that the ratio would reach a level of two percent or less within the ensuing 12 months.

N.J.S.A. 17:9-44(b) provides that no public depository may hold on deposit public funds of a governmental unit which exceed 75 percent of the capital funds of the depository, unless funds in excess of 75 percent are secured by eligible collateral at least equal to 100 percent of such excess. "Capital funds" is defined in N.J.S.A. 17:9-41 to include the surplus and undivided profits. Pursuant to these proposed amendments, the terms "surplus" and "undivided profits" are defined so as to be reduced by the booked value of any intangible assets set up on the balance sheet which represent nonmaterial values over and above physical assets, such as goodwill, deferred losses and intangible assets.

Social Impact

The proposed amendments primarily affect public entities making deposits under the Act. The proposed amendments are intended to make funds insured under the Act more readily available to the public entity in the event a public depository goes into default.

Recent bank failures, primarily in the southwestern part of the country, have reduced public confidence in the banking industry. These proposed amendments will serve to provide additional protections for governmental deposits. To the extent that these proposed amendments increase confidence in the banking industry, they will have a beneficial social impact.

Economic Impact

The proposed amendments require public depositories to remit a $25.00 fee with applications to withdraw or substitute collateral as well as when submitting the biannual certified statements. This will have a minor economic impact on public depositories. It is not possible to determine how many applications will need to be filed.

The proposed requirements that the public depository maintain collateral in a custodial depository may result in small charges to the public depository. The custodial depository will not accrue any significant economic benefit.

The further defining of what constitutes "surplus" and "undivided profits" is not expected to have a great economic impact on the public depositories. However, the amendment may result in the public depositories having to hold slightly higher amounts of collateral. To the extent that the increased collateral is not available for other uses, it may be construed as a negative economic impact on the public depository. On balance, the increased protection of funds of a public entity is a positive economic impact.

If a public depository fails to meet the minimum capital requirements, the imposition of proposed N.J.A.C. 3:1-4.9(d) could result in the limiting of the amount of public deposits to the public depository.

Regulatory Flexibility Analysis

The proposed amendments apply to all public depositories, including those which are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Pursuant to N.J.A.C. 3:1-4.2, public depositories are already required to file biannual reports with the Commissioner, and this requirement has not been changed. The proposed amendments do require for the first time that public depositories seek approval from the Department before substituting collateral between valuation dates, and impose a $25.00 fee for both applications to do so and for the statements required under N.J.A.C. 3:1-4.2. No capital costs beyond those of a purely administrative nature, and the fees, are imposed, and no additional professional services should be required for compliance. No differentiation is made based on business size because this approval requirement is critical to ensure that there is appropriate collateral securing all public deposits.

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

3:1-4.2 Filing of certified statement by public depository

Every public depository shall file with the Commissioner of Banking, on forms furnished by the Commissioner, a certified statement signed by its president or vice president and one other officer indicating the average daily balance or the alternate average balance as provided in the Act of either collected or uncollected public funds on deposit during the six-month period ending on the next preceding valuation date (June 30 or December 31 of each year). The statement shall include information as to the capital funds of the depository and detailed information, including location pertaining to the eligible collateral pledged to secure public funds. The statement shall be filed as of June 30 and December 31 of each year and at such other times as the Commissioner may require. **The public depository shall remit to the Department with each such statement a filing fee of $25.00.**

3:1-4.7 Scope of terms surplus and undivided profits

(a) As included within the definition of capital funds in [Section 1 of the Act] **N.J.S.A. 17:9-41**:

1. The terms "surplus" and "undivided profits" shall, in the case of a State bank or national bank, include any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. [exclude] **Exclude** any specifically allocated reserves or reserves for known specific changes; **and**

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ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

2. The term "surplus" shall, in the case of a savings bank, include undivided profits, any reserve for contingency, reserve for securities and reserve for bad debts as computed for Federal income tax purposes, but shall:

i. [exclude] **Exclude** any specifically allocated reserves or reserves for known specific charges; **and**

ii. Be reduced by the booked value of any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3. The term "undivided profits" shall, in the case of an association, include any reserve for contingency and included within the definition of capital funds in [Section 1 of the Act] **N.J.S.A. 17:9-4.1**, reserve for bad debts as computed for Federal income tax purposes, but shall:

i. [exclude] **Exclude** any specifically allocated reserves or reserves for known specific charges; **and**

ii. Be reduced by the booked value or any intangible assets set up on the balance sheet which represent non-material values over and above physical assets, such as goodwill, deferred losses and intangible assets.

3:1-4.8 Substitution of collateral

(**a**) Public depositories [shall have the right to] **may** make substitutions of eligible collateral between valuation dates [without notification to and] **upon** approval by the Commissioner**, or an employee of the Department specifically authorized by the Commissioner in writing to approve these substitutions**; provided, that any substituted collateral have a market value as of the date of substitution which is at least equal to the market value of the collateral so replaced as reported on the last valuation date. **A letter to the Commissioner requesting such a substitution of collateral shall indicate the collateral to be substituted and the reason or reasons for such substitution. The public depository shall remit to the Department a $25.00 filing fee with each such request. The Commissioner shall transmit in writing his or her approval or disapproval of such substitution to the public depository and the custodial depository.**

(**b**) Any withdrawal of pledged collateral without replacement [as mentioned aforesaid] requires the prior approval of the Commissioner**, or an employee of the Department specifically authorized by the Commissioner in writing to approve withdrawal of collateral.** A letter to the Commissioner requesting such withdrawal of collateral shall indicate the collateral to be withdrawn and the reason or reasons for such withdrawal. **The public depository shall remit to the Department a $25.00 filing fee with each such request.** The Commissioner shall transmit in writing his **or her** approval or disapproval of such withdrawal to the public depository **and the custodial depository**.

3:1-4.9 Agreement or resolution; custodial depository and Commissioner

(a) The depositories specified in N.J.S.A. 17:9-44(**c**)[,] shall be known as custodial depositories. **A public depository shall not deposit collateral in a custodial depository which is a parent or subsidiary of the public depository, or is otherwise related to the public depository.**

(b) A custodial depository [of a State bank, national bank or savings bank] shall be required to have a written agreement with the Commissioner [which will authorize] **authorizing** such depository to hold securities as collateral for public funds under the terms and conditions enumerated therein.

[(c) A custodial depository of an association shall be required to have a written agreement or, in the case of the Federal Home Loan Bank, a resolution filed with the Commissioner, authorizing such depository to hold such securities as collateral for public funds under the terms and conditions enumerated in such agreement or resolution.]

[(d)] (**c**) A public depository who pledges mortgage loans, student loans or Small Business Administration loans insured or guaranteed by the United States of America or an instrumentality thereof or by the State of New Jersey or an instrumentality thereof as to the payment of principal and interest shall file with the Commissioner at the time each certification statement is filed a report of the current status of each mortgage, student loan or Small Business Administration loan pledged as collateral on forms subject to the approval of the Commissioner:

1. The bond or note and mortgage collateral instruments shall be [segregated from other files of the public depository] **deposited with a custodial depository**.

2.-5. (No change.)

(d) If a public depository fails to meet its minimum regulatory capital requirements as established by the appropriate supervising Federal agency or meets the criteria set forth in N.J.S.A. 17:16J-2(a), the Commissioner may:

1. Require that the public depository pledge readily marketable investment grade securities only, and pledge such securities to the extent of 120 percent of the amount of public funds on deposit not insured by the appropriate Federal insurance fund; and/or

2. Issue a limited certificate which prohibits the public depository from accepting public deposits not insured by the appropriate Federal insurance fund.

3:1-4.10 Agreement or resolution; public depository and custodial depository

(a) Each public depository [which is a State bank, national bank or savings bank] shall be required to have a written agreement with a custodial depository. Said agreement shall indicate that the collateral pledged is to be held subject to the order of the Commissioner or his **or her** authorized deputy and is held as security for public funds as required under the Act.

[(b) Each public depository which is an association shall be required to have either of the following:

1. A written agreement with a custodial depository if the custodial depository is not the Federal Home Loan Bank; or

2. If the custodial depository is the Federal Home Loan Bank, a resolution of the association, as provided in Section 524.5 of the regulations of the Federal Home Loan Bank System.]

[(c)] (**b**) Each public depository that pledges insured or guaranteed mortgages, student loans or Small Business Administration loans as security for public funds shall file with the Commissioner a resolution of the board of the depository at the time of the initial pledge. The resolution must authorize the pledging of such mortgages, student loans or Small Business Administration loans **in a custodial depository,** together with other documentation which may be required by the Commissioner.

[(d)] (**c**) The aforesaid written agreement or resolution shall indicate that the collateral pledge is to be held **in a custodial depository** subject to the order of the Commissioner or his **or her** authorized [Deputy] **deputy** and is held as security for public funds as required by the Act.

LAW AND PUBLIC SAFETY

(a)

OFFICE OF THE ATTORNEY GENERAL

Legislative Agents

Fees

Proposed Amendment: N.J.A.C. 13:1A-2.11

Authorized By: Robert J. Del Tufo, Attorney General.
Authority: N.J.S.A. 52:13C-23j.
Proposal Number: PRN 1990-337.

Submit comments by July 18, 1990 to:
Dennis Crowley
Office of the Attorney General
Hughes Justice Complex
CN 080
Trenton, NJ 08625

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The agency proposal follows:

Summary

The Attorney General is vested with the authority and responsibility to receive, compile and make available to the public and interested persons the required reports filed by legislative agents in the State of New Jersey. The Attorney General is also mandated to take all appropriate action to ascertain whether Legislative Agents have complied with the Legislative Agents Disclosure Act of 1971 (hereinafter "Act"), N.J.S.A. 52:13C-18 et seq. Such action includes the reporting to the Governor and Legislature on the administration of the Act.

In order to meet its statutory obligations, the Office of the Attorney General is proposing to increase the fee for the filing of Notice of Representation and Quarterly Reports by Legislative Agents. Legislative Agents are presently charged a filing fee of $5.00 for a Notice of Representation or Quarterly Report required to be filed under the Act. There has been no increase in the fee since the effective date of the Act (1971). Administrative expenses associated with the regulation of the Act require a fee adjustment for present day conditions. The proposal amends the present fee schedule and mandates an annual fee of $100.00 for a legislative agent subject to the registration and reporting requirements of the Act.

Social Impact

The annual fee for $100.00 should have a positive social impact to the extent that it will enable the Office of the Attorney General to meet its statutory mandates in regard to the regulation of the activities of legislative agents.

Economic Impact

The proposed amendment should not have any significant economic impact on legislative agents or their clients. The present schedule requires a $5.00 fee for each Quarterly Report filed and any Notice of Representation filed disclosing a new agency or client. An annual fee of $100.00 is, in effect, an increase of only $80.00 or less and is the first change in the filing fee since the Act became effective in 1971.

Regulatory Flexibility Analysis

The proposed amendment increases the fee required to be paid by legislative agents, from a quarterly $5.00 fee to an annual fee of $100.00. Some of the legislative agents affected may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Besides the fee increase, no additional capital costs, nor any need for professional services, arise from this amendment. A lesser fee for small businesses is not provided due to the Office's funding needs required to meet its statutory mandates.

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

13:1A-2.11 Fees

(a) [For every notice of representation or quarterly report required to be filed under the Act, there shall be charged a filing fee of $5.00.] **Effective July 1, 1990 and each July 1 thereafter, a legislative agent, whose activities during any part of the fiscal year commencing on that date are subject to the Act, shall pay an annual fee of $100.00.**

(b) Payment of this fee shall be by check or money order made payable to "State of New Jersey, Office of the Attorney General" and shall accompany the notice of representation or quarterly report, as the case may be.

(c) No fee shall be required if an organization qualifies under section 9(b) of chapter 30 of the laws of 1966, as amended (N.J.S.A. 54:32B-9(b)).

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Alcoholic Beverage Control Regulations

Proposed Readoption with Amendments: N.J.A.C. 13:2-1 et seq.

Authorized By: Alexander P. Waugh, Jr., Assistant Attorney General In Charge, Division of Alcoholic Beverage Control.

Authority: N.J.S.A. 33:1-1 et seq.

Proposal Number: PRN 1990-322.

Submit comments by July 18, 1990 to:

Robert J. Pinard, Deputy Director
Regulatory Bureau
Division of Alcoholic Beverage Control
TRW Complex—200 Woolverton Street
CN 087
Trenton, New Jersey 08625-0087

The agency proposal follows:

Summary

N.J.A.C. 13:2, containing the rules of the Division of Alcoholic Beverage Control, is set to expire on August 5, 1990, pursuant to Executive Order No. 66(1978). The Division has reviewed these rules and found them to be reasonable, necessary, adequate, efficient, understandable and responsive to the legislative objectives and purposes that exist today. In this Summary, and in the impact statements and regulatory flexibility analysis which follows, each subchapter is addressed separately, along with certain proposed amendments.

Subchapter 1: The basic objective of this subchapter is to identify and establish the filing and advertisement requirements for State license applicants. The subchapter establishes a structured and uniform system in conformity with specific statutory provisions regarding the issuance of State licenses. This objective was set out in the second set of general regulations adopted by Commissioner Burnett in ABC Bulletin No. 9, Items 1 through 14 (January 9, 1934) entitled Rules for Advertising Notice of intent to apply for licenses, and is continued to date. The subchapter specifically sets forth the nature of the application to be filed; the content of the advertisement to be made; the statutory time frame for publishing the notice of application; the procedure for objections and hearings regarding a state license application; and the return of fees when an application is not approved. The nine sections, as amended, of this subchapter are basically derivative and supplemental of the statutory requirements set out under the Alcoholic Beverage Control Act, specifically N.J.S.A. 33:1-25 and N.J.S.A. 33:1-26. They establish a system or framework that has been in place for the issuance of state licenses for the past 56 years. This particular subsection was not subject to Executive Order No. 66(1978) under its initial interpretations. A brief explanation of the specific sections in subchapter 1 and amendments proposed to the readoption follows:

N.J.A.C. 13:2-1.1 advises license applicants that a specific form must be filed with the Director with appropriate fees. The changes proposed are the deletion of all previous forms of advertising of notice of application, to be replaced by one form noted in N.J.A.C. 13:2-1.3(a) as amended, as well as a change to reflect Division policy that applications will be submitted in duplicate.

N.J.A.C. 13:2-1.2 sets forth the information required in the Notice of Application for a license by a corporation or where a building is not yet constructed. N.J.A.C. 13:2-1.3 identifies the specific form for the application advertisement which includes information about the applicant and where written objection should be sent. This form will be modified to provide more relevant information in the Notice and conform to existing Division practice. N.J.A.C. 13:2-1.4 replaces the form previously required to establish proof of publication of the advertising with a more general proof of publication requirement that will include the submission of a copy of the dated ad.

N.J.A.C. 13:2-1.5 is amended to reword the language of the annual notice of renewal that the Division publishes pursuant to N.J.S.A. 33:1-25 for clarity and anticipated savings in publication expenses. N.J.A.C. 13:2-1.6 reiterates the right of persons to object to applications and be afforded a hearing. The amendments proposed are basically grammatical. N.J.A.C. 13:2-1.7 currently reiterates the statutory right of return of 90 percent of an annual fee if an application is denied. This provision is proposed for deletion as redundant and will be replaced with provisions reflecting the requirement of parties to amend applications to show changes in accordance with N.J.S.A. 33:1-34.

N.J.A.C. 13:2-1.8 is a new provision which sets forth the requirements and form to be used to advertise a change in corporate stockholders of a liquor license. This provision will parallel the provisions in N.J.A.C. 13:2-2.14 concerning municipally issued retail licenses. Proposed new N.J.A.C. 13:2-1.9 notes that the provisions in subchapter 1 are of general applicability and, unless mandated by law, can be relaxed where required by the Director, Division of Alcoholic Beverage Control.

Subchapter 2: Division records indicate that the early activities of the first Commissioner after the enactment of the Alcoholic Beverage Control Act in New Jersey on December 6, 1933 involved the manner and

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procedures for acquiring a liquor license to lawfully manufacture, distribute and sell alcoholic beverages. The second general regulation adopted was the specification of "Rules for Advertising Notice of Intention to Apply for License" Bulletin 9, Items 1 through 14 (January 9, 1934). (The first regulation also set forth the application form for licensure with instructions.)

The basic objective of the subchapter dealing with the filing and advertisement of applications for municipal licenses is to establish a structured, uniform method to be used by all municipalities to comply with specific statutory provisions; to afford notice to the public so that objections may be lodged with the issuing authority whenever a new license is to be issued, or an existing license is submitted for renewal or new individuals acquire shares of a corporate licensee; and to delineate the essential procedures for hearing applications and rendering decisions.

The amendments proposed herein to all sections of the subchapter basically address semantic or structure modifications or added provisions further defining or expanding on basic concepts. A brief explanation of the specific sections in subchapter 2 and signficant changes follows:

N.J.A.C. 13:2-2.1 advises license applicants that a specific form must be filed with the issuing authority including appropriate fees. The only change proposed is in the title of the section. N.J.A.C. 13:2-2.2 revises the specific form for the advertisement which includes information about the applicant and where written objections should be sent to provide more relevant information in the Notice and to conform to existing Division practice. N.J.A.C. 13:2-2.3 defines the issuing authority so applicants and objectors know who will be making the decision and where to object. The proposed amendments represent grammatical and Division address changes.

N.J.A.C. 13:2-2.4 provides an instruction for the form provided in N.J.A.C. 13:2-2.2 so that an applicant strictly follows the statutory language in identifying the kind of license in the application. The proposed amendments are for clarity purposes. N.J.A.C. 13:2-2.5 notifies applicants where and how often to publish the notice to conform to the requirements of N.J.S.A. 33:1-25. An amendment is proposed to delete the Division-specified form for showing proof of publication and replace that with a proof format the publishing newspaper provides the applicant. N.J.A.C. 13:2-2.6 indicates that the publication and notice requirements for the annual renewal of most retail licenses shall be performed by the State Director. The existing form of Notice will be deleted and replaced with a reference to a revised Notice of Renewal form now proposed in N.J.A.C. 13:2-1.5.

N.J.A.C. 13:2-2.7 insures that a written objector to a license application is given an opportunity to meaningfully express his or her views by requiring the municipal clerk to schedule a hearing and notify the objector and applicant of the date, hour and place of the hearing. Grammatical changes are proposed for this section. N.J.A.C. 13:2-2.8 sets out timetables when hearings can or must be held. Grammatical changes are proposed for this section. N.J.A.C. 13:2-2.9 indicates that no formal hearing is required if no written objections are received unless the issuing authority desires same or has reason to suspect that the application might be denied. The section also notes the requirement that the issuing authority affirmatively find and include in any resolution approving an application that (a) the application is complete in all respects, (b) the applicant is qualified under law and regulations and (c) the sources of funds to purchase the license and licensed business, or additional financing obtained in connection with the licensed business, have been disclosed and reviewed. The amendments proposed are for clarity purposes.

N.J.A.C. 13:2-2.10 sets time limits upon the municipal issuing authority to make a decision on an application, which provisions protect applicants from undue nonconsensual delays in having a decision rendered. The consequences of a delay are noted. The amendments proposed are for clarity purposes. N.J.A.C. 13:2-2.11 reiterates the provisions of N.J.S.A. 33:1-25 concerning refunds of portion of license application fees when an application is denied and proposes to add the other relevant portion of the law reflecting the nonrefundability of the required $50.00 State application fee. N.J.A.C. 13:2-2.12 reiterates the provisions of N.J.S.A. 33:1-26 concerning the pro-rating of annual license fees from the effective date of issuance. The amendment proposed will clarify that the pro-rating provisions do not apply to licenses issued pursuant to N.J.S.A. 33:1-12.18.

N.J.A.C. 13:2-2.13 provides a flexibility to the municipal issuing authority and allows it to approve an application before five full business days have passed after the second publication of the notice of application. Such early approval, however, must bear a special condition that the license will not be issued until the full five business days have passed and, if a written objection is received within that period or anytime before the license is issued, the license will not then be issued pending further hearing and resolution. This rule insures that potential objectors will have adequate time to formally object, yet also allows municipal issuing authorities to act where necessary at regularly scheduled public meetings and not have to either delay approval for weeks or a month or call a special meeting to act on an application. Grammatical changes for clarity are proposed as amendments.

N.J.A.C. 13:2-2.14 reiterates provisions contained in N.J.S.A. 33:1-34 requiring notification within 10 days after the occurrence of any change in the facts set forth in the last filed license application. The amendments proposed will enhance the information received by the Division and clarifies when a full 12-page application is needed to reflect changes. N.J.A.C. 13:2-2.15 sets forth the requirement and form for publication of a notice of change in stockholders in a corporate licensee, with proposed changes for clarity and to obtain more information. N.J.A.C. 13:2-2.16 outlines the frequency and newspaper to be used for publication of the notice of corporate stockholding changes. A proposed amendment will indicate that the proof of publication must include a copy of the dated advertisement.

This subchapter was readopted with amendment on April 16, 1984 (see 16 N.J.R. 345(a), 16 N.J.R. 916(a)).

Subchapter 3: The intent and purpose of subchapter 3 is to establish for municipal issuing authorities a structured, uniform records and recordkeeping procedure regarding the issuance of retail licenses. This subchapter has its basic direction and authority from N.J.S.A. 33:1-19.

The subchapter in its current form sets forth the manner in which license certificates must be kept; namely, in a bound book similar to a stock certificate book with permanently bound stubs. This procedure has become obsolete since the Division itself began printing the license certificates in conjunction with the Division computerization of license records in 1978. Significant procedural changes are proposed in subchapter 3 to reflect current practice and policy.

A discussion of the specific sections and the amendments proposed follows:

Since the State Division of Alcoholic Beverage Control prints the license certificate form and then provides it without charge to the municipality, the current provisions of N.J.A.C. 13:2-3.1, addressing the practice used before 1978, will be deleted. In its place, a reference to the current practice will be inserted.

The outdated provisions of N.J.A.C. 13:2-3.2 concerning receipts for license certificates will be replaced with the generally stated requirement that municipalities maintain full and complete records concerning the retail licenses in their community.

N.J.A.C. 13:2-3.3 will be amended to reflect assignment by the State Division of a 12-digit number to identify all licenses.

The current license stub rules in N.J.A.C. 13:2-3.4 are proposed for deletion. The new section 4 will be the current N.J.A.C. 13:2-3.6 that requires the State supplied license certificate to be properly signed by the municipality when it is issued.

N.J.A.C. 13:2-3.5, which deals with the name on the license certificate, is to be deleted and replaced with the provisions of the current N.J.A.C. 13:2-3.7, as amended, to note the requirement that a resolution accompany any retail licensure activity. A new subsection (b) is added to make it more clear that the effective date of any license action is the date of approval of action by the municipal issuing authority, unless otherwise specified in the resolution.

N.J.A.C. 13:2-3.6, as proposed for amendment, sets forth the requirement for a municipal issuing authority to notify the State Division of license activity through a daily certification and will be restated generally with changes to make it clear that fees, resolutions and applications must also be included. The basic provisions of the current N.J.A.C. 13:2-3.8 are retained therein.

N.J.A.C. 13:2-3.7, as now proposed in this readoption, contains the provisions of the current N.J.A.C. 13:2-3.10. These provisions set forth Division oversite and investigatory responsibility in certain Atlantic City retail license matters. It is also noted that current N.J.A.C. 13:2-3.9 is to be deleted, its provisions essentially merged into other parts of this subchapter.

Subchapter 4: The basic responsibility to issue, renew and transfer retail liquor licenses is vested by law in the municipal governing body of the community where that license is located. In 16 municipalities in New Jersey that authority has been delegated to a municipal board of alcoholic beverage control. For purposes of the Alcoholic Beverage Law, the governing body or municipal board is called the "municipal issuing authority".

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The provisions of N.J.A.C. 13:2-4 are basically derived from the legislative provisions of N.J.S.A. 33:1-20. That law has as its basic objective the avoidance of any actual or apparent conflict of interest when a member of the issuing authority seeks to acquire an interest in a retail license in the same community. The law specifically states that the municipal issuing authority cannot issue any license to any member of the local issuing authority or to any corporation, organization or association in which any member is interested directly or indirectly. Instead, the applications must be made directly to the Director, Division of Alcoholic Beverage Control. Exempt from this law are club licenses, which can be acted upon by the issuing authority of a municipality, even though individual members of the issuing authority are members of the retail licensed club.

The provisions of subchapter 4 are proposed for readoption with nonsubstantive changes. The non-substantive amendments will reflect certain grammatical changes, and the titles of N.J.A.C. 13:2-4.1, 4.3, 4.4 and 4.5 will now more accurately reflect the information contained therein. Additionally, the provisions concerning place-to-place and person-to-person license transfer application were combined in N.J.A.C. 13:2-4.4 rather than left in separate subsections. Finally, the current address of the Division will be inserted in N.J.A.C. 13:2-4.7 and 4.10 to replace a former Division location.

With respect to provisions submitted for readoption with change, N.J.A.C. 13:2-4.1 restates the statutory language of N.J.S.A. 33:1-20. The provisions of revised N.J.A.C. 13:2-4.2, 4.3, 4.4, 4.5, 4.7, 4.8, 4.9 and 4.10 identify the procedure to file applications under this subchapter, including the required application forms, fees, advertisements, refunds on denials of application and amendment of application on changed facts. These sections parallel the requirements of law and companion regulation in subchapters 2 and 7 for retail licensure when the municipal issuing authority acts on other licenses in the community. N.J.A.C. 13:2-4.6 requires the issuing authority to submit a resolution that it knows of no reason why an application forwarded to the Director under this subchapter should be denied. N.J.A.C. 13:2-4.4 and 4.5 have been amended to require a certification from the issuing authority that the proper municipal fee has been paid, along with the amount of the fee. N.J.A.C. 13:2-4.9 has been amended to clarify that proration of license fees does not occur with the issuance of a new license under N.J.S.A. 33:1-12.18.

Subchapter 5: This subchapter addresses three specific areas where the Director issues special permits to authorize alcoholic beverage activity not otherwise encompassed by licenses provided in the Alcoholic Beverage Law. N.J.A.C. 13:2-5.1 outlines the requirements for the privileges attendant to a social affair permit, which is basically a one-day retail license issued to not-for-profit civic, religious, charitable, fraternal, social, educational or recreational organizations under N.J.S.A. 33:1-74. Subsection (c) will be amended to require that the application for the social affair permit be made on forms prescribed by the Director. Subsection (d) will be amended to allow for the issuance of 12 social affair permits to any one applicant for any 12-month calendar period, rather than the current limitation of one permit per month per year. This therefore will allow permittees to receive permits for more than one event per month but limits the total permits that may be issued to any one applicant to 12. The amendment does not increase the total number of permits that may be issued. Subsections (f), (g), (h) and (i) are merely a rearrangement of the existing sections for clarity purpose with no change in the regulation.

N.J.A.C. 13:2-5.2 outlines the requirements for the privileges attendant to a special concessionaire permit, which is an annual license to sell alcoholic beverages from facilities which are classified as public buildings. Such sales can only be permitted under N.J.S.A. 33:1-42 pursuant to a State-issued permit. Examples of such permits include private concessionaires at municipally-owned golf courses and State owned sports, entertainment or marina facilities. This particular subsection was amended on May 19, 1986 (see 18 N.J.R. 545(a) and 18 N.J.R. 1104(a)) to permit the sale of alcoholic beverages in original containers for off-premises consumption where the applicant receives the consent of the governmental agency and establishes to the satisfaction of the Director that good cause exists for such sale. That amendment also set forth that the hours of sale for the permittee shall not exceed those permitted in the municipality in which the public building is located. Subsection (a) will be amended to allow and permit consumption in not only a public building but on any property owned by or under the control of the political subdivision. This amendment is proposed since on several occasions the proposed lease of the premises includes property immediately adjacent to the building, such as a marina or entertainment facility. Subsection (e) will be amended to change the address of the Division to its current location and also to require the names and addresses of all stockholders and members of a limited partnership holding a one percent or more interest in the permit, rather than 10 percent limitation previously set forth. This will parallel the reason for the requirements in N.J.A.C. 13:1 and N.J.A.C. 13:2-2 governing all State and locally issued licenses. The remaining proposed amendments to the section are basically grammatical or made for clarity purposes.

N.J.A.C. 13:2-5.3 identifies one of several other special permits that the Director is empowered to issue under N.J.S.A. 33:1-74. A judgment creditor, trustee, receiver or other court authorized person can sell alcoholic beverages with this permit in furtherance of the execution of legal responsibilities authorized by law or court order. Under the current rule, the permit would be issued to the purchaser of alcoholic beverages. Under the proposed amended rule, the permit would be issued to the seller, namely the receiver or trustee or other fiduciary who is authorized pursuant to law or court order to sell the alcoholic beverage product. Subsection (a) authorizes the Director for good cause shown to issue such a permit. Subsection (b) establishes an application for the special permit which must be filed with the Division at least seven days prior to the proposed sale. Subsection (c) authorizes upon the issuance of the permit the temporary storage and transportation of alcoholic beverages at an identified location pending sale as well as authorizing the transportation of the alcoholic beverages by the successful purchaser. As amended, the permit will clearly identify and cover all facets of the sale and purchase of the alcoholic beverages pursuant to the court order. Subsection (d) is a new subsection that will require within 10 days of the sale, that the permittee file with the Director a signed and sworn inventory report listing among other things the type and quantity of alcoholic beverage sold, the name and address of the purchaser and the State-assigned number of the purchaser (if it was a New Jersey licensee), and the sales price per item or lot. This will establish the purchase price of the alcohol if the buyer was a New Jersey retail licensee to establish cost and also insure that if the purchaser was other than a New Jersey licensee, the items purchased were merely for personal consumption and not for resale.

N.J.A.C. 13:2-5.4 is a proposed new rule to cover other areas where the Director may issue special permits to authorize the sale of alcoholic beverage activity not otherwise encompassed by licenses. Subsection (a) establishes the statutory authority as set out in N.J.S.A. 33:1-74 for the Director to issue such temporary permits. Subsection (b) requires that application for such permit be on forms promulgated by the Director and establishes the statutory fee limits of not less than $5.00 nor more than $500.00 which are the statutory limits. Subsection (c) permits the Director to impose special conditions or requirements on the permit which, due to their specific nature, may be unique and necessary to insure compliance with the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-5 was readopted pursuant to Executive Order No. 66 on April 26, 1984 (see 16 N.J.R. 497(a), 16 N.J.R. 1277(a)).

Subchapter 6: Subchapter 6 establishes a framework for the extension of a license to a fiduciary in cases of death, bankruptcy, receivership, incompetency or for any other reasons the operation of the business covered by the licensee shall devolve by operation of law upon another person.

The provisions in N.J.A.C. 13:2-6.1 and 6.2 are combined and edited into the proposed amended N.J.A.C. 13:2-6.1 for purposes of enhanced clarity and grammar. The amended section will identify when an extension of license is required, how to petition for the extension and when to amend the current license application to reflect the change in status.

A new N.J.A.C. 13:2-6.2 is proposed that will identify the ability to apply for a special permit from the Division to continue operation of a business while the application of a person to be appointed a fiduciary is pending. An example of this would be the need to wait 10 days from death to probate a will of an individual. If that person owned a license in his or her own name and the business needed to operate in this interim period, a special permit could be acquired for that purpose, generally by the anticipated executor or executrix.

N.J.A.C. 13:2-6.3 is proposed for readoption without change. This section notes what proofs are required with the petition.

N.J.A.C. 13:2-6.4 will show the form of the endorsement that will be put on a license certificate that is extended under this subchapter. Deleted will be an outdated reference to the municipal license book stubs.

N.J.A.C. 13:2-6.5 discussing the need for daily certifications by the municipal issuing authority to the State Division and these provisions will be deleted. These requirements are contained in subchapter 3, as proposed for readoption with amendments.

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Subchapter 7: The basic procedures, fees and requirements to transfer liquor licenses are set forth in N.J.S.A. 33:1-26, which incorporates by reference certain provisions of N.J.S.A. 33:1-25. The purpose and intent of this subchapter is to establish a uniform and comprehensive procedure for license transfers as required by the above statutes.

A major restructuring of the existing 24 sections in this subchapter is proposed with the deletion of outdated recordkeeping references, the consolidation of provisions to avoid duplication with other sections in this subchapter or title, and the rewording or inclusion of provisions that will enhance understanding and reflect current division policy.

N.J.A.C. 13:2-7.1, 7.2 and 7.3 note that a license can be transferred, and such transfers can be either to some other person or some other location. Amendments to these sections are for clarity and to reflect current policy.

N.J.A.C. 13:2-7.4 sets forth the form of the notice that must be published to advise people that a license transfer is being sought. The revisions to the notice essentially parallel changes in the advertising notices required in subchapters 1, 2 and 4. This section also assumes some provisions in existing N.J.A.C. 13:2-7.5, 7.6, 7.7 and 7.11. Part of N.J.A.C. 13:2-7.5 and 7.7 become subsections (b) and (c) of N.J.A.C. 13:2-7.4. N.J.A.C. 13:2-7.6 will be deleted in its entirety. N.J.A.C. 13:2-7.11, which concerns proof of publication, will be a new subsection (d) in this section. In sum, N.J.A.C. 13:2-7.4 will, as amended, reflect the form of notice to be advertised, the requirement to file a proof of publication of notice with the division and an identification of where and how often the notice must be published.

N.J.A.C. 13:2-7.5, 7.6 and 7.7, as proposed for readoption with amendments, identify the provisions concerning objections to applications and hearings. These provisions were basically set forth in the existing provisions of N.J.A.C. 13:2-7.8, 7.9 and 7.10.

N.J.A.C. 13:2-7.8 through 7.12, as proposed for readoption with amendments, indicate the requirements in transfer applications to submit statutorily required fees along with using the State prescribed application form. The fees vary depending upon whether it is a single transfer or combined as to both person and place. The existing rules encompassed within these amended provisions are N.J.A.C. 13:2-7.12 through 7.17.

N.J.A.C. 13:2-7.13, as amended herein, contains the provisions of existing N.J.A.C. 13:2-7.18 which allows for an early approval of a transfer application, subject to a special condition that will allow citizens the five business day period to object.

N.J.A.C. 13:2-7.14 identifies the endorsement that will be made on the license certificate to show the approved transfer. One amendment proposed will add a new subsection (b) noting the effective dates of transfers. Current N.J.A.C. 13:2-7.19 through 7.22 will be deleted because the provisions reflect outdated procedures or are assumed in the revised N.J.A.C. 13:2-7.14.

N.J.A.C. 13:2-7.15 notes the requirement for local issuing authorities to certify license information. Existing provisions in N.J.A.C. 13:2-7.23 and 7.24 are to be deleted as outdated, duplicative and unnecessary.

Subchapter 8: The provisions of N.J.S.A. 33:1-12 establish a club license which entitles the holder, subject to rules and regulations, to sell any alcoholic beverage, but only for immediate consumption on the licensed premises and only to bona fide club members and their bona fide guests. The law further sets forth the fee for such license, provides the local governing body of a municipality with the option not to issue any club licenses, and defines the type of not for private gain corporations, associations and organizations which can qualify for a club license.

N.J.A.C. 13:2-8.1 through 8.5 and 8.7 define club, club member and guests and set forth eligibility requirements and exceptions for a club or proposed club licensed premises. Other than a minor amendment for clarification purposes in N.J.A.C. 13:2-8.1 and 8.4, these sections are proposed for readoption without change. N.J.A.C. 13:2-8.6 is derivative of N.J.S.A. 33:1-25 and incorporates the basic requirements that club officers and governing body members be qualified to have an interest in a retail license. It is proposed for readoption without change.

N.J.A.C. 13:2-8.8, 8.9 and 8.10 reiterate statutory provisions concerning persons to whom alcoholic beverages can be sold, prohibiting sales for off-premises consumption and prohibiting sales during hours not authorized by municipal regulation or referendum. Amendments are proposed to N.J.A.C. 13:2-8.8 to reorganize and clarify, and to N.J.A.C. 13:2-8.9 to make it clear that packaged goods may not be sold by the club licensee. N.J.A.C. 13:2-8.10 is proposed for readoption without change.

N.J.A.C. 13:2-8.11 and 8.13 address the limited nature of the club license and proscribe sale and advertisements to non-members or persons who are not bona fide guests, except when a Social Affairs Permit has been obtained pursuant to N.J.S.A. 33:1-74. The proposed amendment to N.J.A.C. 13:2-8.11 is in keeping with the Division policy that a club licensee may use its own alcoholic beverage stock for an affair held at a club pursuant to a Social Affairs Permit obtained by the club. The amendment proposed to N.J.A.C. 13:2-8.13 is for clarity.

N.J.A.C. 13:2-8.12 and 8.13 encompass statutory provisions applicable to all liquor license holders (maintain true books of account, permit inspections of records, and bear responsibility for agents and employees acts). Amendments are proposed to N.J.A.C. 13:2-8.12 to conform the regulatory language to that used in N.J.A.C. 13:2-23.32 which is applicable to all licensees. Punctuation changes are proposed for N.J.A.C. 13:2-8.14.

This subchapter was last readopted without change on April 25, 1984 (see 16 N.J.R. 494(a) and 16 N.J.R. 1277(c)).

Subchapter 9: The provisions of N.J.A.C. 13:2-9.1 through 9.5 encompass the issuance of the warehouse receipts license, the use and privileges of the license, and the tax requirements the holder of the license must satisfy. A warehouse receipt license entitles the holder of the license to sell receipts, certificates, contracts or other documents given upon the storage of alcoholic beverages as reflected in N.J.S.A. 33:1-72.

N.J.A.C. 13:2-9.1 sets forth that application for the license shall be on a form prescribed by the Director and notes that no publication of the notice or request for the issuance of the license is necessary. The proposed amendment to this section eliminates the requirement that the application be submitted in duplicate since the forms themselves prescribe and require the necessary copies and clarifies the provisions therein.

N.J.A.C. 13:2-9.2 as proposed with amendment will now parallel the statutory privilege and note that the holder of a warehouse receipts license may sell the receipts only to New Jersey licensed manufacturers or wholesalers authorized to sell the alcoholic beverages covered by the receipts. Any other sale of receipts can only be done pursuant to a special permit issued by the Director. On March 1, 1978, the then Division of Administrative Procedures under the New Jersey Department of State published the Alcoholic Beverage Control Rules pursuant to the New Jersey Administrative Code. In compiling the alcoholic beverage control regulations, this subsection was inadvertently omitted. Therefore, this proposed amendment merely restores the subsection to the subchapter. As a result of this restoration, the remaining sections are recodified with no additional amendments unless specifically set forth.

N.J.A.C. 13:2-9.3 prohibits the holder of a warehouse receipts license from selling the receipts or documents to any holder of a New Jersey retail license or any consumer.

N.J.A.C. 13:2-9.4 will be amended to parallel the correct rule citation regarding solicitor's permits and further clarify that solicitor's permits are not necessary for a license held by an individual licensee or for individual members of the partnership licensee.

N.J.A.C. 13:2-9.5 requires the licensee to comply with all requirements and regulations regarding bonds and/or payment of taxes as may be set forth under the Alcoholic Beverage Control Act or other New Jersey statutes.

Subchapter 10: As a result of significant amendments to N.J.S.A. 33:1-10, the law which defines the scope and privileges of a plenary winery license, the provisions in subchapter 10 are proposed for readoption with significant amendments. A more full and detailed identification of the legislative history, impact and consequences of the changes in N.J.S.A. 33:1-10 and N.J.S.A. 33:1-28.1 et seq. can be found in ABC Bulletin 2455, Item 1 (January 29, 1990).

With respect to the readoption and the amendments proposed therein, the following discussion of specific sections is noted.

N.J.A.C. 13:2-10.1 through 10.4 are proposed for repeal to eliminate duplication with the advertising and publication provisions applicable to all State issued licenses. The provisions of N.J.A.C. 13:2-10.5 concerning the retail privileges and possible preferences for a winery based upon areas under cultivation are to be repealed as inconsistent with law.

In lieu of the above sections, a new N.J.A.C. 13:2-10.1 will identify and reference the standard application requirements for any State issued license, under N.J.A.C. 13:2. An added requirement to include in the application a statement of intent will more clearly identify the scope and extent of the license activity intended under the plenary winery license.

N.J.A.C. 13:2-10.2, 10.3 and 10.4, as proposed for readoption with amendments, are basically the provisions contained in the current N.J.A.C. 13:2-10.6, 10.7 and 10.8. These provisions identify special provisions concerning the plenary winery license certificate, retail sales activities, and wine label requirements.

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The new N.J.A.C. 13:2-10.5 will identify the application procedures, by reference to N.J.A.C. 13:2, for the newly created wine blending license. As defined by law, this license will allow the holder to blend, treat, mix and bottle fermented wines and fruit juices with non-alcoholic beverages. The holder can also sell the products to licensed wholesalers and retailers. Wine coolers are the product most commonly expected to be blended, bottled and sold under this license.

The new N.J.A.C. 13:2-10.6 reflects the recently created legislative concept similar in respects to a farm cooperative and designated as a "combination enterprise retail salesroom". Under this permit, which will cost $500.00 per year, no less than five plenary or farm wineries can join together to operate a retail salesroom for all their products. No more than one such salesroom is allowed per county.

N.J.A.C. 13:2-10.7, as now proposed for readoption with amendments, will reiterate the legislative provisions contained in N.J.S.A. 33:1-28.1 et seq. that allows plenary winery licensees with retail privileges to deliver wine to customers by parcel delivery services, subject to strictly defined parameters as to sales and delivery.

Subchapter 11: As a consequence of amendments to N.J.S.A. 33:1-10, the law which defines a farm winery license and sets forth its privileges and limitations, the provisions in subchapter 11 are proposed for readoption with significant amendments to either reflect provisions of the new law, or to eliminate duplicative provisions. A more detailed identification of the legislative history, impact and consequences of the change in N.J.S.A. 33:1-10 and N.J.S.A. 33:1-28.1 et seq. (the law which authorizes parcel delivery to consumers) can be found in ABC Bulletin 2455, Item 1 (January 29, 1990).

The current provisions in N.J.A.C. 13:2-11.1, 11.2 and 11.3 will be repealed because the concepts therein involving identification of the limited winery privilege are no longer accurate. A new N.J.A.C. 13:2-11.1 will identify and reference the standard application requirements for all State issued licenses under N.J.A.C. 13:2. Added thereto will be a statement of intent to more clearly identify the scope and extent of the license activity intended under the farm winery license.

The new N.J.A.C. 13:2-11.2 will note the requirement for reference of retail privileges on the farm winery certificate, essentially containing the provisions that existed in former N.J.A.C. 13:2-11.1.

N.J.A.C. 13:2-11.3 will be the label requirement provisions to describe the product as a "New Jersey Wine". This is basically the provisions contained in the current N.J.A.C. 13:2-11.4. There will be a repeal of current N.J.A.C. 13:2-11.5 and 11.7 since those terms are not consistent with current law.

N.J.A.C. 13:2-11.4 as proposed for readoption with amendment will set forth the rules and limitations concerning retail sales and hours thereof by farm winery licensees.

N.J.A.C. 13:2-11.5 and 11.6 as proposed in the readoption are new sections which incorporate by reference the "combination enterprise retail salesroom" and parcel delivery service provisions that exist for all New Jersey winery licensees under law and as more fully reflected in N.J.A.C. 13:2-10.6 and 10.7.

Subchapter 12: N.J.S.A. 33:1-75 empowers the Director to issue special permits authorizing the manufacture of wine for personal consumption to a limit of not more than 200 gallons of wine per year. N.J.A.C. 13:2-12.1 is basically a reiteration of the statutory provisions. N.J.A.C. 13:2-12.2 through 12.5 are concerned with restrictions that would render either person or premises ineligible for the Special Wine Permit. N.J.A.C. 13:2-12.7 indicates that the permit is not transferable and N.J.A.C. 13:2-12.8 provides for revocation of the permit upon violation of any of its provisions.

An amendment is proposed to N.J.A.C. 13:2-12.4 to indicate that a permit cannot be issued to any person under the age of 21 years. Additionally, an amendment is proposed to N.J.A.C. 13:2-12.5 to conform with the language of N.J.S.A. 33:1-1(x) defining unlawful alcoholic beverage activity. Amendments to N.J.A.C. 13:2-12.1, 12.2, 12.3, 12.6 and 12.7 are grammatical changes.

Subchapter 13: The basic objective and intent of this subchapter is to establish a uniform questionnaire which must be filled out and kept on file at the State licensee's licensed premises. The purpose of such a questionnaire is to provide information to the Inspection Bureau. In addition, the rules also provide a method of assessing whether employees have criminal convictions or may otherwise be disqualified.

With respect to the specific provisions of the subchapter, N.J.A.C. 13:2-13.1 imposes a duty on every person who holds a State issued alcoholic beverage license (except railroad carriers) and every person who is an officer, director or holder of more than one percent of the stock of any such licensed corporation, to execute a questionnaire, in the form prescribed by the Director. N.J.A.C. 13:2-13.2 establishes the identical requirement upon persons who are employed by or connected with businesses who hold a State issued alcoholic beverage license, subject to notation of the five categories of persons who are exempt from the questionnaire requirement, either because such persons are covered under other regulatory provisions or because their positions or interests leave them no voice in the conduct of the licensee's business in this State. N.J.A.C. 13:2-13.3 provides that a passport type photograph shall be affixed to the questionnaire, while N.J.A.C. 13:2-13.4 mandates that all questionnaires must be maintained upon the licensed premises, available for inspection by duly authorized persons.

The basic purpose behind the proposed amendments to this subchapter is to clarify and simplify the regulatory provisions contained therein. In furtherance thereof, N.J.A.C. 13:2-13.5 and 13.6 are proposed for repeal. Those sections, which dealt with notice to the Division concerning questionnaires that evidenced a criminal conviction or questionnaires that were not filled out, are unnecessary. The remaining rules contain adequate prohibition in those areas. The remaining proposed amendments to the rules, other than requiring in N.J.A.C. 13:2-13.3 a color photograph to be attached to the questionnaire, are added to clarify section titles or language usage or to renumber sections.

N.J.A.C. 13:2-13 was last subject to regulatory action when it was readopted on April 4, 1979, effective May 1, 1979, and has not subsequently been amended (see 11 N.J.R. 143(a) and 11 N.J.R. 257(c)).

Subchapter 14: The provisions in this subchapter 14 deal with the issuance of permits to persons who are disqualified from working on a licensed premises, either by being under the required age or by reason of a conviction of a crime of moral turpitude, as is provided by N.J.S.A. 33:1-26.

The first part of this subchapter, as revised, sets forth the provisions by which a person under 18 may obtain a permit to work on a licensed premises. The rules identify the prohibited conduct and set forth the criteria and fee for the individual minor to obtain a permit. Provision is also made for the issuance of a blanket employment permit to a retail licensee in some instances.

The next portion of this subchapter deals with the process by which a person who is criminally disqualified can obtain a rehabilitation employment permit to work on a licensed premises. These provisions set forth the permit process, identify the fees as well as the types of permits. The latter portion of this subchapter sets forth how a permit may be cancelled or terminated, dependent upon the type of conduct or other acts or omissions by the permittee.

The proposed amendments to this subchapter deal basically with reorganizing the sequence of the regulatory provisions as well as clarifying or simplifying the language, as further identified below. The changes are not substantive.

Initially, all the provisions dealing with minors are placed in the first four sections (N.J.A.C. 13:2-14.1 through 14.4), for ease of reference purposes. Following therewith, the provisions regarding employing the criminally disqualified are listed (N.J.A.C. 13:2-14.5 through 14.9). The final sections of the subchapter (N.J.A.C. 13:2-14.10 through 14.13) discuss prohibited conduct, amendments to applications, and termination and cancellation regarding either type of permit.

Some changes were also made to clarify the titles to N.J.A.C. 13:2-14.2, 14.3, 14.5 and 14.7 through 14.10, so that it is easier to determine the subject matter being discussed therein. Finally, provision was made in N.J.A.C. 13:2-14.6 to acknowledge an existing Division practice of issuing a temporary work letter to a criminally disqualified person who has applied for a rehabilitation employment permit, who, but for the existence of a temporary work letter, would have had to wait until the application process was complete before being able to work on a licensed premises. Clarification was also made in N.J.A.C. 13:2-14.2 regarding the time which a minor has before a permit must be obtained. In N.J.A.C. 13:2-14.1, a change was made to recognize that in certain instances as provided by the New Jersey Child Labor Law, minors have the right to work on a premises, although they might otherwise be prohibited under ABC law and regulations.

Subchapter 15: N.J.S.A. 33:1-25 prohibits the acquisition of an interest in a liquor license by a person who has been convicted of a crime involving moral turpitude. N.J.S.A. 33:1-31.2 provides authority for the Director to provide for removal of such disqualification. N.J.A.C. 13:2-15 sets forth the mechanism by which a person applies to the Division for removal of the disqualification.

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N.J.A.C. 13:2-15.1 and 15.4 detail the time and personal requirements for rehabilitation that are considered by the Director in arriving at a determination whether or not the statutory disqualification should be removed. Proposed amendments to both of these sections would make it clear that at least five years must elapse from the date of conviction or the release from incarceration, whichever is later, for the petitioner to be considered eligible for disqualification removal. This amendment reflects the long standing Division policy which is currently in effect.

N.J.A.C. 13:2-15.2 details the contents required for the petition for removal of disqualification. The proposed amendment would require the submission of a color passport photograph, as opposed to the current black and white photograph, and would require the petitioner to pay for fees attendant to the investigation (that is, cost of fingerprint investigation) as well as the filing fee of $25.00.

N.J.A.C. 13:2-15.3 provides for a hearing upon filing of the petition wherein the petitioner and two character witnesses will be required to appear in person and testify under oath. The proposed amendment to this section will reflect Division practice that a hearing will only be required if there is a possibility that the application may be denied. That hearing will be held by either the Director or by an Administrative Law Judge as a contested case. Where the investigation report contains no adverse information, the petition will be granted without a hearing and the need to present character witnesses.

N.J.A.C. 13:2-15.4 sets forth the standards applied in the assessing of a criminal disqualification removal petition. The changes reflect the Division policy in this area concerning the possible hearing requirement and the clarification that the five year waiting period is from the date of conviction or release from incarceration, whichever is later.

N.J.A.C. 13:2-15 has not been amended or readopted since the promulgation of said Executive Order.

Subchapter 16: The statutory requirement that all individuals offering for sale or solicitating orders for alcoholic beverages in the State of New Jersey must be holders of solicitor's permits was one of the early legislative provisions governing alcoholic beverage control. On June 8, 1935, Chapter 256 of the Law of 1935 was enacted which sets specific guidelines for the issuing of solicitor permits and is currently cited as N.J.S.A. 33:1-76. The initial regulations promulgated pursuant to the statute were adopted on July 22, 1935. Commissioner D. Frederick Burnett indicated that the purpose and intent of the regulations was to control an important phase of the liquor industry and prevent the unfair competition with retailers which existed at the time the regulations were promulgated caused by persons not licensed under the New Jersey laws. Subchapter 16 was not initially covered by Executive Order No. 66(1978) and thus this will be the first time that the regulations are readopted pursuant to the Executive Order.

N.J.A.C. 13:2-37, Contracts of Employment and Conduct of Solicitors, was subject to an amendment effective on May 1, 1979 (see 11 N.J.R. 143(a) and 11 N.J.R. 259(c)) and a readoption without change on May 21, 1984 (see 16 N.J.R. 501(a) and 16 N.J.R. 280(b)).

Given the similarity of concepts in both subchapters 16 and 37, it is proposed herein to incorporate N.J.A.C. 13:2-37 into the provisions of N.J.A.C. 13:2-16 for purposes of clarity and to have all rules regarding the eligibility, issuance and conduct regarding solicitor's permits in one subchapter. Therefore, the three subsections of N.J.A.C. 13:2-37.3 shall be incorporated in N.J.A.C. 13:2-16 under the title of Solicitor's Permits.

With this merger, the Division has rearranged sections of the subchapter to include and incorporate the various subject matter covered by the regulation into consecutive sections. In addition, for clarity purposes, the Division has created new subsections to better clarify specific subject matter. An example of this process is that former N.J.A.C. 13:2-16.3 regarding permit fees, terms, applications, applicants photographs and fingerprints has been subdivided into separate sections which, for clarity purposes, address each of the separate topics included in the former larger subsection.

N.J.A.C. 13:2-16.1, 16.2 and 16.3 (formerly N.J.A.C. 13:2-16.4) address the necessity for a permit and the privileges and eligibility requirements of an applicant. N.J.A.C. 13:2-16.1 notes that no individual may sell or solicit an order for the purchase of alcoholic beverages unless he is the holder of a solicitor's permit. The section specifically exempts the individual licensee or the individual members of a partnership if the license is held in the name of an individual or partnership. N.J.A.C. 13:2-16.2 authorizes the holder of a solicitor's permit to offer and solicit the sale of alcoholic beverages on behalf of his or her employer. The section was amended to remove the term "vendor" and use the term "licensee", thereby specifically identifying that the employer must be the holder of the license. N.J.A.C. 13:2-16.3 establishes that the permit will only be issued to bona fide employees of employers who are duly licensed. The proposed amendment in this section specifies that the employers must be holders of Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licensees, with the exception of a bonded warehouse bottling license. This license although listed as a Class A license is not eligible for the issuance of permits since the statute does not provide for or authorize any sale of alcoholic beverage license to retail licensees or other wholesale licensees.

N.J.A.C. 13:2-16.4 is entitled "Permits to Enforcement Officers or Municipal Officials" and was formally cited as N.J.A.C. 13:2-16.8. This section prohibits the issuance of solicitor's permits to any person entrusted with the enforcement of laws concerning alcoholic beverages and provides for the issuance of a solicitor's permit to a member of the governing body with the specific prohibition that such an individual cannot solicit any order or sell any alcoholic beverages to licensees in the municipality in which he is a member of the governing body. The current N.J.A.C. 13:2-16.3 which sets forth the permit fees, the term of the permit, the application, photographs and fingerprints requirements has been divided into separate new sections which address each individual topic done for clarity purposes.

N.J.A.C. 13:2-16.5, Permit fees, establishes the fee for solicitor's permits and specifically adds the statutory requirement that a separate fee shall be paid for each licensee designated in the permit. Thus, an applicant who wishes to be employed by more than one licensee must pay a separate fee for each licensee.

N.J.A.C. 13:2-16.6 addresses applications for the permit, photographs and fingerprints. Subsection (a) sets forth that the application for the issuance or renewal of a solicitor's permit shall be made on the forms prescribed by the Director. Subsection (b) requires applications for the issuance of permits to be accompanied by one passport type color photograph of the applicant not more than 30 days prior to the date of the application. Subsection (c) requires applicants for the issuance of solicitor's permits to be fingerprinted and remit the necessary fees attendant to fingerprinting investigations. The Division has eliminated the requirement that applicants renewing solicitor permits on a continuous and consecutive term basis must once every five years supply a new color photograph and be re-fingerprinted. This practice as a practical matter calls for additional processing with no real additional benefit. The Division notes that other requirements such as amendments to the license application and certain responsibilities a solicitor must comply with provide sufficient means to insure the continuing qualifications of the holder of the permit.

N.J.A.C. 13:2-16.7 identifies the term of the permit, specifically noting that as permitted by N.J.S.A. 33:1-67, the Director has determined that the permit shall expire on May 31st following issuance.

N.J.A.C. 13:2-16.8 (formally N.J.A.C. 13:2-16.9) has been amended to indicate that solicitor's permits are not transferable as to employer or employee.

N.J.A.C. 13:2-16.9 (formally N.J.A.C. 13:2-16.10) requires a solicitor to notify the division in writing of all changes in fact as set forth on the application for the solicitor's permit within 10 days after their occurrence.

N.J.A.C. 13:2-16.10 (formally N.J.A.C. 13:2-16.11) requires upon termination of any employment for which the solicitor's permit was issued, that the solicitor's employer must file a notice with the Director of the termination and the solicitor must surrender for cancellation his or her permit within 10 days.

N.J.A.C. 13:2-16.11 (formally N.J.A.C. 13:2-16.5) places certain restrictions on the activity of the permittee. Subsection (a) specifically prohibits the holder of the permit from engaging in any activity or sale not allowed or permitted by law or by the terms of the New Jersey license held by his or her employer. Subsection (b) incorporates the language of current N.J.A.C. 13:2-37.3 which prohibits the holder of the permit from selling, soliciting or delivering alcoholic beverages at terms or conditions or under certain promotions that are not contained in the employer's Marketing Manual or Current Price Listing for the period and time in which the solicitation occurs.

N.J.A.C. 13:2-16.12, Permittees activities, is proposed for repeal since the language of that section is incorporated and covered by N.J.A.C. 13:2-16.11.

The new N.J.A.C. 13:2-16.12 (formally N.J.A.C. 13:2-16.7) prohibits the holder of a solicitor's permit from having any interest directly or indirectly or being employed or connected in any business capacity with a retail licensee. This follows the statutory prohibition set forth in the New Jersey Tied House statute, N.J.S.A. 33:1-43, which bars any involvement directly or indirectly between Class A or Class B licenses and its employees and retail licensees.

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N.J.A.C. 13:2-16.13 is proposed for readoption without any change. The section notes consent to search waiver by a solicitor concerning any vehicle owned or driven by the solicitor by those persons specifically designated to enforce the Alcoholic Beverage Control Act.

N.J.A.C. 13:2-16.14 (formally N.J.A.C. 13:2-16.16) is entitled "Responsibilities of Employer". The rule prohibits a manufacturer or wholesaler from allowing anyone to solicit sales on their behalf unless he or she is the holder of a solicitor's permit. This particular section was amended to specifically designate that the employer shall be a holder of Class A or Class B licenses.

N.J.A.C. 13:2-16.15, Solicitor's contracts, incorporates the language of N.J.A.C. 13:2-37.1. This section establishes the requirement that all contracts between employers and their solicitors shall be in writing and maintained by the employer for a period of three years. In addition, these contracts shall be available for inspection by those persons authorized to enforce the Alcoholic Beverage Control Act. This particular section was amended to include all Class A or Class B licensees, even those employed selling malt alcoholic beverages.

N.J.A.C. 13:2-16.16 incorporates the language of N.J.A.C. 13:2-37.2. This section requires the filing of an annual compensation statement with the Director setting forth the compensation paid by the employer to the solicitor. The proposed amendments change the date of filing from April 1st to May 31st, which is also the time that all solicitor's permits must be renewed. The rule more fully specifies that the compensation report must be itemized and include, in addition to salary, commission and reimbursement expenses, any prizes, awards or bonuses that were paid to the solicitor. This addition merely reiterates the information the Division has required for compensation reports since 1985 (see ABC Bulletin 2444, Item No. 4 (December 13, 1985), which specifically required that all compensation reports include itemization as to prizes, awards and bonuses).

Subchapter 17: The Director of the Division of Alcoholic Beverage Control is empowered to hear various types of appeals that can be filed by applicants for licenses, licensees and other aggrieved persons arising from actions taken by the local issuing authority concerning retail liquor licenses. Specific statutory appeal provisions exist in actions involving: (a) the issuance, renewal or extension of retail licenses (N.J.S.A. 33:1-22); (b) the transfer of retail licenses (N.J.S.A. 33:1-26); (c) the imposition of disciplinary sanctions or failure to institute disciplinary proceedings against retail licensees (N.J.S.A. 33:1-31); (d) the limitation of the number of retail licenses or hours of sale (N.J.S.A. 33:1-41); and (e) the review and adjudication in a quasi-judicial context of other matters or issues which ". . . may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter, . . ." (N.J.S.A. 33:1-39).

The provisions of subchapter 17, now proposed for readoption with some amendments, delineate various rules involving the filing of appeals and hearing procedures. The first Division regulations in this area were promulgated on May 4, 1934 and June 25, 1935 (see Bulletins 26 and 81, Items 4 and 13, respectively). The most recent rulemaking for this subchapter occurred on January 7, 1985, when the subchapter was readopted with amendments (see 16 N.J.R. 2954(a) and 17 N.J.R. 91(a)).

A discussion of the specific sections in subchapter 17 and proposed rulemaking follows:

N.J.A.C. 13:2-17.1 indicates that an appeal shall be commenced by filing of the Appeal with the Director along with a filing fee of $50.00. In addition to grammatical amendments, the section was expanded to identify the types of action that can give rise to an appeal.

N.J.A.C. 13:2-17.2 readopts the requirements involving service of the appeal papers on various interested parties with only minor grammatical and clarity changes proposed.

N.J.A.C. 13:2-17.3 reiterates the statutory provisions addressing the 30 days time limit applicable to the filing of an appeal. The amendment identified will be for clarity and note that the notice to an applicant or licensee subject to municipal review must be in writing.

N.J.A.C. 13:2-17.4 requires the respondents in an appeal to file an answer with the Director within 10 days after receipt of appeal papers. No change is proposed.

N.J.A.C. 13:2-17.5 sets forth the provisions of law requiring hearings on contested administrative agency matters to be conducted personally by the Director or referred to the Office of Administrative Law. No change is proposed.

N.J.A.C. 13:2-17.6 sets forth the standards for review, submission of evidence and burden of proof applicable in an appeal under the Alcoholic Beverage Law. A change is proposed to clarify the universal application of a de novo appeal hearing even where the record below is the only proofs submitted with the appeal.

N.J.A.C. 13:2-17.7 and 17.8 are being deleted as unnecessary in light of the comprehensive hearing provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1.1.

N.J.A.C. 13:2-17.9, recodified as N.J.A.C. 13:2-17.7, provides for the issuance of subpoenas for hearings by either the Director or Administrative Law Judge, if the appeal had been referred to the Office of Administrative Law for hearing. The only change proposed is grammatical.

N.J.A.C. 13:2-17.10 is being deleted for the same reason as N.J.A.C. 13:2-7.7 and 7.8.

N.J.A.C. 13:2-17.11, recodified as N.J.A.C. 13:2-17.8, is proposed for readoption with amendment to more closely parallel the language in the provisions of N.J.S.A. 33:1-31 which provide that the filing of an appeal from a disciplinary sanction imposed by the local issuing authority automatically stays the sanction (license suspension or revocation) unless otherwise ordered by the Director.

N.J.A.C. 13:2-17.12, recodified as N.J.A.C. 13:2-17.9, reiterates the provisions of N.J.S.A. 33:1-22 authorizing the Director to temporarily extend the privileges of a license denied-renewal pending appeal. Amendment to this section will reflect the ability to appeal the failure to act on a renewal within the time allowed for review under N.J.A.C. 13:2-2.10(b), and make clear that extension orders all expire at the end of the license term they were issued in by the Director, even if the appeal hasn't been decided. In that case, a new appeal must be filed for the next license term.

N.J.A.C. 13:2-17.13, recodified as N.J.A.C. 13:2-17.10, provides that any transfer, extension or renewal of a license involved in a pending appeal will be subject to the ultimate outcome of such appeal. Amendments are proposed for clarity and grammatical purposes.

N.J.A.C. 13:2-17.14, recodified as N.J.A.C. 13:2-17.11, references and incorporates the Uniform Administrative Procedure Rules of Practice, N.J.A.C. 1:1, for the conduct of a contested case. The last phrase of the section is deleted as unnecessary in light of the Administrative Procedure Act and Uniform Administrative Procedure Rules.

N.J.A.C. 13:2-17.15, which was reserved after the last regulatory amendment to this subchapter in 1985, will now be deleted.

Subchapter 18: Subchapter 18 is essentially a reiteration of the provisions of N.J.S.A. 33:1-93.6 through 93.10 and administrative policy and determinations of the Division. Under these statutory provisions, no importer, blender, distiller, rectifier or winery can discriminate in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, to duly licensed New Jersey wholesalers of alcoholic beverages who have been authorized to sell the nationally advertised brand in New Jersey. A procedure is set forth to initiate a claim of discrimination and several specific interim and final enforcement powers are vested in the Director. The validity of this statute was most recently challenged and upheld by the New Jersey Supreme Court in *Joseph H. Reinfeld, Inc. v. Schieffelin & Co.*, 94 *N.J.* 400 (1983).

This subchapter was readopted without change on May 21, 1984 (see 16 N.J.R. 495(a), 16 N.J.R. 1278(a)).

The readoption with amendments proposed for N.J.A.C. 13:2-18.1 (the legal basis for a claim for relief), N.J.A.C. 13:2-18.3 (requirements to serve Answer to Petition) and N.J.A.C. 13:2-18.7, to be recodified as N.J.A.C. 13:2-18.4 (interlocutory relief procedure) are only for clarity or grammatical purposes. N.J.A.C. 13:2-18.4, 18.5 and 18.6, proposed for repeal contain outdated hearing procedures to be replaced by new N.J.A.C. 13:2-18.6, 18.7 and 18.8 that identify jurisdiction, public hearing and hearing procedures consistent with the Administrative Procedure Act and the rules and regulations promulgated thereunder. Current N.J.A.C. 13:2-18.8 concerning the enforcement of the Director's orders will now be cited as N.J.A.C. 13:2-18.5. The only substantive change occurs in N.J.A.C. 13:2-18.2 where a more detailed description of the contents of a Verified Petition alleging discrimination is set forth. These requirements reflect both statutory needs and Division policy.

Subchapter 19: The provisions of N.J.A.C. 13:2-19.1 through 19.5 encompass general principles applicable to administrative disciplinary proceedings instituted for violations of the Alcoholic Beverage Law and/or Division promulgated Rules and regulations.

The basic substances of N.J.A.C. 13:2-19.1 through 19.5 were first adopted as regulatory provisions on June 20, 1935 (see ABC Bulletin 80, Item 8). The hearing procedure in N.J.A.C. 13:2-19.6 was modified in the last regulatory activity concerning this subchapter on January 7, 1985

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when this section was readopted with amendments to reflect and incorporate the hearing and practice provisions under the Administrative Procedure Act and the rules and regulations promulgated thereunder (see 16 N.J.R. 2957(a) and 17 N.J.R. 92(a)).

A specific discussion of these sections, which are proposed for readoption with amendments which are nonsubstantive and reflect clarity or grammar changes, follows:

N.J.A.C. 13:2-19.1 provides that a disciplinary proceeding will not be barred or a pending proceeding terminated because of the expiration, transfer, surrender, renewal or extension of the license or permit.

N.J.A.C. 13:2-19.2 recognizes that a disciplinary proceeding can be instituted for reasons which occurred: (a) during a prior license term; (b) prior to a transfer or extension of a license; or (c) during a period when the license was held by a predecessor in interest to the current licensee.

N.J.A.C. 13:2-19.3 indicates that pending disciplinary proceedings shall continue to completion, and a suspension, cancellation or revocation will be effective without any further proceedings even if the license was transferred, extended or renewed during the disciplinary proceedings.

N.J.A.C. 13:2-19.4 provides that a licensed premises for a license subject to a pending disciplinary proceeding can be declared ineligible for licensure even though the license or permit subject to the disciplinary proceedings expires, is surrendered, or another license was issued to another person for those same premises.

N.J.A.C. 13:2-19.5 indicates that when a license is suspended, that suspension shall continue in full force and effect notwithstanding any transfer of that license during the period of suspension.

N.J.A.C. 13:2-19.6 identifies the jurisdiction and hearing concepts applicable to administrative hearings under the applicable statutory and regulatory provisions governing same.

In sum, the provisions of N.J.A.C. 13:2-19.1 through 19.5 basically recognize that administrative proceedings are addressed to the license itself and are not impacted by changes in the individuals who may thereafter acquire the license through transfers, extensions or renewals of that license.

Subchapter 20: The commercial transportation of alcoholic beverages into, out of or within the State of New Jersey is prohibited unless the vehicle transporting the alcoholic beverages is properly licensed by the Division of Alcoholic Beverage Control, pursuant to N.J.S.A. 33:1-2 and 33:1-28. Most of the State issued licenses that authorize the production or wholesaling of alcoholic beverages in this State carry the privilege of transporting these products subject to rules and regulations. A similar privilege exists for retail consumption and retail distribution licensees. Additionally, a specific license to transport alcoholic beverages and maintain a warehouse is authorized by N.J.S.A. 33:1-13.

The provisions of subchapter 20 that are proposed herein for readoption without change identify the basic application procedures, privileges and restrictions concerning the utilization of vehicles by holders of New Jersey licenses to transport alcoholic beverages within the State and vehicle insignia requirements.

A general discussion of the provisions of subchapter 20 follows:

N.J.A.C. 13:2-20.1 states the requirement that the transportation of alcoholic beverages into, out of, or within the State of New Jersey must be done in a vehicle that is leased, owned or contracted for by the New Jersey licensee and that has been issued a transit insignia or Special Transportation Permit sticker.

N.J.A.C. 13:2-20.2 sets forth the invoice requirements that apply to the delivery of alcoholic beverages to retail licensee.

N.J.A.C. 13:2-20.3 identifies document requirements for State licensees that can lawfully sell at retail and deliver to customers, including winery licensees that can utilize a parcel delivery service for delivery to consumers.

N.J.A.C. 13:2-20.4 sets forth the documents and information required to accompany delivery of alcoholic beverages into, out of, or within the State of New Jersey.

N.J.A.C. 13:2-20.5 identifies the various eligibility standards for the issuance of insignia that will evidence the authorization to transport alcoholic beverages.

N.J.A.C. 13:2-20.6 identifies the application process and fees required for obtaining a regular or special transit insignia, or a transportation license insignia.

N.J.A.C. 13:2-20.7 sets forth the term, renewal requirements and expiration date for the issuance of these various insignia.

N.J.A.C. 13:2-20.8 deals with the affixing of a transit insignia and transportation license insignia to commercial-size vehicles and special transit insignia to passenger-type vehicles.

N.J.A.C. 13:2-20.9 identifies various restrictions that are applicable to vehicles that bear insignia.

N.J.A.C. 13:2-20.10 indicates that by accepting a regular or special transit insignia, the licensee consents to the inspection and search of the vehicle without warrant by persons authorized to enforce the alcoholic beverage law.

The last amendments to this subchapter occurred on July 17, 1989 at which time the entire subchapter was reviewed and significant amendments were made (see 21 N.J.R. 1300(a) and 21 N.J.R. 2045(a)).

Subchapter 21: The commercial transportation of alcoholic beverages into, through or out of the State of New Jersey, as well as the transportation into or within the State of New Jersey for personal consumption, is circumscribed by law and regulation. With commercial transportation, the legislative and regulatory scheme sets forth available licenses or permits to identify and authorize the entity or person transporting alcoholic beverages into or out of New Jersey. In subchapter 20, various transportation insignias were identified that are available to persons who basically possess some other annual State-issued license to either transport, sell or manufacture alcoholic beverages. In this subchapter, several permits are identified that authorize transportation of alcoholic beverages in a limited manner, either as to time or scope. These permits are basically acquired by persons not regularly involved in the alcoholic beverage business.

Transportation of alcoholic beverages in a personal vehicle for an individual's personal use is also regulated by law. Certain quantities can be transported without permit. However, beyond statutorily established limits, the transporter, even for personal usage, must possess some type of license or permit to authorize transportation.

The provisions of this subchapter proposed for readoption without change are more specifically noted as follows:

N.J.A.C. 13:2-21.1 restates the general principle that transportation into or out of New Jersey is prohibited unless an appropriate license or permit has been issued under this subchapter or subchapter 20.

N.J.A.C. 13:2-21.2 identifies the limits set forth in N.J.S.A. 33:1-2 for the allowable transportation of alcoholic beverages for personal use in an individual's own vehicle without a permit, plus the procedure to acquire a permit to transport in excess of those limits.

N.J.A.C. 13:2-21.3 deals with transportation through the State and identifies the invoice requirements needed to verify the interstate transportation if required.

N.J.A.C. 13:2-21.4 identifies the Limited Transportation Permit issued by the Director to authorize non-intrastate commercial transportation. The Section addresses the application process, permit requirements, permit term, and cost for transportation license insignia.

N.J.A.C. 13:2-21.5 sets forth the procedure, fees and requirement for the issuance of Emergency Trip Permits by either the Division or its authorized designated agents. These permits authorize a single transportation either into or out of the State and are generally acquired by those who do not regularly transport alcoholic beverages.

N.J.A.C. 13:2-21.6 restates the basic prohibition against unlicensed transportation and the potential for seizure of vehicles in accordance with N.J.S.A. 33:1-66.

N.J.A.C. 13:2-21.7 contains the provisions regarding a permit holder's consent to search vehicles utilized in furtherance of the permit.

The subchapter as currently structured reflects significant amendments made in a complete review and revision of this subchapter that occurred in 1989 and resulted in the adoption of amendments on July 17, 1989 (see 21 N.J.R. 1304(a) and 21 N.J.R. 2047(a)).

Subchapter 22: The provisions of subchapter 22 concern licensure for the transportation of alcoholic beverages by a railroad carrier and the control and operation of the vehicles by the licensee and the issuance of certain special permits that could be issued. These rules were originally promulgated on November 13, 1935 by D. Frederick Burnett, the first Commissioner of the Alcoholic Beverage Control Commission, and have not been amended or changed since its initial promulgation. On July 17, 1989, subchapter 21, Transportation of Alcoholic Beverages Into, Through or Out of the State, was amended (see 21 N.J.R. 1304(a), 21 N.J.R. 2047(a)). Upon review of subchapter 21, the Division finds that those requirements clearly encompass those set forth in subchapter 22. Thus, since subchapter 21 regarding transportation of alcoholic beverages by all carriers has been reviewed and amended, subchapter 22 should be repealed since it is duplicative and its requirements, purpose and intent are adequately addressed by subchapter 21. Therefore, the Division proposes not to readopt this particular subchapter, but rather, affirmatively repeal it.

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Subchapter 23: When the New Jersey Alcoholic Beverage Law was enacted on December 6, 1933, the Legislature indicated that it was the duty of the Commissioner (now Director) to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger (see N.J.S.A. 33:1-3). More recently, in 1985, the Legislature rendered its latest articulation of the public policy of this State regarding alcoholic beverages in 10 general statements. Briefly stated, the Legislature found it was the policy of New Jersey, regarding alcoholic beverages, to: (1) strictly regulate same; (2) foster moderation and responsibility in the use and consumption of; (3) protect the collection of State taxes; (4) protect the interests of consumers against fraud and misleading sales practices; (5) protect the industry against the infiltration of known criminals or persons with criminal records or associations; (6) provide a framework which recognizes and fosters the beneficial aspects of competition; (7) maintain trade stability; (8) maintain a three-tier (manufacturer, wholesaler and retailer) distribution system; (9) maintain primary municipal control over retailing; and (10) prohibit discrimination in sales to retail licensees (see N.J.S.A. 33:1-3.1).

In another general grant of objectives which should guide the Director, the Legislature indicated that the Director should do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration of this chapter (see N.J.S.A. 33:1-23). Specifically, the Director was authorized to make such general rules and regulations as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. Rules and regulations which could cover numerous subjects were provided by N.J.S.A. 33:1-39 and included but not limited to were: promulgation of forms; licensing of vehicles; inspections, investigations, searches, seizures, findings and such other activities as may become necessary from time to time; hours of sale; sales to defectives and habitual drunkards; out-of-door sales; limitation of sales and the quantity of sales to consumers; racketeering; prostitution; solicitation; disorderly houses; criminals; disreputable characters; gambling, slot machine and gambling devices; control of signs and other displays on licensed premises; identification of licensees and their employees; employment of minors; transportation, standards of cleanliness, orderliness and decency; standards of purity and labeling; records to be kept by licensees and availability thereof; practices unduly designed to increase consumption of alcoholic beverages; gifts of equipment, products and things of value; and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of the law.

N.J.A.C. 13:2-23 represents an articulation of regulations enacted to govern the conduct of the licensed business by a licensee or permittee and the activities which occur upon licensed premises. The current subchapter consists of 32 sections delineating responsibilities of licensees or expressing prohibited activities on licensed premises.

The first articulation of a regulation governing the conduct of licensed premises occurred on February 22, 1934, and changing practices, attitudes and laws have resulted in continued evaluation, modification and expansion of this subchapter. The last major review of the entire subchapter occurred on February 14, 1984 (see 16 N.J.R. 29(a) and 16 N.J.R. 428(a)). At that time, all of the provisions of this subchapter were reviewed by the Division because an amendment made to N.J.A.C. 13:2-23.31 involving employment by licensees of law enforcement officers had subjected this subchapter to the provisions of Executive Order of the Governor No. 66(1978) and it required a readoption to continue in force and effect. At that time, it was determined that no additional changes were required.

In considering the various sections within this subchapter, it can be generally indicated that the rules fall within one of three generic categories. The specific section will either recite an applicable statutory provision contained in the Alcoholic Beverage Law which governs a licensee or the conduct of his licensed business; articulate a practice or policy directly derivative of a statutory enactment; or embody a public policy or practice established, evaluated and/or reinforced by agency review or judicial determination.

The following sections in subchapter 23 represent, in essence, the reiteration of statutory provisions which shall be readopted with amendments (with the general description of proposed amendments changes noted in parentheses immediately following), to reflect current law governing the conduct of licensees:

N.J.A.C. 13:2-23.1 prohibits a licensee from serving persons under the legal age or persons who are actually or apparently intoxicated. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.2 prohibits, during elections, the sales of alcoholic beverages or consumption on a licensed premises, if required by municipal ordinance. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.8 concerns changing hours of sale from Eastern Standard Time to Daylight Savings Time. An amendment is proposed to provide that the change occur on the first Sunday in April, consistent with Federal law.

N.J.A.C. 13:2-23.9 prohibits the manufacture, transport and sale of adulterated alcoholic beverages. An amendment is proposed to change the section heading and to expressly allow a licensee to temporarily retain an adulterated beverage for purposes of returning same to a manufacturer or wholesaler.

N.J.A.C. 13:2-23.10 prohibits receipt of alcoholic beverages transported in violation of law. An amendment is proposed to the section heading, and N.J.A.C. 13:2-20 and 22 are added as applicable rules.

N.J.A.C. 13:2-23.12 prohibits receipt of alcoholic beverages from unauthorized sources. For clarity, the rule is proposed for division into two subsections.

N.J.A.C. 13:2-23.17 prohibits possession of chilled malt alcoholic beverages by holders of limited retail distribution licenses. An amendment to the section heading is proposed along with a modification of the ability to possess chilled draught malt alcoholic beverages in containers of at least 7.75 gallons to be consistent with that accorded State Beverage Distributor Licensees pursuant to a statutory amendment to N.J.S.A. 33:1-11.

N.J.A.C. 13:2-23.21 prohibits the storage of any alcoholic beverage except on licensed premises, in public warehouses or pursuant to Special Permit. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.23 prohibits the possession of any alcoholic beverage container which does not bear a label descriptive of contents or indicia of tax payment. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.25 prohibits a retail licensee from having any interest in the manufacturing or wholesaling of alcoholic beverages. An amendment to the section heading is proposed.

N.J.A.C. 13:2-23.29 authorizes the warrantless search of licensed premises by Division agents and other designated personnel. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.30 requires all licensees to produce documents for investigations and prohibiting the hindering of any such investigation. The section heading is proposed for amendment.

Those rules which can be predominantly categorized as necessarily derivative of express statutory provisions include the following:

N.J.A.C. 13:2-23.4, prohibiting the house-to-house solicitation of alcoholic beverages.

N.J.A.C. 13:2-23.5, prohibiting narcotics activity on licensed premises. The section heading is proposed for amendment, and prohibited conduct is restated for clarity purposes and to reflect current criminal law definitions of prohibited substances.

N.J.A.C. 13:2-23.7, prohibiting illegal lottery or gambling on licensed premises. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.13, requiring display of license certificate and maintenance on premises of employee's list and license application forms. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.15, incorporating the Federal laws and regulations concerning contents of fill of an alcoholic beverage container. An amendment to the section heading is proposed.

N.J.A.C. 13:2-23.22, requiring tap markers which indicate the brand of alcoholic beverage being drawn from a keg or automatic dispensing system. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.24, prohibiting a licensee from placing an order for an alcoholic beverage with any individual not properly licensed to solicit an order. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.26, requiring a licensee to submit to fingerprinting for criminal background searches by the Director or other municipal issuing authority. An amendment is proposed to the section heading.

N.J.A.C. 13:2-23.27, enumerating various alcoholic beverage and advertising activities prohibited during the term of a license suspension. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.32, requiring the maintenance of true books of account of receipt and expenditures in connection with the operation of the licensed business. The modification of language to clarify the period for which records must be kept is proposed.

Each of the aforesaid rules has as its predominant origin a specific statutory privilege or proscription which requires a licensee to either take

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certain actions, avoid certain conduct or maintain required records to achieve the articulated provision.

The third category of rules represents those prohibitions or requirements that have as their dominant source the furtherance of various objectives articulated in the statute, such as the promotion of moderate consumption, the restriction of practices unduly designed to promote the consumption of alcoholic beverages, the prohibition of indecent activities, and the articulation of a licensee's responsibility for its employees' conduct. A summary of these sections follows:

N.J.A.C. 13:2-23.3 requires licensed premises to be closed during riot or conduct of an investigation of a criminal act.

N.J.A.C. 13:2-23.6 prohibits lewd and immoral activity, brawls and nuisances on licensed premises. An amendment to the section heading is proposed.

N.J.A.C. 13:2-23.11 prohibits open containers on distribution licensed premises. An amendment to the section heading is proposed, along with clarification that such license may temporarily retain alleged defective open containers for purposes of returning same to the manufacturer or wholesaler.

N.J.A.C. 13:2-23.14 prohibits possession on licensed premises of indecent and obscene materials. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.16 prohibits various promotional practices unduly designed to promote consumption of alcoholic beverages.

N.J.A.C. 13:2-23.18 prohibits licensees or their employees from soliciting alcoholic beverages from patrons.

N.J.A.C. 13:2-23.19 prohibits a licensee from substituting a brand other than ordered by a patron. The section title is proposed for amendment, and additional clarification that such prohibition does not apply when patron consents to a substitute is added.

N.J.A.C. 13:2-23.20 prohibits a licensee or its employees from being intoxicated while working on licensed premises. An amendment to the section heading is proposed.

N.J.A.C. 13:2-23.28 makes a licensee responsible for the acts, conduct and deeds of its employees which occur on the licensed premises. The section heading is proposed for amendment.

N.J.A.C. 13:2-23.31 prohibits a law enforcement officer from having an interest in a liquor license and regulating such officer's employment by a licensee. A section heading change is proposed, along with relaxation of restriction to comply with enacted legislation which allowed police officers to serve alcohol as long as they wear nothing to identify themselves as police officers nor worked more than 24 hours in a week. Additional modification is proposed to clarify, as provided by legislation, that police officers could be members of club licensed organization, as long as they were not involved in the club's business regarding alcoholic beverages.

The common thread through most of these rules is an awareness that certain practices are not consistent with proper alcoholic beverage control or the objectives the law has articulated to be one of the functions of the Director. Excess stimulation of alcoholic beverage sales and the consequences of alcoholic beverage consumption in more than moderate amounts is regulated by several of the above sections. The prohibition against lewd and immoral conduct and indecent and obscene materials reflects the long-standing judicial recognition that such activity in conjunction with alcoholic beverage consumption can give rise to unacceptable social behavior. The prohibition against substituting a drink other than ordered by a patron represents a consumer protection objective. The rule requiring premises to be closed during an officially declared riot or in an investigation of a crime is a necessary restriction to insure the general safety, health and welfare of citizens in those specific situations. The proposition that the licensee is responsible for the acts of its employees is a concept similar to existing civil law, but is expanded and broadened in scope for purposes of the Alcoholic Beverage Law and it has been consistently sustained and supported in judicial decisions as necessary and proper to achieve appropriate control.

These rules represent notification to the licensees of the State of New Jersey as to those activities required of them in conducting their licensed businesses and delineating specific types of activity that are inconsistent with the statutes or policy of the State of New Jersey concerning the manufacture, distribution and sale of alcoholic beverages.

Subchapter 24: Subchapter 24 was readopted without change pursuant to Executive Order No. 66(1978) on May 7, 1984 (see 16 N.J.R. 413(a) and 16 N.J.R. 1095(a)). The regulatory provisions in the subchapter represent the basic components of significant changes in the regulatory policy which commenced with proposals in March of 1979. These regulatory changes have been commonly designated as deregulation and represent a shift from regulations which established the minimum consumer resale price of alcoholic beverages by individuals other than retailers and which strictly limited permissible trade and marketing practices to regulations which are structured to basically establish wholesale and retail prices through the interplay of standard economic forces and which broaden allowable trade and marketing practices in the industry. Since the date of the last readoption of this subchapter, the United States Supreme Court, in a matter entitled *Brown Forman Distillers Corporation v. New York State Liquor Authority,* 476 *U.S.* 573 (1986) held that a New York regulation requiring a supplier to "affirm" that its sale to New York wholesalers was at a price no higher than the sales price anywhere else in the continental United States was an unconstitutional burden upon interstate commerce. N.J.A.C. 13:2-24.5(a)3 of this subchapter incorporates this concept of "affirmation" for sales to New Jersey wholesalers and the then New Jersey Attorney General rendered an opinion that New Jersey's affirmation regulation is unenforceable for the reasons cited in the U.S. Supreme Court decision as an impermissible burden on interstate commerce. Therefore, since October 20, 1986, this particular regulation has not been enforced. As noted in ABC Bulletin 2447, Item No. 1, the provision would be deleted as soon as practical. Therefore, the only substantive change proposed in this subchapter upon readoption is the deletion of the affirmation provision in N.J.A.C. 13:2-24.5(a)3.

The rules presently proposed for readoption without change insure a continuity of control of licensees in the sale and marketing structures established in the subchapter. It is anticipated that further review of the subchapter will occur because these regulations represent a substantial change in practices governing the industry for over forty years. A brief explanation of the specific sections in subchapter 24 follows.

N.J.A.C. 13:2-24.1 requires manufacturers, suppliers and wholesalers to offer the same prices for products and offer the same credit terms to all its purchaser competitors. Exceptions or differentials are permitted in specific stated circumstances. Predatory Statewide or regional pricing is prohibited. This section is a derivative of the anti-discrimination provisions in N.J.S.A. 33:1-89 thru 93 and State and Federal anti-trust laws.

N.J.A.C. 13:2-24.2 prohibits a manufacturer, supplier or wholesaler from discriminating in providing to purchaser competitors any services, facilities or equipment, or in conditioning any offer of services, facilities or equipment upon the further future purchase of any alcoholic beverage. Also prohibited is the granting of any commission, fee or compensation, or any allowance or discount in lieu thereof except for the reasonable value of services rendered.

N.J.A.C. 13:2-24.3 prohibits activities which would be combinations of parties to conspire in restraint of trade or commerce in alcoholic beverage activity.

N.J.A.C. 13:2-24.4 sets forth a comprehensive regulation of wholesale practices in offering credit to retail licensees, procedures to follow and consequences of retailer default. This rule achieves numerous specific objectives which in the broadest sense can be categorized as essential for industry stability and protection of the alcoholic beverage tax base.

N.J.A.C. 13:2-24.5 establishes the requirement that anyone selling alcoholic beverages to New Jersey wholesalers must maintain for three years a Historic Price Listing and Marketing Manual noting prices charged to wholesalers and marketing services, facilities, equipment, advertisements and promotions offered to wholesalers. Suppliers must also notify wholesalers one month in advance of the prices to be charged for the next preceding month so sufficient time is available for the wholesalers to prepare the necessary price filings. N.J.A.C. 13:2-24.5(a)3 reflects what is commonly designated as New Jersey's affirmation provision. As previously set forth above, it was the determination of the Attorney General upon reviewing the Supreme Court's decision in *Brown Forman Distillers Corporation v. New York State Liquor Authority, supra,* that the New Jersey affirmation regulation was an impermissable burden on interstate commerce and should not be enforced and ultimately deleted.

N.J.A.C. 13:2-24.6 requires licensees who intend to sell to New Jersey retail licensees to maintain a Historical Price List and Marketing Manual for three years. In addition, the mechanism for and notice and recordkeeping requirements of the wholesalers Current Price Listing is set forth. These provisions provide mentors and sources to check any discriminatory prices in marketing and pricing between wholesalers and retail licensees.

N.J.A.C. 13:2-24.7 indicates in general terms the ability of manufacturers, suppliers and wholesalers to provide advertising or promotional material to retail licensees. Since deregulation, suppliers have been per-

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mitted to furnish any type or dollar value in advertising or promotional material to a retailer provided it does not violate other provisions in the subchapter. The section provides and permits the furnishing of sample alcoholic beverages to a retailer after a special permit is obtained from the Division. The permit requires verifications that all taxes have been paid. The section also permits the donation of alcoholic beverages to events conducted by and for qualified alcoholic beverage industry trade organizations.

N.J.A.C. 13:2-24.8 sets forth the prohibition, applicable to licensees selling at wholesale or retail, against selling any alcoholic beverages below cost. Cost is defined and the method of applying the definition to after acquired identical products is stated.

N.J.A.C. 13:2-24.9 prohibits in its basic form practices which require or permit a combination purchase of different products at one time, or condition the purchase of one product only if another different product is purchased. Retail licensees can combine different products into one package (generally holiday and gift baskets) and sell them at one price provided a purchaser can separately purchase each product at the retail premises and the combined price is not less than the sum of each unit price. Wholesale licensees cannot sell combination packages except as follows. The section exempts from these requirements the sale of malt alcoholic beverages to retailers and further defines combination sales so as not to include mixed sized sales (sale of identical products except for size). Further excepted from the combination sales prohibition is the sale of distillers and vintners packaged holiday and gift merchandise prepackaged as a unit. Such holiday and gift packs are specifically authorized in N.J.S.A. 33:1-12.

N.J.A.C. 13:2-24.10 sets forth certain concepts, references, or practices which cannot be included in any advertising material or advertisement by a manufacturer, supplier, wholesaler, retailer or registrant. This section further prescribes requirements when alcoholic beverages are priced in an advertisement placed collectively by non-identically owned licensees.

N.J.A.C. 13:2-24.11 authorizes, under stated requirements and limitations, the furnishing by manufacturers and suppliers of cash rebates to New Jersey resident-purchasers of an alcoholic beverage product.

N.J.A.C. 13:2-24.12 establishes a registration procedure for persons who provide alcoholic beverage display materials or advertising promotions services to or for licensees.

Subchapter 25: The provisions contained in subchapter 25 are basic concepts concerning warehousing of inventory and registered distribution and sale of alcoholic beverages that pre-existed the deregulation amendment to this subchapter on April 4, 1974, effective May 1, 1979 (see 11 N.J.R. 143(a) and 11 N.J.R. 259(c)).

N.J.A.C. 13:2-25.1 requires a plenary or wine wholesale licensee to warehouse its product in a New Jersey warehouse for no less than 24 continuous hours before delivery to a retail licensee. No change is proposed for this section.

N.J.A.C. 13:2-25.2 basically sets forth the requirement that in order to sell a product to a New Jersey retail licensee or a New Jersey wholesale licensee for resale in New Jersey, the selling wholesale class licensee must either be registered as an authorized distributor by the brand owner or its authorized agent or acquire the product from a New Jersey wholesale licensee so authorized and registered. The amendment proposed for this section will utilize the statutory language concerning the concept of registered distribution reflected in N.J.S.A. 33:1-2. Also, inconsistent provisions that formerly allowed for possible exception to the registered distribution concept are proposed for deletion.

The proposed amendments to N.J.A.C. 13:2-25.3 will clarify the recitation of the privileges of a State beverage distributor's license under N.J.S.A. 33:1-11 and make it clear that such licensee cannot sell to another State beverage distributor's licensee. Additionally, the registered distribution provisions of law will be more clearly reflected in the rule.

The last regulatory activity concerning this subchapter involved its readoption on May 21, 1984 (see 16 N.J.R. 496(a) and 16 N.J.R. 1278(c)).

Subchapter 26: Subchapter 26 permits co-op purchases and transportation of alcoholic beverages by retail licensees and sets forth 11 standards, limits or obligations referable to that activity. The areas covered by the subchapter include the number of licenses that can form a cooperative, the assurance of flexibility in joining other cooperatives or leaving cooperatives, the prohibition against non-licensee management of a cooperative and purchase and transportation of alcoholic beverages by an unlicensed person or entity, the conditions required for credit sales and invoicing, and the responsibility of licensees for improper activity in cooperative purchases or transportation.

The proposed amendment to N.J.A.C. 13:2-26.1(a)5 is for grammatical purposes clarifying that any licensee may withdraw from any cooperative agreement by giving 30 days written notice and no penalty may be charged for such withdrawal. N.J.A.C. 13:2-26.1(a)7 will be amended to correct a regulatory citation regarding invoicing and to clarify a statutory reference.

Subchapter 26 was readopted pursuant to Executive Order No. 66(1978) on March 19, 1984 (see 16 N.J.R. 497(a) and 16 N.J.R. 1297(a)).

Subchapter 27: N.J.A.C. 13:2-27.1 incorporates Federal regulations relating to the label and standards of fill concerning all types of alcoholic beverages. N.J.A.C. 13:2-27.2 prohibits the commerce of alcohol in New Jersey of beverages packaged with another State's deposit markings for resale to New Jersey retailers or consumers. This subchapter was last amended May 21, 1984 when N.J.A.C. 13:2-27.2 was added to prohibit the sale of deposit marked containers from other States in New Jersey (see 16 N.J.R. 497(b), and 16 N.J.R. 1279(b)).

Subchapter 28: N.J.A.C. 13:2-28 delineates the circumstances under which a retail licensee can transfer wine for consumption on the licensed premises from originally taxed containers to a decanter or other interim holding receptacle. This practice would otherwise violate the provisions of N.J.S.A. 33:1-2 which makes it unlawful to bottle an alcoholic beverage except pursuant to the terms of a license and N.J.S.A. 33:1-88 which imposes certain labeling requirements for any alcoholic beverage in a container.

N.J.A.C. 13:2-28.1 requires that a label be affixed to the last barrel, cast, keg or other container from which the contents were drawn to fill the open container served to the patron. N.J.A.C. 13:2-28.2 prescribes the form of the label in accordance with N.J.S.A. 33:1-88. Amendments are proposed to these sections to delete references to information that must be included on the label that the container is tax paid. This particular requirement predates changes in the Federal and State tax law that eliminated strip tax stamps on bottles and shifted the responsibility for collection of the alcoholic beverage sales and excise tax from the retailer to the wholesaler. Therefore, the proposed amendments would remove the references to taxes. Additionally, an amendment is proposed to N.J.A.C. 13:2-28.1 to clarify that the label is required to be affixed to the interim container used to fill the glass or other open container that is served to the patron. The original glass or other type container ultimately served to the patron need not be labeled.

N.J.A.C. 13:2-28 is a recodification and adoption of prior Division rules. The subchapter has not been amended subsequent to the issuance of Executive Order No. 66(1978).

Subchapter 29: N.J.A.C. 13:2-29.1 identifies those records which the Division has categorized as public records and includes all license or permit applications, all price and product information filings and all pleadings, transcripts and orders generated in the quasi-judicial activities of the Director.

N.J.A.C. 13:2-29.2 specifies those documents and records which the Division considers confidential and includes initial reports or complaints alleging violations, investigative reports, documents or questionnaires, intergovernmental reports and solicitors statements of compensation required to be filed under N.J.A.C. 13:2-37.2.

The provisions of N.J.A.C. 13:2-29.3 reiterate the right of every citizen of this State to inspect public records at the Division offices during normal business hours and obtain copies of public records upon payment of stated fees.

N.J.A.C. 13:2-29.4 allows, upon prior approval of the Director, the storage of records at locations other than the licensed premises and in alternative modes (usually computerized records) provided the information is readily retrievable and accurate, both terms being defined in the rule.

The rules were first adopted on April 4, 1979, effective May 1, 1979 (see 11 N.J.R. 143(a) and 11 N.J.R. 259(c)) and have not been subsequently amended. They were readopted on April 26, 1984 (see 16 N.J.R. 498(a), 16 N.J.R. 1279(c)). Certain references in N.J.A.C. 13:2-29.1 to "Hearers Reports" will be modified to reflect the elimination of Division appointed Hearing Officers with the establishment of the Administrative Law Judges and the Office of Administrative Law. The Division proposes to substitute the term "Initial Decisions," which are the documents produced by Administrative Law Judges in the adjudicative process. N.J.A.C. 13:2-29.2 has been amended to reflect that tax information, submitted to the Division for the limited purposes of allowing the Division to compute the monetary penalty it would accept in lieu of a suspension of license, will be confidential information and shall remain so. N.J.A.C. 13:2-29.4 has been amended to make clear that certain records must be

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available for inspection immediately upon demand, consistent with Division precedent case holdings. Minor changes to section headings have also been proposed to clarify the substance of requirements articulated therein.

Subchapter 30: Subchapter 30 establishes the procedure for registration of stills and distilling apparatus. These rules, promulgated pursuant to N.J.S.A. 33:1-2.1, consist of six sections which define what items are to be registered, the form to be used in the registration, the nature and contents of the certificate of registration, the necessity to seek permission from the Director before removing or selling the still or distilling apparatus and the exemption from this subchapter's rules of stills and distilling apparatus when connected to a licensed distillery or rectifier and blender. All stills not registered in conformity to this subchapter are subject to seizure. N.J.A.C. 13:2-30.2 will be amended to note that the Director will prescribe certain forms for registration of stills and distilling apparatus. N.J.A.C. 13:2-30.3 will be amended for purposes of clarity to indicate that the registration certificate must be returned to the Director for endorsement. This subchapter is the initial regulation promulgated by Commissioner D. Frederick Burnett and became effective on January 15, 1935.

Subchapter 31: The basic tenet of the New Jersey Alcoholic Beverage Control Act is that the manufacture, sale, transportation, warehousing, bottling and distribution of alcoholic beverages is illegal unless it is done pursuant to and within the terms of a license or permit issued in accordance with the law (see N.J.S.A. 33:1-2). Actions involving violations of this principle result in statutory classifications designated as "unlawful alcoholic beverage activity", "illicit beverage" and "unlawful property", N.J.S.A. 33:1-1(x), (i) and (y) respectively.

One penalty established by law for violations of N.J.S.A. 33:1-2 is the criminal one set forth in N.J.S.A. 33:1-50, a fine of not less than $100.00 or more than $1,000 and/or imprisonment for not less than 30 days and not more than three years. The other sanction provided for by law authorizes the seizure and forfeiture of "illicit beverages", any vehicle containing illicit beverages and all "unlawful property" utilized in conjunction with the "unlawful alcoholic beverage activity". It is the seizure provisions contained in N.J.S.A. 33:1-66 which form the basic subject matter of subchapter 31.

Subchapter 31 was first promulgated March 24, 1936, Bulletin 111, Item VIII and contained the essential elements of N.J.A.C. 13:2-31.2 and 31.3. The provisions in N.J.A.C. 13:2-31.1 and 31.4, involving hearing procedures, were amended to reflect the applicable provisions of the Administrative Procedure Act at the time of this Subchapter's readoption on January 7, 1985 (see 16 N.J.R. 2959(a) and 17 N.J.R. 92(b)).

A discussion of the specific sections proposed for readoption and any amendment proposed follows:

N.J.A.C. 13:2-31.1 reflects and incorporates, by reference, the provisions of the Administrative Procedure Act and the rules promulgated thereunder referable to contested administrative cases. Changes to provide for the full title of the Director, delete unnecessary codification, to convert a rule citation form are proposed, and to delete the last sentence, unnecessary in light of the comprehensive Administrative Procedure Act, are proposed.

N.J.A.C. 13:2-31.2 identifies the three methods of obtaining return of seized property prior to final hearing. They are the posting of a cash bond equal to the Director's appraised retail value of such property; the posting of a surety bond satisfactory to the Director in a sum double the appraised retail value of the property; or the institution of a replevin action within thirty days of the seizure against the Director. The section also notes that a claimant seeking return of a posted bond could have that matter adjudicated either in a judicial proceeding before a court of competent jurisdiction or in an administrative hearing before the Director, Division of Alcoholic Beverage Control. The amendments proposed in the readoption of N.J.A.C. 13:2-31.2 are grammatical.

N.J.A.C. 13:2-31.3 sets forth the statutory provisions of N.J.S.A. 33:1-66 establishing the standards applicable to determine whether claims for return of the property seized, or the bonds posted in lieu of seizure, should be recognized or denied. Essentially, if a person whose property has been seized establishes that he acted in good faith and unknowingly violated the law, or if the claimant is another person who had a valid lien or interest on the property and acted in good faith, or if the claimant is a good faith common carrier whose vehicle was seized, the Director may return the property or posted bond in lieu of seizure upon payment of reasonable costs of seizure and storage, if applicable. The amendment proposed in the readoption of N.J.A.C. 13:2-31.3 is basically grammatical, except for the change in subsection (c) which eliminates the limitations on what claimants to seized or forfeited property can use to establish a claim.

N.J.A.C. 13:2-31.4 is proposed for readoption with only a codification and citation form change and contains the basic recognition that contested case seizure hearings will be conducted in accordance with the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1).

Subchapter 32: This subchapter establishes the procedure to be utilized by the Director in the sale of property that was seized and, after a hearing, forfeited to the State. N.J.S.A. 33:1-66 empowers the Director to either sell this property, destroy it, or retain it for the use of hospitals or State, county or municipal institutions.

No changes are proposed in the readoption of this subchapter. The provisions contained in the nine sections recite basic principles applicable to a sale by a public body. N.J.A.C. 13:2-32.1 requires publication. N.J.A.C. 13:2-32.2 allows adjournments of sales. N.J.A.C. 13:2-32.3 discusses bulk and single lot bidding. N.J.A.C. 13:2-32.4 through 32.7 identify the bid requirements, and the bid rejection, confirmation and forfeiture provisions applicable thereto. N.J.A.C. 13:2-32.8 notes the nature of the legal title conveyed in the bill of sale. N.J.A.C. 13:2-32.9 addresses unconfirmed sales.

Subchapter 33: Subchapter 33 consists of two sections that provide for the filing of specific information with the Division of Alcoholic Beverage Control as to every alcoholic beverage product sold or offered for sale at wholesale or retail in New Jersey. These brand registration filings must include the person or entity who either owns the product or is authorized by the owner to register the product in New Jersey. It also identifies those New Jersey licensed wholesalers who are designated to offer these products for resale in New Jersey. A more specific discussion of the subchapter provisions follows.

N.J.A.C. 13:2-33.1(a) essentially restates the language of N.J.S.A. 33:1-2(c) requiring brand registration. Minor amendments are proposed for purposes of clarity which do not change the substance of the provision. After setting forth the requirement of brand registration, N.J.A.C. 13:2-33.1(a) lists the information that is required to be filed with the Division in a Brand Registration statement.

N.J.A.C. 13:2-33.1(b) and (c) reflect that part of N.J.S.A. 33:1-2(c) which provides that the brand registration schedule is to be filed by the brand owner or his authorized agent. Additionally, whenever any change occurs for information contained in the brand registration schedule, the filer must file an amended brand registration schedule within 10 days after the occurrence of such change.

N.J.A.C. 13:2-33.2 is proposed for readoption without change and sets forth the filing fees for an original brand registration schedule at $10.00 and for an amendment to a previously filed brand registration schedule at $7.00. Additionally, all filings are required to be made on forms prescribed by the Director.

N.J.A.C. 13:2-33 was readopted with substantial changes on April 25, 1984 (see 16 N.J.R. 499 and 16 N.J.R. 1279(d)). After an amendment to N.J.S.A. 33:1-2 (P.L. 1984, c. 233) effective on January 27, 1985, N.J.A.C. 13:2-33 was again amended and readopted with changes on June 3, 1985 (see 17 N.J.R. 794(a), 17 N.J.R. 1423(a)).

Subchapter 34: Subchapter 34 was originally promulgated pursuant to the legislative enactment entitled Alcohol Permits cited as N.J.S.A. 33:1-85, 86 and 87. The initial legislation was enacted on July 11, 1939 (P.L. 1939, c. 173) at the urging and behest of then Commissioner D. Frederick Burnett. The objective of the legislation was to eliminate illicit activity in the home manufacturing, blending or rectifying of alcoholic beverages by prohibiting all sale of "alcohol" at retail except pursuant to a special permit issued by the Division of Alcoholic Beverage Control (see ABC Bulletin No. 345, Item 9). The original regulations were promulgated on July 28, 1939 (see ABC Bulletin 338, Item 1). The current subchapter consists of three sections.

The Division finds that no alcohol permit has been issued in the past 10 years and notes that there has been no activity regarding the sale of alcohol as envisioned by the subchapter. The purpose and intent of the rules was to remove the last vestiges of illegal alcohol manufacturing which occurred during Prohibition where persons illegally sought to obtain alcohol through registered pharmacies. This particular goal has been achieved and under the current State and Federal laws, sufficient legal and economic requirements have been established to prevent this practice. The Division further notes that with the proposed repeal of the subchapter, it will recommend that the specific enabling statute be repealed.

Subchapter 35: The holder of a plenary or seasonal retail consumption license has the basic privilege to sell consumers alcoholic beverages in

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a glass or other open receptacle for consumption on the licensed premises (sale by the drink) and to sell consumers alcoholic beverages in their original sealed containers for consumption off the licensed premises (package goods sale) (see N.J.S.A. 33:1-12). In 1948, the privilege to sell package goods was further defined by N.J.S.A. 33:1-12.23. That law, with exceptions not relevant to the proposed regulatory amendments herein, requires a retail consumption licensee to confine the sale and display alcoholic beverages in original containers for off-premises consumption to the public barroom only. The public barroom is defined as ". . . a room containing a public bar, counter, or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises."

From the inception of the first administrative regulation (then State Regulation No. 32) adopted concerning this subject on June 3, 1948 until significant revisions to this rule were effected on September 8, 1977, the Division regulation explained these concepts in a limited manner.

In September 1977, the amendments made to then State Regulation No. 32 formally codified some previous Division interpretations of this statute but also introduced new concepts, particularly those contained in N.J.A.C. 13:2-35.5, which limit the locations where alcoholic beverages can be displayed for a package goods sale. See *Passaic County Retail Liquor Ass'n. v. Board of Alcoholic Beverage Control, City of Paterson,* 37 *N.J. Super.* 187 (App. Div. 1955) and *Coral Lounge and Cocktail Bar, Inc. v. Hock,* 5 *N.J. Super.* 163 (App. Div. 1949) as examples of judicial determinations.

The proposed readoption with amendments will continue the concepts that have been applied and interpreted by the Courts and the Division since 1948, with generally only minor changes being made. For instance, the headings of N.J.A.C. 13:2-35.2, 35.4 and 35.5 (the last two being current rules N.J.A.C. 13:2-35.5 and 35.6) have been amended to clarify the concepts being articulated therein. N.J.A.C. 13:2-35.3(b) and 35.4 have been deleted, since the former provision requiring daily certification of license renewals or transfers by issuing authorities to this Division is outdated and duplicative, and N.J.A.C. 13:2-35.4 is unnecessarily redundant. Since this subchapter basically codifies statutory provisions, judicial decisions and prior Division interpretations, failure to readopt these provisions would make it more difficult for licensees to understand the scope and limitations on their license privilege concerning package sales from their principal barrooms.

Subchapter 36: N.J.A.C. 13:2-36.1 incorporates the long-standing Division policy of considering the request for advisory opinions under stated conditions. Such inquiries must identify the parties, reference a present or contemplated actual situation, concern Division regulations, practices or policies, and deal with issues not previously articulated or which involve substantial questions of general applicability. The proposed amendments are for purposes of clarity and to set forth that requests should be addressed to the Director at the Division's offices only and does not change the substance of the rule.

The rule was last readopted without substantive change on April 26, 1984 (see 16 N.J.R. 500(a) and 16 N.J.R. 1280(a)).

Subchapter 37: This particular subchapter, which has three active sections and one section designated "reserved," deals with certain aspects of solicitors' conduct and contracts. Upon review of this subchapter, it has been determined to incorporate these sections in subchapter 16, Solicitors Permits. To avoid duplication, subchapter 37 is proposed for repeal.

Subchapter 38: This subchapter deals with the permissible and prohibited hours of sale of alcoholic beverages at retail. The rules generally reflect the statutory provisions of N.J.S.A. 33:1-40.3 which permits malt alcoholic beverages and wine to be sold in original containers for off-premises consumption during the same hours as the sale of alcoholic beverages for consumption on the licensed premises is permitted in the municipality. In addition, the rules specifically set forth that off-premises sales of distilled alcoholic beverages can only be made between the hours of 9:00 A.M. and 10:00 P.M. The provisions in this subchapter also set forth a limited exception to allow a municipality to adopt an ordinance to permit Sunday sales for off-premises consumption by retail distribution licensees even though there is no ordinance or local law existing to authorize the sale of alcoholic beverages for consumption on the premises.

A more detailed discussion of the specific sections follows:

N.J.A.C. 13:2-38.1 provides that sales of package goods are prohibited before 9:00 A.M. or after 10:00 P.M., except that when on premises consumption of alcoholic beverages is authorized in any municipality, the sale of wine and malt alcoholic beverages in original containers for off-premises consumption shall also be authorized on the same days and during the same hours. An amendment is proposed to this section to reflect amendments to N.J.S.A. 33:1-40.3 adding wine to malt alcoholic beverages as an exception. Additional changes are proposed to conform the language of the rule with statutory language and to promote clarity.

N.J.A.C. 13:2-38.2 provides that municipalities that do not authorize sale of alcoholic beverages for consumption on the premises on Sundays may, by ordinance, authorize the sale of wine and malt alcoholic beverages in original containers for off-premises consumption by retail distribution and State beverage distributor's licensees between the hours of 12:30 P.M. and 6:30 P.M. Minor changes are proposed to reflect the statutory language in N.J.S.A. 33:1-40.3.

N.J.A.C. 13:2-38.3 is proposed for readoption with a language change, for clarity. This section makes it clear that the subchapter shall not be construed to permit sale or delivery of alcoholic beverages during hours when the sale is prohibited by municipal regulation or referendum.

The subchapter was last readopted with amendments on May 1, 1981 (see 13 N.J.R. 37(b) and 13 N.J.R. 238(b)).

Subchapter 39: Current N.J.A.C. 13:2-39.1 and 39.2 concerning delivery invoice requirements for State licensees selling to retailers are proposed for repeal since these provisions are now contained in subchapter 20. A new N.J.A.C. 13:2-39.1 is proposed that will set forth the circumstances when alcoholic beverages may be returned by a retail licensee to a manufacturer or wholesale licensee. This new provision will recognize those return policies that are customary and usual to the industry.

N.J.A.C. 13:2-39.3 and 39.4 are proposed for deletion and repeal, respectively. N.J.A.C. 13:2-39.3 was reserved by a prior amendment and contains no provisions. N.J.A.C. 13:2-39.4 has been incorporated in the new N.J.A.C. 13:2-39.1.

The provisions of N.J.A.C. 13:2-39.5 will be retained, but recodified as N.J.A.C. 13:2-39.2 without any other changes. This section sets forth the documentation which must accompany alcoholic beverages that have been picked up from a manufacturer or wholesaler by either a retailer, or a solicitor for the ultimate delivery to a retailer. This subchapter was readopted without change on April 25, 1984 (see 16 N.J.R. 501(b) and 16 N.J.R. 1280(c)).

Subchapter 40: This subchapter consists of seven sections and is promulgated basically pursuant to N.J.S.A. 33:1-81.2 through 81.9. The subject matter of this subchapter concerns the issuance by county clerks of identification cards to residents of their respective counties. These identification cards provide a statutory acceptable proof of age for the purchase of alcoholic beverages. The rules set forth the specific form of the county identification card; the fees to be charged; the requirement that the applicant demonstrate residency and provide two color photographs; specific material that makes up the card including the laminated plastic; and the wording to be contained on the card in reference to the use of the card as a valid defense by a licensee charged with the sale of alcoholic beverages to an underage individual.

This particular subchapter was readopted on August 5, 1985 (see 17 N.J.R. 1380(a) and 17 N.J.R. 1900(a)). In addition, this subchapter was amended on October 5, 1987 (see 19 N.J.R. 1410(a), 19 N.J.R. 1823(a)) after consultation with the 21 county clerks to provide a mechanism and procedure to guarantee uniformity in the cards and enhance its design against alterations and counterfeits.

Social Impact

Subchapter 1: In New Jersey, there are approximately 650 State issued licenses for the manufacture, wholesale sale, warehouse storage, transportation and other processing of alcoholic beverages. The need to have a uniform method to gather relevant information, process and standardize review, hearing and decision making is both necessary and critical to a fair, impartial, stringent and comprehensive administration of the law (see N.J.S.A. 33:1-23). Additionally, the ability of citizens to have a mechanism to express concerns about a license issuance, renewal or change in stockholders recognizes the public's right to object to and be meaningfully heard on the fitness of holders of the liquor license privilege. The input of citizens to the Director can be a significant factor in reinforcing a licensee's awareness that unacceptable business activities may result in a denial of the ability to continue to exercise the privileges of a State issued licensee. Such input also helps to assure that individuals unsuitable for licensure will not be granted a license or permitted to retain a stockholder status in a corporate licensee.

Absent the provisions in N.J.A.C. 13:2-1, a fragmented and chaotic licensure and renewal system would prevail and citizens would lose a significant right to express concerns and objections. Both results would

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significantly undermine the legislative terms and intent expressed in the Alcoholic Beverage Law.

Subchapter 2: In New Jersey, there are approximately 11,000 licensees privileged to sell alcoholic beverages at retail to citizens of the State of New Jersey and its visitors in 525 municipalities. The need to have a uniform method throughout the State to process and standardize review, hearing and decision making is both necessary and critical to a fair, impartial, stringent and comprehensive administration of the law (see N.J.S.A. 33:1-23). Additionally, the ability of citizens to have a mechanism to express concerns about a license issuance, renewal or change in stockholders recognizes the public's right to object to and be meaningfully heard on the fitness of holders of the liquor license privilege. The input of citizens to the municipal issuing authority is a significant factor in reinforcing a licensee's awareness that unacceptable social conduct at the licensed premises may result in a denial of the ability to continue to exercise the privileges of a retail licensee. Such input also helps to assure that individuals unsuitable for licensure will not be granted a license or permitted to retain a stockholder status in a corporate license.

Absent the provisions in N.J.A.C. 13:2-2, a fragmented and chaotic licensure and renewal system would prevail and citizens would lose a significant right to express concerns and objections. Both results would significantly undermine legislative terms and intent expressed in the Alcoholic Beverage Law.

Subchapter 3: The need to maintain full, complete and accurate records of persons and entities involved in alcoholic beverage activity is critical to be able to assess whether someone is properly or improperly licensed. With 525 separate municipalities issuing licenses, it cannot be expected that they could be aware of licensing actions in another town that may have impact on their application. By having all information transmitted in an orderly, systematic and timely fashion to the State Division, the Division can cross-check data in its computerized license information system and uncover discrepancies. Additionally, the development of a central depository of information permits the analysis of licensure trends, the development of statistical information and the mechanism for a checks and balance on the propriety of the municipal issuing authority's action.

Subchapter 4: One of the primary tenets of alcoholic beverage control is to insure the ". . . fair, impartial, stringent and comprehensive administration of this chapter", N.J.S.A. 33:1-24 and 1-39. To eliminate any issues that might arise involving fairness and impartiality, the Legislature in adopting N.J.S.A. 33:1-20 disqualified the municipal issuing authority from acting on retail license applications where one or more of its members are interested directly or indirectly in the licensure request. Removing the municipal issuing authority from any actions concerning its own members totally eliminates any questions of possible favoritism or lack of impartiality.

Review of such applications will be done by the Director, Division of Alcoholic Beverage Control. This review will include an impartial and comprehensive background investigation of the applicant's qualifications, the source of funds used to purchase a license or licensed premises and inquiry into the suitability of the proposed licensee and licensed premises by the New Jersey State Police—Alcoholic Beverage Control Enforcement Unit. Any required hearings will be conducted either by the Director or the Office of Administrative Law. The ultimate determination of whether the grant of an interest in a retail license to an issuing authority member is in the best public interest will be made by the Director.

This procedure for independent review, which is reiterated in the provisions of subchapter 4, provides the best available method to eliminate any possible appearance of conflict in the quasi-judicial review of retail liquor license applications. It also enhances the integrity of the decision making process by affording the citizens of a municipality an independent agency to voice any concerns it may have to an application filed by one of their governing body members.

Subchapter 5: In 1989, the Division issued 3,698 social affair permits to qualified organizations to permit the conduct of outings, dinners, fundraisers, carnivals, picnics and other events where alcoholic beverages would be provided to attendees. The figure has remained basically constant over the past three years. These events assist the organizations in furthering their activities which are often eleemosynary in purpose and part of the social fabric of a community. The annual concessionaire permits issued pursuant to N.J.A.C. 13:2-5.2 amounted to 70 in 1989. They allow limited alcoholic beverage activity for visitors to State, county or municipal recreational facilities.

The permits authorizing the sale of alcoholic beverages pursuant to court order or operation of law under N.J.A.C. 13:2-5.3 insure that these sales are properly carried out pursuant to the court order or applicable statute. Moreover, the rule is a means by which the Director can verify that the sale is not violative of the Alcoholic Beverage Control Act, while at the same time, not impeding the proposed sale of alcoholic beverages in order to satisfy the necessary legal obligations.

Proposed new N.J.A.C. 13:2-5.4 will authorize the Director to issue permits for other emergent situations not specifically provided for under the Alcoholic Beverage Control Act. In issuing these permits, the Director can require sufficient safeguards by means of special conditions or special requirements.

Subchapter 6: In certain situations, the interests a person has in a liquor license may devolve upon someone else by operation of law. Examples of this involve Federal bankruptcy, State court receiverships, sale of incompetents' estates, court supervised assignments for the benefit of creditors, and control and sale of decedents' estates.

To insure that the fiduciary appointed to run or sell the liquor licensed business is qualified, the petition and review procedure is set forth. The process is more expeditious than a formal person-to-person transfer. It does not require a fee, nor is there any requirement to publish the extension. Yet the issuing authority, whether State or local, will be able to review the basic qualification of the trustee, receiver, executor, administrator, etc., to satisfy that they comply with the law. Additionally, the identity and capacity of the person legally entitled to operate the license is known. Finally, a subsequent transfer of the license to third parties will be following the proper legal chain of ownership.

Subchapter 7: The structured, controlled disposition of liquor licenses and the proper qualification of the person who will exercise the interests in a license are fundamental principles of alcoholic beverage control. Whenever someone other than the record designated licensee seeks to exercise the license privileges, the issuing authority, whether State or local, must be advised of such intent and either preapprove that request through a formal approval of license transfer under subchapter 7 herein, or acknowledge an extension of license to a fiduciary under subchapter 6, or conduct an investigation of new stockholders that enter the business under N.J.S.A. 33:1-34 without prior approval, but subject to license divestiture if they are determined not qualified.

The provisions in this subchapter which identify the manner to apply, the information and fee to be paid, the notice to the public required, the right of citizens to object, the hearings on applications, the elements of investigative review, the form of endorsements and the certification requirements, all further the basic legislative mandates set forth in various legislative provisions noted in the heading of this readoption notice.

Without readoption of these rules, as amended, a chaotic, imprecise transfer of license process would occur which would fail to satisfy legal requirements and would be inconsistent with the public interest.

Subchapter 8: There are presently 1,294 club licenses issued in the State of New Jersey. Because of the community based nature of these organizations and the benefits they can provide in civic, charitable, fraternal, religious and recreational activities, they are often a significant social force in a municipality or region. The rules proposed for readoption will not in any way negate the ability of a bona fide club to continue to achieve its purposes. The limited privileges of a club license, as compared to a retail consumption license, are outlined and explained to preserve legislative intent. In that regard, it is noted that when club licensees are involved in functions where alcoholic beverages are dispensed and the general public is invited, the club must obtain a Social Affairs Permit. Finally, since a club licensee is a retail dispenser of alcoholic beverages, all of the ramifications that may flow from the abuse of that privilege require enforcement monitoring and responsibility which is fixed upon the licensee through the acts of its agents or employees.

Subchapter 9: The initial regulations regarding the issuance and responsibilities of a warehouse receipts licensee was promulgated on January 6, 1936 in conjunction with the passage of the warehouse receipts statute currently cited as N.J.S.A. 33:1-72 (P.L. 1935, c. 267). The statute was enacted and regulations promulgated as a result of a unique post-Prohibition problem commented on by Commissioner D. Frederick Burnett. The initial Alcoholic Beverage Control Act did not speak to nor recognize the fact that immediately after Prohibition a market developed for warehouse receipts on alcoholic beverages, specifically spirits, that were stored in casks and aged. At the time Prohibition was repealed, there were scarce amounts of legally aged whiskeys for the sale. Therefore, immediately after the repeal of Prohibition and the passage of the Alcoholic Beverage Control Act, there developed widespread speculation offerings regarding the value and availability for future sale of stored casks of aging alcoholic beverages. Commissioner Burnett noted that

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many of these schemes were deceptive thereby perpetrating fraud on the general public and causing probable loss to the purchaser. Such situation caused a lack of public trust and confidence (see ABC Bulletin 55 Item No. 1 (December 13, 1934)). As a result of this concern, the statute prohibiting the sale of warehouse receipts except by the holder of the necessary license was enacted in 1935 and regulations to enforce the prohibition and establish the procedures necessary for the issuance of the license were promulgated on January 6, 1936 (see ABC Bulletin 102, Item 8).

The intent and purpose of the rules in this subchapter are to insure that no fraud is perpetrated either upon the general public or the alcoholic beverage industry in New Jersey. While there is very little if any activity regarding the sale of Warehouse Receipts license in the State of New Jersey, the prohibition of the sale of these receipts without the necessary license fosters the public safety and welfare.

Subchapter 10: Review of legislative activities concerning the plenary and farm winery licenses disclosed in the Senate Law, Public Safety and Defense Committee Statement to Assembly Bill No. 2240—P.L. 1981. c. 280 the following:

"The purpose of this bill is to encourage the growth of farm wineries in New Jersey. Although the State produces approximately 1,000 tons of grapes annually, its soils and climate could sustain a much greater production. An increase in New Jersey's wine production would boost the State's agricultural production and increase the tourist industry in those areas of the State where farm wineries are established."

The social advantages noted in that statement continue to date.

Subchapter 11: Review of legislative activities concerning the plenary and farm winery licenses discloses in the Senate Law, Public Safety and Defense Committee Statement to Assembly Bill No. 2240—P.L. 1981, c. 280 the following:

"The purpose of this bill is to encourage the growth of farm wineries in New Jersey. Although the State produces approximately 1,000 tons of grapes annually, its soils and climate could sustain a much greater production. An increase in New Jersey's wine production would boost the State's agricultural production and increase the tourist industry in those areas of the State where farm wineries are established.

The social advantages noted in that Statement continue to date.

Subchapter 12: This subchapter is promulgated in furtherance of a legislative policy requiring licensure of individuals involved in the personal manufacture of wine for personal consumption. During calendar year 1989, the Division issued 56 Special Wine Permits.

Subchapter 13: The provisions of this subchapter affect the supplier, wholesaler and the retail transportation segments of the industry. The basis for these rules may be found at N.J.S.A. 33:1-26, which states that "[n]o persons who would fail to qualify as a licensee . . . shall be knowingly employed by or connected in any business capacity whatsoever with a licensee." The remaining segments of the retail industry are covered in like respect under the provisions of N.J.A.C. 13:2-23.13(a)3. It is necessary, in order to insure the basic integrity of the industry, that there be a means of identifying disqualified persons who might otherwise be employed in the alcoholic beverage industry.

Subchapter 14: N.J.S.A. 33:1-26 provides that "[n]o person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee." It thereafter further provides that "[p]ersons failing to qualify as to age or by reason of conviction of a crime of moral turpitude may, with the approval of the director, and subject to rules and regulations, be employed by any licensee . . ."

The public has an interest in ensuring that both persons under the age of majority or criminally disqualified persons, who are employed by or connected with a licensed business, are subject to proper oversight and regulation. The requirement for the issuance of a permit to a minor forcefully signifies to a licensee the State's interest in assuring that such minors are properly supervised and their activities appropriately restricted regarding alcoholic beverages. Additional graduated age limitations are set forth to further restrict the permitted activities of younger minor aged persons. Those age limitations were first adopted on August 8, 1975. Prior thereto, there was a universal prohibition against persons under the age of 15 from being employed upon a licensed premises. The Division proposes to continue the force and effect of the age limitations adopted in 1975 with the current readoption. In the last term, the Division issued 632 individual minor employment permits and two blanket permits. In the latter instance, the full $500.00 fee was charged in anticipation of the employment of at least 100 minor persons by both licensees.

With respect to criminally disqualified persons, the State has a significant interest to be informed about their continued involvement in a licensed business. The issuance of a temporary work letter identifies that an applicant is registered with this Division, with notification thereof sent to the ABC Enforcement Bureau of the Division of State Police, and the applicant is permitted to work on a designated licensed premises while the application is undergoing investigation. For the last permit year which expired March 31, 1989, 72 persons applied for rehabilitation employment permits. Everyone received temporary work letters.

The provisions in this subchapter are applicable to all segments of the industry, although in almost every case, the employing licensees are retailers. Failure to readopt this regulation would result in the forced termination from employment of all permitted minors and criminally disqualified persons having rehabilitation employment permits.

Subchapter 15: The provisions of the subchapter affect an individual who seeks to acquire an alcoholic beverage license but is statutorily disqualified. A total of 36 statutory disqualification removals were issued by the Director in fiscal year 1988-89.

N.J.S.A. 33:1-25 and N.J.S.A. 33:1-26 enunciate a clear legislative mandate that it is necessary to ensure the basic integrity of the alcoholic beverage industry by preventing criminally disqualified persons from owning alcoholic beverage licenses or being employed in the alcoholic beverage industry. On the other hand, the legislature seeks to balance this policy by providing a means for the individual to remove the disqualification under N.J.S.A. 33:1-31.2. The provisions of subchapter 15 are essential to carry out this legislative policy.

Subchapter 16: In 1989, the Division issued 2,019 solicitor permits pursuant to N.J.S.A. 33:1-67. This figure has remained on the average constant over the last five years. By statute such permit is required if an individual seeks to offer for sale or solicit an order for alcoholic beverages in this State, except for retail licensees and their employees. The initial intent and purpose stated by former Commissioner D. Frederick Burnett was to provide a means to allow the State to control an extremely important phase of the industry. It is of the highest importance that all persons involved in the sale and solicitation of alcoholic beverages are statutory qualified to engage in this employment and the solicitor's permit process is the means by which the State can control and insure that those qualifications are met. Moreover, in addressing the solicitor's activities as representatives of manufacturers and wholesalers, the Division has by regulation since 1941 required submission of financial records and reports concerning solicitor's compensation, as well as prohibiting solicitors from engaging in impermissible trade practices. Disclosure of financial information, which is a confidential record under N.J.A.C. 13:2-29.2, is another valuable investigatory tool to insure compliance with Division trade practice, marketing, advertising and price regulation.

Subchapter 17: The statutory provisions establishing the right of affected persons to appeal decisions made adversely to their perceived interest is consistent with traditional concepts of jurisprudence and due process. The administrative appeal before the Director offers licensees, applicants for licenses, aggrieved citizens and taxpayers the opportunity to have an independent *de novo* review of the decision made by the local issuing authority before either the Director or an Administrative Law Judge.

The rules proposed for readoption without change and with amendments establish a uniform simple procedure to follow to initiate the appeal review. Some specific evidential issues involving the submission and acceptance of certain types of evidence, the recitation of burdens of proof and the standard of review to be applied are clearly identified to assist parties in the preparation and litigation of the appeal. The general procedure rules governing the appeal with respect to other issues such as discovery, scheduling of hearings, motions and decisions are governed by the Uniform Administrative Procedure Rules of Practice.

A failure to readopt these rules with amendments would result in a chaotic, imprecise appeal process and would fail to give appropriate accord to specific statutory provisions of the Alcoholic Beverage Law and the Administrative Procedure Act.

Subchapter 18: While the general concept of the statute has social impact to many areas, including the stability of the alcoholic beverage industry, preservation of a sound tax base, employment, and availability and price of product to consumer, these rules do not have independent social impact. These rules repeat statutory provisions and reference existing Division and judicial decisions concerning the law.

Subchapter 19: A license to engage in alcoholic beverage activity is issued annually commencing July 1 of any year and expiring June 30 of

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the following calendar year, pursuant to N.J.S.A. 33:1-12.13, 33:1-12.26 and 33:1-96. That license may be the subject of administrative disciplinary proceedings for violation of the Alcoholic Beverage Control Act; State tax laws; municipal alcoholic beverage ordinances, resolutions or regulations; subsequent actions which if had occurred at the time of application for license would have prevented issuance of the license; and violations of Division promulgated rules and regulations (see N.J.S.A. 33:1-31). When a liquor license is suspended or revoked, the suspension or revocation applies to the license and to the licensed premises. A license revocation renders the licensee and the officers, directors and each owner, directly or indirectly, of more than 10 percent of the stock of a corporate licensee ineligible to hold or receive any other license for a period of two years. A second revocation would permanently preclude any interest in a license in the future. A revocation of license may render the premises ineligible for any other license for two years, if ordered as part of the disciplinary proceeding.

These provisions in subchapter 19 indicate that disciplinary actions can involve activities which might have occurred during terms prior to renewal and can have consequences which extend beyond the final administrative adjudication as it relates to licenses, the owners of the license and licensed premises. N.J.A.C. 13:2-19.1 through 19.5 recognize these consequences and place licensees and prospective licensees on notice that activities which are contrary to the alcoholic beverage law and rules can be the subject of disciplinary sanctions notwithstanding their occurrence in prior license terms, or because the license had expired (not renewed), was surrendered, transferred or extended to another person.

The broadest total number of parties that could be affected by these rules are the approximately 11,700 holders of State and municipally issued liquor licenses, as well as the prospective applicants for a liquor license.

The public at large is also affected by and benefits from these rules through the assurance that offensive conduct of licensees will be punishable and not avoided by changes which are made in the licensed entity, location of the licensed premises, or by an extension or renewal of a license.

Absent readoption of these rules, the legislative intent expressed in provisions of the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., and the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., will not be reinforced and followed.

Subchapter 20: The control of the transportation of alcoholic beverages is an integral element in the legislative objectives of monitoring and regulating all alcoholic beverage activity in this State. Through vehicle licensure, the incidents of unlawful diversion of product to improper sources can be disclosed. Protection against loss of tax revenues flows from this control. So also, licensure permits the State to review the qualifications of the individuals who seek to engage in the transportation of alcoholic beverages in this State.

Subchapter 21: Regulating the transportation of alcoholic beverages facilitates and enhances the Division's ability to monitor compliance with numerous laws and rules aimed at the maintenance of orderly, controlled and verifiable transportation. Some readily identifiable objectives attained by a definite licensure or vehicle identification procedure include: deterring unlawful diversion of product to improper sources, protecting against loss of tax revenues, and fostering the comprehensive enforcement of numerous other regulatory and legislative provisions.

By identifying the participants and the vehicles utilized, the law enforcement community and the Division can effectively ascertain the extent and nature of alcoholic beverage activity in the State and assess these activities to provide a regulatory framework that will best achieve the legislative mandates of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

Subchapter 22: Regulating the transportation of alcoholic beverages by railroad carriers facilitates and enhances the Division's ability to monitor compliance by the carrier. In addition, the social impact that may be generated by these rules is similar to all other carriers as set forth in preceding social impact recitation for N.J.A.C. 13:2-21.

Subchapter 23: In New Jersey, there are approximately 11,700 licensees privileged to manufacture, distribute or sell at retail alcoholic beverages to the citizens of the State of New Jersey and its visitors. The need for strict, comprehensive and impartial regulation of these licensees is an articulated objective of the New Jersey Alcoholic Beverage Control Act. These rules form a guideline or framework for all licensees in their conduct of the licensed business. The failure to comply with the various statutory and public policy objectives sought by these regulatory controls would directly impact not only the regulated industry itself but clearly all of the citizens of the State of New Jersey and the visitors who enter this State for business, social and recreational purposes.

The vast majority of these rules have been in existence in one form or another for over 40 years, some of which have been in effect since early after the adoption of the Alcoholic Beverage Control Act in 1933. The regulated industry is clearly aware of these regulations and the Division has constantly assessed their efficacy and importance on a day-to-day basis through citizen complaints, comments from State, county and municipal law enforcement and elected officials, and in the day-to-day evaluation of disciplinary infractions ascertained by State investigators assigned for such activities.

In those cases in the past where a regulation was deemed to be ineffective to achieve the objective sought or where the objective sought was deemed to be unnecessary due to statutory, judicial or policy changes, the regulation had been modified. In 1978, the last major revision of all Division rules, 10 sections of then State Regulation No. 20, the unofficial citation for these rules, were either repealed, amended or combined. Since 1978, N.J.A.C. 13:2-23.1, 23.8, 23.15, 23.16, 23.21 and 23.31 have been subject to amendments, deletions and additions. Such activity is indicative of the continuing assessment made by the Division, as well as the continuing responses of the Division of changing laws, concepts and policies concerning alcoholic beverage control.

Subchapter 24: The provisions in subchapter 24 seek to foster a fair, competitive and non-discriminatory distribution and marketing system for alcoholic beverage in this State. The rules affect all holders of retail, wholesale or producer licenses in this State and non-licensed foreign suppliers that do business in this State. Consumer interest impacted by these rules involve availability and pricing of products and promotion of moderation. These rules further seek a stable industry and preservation of the independence of a three-tier alcoholic beverage distribution structure. Existence of rules covering the areas addressed in this subchapter are critical to prevent chaotic, discriminatory, predatory and destructive pricing and marketing practices by or against licensees. The consequences that would reasonably be expected to flow from absence of these rules would frustrate and negate the purpose of the Alcoholic Beverage Law including the promotion of moderation, preservation of industry stability and prevention of discrimination in pricing and marketing alcoholic beverages.

Subchapter 25: The concepts and specific provisions in subchapter 25 have been subject to both judicial and administrative review as to validity and purpose. N.J.A.C. 13:2-25.1 was affirmed by the New Jersey Supreme Court to be a proper regulatory provision which implements N.J.S.A. 33:1-11 and ". . . serves the valid purpose of preventing the diversion of alcoholic beverages and assuring the proper collection of taxes under the Alcoholic Beverage Tax Law, N.J.S.A. 54:43-1." *Heir v. Degnan,* 82 *N.J.* 109, 125 (1980). The concepts embodied in N.J.A.C. 13:2-25.2 and 25.3 were subject to extensive hearings before the Division which resulted in Findings and Conclusions Confirming Validity of Regulations, N.J.A.C. 13:2-25.2(a), 13:2-25.3(b) and 13:2-33.1. See, *In the Matter of Petition Proceedings of Todd Seifert, t/a Seifert Distributing Company, et al.,* ABC Bulletin 2433, Item 3 (decided December 5, 1983). Within that declaratory ruling, a full and complete development was made of the public purposes and goals served by the regulation and the impact of the regulations. These purposes and goals include: stability of the industry, enhanced interbrand competition with concomitant price competition, protection of the significant tax base alcoholic beverage sales provide the State, and recognition of product quality control systems. The legislative codification of these concepts occurred with the 1984 amendment to N.J.S.A. 33:1-2.

Subchapter 26: N.J.A.C. 13:2-26.1 was reviewed and determined to be within the power and authority of the Director to promulgate. See *Heir v. Degnan,* 82 *N.J.* 109 (1980). The purpose of this rule to ". . . improve the small retailers competitive position in relation to chain store operations" was specifically identified in *New Jersey Retail Liquor Stores Ass'n. v. Degnan,* 180 *N.J. Super.* 475, 477 (App. Div. 1981). The rule specifically impacts on small retailers by improving their competitive position. By permitting retail licensees to join in a purchasing cooperative, an individual retailer who could not independently acquire a most favorable wholesale quantity discount can obtain that price by joining with other similarly situated retailers. These retailers would have the ability to acquire goods competitively with the largest commonly owned chain. Consumers in the State would then have a broader range of retail licensees who could effectively compete with each other in the sale of alcoholic beverages. Therefore, the consumer would potentially have the widest range of products to choose from at competitive prices.

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Subchapter 27: Label requirements often serve a consumer protection objective providing information about the product contained therein, including size, type, brand, alcohol content by volume, country of production and producer. Size of fill involves the amount of fluid a particular bottle contains. Since the Federal government basically supervises this activity for all products produced in the United States and imported into this country, use of their standards insures uniform regulations.

The prohibition against sale of deposit marked containers from other states in New Jersey assures that no New Jersey consumer will unwittingly pay a deposit, whether directly or indirectly, thereby protecting the New Jersey consumer and preventing unfair competitive situations among New Jersey retail licensees. It also insures that the registered distribution requirements of N.J.S.A. 33:1-2 and N.J.A.C. 13:2-25 are satisfied.

Subchapter 28: The provisions of this subchapter affect retailers who transfer wine from the original container to an interim container prior to service to patrons. Without the regulatory provisions, this practice may technically violate statutory bottling and license requirements. The labeling requirement also helps to effect the legislative purpose of the Alcoholic Beverage Control Act in protecting the interest of consumers against fraud and misleading practices in the sale of alcoholic beverages.

Subchapter 29: The provisions in N.J.A.C. 13:2-29 reflect and implement the public policy of this State to make public records readily accessible for examination by citizens of this State, with certain exceptions, for the protection of the public interest (see N.J.S.A. 47:1A-1). Access to licensure, adjudicative and informational records and filings afford citizens and journalists the opportunity to access information which may thereafter serve meaningful public and private interests. N.J.A.C. 13:2-29.4 recognizes the reliance on computerization in the efficient operation of businesses, subject to the State's right and need to access required information.

Subchapter 30: This subchapter is the original regulation which was promulgated in 1935 by D. Frederick Burnett, the first Commissioner of the ABC Commission. The intent and purpose of the regulation at that time was to require registration of stills and distilling apparatus to insure and remove from the alcoholic beverage industry the bootleggers, racketeers and other criminal elements that had been illegally manufacturing alcoholic beverages during Prohibition. Therefore, during the 1930's and 1940's, this regulation was a means to insure that only qualified holders of manufacturing licenses would be in possession of distilling apparatus. The Division notes that in the last 10 years there have been no new applications for the registration of stills or transfer of ownership of the existing registered stills. The stills that are held by private individuals are normally collectors' items that are rendered unfit for actual use. While the problems that existed immediately following repeal of Prohibition are no longer prevalent in the 1980's or 1990's, the rules act as a deterrent, enforcement tool and management device to insure that the means to manufacture alcoholic beverages are regulated and exercised only those entities or persons duly qualified and licensed by the State of New Jersey.

Subchapter 31: After the repeal of Prohibition in 1933, the legislature of New Jersey authorized the manufacture, transportation, warehousing, distribution and sale of alcoholic beverages under a specific system of licensure and control. It has been oft-noted that a strict system of regulation and control is necessary in the dealing with alcoholic beverages to protect the health, safety and welfare of the people of this State and to avoid the abusive incidents that might result from misuse of the product (see N.J.S.A. 33:1-3; *Grand Union Co. v. Sills*, 43 *N.J.* 390 (1964)). The legislative provisions of N.J.S.A. 33:1-66 represent a sanction for those persons who seek to engage in alcoholic beverage activity without a proper license. The unlicensed manufacturer, transporter, distributor or seller is an unregistered source of intoxicating beverage activity that can be injurious to the citizens of this State because of impure product; deprives the State of lawful tax revenue; unfairly competes with properly licensed individuals; and operates outside the statutory and regulatory provisions established to achieve these legislative objectives and to prevent the social and economic consequences of alcohol abuse and misuse.

The rules proposed for readoption advise those that engage in unlawful alcoholic beverage activity that the beverages and other personal property utilized in connection with that activity will be seized and forfeited. They indicate to property owners, individuals with a lien upon or other interests in the seized property and common carriers what rights they may have to avoid the consequences of forfeiture and when and how those claims must be exercised. A due process hearing right is afforded those claimants. In sum, the statute (N.J.S.A. 33:1-66) and rules in furtherance thereof (N.J.A.C. 13:2-31) protect the citizens of this State against unsupervised liquor traffic by nonaccountable individuals that operate outside the scope of the law.

Subchapter 32: The consequences of illegal alcoholic beverage activity can include forfeiture of personal property as set forth in subchapter 31. The rules in subchapter 32 outline the common parameters that exist in most public sales of property. The structured system for a sale and the requirements for notice insure a proper, fair sale with the potential for the greatest return to the State Treasury which receives the proceeds.

Subchapter 33: A brand registration is mandated by N.J.S.A. 33:1-2. The statement to S-517 which ultimately became P.L.1984 c.233 (the brand registration amendment to N.J.S.A. 33:1-2) indicates that the benefits of brand registration include complete oversight over alcoholic beverages from the time of their importation into the State until they are sold at retail by the Division of Alcoholic Beverage Control. This will insure that the product meets all standards necessary for the protection of the consumer. Additionally, a registered distribution system provides for the orderly marketing of alcoholic beverages in New Jersey and is helpful in the assessment, collection and audit of taxes imposed by New Jersey on alcoholic beverages and collected at the wholesale level.

Some other objectives and goals of brand registration include identification of products, stability of the industry, enhanced interbrand competition with concomitant price competition, and protection of the significant tax base that alcoholic beverage sales provide the State and a recognition of product quality control systems.

Subchapter 34: Upon the initial promulgation of these regulations, Commissioner Burnett stated that the objective of the legislation was to wipe out as far as possible illicit activity in the home manufacturing and rectifying of alcoholic beverages. The Commissioner noted that the regulations attempt to minimize any interference with the legitimate use of grain alcohol for family or therapeutic purposes, but noted that the regulations were extremely necessary to exercise a proper control over a commodity susceptible to misuse. At the time the regulations were promulgated, the repeal of Prohibition was only six years old and Commissioner Burnett was attempting to eliminate one of the last practices that was prevalent during Prohibition, namely, the home manufacturing of alcoholic beverages by individuals who apparently purchased alcohol from registered pharmacies under the guise of medicinal use. The intent of the Division at the time of the passage of these regulations was therefore to eliminate the last vestiges of illicit alcoholic beverage activity that had been prevalent during Prohibition while at the same time permitting the legitimate use of the product which included various pharmaceutical purposes and also certain domestic purposes.

Because of sufficient State and Federal laws and regulations that serve as a deterrent and meet the statutory intent and purpose that the regulation sought to establish, it is proffered that the deletion of this subchapter will have no adverse effect on the health, safety or welfare of the citizens of the State.

Subchapter 35: The proposed readoption with basic grammatical, clarity and restructuring amendments continues to preserve and reflect the legislative policy to limit package goods sales by consumption licenses that do not possess the broad package privilege to specific areas in the principal public barroom. Whether or not it is in the public interest to allow for greater flexibility in the sale of package goods is a matter that has been subject to review in the Division and by the legislatively created ABC Study Commission. Various retail licensed industry members differ on this issue. The proposed amendments herein do not make any substantive changes to the rules which have been in effect since 1977.

Subchapter 36: In fulfilling the duty to ensure the "fair, impartial, stringent and comprehensive" administration of the Alcoholic Beverage Law and its regulations (N.J.S.A. 33:1-23), the Director must address bona fide questions from licensee and the public concerning permissible and impermissible activities, practices or conduct. In many cases, the preliminary review and advice rendered by the Division and the Office of the Attorney General deter prohibited actions. Greater awareness of the law, regulations and policies concerning alcoholic beverage activity in this State is fostered through the mechanisms provided in N.J.A.C. 13:2-36.1, and the readoption of subchapter 36 will continue to enhance regulatory compliance within the regulated industry and provide citizens with meaningful opportunities to obtain information and bring to the attention of the Division problems and concerns.

Subchapter 37: Regulating the standard of conduct that solicitors must abide by insures that only qualified individuals will be employed in the sale and solicitation of alcoholic beverages. For other requirements, see those portions of this notice of proposed readoption concerning N.J.A.C. 13:2-16, Solicitors Permits.

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Subchapter 38: The provisions of subchapter 38 affect retail licensees and reflect the provisions of N.J.S.A. 33:1-40.3. The rules prevent the sale of packaged goods at hours when their sale may be socially undesirable and helps to prevent indiscriminate bottle drinking on public streets during late hours or early hours of the morning.

Subchapter 39: The provisions of this subchapter affect suppliers, wholesalers and retailers, albeit only with respect to the limited instances dealing either with the return of alcoholic beverages by a retailer to a manufacturer or wholesaler or the pick-up, delivery and transportation of same by a retailer, or a solicitor on behalf of a retailer. The regulatory provisions which set forth the reasons whereby a licensee may be able to return alcoholic beverages for either cash, credit or exchange, substantially coincide with the applicable standards of the Federal government (under the Federal Alcohol Administration Act) in its regulation of the alcoholic beverage industry by the Bureau of Alcohol, Tobacco and Firearms. It also sets forth the Division's understanding as to what is "usual and customary" to the industry in this regard. Proposed new N.J.A.C. 13:2-39.1 is intended to more clearly express existing policy and obviate the apparent ambiguity which experience has shown now exists. The provision which deals with retailer and salesmen picking up and delivering alcoholic beverages retains and continues the previous Division rule.

Subchapter 40: The elimination of alcoholic beverage sales and consumption involving persons under the legal ages is a basic, primary objective of alcoholic beverage control. Establishing a mechanism and card where those of lawful age can acquire identification to be used to verify age and which the retail seller can rely upon serves the public interest in this sensitive area of responsibility.

The rules in subchapter 40 establish an ABC identification card, the issuance procedure and the consequences of proper and improper use. When properly utilized, the card is a fair tool for retail licensees and persons appearing 21 years old. The ability to lawfully acquire an ABC identification card is of importance to thousands of citizens who apply for the same. Thousands of retail licensees were able to resolve doubts about patrons' age by reviewing these cards.

The greatest negative concern involving these cards is the potential fraudulent issuance, counterfeit issuance or alterations to the cards. The amendments of 1987 establishing the uniform card with various safeguards have greatly enhanced the reliability of the card by making these practices more difficult to succeed. Prior to the amendments of 1987, the county clerks issued between seven and eight thousand cards. Since the amendment in 1987, the county clerks have issued on an average 34,000 cards annually.

Economic Impact

Subchapter 1: This subchapter essentially contains requirements for publication of Notices of Application and changes in stockholders which are all mandated by statute. These provisions proposed for readoption with amendments have no additional intrinsic economic impact. Licensees and the State Division have administered the essential notice, hearing and decision making provisions for over 56 years. Absent these rules, the expenses incurred by the State Division in its licensure activities and overall supervision and control of the alcoholic beverages industry would significantly increase.

Subchapter 2: Other than requirements for publication and recitation of certain license fees, refunds or pro-rating, which are all mandated by statute, the provisions proposed for readoption with amendments have no additional intrinsic economic impact. Municipal issuing authorities, licensees and the State Division have administered the essential notice, hearing and decision making provisions for over 56 years. Absent these rules, the expenses incurred by the State Division in its overall supervision and control of the sale of alcoholic beverages at retail in both its computerized record processing of all retail licenses in the State and investigations and review of retail license issuance would significantly increase.

Subchapter 3: The subchapter requires the local issuing authority to maintain records concerning license activity and transmit license information and State fees to the division in a timely manner. The costs for such systems are borne by the municipality, but they do receive from a licensee in their community an annual fee which ranges from $100.00 per year to $2,000 per year for retail consumption or distribution licenses. The $50.00 application fee paid to the State Division of Alcoholic Beverage Control helps to offset the expenses incurred in the Division to process, verify and file the information in a readily retrievable fashion.

Absent a structured system with uniform requirements, the expenses incurred in establishing a verifiable, accurate base of license information would be significantly increased.

Subchapter 4: As of April 2, 1990, there were 32 retail liquor licenses in which members of a municipal issuing authority possessed an interest in such licenses in their communities. The economic impact on the Division in reviewing and issuing these 32 licenses is borne essentially from the general budget allocations provided the Division and the Alcoholic Beverage Control Enforcement branch of the State Police. The minimal fees required to be filed in subchapter 4 applications are deposited in the General Treasury of the State. Existing resources and personnel can adequately handle these matters. Absent these rules, greater expenditures of resources would be anticipated to process appeals or conduct disciplinary investigations based upon allegations of actual or apparent conflicts of interest in the issuance by the municipal issuing authority of licenses to one of its members.

Subchapter 5: The provisions of N.J.A.C. 13:2-5 identify the procedure to apply for specific permits. The issuance of these permits generate revenue for the State and presumably the permit holders that utilize them. In 1989, the State collected $216,000 from such permits and such figure has remained basically constant over the past three years. The specific regulatory provisions in subchapter 5 simply refect the economic impact of the statute by reiterating the established statutory fees. More importantly, subchapter 5 seeks to insure that qualified persons obtain permits upon proper advance notice to the public and the local governing body.

Subchapter 6: Minimal economic impact is a consequence of these rules. However, the reasons that generate an extension of license will have very significant economic causes and results. The relative ease to process the extension and the lack of expense to the petitioner seek to minimize any added economic impacts.

The expense to the issuing authority to process an extension request is minor and the benefits derived from a structured system in this area ultimately reduces costs of administration. The Division receives a fee of $50.00 for the issuance of the special permit under N.J.A.C. 13:2-6.2 pending formal extension of license. No fees are required for the formal license extension as previously noted.

Subchapter 7: By law, fees are required when license transfer applications are filed. In municipal actions the license applicant submits either 10 percent or 20 percent (combined transfer) of the full annual fee with the application. A State fee of $50.00 must also be submitted. All of these fees are nonrefundable. For the municipal and State entities that process, investigate and decide whether to transfer a license, or not, these fees can defray expenses.

Absent readoption of the regulatory provisions to subchapter 7, the cost and expense to administer and monitor transfer applications would increase because use of nonstandardized documents and procedures would increase clerical and professional time spent in reviewing and processing applications. It is also anticipated that many more legal challenges through administrative appeals to the division would occur.

Subchapter 8: The rules proposed for readoption have no intrinsic economic impact on the Division or Club licenses. The statutory fee which cannot be less than $50.00 and cannot exceed $150.00 per license is paid to the municipality and such fees vary. Absent these clear uniform procedures for eligibility for licensure and limitation on alcoholic beverage activities, significant increased State and municipal enforcement and investigative resources would be required to insure compliance with the provisions and intent of the Alcoholic Beverage Law.

Subchapter 9: During the 1989-90 license term, only one warehouse receipts license was issued. At the present time, the Division is aware of no activity in the sale of warehouse receipts. Whether changes in State and Federal laws and regulations that have occurred since the time the statute was adopted justify repeal is being further considered, these rules are necessary.

Subchapter 10: The regulatory provisions in subchapter 10 have no intrinsic economic impact. The fees for and privileges of licensure are statutorily established. The application procedure is similar to that required of all other State issued license applicants. The anticipated economic benefits sought by encouraging and promoting a viable, healthy and stable winemaking industry in this State was noted in the Social Impact statement above.

A structured, uniform application and processing procedure, along with a recitation of certain new legislative provisions, should reduce the expenses of the Division and the regulated industry in conforming to the new standards and concepts.

Subchapter 11: The regulatory provisions in subchapter 11 have no intrinsic economic impact. The fees for and privileges of licensure are statutorily established. The application procedure is similar to that required of all other State issued license applicants. The anticipated econ-

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omic benefits sought by encouraging and promoting a viable, healthy and stable wine making industry in this State was noted in the Social Impact statement above.

A structured, uniform application and processing procedure, along with a recitation of certain new legislative provisions, should reduce the expenses of the Division and the regulated industry in conforming to the new standards and concepts.

Subchapter 12: The economic consequences of this subchapter are minimal. A total of 56 licenses were issued for calendar year 1989 at a statutory fee of $3.00 per permit pursuant to N.J.S.A. 33:1-75.

Subchapter 13: This subchapter affects basically the supplier and wholesale segments of the industry. It merely requires their employees to fill out a one-page questionnaire; there is no fee involved and the licensees maintain the executed questionnaires upon their licensed premises where same are available for inspection by authorized ABC personnel. The Division incurs no expenses under this subchapter.

Subchapter 14: The fees charged for issuance of these permits, whether to minors ($5.00 each) or criminally disqualified persons ($15.00 each) is modest. Considering the fact that these permits allow such persons to be gainfully employed and provide benefits from their employment to the licensees, the economic impact of the rules is very positive. In contrast, however, failure to readopt such rules would have drastic consequences on the terminated persons as well as the licensees, some of whom have indicated to the Division the difficulty they are having in finding qualified employees.

This subchapter, while applicable to all segments of the industry, has its basic application at the retailer level. The costs are modest and, with respect to minors, involves merely filling out a one-page application and paying a $5.00 fee. The application investigation process of criminally disqualified persons must, of necessity, be more involved.

Subchapter 15: The provisions of N.J.A.C. 13:2-15 have little effect on the revenue of the State. The consequences to a successful applicant could be economically significant, because he could become a liquor license owner. The proposed amendment to N.J.A.C. 13:2-15.2 provides that fees required in processing the petition submitted for removal of disqualification shall be paid by the petitioner. A total of 36 statutory disqualification removals were issued for fiscal year 1988-89 after the Division received a filing fee of $25.00 each.

Subchapter 16: This subchapter impacts on salesmen who must take out solicitor's permits each year. The fee is between $15.00 and $25.00. These fees generated an average revenue of $50,000 in each of the past five years. The Division incurs administrative expenses in issuing permits, investigating applicants and maintaining files. Commissioner Burnett stated that the issuance of solicitor's permits is one means to prevent the unfair competition by persons not licensed under New Jersey law or employed by New Jersey licensees. This purpose is extremely germane today since the legislative enactment effective July 1, 1982 and cited as N.J.S.A. 33:1-3.1 found and declared that the public policy of this State is, among other things, to maintain trade stability while providing a framework for the alcoholic beverage industry that recognizes and encourages the beneficial aspects of competition. Therefore, by requiring persons who wish to sell or offer for sale alcoholic beverages in this State to hold solicitor's permits, all such persons have the same rights and obligations thereby maintaining a stable marketplace where they may compete on a fair and equal basis.

Subchapter 17: By statute, a filing fee of $50.00 must accompany each appeal and those funds are remitted to the General Treasury. The expenses of administration and adjudication of appeals by both the Division and the Office of Administrative Law are essentially paid from funds allocated the agencies in their general budgets. The minimal recapture of expenditures from the appeal filing fee represents the basic State philosophy to permit its citizens affordable, ready access to the administrative review process. This appeal mechanism helps to insure the integrity and competency of liquor license determinations made by municipalities and it encourages licensees, applicants for licenses and citizens to monitor alcoholic beverage activities in a community with the knowledge and awareness that any determinations made at the municipal level can be independently reviewed and judged on appeal.

Absent readoption of the regulatory provisions in subchapter 17, the expenses to administer appeals would increase because the result would be imprecise, nonuniform appeal documents and procedures that would increase clerical and professional time spent in the processing of appeals.

Subchapter 18: As indicated in the Social Impact statement, while the law itself has economic consequences to the industry and citizens of the State of New Jersey, subchapter 18 does not, in and of itself, have economic impact. The only economic expense to the Division and the Office of Administrative Law would be in conducting hearings and rendering decisions on petition proceedings instituted under the law.

Subchapter 19: The fact that a liquor license can be suspended or revoked does create potential economic impact upon an affected licensee. However, this impact on a license is envisioned and authorized as a statutory sanction under N.J.S.A. 33:1-31 for those who abuse the privilege of engaging in alcoholic beverage activity in this State. To the extent that a person who acquires an interest in a license may have that license subject to disciplinary sanctions arising from the actions of a predecessor, the Division does provide, upon request, a statement indicating whether the license to be acquired has any prior violations, outstanding license suspension orders or charges pending adjudication.

Subchapter 20: During the 1987-88 fiscal year, the Division issued a total of 6,132 transit insignia. Four thousand, one hundred and sixty-nine (4,169) of these transit insignia were issued to holders of transportation licenses to cover the vehicles used in connection with their business. All funds received are deposited in the general treasury of the State. The cost to industry members is modest, with insignia fees ranging from $25.00 to $10.00 per vehicle.

Subchapter 21: The ability to acquire the necessary permits authorized under this subchapter is relatively simple and the cost is moderate. A Limited Transportation permit costs $200.00 and will allow the permittee to transport alcoholic beverages into or out of New Jersey for a full year. The Emergency Trip Permit costs $25.00 and will allow one specific delivery into or out of New Jersey. This is most useful for truck operators who do not regularly transport alcoholic beverages. The personal consumption or importation permits that allow a New Jersey resident to transport in excess of the statutory limits in N.J.S.A. 33:1-2 costs only $5.00.

All permit fees are deposited into the General Treasury of the State. The surcharge collected when the designated agent issues the Emergency Trip Permit at a Truck Stop will cover the agents' business operations. The location of these agents at the most frequented truck stops will economically benefit the permit applicant by saving the expense required to travel to Trenton and the Division's office to acquire these permits.

During 1988, the number of permits issued in these areas was as follows:

Limited Transportation Permits	185
Personal Consumption/Importation	224
Emergency Trip Permit	8,724

Subchapter 22: The ability to acquire the necessary permit is relatively simple with a moderate cost. The railroad carriers of alcoholic beverages would experience the same economic impact as any other permittee or licensee as set forth in the above statement relating to N.J.A.C. 13:2-21.

Subchapter 23: The provisions of subchapter 23 do not have any intrinsic economic impact. These rules, as the title indicates, are intended to govern the conduct of the holder of a liquor license and the activities which occur on liquor licensed premises. These rules seek to insure the integrity of the licensed industry and the actions required to comply with these rules do not, in and of themselves, impose any financial burdens or obligations upon the regulated industry or the citizens of the State of New Jersey who avail themselves of the many services provided by licensees of this State in conducting their various types of businesses.

The economic impact upon the Division of Alcoholic Beverage Control and its enforcement arm, the ABC Enforcement Unit of the Division of State Police, will not be changed by the readoption of these regulations. The Statewide investigative force which reviews the activity of liquor licensees and the conduct of their licensed business, as well as Division personnel which monitor certain regulations, will continue as in the past. Similarly, the local law enforcement officials who review activities at liquor licensed premises in their communities will continue to do so without any enhanced economic impact because of the readoption of these rules.

Absent the existence of these rules and the sanctions of suspension or revocation of a license for breach thereof, an anticipated economic impact to all law enforcement agencies and the citizens of the State of New Jersey in total would be great. Such risks are unnecessary because the readoption of these rules represents the needed control and enforcement remedy to ensure, as best as possible, a uniform and strict compliance with the standards set forth in subchapter 23.

Subchapter 24: The rules proposed for readoption in subchapter 24 have a significant economic impact on the industry and consumers of the State in that they regulate and proscribe the pricing and marketing practices of alcoholic beverages by licensees and out-of-State suppliers

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and importers. Such rules explicitly impact on the determinations a licensee would make on the sale and promotion of alcoholic beverages. By balancing the need to insure fair competition between licensees (with concomitant competitive pricing to consumers) against the need to insure a stable alcoholic beverage industry (with concomitant preservations of a tax base producing revenues in excess of $140,000,000 per year and promoting the legislative mandate of moderation), the provisions of this subchapter seek an acceptable middle ground to achieve objectives with the least destructive economic impact on the public or the industry.

Subchapter 25: Those portions of the Social Impact statement above which intertwine economic consideration are incorporated herein. Whatever constraints an individual licensee experiences as a consequence of these rules is significantly outweighed by the numerous public purposes and benefits achieved for all citizens and licensees of this State through a registered distribution system.

Subchapter 26: The rule provides a tool for individual retail licensees to take advantage of quantity discount prices offered by wholesalers. Smaller retailers who buy in quantity as a group are able to buy at a discount. Currently, there are 351 co-ops registered with the Division which encompass a total of 2,019 retail licensees. Since some retail licensees are members of more than one cooperative, the total number of licensees in cooperatives is less than the 2,019 number.

Subchapter 27: Label and bottle size are strictly regulated by the Federal government. Those entities that produce and bottle alcoholic beverages do so now under the standards imposed by Federal regulation. The State rules, therefore, do not impose additional labeling requirements and have no intrinsic economic impact. The prohibition against deposit marked containers from other states protects New Jersey consumers from paying unauthorized deposits either directly or indirectly. This does not cause an adverse economic impact on the alcoholic beverage industry or on the availability of product, since all products are regularly and sufficiently available to New Jersey consumers in non-deposit marked containers through normal authorized distribution channels.

Subchapter 28: The provisions of N.J.A.C. 13:2-28 identify a procedure by which retail licensees may transfer wine from an original container to an interim container prior to service to patrons. The requirement that labels be affixed to the interim containers should not have any significant economic impact on the industry.

Subchapter 29: The Division has had no difficulty from a personnel or budget standpoint in servicing requests for access to and photocopying of public records; nor has any complaints from the public been received in these areas. Since requests for photocopying and inspection are minimal, costs to the Division are negligible. By permitting licensees to utilize computer recordkeeping and invoice systems, the cost efficiencies of such usage generally reduce operational expenses, which savings can inure to the benefit of the licensed industry and ultimate consumer.

Subchapter 30: The Division has had no request, nor has it registered any still or distilling apparatus, in the last 10 years. The statute and rules exempt from this registration requirement any duly licensed manufacturer or rectifier and blender of alcoholic beverages and serves as a means to insure that alcoholic beverages are only manufactured by those duly qualified and licensed entities. The Division notes that although there has been no recent registration of stills or distilling apparatus, the deterrent and management control these rules place at the disposal of the Division of Alcoholic Beverage Control is necessary to prevent the illegal and unlicensed manufacturing of alcoholic beverages.

Subchapter 31: The direct economic impact of a seizure when unlawful alcoholic beverage activity occurs is the forfeiture of the illicit alcoholic beverages, the cash that might have been generated from illegal sales, all of the fixtures and personal property located in or upon any premises where the illicit beverages are located and any implements, vehicles, vessels, airplanes or paraphernalia that was used in connection with the unlawful activity.

As it relates to cash seized from illegal operators or the forfeiture of bonds posted, the Division in the past three fiscal years 1987, 1988 and 1989 has remitted $109,264 to the General Treasury of the State. The trust fund maintained by the Division for such funds awaiting final determination in pending seizure proceedings has a balance of $204,613.03.

There is a revenue benefit to the State resulting from orders of forfeiture as previously noted and, in addition, unopened alcoholic beverage products which are fit for beverage purposes after forfeiture are provided free to hospitals and State, county and municipal institutions to be dispensed to patients pursuant to physician's orders. Opened alcoholic beverages or unopened bottles which are or appear to be spoiled are destroyed. The administrative costs to conduct seizure hearings are basically borne from the allocated budgets of the Division of Alcoholic Beverage Control and the Office of Administrative Law. Absent readoption of these rules, the administrative costs would increase because of fragmented, imprecise and unclear procedures and standards to govern actions required under N.J.S.A. 33:1-66.

Subchapter 32: The rules in this subchapter do not have any intrinsic economic impact, other than the minimal expense upon the Division to process and advertise the sale. The division has not had a public sale of property in the last 10 years. Most property is either returned upon the posting of a bond or is given to hospitals and State, county and municipal institutions and agencies for their public usage. The benefit achieved through this latter public disposition does inure to the public's benefit in reducing what otherwise might be a purchase expense. The fact that there is an economic loss to a party whose property is forfeited is of no consequence since it was that person's illegal activity, or his allowance of someone else to use the property in connection with illegal activity, that casued that result.

Subchapter 33: Economic constraints imposed on an individual licensee as a consequence of these rules are significantly outweighed by the numerous public purposes and benefits achieved for all citizens and licensees of this State through a registered distribution system. In fiscal year 1989, the Division processed 6,138 new brand registration schedules and 1,808 amended brand registration schedules. The Division notes that the $10.00 fee is necessary to cover the reasonable costs incurred by the Director in connection with the filing of a new brand registration. Since the basic information already exists in the files for an amended brand registration schedule, the reasonable cost incurred by the Director in connection with such filing will be covered by a fee of $7.00.

Subchapter 34: Since there have been no requests or applications in the last 10 years for the alcohol permits, there is no economic impact either upon the alcoholic beverage industry or the public at large. It is specifically noted that N.J.S.A. 33:1-87 exempts from the statutory and regulatory requirements the sale or possession of alcohol which is not intended for beverage purposes and has been denatured or otherwise rendered unfit in fact for beverages purposes. Moreover, the statute also exempts those entities possessing alcohol for the actual manufacturing or preparation of the medicines. Therefore, with the repeal of this subchapter, there shall be no economic impact either upon the public at large or the alcoholic beverage industry.

Subchapter 35: During the 1989-1990 license term, there were issued in New Jersey 1,869 plenary retail distribution licenses, 558 plenary retail consumption licenses with broad package privileges, and 6,972 plenary retail consumption licenses (and 18 seasonal consumption licenses). This subchapter addresses the package sales made by the nearly 7,000 consumption licenses which do not possess the broad package privilege.

As previously noted, it is anticipated that any changes to this subchapter will be the subject of significant comment, the direction of which will be dependent upon the segment of the industry affected. The Division proposes maintaining the *status quo* by readopting the current rules without substantive costs may be incurred by licensees in complying with this subchapter, if a licensee desires to sell package goods, in order to conform the physical configuration of the licensed premises to satisfy the product display, shelving and barroom minimums set forth in the subchapter. What expenses would entail depend upon each licensee's determination under its business plan and is not quantifiable or subject to estimate, and could range from nothing to tens of thousands of dollars.

Subchapter 36: Compliance with N.J.A.C. 13:2-36.1 does not have a direct economic impact on the alcoholic beverage industry. Administrative costs and personnel time at the Division or Division of Law is relatively minor because providing advice is part of the nature of the Divisions' daily business. Significant adverse economic consequences to the Division and to the alcoholic beverage industry are averted when opinions are obtained which identify and correct actual or contemplated impermissible activities, not the least of which is the avoidance of Division investigatory and adjudicatory activities, the savings of time and funds which can be directed to other Division responsibilities.

Subchapter 37: These rules impact on salesmen who must take out solicitors permits. The rules maintain a stable marketplace. For additional information on the economic impact, see the portion of this statement concerning N.J.A.C. 13:2-16, Solicitor Permits.

Subchapter 38: Any economic impact suffered by retail licensees through reduced sales as a result of these rules are offset by the public purpose of reducing instances of alcohol abuse and promotion of public welfare.

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Subchapter 39: The return of alcoholic beverages for credit is ancillary to the conduct of business in this industry. Since the previous terminology left what was "usual and customary" in the industry up to some individual interpretation, it was felt more certainty would be beneficial in clarifying and articulating those instances which the Division finds falls within the penumbra of the previous generalized statement. The Division does not anticipate this clarification will have a significant economic impact on any segment or member of the industry.

Subchapter 40: The cost to an applicant of an ABC identification card is a modest amount and at best encompasses the actual cost to the county clerk to issue these cards. The current fee established by statute is $6.00 as set forth by N.J.S.A. 33:1-81.5. Thus, the annual amount of fees collected for the issuance of the approximately 34,000 cards is over $200,000.

Regulatory Flexibility Analysis

The rules in subchapter 1 apply to any person or entity applying for the issuance of a State license to manufacture, wholesale, warehouse, transport or bottle alcoholic beverages in New Jersey. It also impacts on existing State license holders if there is a restructuring in ownership through stockholder changes. There are approximately 700 persons or entities that could be required to follow the application and advertising requirements of this subchapter.

Approximately 90 percent of the affected entities would be classified as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which range from $50.00 (small gallonage producing farm winery) to $8,500 (plenary brewery license). The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 2 apply to any person or entity applying for the issuance of a municipally issued license to sell alcoholic beverages at retail to consumers or club members and their bona fide guests. They also impact on existing municipally issued retail license holders if there is a restructuring in ownership through stockholder changes. There are approximately 14,000 persons or entities that could be required to follow the application and advertising requirements of this subchapter.

Approximately 95 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which range from $50.00 (club license) to $2,000 (plenary retail consumption or distribution license). The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The basic impact of subchapter 3 is not on any small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The affected entities are 525 municipal clerks or ABC board secretaries at the local level and the Licensing Bureau of the Division at the State level that issue retail liquor licenses in their communities. These governmental units collect, edit, process and store the required information.

The rules describe a uniform method of maintaining relevant data concerning license activity and indicate when and how to transmit same to the Division. With respect to review and action concerning retail licenses in Atlantic City, specific rules define the governmental review process for license changes which include review by the Director of the Division of Alcoholic Beverage Control. The expenses incurred by the governmental entity is presumptively reimbursed through the collection of annual license fees and specific filing fees mandated by law and noted in various other subchapters of N.J.A.C. 13:2 where license issuance and transfer are discussed.

The rules in subchapter 4 apply to any person or entity seeking to acquire an interest in a retail license and the applicant is a member of the municipal issuing authority (governing body in the municipality or board of alcoholic beverage control). It also impacts on existing municipally issued retail license holders if there is a restructuring in ownership through stockholder changes. There are approximately 40 persons or entities that are currently required to follow the application and advertising requirements of this subchapter.

Approximately 95 percent of the affected entities would be classified as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which range from $25.00 (limited retail distribution license) to $2,000 (plenary retail consumption or distribution license). The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or satisfy the procedures for reflecting changes in stockholders, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 5 affect any person or entity applying for the issuance of: (a) a one-day Social Affair permit to sell alcoholic beverages at retail by the glass (not-for-profit civic, religious, charitable, fraternal, social, etc., organizations); (b) a Special Concessionaire Permit to sell alcoholic beverages at retail on property that is under the control of the State of New Jersey or any political subdivision thereof for a one-year renewable term; (c) a special permit to Court-appointed fiduciaries to sell alcoholic beverages in original sealed containers under Court authority; or (d) such other Special permits issued under the authority of N.J.S.A. 33:1-74.

There are approximately 12,000 persons or entities that were required last year to follow the application and issuance process and to comply with the alcoholic beverage usage or sale under this subchapter.

Approximately 80 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which range from $5.00 (special import for personal use permit) to $500.00 (Annual State Concessionaire Permit). Where the applicant (Special Concessionaire permittee) must publish notices in newspapers, it should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The basic impact of subchapter 6 is not on any small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The affected entities are the 525 municipal clerks or ABC board secretaries at the local level and the Licensing Bureau of the Division at the State level. These governmental units collect, edit, process and store the required information. There are no significant reporting, record keeping or professional services mandated upon the fiduciary applying for an extension. This fiduciary is generally a person and not a business entity. There are no fees required and the documents the fiduciary must produce already exist other than a brief request by Petition. Approximately 50 extensions are issued each year as part of the judicially supervised proceeding which inititate the need for these extensions.

The rules in subchapter 7 apply to any person or entity seeking to acquire or relocate an existing State or municipally issued license either

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from one person to another, one place to another or for both person-to-person and place-to-place. There are approximately 1,500 transfer applications filed each year that would be required to follow the application and advertising requirements of this subchapter.

Approximately 95 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which range from 10 percent of the annual State or municipal statutory fee to 20 percent if it is a combined transfer request. For municipally issued licensed another $50.00 fee is required by law to be paid to the State Division of Alcoholic Beverage Control. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 8 apply to any not-for-profit entity that wishes to apply for, or currently holds, a club license issued under N.J.S.A. 33:1-12. There are approximately 1,300 entities that hold club licenses and they plus any new applicants would be required to follow the qualification requirements, the limitations on sale of alcoholic beverages (only to club members or bona fide guests and only for consumption on the licensed premises) and the recordkeeping requirements. These records include the need to document when the club premises are made available to non-member groups and to maintain true books of account as to the club's financial activities.

Approximately 80 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are no fees required under this subchapter other than the statutory license fee of from $50.00 to $150.00 collected annually by the municipality and a $50.00 application processing fee paid to the State Division of Alcoholic Beverage Control. No professional services or capital expenditures (except for record books) are mandated, although the affected entities may utilize professional accounting type services or computer equipment for these purposes if they so decide.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 9 apply to any person or entity seeking to acquire a State-issued warehouse receipts license under N.J.S.A. 33:1-72. There is one entity that is currently required to follow the application and advertising requirements of this subchapter. This entity, and others that could apply for the warehouse receipts license, would be classified as a small business, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form and payment of the statutory fee of $300.00. In addition, a Solicitor's Permit must be acquired, which is more fully discussed in subchapter 16. The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 10 apply to any person or entity applying for the issuance of a Plenary Winery license, Wine Blending license or Parcel Delivery Service permit to manufacture and produce wine and sell at wholesale or retail, to blend wine with other permitted items; or to use a parcel delivery service to ship wine to New Jersey purchasers. They also impact on existing State license holders if there is a restructuring in ownership through stockholder changes. There are approximately 12 persons or entities that are currently required to follow the application and advertising requirements of this subchapter.

Approximately 95 percent of the affected entities would be classified as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which are $750.00 for a Plenary Winery license, $500.00 for a Wine Blending license and $150.00 for a Parcel Delivery Service permit. The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 11 apply to any person or entity applying for the issuance of a State Farm Winery license to manufacture and sell New Jersey wine at wholesale and retail. They also impact on existing State license holders if there is a restructuring in ownership through stockholder changes. There are approximately 10 persons or entities that are currently required to follow the application and advertising requirements of this subchapter.

Approximately 95 percent of the affected entities would be classified as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The subchapter does require completion of a State promulgated form with payment of statutorily established fees which ranged from $50.00 to $300.00, depending upon the gallonage of wine produced per year. The applicant must publish notices in newspapers which should cost no more than $50.00; however, newspapers have varying rates for legal publication expenses. No professional services are necessary to complete the application or stockholder amendment requirements, although the affected entities may do so as a matter of choice and the forms do require notarization. No other reporting, recordkeeping or other compliance requirements are imposed, except as to labelling which parallel Federal requirements that already exist.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for application, payment of fees and advertisement. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 12 apply only to individuals that seek to manufacture wine in their home for personal consumption only. Since all applicants are individuals and cannot commercially use the wine produced, they would not be a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The fee for this permit is $3.00 and can be applied for by letter. There were 56 Special Wine permits issued in calendar year 1989.

The rules do not impose any bookkeeping or recordkeeping requirements, nor does the subchapter make any distinction for a small business since the Regulatory Flexibility Act requirements do not apply. The requirements imposed are considered the minimum to effectuate the requirements and purpose of the law.

The rules in subchapter 13 apply to all persons or entities that hold State liquor licenses and require them to complete an employee questionnaire on a form promulgated by the Division of Alcoholic Beverage Control. This questionnaire is the only record required under this regulation and asks basic personal employment information about the licensee and every officer, director or stockholder of a licensee.

The information required already exists and is available from other payroll and tax records required to be kept by the business entity. It need only be recopied into the ABC form.

There are approximately 750 State licensees affected by this requirement and 90 percent are estimated to be a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Estimating an average of 10 persons per licensee that would be required to complete the questionnaire, a total number of individuals affected would be 7,500.

There are no fees required by this subchapter and no professional services or other capital expenditure is required to complete the questionnaire.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of disclosure and to lessen the requirements would frustrate the statutory standards.

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The rules in subchapter 14 do not apply to any small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. This subchapter requires individuals who are disqualified from working for the holder of an alcoholic beverage license because of age (generally under 18 years of age) or because of an existing conviction of record of a crime involving moral turpitude to apply for and receive a permit from the Division of Alcoholic Beverage Control.

The minor's employment permit costs $5.00 and the criminally disqualified persons permit costs $25.00. These permits are renewable annually and can be obtained by completing a State prepared form without any need for professional services or other capital outlay. The requirements imposed on these individuals and indirectly upon the licensees that seek to employ such individuals, are considered the minimum to effectuate the requirements of N.J.S.A. 33:1-26. To lessen the requirement by any distinction under the small business concept, if it applied, would frustrate legislative provisions and intent.

The rules in subchapter 15 allow individuals who are disqualified from either working at liquor licensed premises or owning a liquor license because they have been convicted of a crime involving moral turpitude, to have that disqualification removed by the Division of Alcoholic Beverage Control. As such, these provisions do not involve a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

A person applies for removal of the disqualification by filling out an application provided by the Division. A fee of $25.00 is required as well as payment of fees (generally $38.00) to have fingerprint cards processed by the New Jersey State Police and the Federal Bureau of Investigation.

No other professional services or capital outlay are required, although some applicants retain professional legal services to process the request. The requirements imposed upon these individuals are considered the minimum to effectuate the provisions of N.J.S.A. 33:1-31.2.

The rules in subchapter 16 require individuals who seek to sell alcoholic beverages to New Jersey retailers as employees of New Jersey licensed manufacturers or wholesalers to apply for and obtain a solicitor's permit as required by N.J.S.A. 33:1-67. Since these provisions deal with individuals as prospective employees, the provisions of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. do not apply. The individual applies for the permit on a Division-provided application form. The fee is either $15.00 or $25.00 depending upon the types of alcoholic beverages to be sold. Fingerprint fees and the cost of photographs also are required. No other professional services, recordkeeping or capital outlay are needed.

The provisions in N.J.A.C. 13:2-16.15 and 16.16 do affect a small business by requiring the solicitor's employer to reduce to writing the employment contract between the parties and to file annually with the Division a statement of compensation paid to each solicitor. These records should be readily available from other data required by the businesses to be kept for other tax and employment purposes. There is no distinction made in the subchapter for the approximate 250 small business licensees that employ approximately 2,700 solicitors, since the requirements imposed are considered the minimum to effectuate the requirements for disclosure and administrative control. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 17 essentially set out quasi-judicial procedural requirements that apply when an affected entity files an appeal to the State Division of Alcoholic Beverage Control from some action taken at the municipal level concerning a retail liquor license. Since the person filing the appeal is most often a business entity, a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. is involved. Approximately 140 appeals are filed annually, almost all of which would concern a small business.

The compliance requirements include filing documents and paying the statutory filing fee of $50.00. While not necessary, most affected entities retain legal counsel to prosecute the appeal, which may require other litigation expenses if a hearing is held by the Director or the Office of Administrative Law. There are no other reporting, recordkeeping or capital expenditures required by the subchapter.

There is no distinction made in the subchapter for a small business appellant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for due process and the payment of statutorily established fees. To lessen the requirements would frustrate statutory and constitutional standards.

The rules in subchapter 18 essentially set out quasi-judicial procedural requirements that apply to New Jersey licensed wholesalers who can file a petition with the Division of Alcoholic Beverage Control alleging that it has been discriminated against by a supplier or manufacturer in the ability to continue to purchase and sell nationally advertised wines or distilled spirits. Since the person filing the petition is most often a business entity, a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. is involved. Approximately 10 petitions are filed annually.

The compliance requirements include filing documents and paying the filing fee of $50.00. While not necessary, most affected entities retain legal counsel to prosecute the discrimination proceeding, which may require other litigation expenses if a hearing is held by the Director or the Office of Administrative Law. There are no other reporting, recordkeeping or capital expenditures required by the subchapter.

There is no distinction made in the subchapter for a small business petitioner since the requirements imposed are considered the minimum to effectuate the requirements under N.J.S.A. 33:1-93.6 et seq. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 19 essentially set out quasi-judicial procedural requirements that apply when a license is subject to State or municipally initiated administrative disciplinary proceedings alleging a violation of law, regulations or municipal ordinance. In most cases, the person involved in the disciplinary case is a small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is estimated that 800 disciplinary cases are initiated at the State and municipal level annually.

While not necessary, most affected entities retain legal counsel to defend the disciplinary charges, which may require other litigation expenses if a hearing is held by the Director or the Office of Administrative Law. There are no other fees, reporting, recordkeeping or capital expenditures required by the subchapter.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for due process. To lessen the requirements would frustrate the statutory and constitutional standards.

The rules in subchapter 20 affect persons or entities involved in the commercial transportation of alcoholic beverages into, out of, or through New Jersey that currently hold a New Jersey license that authorizes the wholesale sale of alcoholic beverages. Of the approximately 250 licensed suppliers and wholesalers, it is estimated that 80 percent would be classified as a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The recordkeeping and reporting requirements in this subchapter include the preparation, dissemination and retention for one year of invoice documents that basically identify the seller, buyer, destination, and alcoholic beverages being transported. Prior amendments reduced the record retention period from three years to one year in the spirit of this "small business" legislation concept. Any further distinctions between large and small businesses would thwart the legislative scheme under the Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq., mandating a controlled, supervised and identifiable process to insure compliance with numerous other specific provisions of law or regulation.

A second basic concept in this subchapter requires licensure and identification of the vehicles used for alcoholic beverage transportation. Holders of existing New Jersey supplier or wholesale class licenses will acquire transit insignia or special transit insignia at a cost of $25.00 per vehicle. An application form provided by the Division is used to apply for the insignia. Approximately 2,000 vehicles are currently covered by such insignia. A person or entity that does manufacture or wholesale alcoholic beverages under a New Jersey license may also acquire a Transportation license under N.J.S.A. 33:1-28 for $500.00 per year. The licensees that now possess Transportation licenses encompass approximately 4,100 vehicles with special transportation license insignia that cost $10.00 per vehicle. All these various type transit insignia are renewable annually.

Except as noted above, there are no other capital expenditures, reporting, recordkeeping, or compliance requirements imposed by the rules. The requirements established are the minimum necessary provisions to maintain compliance with the statutory scheme to avoid any improper diversion of alcoholic beverages, avoidance of tax responsibilities or discriminatory sales at different prices to similarly situated buyers of the same product.

The rules in subchapter 21 affect persons or entities that generally hold no other New Jersey issued license but seek authorization to transport alcoholic beverages into or out of New Jersey as part of a commercial business operation, or as individuals who seek to transport alcoholic beverages for personal use in amounts that exceed statutorily established limits under N.J.S.A. 33:1-2.

The individuals that acquire a personal transportation permit for $5.00 to allow excess volume transportation in their own cars would not be

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a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The business entities that acquire Limited Transportation permits or Emergency Trip permits are required to pay a statutorily established fee of $200.00 per year or $25.00 per trip, respectively. Application is made on forms provided by the Division. In 1988, 185 entities were issued Limited Transportation permits, while 8,724 Emergency Trip permits were issued. It is estimated that 80 percent of these entities would be considered a "small business".

Except as noted above, there are no other capital expenditures, fees, reporting or recordkeeping or compliance requirements imposed by the regulation. The requirements established are the minimum necessary provisions to maintain compliance with the statutory scheme to avoid any improper diversion of alcoholic beverages, avoidance of tax responsibilities or deviations from the controlled, identifiable movement of alcoholic beverages into or out of the State.

The rules in subchapter 23 affect the almost 12,000 entities or persons that hold retail liquor licenses in the State of New Jersey. Approximately 90 percent of these entities would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. While most of the sections in this subchapter identify activity that is either prohibited or required for compliance with law, there are provisions in N.J.A.C. 13:2-23.13, 23.22, 23.23, 23.31, and 23.32 that set forth certain recordkeeping or reporting requirements in the area of retention of licensure applications and lists of employees; the maintenance of proper label or tap marker designations for alcoholic beverages; the hiring of police officers as employees; and the keeping of accurate financial records concerning the operation of the licensed business.

The rules require no fees, nor are there any other capital outlay or professional services required for compliance, except as a licensee may choose to utilize if it so desires. There is no distinction made for a small business in this subchapter since the rules involved are considered the minimum necessary to insure compliance with statutory requirements and insure proper supervisory control by the Division of Alcoholic Beverage Control or the 525 municipal issuing authorities that also supervise the retail licensees in their communities. To lessen the requirements would frustrate the statutory and regulatory scheme.

The rules in subchapter 24 basically affect the supplier and wholesaler segments of the alcoholic beverage industry that engage in the marketing and sale of alcoholic beverages in New Jersey. They essentially apply to the almost 250 entities that are licensed by the Division to manufacture and/or wholesale alcoholic beverages. They also regulate manufacturers, importers and wholesalers not licensed in New Jersey but who do business in New Jersey with New Jersey licensees. That number of entities is estimated at 200. Eighty percent of these businesses would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

There are numerous provisions in the subchapter that require the filing or recordkeeping of price information, promotional offerings, advertising expenditures, credit to retailer records, rebate to consumer offerings, product display placements and other marketing initiatives. A significant amount of this recordkeeping, reporting or the capital expenditures needed for compliance is already required to satisfy existing Federal regulations. There are no fees established under the subchapter. It is assumed that professional accounting type services are utilized by most of the affected industry members because the sale and marketing activities undertaken, and the need to accurately record such information, involves tens of thousands of transactions each year.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of numerous laws and other regulatory provisions directed to achieve a fair, impartial, nondiscriminatory, controlled and identifiable sale and marketing of alcoholic beverages in the State. To lessen the requirements would frustrate statutory and constitutional standards.

The rules in subchapter 26 affect independent retail license holders who decide to join together for the purposes of cooperatively buying alcoholic beverages from wholesalers in this State. Currently, approximately 2,000 retailers are members of 350 registered cooperative buying groups. Approximately 95 percent of these entities would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules do require the retailers to register as a cooperative group with the Division at a fee of $10.00 per participating retailer. This is renewable annually. The cooperative must have a written organizational agreement that might require professional legal services. However, the Division does have a form agreement reciting the specific requirements of subchapter 26 which it will provide at no cost. Credit sales to a cooperative also require individual assurances of payment which might be obviated by a bond or other cash funded escrow that could require additional expense. No other reporting or recordkeeping is required by this regulation.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements for a structured, identifiable supervision of the relationship of separate, independent licensees who are otherwise prohibited from joining other licensees in the retailing of alcoholic beverages because of the Two License Limitation Law, N.J.S.A. 33:1-12.31. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 27 predominantly affect all supplier, importer and wholesaler segments of the alcoholic beverage industry in New Jersey. Of the estimated 450 affected industry members, approximately 80 percent would be considered a small business as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules have a two-fold aspect. First, they require compliance with Federal rules concerning standards of fill and alcoholic beverage labelling. Second, they prohibit the sale of products to retailers where the bottle or can has a deposit marking of another state. No professional services are needed for compliance and no additional recordkeeping, reporting, fees, or other capital expenses are required by the subchapter.

There is no distinction made in the subchapter for a small business because these requirements are of a universal nature to be applicable equally to a small or large business. To lessen the requirements would frustrate statutory scheme.

The rules in subchapter 28 could affect any of the approximately 9,000 New Jersey retail consumption licensees that have the privilege of selling alcoholic beverages by the glass or other open container for consumption on the licensed premises by their patrons. Approximately 90 percent of these entities would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules basically incorporate the requirement of N.J.S.A. 33:1-88 that all containers of alcoholic beverages have a label that accurately describes its contents. This subchapter requires a label in a specified form to be placed on any interim, temporary container of wine used by a licensee to fill customer orders when the original sealed container or keg is not used for that purpose. The cost for labels is minimal and no other reporting, recordkeeping, capital expense or professional service is required.

No distinction is made for a small business since the provisions set forth are the minimum necessary to effectuate the legislative purpose and to lessen same would thwart the provisions of law.

The rules in subchapter 29 do not basically affect any small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules affect the State Division of Alcoholic Beverage Control and the public by noting what records the Division maintains and whether they are classified as a public record or a confidential record.

With respect to public records, the inspection rights and the range of statutory fees for photocopying are noted. One provision does describe the timeframe under which a licensee in New Jersey must be able to produce for inspection records that may be required by other laws or regulations to be maintained on the licensed premises. However, this subchapter does not itself impose recordkeeping requirements. Alternatives as to where records can be kept and some reduced inspection and copying fees are noted that could be considered responsive to a small business and its economic expenses.

The concepts noted in this subchapter represent the minimum requirements necessary to effectuate legislation policy and to lessen the requirements would be inconsistent with and frustrate statutory standards.

The rules in subchapter 30 affect those entities that possess stills and other distilling apparatus used to produce alcoholic beverages in New Jersey and do not otherwise hold a distiller's license or rectifier or blender's license. There are no entities which are currently impacted by this subchapter, but its notification and supervisory concepts are appropriate for retention and application should such equipment be possessed or utilized in the future. It will be assumed that a future applicant will be small business as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules require a registration with the Division of Alcoholic Beverage Control on an application form provided by the Division. Notification to the Division is required of any removal or sale of the equipment. No

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fee is required. There are no other recordkeeping or reporting requirements. No professional services or capital outlay is needed for compliance with these provisions.

There is no distinction made in the subchapter for a small business applicant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of specific laws contained in N.J.S.A. 33:2-1 et seq. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 31 essentially impact on illegal operators of unlicensed clubs, restaurants and other unlicensed sellers or transporters of alcoholic beverages. It is unlikely that these individuals or entities would be encompassed as a small business and subject to the beneficial concepts articulated in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, there is a class of people that are considered "good faith" claimants that can receive return of property seized in connection with the unlawful alcoholic beverage activity if they establish certain elements set forth in N.J.S.A. 33:1-66. To the extent members of this group might be encompassed under the law as a small business, nothing in these rules would establish any independent recordkeeping, reporting or fee requirements, nor is any capital expense needed to prove their claim. Professional services might be utilized for an administrative hearing, but are not required by regulation.

The quasi-judicial hearing concepts set forth in the subchapter are the minimum necessary to satisfy statutory and due process requirements concerning hearings and forfeiture. No distinction is made for the possible small business claimant since to lessen the requirements would frustrate the statutory and constitutional standards.

The rules in subchapter 32 impose upon the Division of Alcoholic Beverage Control standards concerning sale of forfeited property and do not affect or regulate any business or individual that would be considered encompassed under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. The subchapter sets forth specific standards, procedures and requirements upon the Division in the conduct of the sale of forfeited property. Any person bidding is subject to the conditions articulated in the regulations and to that extent, a small business might be a bidder in the sale process. However, the rules in this subchapter impose no recordkeeping, reporting or fees, and no professional services or capital expense is required for compliance by this subchapter, other than the bidder paying the expenses required to purchase property hereunder.

The rules in this subchapter contain the minimum requirements to satisfy statutory and due process provisions and to lessen them for any bidder that might be considered a small business would frustrate legal standards.

The rules in subchapter 33 affect all suppliers, importers, manufacturers and wholesalers that intend to sell alcoholic beverages in the State of New Jersey to New Jersey licensed retailers. Of the approximately 450 industry members impacted, it is estimated that 80 percent would be a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The subchapter requires the filing of a Brand Registration Statement for each brand and type of alcoholic beverage to be offered for sale in New Jersey. In 1989, the Division processed 6,138 new brand registrations at a $10.00 fee per brand and 1,808 amendments at a fee of $7.00 per amendment. Approximately 25,000 active brands are currently filed with the Division. No annual renewals are required for a brand registration.

A specific form provided by the Division at no cost is used to effectuate the registration. No other reporting, capital expense, recordkeeping or professional services are required to complete the filing.

There is no distinction made in the subchapter for a small business registrant or licensee since the requirements imposed are considered the minimum to effectuate the requirements of specific provisions of law (N.J.S.A. 33:1-2 and N.J.A.C. 13:2-25). To lessen the requirements would frustrate statutory standards.

The rules in subchapter 34 which dealt with issuing permits to authorize possession and sale of alcohol by registered pharmacies that also possessed retail liquor licenses are being proposed for repeal. Consequently, there is no small business that will be impacted to support a need for an analysis under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Nor is there a consequence or effect upon any existing small business because of the abolition of these provisions since there is no one who possessed such a permit within the last 10 years.

The rules in subchapter 35 affect approximately 7,600 retail licensees that hold either plenary or seasonal retail consumption licenses without a statutory privilege under N.J.S.A. 33:1-12.23 called the Broad Package Privilege. By law, these 7,600 licensees are limited in the location where they can sell or display alcoholic beverages in original cans or bottles for sale for consumption off the licensed premises. The rules describe the limitations consistent with law, judicial interpretation and prior administrative determinations.

Approximately 90 percent of the licensees affected by this subchapter would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impose no fee, reporting or recordkeeping requirements nor should they require other professional services. Capital expenditures might be required, if the licensee desires to sell package goods, in order to conform the physical configuration of the licensed premises to satisfy the product display, shelving and barroom minimums set forth in the subchapter. What expenses would entail depend upon each licensee's determination under its business plan and is not quantifiable or subject to estimate, and could range from nothing to tens of thousands of dollars.

There is no distinction made in the subchapter for a small business entity since the requirements imposed are considered the minimum to effectuate the requirements of specific law. To lessen the requirements would frustrate the statutory standards.

The rules in subchapter 36 identify the concept that the Division of Alcoholic Beverage Control will reply to written request for opinions under stated standards. The inquiries the Division receives are from individuals or entities who, in most cases, would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The only requirement imposed by the subchapter that is in the nature of recordkeeping or reporting is that the request be in writing. No specific recordkeeping or reporting requirements are imposed, nor is any fee or other capital expense required. The affected entity may refer such issue to professional legal counsel if it so desires, but that is not mandated by the regulation.

There is no distinction made in the subchapter for a small business inquirer since the requirements imposed are considered the minimum to effectuate the requirements for reasonable access to the Division to request general guidance or clarification of administrative policy. To lessen the requirements would frustrate these purposes.

The rules in subchapter 37 affect wholesale licensees and their solicitor employees. These provisions are proposed for repeal and those concepts deemed relevant have been incorporated in subchapter 16, now proposed for readoption with amendments.

Consequently, there is no small business that would be subject to any provisions of this "Reserved" subchapter under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Any relevant evaluation concerning the current provisions of this subchapter can be found in the portion of this regulatory flexibility analysis addressing subchapter 16.

The rules in subchapter 38 affect the approximately 12,000 licensees that have retail sales privileges. It is estimated that 90 percent of these entities or individuals would be considered a small business under N.J.S.A. 52:14B-16 et seq.

The provisions in this subchapter restate a basic concept that the hours and days when a retail licensee can sell alcoholic beverages is regulated by State law, municipal ordinance and Division regulation. This regulation of hours flows from specific enabling statutory provisions that concern the regulation of the lawful hours of sale.

There is no recordkeeping or reporting required, no professional services are needed, no fees are imposed and no capital expenditures are necessary. As such, no different requirements could be stated to benefit a small business. In fact, the nature of control articulated in this subchapter mandates its universal application whether the affected business is large or small.

The rules in subchapter 39 affect holders of State-issued manufacturer or wholesale licenses. Of the approximately 250 affected New Jersey licensees, 80 percent would be considered a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Those rules which set forth invoice, delivery and return document requirements are now proposed for repeal. The concepts concerning documentation for invoices and deliveries are already contained in subchapter 20 and their repetition in this subchapter is unnecessary. The remaining provision contained in N.J.A.C. 13:2-39.4 concerning return of alcoholic beverages by a retailer to a wholesaler will be restated with specific clarity to identify reasons authorizing return of alcoholic beverages. This rule does require recordkeeping and document retention for one year. No fees are required, nor is any professional service needed for compliance. Capital expense for the record production and retention should be minimal.

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There is no distinction made in the subchapter for a small business licensee since the requirements imposed are considered the minimum to effectuate the need for a structured, identifiable system and standard concerning the return and delivery of alcoholic beverages. To lessen the requirements would frustrate the regulatory and legislative scheme of control.

The rules in subchapter 40 affect individuals who wish to acquire for their own personal use an identification card to establish they are 21 years of age or older. The governmental entity that issues the cards, the County Clerks of the 21 counties in New Jersey, are also impacted. Neither of these parties would be treated as a small business as encompassed in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

However, the requirements imposed to process and acquire this County ABC Identification Card are considered to be the minimum necessary to effectuate the specific statutory provisions and intent under N.J.S.A. 33:1-81.2 et seq., and to lessen them would frustrate the legislative scheme.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2.

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

SUBCHAPTER 1. FILING OF APPLICATION AND ADVERTISING NOTICE OF APPLICATION FOR STATE LICENSE

13:2-1.1 Filing of application; advertising

(a) Application for license must be filed **on forms promulgated by the Director, Division of Alcoholic Beverage Control, in duplicate** with the [director] **Division at or** before the first insertion of advertisement [on forms promulgated by the director] **and** accompanied by the full annual license fee. If the application is [for] **to include as the licensed premises** a building not yet constructed, plans **for the proposed building** shall accompany **the** application. [and] **The plans** shall show the appearance and design of the proposed building, **the type or types of exterior building material,** and the overall room dimensions. [Notice of application shall be published in the appropriate below listed form. However, no advertising of notice of application shall be required of applicants for transportation, public warehouse or warehouse receipts licenses.]

[1. The manufacturer's form is as follows:

MANUFACTURER'S FORM

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director of the Division of Alcoholic Beverage Control for a _____ license
(Type of license)

for the premises situated at _____
(No.) (Street) (City)

and to maintain a warehouse at _____
(No.) (Street) (City)

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

[2. An example of the wholesaler's form follows:

WHOLESALER'S FORM

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director of the Division of Alcoholic Beverage Control for a _____ license
(Type of license)

for the premises situated at _____
(No.) (Street) (City)

and to maintain a warehouse at _____
(No.) (Street) (City)

and to maintain a salesroom at _____
(No.) (Street) (City)

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

[3. An example of the railroad form follows:

RAILROAD FORM

Take notice that _____
(Name of Applicant)

has applied to the Director of the Division of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only in dining and club cars while in transit and operated within the State of New Jersey.

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

[4. An example of the airplane form follows:

AIRPLANE FORM

Take notice that _____
(Name of Applicant)

has applied to the Director of the Division of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only on airplanes while in transit within the State of New Jersey.

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Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

[5. An example of the boat form follows:

BOAT FORM

Take notice that _____
(Name of Applicant)

has applied to the Director of the Division of Alcoholic Beverage Control for a Plenary Retail Transit license to sell alcoholic beverages for consumption only on the boat named _____
(Name of Boat)
while in transit within the State of New Jersey.

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

[6. An example of the broker's form follows:

BROKER'S FORM

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director of the Division of Alcoholic Beverage Control for a Broker's license for the premises situated at

_____
(No.) (Street) (City)

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

13:2-1.2 Corporate or partnership applicant; building not yet constructed

(a) If an applicant [for a manufacturer's or wholesaler's or broker's license] is a corporation, insert [at the asterisk (*),] in the **Notice of Application** the names and residences of all officers and [all] directors [who have no other named office], and the names and residences of all stockholders holding **one percent or** more [than 10 percent] of any of the stock of said corporation. **If in listing those stockholders, another corporation, partnership or other legal entity is noted, the Notice must also contain the required information concerning the officers, directors, stockholders, or partners of that corporation, partnership or other legal entity.** If the applicant is a partnership, insert [at the asterisk (*),] the names and residences of all **general** partners **and any limited partner holding an interest of one percent or more**.

(b) If the application is [for] **to include as the licensed premises** a building not yet constructed, also insert [at the asterisk (*)] **in the Notice the following:** "Plans of building to be constructed may be examined at the Office of the Director of the Division of Alcoholic Beverage Control, [25 Commerce Drive, Cranford, New Jersey 07016] **TRW Complex, Bldg. 20, 200 Woolverton Street, Trenton, New Jersey 08625.**"

13:2-1.3 Publication of notice of application

(a) Notice of application shall be published by all applicants for State licenses, except Transportation, Public Warehouse or Warehouse Receipts licenses, in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to the Director, Division of Alcoholic Beverage Control, for a State-issued _____ license for
(Type of License)

premises situated at _____.
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are: See *
(See ** to insert other information if applicable)
Objections, if any, should be made immediately in writing to: Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Applicant)

_____
(Address of Applicant)

***If the applicant is an individual, insert the name and residence address of that individual.**

If applicant is a corporation, insert the names and residence address of all officers and directors, and the names and residences of all stockholders holding one percent or more of any stock of the applicant corporation or any corporation that is a stockholder in the applicant corporation.

If the applicant is a partnership, insert the names and residence address of all general partners and any limited partners holding an interest of one percent or more.

****If the application is for a building not yet constructed, insert in the Notice the following: "Plans of the building to be constructed may be examined at the Office of the Director, Division of Alcoholic Beverage Control, 200 Woolverton Street, Trenton, New Jersey 08625.**

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under its license, insert in the Notice the following: "The applicant intends to engage in the retail sale of _____ at _____
(Alcoholic Beverage Type) (No.) (Street)

_____ under the terms and conditions
(Municipality)
allowed by law."

[(a)]**(b)** Where the premises sought to be licensed are located in the State of New Jersey, the notice of application shall be published once a week for two weeks successively, at least seven days apart, in a newspaper printed in the English language, published and circulated in each municipality in which [said] **the** premises or any portion thereof, for example, office, warehouse, salesroom, are located. If, however, there shall be no such newspaper, then [such] **the** notice shall be published in a newspaper printed in the English

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language, published and circulated in the county or counties in which the licensed premises or any portion thereof are located.

[(b)](c) Where applicant does not maintain any licensed premises in the State of New Jersey, notice of application shall be published in the manner above described in the municipality wherein the duly authorized agent within the State upon whom service of process may be made[,] is located. [If applicant is a corporation authorized to do business in New Jersey said agent may be the registered agent.]

13:2-1.4 Proof of publication

Proof of publication of notice of application for a license shall be furnished [upon] **after** second publication **with copy of the dated advertisements attached.** [thereof and shall be substantially in the following form:]

[STATE OF NEW JERSEY
SS:
COUNTY OF

_____, of full age, being duly sworn according to law, on his oath says:

That he is a _____, employed by _____,
(Name of Newspaper)

which is a newspaper printed in the English language, published and circulated in _____;
(Name of municipality or county)

that a Notice of Application, of which the annexed notice is a true copy, was published once a week for two (2) weeks successively in the said _____;
(Name of Newspaper)

and that the first insertion was on the _____ day of ____, 19__,

and that the second insertion was on the_____ day of __, 19__,

making two (2) insertions in all. _____
(Signature of affiant)

Sworn to and subscribed before me this .....

day of ..... , 19 .....

.....

(Signature of officer administering oath)

.....]

(Title of such officer)

13:2-1.5 Applicants for renewal of annual State license

Applicants for renewal of annual State licenses issued by the [director] **Director** are not required to advertise notice of application. In lieu thereof, the [director] **Director** shall cause a general notice of application to be published once a week from the week of April 1 through the week of June 1 in a newspaper printed in [this] **the** English language and published and circulated in the counties in which the premises of applicants for such renewals are located. The notice shall be published in the following form:

NOTICE OF
APPLICATION FOR RENEWAL OF
ALCOHOLIC BEVERAGE LICENSES

[The public] **Notice** is hereby [notified] **given** that applications [for renewal of] **to renew** all annual alcoholic beverages licenses [may] **will** be filed with the Director of the Division of Alcoholic Beverage Control or the municipal local license issuing authority [on or before May 1st of this year] and may be approved on or after May 1st of this year. Objection[s, if any, with respect] to any [retail license] renewal [application] should be made immediately in writing to the Municipal Clerk of the municipality [in which the retail licensed premises are located and with respect to any other license renewal application should be made immediately in writing] **where the license is located if that license sells alcoholic beverages to consumers or** to the Director [of the Division of Alcoholic Beverage Control] **Div. of ABC, CN 087, Trenton, NJ 08625 for any other type alcoholic beverage license.** No individual notices [by individual license holders need by] **will be** published with respect to [each separate] license renewal **applications.** [application; but this general notice, published pursuant to Chapter 99 of the Laws of 1975, shall be the sole notice thereof required to be published according to law.]

13:2-1.6 Objections; hearing

The [director] **Director**, upon receipt of a **timely** written objection duly signed by an objector, [will afford] **shall provide** a hearing [to] and all parties [and forthwith notify the applicant and the objector] **shall be notified** of the date, hour and place thereof. No hearing need be held if no objection shall be lodged **unless the Director deems one necessary in order to make his or her determination on the application.** [Upon receipt of application, and after the requisite statutory investigation, the director] **The Director** shall not deny issuance, **renewal or transfer** or [such] **any** license without first stating the reasons therefor[,] and affording applicant the opportunity to be heard.

[13:2-1.7 Return of fee if application not approved

If application is not approved, 10 percent of full annual license fee is retained by the director and balance returned to the applicant.]

13:2-1.7 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any existing filed application concerning a State-issued license, the licensee shall file with the Director an amendment to the license application in a form prescribed by the Director reflecting the change not later than 10 days after the occurrence.

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate licensee.

13:2-1.8 Publication of notice of change in corporate structure; form

(a) Every corporate licensee shall, in addition to filing written notice with the Director of changes in stockholdings, cause to be published in the following form a notice of change in corporate structure not later than 10 days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.

—NOTICE—

Take notice that on _____ a change occurred in the stockholdings of _____,
(Licensee)

trading as _____ holder of
(Trade Name, if any)

_____ for premises located
(Type of License)

at _____
(No.) (Street) (Municipality)

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resulting in the following persons, each acquiring one percent or more of the corporate licensee's stock:

Name	Residence Address

Any information concerning the qualifications of any of the above stockholders should be communicated in writing to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625.

_____
(Name of Licensee)

(b) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in each municipality in which the licensed premises is located. If, however, there shall be no such newspaper, then the notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(c) Proof of publication of such notice shall be furnished by the licensee to the Director within 10 days after the date of publication with copy of the dated advertisement attached.

13:2-1.9 Rules of general application; relaxation

The procedural rules in this chapter concerning application for licenses, type of forms required, notices to be utilized and specific information to be listed represent provisions of general applicability that may be relaxed by the Director upon a showing of good cause, except where specifically required by law.

SUBCHAPTER 2. FILING **OF APPLICATIONS** AND ADVERTISING NOTICE OF APPLICATION FOR MUNICIPAL LICENSE

13:2-2.1 Application forms

Application for license must be filed [in triplicate] with the issuing authority, **in triplicate, on forms promulgated by the Director, Division of Alcoholic Beverage Control** at or before the first insertion of advertisement [on forms promulgated by the director] together with the full annual license fee and an additional $50.00 filing fee payable to the Division of Alcoholic Beverage Control. One copy of the application and the non-returnable filing fee of $50.00 shall be forwarded by the issuing authority to the Director [of the Division of Alcoholic Beverage Control] immediately upon receipt thereof, and a second copy returned to the applicant. If the application is [for] **to include as the licensed premises** a building not yet constructed, plans of the proposed building shall accompany the application. The plans shall show the appearance and design of the proposed building, the type or types of exterior building material and the overall and room dimensions.

13:2-2.2 Form of notice of application

(a) Notice of application shall be published in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE LICENSE

Take notice that _____
(Name of Applicant)

trading as _____
(Trade Name, if any)

has applied to _____
(Name of Issuing Authority)

of _____
(Municipality)

for a _____ license for premises situated
(Type of License)

at _____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:
See *
(See ** to insert other information if applicable)
[See below *, **, ***, ****.]
Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk) (Municipality **and Mailing Address**)

_____
(Name of Applicant)

_____
(Address of Applicant)

***If the applicant is an individual, insert the name and residence address of that individual.**

If **the** applicant is a corporation, insert [at this point] the names and residence[s] **addresses** of all officers and [all] directors [who have no other named office] and the names and residences of all stockholders holding **one percent or** more [than ten percent] of any of the stock of [said corporation.] **the applicant corporation or any corporation that is a stockholder in the applicant corporation.**

[**]If **the** applicant is a partnership, insert [at this point the name of the partnership and] the names and residence[s] **addresses** of all partners **and any limited partners holding an interest of one percent or more.**

[***]If **the** applicant is a club, insert [at this point] the names and residence[s] **addresses** of [the] **all** officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing [body] **officials**.

[****]**If the application is for a building not yet constructed, insert [at this point] **in the Notice the following:** "Plans of building to be constructed may be examined at the office of the Municipal Clerk."

13:2-2.3 Issuing authority defined

(**a**) [Name of] "Issuing authority" in **the** form **of notice** in [Section 2 of this subchapter] **N.J.A.C. 13:2-2.2** usually means the governing board or body of the municipality, whatever the name may be, for instance the mayor and [common] council, the township committee, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority.

(**b**) If **the** application is made by a member of [any] **the** issuing authority or by a corporation, organization or association (except a club license) in which any member of [an] **the** issuing authority is interested, directly or indirectly, the Director **of the Division of Alcoholic Beverage Control** is the issuing authority **in the form of notice** and [in that event] the notice must state that **any** objections **should** be addressed to the Director, [of the] Division of Alcoholic Beverage Control, **CN 087, Trenton, New Jersey 08625**.

13:2-2.4 Type of license defined

"Type of license" [is] **in** the form **of notice** in [section 2 of this subchapter means] **N.J.A.C. 13:2-2.2 requires** the name or kind of license [applied for] **that is involved in the application**. It must be worded strictly in accordance with the statutory language, for instance, "plenary retail consumption **license**", **"plenary retail distribution license", "club license"**, and so forth.

13:2-2.5 Publication of notice of application

(a) The notice of application shall be published once a week for two weeks successively, in a newspaper printed in the English

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language, published and circulated in the municipality in which the licensed premise[s are] **is** located. If, however, there shall be no such newspaper, then [such] **the** notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premise[s are] **is** located.

(b) Proof of publication of **the** notice of application for license shall be furnished [forthwith upon] **after the** second publication [thereof and shall be substantially in the following form:] **with copies of the dated advertisements attached.**

[STATE OF NEW JERSEY
SS:
COUNTY OF

_____, of full age, being duly sworn according to the law, on his oath says:

That he is a _____, employed by _____,
(Name of Newspaper)

which is a newspaper printed in the English language, published and circulated in

_____; that a Notice of
(Name of Municipality or County)
Application, of which the annexed notice is a true copy, was published once a week for two weeks successively in the said ;

_____
(Name of Newspaper)

and that the first insertion was on the _____ day of _____, 19__, and

that the second insertion was on the _____ day of _____, 19__, making two insertions in all.

_____
(Signature of Affiant)

Sworn to and subscribed before me

this _____ day of ____, 19__.

_____
(Signature of officer administering oath)

_____]
(Title of Such Officer)

13:2-2.6 [Notice;] **Applicants for** renewal of municipal licenses

Applicants for renewal of municipal licenses, other than seasonal retail consumption licenses, [issuable] **issued** by municipal issuing authorities are not required to advertise notice of application. In lieu thereof, the [director] **Director** shall cause a general notice of application to be published **in the form set forth in N.J.A.C. 13:2-1.5** once a week from the week of April 1 through the week of June 1 in a newspaper printed in the English language and published and circulated in the counties in which the premises of applicants for such renewals are located. [The notice shall be published in the following form:

NOTICE OF
APPLICATION FOR RENEWAL OF
ALCOHOLIC BEVERAGE LICENSES

The public is hereby notified that applications for renewal of all annual alcoholic beverage licenses may be filed with the Director of the Division of Alcoholic Beverage Control or the municipal local license issuing authority on or before May 1st of this year and may be approved on or after May 1st of this year. Objections, if any, with respect to any retail license renewal application should be made immediately in writing to the Municipal Clerk of the municipality in which the retail licensed premises are located and with respect to any other license renewal application should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control. No individual notice by individual license holders need be published with respect to each separate license renewal application, but this general notice, published pursuant to Chapter 99 of the Laws of 1975, shall be the sole notice thereof required to be published according to law.]

13:2-2.7 [Hearing granted upon receipt of written objection]
Objections; hearing

Each municipal [clerk shall immediately] **issuing authority,** upon receipt of a **timely** written objection[,] duly signed by an objector[, transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it] shall **set the matter down for** [become the duty of each issuing authority to afford] a hearing [to] **and** all parties **shall be notified** [and immediately notify the applicant and the objector] of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

13:2-2.8 Date of hearing

The date fixed for [such] hearing shall not be [less] **sooner** than five days (excluding Saturdays, Sundays and legal holidays) after the second [insertion shall be published] **publication** and should not be [more] **later** than 14 days **thereafter**. For good cause, each issuing authority in the exercise of sound and fair discretion may, [(]subject to appeal to the [director] **Director** by the applicant if he proves that he is aggrieved by the delay[)], fix a date for hearing later than said 14 days or may adjourn the hearing, upon notification to all parties.

13:2-9 Hearing not required; reasons

(a) [No hearing need be held if] **If there is** no **timely** written objection [shall be lodged] and the issuing authority determines to approve the application, **no hearing is required**; but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

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

1. The submitted application form is complete in all respects; [and]

2. The applicant is qualified to be licensed according to all standards established by [Title 33 of the New Jersey Statutes,] **the New Jersey Alcoholic Beverage Control Act, the** regulations promulgated thereunder, as well as **any** pertinent local ordinances [and] **or Division-approved** conditions [consistent with Title 33]; and

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

(c) [However,] **No application shall be disapproved without** the issuing authority [shall not disapprove the application without] first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type[;], and the burden of establishing that the application should be approved shall rest with **the** applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor.

13:2-2.10 Decision on application; **ad interim (temporary) permit**

(a) A municipal issuing authority must render a decision within 45 days [of] **from** the date of a duly filed application for **issuance of a new** license unless the applicant consents to an extension [thereto]. Failure to **act** [do so] may[, except with respect to a renewal application,] be deemed a denial of application **by the applicant** for the purpose of allowing the applicant to appeal to the [director] **Director** [from such denial of application].

(b) [In the event] **If** no action is taken on an application for renewal of license prior to the expiration of its term, the applicant may apply to the [director] **Director** for [a special permit] **issuance of an ad interim (temporary) permit** authorizing the applicant to continue to conduct the licensed business until the application has been acted upon. [In the event] **If** no action is taken on an application

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for renewal of a license within 90 days after the expiration of its term, the applicant may file an appeal with the [director] **Director** [as if the application has been denied] **from such failure to act on the renewal application**.

13:2-2.11 Denial of application; refund of fees

If the application for new or renewal license is denied for any reason whatsoever or withdrawn, **a** statutory refund of 90 percent of the fee deposited with the municipality shall be made by [said] **the** municipality to the applicant. The remaining 10 percent shall be deemed an investigation **and processing** fee and shall be retained by the municipality. **The State filing fee required to accompany such applications shall be retained by the Director as a processing fee.**

13:2-2.12 Application granted; proration of fee; refund

If the application **for a new license** is granted, **except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18,** the license fee shall be prorated from the effective date of the license; and where the amount deposited exceeds the prorated fee, the applicant shall be entitled to a refund of the excess. **Any new license issued for failure to timely renew pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the preceding license term, and no prorating of fee is warranted.**

13:2-2.13 Special conditions

If a resolution [or motion] granting **an** application for license is adpted [before] **sooner than** five [whole] business days (excluding Saturdays, Sundays and legal holidays)[, shall have passed following] **after** publication of the second notice of application, the resolution [or motion] shall set forth in a special condition that the license [shall] **will** not be issued [unless and] until [such] **the** five [whole] **business** days [shall] have elapsed. [after the second publication of notice of application, not counting the day on which such second publication may be made; and within such period or at any time before the license is issued,] **If a** written objection to issuance of the license is filed **within such period**, the license shall not be issued pending [the] **hearing and** further determination of the issuing authority.

13:2-2.14 Changes in facts; application

(a) Whenever any change shall occur in the facts as set forth in any application for **a** retail license, the licensee shall file with the municipal issuing authority [and this division, a notice in writing of] **an amendment to the license application on a form promulgated by the Director reflecting the** [such] change [within] **and not later than** 10 days after the occurrence. [thereof; said change when so notified, shall thereupon become part of said application for license to the end that subsequent changes must likewise be so notified; provided, however, that no such notice need to be given of change of stockholdings of a corporate licensee resulting in a person acquiring an interest of not more than 10 percent of any corporation the shares of which are traded on a national securities exchange or regularly traded in an over-the-counter market by one or more members of a national or affiliated securities association.]

(b) Corporate licensees shall file an amendment to reflect any stockholder change resulting in any person acquiring one percent or more of its stock. If the change affects less than one-third of the stock of the corporation, the licensee need only amend those pages that reflect the change in information. If the change affects one-third or more of the stock, a full application is required. Changes in limited partners shall be treated in the same manner as a stockholder change of a corporate licensee.

13:2-2.15 Publication of notice of change in corporate structure; form

Every corporate licensee **shall, in addition to** filing written notice with the municipal issuing authority [and this division] of changes in stockholdings, [therein, wherein the aggregated of such changes result in a stockholder owning, directly or indirectly, more than 10 percent of its stock, provided that prior thereto, such stockholder did not own more than 10 percent of the corporation's stock, shall, not later than the time for filing of such notice,] cause to be published a notice of change in corporate structure[, truly reflecting such change,] in the following form[:], **not later than 10 ten days after the occurrence whenever the stockholder change involves a new individual acquiring one percent or more of the stock.**

—NOTICE—

Take notice that on _____ a change occurred in the stockholdings of _____, trading as _____
(Licensee)

_____ holder of _____
(Trade Name, if any)

_____ for premises located at
(Type of License and Number)

_____
(No.) (Street) (Municipality)

resulting in the following persons, [residing at their following respective addresses,] each acquiring in the aggregate **one percent or** more [than 10%] of [said] **the** corporate licensee's stock:

_____
Name **Residence** Address

_____

Any information concerning the qualifications of any of the above current stockholders should be communicated in writing to:

_____ of _____
(Municipal Clerk) (Municipality)

_____
(Name of Licensee)

13:2-2.16 [Proof of publication] **Publication** of notice of change in corporate structure

(a) The notice of change in corporate structure shall be published once in a newspaper printed in the English language, published and circulated in the municipality in which the licensed premises is located. If, however, there[,] shall be no such newspaper, then [such] **the** notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises is located.

(b) Proof of publication of such notice shall be furnished by the licensee to the municipal issuing authority [in affidavit form] within 10 days after the date of publication **with a copy of the dated advertisement attached.**

SUBCHAPTER 3. ISSUANCE OF RETAIL LICENSES BY MUNICIPAL ISSUING AUTHORITIES; **SPECIAL REVIEW OF ATLANTIC CITY LICENSES**

13:2-3.1 License certificate; form

[The issuing authority of each municipality shall cause license certificate forms to be printed in bound books in manner prescribed by the director, similar to a stock certificate book.

Each such certificate form shall have a stub bound permanently in the book from which the certificate is detachable by perforation.

The stubs of all books shall be printed in the following manner:

License No. and type .....

Name .....

Trade Name, if any .....

Licensed Premises .....

Date authorized .....

Effective Date .....

Fee Paid .....

Receipted by .....

Special Conditions, if any .....]

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The Director, Division of Alcoholic Beverage Control shall establish the form and content of all license certificates and shall make certificates for licenses available to the municipal issuing authority in each municipality issuing licenses.

[13:2-3.2 Receipt for license certificate]

[No license certificate shall be delivered until actual receipt therefor is signed in the stub of the license book by the licensee or his authorized agent and the required fee of $50.00, together with a copy of application, has been forwarded to this division.]

13:2-3.2 Required records

The municipal issuing authority shall maintain full and complete records concerning each license in its municipality, including information relative to the license's issuance, renewal, transfer, disciplinary sanctions, special conditions, extension of license to a fiduciary, payment of fees and any other matter the director or municipal issuing authority may deem appropriate.

13:2-3.3 Numbering license certificates

[All license certificates shall be sorely numbered.]

All license certificates shall bear a 12-digit State-assigned license number that will identify the license's county and municipality, license type, sequential license number in that community and license generation number.

[13:2-3.4 License certificate stubs

All stubs must be filled out to correspond exactly with the essential facts shown on the face of each particular certificate, including special conditions, if any.

13:2-3.5 Names on license certificates

On all license certificates the name of the municipality shall be shown according to its exact corporate name, thus: "Town of Belleville". The name of the licensee and trade name, if any, the address of the licensed premises, the effective date of the license and the amount of the fee are to be filled in, either by typewriter or ink, upon the license certificate and the stub. The corporate seal of the municipality is to be affixed to each license certificate at the place indicated.]

13:2-[3.6]**3.4** License certificate signed by issuer

Each license certificate shall be signed either in the name of the municipality or [of the] **its** municipal board, whichever is the issuing authority. It shall also bear the actual signature, at the place indicated, of such municipal officer or agent as the governing board or body of the municipality or the municipal board, as the case may be, shall have designated to sign and to deliver such certificate [in] **on** its behalf.

13:2-[3.7]**3.5** Issuance of a license certificate; resolution of issuing authority

(a) (No change.)

(b) Unless another specific date is identified in the resolution concerning an application for issuance or transfer of a license, the effective date shall be the date of the adoption of the resolution by the issuing authority.

13:2-[3.8]**3.6** [Daily certification] **Certification** of [licenses granted] **license activity**

(a) Each **municipal** issuing authority shall make or cause to be made daily certification to the [director] **Director** of all licenses granted during the preceding business day, which certification shall **include any license application filings or amendments, any fees to be remitted to the Director, and any resolutions adopted.** [set forth:

1. Name of licensee;
2. Trade name, if any;
3. Address of licensed premises;
4. License number;
5. Kind of license;
6. Date authorized;
7. Effective date;
8. Fee charged; and
9. Special conditions; if any.]

[13:2-3.9 Daily certification; accompanying resolution

Each such daily certification shall be accompanied by a true copy of the resolution of the issuing authority directing the issuance of the license so certified. To be legally effective, any special condition imposed upon the license must be imposed by and set forth in the resolution and approved by the State director. Where licenses are issued by the governing board or body of a municipality, the copy of the resolution shall be attested as true by the municipal clerk. Where licenses are issued by a municipal board, such attestation shall be made by the person specially designated for that purpose by resolution of the municipal board.]

13:2-[3.10]**3.7** Atlantic City; alcoholic beverage licenses

(a) The [board of commissioners] **Municipal Board of Alcoholic Beverage Control of the City** of Atlantic City shall forward to the Division of Alcoholic Beverage Control a copy of all applications for issuance, renewal or transfer of any alcoholic beverage license.

(b) No action shall be taken by the [board] **Board** with respect to any application until [conduct] **completion** of an appropriate investigation by the Division of Alcoholic Beverage Control **or its designees**.

(c) Upon completion of the investigation, the Division of Alcoholic Beverage Control shall certify whether granting of the application is in the public interest.

(d) Upon a finding by the [division] **Division** that granting of the application will not be contrary to the public interest, the [board of commissioners] **Board** may act upon the application in any way consistent with [the] **its** legal authority.

(e) Upon a finding by the [division] **Division** that the granting of the application would be contrary to the public interest, the [board of commissioners] **Board** shall deny the application.

(f) The applicant shall retain the right conferred by N.J.S.A. 33:1-22 to appeal to the [director] **Director** from the denial of an application by the [board of commissioners] **Board** and shall be afforded a [plenary] hearing.

SUBCHAPTER 4. ISSUANCE [OF THE] **OR** TRANSFER OF MUNICIPAL RETAIL LICENSES (OTHER THAN CLUB LICENSES) BY THE DIRECTOR

13:2-4.1 Interest in issuance or transfer of license**; application made to the Division**

(**a**) No municipal issuing authority may issue **or transfer** a license to[, or transfer a license to] or from[,] any of its members**,** or issue **or transfer** a license (other than a club license) [to, or transfer such license] to or from any corporation, organization, or association in which any of its members is interested directly or indirectly.

(**b**) No municipal issuing authority may transfer[,] to other premises[,] a license of any of its members**,** or transfer to other premises a license (other than a club license) of any corporation, organization or association in which any of its members is interested, directly or indirectly.

(**c**) [In such circumstances] **Whenever the municipal issuing authority is prohibited from acting by this section,** application must be made to the Director of the Division of Alcoholic Beverage Control **and shall be governed by this subchapter.**

13:2-4.2 Application to the [director] **Director**

(**a**) Application to the [director] **Director** shall be made upon the same [prescribed] application forms [as are] used in all applications for municipal licenses (copies are [attainable] **obtainable** from the clerk of the municipality wherein the premises sought to be licensed are situated).

(**b**) The application shall be fully executed and submitted in triplicate.

13:2-4.3 [Fees; new] **New** or renewal license[s] **fees; certification by issuing authority**

(a) [Where application is made] **Applications** for a new license or for a renewal of [a] **an existing** license [there] shall [also] be [submitted supplemental application forms (copies may be obtained from the director), fully executed in triplicate and] accompanied by[:

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1. A] **a** fee of $50.00 in cash, money order or certified check drawn to the order of **the** Division of Alcoholic Beverage Control[; and].

[2.]**(b)** A certification **shall also be submitted** from the municipal clerk**, board secretary,** or other responsible municipal official stating that the **appropriate** municipal [new license or renewal] fee has been paid and the amount of such fee.

13:2-4.4 Fee for license transfer to other persons **or other premises; certification**

(a) Applications for transfer[s] of license[s] to other persons **only, or applications for transfer of license to other premises only (not combined),** shall be accompanied by: [a fee of 10 percent of the full municipal annual or term license fee for said license, which fee shall be paid to the municipality wherein the license is located. In addition to that fee,]

1. A fee of $50.00 [shall be paid] in cash, money order or certified check drawn to the order of **the** Division of Alcoholic Beverage Control and retained by the [director] **Director** whether or not the transfer is granted, and accounted for as are other license fees.

2. A certification shall be submitted from the municipal clerk, board secretary, or other responsible municipal official that 10 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

[13:2-4.5 Fee for license transfer to other premises

Applications for transfer of licenses to other premises shall be accompanied by a fee of 10 percent of the full municipal annual or term license fee for said license, which fee shall be paid to the municipality wherein the license is located. In addition to that fee, a fee of $50.00 shall be paid in cash, money order or certified check drawn to the order of Division of Alcoholic Beverage Control and retained by the director whether or not the transfer is granted, and accounted for as are other license fees.]

13:2-[4.6]**4.5** [Combined] **Fee for combined** transfers; **certification**

(a) Transfers of license[s] both as to person and place may be applied for simultaneously and in a single application, accompanied by [a fee of 20 percent of the full municipal annual or term license fee for said license; which fee shall be paid to the municipality wherein the license is located. In addition to that fee,] a fee of $50.00 [shall be paid] in cash, money order or certified check drawn to the order of **the** Division of Alcoholic Beverage Control. [and retained by the director whether or not the transfer is granted, and accounted for as are other license fees.]

(b) A certification shall also be submitted by the municipal clerk, board secretary or other responsible municipal official stating that 20 percent of the full municipal annual license fee for said license has been paid and the amount of the fee.

(c) Where there is [such] a combined transfer application, the [applicant may not obtain] **Director shall not approve** a person-to-person transfer of the license if the place-to-place transfer is denied.

13:2-[4.7]**4.6** Submission of issuing authority's resolution

There shall also be submitted **to the Director** a certified copy of a resolution adopted by the issuing authority of the municipality wherein the premises sought to be licensed are situated, setting forth that said issuing authority has no objection to the issuance [(]or the transfer, as the case may be[)]**,** of the license applied for and consents thereto, and, furthermore, is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance [(]or the transfer, as the case may be[)]**,** of the license.

13:2-[4.8]**4.7** Advertising notice of application

The rules applicable to **the application,** advertising [notice of application for] **and hearing rights concerning a** municipal license or the transfer thereof (N.J.A.C. 13:2-2 and N.J.A.C. 13:2-7) shall apply when application is made to the [director] **Director**. However, the notice of application, as published, shall state that such application has been made **to**, and objections[,] if any[,] should be addressed to: [the] Director of the Division of Alcoholic Beverage Control, [Richard J. Hughes Justice Complex,] **TRW Complex, 200 Woolverton Street,** CN 087, Trenton, New Jersey 08625.

13:2-[4.9]**4.8** Refund of fees

If the application for [new or renewal] license **issuance or transfer** is denied for any reason whatsoever or withdrawn, **a** statutory refund of 90 percent of the fee deposited with the municipality shall be made by [said] **the** municipality to the applicant. The remaining 10 percent shall be deemed an investigation **and processing** fee and shall be retained by the municipality. The $50.00 **State** fee **required to** accompany[ing] the application shall be retained **as a processing fee** by the [director] **Director**.

13:2-[4.10]**4.9** Proration of fee

If the application **for a new license** is granted, **except in connection with the issuance of a new license upon failure to timely renew under N.J.S.A. 33:1-12.18,** the license fee shall be prorated from the effective date of the license and where the amount deposited exceeds the prorated license fee, the applicant shall be entitled to a refund of the excess. **Any renewal or new license issued pursuant to N.J.S.A. 33:1-12.18 will be effective immediately following the last day of the proceeding license term, and no prorating of fee is permitted.**

13:2-[4.11]**4.10** Notice of change in facts in application

The rules applicable to filing [with a municipal issuing authority] **a** notice of change in the facts set forth in **the** application for **a** retail license and **to** publishing **a** notice of change in corporate structure and furnishing proof thereof (N.J.A.C. 13:2-[2.12]**2.14** through [2.14] **2.16**) shall apply to all retail licensees holding licenses issued by the [director] **Director**. However, the licensee shall file such notice with and furnish such proof [to the director and such] **directly to the Division; and where the** notice [of] **concerns a** change in corporate structure, **the notice** as published[,] shall state that information concerning the qualifications of any of the [current] stockholders of the corporate licensee shall be addressed to the Director of the Division of Alcoholic Beverage Control, [Richard J. Hughes Justice Complex,] **TRW Complex, 200 Woolverton Street,** CN 087, Trenton, New Jersey 08625.

SUBCHAPTER 5. ISSUANCE OF SPECIAL PERMITS BY DIRECTOR

13:2-5.1 Social affair permit

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

(c) Applications for a social affair permit shall be **made on forms promulgated by the Director and** endorsed by the chief of police (or his **or her** designee) and the clerk of the municipality wherein the affair is to be held.

(d) No more than [one] **12** social affair permits shall be issued to any one applicant per **12** months, nor shall any such permit be granted for premises at which 25 prior social affair permits have been issued within the same calendar year.

(e) A social affair permittee shall be entitled to purchase alcoholic beverages to be dispensed at social affairs from a New Jersey licensed wholesaler distributor or retailer only, and to resell said alcoholic beverages, for on-premises consumption only.

[1.]**(f)** Within 10 days after the social affair, the permittee shall file with the [director] **Director** a signed [and sworn] inventory report on forms promulgated by the Director showing all purchases of alcoholic beverages and the source and disposition thereof. Failure to [so] file the [said] inventory report shall be cause for denial of [any] future applications for a social affair permit.

[(f)]**(g)** A social affair permittee must abide by all the provisions of the New Jersey Alcoholic Beverage law, Division rules and regulations, and municipal ordinances. Failure to do so may result in said permittee being denied future applications for social affair permits.

[(g)]**(h)** A [special] **social affair** permit shall be required for the sale or service of alcoholic beverages to those attending an affair at which there is any charge in connection with the affair, whether the charge be a direct one for drinks, imposed through the sales of tickets or charging of admissions, requiring donations or special assessments, or where the charge is made ostensibly for food, entertainment or anything else.

[(h)]**(i)** The rules [herein contained] **in this section** shall be considered general rules governing the issuance of a social affair permit,

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and may be relaxed or dispensed with by the [director] **Director** in any case where a strict adherence to them will result in hardship.

13:2-5.2 Special concessionaire permit

(a) Application for a special concessionaire permit may be made to the [director] **Director** by any individual, partnership, or corporation who has entered into a contract with the State of New Jersey, or any political subdivision thereof, whereby said person or organization is authorized to sell alcoholic beverages for immediate consumption in any public building **or on any property** owned by or under the control of the State of New Jersey or any political subdivision thereof. Such permit may also authorize the sale of alcoholic beverages in original containers for off-premises consumption, provided the applicant, with the consent of the governmental agency, establishes to the satisfaction of the [director] **Director** that there is good cause for such sales.

(b) The term of a special concessionaire permit shall be from July 1 through June 30 unless otherwise specified. The fee for [said] **the** permit shall be fixed by the [director] **Director**, and must [accompany] **be paid with the** application [with] **in** either cash, certified check or money order payable to the Division of Alcoholic Beverage Control.

(c) Application must be supported by the following documents before permit will be issued by the [director] **Director**:

1. Letter of authorization from, and copy of agreement with, **the** State, county, or municipal official or body charged with responsibility over public **buildings or** lands [for] **at** which **the** sale of alcoholic beverages is sought;

2. Letter of applicant detailing manner and method of proposed operation under permit;

3. Plan or sketch of premises to be used in accordance with permit;

4. If applicant is incorporated—copy of certificate of incorporation; if an association—copy of charter; **and**

5. Affidavit of publication by newspaper in which notice of application has appeared, as hereinafter provided.

(d) Within 10 days subsequent to the filing of application with the [director] **Director**, applicant shall cause to be published a notice of application once, in a newspaper printed in the English language, published and circulated in the municipality in which the premises sought to be authorized are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which said premises are located.

(e) Notice of application shall be published in the following form:

NOTICE
ALCOHOLIC BEVERAGE PERMIT

TAKE NOTICE THAT _____ has applied to the
(Name of Applicant)
DIRECTOR of the New Jersey DIVISION OF ALCOHOLIC BEVERAGE CONTROL for a SPECIAL CONCESSIONAIRE PERMIT for premises situated at

_____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:
See *
See ** to insert other information applicable
[See below *, **, ***, ****.]

Objections, if any, should be addressed to the Director, Division of Alcoholic Beverage Control[.], **CN 087, Trenton, New Jersey 08625.**

_____
(Name of Applicant)

_____
(Address of Applicant)

***If the applicant is an individual, insert the name and residence address of that individual.**

If applicant is a corporation, insert [at this point] the names and residence[s] **address** of all officers and all directors [who have no other named office], and the names and residences of all stockholders holding **one percent or** more [than ten percent] of any of the stock of [said corporation] **the applicant corporation or any corporation that is a stockholder in the applicant corporation.**

[**]If **the** applicant is a partnership, insert [at this point] the name of the partnership and the names and residence[s] **address** of all partners **and any limited partners holding an interest of one percent or more.**

[***]If applicant is a club, insert [at this point] the names and residence[s] **address** of the officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing [body] **officials.**

[****]**If the application is for a building not yet constructed, insert [at this point] **in the Notice the following:** "Plans of building to be constructed may be examined at the office of the [Municipal Clerk] **Director of the Division of Alcoholic Beverage Control, TRW Complex, Bldg. 20, Woolverton Street, Trenton, New Jersey 08625.**"

(f) Upon **timely** receipt of a duly signed written objection to the issuance of **a** special concessionaire permit, the [director] **Director** will afford a hearing to all parties [immediately] **and** notify[ing] the applicant and the objector of the date, hour and place thereof.

1. No hearing need be held if no [such] objection shall be lodged, but the application shall not be denied without first affording the applicant an opportunity to be heard.

(g) The holder of a special concessionaire permit shall be entitled to purchase alcoholic beverages only from the holders of New Jersey wholesale [or distributor's] licenses[, for resale at the authorized premises]. Said [holder] **permittee** is expressly prohibited from purchasing alcoholic beverages from retail licensees[. Said holder is also expressly prohibited] **and** from selling or offering for sale alcoholic beverages for off-premises consumption, unless specifically authorized in the permit issued by the [director] **Director** upon a showing of good cause therefor.

(h) The [director] **Director** may, in his **or her** discretion, impose special conditions on any permit.

(i) The holder of a special concessionaire permit must abide by all provisions of the New Jersey Alcoholic Beverage [Law] **Control Act,** [division] **Division** rules and regulations and municipal ordinances as they pertain to retail licensees. Failure to do so may result in disciplinary proceedings against the permittee. Hours of sale shall not exceed those permitted in the municipality in which the public building **or land** is located.

(j) The rules [herein contained] **in this section** shall be considered as general rules governing the issuance of a special concessionaire permit and may be relaxed or dispensed with by the [director] **Director** in any case where a strict adherence to them will result in hardship.

13:2-5.3 Special permit for **the sale or** purchase of alcoholic beverages

(a) The [director] **Director**, for good cause shown, may issue a special permit to [purchase alcoholic beverages sold pursuant to court order or otherwise, at a schedule of fees established by the director] **authorize the sale of alcoholic beverages by a receiver, trustee, executor, or other court appointed or authorized person, or judgment creditors or secured parties where such sale is authorized in accordance with law or a specific court order.**

(b) An application for such special permit shall be filed with the Division at least seven days before the proposed sale on forms to be promulgated by the Director and accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than $500.00.

(c) Upon issuance of the special permit, the temporary storage and transportation of alcoholic beverages pending sale shall be authorized, as well as the sale to and transportation by the purchaser.

(d) Within 10 days after the sale, the permittee shall file with the Director a signed inventory report on forms prescribed by the Director identifying the type and quantity of all alcoholic beverages sold, the

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name and address of the purchaser, the State-assigned license number of the purchaser if it was a New Jersey licensee, and the sales price per item or lot. Failure to file the inventory report shall be cause for denial of future special permit applications.

13:2-5.4 Temporary miscellaneous contingency permits; fees

(a) The Director, for special cause shown, may issue such temporary permits for such contingencies where a license is not expressly provided for by law, and such a permit would be appropriate and consonant with the spirit of the Alcoholic Beverage Control Act.

(b) Application for such permits shall be on forms promulgated by the Director and shall be accompanied by payment of fees as set forth by the Director. The fees for such permits shall not be less than $5.00 nor more than $500.00.

(c) The Director may impose special conditions or requirements on any such permit.

SUBCHAPTER 6. EXTENSION OF LICENSE

13:2-6.1 [Special permit to operate licensed business] **Petition for extension of license**

(a) In case of death, bankruptcy, receivership or incompetency of **a** licensee, or if for any other reason whatsoever the operation of the business covered by the license shall devolve by operation of law upon a person other than the licensee, the licensed business may not be operated [prior to extension of the license except pursuant to a special permit issued by the Director of the Division of Alcoholic Beverage Control. The issuance of such permit by the director shall in no way indicate any opinion by him as to the desirability of the municipal issuing authority in its discretion extending the license.] **unless the license is extended by the issuing authority which issued the license.**

[13:2-6.2 Petition for extension of license]

[(a)] **(b)** An application for extension of a license for a limited time not exceeding its term must be made in the form of a petition executed by the executor, administrator, trustee, receiver or other person upon whom operation of the business covered by the license shall have devolved by operation of law.

[(b)] **(c)** Said petition shall be addressed to and acted upon by the authority which issued the license sought to be extended. **An amendment of the license application to reflect the extension of the license shall be filed at the same time.** No fee is required to be paid for an extension of the license and **the** petitioner is not required to publish a notice of application.

13:2-6.2 Special permit to operate licensed business

Where an application for extension of license cannot be made immediately because the fiduciary has not yet qualified, the Director, Division of Alcoholic Beverage Control, may issue a special permit to allow the licensed business to continue operations temporarily until the license is formally extended. The issuance of any special permit shall not indicate any opinion as to the merits of the formal petition to extend the license.

13:2-6.3 (No change.)

13:2-6.4 Endorsement of licenses

[(a)] If the petition for extension is granted [by a local issuing authority], the license shall be endorsed as follows [by the proper municipal official]:

"This license is hereby extended, subject to all its terms and conditions to _____, (Executor, or as the case may be) until _____, 19___".

[(b) A similar endorsement shall be noted upon the appropriate stub in the license book.]

[13:2-6.5 Daily certification of license extensions

(a) Each issuing authority shall make or cause to be made daily certification to the director of all licenses extended during the preceding business day, and each such daily certification shall be accompanied by a true copy of the resolution of the issuing authority granting the extension so certified.

(b) To be legally effective, any special condition imposed upon the extension must be imposed by and set forth in the resolution and approved by the State director.

(c) Where licenses are issued by the governing body or body of a municipality, the copy of the resolution shall be attested as true by the municipal clerk. Where licenses are issued by a municipal board, such attestation shall be made by the person specially designated for that purpose by resolution of the municipal board.]

SUBCHAPTER 7. TRANSFERS OF STATE AND MUNICIPAL LICENSES

13:2-7.1 Transferability of license

Any license [heretofore to hereafter] issued under the [alcoholic beverage law] **New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.,** may be transferred either from person-to-person or place-to-place, or both, in accordance with the provision of said law and these regulations.

13:2-7.2 Application for place-to-place license transfer

(a) Application for transfer of license to other premises, signed and sworn to by the licensee, must be filed with the [director] **Director** or other issuing authority, as the case may be, at or before the first insertion of the advertisement of the notice of application on forms promulgated by the [director] **Director.**

(b) (No change.)

13:2-7.3 Application for person-to-person license transfer

Application for transfer of license to [other] **another** person, or other persons and other premises, signed and sworn to by the person who seeks the transfer, and bearing the consent in writing to such transfer by the **current** licensee, must be filed with the [director] **Director**, or other issuing authority, as the case may be, at or before the first insertion of the advertisement **of the notice of application on forms promulgated by the Director.**

13:2-7.4 Notice of transfer application, form

(a) Notice of application for transfer of **a** [municipal] license shall be published in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE CONTROL

Take notice that application has been made to _____

_____ of _____
(Name of Issuing Authority) [(Municipality)] **(Address)**

to transfer to _____
(Name of transferee)

trading as _____ for premises located at
(Trade Name, if any)

_____
(Address of premises to which transfer is sought)

the _____ heretofore issued to
(Type of License and Number)

_____, trading as _____
(Name of Licensee in full) (Trade Names, if any)

for the premises located at _____
(No.) (Street) (Municipality)

The person(s) who will hold an interest in this license is/are:

_____
(Name(s))

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See *
(See ** to insert other information if applicable)
[See next page *, **, ***, ****.]
Objections, if any, should be made immediately in writing to:

_____, of _____
(Municipal Clerk **or Director, Division of Alcoholic Beverage Control)** [(Municipality)] **(Address)**

_____
(Name of Applicant)

_____
(Address of Applicant)

[(b) Notice of application for transfer of State license should be published in the following form:

—NOTICE—
ALCOHOLIC BEVERAGE LICENSE

Take notice that application has been made to the Director of the Division of Alcoholic Beverage Control to transfer to

_____, trading as _____ for

premises located at _____
(Address of premises to which transfer is sought)

the _____ heretofore issued
(Type of License and Number)

to _____
(Name of Licensee in full) (trading as)

_____ for premises
(Trade Name, if any)

located at _____
(No.) (Street) (Municipality)

See below *, **, ***, ****.
Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

_____
(Name of Applicant)

_____]
(Address of Applicant)

***If the applicant is an individual, insert the name and residence address of that individual.**

[*]If **the** applicant is a corporation, insert [at this point] the names and residence[s] of all officers and [all] directors [who have no other named office,] and the names and residences of all stockholders holding **one percent or** more [than ten percent] of any of the stock of [said corporation] **the applicant corporation or any corporation that is a stockholder in the applicant corporation.**

[**]If **the** applicant is a partnership, insert [at this point the name of the partnership and] the names and residence[s] **address** of all partners **and any limited partners holding an interest of one percent or more.**

[***]If **the** applicant is a club, insert [at this point] the names and residence[s] **address** of [the] **all** officers and the offices they fill respectively, and the names and residences of the directors, trustees or other governing [body] **officials.**

[****]**If the application is for transfer of a municipal license to a building not yet constructed, insert [at this point] **in the Notice the following:** "Plans of building to be constructed may be examined at the office of the Municipal Clerk".

If the application is for a State license for a building not yet constructed, insert [at this point,] "Plans of building to be constructed may be examined at the office of the Division of Alcoholic Beverage Control".

If the applicant intends to conduct retail sales of alcoholic beverages as may be authorized under a State issued license, insert in the Notice the following: "The applicant intends to engage in the retail sale of

_____ at _____,
(Alcoholic beverage type) (No.) (Street)

_____ **under the terms and conditions**
(municipality)
allowed by law.

[13:2-7.5 Issuing authority defined in form
(a)]**(b)** "Name of issuing authority" in the form in N.J.A.C. 13:2-7.4(a), usually means the governing board or body of the municipality, whatever the name may be, for instance, the mayor and common council, the township council, and so forth, except where a municipal board of alcoholic beverage control has been created, in which case such board is the issuing authority. If application is made by a member of any issuing authority, or by a corporation, organization or association (except a club license) in which any member of an issuing authority is interested directly or indirectly, or if the license sought to be transferred was issued in the first instance by the [director] **Director**, he **or she** is the "issuing authority" and in that event the notice must state that objections be addressed to the Director of the Division of Alcoholic Beverage Control, [25 Commerce Drive, Cranford, New Jersey 07016] **CN-087, Trenton, New Jersey 08625.** [(b)] A copy of such notice shall be filed with the Division at the time of first publication and shall be available for inspection as a public record.

[13:2-7.6 Type of license defined in form
"Type of license" in the form in N.J.A.C. 13:2-7.4(b), means the name or kind of license sought to be transferred. It must be worded strictly in accordance with the statutory language, for instance, plenary retail consumption, and so forth.

13:2-7.7 Publication of notice of application]
(c) The notice of application shall be published once a week, for two weeks successively, at least seven days apart, in a newspaper printed in the English language published and circulated in the municipality in which the licensed premises are located. If, however, there shall be no such newspaper, then such notice shall be published in a newspaper printed in the English language, published and circulated in the county in which the licensed premises are located.

(d) Proof of publication of notice of application for transfer of a license shall be furnished after second publication with a copy of the dated advertisements attached.

13:2-[7.8]**7.5** [Hearing granted upon written objection] **Objections; hearing**

Each [municipal clerk shall] **issuing authority,** immediately upon receipt of a written objection[,] duly signed by an objector, [transmit forthwith to the issuing authority of the particular municipality said objection and everything pertaining thereto, whereupon it] shall [become the immediate duty of such issuing authority to afford] **set the matter down for** a hearing [to] **and notify** all parties [and immediately notify the applicant, the licensee, and the objector] of the date, hour and place thereof. Said hearing shall be stenographically or electronically recorded.

13:2-[7.9]**7.6** Date of hearing

The date fixed for [such] hearing shall not be [less] **sooner** than five days after the second [insertion] **notice was published** (excluding Saturdays, Sundays and legal holidays) [shall have been published]

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and should not be [more] **later** than 14 days **thereafter**. For good cause, each issuing authority in the exercise of sound and fair discretion may[, subject to appeal to the director by the applicant, if he proves that he is aggrieved by the delay,] fix a date for hearing later than said 14 days [or] **and** may adjourn the hearing, **upon notification to all parties**.

13:2-[7.10]**7.7** Hearing not required; reasons

(a) [No hearing need be held if] **If there is** no written objection [shall be lodged] and the issuing authority determines to approve the application, **no hearing is required;** but this in no way relieves the issuing authority from the duty of making a thorough investigation on its own initiative.

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

1. The submitted application form is complete in all respects; [and]

2. The applicant is qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, **the** regulations promulgated thereunder as well as **the** pertinent local ordinances and conditions **imposed** consistent with Title 33; and

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

(c) [The issuing authority shall not disapprove the application] **No application shall be disapproved** without first affording the applicant an opportunity to be heard, and providing the applicant with at least five days notice thereof. The hearing need not be of the evidentiary or trial type and the burden of establishing that the application should be approved shall rest with the applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor[e].

(d) In the event no action is taken on an application for transfer of a **municipally issued** license within 60 days of the date of filing of the application, **the applicant** may file an appeal with the [director as if the application has been denied] **Director from such failure to act on the transfer application**.

[13:2-7.11 Proof of publication of notice of application; form

(a) Proof of publication of notice of application for transfer of license shall be substantially in the following form:

STATE OF NEW JERSEY
SS:
COUNTY OF

_____, of full age, being duly sworn according to law, on his oath, says:

that he is a _____, employed by _____
(Name of Newspaper)
which is a newspaper printed in the English language, published and

circulated in _____; that a Notice
(Name of municipality or county)
of Application, of which the annexed notice is a true copy, was published once a week for two (2) weeks successively in the said

_____; that the first insertion
(Name of Newspaper)
was on the _____ day of _____, 19__, and that the second insertion was on the _____ day of _____, 19__, making two (2) insertions in all.

_____
(Signature of Affiant)

Sworn to and subscribed before me

this _____ day of _____, 19__.

_____
(Signature of Officer Administering Oath)

_____]
(Title of such Officer)

13:2-[7.12]**7.8** [Information for premises] **Application for place-to-place** license transfer

Applications for transfers of licenses to other premises [must] **shall be on forms promulgated by the Director and shall** set forth the same [matters and things with reference to the premises to which a transfer of license is sought as are] **information** required to be set forth in connection with an original application for license [as to said premises].

13:2-[7.13]**7.9** [Information of persons seeking] **Application for person-to-person** transfer

Applications for transfers of licenses to other persons [must] **shall be on forms promulgated by the Director and shall** set forth the same [matters and things with reference to the person to whom a transfer of license is sought as are] **information** required to be set forth in connection with an original application for license.

13:2-[7.14]**7.10** Combined transfer

Transfers of license both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person [the] **and** place-to-place transfer, the [license shall not be transferred to the applicant] **person-to-person application shall not be approved** unless the place-to-place transfer is also [affected] **granted**.

13:2-[7.15]**7.11** Fee for license transfer to other premises **or to another person**

Applications for transfers of license to other premises **only, or applications for transfer of license to another person only (not combined,** shall be filed in triplicate and accompanied by a fee of 10 percent of the full [municipal] annual [or term] license fee for said license, which fee shall be retained by the [director] **Director** or other issuing authority as the case may be, [regardless of] whether or not the transfer is granted, and is to be accounted for as are other license fees. If **the** application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of $50.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control **along** with [one copy] **the original** of the application.

[13:2-7.16 Fee for license transfer to other persons

Applicants for transfer of license to other persons shall be filed in triplicate and accompanied by a fee of 10 percent of the full municipal annual or term license fee for said license, which fee shall be retained by the director or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of $50.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control with one copy of the application.]

13:2-[7.17]**7.12** Fee for combined license transfer

(a) Applications for transfer[s] of license[s] to other premises and other persons shall be filed in triplicate and accompanied by a fee of 20 percent of the full [municipal] annual [or term] license fee for said license, which fee shall be retained by the [director] **Director** or other issuing authority as the case may be, whether the transfer is granted or not, and accounted for as are other license fees. If **the** application is for transfer of a retail license to be acted upon locally, it must also be accompanied by a filing fee of $50.00 to be forwarded to the Director of the Division of Alcoholic Beverage Control **along** with [one copy] **the original** of the application.

13:2-[7.18]**7.13** Special condition for early grant

If a resolution or [motion] **certification** granting application for transfer is adopted [before] **sooner than** five [whole] business days (excluding Saturdays, Sundays and legal holidays) [shall have passed

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following] **after** publication of the second notice of application, the resolution or [motion] **certification** shall set forth a special condition that the transfer shall not be [endorsed and] effective [unless and] until five [whole] **business** days [shall] have elapsed. [after the second publication of such notice of application, not counting the day on which such second publication may be made; and if] **If** within such period [or at any time before the transfer is endorsed] **a** written objection to the transfer is filed, the transfer shall not be [endorsed and] effective pending the further determination of the issuing authority.

13:2-[7.19]**7.14** License certificate

(**a**) Upon the grant of a transfer, the [director] **Director** or other issuing authority **as the case may be** shall cause the following written endorsement to be made upon the face of the license certificate:

This license, subject to all of its terms and conditions is hereby

transferred, effective _____, 19__,
(Date)

from _____
(**Name**) **and/or** (Address)

to _____
(**Name**) **and/or** (Address)

_____
(Name of Issuing Authority)

By:_____
([Clerk, Secretary or other duly] **Duly** authorized official)

Dated: _____, 19___

[OR]

[This license, subject to all its terms and conditions, is hereby trans-

ferred, effective _____, 19__,
(Date)

to _____ for premises located
(Name of Transferee and trade name, if any)

at _____
(Address of premises at which privileges of license are to be exercised)

_____
(Name of Issuing Authority)

Dated: _____, 19___

By:_____]
(Clerk, Secretary or other duly authorized official)

(b) Unless another specific date is identified in the resolution approving the transfer of license, the effective date for municipally issued licenses shall be the date of adoption of the resolution by the issuing authority, and for State issued licenses, the date the Director certifies on the license certificate.

[13:2-7.20 Endorsement; stub in license book

A similar endorsement shall be noted upon the appropriate stub in the license book.]

[13:2-7.21 Endorsement signature

Each endorsement shall be signed in the name of the director or other issuing authority, as the case may be, and shall bear the actual signature, at the place indicated, of such officer or agent as the director or other issuing authority, as the case may be, shall have designated to execute such endorsements in his or her behalf.]

[13:2-7.22 Order or resolution of endorsement

(a) No endorsement of transfer shall be executed by any person unless and until expressly directly by the director or by a resolution of the issuing authority, which resolution shall, among other things:

1. Specifically set forth the name and also trade name, if any, of the person, association, firm or corporation to whom the license shall be transferred and specify the effective date of the transfer; and

2. Order the execution of the endorsement of transfer by such municipal officer or agent as the issuing authority shall, thereby or by some previous resolution, designate to execute such endorsement on its behalf.]

13:2-[7.23] **7.15** [Daily certification] **Certification of license transfers**

(a) Each **municipal** issuing authority shall make or cause to be made [daily] certification to the [director] **Director** of all license[s] **applications filed,** transferred**, denied or withdrawn** during the preceding business [day] **week**, which certification shall **include the original of the filed application, any fees to be remitted to the Director and any resolution adopted.** [set forth:

1. Name of licensee;
2. Trade name, if any;
3. Address of licensed premises;
4. License number;
5. Kind of license;
6. Date authorized;
7. Effective date;
8. Fee charged;
9. Special conditions, if any;
10. Name of transferee;
11. Trade name, if any, of transferee; and
12. Address of premises to which license was transferred.]

[13:2-7.24 Accompanying resolution

Each such daily certification shall be accompanied by a true copy of the resolution of the issuing authority directing the transfer of each such license so certified. To be legally effective, any special condition imposed upon the transfer must be imposed by the State Director. Where licenses are issued by the governing board or body of a municipality, the copy of the resolution shall be attested as true by the municipal clerk. Where licenses are issued by a municipal board, such attestation shall be made by the person specially designated for that purpose by resolution of the municipal board.]

SUBCHAPTER 8. CLUB LICENSES

13:2-8.1 Definitions

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

. . .

"Guest of club member" **means** an individual who is expressly invited to the club licensed premises by an individual member of the club and who is sponsored by and personally attended by the member at such premises. An individual club member may have as his guest no more than nine individuals on any one occasion unless such individuals are attending a private affair, such as a wedding, anniversary, confirmation, bar mitzvah or birthday party, honoring a spouse, child, parent, brother or sister of a club member.

13:2-8.2 and 8.3 (No change.)

13:2-8.4 Previous period of possession and use of club quarters

Except as provided herein or in N.J.A.C. 13:2-8.5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the [submisstion] **submission** of its application for a license. A bona bide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reasons of foreclosure, [dispossess] **loss of lease, eminent domain, fire, casualty** or other removal for a cause other than the violation of the laws of the State or of municipal ordinance, shall not be prevented thereby from obtaining a club

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license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained.

13:2-8.5 Exceptions to eligibility requirements

(a) Any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which is in possession of suitable premises, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the [director] **Director**, and presents to the issuing authority at or before the issuance of the license, a certificate stating that satisfactory proof has been submitted to the [director] **Director** that said unit, chapter or member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license.

(b) Nothing in N.J.A.C. 13:2-8.3 or 8.4 shall prevent the issuance of a club license to a bona fide club provided that special cause for such issuance is shown in writing to the [director] **Director** and provided that the [director's] **Director's** written approval of such issuance is first obtained.

13:2-8.6 Qualifications of officers and members

(a) No club license shall be issued nor renewal granted to any corporation, association or organization in which an officer or member of the governing body has been convicted of a disqualifying offense pursuant to Title 33 unless the statutory disqualification resulting from such conviction has been removed by order of the [director] **Director**. Application for removal of the disqualification may be made by verified petition to the [director] **Director** when the unlawful situation is corrected.

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

1. The submitted application form is complete in all respects, including requirements of N.J.A.C. 13:2-8.7; [and]

2. The officers and directors of applicant club are qualified to be licensed according to all standards established by Title 33 of the New Jersey statutes, regulations promulgated thereunder as well as pertinent local ordinances or conditions consistent with Title 33; and

3. The club maintains all records required pursuant to N.J.A.C. 13:2-8.8 and 8.12.

13:2-8.7 Submission of club member list and club charter

(a) (No change.)

(b) Nothing in this section shall prevent the renewal of a license to a club not qualified by reason of a lack of requisite number of members, provided that special cause for such renewal is shown in writing to the [director] **Director** and further provided that the Director's written approval for such renewal is first obtained.

13:2-8.8 Sales **restricted** to club members

(a) (No change.)

(b) All club licensees shall have and keep on the licensed premises a true record, in the form [prescribed] **promulgated** by the [director] **Director** (set forth below), of all scheduled dinners, luncheons, receptions, dances, parties, catered events and similar affairs held at the club licensed premises and attended by non-club members [and such record shall be available for inspection by the director and other issuing authority and by his or its deputies, inspectors, investigators and agents and by other officers as defined by N.J.S.A. 33:1-1(p) for a period of three years from the date of such affair].

Date of affair .....

Type of affair .....

Sponsored by .....

Was affair conducted under authority of a special permit? .....

If so, give number of permit .....

Were alcoholic beverages supplied by the club licensee? .....

_____

(Signature of authorized officer)

(c) No club licensee shall allow, permit or suffer any such affair to be held at the club licensed premises at which any [non-club member makes any direct or indirect payment (such as by admission fee, donations, contributions or otherwise) for any alcoholic beverage or combination of food and alcoholic beverages] **charge is made to a non-club member or non-bona fide guest in connection with the affair, whether the charge be a direct one for drinks, imposed through the sales of tickets or charging of admission, requiring donation or special assessments, or where the charge is made ostensibly for food, entertainment or anything else** unless a special permit is first obtained from the [director] **Director**.

[Date of affair .....

Type of affair .....

Sponsored by .....

Was affair conducted under authority of a special permit? .....

If so, give number of permit .....

Were alcoholic beverages supplied by the club licensee? .....

_____

(Signature of authorized officer)]

13:2-8.9 Sales for on-premises consumption **only**

No club licensee shall sell, serve or deliver, or allow, permit or suffer the sale, service or delivery of any alcoholic beverages [except for consumption on the licensed premises] **in original containers for off-premises consumption**.

13:2-8.10 (No change.)

13:2-8.11 Social affairs permittees

No club licensee shall sell, serve or deliver any alcoholic beverages to the holder of any special permit authorizing sale of alcoholic beverages at a social affair to be conducted by [the] **a** permittee **other than the club licensee itself**, or to any person attending such social affair on the club licensed premises unless such person is, in fact, a bona fide member of the licensee-club or a bona fide guest of such member.

13:2-8.12 Books of account

All club licensees shall have and keep for a five year period a true book or books of accounts wherein there shall be entered a record of all moneys received **in the ordinary course of business;** [and] a record of the source **and amount** of all moneys received other than in the ordinary course of business; [and] a record of all moneys expended from such receipts; and the name of the person receiving such moneys and the purpose for which such expenditures were made. All books and records pertaining to such receipts or expenditure**, as well as other records required by N.J.A.C. 13:2-8.8,** shall be made available for inspection by the Director of the Division of Alcoholic Beverage Control and the other issung authority, by his **or her** or its deputies, inspectors, investigators and agents and other officers defined by N.J.S.A. 33:1-1(p).

13:2-8.13 Advertising prohibition

No club licensee shall advertise, directly or indirectly, or allow, permit or suffer any advertising, to non-club members the availability of alcoholic beverages at its licensed premises [other than by signs on the interior of the licensed premises not visible from the exterior thereof]; provided, however, that the prohibition herein shall not

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apply to the holder of any special permit issued by the Director and authorizing the sale of alcoholic beverages at a social affair to be conducted at the club's licensed premises, with respect to such particular affair providing the social affair permit number is indicated [on] **in** the advertisement.

13:2-8.14 Violations

A club license is a restricted type of retail license and therefore its holder must comply with not only the rules set forth in this [regulation] **subchapter**, but with all the relevant provisions applicable to retail licenses. In disciplinary proceedings brought pursuant to the alcoholic beverage law, it shall be sufficient, in order to establish the guilt of the club licensee, to show the violation was committed by an agent, servant, employee of the club licensee or a member of the club. The fact that the licensee did not participate in the violation or that its agent, servant, employee or member acted contrary to instructions given to him by the club licensee, or that the violation did not occur in the presence of the licensee's agent, servant, employee or member, shall constitute no defense to the charges preferred in such disciplinary proceedings.

SUBCHAPTER 9. WAREHOUSE RECEIPTS LICENSES

13:2-9.1 Application for license; form

Application to the [director] **Director** for a warehouse receipts license shall be made on forms [prescribed] **promulgated** by the [director] **Director, Division of Alcoholic Beverage Control,** [submitted in duplicate] and accompanied by the full amount of the required **license** fee. No publication of notice of application shall be required.

13:2-9.2 Sale of warehouse receipts to manufacturers and wholesalers

The holders of warehouse receipts licenses may sell receipts thereunder only to New Jersey licensed manufacturers and wholesalers authorized to sell the beverages covered by the receipts. Sales of receipts not in accordance with the foregoing may be made only pursuant to special permit issued by the Director.

13:2-[9.2]**9.3** Sale of receipts **to retailers and consumers** prohibited

No holder of a warehouse receipts license may sell receipts thereunder to any New Jersey licensed retailer, or to any consumer in this State.

13:2-[9.3]**9.4** Solicitor's permit **required**

No individual shall sell or offer for sale or solicit any order for the purchase or sale of any receipt, certificate, contract or other document given upon the storage of alcoholic beverages unless such individual is the holder of a solicitor's permit issued pursuant to N.J.A.C. 13:2-[15]**16. This prohibition** [provided, however, that this] shall not apply to any individual licensee [himself] or the individual members of a partnership [licensee] **if the license is issued to and held by the individual or partnership**.

13:2-[9.4]**9.5** Tax compliance

Warehouse receipts licensees shall comply with all regulations promulgated by and all requirements pertaining to bonds and reports imposed by the Division of Taxation, Department of Treasury.

SUBCHAPTER 10. PLENARY WINERY LICENSES; **WINE BLENDING LICENSES;** [AND] RETAIL PRIVILEGES; **PARCEL DELIVERY SERVICE**

[13:2-10.1 Application for license, form; date for filing

Application for the privilege of selling wine at retail by the holder of or by an applicant for a plenary winery license must be filed with the director at or before the first insertion of advertisement of notice of application therefor on forms promulgated by the director, accompanied by the full amount of the required license fee.

13:2-10.2 Application for retail wine privilege, form and content

(a) Where the applicant applies simultaneously for a plenary winery license and the privilege of selling only wine at retail, the notice of application published in the form prescribed by N.J.A.C. 13:2-1.1, and in the manner prescribed by N.J.A.C. 13:2-1.3, shall include the following statement: Take further notice that the within named applicant has also applied for the privilege of selling wine at retail at the premises situated at (insert address of such premises).

13:2-10.3 Application for retail wine and other privilege; form

(a) Where the applicant applies simultaneously for a plenary winery license and the privilege of selling wines and other alcoholic beverages at retail, the notice of application published in the form prescribed by N.J.A.C. 13:2-1.3, shall include the following statement: Take further notice that the within named applicant has also applied for the privilege of selling at retail on the licensed premises, but only for consumption off such premises, such wines and other alcoholic beverages as bear applicant's labels and as are manufactured or blended, fortified, distilled or treated by the applicant or by applicant's subsidiary corporation.

13:2-10.4 Existing licensee application for additional retail privilege

(a) Where applicant is already the holder of a plenary winery license, the notice of application for the privilege of selling wine, or wines and other alcoholic beverages, at retail shall be published in the manner prescribed by N.J.A.C. 13:2-1.3 in whichever of the following forms is applicable:

FORM A: Take notice that _____
(Name of Applicant)

trading as _____, holder of a
(Trade Name, if any)

plenary winery license for premises situated at (insert address of licensed premises shown on current license certificate) has applied to the Director of the Division of Alcoholic Beverage Control for the privilege of selling wine at retail at premises situated at (insert address).

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

FORM B: Take notice that _____
(Name of Applicant)

trading as _____, holder of a
(Trade Name, if any)

plenary winery license for premises situated at (insert address of licensed premises shown on current license certificate) has applied to the Director of the Division of Alcoholic Beverage Control for the privilege of selling at retail at such premises, but only for consumption off such premises, such wine and other alcoholic beverages as bear applicant's labels and as are manufactured or blended, fortified, distilled or treated by the applicant or by applicant's subsidiary corporation.

Objections, if any, should be made immediately in writing to the Director of the Division of Alcoholic Beverage Control.

(b) Proof of publication of notice of application shall be furnished in the form set forth in N.J.A.C. 13:2-1.4.

13:2-10.5 Prior consideration given vineyard-owning applicants

Within any statutory limitation of the number of plenary winery licenses as to which the privilege of selling wine at retail may be granted, prior consideration will be given to applicants for such privilege who are engaged in growing and cultivating grapes upon land owned by the applicant and having an area not less than three acres.]

13:2-10.1 Application for plenary winery license; statement of intent

(a) All applicants for a plenary winery license shall comply with the application, advertising and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. The statement of intent shall include, at a minimum, the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage in respect to the proposed licensed premises; type of products to be produced (for example, naturally fermented wines, fortified wines, treated wines); intent to sell products to wholesalers, retailers, or consumers; and intent to utilize other premises for retail sales.

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(b) Any application for license which seeks permission for an off-winery retail sales premises shall be accompanied by a sketch of the proposed licensed premises depicting the area to be included under the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, as a minimum, a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and an identification of whether any sampling will take place, and if so, how this will be controlled.

13:2-[10.6]**10.2** Certificate endorsement

Whenever the holder of a plenary winery license is granted the privilege of selling wine at retail[, or wines and other alcoholic beverages] **at a premises other than the winery licensed premises**, the license certificate shall [thereupon] be appropriately endorsed by the [director] **Director** to set forth the retail privileges conferred thereunder, and no plenary winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine[, or wines and other alcoholic beverages, as the case may be] **at other than the winery licensed premises**.

13:2-[10.7]**10.3** Labeling wine sold at retail

Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each plenary winery licensee having the privilege of selling wine at retail shall attach a label to each container in which wine is sold to consumers [for off-premises consumption], which label shall bear the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and name or trade name and address of the licensee.

13:2-[10.8]**10.4** Hours of retail sales

No plenary winery licensee privileged to sell at retail shall sell, **serve** or deliver, or allow, permit or suffer the sale, **service** or delivery of any wine [or other alcoholic beverage] at retail [for consumption off the retail licensed premises or allow, permit or suffer the removal of any such wine or other alcoholic beverage from the retail licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week] **during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.**

13:2-10.5 Application for wine blending license; form

Applicants for a wine blending license shall comply with the application, advertising, and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. Such statement of intent shall include, at a minimum, the following information: type of process to be implemented, for example, blending, treating, mixing, or bottling; products to result from process; and intended sales to wholesalers or retailers.

13:2-10.6 Combination enterprise retail salesroom

(a) A "combination enterprise retail salesroom" is defined as a jointly controlled and operated retail salesroom by at least five plenary or farm winery licensees, at which premises, the alcoholic products produced under the licenses of such licensees may be sold at retail for consumption off the licensed premises and for consumption on the licensed premises for sampling purposes only.

(b) Only one combination enterprise salesroom shall be licensed per county and the fee therefor shall be $500.00.

(c) Applicants for a combination enterprise retail salesroom permit shall comply with the application, advertising, and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a sketch of the proposed licensed premises depicting the area to be included within the scope of the license and the perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, at a minimum, a copy of the lease agreement; a statement of how the winery sales outlet will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and a description of any sampling to take place including how this will be controlled.

(d) "Sampling" as authorized under N.J.S.A. 33:1-10 means the selling at a nominal charge or the gratuitous offering of an open container not exceeding one and one half ounces of any wine.

13:2-10.7 Parcel delivery service

(a) The holder of a New Jersey issued plenary winery license with retail privileges or a farm winery license may, on forms promulgated by the Director, Division of Alcoholic Beverage Control, apply for authorization to ship within this State wine products by parcel delivery service to customers resulting from sales from the winery premises or off winery premises sales locations, or from mail or telephone orders. Wine which is ordered by mail or telephone may be shipped by parcel delivery only if the licensee has a signed authorization by the person placing the order to ship wine upon his order by mail or telephone. In such case, the wine shall be shipped as a restricted delivery and may be delivered only to the residence of the person who placed the order.

(b) The annual fee for a permit to authorize parcel delivery service is $150.00 for a plenary winery licensee and $50.00 for a farm winery licensee.

(c) No delivery shall be completed by a parcel delivery service until the delivering agent shall determine that, at the time of delivery of wine, the party signing the delivery receipt is of legal age to purchase and consume alcoholic beverages.

SUBCHAPTER 11. [LIMITED] **FARM** WINERY LICENSES AND RETAIL PRIVILEGES

[13:2-11.1 Endorsement of license certificate; retail sales privilege

(a) Whenever the holder of a limited winery license qualifies for the privilege of selling wine at retail, the license certificate shall thereupon be endorsed by the director as follows, and no limited winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery of wine at retail:

"This license also permits sale at retail of naturally fermented wines manufactured only from fresh grapes or other fruit grown in New Jersey to consumers for off-premises consumption."

13:2-11.2 Vineyard requirements

No limited winery licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any wine at retail unless the winery at which the wine is manufactured is located and constructed upon a tract of land owned exclusively by such licensee and unless said tract of land has an area of not less than three acres and has growing and under cultivation upon land at least 1,200 grape vines.

13:2-11.3 Retail sales requirements

No limited winery licensee shall sell or deliver, or allow, permit or suffer the sale or delivery of any wine at retail unless the wine is naturally fermented and is manufactured by the licensee only from fresh grapes or other fruit grown in New Jersey and unless the container in which such wine is sold is clearly and prominently labeled "New Jersey Wine."]

13:2-11.1 Application for farm winery license; statement of intent

(a) Applicants for a farm winery license shall comply with the application, advertising and hearing provisions of this chapter, N.J.A.C. 13:2. The application shall also be accompanied by a description of the intended activities to be conducted under the authority of the license. The statement of intent shall include, at a minimum, the following information: number of acres engaged in cultivating grapes or growing fruit; location of acreage with respect to the proposed licensed premises; means by which acreage is under the applicant's control; plan under which New Jersey grown fruit will constitute at least 51 percent of wine product initially with plans to increase that percentage over five years; intent to sell products to wholesalers, retailers, and/or consumers; number of gallons projected to be produced annually; and intent for off winery premises retail sales locations.

(b) Any application which seeks permission for an off-winery retail sales premises shall be accompanied by a sketch of the proposed licensed premises depicting the area to be included under the license and the

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perimeter measurements. If the sales location is to be within another mercantile business operation, the application shall be accompanied by a description of the business relationship with the other business including, at a minimum, a copy of the lease agreement; a statement of how the winery will maintain separate accounting for sales; a description of how the applicant will compensate the sales employees; and an identification of whether any sampling will take place, and, if so, how this will be controlled.

13:2-11.2 Certificate endorsement

Whenever the holder of a farm winery license is granted the privilege of selling wine at retail at premises other than the winery licensed premises, the license certificate shall be appropriately endorsed by the Director to set forth the retail privileges conferred thereunder; and no farm winery licensee whose certificate does not bear such endorsement shall sell or deliver or allow, permit or suffer the sale or delivery at retail of wine at other than the winery licensed premises.

13:2-[11.4]**11.3** Labeling wine sold at retail

Unless the container in which the wine is sold shall bear a label approved pursuant to the provisions of the Federal Alcoholic Administration Act, each [limited] **farm** winery licensee shall attach a label to each container in which wine is sold to consumers, which label shall bear[, in addition to the requirements of section 3 of this subchapter,] the brand name, type, alcoholic content of the wine stated in percentage of alcohol by volume within an accuracy of one percent, net contents of the container, and the name and address of the licensee. **Every container's label must indicate that it is "New Jersey Wine"; and, for the first five years of the winery's operation, all fermented wines and juices shall be manufactured from at least 51 percent grapes or fruit grown in New Jersey; and that thereafter they shall be manufactured from grapes or fruit grown in this State at least to the extent required for labeling as "New Jersey Wine" under applicable Federal laws and regulations.**

[13:2-11.5 Retail sales at prescribed licensed premises

No limited winery licensee, even though qualified to sell wine at retail, shall engage in any such retail sale at any portion of the licensed premises other than that described in the application for license under the caption "Location of premises in New Jersey to be licensed."]

13:2-[11.6]**11.4** Hours of retail sales

No [limited] **farm** winery licensee[, even though qualified] **privileged** to sell wine at retail[,] shall sell or deliver, or allow, permit or suffer the sale or delivery of any wine at retail [or allow, permit or suffer the removal of any such wine from the licensed premises, on Sunday, or before 9:00 A.M. or after 10:00 P.M. on any other day of the week] **during any hours where the retail sale of alcoholic beverages is prohibited in the municipality where the winery retail sale would occur.**

[13:2-11.7 Consumption on licensed premises

No limited winery licensee shall allow, permit or suffer the consumption of wine on the licensed premises.]

13:2-11.5 Combination enterprise retail salesroom

A farm winery licensee may participate in a combination enterprise retail salesroom in accordance with N.J.A.C. 13:2-10.6.

13:2-11.6 Parcel delivery service

A farm winery licensee may arrange for delivery of products to consumers by a parcel delivery service in accordance with N.J.A.C. 13:2-10.7.

SUBCHAPTER 12. WINE PERMITS

13:2-12.1 Special wine permit

(a) Wine for personal consumption may be manufactured only under the provisions of a special wine permit, issuable by the [director] **Director, Division of Alcoholic Beverage Control,** which [authorized] **authorizes** the permittee to manufacture within the home of the permittee or other premises used in connection therewith, and during the permit period, wine in quantities of not more than 200 gallons.

(b) Wine manufactured under the authority of such permit may not be sold under any circumstances, nor may it be used for any purpose other than personal consumption at the permittee's home by the permittee and his family and [their] bona fide guests. The fee for this permit is $3.00.

13:2-12.2 Ineligibility of licensees

No [such] permit shall be issued to the holder of any alcoholic beverage license.

13:2-12.3 Ineligibility of licensed premises

No [such] permit shall be issued for the manufacture[r] of wine on premises **that are also** licensed for the retailing, wholesaling or manufacturing of alcoholic beverages.

13:2-12.4 Ineligibility of minors

No [such] permit shall be issued to any person under [18] **21** years of age.

13:2-12.5 [Criminal] **Other** disqualification

No [such] permit shall be issued to any person who has been convicted of [a violation of Revised Statutes, Title 33, involving the possession or operation of an illicit still, the possession of illicit alcoholic beverages other than wine or the sale of any illicit alcoholic beverages, except,] **an offense involving "unlawful alcoholic beverage activity", as defined in N.J.S.A. 33:1-1(x), subject to a waiver of this prohibition** in the discretion of the [director] **Director** after the lapse of 12 months from the date of such conviction.

13:2-12.6 Number of permits per year

Not more than one [such] permit shall be issued to any individual during any [fiscal] **calendar** year.

13:2-12.7 Transfer of permits

No [such] permit shall be transferable from person to person, and transfer from premises to premises may only be made with the written permission of the [director] **Director.**

13:2-12.8 Revocation of permit

Violation of the provisions of [such] **the** permit shall be grounds for revocation.

SUBCHAPTER 13. [IDENTIFICATION OF] **EXECUTION OF QUESTIONNAIRE BY** STATE LICENSEES AND THEIR **PRINCIPALS AND** EMPLOYEES

13:2-13.1 Execution of questionnaires[;] **by** State licensees and principals

Every person who, individually or as a member of a partnership, holds a manufacturer's, wholesaler's, public warehouse, warehouse receipts, broker's or transportation license (except railroad carriers, but not excepting their affiliated or subsidiary transportation companies engaged in transporting alcoholic beverages) **shall execute a questionnaire, on a form promulgated by the Director. In addition,** [and] every person who is an officer, director or holder of more than [10] **one** percent of the stock of a corporation holding any such license, shall execute a questionnaire, in a form prescribed by the [director] **Director**[, and signed and sworn to by such person].

13:2-13.2 Execution of questionnaires[;] **by** employees of State licensees; **exemptions**

(a) Every person employed by or connected in any capacity whatsoever with the alcoholic beverage business conducted in this State by the holder of any license specified in [section 1 of this subchapter] **N.J.A.C. 13:2-13.1** shall execute a questionnaire, [in] **on** a form [prescribed] **promulgated** by the [director] **Director.**[, and signed and sworn to by such person; provided, however, that this rule] **This requirement** shall not apply to:

1. Any person holding a solicitor's permit or an employment permit issued by the [director.] **Director;**

2. Any person whose employment does not exceed 10 working days in any one calendar year[.];

3. Stenographers, telephone operators, clerks, office boys and other employees who do not handle any alcoholic beverages and have

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no choice in the conduct of the licensee's alcoholic beverage business in this State[.]**;**

4. A nonresident banker or other creditor who has loaned money to a licensed corporation and who becomes a director thereof but has no active interest in the conduct of the corporation's business in this State[.]**; or**

5. Any person whose only connection with a licensed [foreign] corporation is that of registered or authorized agent for the service of process.

13:2-13.3 Photograph of person executing questionnaire

Each questionnaire shall have attached thereto one **color** passport type photograph, two inches by two inches, of the person [therein described] **who has executed such questionnaire**, which photograph shall have been taken not more than 30 days prior to the execution of the questionnaire.

13:2-13.4 Maintenance of questionnaire upon licensed premises

[Except as provided in section 5 of this subchapter, all] **All** questionnaires [executed on or after April 1, 1956,] shall be kept upon the licensed premises, available for inspection by the [director] **Director, his or her** deputies, inspectors, investigators and agents **and other officers defined by N.J.S.A. 33:1-1(p)**.

[13:2-13.5 Criminal convictions disclosed in questionnaire

Whenever a questionnaire shall disclose that the person described therein has been convicted of any crime, the licensee shall immediately submit such questionnaire to the director.

13:2-13.6 Failure to execute questionnaire; employment

No licensee specified in section 1 of this subchapter shall employ or have connected in any business capacity whatsoever with such licensee any person who is required by these regulations to execute a questionnaire and who has failed, neglected or refused to do so.]

SUBCHAPTER 14. EMPLOYMENT BY LICENSEES OF A PERSON FAILING TO QUALIFY AS A LICENSEE

[13:2-14.1 Criminally disqualified persons

No licensee shall employ or have connected in any business capacity with the licensee any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been removed by order of the director, or such person has first obtained the appropriate rehabilitation employment permit from the director.]

13:2-[14.2]**14.1 Restriction upon a** [Minor's] **minor's employment** activities on **a** licensed premises

(a) No licensee shall allow, permit or suffer any person under the age of 18 years to sell, serve or solicit the sale of any alcoholic beverage, or to participate in the manufacture, rectification, blending, treating, fortification, mixing, processing, preparing or bottling of any alcoholic beverage. It shall not constitute a defense to any prosecution for violation of [the] **this** rule that the employment of a person under the age of 18 years is permitted under [section 3 of this subchapter] **N.J.A.C. 13:2-14.2**.

(b) No licensee shall allow, permit or suffer any person under 18 years of age to be employed as an entertainer on any premises where the consumption of alcoholic beverages is permitted unless such minor's employment shall be authorized pursuant to N.J.S.A. 34:2-21.1 et seq. of the New Jersey Child Labor Law and the rules and regulations established thereunder.

13:2-[14.3]**14.2** Minor's employment permit; fees

(a) No licensee[,] (except a retail licensee conducting a bona fide hotel or public restaurant)[,] shall employ any person under the age of 18 years, [or] **nor** shall **such licensee** allow, permit or suffer the employment of any such person, in or upon the licensed premises, unless such person shall have [first] obtained an employment permit from the Director of the **Division of** Alcoholic Beverage Control [or within] **no later than** 10 days [after becoming employed,] **from commencement of employment, or the licensee shall** have [filed with] **had issued by** the Director of the Division of Alcoholic Beverage Control [the application and fee for his employment permit to be covered under] a blanket employment permit issued [to his employer] pursuant to [section 10 of this subchapter] **N.J.A.C. 13:2-14.4**.

(b) The fee for an individual permit is $5.00 per annum, or any part thereof.

13:2-[14.4]**14.3** Permit[s]; [persons under 18 years of age] **age restrictions**

No permit shall be issued to any person under the age of 16 years except caddies, pinboys **or similar temporary or transient type employees as the Director may deem appropriate upon a showing of good cause,** and **further except** persons employed by a plenary or limited retail distribution licensee[;], which [latter] persons shall be no younger than 15 years of age. [Nor shall any permit be issued to any person under 18 years of age to be employed as an entertainer on any premises where the consumption of alcoholic beverages is permitted.]

13:2-14.4 Blanket minors' employment permit

(a) A blanket minors' employment permit may be issued by the Director to a licensee to authorize the employment of persons disqualified by reasons of age, who are employed by the licensee as caddies or pinboys, or similar temporary or transient employees as the Director may deem appropriate upon a showing of good cause, and such persons covered by the licensee's blanket minors' employment permit need not hold or apply for individual employment permits.

(b) The fee for the blanket employment permit shall be based upon the number of anticipated employees to be hired under the permit, but shall not exceed $500.00 per annum.

13:2-14.5 Restrictions upon employing criminally disqualified persons

No licensee shall knowingly employ or have connected with him in any business capacity any person who has been convicted of a crime involving moral turpitude unless the statutory disqualification resulting from such conviction has been removed by order of the Director, in accordance with N.J.A.C. 13:2-15, or such person has first obtained the appropriate rehabilitation employment permit or temporary work letter from the Director.

13:2-[14.5]**14.6** Application[;] **for a** rehabilitation employment permit**; temporary work letter**

(a) Any person convicted of a crime involving moral turpitude may apply to the [director] **Director**, in the manner and form prescribed by the [director] **Director**, for a rehabilitation employment permit. Whenever [any such] **that** application is made[,] and it appears to the satisfaction of the [director] **Director** that such person's employment in the alcoholic beverage industry will not be contrary to the public interest, the [director] **Director** may, in his **or her** discretion, issue such employment permit. [Applicant after request, shall be afforded an opportunity to have a hearing.]

(b) Upon the proper filing of an application and proof of promised employment, the Director may, in his or her discretion, issue the applicant temporary work letters not to exceed 90 days at any one time, authorizing employment upon a specified licensed premises pending determination on the application for a permit.

13:2-[14.6]**14.7** [Types of rehabilitation] **Rehabilitation** employment permit; duration**; types; fees**

(a) [The] **A** rehabilitation employment permit shall be issued for a one year period, and **shall be** renewable annually for the term of disqualification, as set forth in N.J.S.A. 33:1-31.2. [The fee shall be $15.00 per annum, payable on the date of application.]

(b) Rehabilitation employment permits shall consist of the following types:

1. Unlimited employment permit: This permit shall allow the holder thereof to be employed[,] by any class license, without restriction as to type of employment. Such permits may not be issued to persons who have been convicted of crimes which, in the opinion of the [director] **Director**, present a special risk to the alcoholic beverage industry.

2. Limited employment permit: This permit shall allow the holder thereof to be employed[,] by any class license[,] in any non-managerial capacity, except that the holder may not sell, serve or deliver any alcoholic beverages.

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(c) The fee for either type of rehabilitation employment permit shall be $15.00 per annum, payable on the date of application.

13:2-[14.7]**14.8** [Limitations] **Restrictions upon limited rehabilitation employment permittee**

No [licenses] **licensee** shall allow, permit or suffer the holder of limited rehabilitation employment permit [issued pursuant to section 6(a), 2 of this subchapter,] to act in a managerial capacity with respect to the licensed business, or [to] sell, serve or deliver any alcoholic beverage[,]; nor shall any holder of a limited rehabilitation permit engage in any such activity.

13:2-[14.8]**14.9** [Continued] **Termination of** employment of disqualified person

No licensee shall continue to employ in any manner whatsoever on the licensed premises any **criminally disqualified** person [disqualified as aforesaid, where] **after** the application of such person for **an** employment permit has been **withdrawn or** denied, or the employment permit **or temporary work letter** has been cancelled, suspended [or], revoked, or has expired.

13:2-[14.9]**14.10** **Nontransferability of permits;** [Term] **term** of permit; applicant's photograph and fingerprints

(**a**) Employment permits are not transferable from person to person.

(**b**) All [such] individual permits, except rehabilitation permits, expire on March 31st following their issuance unless otherwise specified therein.

(**c**) Each applicant for his first [such] permit shall [accompany his] **submit with the** application [with] one **color** passport-type photograph, two inches by two inches, taken not more than 30 days prior to the date of application.

(d) Applications for a rehabilitation employment permit shall require fingerprinting of the applicant and payment of the necessary fingerprinting processing fees attendant thereto.

[13:2-14.10 Blanket employment permit

A blanket employment permit may be issued by the director to a licensee to authorize the employment of person disqualified by reasons of age, who are employed by the licensee for a temporary period of time not exceeding one week, or as caddies or pinboys, and such persons covered by the licensee's blanket employment permit need not hold or apply for individual employment permits.]

13:2-14.11 Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for **a** permit, the permittee shall file with the [director] **Director** a notice in writing of [such] **the** change within 10 days after its occurrence.

13:2-14.12 [Conduct] **Prohibited conduct** of permittee

No permittee shall engage in any conduct which is prohibited to his employer by the [alcoholic beverage law] **Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.** or any regulation adopted thereunder, or **by** any valid municipal ordinance or regulation pertaining to employment upon licensed premises.

13:2-14.13 Cancellation, suspension and revocation of permit

(a) Any employment permit may be canceled or suspended or revoked by the [director] **Director** for cause, including, **but not limited to,** [among other] any of the following [causes]:

1. Violation by the holder [thereof] **of** any provision of the alcoholic beverage law or any regulation adopted thereunder;

2. For any fraud, misrepresentation, false statement, misleading statement, evasion or suppression of a material fact in the application for [said] **the** permit;

3. [Upon presentation of proof] **Proof** that the holder [thereof] has a prohibited interest in any license issued by the [director] **Director** or any other issuing authority;

4. [If the director concludes that the holder thereof] **The permit holder** is disqualified from being employed by a licensee for [any] reasons other than the disqualification referred to in the employment permit;

5. Any other act or happening, occurring after the time of making an application for an employment permit which, if it had occurred before said time, would have prevented issuance of the permit; **and**

6. With respect to rehabilitation employment permits **or temporary work letters** issued pursuant to N.J.A.C. 13:2-[14.5]**14.6, proof of arrest or** conviction **of the permit holder** of any crime or disorderly persons offense.

SUBCHAPTER 15. REMOVAL OF STATUTORY DISQUALIFICATION

13:2-15.1 Time for petition filing; removal of statutory disqualification

Any person convicted of a crime involving moral turpitude may, after the lapse of five years from the date of conviction, **or release from incarceration, whichever is later,** petition the [director] **Director of the Division of Alcoholic Beverage Control** pursuant to N.J.S.A. 33:1-31.2 for an order removing the resulting statutory disqualification from obtaining or holding any license or permit.

13:2-15.2 Petition; contents

The petition for removal of disqualification shall be in verified form accompanied by payment of a filing fee of $25.00. The petitioner shall be required to submit a set of fingerprints and a recent **color passport** photograph (two inches by two inches) with said application, **as well as any fingerprinting processing fees attendant thereto.**

13:2-15.3 Hearing

[Whenever any such petition is filed,] **No petition shall be denied without first affording the petitioner a hearing, which** the [director] **Director** shall schedule [a hearing] to be held at this [division] **Division by the Director under N.J.S.A. 52:14F-8 or by an Administrative Law Judge as a contested case pursuant to N.J.A.C. 1:1-3.2.** The petitioner and two character witnesses will be required to appear in person at said hearing and to testify under oath.

13:2-15.4 Removal of disqualifications; causes

(a) The [director] **Director** may, in the exercise of his **or her** discretion, enter an order removing the disqualification, if he **or she** is satisfied from the petitioner's testimony, the witnesses produced [and] **or** the investigative record, that:

1. At least five years have elapsed from the **later of the** date of conviction **or release from incarceration;**

2. The petitioner has conducted himself or herself in a law-abiding manner during such period; and

3. His or her association with the alcoholic beverage industry will not be contrary to the public interest.

SUBCHAPTER 16. SOLICITOR'S PERMIT

13:2-16.1 (No change.)

13:2-16.2 Privileges of permit

A solicitor's permit, issuable by the [director] **Director of the Division of Alcoholic Beverage Control,** authorizes the permittee to make offers and solicit for such sales of alcoholic beverages on behalf of the [vendor] **licensee** represented by the solicitor and designated in the permit.

[13:2-16.3 Permit fees; terms; applicant's photographs and fingerprints

The fee for solicitor's permit is $15.00 per annum for solicitors employed exclusively by licensees whose license permits sale of malt alcoholic beverages only, and is $25.00 per annum for solicitors employed by other wholesaler or manufacturing licensees. All such permits expire on the May 31st following their issuance unless otherwise specified therein. Each applicant for this first such permit and any renewal occurring in the year 1978 and in five year intervals thereafter shall accompany the application with one passport-type photograph of the application, two inches by two inches, taken not more than 30 days prior to the date of the application. Each applicant shall be fingerprinted without charge, under the supervision of the Division of Alcoholic Beverage Control at such time and place as shall be designated from time to time by the director. The fingerprints shall be marked "non-criminal" and shall be filed with the director.]

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13:2-[16.4]**16.3** Eligibility for permit

Solicitor's permits may be issued only to bona fide employees of [duly licensed New Jersey manufacturers or wholesalers] **Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licensees with the exception that no solicitor's permits shall be issued to employees of a bonded warehouse bottling licensee which holds no other type of Class A or Class B license.**

[13:2-16.5 Restrictions on permittee

No holder of a solicitor's permit shall, in the State of New Jersey, offer for sale or solicit any order for the purchase or sale of any alcoholic beverage otherwise then to the extent duly allowed and permitted by law and by the New Jersey license of his employer nor shall any licensed New Jersey manufacturer or wholesaler, allow, permit or suffer the holder of a solicitor's permit who is his agent or who is in his employ to do so.

13:2-16.6 Solicitation without permit

No licensed New Jersey manufacturer or wholesaler shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

13:2-16.7 Interest of permittee in retail business

No holder of a solicitor's permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, or shall be employed by or connected in any business capacity with any retail licensee.]

13:2-[16.8]**16.4** Permits to enforcement officers **or municipal officials**

No solicitor's permit shall be issued to or held by any person charged or entrusted with the enforcement of the laws concerning alcoholic beverages in any manner whatsoever, except that nothing herein shall prohibit a member of a municipal governing body or municipal issuing authority from being issued or holding a solicitor's permit, provided, however, that no holder of a solicitor's permit shall, directly or indirectly, offer for sale or solicit any order for the purchase or sale of any alcoholic beverages in any municipality in which he is a member of the municipal governing body or municipal issuing authority.

13:2-16.5 Permit fees

The fee for a solicitor's permit is $15.00 per annum for solicitors employed exclusively by licensees whose license permits the sale of malt alcoholic beverages only, and $25.00 per annum for solicitors employed by all other eligible licensees. A separate fee shall be paid for each licensee designated in the permit.

13:2-16.6 Application for permit; photograph and fingerprints

(a) Each applicant for the issuance or renewal of a solicitor's permit shall make application on a form promulgated by the Director accompanied with the appropriate fee.

(b) Applications for the issuance of a solicitor's permit shall be accompanied by one passport type color photograph of the applicant, two inches by two inches, taken not more than 30 days prior to the date of the application.

(c) Applications for the issuance of a solicitor's permit shall require the fingerprinting of the applicant and the payment of the fingerprinting processing fees attendant thereto.

13:2-16.7 Term of permit

All solicitors' permits shall expire on May 31st following their issuance, unless otherwise specified therein, as provided in N.J.S.A. 33:1-67.

13:2-[16.9]**16.8** [Transferability] **Non-transferability** of permit

Each solicitor's permit covers only the employment designated therein and is not transferable as to employer or employee or employment.

13:2-[16.10]**16.9** Amendment of application

Whenever any change shall occur in any of the facts set forth in the application for **a** solicitor's permit, the permittee shall file with the [director] **Director** a notice in writing of such change within 10 days after its occurrence.

13:2-[16.11]**16.10** Surrender of permit upon termination of employment

Upon the termination of any employment for which a solicitor's permit has been granted, the employer named therein shall file with the [director] **Director** a notice in writing of such termination and the permittee shall surrender for cancellation to the [director] **Director** the permit covering such employment within 10 days after its occurrence.

13:2-16.11 Restrictions on permittee

(a) No holder of a solicitor's permit shall, in the State of New Jersey, offer for sale or solicit any order for the purchase or sale of any alcoholic beverage other than to the extent duly allowed and permitted by law and by the New Jersey license of his employer.

(b) No holder of a solicitor's permit shall directly or indirectly engage in any conduct prohibited its employer by the provisions of Title 33 or any regulations promulgated thereunder, nor shall such person sell, solicit, or deliver alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained in its employers "Marketing Manual" and "Current Price List" kept pursuant to N.J.A.C. 13:2-24 for the operative period.

[13:2-16.12 Permittee's activity

No holder of a solicitor's permit shall engage in any conduct which is prohibited to his employer by the alcoholic beverage law or any regulation adopted thereunder.]

13:2-16.12 Interest of permittee in retail business

No holder of a solicitor's permit shall be interested, directly or indirectly, in any retail license or any business conducted thereunder, nor shall the holder of a solicitor's permit be employed by or connected in any business capacity with any retail licensee.

13:2-16.13 Search of permittee's vehicle

By the acceptance of a solicitor's permit, the permittee consents to inspection and search of any vehicle owned or being driven by him, without search warrant, by the [director] **Director**, his **or her** deputies, inspectors and investigators and by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-16.14 Responsibilities of employer

No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

13:2-16.15 Solicitor's contracts

All contracts of employment between Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licenses and their solicitors shall be in writing and shall set forth the salary, commission or other compensation of any kind agreed to be paid to such solicitor. Contracts shall be maintained by the employer for a period of three years from the date of execution and shall be available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

13:2-16.16 Filing of statement of compensation with Director

On or before May 31 of each year, each holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license employing any solicitor during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses, prizes, awards, bonuses, or otherwise, paid to each such solicitor by such manufacturer or wholesaler during that calendar year.

SUBCHAPTER 17. APPEALS

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals [to the Director] **from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license** shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the [director] **Director** of the Division of Alcoholic Beverage Control[, setting] .

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The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, [and] the grounds therefor and a fee of $50.00 payable to the Director, Division of Alcoholic Beverage Control.

13:2-17.2 Service of notice and petition of appeal

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority and, where the action appealed from is the grant, transfer or extension of a license, or the refusal to revoke or suspend a license, a copy shall also be so served upon the licensee, who shall [also] be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed with the [director] **Director** within the time set forth in N.J.A.C. 13:2-17.3.

13:2-17.3 Time for appeal

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a licensee must be taken within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be taken within 30 days after the personal service or mailing by registered mail of **a written** notice by the municipal issuing authority of the action taken against the licensee or the applicant.

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the [director] **Director** and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the [director] **Director** shall determine whether the case is contested. If the [director] **Director** determines that the case is contested, he **or she** shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo[, except as otherwise provided in N.J.A.C. 13:2-17.8. The] **and the** burden of establishing that the action of the respondent issuing authority was erroneous[,] and should be reversed[,] shall rest with appellant.

[13:2-17.7 Public hearing

All appeals shall be heard at the office of the Division of Alcoholic Beverage Control or designated location by the Office of Administrative Law, whichever agency is hearing the case, and shall be open to the public, unless otherwise directed by the [director] **Director** or Administrative Law Judge, whichever is hearing the case, pursuant to the standards set forth in N.J.A.C. 1:1-3.1.

13:2-17.8 Stipulations, offer of transcript

Where none of the material facts is disputed, the appeal may be presented, subject to the approval of the [director] **Director** or Administrative Law Judge, whichever is hearing the case, upon an agreed statement of facts. Where there is available a stenographic transcript or electronic recording of the proceedings before the issuing authority, either party may, [if at least three] **on 10** days notice [of intention so] to [do has been given] opposing parties, or counsel therefor, offer the transcribed record thereof in lieu of producing said witnesses at the hearing of the appeal. In such event, any party may produce any additional evidence, oral or documentary, at the hearing of the appeal. Subject to the approval of the [director] **Director** or Administrative Law Judge, whichever is hearing the case, the parties may agree to present the appeal solely upon such stenographic or electronic transcript.]

13:2-[17.9]**17.7** Subpoenas

Subpoenas and subpoenas duces tecum, signed by the [director] **Director** or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

[13:2-17.10 Failure to appear; failure to comply with orders or hearing requirements; obstructing the orderly conduct of proceedings

Failure of any party to an appeal to appear at a scheduled hearing, conference or motion, without just excuse or because of failure to give reasonable attention to the matter; **or** the unreasonable failure to comply with an order or hearing requirements; or the engaging in behavior that obstructs the orderly conduct of proceedings by any party, attorney at law or other representative of a party; may result in the imposition of sanctions and penalties as proscribed in N.J.A.C. 1:1-3.5.]

13:2-[17.11]**17.8** Stays

[An] **The filing of an** appeal from a suspension or revocation of a license **by a municipal issuing authority** shall act as [a] **an automatic** stay of such suspension or revocation [pending the determination thereof], unless the [director at the time of the filing of the appeal] **Director** shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the [director] **Director** or Administrative Law Judge.

13:2-[17.12]**17.9** Extension of license term

Upon **the filing of an** appeal from the denial of an application for renewal of a license**, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b),** the [director] **Director** may, at the time of the filing of the appeal, in his **or her** discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with [the] ad interim relief extending [the term of] the license pending the return of the order to show cause [and until further order of the Director or Administrative Law Judge]. If it shall appear [upon the return of the order to show cause] that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would otherwise result, the **extension of license,** [director, or Administrative Law Judge, may,] subject to such conditions as may be imposed, [order that the term of the license be extended] **shall be continued** pending a final determination of the appeal**, or the expiration of the license term, whichever comes sooner.**

13:2-[17.13]**17.10** Transfer, extension or renewal subject to appeal

When appeal is taken in any matter, any **subsequent** transfer, extension or removal of [any] **the** license involved [therein] **in the appeal** shall be subject to the ultimate outcome of such appeal, unless otherwise ordered in the final administrative determination of the case.

13:2-[17.14]**17.11** Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1[-1.1 et seq.]) shall govern the conduct of the case[, except where the matter is submitted for determination upon an agreed statement of facts pursuant to N.J.A.C. 13:2-17.8].

[13:2-17.15 (Reserved)]

SUBCHAPTER 18. PETITION PROCEEDINGS; DISCRIMINATION AGAINST WHOLESALERS

13:2-18.1 Grounds of relief

(a) There shall be no discrimination in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, by importers, blenders, distillers, rectifiers and wineries, to duly licensed wholesalers of alcoholic beverages who are authorized by such importers, blenders, distillers, rectifiers and wineries to sell such nationally advertised brand in New Jersey. All actions by duly licensed New Jersey wholesalers seeking relief from such discrimination shall be in the form of a petition to the [director] **Director** setting forth the facts of alleged discrimination, the relief sought and the grounds therefor.

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(b) For purposes of (a) above, refusal to sell based upon any of the following shall be deemed not to be discrimination:

1.-7. (No change.)

8. The disparagement, by the wholesaler, of any product of the refusing seller made by a representative specifically authorized by a wholesaler's key management personnel. "Disparagement" shall mean the specific suggestion that the product of the refusing seller not be purchased, or demonstration of a course of conduct that would lead a reasonable person to believe that the product of the refusing seller should not be purchased, and when called to the attention of key management personnel of the wholesaler, no reasonable corrective action is taken;

9.-10. (No change.)

(c) (No change.)

13:2-18.2 Filing and serving petitions

(a) The petitioner shall file with the Director, Division of Alcoholic Beverage Control, an original and copy of a Verified Petition setting forth the identity of the parties, the subject matter of the petition, the identity of the product(s) involved, brand registration filings for the products, the relief sought, the grounds therefor and such other matters required under N.J.S.A. 33:1-93.6 et seq.

(b) The petitioner [or petitioners] shall [first] serve, personally or by ordinary mail, a copy of the petition upon the respondent importer, blender, distiller, rectifier or winery **no later than within five days from the filing of the petition.** The original petition, together with acknowledgement or affidavit of service, shall be filed with the [director forthwith] **Director.**

13:2-18.3 Answer to petition

Within 10 days after service of the copy of the petition, each respondent shall file an answer with the [director] **Director**, together with proof of service of a copy thereof on the petitioner [or petitioners]. The answer [by the respondent or respondents] shall include a statement whether the respondent [or respondents have] **has** refused to sell to the petitioner [or petitioners any amount of alcoholic beverages other than malt alcoholic beverages] and, **if so,** the reasons for such refusal.

[13:2-18.4 Hearing schedules; notice

Upon the filing of the petition, the director shall schedule a hearing and shall give each of the parties at least five days notice of the time and place thereof.

13:2-18.5 Discovery

The parties may, upon good cause shown, and at the discretion of the director, have pre-hearing discovery including written interrogatories or depositions. Failure to comply with the order for discovery may result in appropriate sanctions by the director.

13:2-18.6 Hearing procedure

(a) Hearing shall be conducted by the director or a duly designated hearer. Each party may appear pro se, except a corporation, or be represented by an attorney admitted to practice in this State. Each party shall have the right to present his case by oral and documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

(b) Testimony shall be taken stenographically or recorded electronically in each case. Each party shall be afforded the opportunity to present argument, either orally before the hearer immediately upon the close of the evidence, or by written brief. Oral argument shall be limited to 15 minutes for each party, unless the hearer shall otherwise order. Briefs, if any, shall be submitted within the time fixed by the hearer.

(c) In cases where the hearer's report is not to be prepared, and the matter is to be submitted directly to the director for his action, such fact shall be announced by the hearer at the close of the evidence. In other cases, the hearer shall prepare a report containing recommended conclusions and order, file the original report with the director, and forthwith transmit a copy, either personally or by mail, to the parties or their attorneys.

(d) Within 10 days of the receipt of the hearer's report, each party may file written exceptions and arguments thereto, with the director, together with proof of service of a copy thereof upon the other parties or their attorneys. Within five days after such service, answering argument may be filed with the director, together with proof of service of a copy thereof upon the other parties or their attorneys.

(e) Except as otherwise provided herein, no oral argument may be had before the director, unless, on his own motion, the director decides to hear oral argument and notifies the parties or their attorneys of the date and place fixed therefor.

(f) This hearer's report shall not be binding upon the director and director's decision may, in whole or in part, adopt, modify or reject the report, provided, however, that no material change in the result recommended by the hearer shall be made by the director without first affording the parties or their attorneys an opportunity to present oral argument before the director. The written decision of the director shall set forth his conclusions, together with supporting reasons therefore, and his order, if any. A copy of the decision shall be mailed forthwith to the parties or their attorneys.

(g) Any of the provisions of this rule relating to the presentation of a party's case or argument, or to the procedure in connection with the hearer's report, may be waived by any party or his attorney.]

13:2-[18.7]**18.4** Interlocutory relief

[(a)] The petitioner may apply to the [director] **Director** for interlocutory relief by order to show cause, accompanied by [affidavit or] **the** verified petition [showing] **alleging** that the petitioner will probably suffer substantial and irreparable injury before final determination of the proceeding **unless interlocutory relief is granted.** If it appears [from an affidavit or verified petition] that the petitioner will probably suffer immediate, substantial and irreparable injury before a hearing can be [had] **held** on the **return date of the** order to show cause, the [director] **Director** may enter an ex parte order granting ad interim relief [pending the hearing on the order to show cause or for an extended period to which the respondent or respondents consent or until further order of the director], provided the respondent [or repondents are] **is** granted the right to move, on two days' notice, to dissolve or modify said order. Upon return of the order to show cause, the [director] **Director** may grant interlocutory relief if it appears that a substantial question of law or fact has been raised and that the petitioner will probably suffer substantial and irreparable injury **without such relief** before final determination of the proceeding.

[(b) Copies of all papers filed with the director in connection with an application for interlocutory relief shall include proof of service thereof upon all the affected parties to the proceeding or their attorneys of record. Copies of all ex parte orders shall be served upon all the affected parties to the proceeding within the time designated in the order and proof of service thereof shall forthwith be filed with the director. Hearings on the herein before mentioned orders to show cause shall be scheduled as soon as practicable.]

13:2-[18.8]**18.5** Enforcement of [director's] **Director's** orders

All persons, whether licensees or non-licensees, shall comply with the terms of any final, interlocutory or other order entered in these proceedings. In the event a respondent fails to comply with the terms of such order, the [director] **Director** may, in addition to any penalty provided by law, enter an order prohibiting **any** licensed wholesaler from purchasing, directly or indirectly, any alcoholic beverage other than malt alcoholic beverages of such respondent until the [director] **Director** finds that there has been compliance therewith.

13:2-18.6 Jurisdiction

Upon the filing of the verified petition and answer, the Director shall determine whether the case is contested. If the Director determines that the case is contested, he or she shall either file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retain it under the provisions of N.J.S.A. 52:14F-8.

13:2-18.7 Public hearing

All proceedings shall be heard at the office of the Division of Alcoholic Beverage Control or designated location by the Office of Administrative Law, whichever agency is hearing the case.

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13:2-18.8 Hearing procedure

Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1) shall govern the conduct of the case.

SUBCHAPTER 19. DISCIPLINARY PROCEEDINGS

13:2-19.1 License or permit subject to disciplinary proceedings

Disciplinary proceedings **against a license or permit** shall not be barred or abated [by] **because of** the expiration, transfer, surrender, renewal or extension of the license or permit.

13:2-19.2 Suspension, cancellation or revocation

Any license or permit may be suspended, cancelled or revoked for proper cause, [not withstanding] **notwithstanding** that such cause arose prior to **a subsequent** transfer or extension of the license, or **arose** during [the] **a prior license** term of a [prior] license held by the licensee or his predecessor in interest or **arose** during the term of a prior permit held by the permittee.

13:2-19.3 Pending proceedings; effect upon license or permit

When disciplinary proceedings are instituted and the license is transferred, extended or renewed, or a permit is **extended or** renewed [or extended] during the pendency thereof, such proceedings shall be carried through to completion[, and]. Any order of suspension, cancellation or revocation therein shall apply without further proceedings to the [license] transferred, extended or renewed **license** or [the renewed or extended] permit.

13:2-19.4 Expiration or surrender of license; pending proceedings

Where a license expires or is surrendered and another license is issued or transferred to another person for the [same] **licensed** premises [during the pendency of] **subject to pending** disciplinary proceedings, the premises shall continue to be subject to any order made in the disciplinary proceedings declaring the premises ineligible to become the subject of a license [during the period therein provided] **under N.J.S.A. 33:1-31**.

13:2-19.5 Suspended license; transfers **or extensions**

When any license has been suspended, such suspension shall continue in full force and effect notwithstanding any transfer **or extension** of the license during the period of suspension.

13:2-19.6 Jurisdiction and hearing procedure

(a) A Division instituted disciplinary proceeding shall be considered a contested case upon the entry of a "not guilty" plea by the licensee or upon the failure of the licensee to enter a timely plea. Contested cases shall be filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1 or retained by the Director under the provisions of N.J.S.A. 52:14F-8. Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1[-1 et seq.]) shall govern the conduct of the case.

(b) In uncontested cases before the [division] **Division**, written argument as to penalty may be submitted to the [director] **Director** within 10 days after entry of the plea. No oral argument may be had before the [director] **Director**, unless, on his **or her** own motion, the [director] **Director** decides to hear oral argument and notifies the parties or their attorneys of the time and place fixed therefor[e].

SUBCHAPTER 20. (No change.)

SUBCHAPTER 21. (No change.)

SUBCHAPTER 22. [TRANSPORTATION OF ALCOHOLIC BEVERAGES BY RAILROAD CARRIERS] **(RESERVED)**

[13:2-22.1 Transportation by unlicensed railroad carrier

(a) No railroad carrier shall transport alcoholic beverages into, through or out of New Jersey without a transportation license, except as follows:

1. Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported through this State without such license where no delivery is made therein, provided that the carrier shall furnish to the director, on demand, a waybill or copy thereof or similar document stating the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported.

2. Alcoholic beverages not intended for delivery, sale or use in New Jersey may be transported from a licensed public warehouse or the licensed premises, warehouse, salesroom or office of a licensed New Jersey manufacturer or wholesaler to a point outside this State, and between piers of import or export located within this State and points outside this state, without such license, provided that the railroad carrier is the holder of a special permit issued by the director authorizing such transportation and shall furnish to the director, on demand, a waybill or copy thereof or similar document stating the names and addresses of the consigner or consignee and the nature and quantity of the alcoholic beverages being transported.

13:2-22.2 Transportation by licensed railroad carriers; transit insignia

Railroad carriers holding transportation licenses may transport alcoholic beverages into, through and out of New Jersey in vehicles controlled and operated by them, provided, however, that each of said vehicles transporting alcoholic beverages, except railroad cars, shall bear a proper transit insignia or special transportation permit.

13:2-22.3 Control and operation of vehicles; licensed railroad carrier

No transportation license held by a railroad carrier shall authorize the transportation of alcoholic beverages in vehicles not controlled and operated by such carrier, even though operated by an independent contractor under exclusive contract to transport and deliver for such carrier; provided, however, that carriers holding special permits, in addition to transportation licenses, may use such vehicles in connection with their door to door deliveries to the extent and in the manner allowed by the special permits.

13:2-22.4 Importation by licensed railroad carrier

(a) Railroad carriers holding transportation licenses may transport alcoholic beverages from a point outside this State to a point within this State in the following cases, but not otherwise:

1. Where the consignor or consignee of the alcoholic beverages is the holder of a New Jersey manufacturer's or wholesaler's license or a special permit issued by the director; or

2. Where the alcoholic beverages are delivered to a licensed public warehouse for ultimate delivery without this State or within this State to licensed manufacturers and wholesalers; or

3. Where the carrier has mailed to the director from a point not in excess of 250 miles from the division offices, at least 48 hours prior to the delivery of the alcoholic beverages, a statement of the shipment, including the names and addresses of the consignor and consignee and the nature and quantity of the alcoholic beverages being transported, the shipment may be completed unless otherwise specifically directed by the director; provided, however, that in lieu of such statement the carrier may furnish the aforesaid information by telephone or telegraph at least 12 hours prior to the completion of the shipment.

13:2-22.5 Retail transit licensees

Nothing herein contained shall prohibit the holders of retail transit licenses from bringing alcoholic beverages into this State in connection with such licenses.]

SUBCHAPTER 23. CONDUCT OF LICENSEES **AND PERMITTEES** AND USE OF LICENSED PREMISES

13:2-23.1 [Serving minors] **Prohibition against serving persons under the legal age** and intoxicated persons

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

13:2-23.2 [Closing] **Prohibiting sales or consumption of alcoholic beverages** during elections; **municipal option**

(No change in rule text.)

13:2-23.3 (No change.)

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13:2-23.4 House-to-house solicitation forbidden

[(a)] No licensee shall solicit from house-to-house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

13:2-23.5 [Narcotics and illegal activities, prohibited] **Prohibited** patrons; **narcotics or other unlawful drugs; illegal activity or enterprise**

(a) (No change.)

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. [narcotic] **Narcotic drugs;** [or]

2. [other drugs, or other controlled] **Controlled** dangerous substances as defined by the New Jersey [controlled] **Controlled** Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.); [or]

3. Controlled dangerous analogs as defined by the Comprehensive Drug Reform Act of 1987 (N.J.S.A. 2C:35-1 et seq.);

4. [any] **Any** prescription legend drug, in any form, which is not a narcotic[, depressant or stimulant] drug[,] or **a** controlled dangerous substance **or analog,** as so defined[.]; **or**

5. Drug paraphernalia as defined by N.J.S.A. 2C:36-1.

(c) (No change.)

13:2-23.6 [Immoral] **Prohibition against immoral** activities; disturbance; nuisance on premises

(a) (No change.)

13:2-23.7 [Lottery] **Prohibition against lottery** and gambling; **exceptions**

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

13:2-23.8 Eastern Standard Time change

(a) On the [last] **first** Sunday of April of each year, at 2 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time. In any municipality having a closing hour later than 2 A.M., the official time will then become 3 A.M. and the hours of sale will be calculated accordingly.

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

13:2-23.9 [Adulterated] **Prohibition against adulterated** alcoholic beverages

(a) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverages adulterated with any foreign or harmful substance.

(b) Nothing in this section shall prohibit licensees from storing and temporarily retaining such beverages for purposes of returning same to a manufacturer or wholesaler provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

13:2-23.10 [Receiving] **Restriction upon receiving** prohibited deliveries of alcoholic beverages

No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of N.J.A.C. **13:2-20,** 13:2-21 **and 13:2-22.**

13:2-23.11 [Possession] **Consumption of alcoholic beverages and possession** of open containers[; consumption] **prohibited upon retail distribution licensee's premises; exception**

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises[; provided, however, that].

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective [may be so] **from being** possessed **by such licensee** pending return to the manufacturer or wholesaler; [and further] provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

13:2-23.12 Receiving alcoholic beverages from prohibited sources

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director of the Division of Alcoholic Beverage Control. [Purchase]

(b) The purchase of alcoholic beverages by one retailer from another and the sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director of the Division of Alcoholic Beverage Control.

13:2-23.13 [Copies] **Maintaining copies** of current **license** certificate[s]; application, list of employees; **availability for inspection**

(a) No licensee shall conduct the licensed business unless:

1.-2. (No change.)

3. A list, [in] **on a** form [prescribed] **promulgated** by the Director of the Division of Alcoholic Beverage Control, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises.

(b) Such application copy and such list shall be available for inspection by the [director] **Director,** his **or her** deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

13:2-23.14 [Indecent] **Prohibition against indecent** matter **upon licensed premises**

(No change in rule text.)

13:2-23.15 Possession of container mislabeled as to fill **prohibited; exception**

No licensee shall knowingly display, sell or deliver any alcoholic beverages in an original container having a content of fill less than that stated on the container or label thereof, subject to such tolerance as permitted by Federal law and regulation; and no licensee shall possess such a container except for the sole purpose of return for credit or replacement consistent with N.J.A.C. 13:2-23.11 and [39.4] **39.2.**

13:2-23.16 (No change.)

13:2-23.17 [Possession of] **Restriction upon limited retail distribution licensee possessing** chilled malt alcoholic beverages

No limited retail distribution licensee shall possess or allow, permit or suffer any chilled malt alcoholic beverages other than **chilled draught malt alcoholic beverages** in kegs, barrels or similar containers of at least [one gallon] **7.75 fluid gallons in** capacity, in or upon the licensed premises.

13:2-23.18 (No change.)

13:2-23.19 [Substitute] **Prohibition against offering substitute** beverages; **exception**

No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered, **unless agreed to by the customer.**

13:2-23.20 Intoxicated workers **prohibited**

(No change in rule text.)

13:2-23.21 [Storage] **Restrictions upon storage** of alcoholic beverages

(No change in rule text.)

13:2-23.22 [Tap] **Requirement for labeled tap** markers; **provision for electronic systems**

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

13:2-23.23 [Labels] **Requirements concerning labels**; tax payment indicia

(a) (No change.)

13:2-23.24 [Placing] **Restrictions upon placing** of orders

(No change in rule text.)

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13:2-23.25 [Retail] **Restrictions upon retail**/manufacturer or wholesaler relationships
(No change in rule text.)

13:2-23.26 Fingerprinting **requirements**
(No change in rule text.)

13:2-23.27 [Activities] **Prohibited activities** during license suspension
(a) No licensee, during the suspension of license, shall:
1. Allow, permit, or suffer the sale, service, delivery or consumption of any alcoholic beverage, or any other alcoholic beverage activity in or upon the licensed premises, except the storage of alcoholic beverages on hand or (with **the** permission of [director] **the Director**) the return of alcoholic beverages to wholesalers or manufacturers; or
2.-4. (No change.)

13:2-23.28 Responsibility of licensee [in disciplinary proceedings] **for employee conduct**
(No change in rule text.)

13:2-23.29 [Search] **Detention of evidence; search** of licensed premises[; evidence]
By the acceptance of the license, the licensee consents to the detention, as and for evidence, of any physical matter, including alcoholic beverages, found on the licensed premises or during the course of any investigation, inspection or search of the licensed premises being conducted by the Director of the Division of Alcoholic Beverage Control, his **or her** deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.30 [Hindering] **Prohibition against hindering an** investigation
No licensee shall, directly or indirectly, fail, on demand, to produce, exhibit or surrender to the Director of the Division of Alcoholic Beverage Control, his **or her** deputies, inspectors or investigators and any officer as defined by N.J.S.A. 33:1-1(p), any and all matters and things which the [director] **Director** or other issuing authority is authorized or empowered to investigate, inspect or examine; nor shall any licensee, directly or indirectly, fail to facilitate, or hinder, delay or cause the hindrance or delay, of any investigation or inspection of the licensed business or of the licensed premises or of any search thereof by the [director] **Director**, his **or her** deputies, inspectors or investigators or by any officer as defined by N.J.S.A. 33:1-1(p).

13:2-23.31 Law enforcement officers; **ownership prohibition; employment restrictions**
(a) (No change.)
(b) No licensee shall employ or have connected with him in any business capacity whatsoever any such officer or person, except that:
1. Nothing herein shall prohibit a licensee from employing in a non-managerial capacity a special police officer [who shall not sell, serve or deliver any alcoholic beverages]; and
2. A licensee, upon prior written application to and written approval by the Director **of the Division of Alcoholic Beverage Control**, may employ [in a non-managerial capacity] a regular police officer, peace officer or other person whose powers and duties include the enforcement of the Alcoholic Beverage Law (other than an officer employed by the Division of State Police) provided that such officer shall not be employed in a jurisdiction in which the officer is officially employed and [such officer shall not sell, serve, possess or deliver alcoholic beverages.] **further provided:**
i. Written application pursuant to [(a)](**b**)2 above shall include prior written approval of such employment by the chief law enforcement officer of the jurisdiction which employs said officer or person and proof that written notice of the application has been provided to the chief law enforcement officer of the jurisdiction where the licensee is located.
ii. In the case of the chief law enforcement officer seeking such employment, the prior written approval must be from the chief executive officer of the governing body of the jurisdiction which employs said chief officer;
iii. A police officer so employed shall not, while engaged in the selling, serving, possessing or delivering of any alcoholic beverages;
(1) Have in his or her possession any firearm; or
(2) Wear or display any uniform, badge or insignia which would identify him or her as a police officer; and
iv. No police officer so employed shall be permitted to work in excess of 24 hours a week in any such establishment.
[3.](**c**) (No change in text.)
(d) Nothing contained in this section shall prohibit any regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage control laws or regulations from assuming any leadership or titular position in any fraternal, veterans', religious or similar type of nonprofit organization that is a club licensee; provided, however that:
1. The actual licensee of the organization is not a police officer or a person whose duties include enforcement of the alcoholic beverage control laws and regulations; and
2. No police officer or person whose duties include enforcement of the alcoholic beverage control laws and regulations shall be involved in the alcoholic beverage operations of the club licensee.

13:2-23.32 Books of account
All licensees shall have and keep a true book or books of account in the English language wherein there shall be entered a record of all moneys invested in the licensed business and the source of all such investments, for an unlimited period of time; **and, for a period of five years, a record of** all moneys received **in the ordinary course of business;** [and] a record of the source of all moneys received other than in the ordinary course of business;[, for a five year period and] **a record of** all moneys expended from such receipts; and the name of the person receiving such moneys and the purpose for which such expenditures were made [for a five year period]. All [such] books and records pertaining to such investments, receipts or expenditures shall be made available for inspection, upon demand, by the Director of the Division of Alcoholic Beverage Control and the other issuing authority and by his **or her** or its deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

SUBCHAPTER 24. TRADE MEMBER DISCRIMINATION, MARKETING AND ADVERTISING

13:2-24.1 (No change).

13:2-24.2 Discrimination in services, facilities or equipment
(a) Except as may otherwise be authorized by this subchapter, no manufacturer, supplier, importer, brand registrant, wholesaler or distributor privileged to engage in the commerce of any alcoholic beverage into or within this State shall, directly or indirectly, in any connection whatsoever with the sale, purchase, distribution or marketing of alcoholic beverages in this State, sell, pay, grant, provide, receive or accept anything of value:
1. (No change.)
2. As, [of] **or** for services, facilities or equipment, unless the same is available on proportionally equal terms to all other customers or accounts competing in the distribution of the connected alcoholic beverage product(s), except that no service, facility or equipment may be offered to a retail licensee which, directly or indirectly, requires the future purchase or an agreement to make a future purchase of any alcoholic beverages.

13:2-24.3 and 24.4 (No change.)

13:2-24.5 Supplier pricing and marketing information
(a) Every manufacturer, supplier, winery, brewer, importer, blender or rectifier intending to sell alcoholic beverages to wholesalers or distributors within this State shall:
1. (No change.)
2. By the first day of the month preceding the month for which they are to become effective, make available to all its wholesalers or distributors its prices, inclusive of all discounts, allowances or differentials.[; and
3. Prior to any sale or delivery or distilled spirit alcoholic beverages, or annually by August 1 of each year, file with the Division

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a written statement under oath affirming that its prices to New Jersey wholesalers and distributors have not been and will not be a price or discount higher than the lowest price or lower than the highest discount which has been or will be offered to any wholesaler or distributor or State agency (which operates retail stores) in any other state of the United States or in the District of Columbia.]

13:2-24.6 (No change.)

13:2-24.12 Display services

(a) No licensee, permittee, or registrant privileged to engage in the commerce of alcoholic beverages in this State shall, directly or indirectly, furnish to, provide payment for, receive or accept anything of value from, or otherwise utilize in any manner whatsoever, any display service unless such service has registered with the Division in a form prescribed by the Director. Such registration shall include:

1. (No change.)

2. An affidavit or certification that no person listed in [N.J.A.C. 13:2-24.12](a) **above** would be disqualified from having an interest in an alcoholic beverage license in this State;

3.-4. (No change.)

(b)-(c) (Nochange.)

SUBCHAPTER 25. DIVERSION, TRANSSHIPMENT AND REGISTERED DISTRIBUTION

13:2-25.1 (No change.)

13:2-25.2 Registered distribution

[(a)] No plenary wholesale, wine wholesale or limited wholesale licensee shall sell[,] **or** deliver **any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is acquired from the brand owner, or his authorized agent, or a wholesale licensee designated as a New Jersey registered distributor by the brand owner or his authorized agent**[, or include in its Current Price List any brand of alcoholic beverages not acquired from the owner of the brand or its registered supplier pursuant to N.J.A.C. 13:2-33, or for which that wholesaler or distributor is not a registered wholesaler or distributor] pursuant to N.J.A.C. 13:2-33[, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3, when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary].

[(b) Nothing herein shall prohibit accommodation sales or transfers of alcoholic beverages by such a wholesaler:

1. To an affiliated wholesaler; or

2. To another such wholesaler registered pursuant to N.J.A.C. 13:2-33, to sell the brand which is the subject of the sale or transfer to alleviate a bona fide temporary shortage of inventory. Except where the wholesaler is the registering brand owner pursuant to N.J.A.C. 13:2-33, any other such sale or transfer of alcoholic beverages between wholesalers is prohibited.]

13:2-25.3 State [Beverage Distributors] **beverage distributor**

(a) No State [Beverage Distributor] **beverage distributor** shall sell or deliver to [another State Beverage Distributor] **any retailer or consumer** malt alcoholic beverages other than from inventory[:

1. From a warehouse located in New Jersey.

2. Stored therein for a period of at least 24 continuous hours; and

3. Operated pursuant to a State Beverage Distributors' license.] **in a warehouse or salesroom located in New Jersey and operated under a State beverage distributor's license. Such "inventory" shall be deemed to include only malt alcoholic beverages which shall have been stored in such warehouse for at least a period of 24 continuous hours.**

(b) No State [Beverage Distributor] **beverage distributor** shall sell[,] **or** deliver[, acquire, or purchase or include in its Current Price List malt alcoholic beverages not] **any brand of alcoholic beverage intended for resale in this State unless the alcoholic beverage is** acquired [or purchased] from the **brand** owner [of the brand] **or his authorized agent,** or [its] **a New Jersey** [registered] distributor **designated by the brand owner or his authorized agent** [agents pursuant to N.J.A.C. 13:2-33, except pursuant to waiver provisions of N.J.A.C. 13:2-33.1(b)3, when granted permission by the Director upon petition setting forth the brand name, the quantity to be acquired, the source of supply, and such other information as the Director may deem necessary].

SUBCHAPTER 26. RETAIL COOPERATIVE PURCHASES

13:2-26.1 Restrictions on cooperative purchases

(a) A Class C retail licensee, as defined in N.J.S.A. 33:1-12, may join with another Class C licensee in a cooperative agreement for the purchase and transportation of alcoholic beverages, provided that such agreement and activity shall conform to the following standards:

1. No unlicensed person or entity may participate in any management capacity nor receive any compensation in connection with the purchase or transportation of alcoholic beverages; [and]

2. The number of Class C licensees joined in any agreement shall not exceed the largest number of plenary retail distribution licenses, as defined in N.J.S.A. 33:1-12(3)(a), issued to any one person or entity in this State at the time of the prior most recent annual renewal of such licenses; [and]

3. No cooperative agreement may prohibit any licensee from joining any other cooperative agreement; [and]

4. No cooperative agreement may prohibit any retailer from advertising or selling any product at any otherwise lawful price; [and]

5. Any **licensee may withdraw from any** cooperative agreement [may be withdrawn from by any licensee] upon 30 days written notice and no penalties may be charged for such withdrawal; [and]

6. All purchases on credit through or by cooperative agreement shall be reduced to writing, signed by the wholesaler and each individual participating member of the cooperative, and be consistent with the credit provisions of N.J.A.C. 13:2-24 and 39. Such credit terms shall include adequate assurances of payment by either the posting of a bond by the cooperative member or a provision that each member of the cooperative shall be jointly and severally liable for payment for the purchases made through the cooperative. A copy of such written agreements shall be maintained by the wholesaler in its marketing manual and by the registered buying cooperative; [and]

7. All individual purchases through or by cooperative agreement shall be separately invoiced consistent with N.J.A.C. 13:2-[39] **20.4**; and shall contain the cooperative's registration number; [and]

8. All purchases through or by cooperative agreement shall be transported consistent with N.J.A.C. 13:2-20, N.J.S.A. 33:1-13 and N.J.S.A. 33:1-28; [and]

9. No licensed party to a cooperative agreement shall co-mingle inventory, funds or other assets inconsistent with this subchapter and N.J.A.C. 13:2-23.21; [and]

10. Any purchase or transfer in violation of [Title 33] **the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.,** or the regulations promulgated thereunder, shall be a violation by all members of the cooperative purchase agreement[.]**; and**

11. Nothing herein shall be deemed to require the servicing of any cooperative agreement with quantity or cash discounts if there exists no corresponding justification for the differential pursuant to N.J.A.C. 13:2-24.1(b)1.

(b) (No change.)

SUBCHAPTER 27. (No change.)

SUBCHAPTER 28. DECANTING OF WINE

13:2-28.1 Decanting wine for consumption; labeling container

The holder of any retail license authorizing the sale of alcoholic beverages for consumption on the licensed premises may transfer wine from any original [tax paid] barrel, cask, keg or other container on the licensed premises to another barrel, cask, keg, decanter, bottle or similar receptacle and serve such wine therefrom solely for consumption on the licensed premises, and not to be removed from the licensed premises under any circumstances whatsoever; provided, however, that the last barrel, cask, keg or other container from which the contents thereof were drawn **to fill the open container served to the patron** shall have affixed thereto at all time a gummed label clearly identifying the contents thereof.

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13:2-28.2 (No change.)

SUBCHAPTER 29. RECORDS

13:2-29.1 Public records

(a) The following enumerated records required to be maintained by law or other regulation by the Director, Division of Alcoholic Beverage Control, shall constitute public records of the Division:

1. All license or permit applications filed with the Director, subject to nondisclosure of information protected by Federal or State law;

2. All filed administrative disciplinary charges, transcripts of Division disciplinary hearings, [Hearers' Reports] **Office of Administrative Law initial decisions and reports and recommendations,** and Conclusions and Orders of the Director;

3. All filed administrative appeal pleadings, transcripts of Division appeal hearings, [Hearer's Reports] **Office of Administrative Law initial decisions and reports and recommendations,** and Conclusions and Orders of the Director;

4. All Ordinances or Resolutions of local issuing authorities that may be filed with the Division;

5. All product information [filings, affirmation price filings,] and [such] other filings required to be made by licensees and permittees by law or regulation; **and**

6. All records, pleadings, documents and orders, exclusive of investigative reports, pertaining to duly instituted seizure proceedings, pocket license applications and tax revocation proceedings.

13:2-29.2 Confidential records

(a) For purposes of investigative confidentiality and integrity, the following records constitute "confidential records" of this Division and shall not be available for inspection or photocopy:

1.-3. (No change.)

4. All intergovernmental and intra-Division memoranda, documents or records of and to this Division[;], including, but not limited to, Criminal History Record Information supplied by a Criminal Justice Agency;

5. All such other documents, records, reports and memoranda the Division shall possess, where the primary purpose is the investigation and enforcement of the Alcoholic Beverage Law and its regulations;

6. All solicitors' statements of compensation[.]; **and**

7. Tax reports and documents filed by licensees regarding the payment of monetary penalties.

13:2-29.3 Inspection, reproduction and availability of records; **copy fees**

(a) As hereinabove defined and limited, every citizen of this State, during regular business hours, shall have the right to inspect such public records at the Division's offices, and, under the supervision of a Division representative, to copy such public records by hand or purchase copies of same upon payment [of such prices] as hereinafter set forth.

(b) (No change.)

(c) If the Director finds that there is no risk of damage or mutilation of such records and that it would not be [imcompatible] **incompatible** with the economic and efficient operation of the office and the transaction of public business, he **or she** may permit any citizen who is seeking to copy any individual record or report which exceeds 100 pages to use his own photographic process, approved by the custodian, upon the payment of a fee of $25.00 per day.

(d) (No change.)

13:2-29.4 Licensee records; storage systems **and availability of records**

(a) Upon written application to the Director accompanied by all relevant specifications and descriptions, the Director, in his **or her** discretion, may approve alternate methods or locations for storage of any record required to be maintained by licensees, provided that such a record system permits access to all required records so that they are "readily retrievable" and "accurate".

(b) Records are "readily retrievable" if, when relating to a transaction from the date of request, they are:

1. Not more than three months old and are produced for inspection **immediately** upon demand[.];

2. Not more than one year old but in excess of three months old, and are produced for inspection within two business days[.]; **or**

3. In excess of one year old and produced for inspection within seven business days.

(c) Records are "accurate" if they are a reduced copy of the original document or otherwise correctly reflect all information contained on the original required record.

SUBCHAPTER 30. REGISTRATION OF STILLS

13:2-30.1 (No change.)

13:2-30.2 Registration form; contents

Such registration shall be upon **forms promulgated by the Director** [prescribed forms,] designated as registry certificates, which may be obtained from the Director upon request, and which shall set forth the description and location of the still, distilling apparatus and parts thereof, and the names and address of the owner and the person having possession, control or custody thereof.

13:2-30.3 Possession of registry certificate on premises

[Said certificates] **Certificates** must be [executed and transmitted] **completed and returned** to the Director in duplicate, and one of said certificates, bearing due endorsement by the Director of the receipt thereof, shall be returned to the registrant and must at all times be kept on the premises where the still, distilling apparatus and parts thereof are located.

13:2-30.4 to 30.6 (No change.)

SUBCHAPTER 31. SEIZURE HEARINGS

13:2-31.1 Hearings generally

[(a)] Contested case hearings to determine whether seized property constitutes unlawful property and shall be forfeited, shall be conducted according to N.J.A.C. 1:1[-1 et seq.] and either retained by the Director, **Division of Alcoholic Beverage Control** under the provisions of N.J.S.A. 52:14F-8 or filed with the Office of Administrative Law pursuant to N.J.A.C. 1:1-5.1. [Such hearings shall be open to the public unless otherwise directed by the Director or Administrative Law Judge, whichever is hearing the case, pursuant to the standards set forth in N.J.A.C. 1:1-3.1.]

13:2-31.2 Procedures; return of property seized

(a) Prior to final determination by the Director, claims for the return of property seized under N.J.S.A. 33:1-66 or N.J.S.A. 33:2-3 may be made to the Director [upon] **by** payment in cash, under protest, of the retail value of the seized property, or **by** the posting of a proper bond with sureties satisfactory to the Director in a sum double the retail value of the property. In lieu of such cash bond or surety bond, a claimant may institute an action for replevin against the Director in any court of competent jurisdiction according to the forms and procedure, including the delivery of a bond, of such court; such action to be commenced within 30 days from the seizure of such property and not thereafter. The Director may, in his **or her** discretion, refuse to entertain any such claim for the posting of a bond to obtain return of the property seized made more than 30 days from the date of the final order of forfeiture.

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

13:2-31.3 Forfeiture of seized property

(a) (No change.)

(b) Claims may be made by the person whose property has been seized or forfeited for the return of seized property on the ground that the claimant has acted in good faith and has unknowingly violated the law, by presenting evidence to that effect at the hearing. The Director may require a claimant to file a verified petition setting forth in detail all of the facts relied upon. Where the Director is satisfied that the claimant has acted in good faith and has unknowingly violated the law, he **or she** may order the return of the property upon payment by claimant of reasonable costs of seizure and storage.

(c) Claims may be made by any person having a bona fide and valid lien upon or interest in the seized or forfeited property for the recognition of the validity and priority of such lien or interest, by presenting evidence at the hearing that such claimant has acted in

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good faith, and had no knowledge of the unlawful use to which the property was put, or of such facts as would have led a person of ordinary prudence to discover such use. The Director may require such claimant to file a verified petition setting forth in detail the facts relied upon. [Where the validity and priority of such lien or interest, the claimant's good faith and lack of knowledge of the unlawful use, and the absence of such facts as would have led a person of ordinary prudence to discover such use, have been] **If the claim is** established to the satisfaction of the Director, he **or she** may order the return of the property to the claimant where it appears that the amount or value of such lien or interest exceeds the value of the property [plus costs upon] **, subject to** payment of reasonable costs of seizure and storage; or order the retention [thereof] of the property for the use of the State [conditioned upon] **, subject to** the payment of the lien or interest less costs of seizure and storage; or order the sale [thereof upon condition that] **of the property, subject to** the payment of the lien or interest [shall be made] out of the proceeds of sale, after first deducting the reasonable costs of seizure and storage.

(d) Claims may be made by a common carrier whose vehicle has been seized for return of the vehicle by filing a verified petition with the Director substantiating such interest, together with a statement that claimant has acted in good faith and had no knowledge at the time of the seizure that the vehicle contained illicit alcoholic beverages. The Director may, in his **or her** discretion, if satisfied that these facts are established, order the return of the seized vehicle to the common carrier.

13:2-31.4 Hearing procedure

[(a)] Upon determination that the matter is a contested case, the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1[-1.1 et seq.]) shall govern the conduct of the case.

SUBCHAPTER 32. SALES OF FORFEITED PROPERTY

13:2-32.1 Publication of notice of sale

Notice of sale of forfeited property shall be given by publication twice in at least one newspaper designated by the Director of the Division of Alcoholic Beverage Control and published either in the county where the sale is to be held, or elsewhere in the State of New Jersey as may appear expedient once in each of the two consecutive calendar weeks preceding such sale. Such notice shall contain a brief description of the property to be sold and shall state that inspection of such property will be permitted upon application therefor to the [director] **Director**.

13:2-32.2 Adjournment of sales

Sales may be adjourned from time to time with respect to all of the property to be sold or any part thereof. No advertisement of the adjourned date shall be necessary but such adjourned date shall be announced at the sale. Adjourned sales shall be subject to all rules [and regulations herein contained] **in this subchapter**.

13:2-32.3 (No change.)

13:2-32.4 Bids subject to rejection

The [director] **Director** reserves the right to reject each and every bid in whole or in part and all sales shall be subject to such reserved right.

13:2-32.5 Bids and deposits

Written bids accompanied by a deposit of 25 percent thereof either in cash, money order or certified check payable to the order of the Division of Alcoholic Beverage Control will be received by the [director] **Director** at any time within two days prior to the date of sale and will be announced and considered as having been made at the sale. Each successful bidder who submits his bid at the sale must accompany his bid by 25 percent of the amount thereof in cash, money order or certified check. Any deposits made by unsuccessful bidders shall be returned.

13:2-32.6 Confirmation of bids and sales

All successful bids shall be submitted to the Director and all bids and sales shall be subject to confirmation by the Director. The Director may in his **or her** absolute discretion withhold confirmation and such decision shall be final.

13:2-32.7 (No change.)

13:2-32.8 Bill of sale; delivery of property

In cases of property other than motor vehicles, after payment of the balance of the amount due on his bid, within the time limited by [section 7 of this subchapter] **N.J.A.C. 13:2-32.7**, and after confirmation of the sale by the Director, the purchaser shall be entitled to a bill of sale which shall transfer all the right, title and interest to said property as the Director is empowered to transfer under and by virtue of the alcoholic beverage law, as amended and supplemented, and shall take possession of the property forthwith. In cases of sales of motor vehicles, upon payment of the balance of the amount due on his bid, within the time limited by N.J.A.C. 13:2-32.7, and after confirmation of the sale by the Director, the purchaser shall be entitled to a bill of sale, accompanied by an affidavit of a duly authorized agent of the Director, stating the time and place of seizure, the determination by the Director that said motor vehicle constitutes unlawful property, the sale thereof to the purchaser named in the bill of sale and the confirmation of said sale by the Director. The said bill of sale shall transfer all the right, title and interest to said motor vehicle as the Director is empowered to transfer under and by virtue of the alcoholic beverage law, as amended and supplemented. Actual delivery of the motor vehicle to the purchaser shall be deferred until such purchaser has presented satisfactory evidence of motor vehicle registration thereof. In the event the purchaser fails within five days after delivery of a bill of sale to present such motor vehicle registration, a notice may be mailed to the purchaser at the address set forth in the bill of sale stating that unless such motor vehicle registration is presented within five days from the date of the notice, the amount paid by the purchaser shall be forfeited to the State and such property shall be resold for the benefit of the State. The Director may, however, in his **or her** discretion, permit the purchaser to present evidence of registration and to take possession of such motor vehicle after the expiration of the five-day period referred to in this notice.

13:2-32.9 Unconfirmed sales

In the event that any sale is not confirmed, the amount deposited shall be returned to the successful bidder and the property shall be resold, subject to this [regulation] **subchapter** or otherwise disposed of according to law.

SUBCHAPTER 33. PRODUCT INFORMATION FILING: BRAND REGISTRATION

13:2-33.1 Brand registration schedule

(a) No licensee shall knowingly sell, offer for sale, deliver, receive or purchase, for resale in New Jersey, any alcoholic beverage[,] (including private label brands owned by a retailer [and] **or** exclusive brands owned by a manufacturer or wholesaler and [offered for sale or] sold by such manufacturer or wholesaler exclusively to one New Jersey retailer or **group of** affiliated retailers[,]) unless there is first filed with the Director of the Division of Alcoholic Beverage Control a schedule, for each separate alcoholic beverage product, listing the following:

1.-8. (No change.)

(b) (No change.)

(c) Whenever any change occurs, including, but not limited to, the addition or deletion of an authorized wholesaler, the filer of the brand registration schedule shall file an amended brand registration schedule within [ten] **10** days after the occurrence of such change.

13:2-33.2 (No change.)

SUBCHAPTER 34. [ALCOHOL PERMITS] (RESERVED)

[13:2-34.1 Possession and sale of alcohol; permit required

The possession and sale of alcohol by the holders of retail liquor licenses, and also the sale of alcohol at retail by all other persons, is prohibited, except pursuant to special alcohol permit issued by the Director of the Division of Alcoholic Beverage Control.

13:2-34.2 Issuance of special alcoholic permits

Special alcoholic permits are issuable only to owners of registered pharmacies who hold retail liquor licenses.

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13:2-34.3 Permit fee

The permit fee is $20.00 per annum without proration. The term of the permit is from April 1 each year through the following March 31.]

SUBCHAPTER 35. SALE AND DISPLAY OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS BY CONSUMPTION LICENSEES NOT HOLDING THE BROAD PACKAGE PRIVILEGES

13:2-35.1 Definitions

(a) For the purpose of this regulation:

1. A public barroom shall be a room containing a public bar, counter or similar piece of equipment, **which must occupy not less than 15 percent of the total square footage of said room and which is** designed for and used to [facilitate the sale and dispension of] **sell and dispense** alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises.[, which public bar must occupy not less than fifteen per cent of the total square footage of said room;]

2. The public bar, counter or similar piece of equipment must be equipped with hot and cold running water, sink, drainboard, a sufficient number of bar stools (minimum of one for each three feet of bar perimeter), utensils and glassware for the making and serving of mixed drinks, and a sufficient number of opened bottles of alcoholic beverages for the service of drinks to be consumed upon the licensed premises[,]. **A** substantial portion of the bar must be visible from all public entrances to the barroom[;].

3. The principal public barroom shall be the room in which the main public bar is located[; in]. **In** determining which public barroom shall constitute the principal public barroom, consideration shall be given to the nature of the operation and volume of alcoholic beverage business for consumption on the licensed premises, the accessibility to the barroom, the size of the barroom, and the hours of operation.

13:2-35.2 [Broad] **Prohibition on sales of package goods from other than the principal barroom except by holders of the broad** package privilege

(a) No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises (the privilege to engage in such sale and display in other than such barroom being known as the "Broad Package Privilege") unless:

1. (No change.)

2. The Director of the Division of Alcoholic Beverage Control has approved a verified petition, received on or before June 18, 1948, by such a license alleging that on May 27, 1948, such licensee was not actually engaged in the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom by reason of:

i. Building alteration or construction in progress;

ii. Prior destruction or loss of possession of the licensed premises; or

iii. Non-operation of the entire licensed business, but that, prior to May 28, 1948, such licensee had sold alcoholic beverages in original containers for off-premises consumption from a portion of the licensed premises other than the public barroom or had actually undertaken alteration or construction of the [licensed] premises to be licensed, intending and making provision thereon for the sale of alcoholic beverages in original containers for off-premises consumption from a portion of the premises other than the public barroom.

13:2-35.3 Notation of privilege on license certificate; daily certification

[(a)] The [issuing authority] **Division of Alcoholic Beverage Control** shall [cause the following notation to be made] **note the following** on the face of the renewal license certificate of each holder of a license which includes the "Broad package privilege" as set forth in N.J.A.C. 13:2-35.1:

"This license bears the "Broad package privilege" pursuant to P.L. 1948, ch. 98 (N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-[34] **35.1**)".

[(b) Daily certifications of license renewals or transfers required by N.J.A.C. 13:2-3.8 and 13:2-7.23 shall include, where appropriate, under the caption "special conditions, if any" the notation "Broad package privilege" to denote compliance with N.J.A.C. 13:2-35.1.]

[13:2-35.4 Lack of notation of privilege on license certificate

No holder of a plenary retail consumption license or seasonal retail consumption license, except as provided by N.J.S.A. 33:1-12.24 and 12.25, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in the bona fide public barroom of the licensed premises unless the then current license certificate bears the notation as set forth in N.J.A.C. 13:2-35.2.]

13:2[35.5]**35.4** Off-premises consumption sales; requirements **and prohibitions**

(**a**) No licensee **without the "Broad package privilege" shall,** with respect to the public barroom in which he may sell or display for sale alcoholic beverages in original containers for off-premises consumption [shall]:

1.-4. (No change.)

13:2-[35.6]**35.5** Multiple barrooms; **package goods sales restricted to the bona fide principal barroom**

No holder of a plenary retail consumption license or seasonal retail consumption license, without the "[broad] **Broad** package privilege" as set forth in N.J.A.C. 13:2-35.1, **35.2** and **35.3**, who maintains at the same time more than one barroom on the licensed premises, shall sell or display for sale any alcoholic beverage in the original container for off-premises consumption except from and in principal bona fide public barroom on the licensed premises.

SUBCHAPTER 36. REQUESTS FOR ADVISORY OPINIONS

13:2-36.1 Advisory opinions

(a) Other than in proceedings instituted pursuant to N.J.S.A. 52:14B-8 (Declaratory Rulings), a written [non-hypothetical] request for an interpretation, application, or other inquiry concerning the Division['s] **of Alcoholic Beverage Control's** regulations, policies or practices shall only be considered if it sets forth issues not previously articulated by the Division or involves a substantial question of general applicability.

(b) All requests shall be sent to the Director, Division of Alcoholic Beverage Control, CN 087, Trenton, New Jersey 08625, and any [Such] request[s] and corresponding advisory opinion[s] may be reproduced in Bulletins issued by the Division which are publicly available upon subscription. Requests which are hypothetical in nature will not receive Division response.

[(b)] (**c**) The provisions of this section are to be considered of general applicability and may be relaxed in the discretion of the Director.

SUBCHAPTER 37. [CONTRACTS OF EMPLOYMENT AND CONDUCT OF SOLICITORS] **(RESERVED)**

[13:2-37.1 Solicitor's contracts

All contracts of employment between manufacturers or wholesalers engaged in the sale in New Jersey of alcoholic beverages, other than malt alcoholic beverages, and their solicitors shall be in writing and shall set forth truly the salary and commission or other compensation of any kind agreed to be paid to such solicitor. Said contracts shall be maintained by the employer for a period of three years from the date of execution. Contracts which are the result of collective bargaining shall be available for inspection by any licensee or authorized representative thereof.

13:2-37.2 Filing of statement of compensation with Director

On or before April 1 of each year, each manufacturer and wholesaler employing any holder of a solicitor's permit during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses or otherwise, paid to each such solicitor by such manufacturer or wholesaler during such calendar year.

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13:2-37.3 General prohibited conduct

No holder of a solicitor's permit employed by a manufacturer or wholesaler of alcoholic beverages shall, directly or indirectly, engage in any conduct prohibited its employer by the provisions of Title 33, or any regulations promulgated thereunder. Nor shall he or she offer to sell, solicit, or sell alcoholic beverages at a price or upon terms or conditions or under promotions or contests not contained for the operative period in his or her employer's "Marketing Manual" and "Current Price List", kept pursuant to N.J.A.C. 13:2-24.

13:2-37.4 (Reserved)]

SUBCHAPTER 38. LIMITATION OF HOURS FOR SALE AND DELIVERY AT RETAIL OF ALCOHOLIC BEVERAGES IN ORIGINAL CONTAINERS FOR OFF-PREMISES CONSUMPTION

13:2-38.1 Retail package sales hours

Subject to local options as expressed in [Title 33] **the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.** and N.J.A.C. 13:2-38.3, no licensee shall [sell or deliver, or] allow, permit or suffer the sale**, service** or delivery of any alcoholic beverage at retail in its original container for consumption off the licensed premises, or allow, permit or suffer the removal of any alcoholic beverage in its original [or opened] container from retail licensed premises, before 9:00 A.M. or after 10:00 P.M. on any day of the week; except that, whenever the sale of alcoholic beverages for consumption on the premises [and off the premises or either thereof] is authorized in any municipality [by ordinance or rule or regulation of the Division of Alcoholic Beverage Control by] **for** the holder of a retail consumption [or retail distribution] license, [such ordinance or rule shall authorize] the sale**, service or delivery** by [such licensees] **any licensee with retail off-premises package goods privileges** of **wine and** malt alcoholic beverages in original [bottle or can] containers for consumption off the premises **shall be authorized** on the same days and during the same hours as the sale of alcoholic beverages for consumption on the premises is permitted [and authorized in said municipality pursuant to] **as reflected in** N.J.S.A. 33:1-40.3.

13:2-38.2 Hours; municipal ordinances

If a municipality has no ordinance or local law that authorizes the sale of alcoholic beverages for consumption on the premises, then such municipality may by ordinance authorize the sale of **wine and** malt alcoholic beverages in original [bottle or can] containers by retail distribution and [state] **State** beverage distributor's licensees any time between the hours of 12:30 P.M. and 6:30 P.M. on Sunday, in addition to such weekday hours as may be authorized by ordinance.

13:2-38.3 Municipal ordinances and regulations

N.J.A.C. 13:2-38.1 shall not be construed to permit the sale or delivery of any alcoholic beverage**, whether for on-premise or off-premise consumption,** during hours when such sale or delivery is prohibited by an applicable municipal regulation or referendum.

SUBCHAPTER 39. [CREDIT TERMS: REQUIRED RECORDS;] RETURN[S;] **OF ALCOHOLIC BEVERAGES**; [NOTICES] **SOLICITOR'S DELIVERY**

[13:2-39.1 Credit terms; disclosure on documents

Subject to N.J.A.C. 13:2-39.2(c) no manufacturer or wholesaler shall sell or offer for sale to any licensee any alcoholic beverages, and no licensee shall purchase or offer to purchase from any manufacturer or wholesaler any alcoholic beverages except for payment before or upon delivery of such alcoholic beverages or on credit terms which shall be fully disclosed on the delivery slip, invoice, manifest, waybill or similar document. Nothing in these regulations shall require any manufacturer or wholesaler to extend credit to any retail licensee.

13:2-39.2 Delivery and transportation documents

(a) No manufacturer or wholesaler shall deliver or transport, directly or indirectly, any alcoholic beverage to any licensee unless such beverage is accompanied by an accurate delivery slip, invoice, manifest, waybill or similar document stating the **bona fide** name and address of the licensee, the state assigned license number, the brand, size of container and quantity of each kind of alcoholic beverages being delivered or transported, and the terms of sale, and bearing a printed or stamped legend reading as follows:

"The undersigned licensee hereby acknowledges that all of the alcoholic beverages itemized above have been ordered and were received on _____.
(Date)

_____ "
(Signature by or for licensee)

(b) Two copies of such delivery slip, invoice, manifest, waybill or similar document shall be truly dated and signed by the licensee or his agent at the time and on the date of actual delivery of any alcoholic beverage, one of which copies shall be retained for a period of three years from the date thereof by the manufacturer or wholesaler and the other by the purchasing licensee for a like period at its respective licensed premises, available for inspection by agents of the director, unless the director shall have granted written permission to the manufacturer, wholesaler or retailer to keep its copies at another designated place or in another readily retrievable form.

(c) Except that with regard to the following:

1. Sales or transfers from manufacturers or suppliers wholesalers or distributors, when the nature of the documentation and transaction precludes the immediate availability of all documents required in (a) and (b) above, compliance shall be deemed to have occurred when all such records are available within a reasonable time following the sale, transfer, delivery and receipt; and

2. Sales or deliveries of keg beer or ale only to retail licensees, when the nature of the documentation and transaction precludes the immediate availability of all documents required in (a) and (b) above, compliance shall be deemed to have occurred when all such records are available upon completion of the operative period of the terms of such sales which shall have been set forth and consistent with the sellers Marketing Manual and Current Price List pursuant to N.J.A.C. 13:2-24.

13:2-39.3 (Reserved)

13:2-39.4 Return of alcoholic beverages

(a) No wholesale licensee shall accept return of a product from a retail licensee for credit except on such terms as are either:

1. Customary to the industry; or

2. Set forth by the wholesaler in its current price list or marketing manual.]

13:2-39.1 Reasons authorizing return of alcoholic beverages; inclusion in marketing manual; other required records

(a) No manufacturer, brewer, winery, distiller, rectifier and blender, wholesaler or distributor privileged to sell to retailers shall accept a return of any alcoholic beverages from a retail licensee for cash, credit or exchange, nor shall any retail licensee accept any cash, credit or exchange, except for one of the following reasons:

1. Defective product and breakage which occurred prior to or simultaneously with delivery of such products to the retailer;

2. Bona fide error in product delivered;

3. Product which may no longer be lawfully sold;

4. Product on hand when retail licensee terminates business (subject to applicable rights of other persons protected by State or Federal laws);

5. Change in product or labeling of product;

6. Discontinued product;

7. Product likely to spoil from retailers who are only open for a portion of the year;

8. Rotation of malt alcoholic beverage product consistent with the policy established by the brewer; or

9. Such other good cause as may be approved by the Director.

(b) A manufacturer, brewer, winery, distiller, blender and rectifier, wholesaler or distributor privileged to sell to retailers is not required to accept returns from a retail licensee for any of the reasons enumerated in (a) above; but should such licensee do so, the return policy shall

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be clearly identified in its "Marketing Manual" and shall be non-discriminatorily applied to all similarly situated retail licenses.

(c) Every return of an alcoholic beverage by a retail licensee shall be accompanied by a return document truly dated and signed by a duly authorized representative of both the wholesale and retail licensee, and contain a detailed description of all product returned, the specific reason for the return, the original date of delivery and invoice number of the original purchase, the date of pick-up or return, the name of the person requesting the return, and the terms of return, that is, cash, credit or exchange. A copy of the return document shall be left with the retail licensee.

(d) The return document shall be retained for a period of one year on the licensed premises, unless the Director, Division of Alcoholic Beverage Control, shall have granted to the licensee written permission to keep such documents at another designated place. Licensees shall make the return documents available for inspection by any person authorized to enforce the provisions of the New Jersey Alcoholic Beverage Control Act, N.J.S.A. 33:1-1 et seq.

13:2-[39.5] **39.2** (No change in text.)

SUBCHAPTER 40. (No change.)

(a)

STATE BOARD OF OPTOMETRISTS

Rules of the New Jersey State Board of Optometrists

Proposed Readoption: N.J.A.C. 13:38

Authorized By: Board of Optometrists, Edward Campbell, President.

Authority: N.J.S.A. 45:12-4

Proposal Number: PRN 1990-331.

Submit comments by July 18, 1990 to:
Lila Horwitz, Acting Executive Director
Board of Optometrists, Room 501
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Optometrists is proposing to readopt its current rules, N.J.A.C. 13:38, which are scheduled to expire on October 7, 1990 pursuant to Executive Order No. 66(1978). The Board has reviewed these rules and found them to be necessary, reasonable and proper for the purposes for which they were originally promulgated; therefore, no changes will be made at this time. The readoption is necessary because the rules protect the public health and welfare by perpetuating standards for the provisions of optometric services and by setting minimum standards and tolerances for the fabricating of corrective eyewear.

This chapter contains six subchapters. Subchapter 1 sets forth rules governing advertisements and solicitation. Subchapter 2 details general rules of optometric practice. Specifically, N.J.A.C. 13:38-2.1 defines minimum examination requirements; N.J.A.C. 13:38-2.2 lists mandatory minimum equipment for each office where an optometrist is licensed to practice; N.J.A.C. 13:38-2.3 sets forth patient record rules; N.J.A.C. 13:38-2.4 states that vision screening for the purpose of determining the advisability of a complete optometric examination is not prohibited; N.J.A.C. 13:38-2.5 sets forth rules for the division of fees; N.J.A.C. 13:38-2.6 defines a vision service plan; N.J.A.C. 13:38-2.7 details rules regarding optometrists' availability to patients; N.J.A.C. 13:38-2.8 is reserved; N.J.A.C. 13:38-2.9 specifies minimum standards and tolerances for the fabricating of corrective eyewear; N.J.A.C. 13:38-2.10 is reserved; and N.J.A.C. 13:38-2.11 sets forth the rules for the preceptorship program. Subchapter 3 lists the requirements for licensure by examination and includes rules relating to the issuance of registration certificates, approved curricula and credentials, and employment. Subchapter 4 provides the citation for the uniform penalty letter, subchapter 5 outlines Board fees, and subchapter 6 sets forth the licensee's obligations with reagrd to maintaining and releasing patient records.

Social Impact

Once readopted, these rules will continue to protect the public health and welfare by assuring professional competence both in the provision of optometric care and in the fabricating of corrective eyewear. The rules will also have a positive effect on the Board of Optometrists; by providing various procedures for the orderly operation of the Board and the conduct of examinations, the rules will enable the Board to fulfill its statutory duty to protect the public health, safety and welfare.

Economic Impact

The rules proposed for readoption will not have a direct economic impact on the general public. The readopted rules will, however, continue to have an economic impact upon licensees and applicants for licensure. Licensees must comply with the rules regarding minimum equipment and renewal of registration certificates, and applicants must comply with educational and examination requirements. However, the Board believes the fees set forth in N.J.A.C. 13:38-5.1, which have not changed for several years, are reasonable and that the additional costs of compliance are necessary in order to preserve and promote the public health. The economic impact upon the Board will be favorable in that readoption will enable it to continue to perform its necessary regulatory functions; failure to readopt these rules would place the operation of the Board in jeopardy.

Regulatory Flexibility Analysis

If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., optometrists are deemed "small businesses" within the meaning of the statute, the following statement is applicable: The rules proposed for readoption for readoption do contain reporting, recordkeeping and compliance requirements relating to licensure and practice. However, because the rules seek to promote and protect the public welfare, they must be uniformly and consistently applied; no differential treatment can be accorded to small businesses.

Recordkeeping requirements include the maintenance of patient records for seven years and the maintenance for three years of copies of advertisements and of documentation relating to advertisements containing testimonials. The Board considers such records essential to the proper practice of optometry. The reporting requirements include a yearly report by a licensed optometrist who is also an officer of a professional service corporation which renders optometric service or sells ophthalmic merchandise. Compliance requirements are related to examination, licensure and practice. These requirements are not burdensome and no additional professional services will be needed to comply with these rules.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:38.

(b)

BOARD OF PHARMACY

Prescriptions for Controlled Substances

Proposed Amendment: N.J.A.C. 13:39-5.6

Authorized By: Board of Pharmacy, H. Lee Gladstein, R.P., Executive Director.

Authority: N.J.S.A. 45:14-26.2; 45:14-36.1.

Proposal Number: PRN 1990-319.

Submit comments by July 18, 1990 to:
H. Lee Gladstein, Executive Director
Board of Pharmacy, Room 325
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

On January 11, 1990, the New Jersey State Board of Medical Examiners filed a petition with the Board of Pharmacy requesting the Board to promulgate a new rule requiring that prescriptions for controlled substances listed in schedules III and IV be maintained in a file separate from all other prescriptions. The Medical Board stated that maintaining a separate file for schedules III and IV prescriptions would facilitate Enforcement Bureau investigations into inappropriate prescribing by Medical Board licensees (see 22 N.J.R. 995(d)).

At its meeting of February 14, 1990, the Board duly considered the petition for rulemaking and determined to deny the petition for the reasons set forth below. Although the Board denied the petition, it also determined to propose amendments to N.J.A.C. 13:39-5.6 regarding record keeping requirements for controlled substances which it believes are responsive to the problems raised in the Medical Board's petition.

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The Medical Board's petition was denied because the Board is of the opinion that the need for actual physical files is decreasing as more and more pharmacies are computerizing their records; through the use of the computer, records for specific controlled substances can be readily retrieved and made available to investigators in a short period of time. Accordingly, rather than make mandatory a duplicate record keeping effort (the physical file and the computer record), the Board is proposing, in N.J.A.C. 13:39-5.6(f), that schedules III, IV and V prescriptions be maintained in a single file separate from all other prescriptions only if the pharmacy's records are not computerized. This proposed amendment requires that schedule V prescriptions, if not computerized, be maintained with schedules III and IV prescriptions, contrary to the Medical Board's request, since the Board is of the opinion that Schedule V prescriptions are not issued frequently enough to warrant maintaining a separate file. Proposed N.J.A.C. 13:39-5.6(d) and (e) merely set forth current Board and Department of Health requirements regarding prescriptions for controlled substances; these subsections were added to provide licensees with a clear and comprehensive set of rules regarding their record keeping responsibilities when filling prescriptions for controlled substances. The Board believes this amendment, although somewhat different from the Medical Board's request, is responsive to the Medical Board's stated goal of facilitating administrative efforts to curb the pandemic of drug abuse and/or inappropriate prescribing by Medical Board licensees.

Social Impact

The proposed amendment will have a beneficial social impact. The separate filing of prescriptions for substances listed in schedules III, IV and V, required when a computer is not utilized, will facilitate Enforcement Bureau investigations; investigators performing an investigation of a specific Medical Board licensee will be able to readily review all schedules III, IV and V prescriptions to ascertain whether prescriptions by the licensee have been presented for filing. Detection of inappropriate prescribing will aid the Board of Pharmacy and the Board of Medical Examiners in their statutory duty to protect the public health and welfare. The proposed amendment will also benefit pharmacists by providing them with a clear and comprehensive set of rules regarding their record keeping responsibilities when filling prescriptions for controlled substances. Through this improved record keeping, protection of the public health and welfare is enhanced.

Economic Impact

The proposed amendment will have no economic impact on the public or on pharmacies which maintain computerized records; the Board estimates that approximately 80 percent of New Jersey pharmacies are computerized. Those pharmacies which are not computerized will be required pursuant to N.J.A.C. 13:39-5.6(f) to purchase a file to maintain prescriptions for schedules III, IV and V substances. The cost of such a file, however, is expected to be minimal. Enforcement Bureau administrative costs should decrease in connection with investigations of inappropriate prescribing by Medical Board licensees since investigators will now have ready access to noncomputerized information on prescriptions issued for schedules III, IV and V substances.

Regulatory Flexibility Analysis

The proposed amendment, which sets forth record keeping responsibilities in connection with the issuance of prescriptions for controlled substances, will apply to all 9,052 licensees of the Board of Pharmacy and to all 1,886 currently licensed pharmacies, all of which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Proposed N.J.A.C. 13:39-5.6(d) and (e) will impose no new reporting, record keeping or other compliance requirements upon small businesses since these subsections merely codify existing Board and Department of Health requirements. Proposed N.J.A.C. 13:39-5.6(f) will impose record keeping and compliance requirements on pharmacies which are not computerized. These pharmacies will be required to separately file all prescriptions for substances listed in schedules III, IV and V. No professional services will be needed in order to comply with this amended rule since the Board anticipates that only a negligible amount of time and effort will be required for licensees or pharmacy employees to place the specified prescriptions in a separate file. The only initial capital cost will be the small sum required to purchase a prescription file. No exemption based on pharmacy size is possible since the requirements are imposed to protect the public health and welfare through control of scheduled substances.

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

13:39-5.6 Record of pharmacist filling prescription

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

(d) Prescriptions for all controlled substances listed in schedules I and II shall be maintained in a separate prescription file.

(e) Prescriptions for all controlled substances listed in schedules III, IV and V shall be stamped in red ink in the lower right corner with the letter "C" no less than one-inch high.

(f) Prescriptions for all controlled substances listed in schedules III, IV and V shall be maintained in a single file separate from all other prescriptions, unless an electronic data processing system is utilized which meets the requirements of (i) below. If such an electronic data processing system is utilized, prescriptions for all substances listed in schedules III, IV and V shall be filed either in the prescription file for controlled substances listed in schedules I and II or in the usual consecutively numbered prescription file for noncontrolled substances.

Recodify existing (d)-(g) as **(g)-(i)** (No change in text.)

[(g)]**(j)** Initials and/or access code number(s) of the dispensing pharmacist and intern or extern, if applicable, shall be entered into the system each time a prescription is filled or refilled. Computer programs which automatically generate a pharmacist's initials without requiring a direct entry by the dispensing pharmacist at the time of dispensing are prohibited.

(a)

STATE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Rules of the State Board of Professional Engineers and Land Surveyors

Proposed Readoption: N.J.A.C. 13:40

Authorized By: State Board of Professional Engineers and Land Surveyors, W. O. Van Blarcom, Acting Executive Director.

Authority: N.J.S.A. 45:8-27 et seq.

Proposal Number: PRN 1990-332.

Submit comments by July 18, 1990 to:
W. O. Van Blarcom, Acting Executive Director
State Board of Professional Engineers and Land Surveyors, Room 317
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 13:40 is scheduled to expire on September 3, 1990. The State Board of Professional Engineers and Land Surveyors has reviewed the current rules and has found them to be necessary and effective for the purposes for which they were originally promulgated. The body of rules proposed for readoption has had an advantageous impact on the regulation of the professional engineering and land surveying professions by enabling the Board to have in place procedures which maintain high standards of practice, thus serving and protecting the public's best interests.

This chapter contains 10 subchapters. Subchapter 1, Title Blocks and Seals for Professional Engineers and Land Surveyors, sets forth rules regarding the sealing of documents and the use and form of title blocks. Subchapter 2, Application Requirements, establishes various rules on the application and examination process. Subchapter 3, Misconduct, enumerates prohibited acts and prescribes the procedure for reporting incidents of professional misconduct. Subchapter 4, General Provisions, describes procedures for notification of change of address and also covers service of process. Subchapter 5, Land Surveyors; Preparation of Land Surveyors, sets forth rules for the practice of land surveying. Subchapter 6 establishes fees charged by the Board. Subchapter 7, Permissible Division of Responsibility in Submission of Site Plans and Major Subdivision Plats, provides that the definitions used in the Municipal Land Use Act, N.J.S.A. 40:55D-1 et seq., apply to this subchapter and sets forth rules on the preparation of site and subdivision plans. Subchapter 8, Maintenance of Project Records, sets forth standards for the maintenance and release of project records. Subchapter 9, Responsible Charge of Engineering or Land Surveying Work, establishes standards for the supervision of subordinates and requires maintenance of records of adequate supervision; the subchapter also lists acts reflecting inadequate

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supervision. Subchapter 10, Contract to Provide Professional Services, sets forth the requirement of a written contract with a New Jersey licensed engineer or land surveyor prior to a firm's offering or performance of engineering or land surveying services.

Social Impact

The readopted rules will have a positive effect on the consumer; the rules will enable the Board to continue orderly operation and to provide for examination and licensure of applicants in order to ensure that truly qualified individuals are licensed to practice professional engineering and land surveying. The State Board of Professional Engineers and Land Surveyors endeavors to maintain the highest possible level of professionalism for the benefit and protection of the public.

Economic Impact

Since this chapter is proposed for readoption without change, there will be no additional economic impact on the public or on candidates or licensees as a result of this proposal. While compliance with this chapter does entail certain costs for candidates and licensees, such as examination, re-examination and renewal fees, such costs are reasonable and necessary to preserve and promote the public welfare. Because funding of the Board's operation is attained by the fee structure, these rules will have a positive economic impact on the Board; failure to readopt would place such operation in jeopardy.

Regulatory Flexibility Analysis

The State Board of Professional Engineers and Land Surveyors currently licenses approximately 5,000 engineers-in-training, and 20,500 professional engineers and land surveyors. If, for the purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., professional engineers and land surveyors are deemed "small businesses", the following statement is applicable:

The rules proposed for readoption do contain reporting, record keeping and compliance requirements relating to licensure and practice which may affect licensees who practice as small businesses. The requirements relate to the application process, fees, division of responsibility, project records maintenance, responsible charge of work, contracts, misconduct, land survey preparation and title blocks and seals. No substantial capital costs nor any need for outside professional services should result from these rules. Because these rules seek to promote and protect the public welfare, they must be uniformly and consistently applied; therefore, no differential treatment can be accorded to any licensee or enterprise.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:40.

(a)

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Patient Records
Retirement or Death of Veterinarian in Charge
Proposed Amendment: N.J.A.C. 13:44-2.12

Authorized By: State Board of Veterinary Medical Examiners, Maurice W. McQuade, Executive Director.

Authority: N.J.S.A. 45:16-9.9.

Proposal Number: PRN 1990-334.

Submit comments by July 18, 1990 to:
Maurice McQuade, Executive Director
State Board of Veterinary Medical Examiners, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Veterinary Medical Examiners is proposing to amend N.J.A.C. 13:44-2.12 to establish the appropriate procedure to be followed prior to disposing of or upon the transfer of medical records in the event of the retirement or death of a licensee in charge of a veterinary facility.

The proposed amendment at N.J.A.C. 13:44-2.12(d) requires that whenever a licensee's practice is closed due to retirement or death and the medical records are not to be transferred to another facility, the retiring licensee or executor or administrator of the licensee's estate shall publish a notice in a daily newspaper in the county in which the licensee's practice is located, on two occasions, 15 days apart, indicating that the medical records will be available to the client for a period of 60 days. The notice must include the name, address and telephone number of the person to contact to obtain the records. The 60-day period will commence from the date the second notice appears in the newspaper.

If the records are to be transferred to another facility, they may be transferred immediately. The person responsible for the transfer must thereafter publish a notice in a daily newspaper, on two occasions, 15 days apart, notifying the public of the transfer and indicating the place to which the records have been transferred.

Also, the retiring licensee or the executor or administrator of the licensee's estate, whichever is applicable, must under the amendment notify the Board of the closing of the licensee's practice.

The proposed amendment will ensure the orderly transition of business from one veterinary establishment to another in a timely fashion. It will provide for continuity of health care and be of clear benefit to the public because consumers will be assured that licensed veterinarians treating their pets will have the pets' medical histories readily available to them.

Social Impact

The effect of the proposed amendment is to assure continuity of health care. This is of clear benefit to the public because consumers will be certain that their pets are treated by licensed veterinarians who will have the benefit of knowing the pets' medical histories. Also, by requiring publication on two separate occasions in a daily newspaper of the name, address, and telephone number of the person or facility in possession of the records, the amendment will provide the consumer with adequate access to these records. The requirement that the Board must be immediately notified of the closing of the veterinary facility will assist the Board in its effort to maintain current information regarding its licensees.

Economic Impact

The proposed amendment will have minimal economic impact on licensees in that the retiring licensee or the executor or administrator of the licensee's estate will have to place two notices in a daily newspaper, and notify the Board of the impending practice closure. The Board believes that this expense will be insignificant when compared to the advantage of providing the consumer with a historical health and treatment record.

Regulatory Flexibility Analysis

The State Board of Veterinary Medical Examiners currently licenses 1,766 (1,270 active; 496 inactive) individuals. It is impossible to determine how many of these licensees operate individually owned veterinary facilities inasmuch as the Board licenses individuals and not entities.

The proposed amendment sets forth the reporting requirement that the retiring licensee or the executor or administrator of the licensee's estate must notify the Board when the veterinary facility is closed. There are no recording requirements, and no capital investment or professional services are needed for compliance.

Other than the minimal advertising cost incurred for the insertion of two notices in a newspaper, it is not anticipated that compliance will impose any additional expense on the retiring licensee or his or her estate. The Board believes that this amendment will have a salutary effect in that it will ensure the orderly transition of business from one veterinary facility to another. Therefore, no differentiation in requirements based upon business size is provided.

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

13:44-2.12 Patient records

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

(d) Whenever a veterinary facility is to be closed due to the retirement or death of the veterinarian in charge, the following shall apply:

1. The retiring licensee or the executor or administrator of the licensee's estate shall immediately notify the Board of the impending closure.

2. If the medical records are not to be transferred to another veterinary facility, the retiring licensee or the executor or administrator of the licensee's estate shall, prior to disposing of any records and within a reasonable period of time, publicize notice of closing of the veterinary facility. The notice of closing shall be published in a daily newspaper with circulation in the county in which the veterinary facility is located, on two occasions, 15 days apart. The notice shall advise the public of the licensee's retirement or death; shall indicate that the medical re-

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cords will be available to the consumer for a period of 60 days subsequent to the second publication; and shall include the name, address and telephone number of the person to contact to obtain the medical records.

3. If the medical records are to be transferred to another veterinary facility, the retiring licensee or the executor or administrator of the licensee's estate may immediately transfer the medical records provided that he or she shall, within a reasonable period of time after the transfer, publicize notice of closing of the veterinary facility. Such notice shall be published in a daily newspaper with circulation in the county in which the veterinary facility is located, on two occasions, 15 days apart. The notice shall advise the public of the licensee's retirement or death and indicate the name, address and telephone number of the facility to which the records have been transferred.

(a)

DIVISION OF STATE POLICE
STATE BUREAU OF IDENTIFICATION (SBI)
Criminal History Record Background Checks for Non-Criminal Matters
Proposed Readoption with Amendments: N.J.A.C. 13:59

Authorized By: Col. Justin J. Dintino, Superintendent, Division of State Police.

Authority: N.J.S.A. 53:1-20.5, 53:1-20.6 and 53:1-20.7 (P.L. 1985, c. 69).

Proposal Number: PRN 1990-333.

Submit comments by July 18, 1990 to:
Capt. James Petrecca, Bureau Chief
State Bureau of Identification
Division of State Police
P.O. Box 7068
W. Trenton, NJ 08628-0068

The agency proposal follows:

Summary

In October 1982, due to fiscal restraints and a reduction in personnel, it became necessary to curtail the processing on non-criminal justice licensing and employment checks ("Applicant" fingerprint card SBI-19 and Request for Criminal History Record Information form SBI-212) for State, county and local governmental agencies.

The Division of State Police proposes to readopt the provisions of N.J.A.C. 13:59, promulgated pursuant to P.L. 1985, c.69, signed into law by the Governor on March 7, 1985, and effective May 6, 1985, codified as N.J.S.A. 53:1-20.5, 20.6 and 20.7, which are scheduled to expire on September 16, 1990 pursuant to Executive Order 66(1978).

This law establishes a maximum statutory fee for the processing of Criminal History Record background checks, which are made through the Criminal History Record files of the State Bureau of Identification, Division of State Police. These background checks are requested by authorized governmental or quasi-governmental state, county or local agencies. This service is performed for a minimal processing fee for the requesting agencies.

The rules proposed for readoption provide definitions of terms used in the chapter, set forth the applicable fees, provide for separation of fees, identify prescribed forms, set forth acceptable forms of payment, provide for fee waiver by the Superintendent, establish rejection and resubmission procedures and limit access to Criminal History Record Information.

The proposed amendments clarify the definitions of "authorized agency" and "licensing and/or employment purpose" by adding to each definition executive order, administrative code and Federal statute authorizations or requirements, respectively. In N.J.A.C. 13:59-1.4(d), references to "Request for Criminal History Record Information" form SBI-212A are added. In N.J.A.C. 13:59-1.5, section heading language is corrected, and provision is made for the acceptable form of payment from New Jersey State agencies.

Social Impact

The social impact of these rules is best reflected in Governor Kean's Reconsideration and Recommendation Statement to Senate Bill #788 (P.L.1985 c.69). He described the importance of this service provided to the public by the State Police and said that a myriad of governmental agencies and private concerns require information to effectively administer their various licensing and employment functions. The fee system underwrites the cost to the Division of State Police, allowing them to implement and maintain the services.

These rules result in a more efficient and expeditious return of all Criminal History Record background checks submitted from authorized agencies for a licensing and/or employment purpose. In part, it enables these agencies to be aware of the Criminal History Records of their applicants.

These rules are specifically mandated by statute, N.J.S.A. 53:1-20.6a.

Economic Impact

The income generated by the payment of a prescribed fee will enable the Division of State Police, State Bureau of Identification, to facilitate the processing of checks and continue to be compensated for a required service.

The revenue that will be forthcoming from the User Fee will be utilized by the Division of State Police, State Bureau of Identification to process authorized licensing and/or employment checks.

The Division of State Police will continue to be compensated for this service. The requesting agency, unless they so desire, will not be responsible to absorb the cost for the processing of a Criminal History Record background check. The financial burden will be borne by the person applying for the license and/or employment check.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because these rules proposed for readoption do 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 rules impact only on authorized agencies, as defined in the rules, seeking to obtain criminal history information. The rules require that a request for a criminal history check be made on a form designed and provided by the State Bureau of Identification.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:59.

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

13:59-1.1 Definitions

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

"Authorized agency" means any [governmental or quasi-governmental state, county or local] agency which is authorized by a **federal or** state statute, rule or regulation, **executive order, administrative code** or local ordinance to have access to the Criminal History Record Information File for non-criminal licensing and/or employment purposes.

. . .

"Licensing and/or employment purpose" means any matter in which applicant fingerprints or name search requests are submitted as required by **a federal or** state [or county] statute, rule[,] **or** regulation, **executive order, administrative code** or local ordinance to the State Bureau of Identification for processing from all authorized agencies.

. . .

13:59-1.4 Prescribed forms

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

(c) For fingerprint identification purposes, an "Applicant" fingerprint card (SBI-19) must be used. The exception to this rule will be for a firearms application which requires a "Firearms Application" card (SBI-19A).

1. Fingerprint card (SBI-19 or SBI-19A): The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police—SBI,"[,] must be stapled [on] **to** the lower left corner of the "Applicant" fingerprint card (SBI-19) or "Firearms Application" fingerprint card (SBI-19A) and submitted to the State Bureau of Identification.

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(d) For name search identification purposes, a "Request for Criminal History Record Information" form (SBI-212 **or SBI-212A**) must be used.

1. "Request for Criminal History Record Information" form (SBI-212 **or SBI-212A**): This form will be filled out in its entirety and must contain all the required information necessary to complete the check. The fee as prescribed in this subchapter, in the form of a cashiers check, certified check or money order payable to the "Division of State Police—SBI,"[,] must be stapled to the front of each SBI-212 **or SBI-212A** form and submitted to the State Bureau of Identification.

13:59-1.5 [Acceptance] **Acceptable** form of payment

(a) A cashiers check, certified check or money order made payable to the "Division of State Police—SBI" will be accepted.

(b) New Jersey State agencies shall submit a "Memo Processed Certificate of Debit and Credit" for the applicable amount with each group of submissions. Any other form of payment is unacceptable unless approved by the Superintendent of State Police.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Hotels and Multiple Dwellings
Dormitories

Proposed Amendments: N.J.A.C. 5:10-1.6, 1.10 and 1.11

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 55:13A-6(e).

Proposal Number: PRN 1990-318.

A **public hearing** on this proposal will be held on:
Monday, July 9, 1990 at 10:00 A.M.
William Ashby Community Affairs Building
101 South Broad Street
Trenton, New Jersey

Submit written comments by July 18, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

In the case of *Blair Academy v. Sheehan,* 149 *N.J. Super.* 113, (App. Div. 1977), the Department of Community Affairs was sustained in its determination that school dormitories are to be classified as "hotels" for purposes of the Hotel and Multiple Dwelling Law. The determination that dormitories would be regarded as hotels, rather than as multiple dwellings, was based in part upon a use group classification set forth in the text, now repealed, of N.J.A.C. 5:10-3.4(e), which included dormitories in "Hotels and lodging houses, group L-1."

Use group determinations for purposes of the State Uniform Construction Code and the Uniform Fire Code are based upon the BOCA National Building Code. Section 309.3.1 of the BOCA Code classifies dormitories accommodating more than five persons more than 2-1/2 years old as Use Group R-2, that is, as multiple dwellings. This classification is based upon the principle that the crucial difference between a multiple dwelling and a hotel, which makes a hotel a more dangerous structure in a fire or other emergency situation, is the fact that the occupants are likely to be much less familiar with a hotel building in which they are temporarily staying than they would be with a multiple dwelling in which they live. The drafters of the BOCA Code concluded that residents of a dormitory are likely to be there long enough to become familiar with it and the actual hazard level therefore approximates that of a multiple dwelling rather than that of a hotel.

Since the Regulations for the Maintenance of Hotels and Multiple Dwellings now incorporate the applicable provisions of the Uniform Fire Code by reference, classification of buildings subject to the Hotel and Multiple Dwelling Law as either hotels or multiple dwellings should, to the extent that the statute permits a choice, be done in a manner consistent with the use group classifications in the BOCA Code, since doing so will eliminate a potential source of confusion for those enforcing the fire safety rules. The Department therefore proposes to reclassify dormitories as "multiple dwellings" for purposes of the Hotel and Multiple Dwelling Law.

Since it is not the intention of these amendments to impose any significant new costs upon schools and colleges that operate dormitories, provision is made for dormitories to comply with the building security requirements for either hotels or multiple dwellings and for the building directory requirement for multiple dwellings to be inapplicable. Multiple dwelling requirements for janitorial services and handicapped parking will apply; the latter, however, only in the event that there is a parking lot set aside for the use of the residents of the dormitory.

Social Impact

Dormitories will now be subject to inspection once every five years rather than once every three years. No effect on dormitory safety is anticipated. Since the classification will be consistent with that followed under the Uniform Fire Code, a source of confusion for fire code enforcement personnel will be eliminated.

Economic Impact

The statutory fee schedules for hotels and multiple dwellings impact buildings of different sizes differently. However, the maximum per project fee, which would apply to most dormitories, is $750.00 for hotels and $1,250 for multiple dwellings. However, since hotels are required to be inspected once every three years and multiple dwellings only once every five years, the fees paid by a project over a 15 year period would be $3,750, regardless of classification. The State will save money by inspecting dormitory "projects" (groups of buildings under common ownership or control) less frequently because project inspections invariably cost considerably more than the Department is allowed to recoup in fees, due to the statutory maximums that were established in 1970.

Since the proposed amendments would allow a dormitory to meet either hotel or multiple dwelling building security standards, and since dormitories generally have either on-premises janitors or 24-hour janitorial service already, the change to multiple dwelling status is unlikely to impose any added costs.

Regulatory Flexibility Analysis

The proposed amendments reclassify dormitories as "multiple dwellings" for purposes of the Hotel and Multiple Dwelling Law. For schools and colleges with residential facilities, regardless of whether they are "small businesses" as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the compliance requirements of this classification are unlikely to impose any added costs, as explained in the Economic Impact statement above, or need for professional services. As a result of these amendments, such schools and colleges will be subject to less frequent inspections.

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

5:10-1.6 Maintenance requirements

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

(g) Except as otherwise provided in this subsection, all rules in this chapter that are applicable to multiple dwellings shall be applicable to dormitories.

1. For purposes of N.J.A.C. 5:10-18.1, residents of a dormitory shall be deemed to be "transient guests"; and

2. Dormitories in compliance with N.J.A.C. 5:10-19.1 shall not be required to comply with N.J.A.C. 5:10-19.2.

5:10-1.10 Bureau inspections

(a)-(g) (No change.)

(h) Dormitories shall be inspected as multiple dwellings.

5:10-1.11 Certificate of registration

(a)-(k) (No change.)

(l) Dormitories shall be registered as multiple dwellings; provided, however, that no new registration shall be required for any dormitory already registered as a hotel unless there is a change of ownership.

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(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Dedication of Revenue for Code Enforcement
Proposed Amendment: N.J.A.C. 5:23-4.17

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Authority: N.J.S.A. 52:27D-124.
Proposal Number: PRN 1990-309.

Submit comments by July 18, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department proposes to repeal those portions of recently amended N.J.A.C. 5:23-4.17 pertaining to the appropriation and expenditure of municipal construction code fees which require that such fees be appropriated through dedication by rider. Under the Local Budget Law, N.J.S.A. 40A:4-1 et seq., dedicated revenues are defined to include revenues which are "required by law to be applied to a specific purpose" (N.J.S.A. 40A:4-36). The Department has been advised by the Attorney General that municipal construction code fees collected pursuant to N.J.S.A. 52:27D-126a are dedicated revenues for the purposes of the Local Budget Law in that such fees are required to be utilized for a specific purpose, that is, the costs of enforcing the uniform construction code in the municipality.

The Local Budget Law provides two separate methods for the appropriation of dedicated revenues. If the amounts of such revenues are subject to reasonably accurate estimates in advance, such revenues are to be stated in a municipality's budget in accordance with their respective sources together with the appropriations for the purposes to which such revenues are applicable (N.J.S.A. 40A:4-36). If, alternatively, the amounts of such revenues are not subject to reasonably accurate estimates in advance, then such revenues may, with the approval of the Director of the Division of Local Government Services, be appropriated through use of a budgetary rider (N.J.S.A. 40A:4-39).

The Department's recently adopted provisions regarding the appropriation and expenditure of municipal construction code fees mandate the appropriation of revenues generated from such fees through use of a budgetary rider regardless of whether a municipality may be able to estimate with reasonable accuracy in advance the amount of such revenues which it will receive in the course of the municipality's budget year. The Department has concluded that such a requirement is inappropriate in that, at least in certain cases, municipalities may in fact be able to estimate with reasonable accuracy in advance the amount of such revenues which they will receive in a budget year.

Accordingly, the Department proposes to delete those portions of N.J.A.C. 5:23-4.17 which provide that municipalities may only appropriate municipal construction code fees through use of a budgetary rider. By repealing such provisions, municipalities will be afforded the option of appropriating such fees in either of the two ways authorized under the Local Budget Law for the appropriation of dedicated revenues depending upon whether such municipalities can anticipate with reasonable accuracy the amount of such fees they will receive in a particular budget year. Further, it is the expectation of the Department that the Director of the Division of Local Government Services, in the exercise of his authority under the Local Budget Law, will ensure that municipal construction code fee revenues will be appropriated in a manner consistent with the requirements of that Law.

Social Impact

The proposed amendment to the Department's existing rule regarding the appropriation and expenditure of municipal construction code fees will afford municipalities greater flexibility in appropriating such fees. By deletion of those portions of the Department's rule which requires that such fees be appropriated solely through use of budgetary riders, the proposed amendment will return to each municipality the discretion to determine the manner in which such dedicated revenues shall be appropriated on the basis of whether the amount of such revenues which a municipality will receive in a budget year can be estimated with reasonable accuracy in advance. Further, deletion of the existing appropriation by rider requirement is not expected to in any way impair the ability of municipalities to protect the public health and safety through enforcement of the State Uniform Construction Code. Rather, by affording municipalities greater flexibility in appropriating fees collected to meet the costs of code enforcement, it is anticipated that the ability of such municipalities to properly implement their code enforcement responsibilities will be enhanced.

Economic Impact

The proposed amendment will facilitate the proper appropriation of municipal construction code fee revenues in a manner consistent with the requirements of the Local Budget Law and is consequently expected to have a positive fiscal impact on municipalities which collect and appropriate such revenues. It is not expected that the proposed amendment will impose any additional costs on such municipalities or have any impact on the amount of municipal construction code fees collected by such local units.

Regulatory Flexibility Statement

This proposed amendment concerns budgetary requirements for local governments and does not have any direct impact on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

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

5:23-4.17 Municipal enforcing agency fees

(a) (No change.)

(b) Report:

1. On or before February 10th of each year, the construction official shall, with the advice of the subcode officials and in consultation with the municipal finance officer, prepare and submit to the governing body a report detailing the receipts and expenditures of the enforcing agency and indicating his recommendations for a fee schedule, based on the operating expense of the agency. The report shall be structured in accordance with (c) below and with such guidelines as shall be issued from time to time by the Commissioner so as to accurately portray true enforcing agency expenses in general and for structures of different use groups. This report shall serve as the basis for the ordinance to be enacted by the municipality, as it may deem appropriate, establishing the fee schedule.

2. A copy of the construction official's report recommending a fee schedule and setting forth enforcing agency revenues and expenses shall be filed with the Department when prepared and a copy of the ordinance, together with the fee schedule, shall be filed with the Department when enacted or amended.

3. The [fund containing all revenue dedicated by rider pursuant to (c) below] **appropriation and expenditure of construction code fee revenues generated from the fee schedule established pursuant to (b)1 above** shall be audited annually by an independent auditor acceptable to the Department and a copy of the auditor's report shall be provided to the Department when it is issued to the municipality. Submission of a copy of the annual municipal audit required to be submitted to the Division of Local Government Services at the time that it is required to be submitted to that Division shall constitute compliance with this requirement provided, however, that the annual municipal audit tests and contains an opinion that all expenditures of **construction code** fees [dedicated by rider] have been made for purposes herein permitted.

(c) Costs: The fee schedule shall be calculated to reasonably cover the municipal costs of enforcing the regulations.

[1. It is the purpose and intent of this subsection to provide a mechanism to facilitate the accumulation by municipalities of the funds necessary to offset future construction code enforcement expenses, to ensure that construction code fee revenue is used only for construction code enforcement purposes, and to provide a means of making such revenue readily available for such purposes from year to year.]

[2.] **1.** All fees collected [after February 28, 1990, or after the date on which the 1990 municipal budget is adopted, whichever is later, shall be dedicated by rider] **pursuant to the fee schedule established**

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in accordance with (b)1 above shall be appropriated in accordance with the requirements of the Uniform Construction Code Act and the Local Budget Law to be applied [to] **solely to meet** the municipal costs of enforcing the regulations, which costs shall be defined as including only the following:

i. Salaries and employee benefits for licensed code enforcement officials and inspectors and clerical personnel assigned to the enforcing agency, in an amount proportionate to the time spent in performing work for the enforcing agency provided, however, that detailed time records are kept where employees divide their time between Uniform Construction Code and Non-Uniform Construction Code duties;

ii. Cost of motor vehicles in an amount proportionate to their use by or for the enforcing agency. Payments for this purpose may be in the form of mileage reimbursement paid to employees for use of their own motor vehicles, cost of purchase of motor vehicles by the municipality for the exclusive use of the enforcing agency (which cost may not be amortized), depreciation and operating expenses of motor vehicles made available to the enforcing agency by another municipal agency, and cost of rental of motor vehicles for use by the enforcing agency;

iii. Direct costs in support of the agency such as equipment, supplies, furniture, office equipment maintenance, standardized forms, printing, and safety equipment that are supplied directly to the enforcing agency for its sole use;

iv. Professional expenses of enforcing agency personnel that are directly related to the enforcement of the regulations, including publications, membership dues, license fees, and authorized travel to conferences, meetings and seminars;

v. Fees for services performed under contract by private on-site inspection agencies;

vi. Documented charges for legal services required in connection with construction code enforcement litigation;

vii. Fees for the annual audit of the dedicated fund by an independent auditor; and

viii. Subject to the limitations set forth in [(c)3] **(c)2** below, indirect, overhead, and other expenses of the municipality in support of the enforcing agency, including:

(1) Legislative and Executive expenses;

(2) Administration, including personnel, payroll, and general training services provided to the agency in common with all other municipal offices;

(3) Central services shared jointly with other municipal offices, such as telephone, reproduction, centralized computer services, etc.;

(4) Insurance except for group insurance premiums included under employer fringe benefits;

(5) General building maintenance expenses;

(6) Finance, including bookkeeping, purchasing, and auditing;

(7) Office space expenses, including rent or interest and debt service on municipal capital facilities; and

(8) Such other expenses as may be properly allocable to construction code enforcement[, not to exceed the amount by which the municipal costs of construction code enforcement in any prior year beginning after December 31, 1989 exceeded fee revenue received by the enforcing agency in that year, provided that such amount has not previously been charged against the dedicated fund].

[3.] **2.** Indirect and overhead expenses charged to the [the dedicated fee account, other than amounts charged pursuant to (c)2viii(8) above,] **construction code fee revenues** shall [only] **not** exceed 12 percent of all other costs of the enforcing agency [if] **unless** the indirect and overhead expenses of the municipality exceed 12 percent of the entire municipal budget, in which case indirect and overhead expense may be charged [to the rider] **to construction code fee revenues** in proportion to the general municipal overhead and expense ratio. A detailed written justification for any charge **for indirect and overhead expenses** in excess of 12 percent shall be prepared and made available for inspection both by the Department and by the public.

[4.] **3.** This subsection shall not be construed as precluding the use of money from the general fund of the municipality to pay costs of code enforcement when the [funds dedicated by rider] **construction code fee revenues generated from the fee schedule established pursuant to (b)1 above** are insufficient for that purpose or when necessary to compensate the enforcing agency for work done without fee pursuant to statute or ordinance.

(d) (No change.)

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Planned Real Estate Development Full Disclosure Exemptions

Proposed Amendment: N.J.A.C. 5:26-2.2

Authorized By: William M. Connolly, Director, Division of Housing and Development, Department of Community Affairs.

Authority: N.J.S.A. 45:22A-35.

Proposal Number: PRN 1990-329.

Submit comments by July 18, 1990 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 5:26-2.2 is currently a restatement of the exemptions set forth in section 5 of the Planned Real Estate Development Full Disclosure Act, N.J.S.A. 45:22A-21 et seq., at N.J.S.A. 45:22A-25. Subsection b of section 5 gives the "Agency" (that is, the Division of Housing and Urban Renewal, now Housing and Development, of the Department of Community Affairs) the power to allow exemptions other than those set forth in subsection a of section 5. Its counterpart in the rules, paragraph (a)10 of N.J.A.C. 5:26-2.2, does not provide any further guidance as to what else is to be exempted. The practice of the Division has long been to exempt offerings of under 10 units, though this would not be known to someone relying solely upon the statute and the rules. With this amendment, the rule will provide further guidance as to what else is exempted.

The amendment also provides for exemption for developments consisting entirely of units affordable to persons of low or moderate income. In such developments, preparation of a full public offering statement may impose unnecessary costs that cannot reasonably be absorbed by the sponsors, generally community-based nonprofit organizations. Again, exemption of such developments has been the established practice of the Division, although the rules give no indication of that.

To ensure that purchasers in small and affordable planned developments, and in such other planned developments as may be exempted under paragraph (a)10, are not left unprotected and that the intention of the Act is honored, provision is also made for the Division to require, as a condition of exemption for any such development, a simplified disclosure statement, the content of which is set forth in the proposed amendment.

Social Impact

By making explicit in the rules the major grounds that have been recognized in practice for exemption from registration, the amendment allows those who are not familiar with agency practice to have the same information about exemptions that is already known to those who have previously applied for them. The provision for a simplified disclosure statement as a condition for exemption will provide protection for all purchasers of units and interests in developments for which exemption is not required by statute.

Economic Impact

Developers of small and affordable planned developments will, for the first time, have sure knowledge that their offerings will be exempt from registration and will be able to plan accordingly. The simplified disclosure statement will be a short form that will not be costly to produce.

Regulatory Flexibility Analysis

The proposed amendments impose requirements regarding disclosures to be included in the offerings of small or affordable developments which seek exemptions from the registration requirements of N.J.A.C. 5:26 and the Planned Real Estate Development Full Disclosure Act.

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The Planned Real Estate Development Full Disclosure Act is a consumer protection statute that does not distinguish between developers that are "small businesses," as defined in the New Jersey Regulatory Flexibility Act, and those that are not. To the extent that developers of small developments are more likely to be "small businesses" than are developers of large developments, they will benefit by the explicit exclusion of their developments from registration and from the substitution of a simplified disclosure statement for the public offering statement that would be required if they were required to register.

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

5:26-2.2 Exemptions

(a) Unless the method of disposition is adopted for purposes of evasion, the provisions of [this Act] **these rules** shall not apply to offers or dispositions:

1.-9. (No change.)

10. Where **the offering is not part of a larger offering and consists of fewer than 10 lots, parcels, units or interests, or where the offering consists entirely of units affordable to persons of low or moderate income, or where** the Agency **otherwise** finds that the enforcement of the Act is not necessary in the public interest or for the protection of purchasers by reason of the small amount of the purchase price, or the limited character of the offering, or the limited nature of the common or shared elements[.]; **provided, however, that, as a condition of any exemption granted under this paragraph, the developer shall disclose to prospective purchasers, in a format acceptable to the Agency, such information and documentation as the Agency may deem appropriate, including, without limitation, the following:**

i. The name, address and telephone number of the developer and of any designated agent;

ii. The total number of units proposed for the entire development and the scheduled completion dates;

iii. The total number of units currently being offered and the date by which the current phase of construction is scheduled to be completed;

iv. The types of units being offered (for example, detached homes, townhouses, apartments, non-residential units) and the number of units being offered in each category;

v. Whether or not there is a flood hazard zone on or adjacent to the site;

vi. Information as to who will control the association and when control by the homeowners will begin;

vii. A statement as to who may use common facilities;

viii. Information as to how a prospective purchaser may review the declaration of covenants and restrictions, the by-laws of the association, and the rules and regulations, if any, governing the operation of the development;

ix. A list of management contracts that are or will be in effect and information as to how a prospective purchaser may review any current managment contract or proposed maintenance agreement;

x. A statement of the relationship of the developer to the service provider, if any;

xi. The amount that it is reasonably anticipated that a prospective purchaser would be required to pay, currently and in the near future, for the operation and maintenance of the common facilities, including the amount set aside for reserves, and information as to how a prospective purchaser may review the current budget; and

xii. Information as to how a prospective purchaser may review a copy of the final plat plan, as approved and signed by the local planning board, showing all amenities, facilities and improvements.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Teacher Preparation and Certification

Proposed Readoption with Amendments: N.J.A.C. 6:11

Proposed Repeals: N.J.A.C. 6:3-1.11 and 1.12

Proposed Amendment: N.J.A.C. 6:3-1.24

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 1990-239.

Submit comments by July 18, 1990 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 6:11 expires on December 12, 1990. The State Board of Education has reviewed these rules and found them to be reasonable, necessary and proper for the purposes for which they were originally promulgated.

The following provides an overview of the intent of N.J.A.C. 6:11:

Although the State has regulated the employment of public school teachers since 1903, these rules were promulgated in response to the enactment in 1967 of N.J.S.A. 18A:26-2, which required all school staff to hold valid certificates of employment. The purpose of this statutory provision is to protect the public from potential harm through regulation of the minimum qualifications that must be possessed by those who seek to work in the schools. N.J.A.C. 6:11 defines the various school positions that may exist and defines the minimum qualifications for each. Certificates issued by the State Board of Examiners are evidence that the certificate holder possesses the required qualifications.

These rules were amended in 1983 to upgrade curriculum standards as well as admission, retention and graduation requirements of those college academic programs which prepare prospective teachers for State certification. In 1984, major reforms were enacted to eliminate the practice of "emergency" certification from the academic teaching fields and the area of school administration, to establish an "alternate route" by which certification may be attained by persons who hold appropriate degrees but lack education coursework and to create a system of qualifying examinations for most teaching certificates.

Additional amendments adopted in 1988-89 applied these reforms to the certificates for school principals, district business administrators and teachers of bilingual students and English as a second language. These amendments also required candidates for certification as teachers, principals and business administrators to serve a provisional year of employment under the guidance of a mentor as a condition for earning permanent certification.

The current proposal for readoption of N.J.A.C. 6:11 contains three sets of proposed amendments:

State Board of Examiners

Certain amendments to N.J.A.C. 6:11-2 and 6:11-3 are proposed at the unanimous recommendation of the State Board of Examiners. These amendments are intended to strengthen and clarify the Board's procedures for revocation or suspension of certificates, and for granting of certificates in exceptional cases based upon alternative education and experience.

Certification of Vocational Teachers

Currently, the vast majority of new teachers in the vocational trade/occupation areas are hired through emergency certification. The proposed amendments would replace that approach with a meaningful and credible program of qualification, professional training and certification.

Emergency certification, instituted in 1942, was intended to be a device used in relatively rare and extenuating circumstances. Yet, its use as a matter of standard practice has been imposed on vocational school dis-

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tricts and teachers by inappropriate State requirements for standard certification.

The current requirements assert that teachers of vocational trades/occupations must hold the baccalaureate degree as a prerequisite to employment. Yet, society's most able practitioners in these fields (for example, plumbing, cosmetology, and practical nursing) universally acquire their knowledge and skills through means other than a college education. The current requirements hold, therefore, that successful work experience may be "substituted" for the baccalaureate degree. However, they require 18 credits of general college education and approximately 30 credits of college teacher education coursework, both ostensibly as employment prerequisites.

For many reasons, virtually no candidates exist who meet those prerequisites. As a result, the persons who are most qualified to teach are forced to enter their positions under emergency certification and to labor for years toward meeting requirements that many assert are not essential to their ability to function effectively. Given their State-imposed "second-class" status, many vocational teachers are more likely eventually to leave teaching than they are to complete certification requirements.

Ironically, the emergency approach provides no meaningful public guarantees whatsoever. Teachers employed on emergency certificates are not required to meet any specific entry standards. In addition, they may be placed immediately in the classroom without any special supervision or other accommodation to the fact that they have not met minimum requirements. Further, there is no deadline within which they must complete required training, nor any program specifically designed to qualify them as vocational teachers within a reasonable period.

The proposed amendments would eliminate the practice of emergency certification in the vocational trade/occupation areas. They would also apply the basic principles embodied in other certification policies of the State Board of Education in establishing a meaningful system of certification. Under the proposed amendments, all new teachers of vocational trades/occupations would be required, prior to employment, to acquire four years of approved experience in the particular trade or occupation, to obtain the State licenses or national certificates of that trade, and to pass a communication skills test. Once employed on provisional certification, they would work for one year under a mentor while completing the standard teacher training program required of other teachers. The formal instruction aspect of such training may be completed prior to employment at a college. Upon successful completion of the provisional year, the new teacher would earn a standard certificate.

Certification of Superintendents

The proposed amendments are intended to strengthen requirements for the State licensing of public school superintendents. The recommended requirements are based upon the same principles that undergird the State Board of Education's other licensing policies. Those principles emphasize general degree prerequisites that provide employment access to a broad pool of talented candidates who possess high-quality academic preparation, screening mechanisms that prevent the least able from obtaining employment, a first-year program of continued training, induction and support and permanent licensing decisions that are based upon candidate job performance as well as on academic preparation and pre-employment screening.

State licenses and the minimum requirements associated with them qualify or authorize licensees to perform certain job functions. The provisions concerning licensing authorizations in these rules must provide concise statements of the basic functions that are common to variations of a particular job. If they do not, then it is unclear as to what candidates are being trained and licensed to do, essentially, and what license, if any, ought to be required for a particular local position.

Current authorizations for the school superintendent and principal licenses lack clarity, both individually and in relation to each other. They are based mainly on job titles—for example, the authorization for the principal license says that the license entitles its holder to be a principal or vice principal or to serve in "certain other administrative positions."

The proposed amendments are intended in part to provide a more appropriate statement of those basic functions that the superintendent and principal licenses qualify or authorize their holders to perform. The proposed authorization for the principal license reflects new training requirements adopted by the State Board of Education in September 1988. The authorized functions, which are implicit in the new training requirements but were not specified in code, would emphasize administration of school programs, operations and subunits, and the evaluation of school staff. The proposed authorization for the superintendent license emphasizes administration of district programs, operations and subunits, and the evaluation of district and building administrators.

The respective training programs and certification requirements for principals and superintendents would reflect these differences in State-certified job functions. Since the proposed training requirements for superintendents would develop each of the proposed job functions, previous experience in other educational positions would not be a State-level certification requirement but rather would be determined by local boards of education for specific positions.

It should be noted that certification authorizations are not comprehensive State-prescribed job descriptions. They simply identify those broad functions that the State has chosen to regulate and they communicate to local employers that the State license and its training requirements assure the licensee's basic capability to perform the identified functions, and that all positions involving these State-regulated functions must be occupied by holders of the appropriate license.

Several types of variation may occur at the local level. As suggested above, districts boards of education are responsible pursuant to N.J.A.C. 6:3-1.24(a) for determining what qualifications they want job candidates to possess beyond the State licenses. District boards of education may also add to a particular job functions that are not regulated by the State anywhere in its licensing system. In those instances, too, the local board is responsible for determining what supplemental qualifications candidates must possess.

Local boards may also assign two sets of State-regulated functions to a single individual. In some districts having one, two or three schools, one individual serves both as school principal and district superintendent. In such cases, the job occupant must hold both of the licenses and complete the training requirements for the functions he or she performs.

The proposed repeal of N.J.A.C. 6:3-1.11 and 1.12 would eliminate the process by which each district superintendent position is approved by the county superintendent, the Commissioner of Education and the State Board of Education. The repeal would also eliminate a superintendent job description from a code chapter aimed at the general regulation of school districts. The job description proposed for elimination is archaic, detailed and, in view of proposed changes to certification rules, unnecessary.

The following is a summary of the proposed amendments in subchapters 1 through 11 of N.J.A.C. 6:11:

N.J.A.C. 6:11-1 Division of Teacher Preparation and Certification

The proposed repeal and new rule updates and clarifies the functions and responsibilities of the Division of Teacher Preparation and Certification.

N.J.A.C. 6:11-2 State Board of Examiners

The proposed amendments, recommended by the State Board of Examiners, update the composition of the Board consistent with a recently adopted amendment to N.J.S.A. 18A:6-34 (see P.L.1988, c.124) which added a school business administrator to the membership. The proposed amendments also define the officers and permit the Board to form committees to assist in the conduct of its duties.

N.J.A.C. 6:11-3 Basic Certification Policies

The proposed amendments update and clarify procedures for enforcing compliance with New Jersey laws requiring the certification of all public school teaching staff members. In addition, proposed amendments recommended by the State Board of Examiners strengthen and clarify procedures and responsibilities concerning the revocation or suspension of certificates and the granting of certificates based on alternative education and/or experience. An amendment to N.J.A.C. 6:11-3.14 requires candidates to obtain a notarized statement of loss in order to obtain a duplicate copy of a lost certificate. This amendment establishes in the rules an existing practice which is intended to protect against illicit duplication of certificates. Finally, several recodifications are proposed in this subchapter in order to improve clarity.

N.J.A.C. 6:11-4 Types of Certificates

The proposed amendments clarify the purposes of the various types of certificates. They list as types of certificates the Certificate of Eligibility and the Certificate of Eligibility with Advanced Standing which are referred to throughout N.J.A.C. 6:11. The proposed amendments also eliminate the practice of emergency certification in the field of vocational education. In addition, requirements for the provisional certificate are to be moved from N.J.A.C. 6:11-4 to other more appropriate sections of the chapter (see N.J.A.C. 6:11-5, 9 and 11). An amendment to N.J.A.C. 6:11-4.6 is intended to clarify the established process by which paraprofessional positions are approved.

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N.J.A.C. 6:11-6 Endorsements on the Instructional Certificate

The proposed amendments consolidate endorsements for teachers of vocational trades/occupations through a general provision authorizing teachers in each category to teach in the area of his or her State-approved occupational experience. The proposed amendments transfer to N.J.A.C. 6:11-8 requirements for endorsements that are exceptions to the basic rules iterated in N.J.A.C. 6:11-5.

N.J.A.C. 6:11-8 Exceptions to Requirements for the Instructional Certificate

The proposed amendments delete provisions that are unnecessary or duplicative, and they would devote N.J.A.C. 6:11-8 to exceptional certification requirements. The proposed amendments also establish new requirements for the various vocation trade and occupational teaching certificates. Before seeking employment, all candidates in these fields would be required to demonstrate subject competence, based on a review of work experience and other occupational credentials, as well as competence in the use of the English language.

Provisional certificates would be issued to those candidates who are offered employment. During their first year, these teachers would receive assistance from mentors while they complete the same program of formal professional training that is required of all provisional teachers. The teaching performance of these beginning vocational teachers would be evaluated, and standard certification would be issued to successful teachers at the end of their first year.

The proposed amendments require that provisionally certified candidates be evaluated for standard certification using State criteria and procedures. If this requirement is adopted, the Department of Education will pursue the development of such criteria and procedures and will propose their adoption prior to the implementation date of the rule.

Pursuant to established rules, candidates would have the option of completing the formal instruction aspect of their professional training prior to employment through an approved college program (see N.J.A.C. 6:11-5 and 6:11-7).

Proposed amendments to this section also establish effective dates for recently adopted rules for the certification of teachers of bilingual students and English as a second language. These effective dates were inadvertently omitted from a previous adoption of rules (see: 21 N.J.R. 3937(a), December 18, 1989 issue of the New Jersey Register). In response to an inquiry from the Public Advocate, the Attorney General requested that the dates be reinserted.

N.J.A.C. 6:11-9 Bases for Issuance of Administrative and Supervisory Certificates

Subchapter 9 is proposed for repeal thus eliminating existing rules, which are duplicative, unnecessary, or contradictory of other more recently adopted policies.

N.J.A.C. 6:11-10 through 12 will be recodified to reflect the deletion of existing subchapter 9.

N.J.A.C. 6:11-10 Requirements for Administrative Certification

The proposed amendments clarify the basic job functions that State certification prepares and authorizes certificate holders to perform. The proposed amendments require applicants for the chief school administrator endorsement to complete a master's degree in administration; pass a written examination; complete a preliminary assessment of performance; and serve a year of provisional employment under the supervision of a State-appointed mentor as part of a program of job induction and continued training. The proposed amendments eliminate the special endorsement that is currently issued to persons who hold the title of executive superintendent pursuant to N.J.S.A. 18A:17A-1. Holders of this title would be required to possess the chief school administrator endorsement.

The proposed amendments require that provisionally certified candidates be evaluated for standard certification using State criteria and procedures. If this requirement is adopted, the Department of Education will pursue the development of such criteria and procedures and will propose their adoption prior to the implementation date of the rule.

N.J.A.C. 6:11-11 Requirements for educational services certification

The proposed amendment to N.J.A.C. 6:11-12.5(e) extends the effective date of new requirements for the substance awareness coordinator endorsement two additional years. Reductions in the State Department of Education's budget for fiscal year 1990 eliminated funding needed for implementation of these requirements.

Social Impact

Prior to the enactment in 1967 of N.J.S.A. 18A:26-2, New Jersey public schools experienced chronic shortages of qualified new teachers. Therefore, the "emergency" certificate was created in 1942 to allow the waiver of any and all State requirements in instances where qualified candidates were unavailable. In no year between 1942 and 1967 were fewer than 1,000 emergency certificates issued and, in some years, as many as half of all new teachers were employed through emergency waivers.

N.J.A.C. 6:11 more clearly defined the positions for which certificates are required and the minimum qualifications needed for each. However, teacher shortages persisted and, due to these shortages and to ineffective State requirements, statistical indicators of the quality of certificate applicants were not satisfactory.

Reforms adopted during the 1980s were intended to increase both the supply and the general quality of those who apply for State certificates. Requirements were redefined to achieve a closer relationship between mandated qualifications and actual quality. Emergency waivers were eliminated in favor of an alternate preparation format that made certification routinely more accessible to a wider range of essentially qualified persons. Qualifying examinations were established to screen out those at the lowest levels of academic accomplishment.

Provisional support systems were established to help new staff to succeed while assuring that permanent certification is not acquired by those who cannot demonstrate minimum on-the-job capability.

The State Board of Education continues to review the results of these prior amendments and has found them thus far to have succeeded both in doubling teacher supply and in substantially improving statistically indicators of the quality of certification applicants.

Proposed amendments to N.J.A.C. 6:11-3 improve the effectiveness and efficiency of the State Board of Examiners' procedures for revocation and suspension of certificates by defining more clearly the procedures for enforcing certification requirements; the conditions under which revocation and suspension cases are brought before the Board; the process by which such cases are considered; and the grounds on which such cases are judged. The amendments will better serve those State laws which are intended to protect the public by assuring through certification that all teaching staff members possess minimally essential preparation and competency.

Proposed amendments to N.J.A.C. 6:11-8 would make vocational teaching more attractive to talented candidates by removing the imposed stigma of emergency certification along with its associated negative professional consequences. They would also provide a formal recognition of candidates' work experience and other legitimate means by which persons in the affected fields typically document their expertise. Therefore, the plan would increase the supply and the quality of new candidates. The amendments would also ensure that all new teachers in these fields meet defined entry requirements before they are hired in the public schools. They would require these teachers to complete their training for standard certification within a prescribed and reasonable period. The amendments would also provide on-the-job support and assistance to these new teachers and would make standard certification contingent in part on satisfactory performance as a beginning teacher. In short, the proposed amendments would significantly raise standards, yet would also increase the supply of qualified candidates.

Proposed amendments to N.J.A.C. 6:11-10 improve the quality of the superintendent licensing system in several ways. They would require candidates to complete preparation that is directly relevant to the functions of the various administrative positions. They would foster competition among various types of college preparation programs and thus stimulate improvements. They would screen out the least able job candidates through the use of a written exam. They would also provide a program of assessment, support, supervision and continued training that will help to ensure the success of the vast majority of first-year superintendents while denying permanent licenses to the few who cannot do the job with minimal competence.

Economic Impact

Certificates to teach or administer programs of education qualify candidates for gainful employment. Therefore, New Jersey, like virtually all other states, requires certification candidates to pay tuition for the acquisition of academic degrees and other costs associated with the qualifying procedure. Therefore, the cost to the general public has been negligible—while some public funds have been appropriated to initiate certain reforms, the fee revenues generated by the Division of Teacher Preparation and Certification have equaled its expenditures over the past five years.

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The proposed amendments would generate some new candidate costs but would not require funding by the general public.

Vocational certification candidates would be required to pay an examination fee (currently $45.00) and a training fee (currently $1,450). However, the overall cost of qualifying would be reduced through elimination of tuition costs associated with the completion of currently required but unnecessary courses. In addition, candidates would not be required to pay training costs unless offered salaried employment.

The proposed amendments for certifying chief school administrators will be supported by fees paid by certification candidates. These fees are likely to include an examination fee (currently $45.00), a performance assessment fee (estimated $1,000) and variable tuition fees. There will be no significant ongoing cost to the public.

Regulatory Flexibility Statement

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

Certification rules apply, by statute, exclusively to all teaching staff members employed by public schools of the State of New Jersey. They do not apply to nonpublic institutions. However, certain individuals employed by nonpublic schools frequently elect to obtain certificates in order to satisfy requirements of their employers or Federal agencies, or other rules of the State Board of Education.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 6:11.

Full text of the proposed repeal of Subchapter 9 may be found in the New Jersey Administrative Code at N.J.A.C. 6:11-9.

Full text of the proposed amendments follows:

6:3-1.11 [Superintendency; chief school administrator] **(Reserved)**

[(a) Any superintendency hereafter approved shall meet the following conditions:

1. The superintendent shall hold an appropriate certificate prescribed by the State Board of Education.

2. The county superintendent shall certify the necessity for the position which shall require the approval of the Commissioner of Education and the State Board by the county superintendent of schools shall be accompanied by an application for such approval from the employing district board(s) of education.

(b) Any application from a district board of education for the abolishment of the position of superintendent of schools shall be recommended by the county superintendent of schools, and approved by the Commissioner of Education and the State Board of Education. Such requests shall be accompanied by a resolution of the district board of education citing reasons for the request.

(c) Each chief school administrator who is an administrative principal shall be the holder of a school administrator's certificate.]

6:3-1.12 [Duties of district superintendent of schools; chief school administrator] **(Reserved)**

[(a) In the performance of his or her duties the superintendent shall visit the schools under his or her jurisdiction and shall examine into their condition and progress.

(b) He or she shall be responsible for the supervision of instruction and for advising the principals and teachers in procedures, methods, and materials of instruction and he or she shall be responsible for the discipline and conduct of the schools.

(c) He or she shall exercise such educational and administrative leadership, supervision, and guidance as may be necessary for producing the best possible educational conditions and outcome.

(d) He or she shall appoint such clerks as may be authorized by the district board(s) of education.

(e) He or she shall nominate to the district board(s) of education such assistant superintendents as shall be authorized by the district board(s) of education.

(f) He or she shall recommend to the district board(s) of education formal appointment of all teaching staff members.

(g) It shall also be his or her duty to recommend and prepare for the district board(s) of education a list of textbooks and reference and library books, materials of instruction, instructional equipment and school supplies for the approval by the district board(s) of education.

(h) He or she shall ascertain if teachers are properly certified and shall report to the district board(s) of education teachers who are not properly certified.

(i) He or she shall make reports on the schools under his or her supervision to his or her district board(s) of education, and, when so required, to the county superintendent, to the Commissioner of Education and the State Board of Education.

(j) Each chief school administrator who is an administrative principal shall perform all of the duties enumerated in this section.]

6:3-1.24 Local district responsibility for employment of staff

(a) State certification requirements are those structured training and competency evaluation requirements that are prescribed by the State Board of Education in order to protect the public. In addition, the teaching and other background experiences of candidates for professional positions may often be important considerations in the local selection of specific staff for specific positions. Each district board of education shall determine the types of background experiences and personal qualities, if any, that the district requires or prefers successful candidates for specific positions to possess in addition to appropriate [state] **State** certification. Such local requirements shall be based upon a careful review of the position in question, and the requirements shall emphasize the nature of experience and the quality of individual achievement desired, rather than only the amount of experience, and shall be applied [flexibility] **flexibly** without having the force of legal requirements.

(b) (No change.)

(c) District boards of education shall assign to administrative positions those functions which are consistent with the individual qualifications of the position occupant, and shall support the establishment of structures for making instructional decisions that take administrator qualifications into account.

CHAPTER 11
TEACHER PREPARATION AND CERTIFICATION

SUBCHAPTER 1. [BUREAU] **DIVISION** OF TEACHER PREPARATION AND CERTIFICATION

6:11-1.1 [Function] **Functions**

[(a) The Bureau of Teacher Preparation and Certification is the focus of the Department of Education's activities in establishing standards for well-prepared teachers, administrators and other personnel for the public schools in New Jersey.

(b) The Bureau works closely with colleges and universities which prepare teachers and other school personnel.

(c) The Bureau assists the colleges to establish and expand teacher education programs in relationship to the need of the schools in New Jersey and reviews and approves these programs in terms of standards adopted by the State Board of Education.

(d) The Bureau works directly with local school districts and consortia of institutions which offer State-approved training programs leading to the certification of teachers, and reviews these programs in accordance with standards adopted by the State Board of Education.]

(a) The Division of Teacher Preparation and Certification is the unit of the State Department of Education that is responsible for:

1. Examining credentials and issuing certificates that qualify individuals to seek employment as teaching staff members in the public schools of the State of New Jersey;

2. Providing staff support to the State Board of Examiners;

3. Assisting in the development of policies that govern the certification of teaching staff members;

4. Coordinating, monitoring and evaluating those aspects of college academic programs and those training programs of district boards of education that lead to educational certificates, and recommending their periodic approval by the Commissioner of Education;

5. Coordinating, monitoring and evaluating the administration of tests and other assessments that are required for educational certification;

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6. Maintaining reciprocal agreements with other states and territories concerning the certification of educational practitioners;

7. Maintaining and reporting data on the supply and quality of newly certified teaching staff members; and

8. Assisting district boards of education in the recruitment and employment of teaching staff members.

SUBCHAPTER 2. STATE BOARD OF EXAMINERS

6:11-2.1 Membership

(a) There shall be a State Board of Examiners, consisting of the Commissioner of Education, ex officio, and one assistant commissioner of education, two presidents of State colleges, one county superintendent, one superintendent of schools of a Type I district, one superintendent of a Type II district, one high school principal, one elementary school principal, one librarian employed by the [state] **State** or by one of its political subdivisions, **one school business administrator,** and four teaching staff members other than a superintendent, principal or librarian, all of whom shall be appointed by the [commissioner] **Commissioner** with the approval of the State Board.

(b) The officers of the State Board of Examiners shall be the chairman and the secretary of the Board.

(c) The chairman of the State Board of Examiners shall have the power to appoint committees made up of less than a majority of the full Board to assist the Board in the conduct of its duties.

6:11-2.2 Duties

The **State** Board **of Examiners** shall grant appropriate certificates to teach or to administer, direct, or supervise the teaching instruction or educational guidance of pupils in public schools operated by district boards of education, and such other certificates as it shall be authorized to issue by law, based upon certified scholastic records, documented experience or upon examinations[, and may revoke or suspend such certificate. It is the responsibility and authority of the State Board of Education upon recommendation of the Commissioner of Education to establish rules and regulations governing the issuance, revocation and suspension of certificates, including rules governing types of certificates, authorizations and certification requirements. All actions of the State Board of Examiners shall be taken in accord with rules prescribed by the State Board of Education]. **The Board may, subject to the procedures set forth in N.J.A.C. 6:11-3, refuse to issue a certificate where the applicant has been found by a court or administrative agency of competent jurisdiction, to have engaged in conduct which would have provided adequate grounds for the revocation of the certificate, if then held. The Board shall not refuse to issue a certificate without providing the applicant an opportunity to be heard pursuant to N.J.A.C. 6:11-3.15.**

6:11-2.3 Certificates and endorsements

Consistent with N.J.S.A. 18A:6-38, the State Board of Examiners shall issue three educational certificates: the Instructional Certificate, the Administrative Certificate and the Educational Services Certificate. The Board may issue for each teaching, administrative or service position a special endorsement under the appropriate certificates.

SUBCHAPTER 3. BASIC CERTIFICATION [REQUIREMENTS] **POLICIES**

6:11-3.1 [Teacher's certificate] **Certificate** required

[(a) No teacher shall be entitled to any salary unless such teacher shall be the holder of an appropriate teacher's certificate (N.J.S.A. 18A:26-2).

(b) The standard employment contract supplied by the Commissioner of Education states that the teacher ". . . before entering on the duties of such position will exhibit the certificate to the County Superintendent of Schools and to the Chief School Administrator of the district in which such school is situated, or to the Secretary in the district where there is no Chief School Administrator."

(c) The certificates should always be kept in the possession of the teacher.]

(a) Pursuant to N.J.S.A. 18A:26-2, the requirement of certification applies to any person who is employed by a district board of education to perform duties that are regulated through certification rules pursuant to this chapter. Such duties shall be performed by the holder of the required certificate or under his or her direct and continuous personal supervision.

(b) The chief school administrator of the employing district board of education shall require each newly employed or reassigned teaching staff member to exhibit an appropriate certificate before the teaching staff member assumes responsibility for the performance of regulated duties.

(c) The chief school administrator shall annually exhibit to the county superintendent of schools the certificates of all newly assigned teaching staff members. The county superintendent of schools shall notify in writing the employing district board of education and the Commissioner of Education of any instance in which a teaching staff position is occupied by a person who has failed to exhibit an appropriate certificate.

(d) Pursuant to N.J.S.A. 18A:27-2, any contract or engagement of any teaching staff member shall cease and terminate whenever the employing district board of education shall ascertain by written notice received from the county or district superintendent of schools, or in any other manner, that such person is not, or has ceased to be, the holder of an appropriate certificate required by this title for such employment, notwithstanding that the term of such employment shall not then have expired.

(e) The Commissioner of Education may direct any district board of education that, properly notified, fails to terminate the contract of an uncertified or improperly certified teaching staff member to show cause why the amount of the teaching staff member's per diem salary should not be withheld from the district board of education's State financial aid for each day the teaching staff member remains employed. If such district board of education fails within 20 days to respond or to show adequate cause, either by exhibiting an appropriate certificate or by terminating the contract of the uncertified teaching staff member, the Commissioner of Education, in order to fulfill his or her responsibility for ensuring the certification of teaching staff members and the thorough and efficient education of students, may reduce State financial aid to such district board of education by the amount of the uncertified teaching staff member's per diem contract salary (N.J.S.A. 18A:58-16).

[6:11-3.2 Employment without certificate prohibited

Any contract or engagement between a board of education and a teacher shall cease and be of no effect whenever said board shall ascertain by notice in writing that said teacher is not in possession of a proper teacher's certificate. This rule shall apply even though the term of the contract may not have expired. (N.J.S.A. 18A:27-2)]

6:11-[3.3]**3.2** [State Board of Education responsible for rules; fees required] **Fees**

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

(c) The State Board may establish from time to time a fee schedule for services related to the issuance of certificates which includes, but is not limited to, fees charged by [local districts] **district boards of education** to provisional teachers to pay for their training. This fee schedule shall be in addition to any tuition and fees charged by institutions of higher education for courses and credits offered in connection with State-approved training programs.

(d) The State [Board] **Department** of Education may establish fees which candidates shall pay in order to obtain services which are offered but not required such as the inclusion of candidates' names or other personal inforamtion in publications of available candidates.

[6:11-3.4 Teaching staff member defined

"Teaching staff member" means a member of the professional staff of any district or regional board of education, or any board of education of a county vocational school, holding office, position or employment of such character that the qualifications, for such office, position or employment, required him or her to hold a valid and effective standard or provisional or emergency certificate, appropriate to his office, position or employment, issued by the State Board of Examiners and includes a school nurse.

6:11-3.5 Enforcement

(a) The local Chief School Administrator shall ascertain if professional staff members are properly certificated and shall report to

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the appropraite district board of education those who are not certificated.

(b) The county superintendent shall take measures necessary for the enforcement of the State law requring district boards of education to employ only those professional staff members who are properly certificated for the positions held.

(c) The county superintendent shall notify the appropriate district board of education and the Commissioner of Education immediately when he or she learns of a professional staff member holding a position in violation of the State certification laws and rules.]

6:11-[3.6]**3.3** (No change in text.)

6:11-[3.7]**3.4** [Revocation] **Grounds for revocation** and suspension of certification

[(a) Any certificate that has been issued, or that may hereafter be issued under the rules of the State Board of Education, may be revoked or suspended by the State Board of Examiners for] **The State Board of Examiners may revoke or suspend the certification of any certificate holder on the basis of demonstrated** inefficiency, incapacity, conduct unbecoming a teacher, or other just cause. **Other just cause shall include, but not be limited to, offenses within the terms of the forfeiture (N.J.S.A. 2C:51-2) or disqualification statutes (N.J.S.A. 18A:6-7.1). The State Board of Examiners may revoke or suspend a certificate upon evidence that the applicant did not meet the qualifications for the certificate at the time of issuance. The Board may not revoke or suspend a certificate without providing the applicant**[, provided that no certificate shall be revoked or suspended unless the holder thereof shall have been given] **an** opportunity to be heard **pursuant to N.J.A.C. 6:11-3.**

[(b) Certification revocation or suspension procedures are as follows:

1. The State Board of Examiners is empowered by N.J.S.A. 18A:6-38 to revoke or suspend any certificate issued by that board. Cases which merit revocation or suspension consideration may be brought before the State Board of Examiners for review from any of the following sources.

i. Upon the decision of the Commissioner of Education, cases contested before the Commissioner of Education, resulting in loss of tenure or dismissal of a teacher or teaching staff member for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause, shall be forwarded to the State Board of Examiners for determination of possible revocation or suspension. The State Board of Examiners, after review of the record, shall determine by public vote whether or not the offense as proven is of such a nature as to warrant revocation or suspension consideration, or dismissal of the case. In such cases where the decision of the State Board of Examiners is to move for revocation or suspension of certification, the Secretary of the State Board of Examiners shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate holder, the board shall refer the case to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.).

ii. Upon knowledge of any criminal conviction, the county superintendent of schools or the Chief School Administrator shall notify the Commissioner of Education directly of such a criminal conviction involving a certificate holder, as described in N.J.S.A. 2C:51-2.a. The Secretary of the State Board of Examiners, upon being notified in writing by the Commissioner of Education of such a criminal conviction or guilty plea involving a certificate holder, whether such knowledge comes as a result of a notification by the county superintendent of schools or chief school administrator or otherwise, shall communicate with the court to obtain the judgment of conviction, copy of testimony and other evidence for presentation of the case before the State Board of Examiners. The Secretary of the State Board of Examiners shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate holder, the State Board of Examiners shall refer the case to the Office of Administrative Law for a hearing, in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.).

iii. Upon the filing of a petition by any person for revocation or suspension of a certificate with the State Board of Examiners against a certificate holder pursuant to (a) above:

(1) A petitioner must furnish to the Secretary of the State Board of Examiners evidence of proof of service of petition to the other party or parties involved.

(2) The Secretary of the State Board of Examiners shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. Upon timely filing of an answer, the board shall determine whether a matter is a contested case. Each contested case shall be referred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.).

2. After the State Board of Examiners has acted upon the initial decision of the administrative law judge in accordance with N.J.S.A. 18A:6-38, where the decision of the board has resulted in revocation or suspension of a certificate, the Secretary of the State Board of Examiners shall notify the following:

i. The 50 states and other such agencies which are part of the Interstate Certification Project;

ii. All New Jersey county offices of education;

iii. Appropriate governmental pension and annuity funds, or retirement services.

3. Decisions pertaining to revocation or suspension made by the State Board of Examiners shall be appealable to the State Board of Education, in accordance with the provisions of N.J.S.A. 18A:6-28.]

6:11-3.5 District reporting responsibility

In cases in which teaching staff members accused of misdemeanors, crimes or conduct unbecoming which might warrant revocation or suspension, resign or retire from their positions, either before tenure proceedings have been brought or prior to the conclusion of such proceedings, it shall be the responsibility of the chief school administrator of that district to notify the State Board of Examiners of the alleged conduct pursuant to N.J.A.C. 6:11-3.6(a)2. Should the Board of Examiners issue an Order to Show Cause, it shall be the responsibility of the district which reported the conduct to cooperate with the Board of Examiners in ascertaining and presenting the facts underlying such allegations.

6:11-3.6 Procedures for revocation or suspension of certificates

(a) The procedure for issuance of an Order to Show Cause shall in all cases afford the individual notification of the charges and an opportunity to be heard with respect thereto. The following procedures are applicable to cases brought to the State Board of Examiners by reason of specific statutes and regulations:

1. Upon the decision of the Commissioner of Education, cases contested before the Commissioner of Education, resulting in loss of tenure or dismissal of a teacher or teaching staff member for inefficiency, incapacity, conduct unbecoming a teacher, or other just cause, shall be forwarded to the State Board of Examiners for determination of possible revocation or suspension. The State Board of Examiners, after review of the record, shall determine by public vote whether or not the offense as proven is of such a nature as to warrant revocation or suspension consideration, or dismissal of the case. In such cases where the decision of the State Board of Examiners is to move for revocation or suspension of certification, the Secretary of the State Board of Examiners shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate

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holder, the board shall refer the case to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.). Where no answer is received to the allegations set forth in the Order to Show Cause, the State Board of Examiners shall proceed to a decision as to the revocation or suspension on the basis of the evidence before it.

2. Upon knowledge of any criminal conviction, the chief school administrator shall notify the county superintendent of schools directly of such a criminal conviction involving a certificate holder, as described in N.J.S.A. 2C:51-2a. The county superintendent of schools shall notify the Commissioner of Education of the criminal conviction of the certificate holder. The Secretary of the State Board of Examiners, upon being notified in writing by the Commissioner of Education of such a criminal conviction or guilty plea involving a certificate holder, whether such knowledge comes as a result of a notification by the county superintendent of schools or chief school administrator or otherwise, shall communicate with the court to obtain the judgment of conviction, copy of testimony and other evidence for presentation of the case before the State Board of Examiners. Where authorized by the State Board of Examiners, the Secretary of the Board shall issue an order to show cause and shall issue a statement of charges upon which revocation or suspension will be considered, which shall not preclude the subsequent inclusion of new findings, and shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. After an answer has been filed on behalf of the certificate holder, the State Board of Examiners shall refer the case to the Office of Administrative Law for a hearing, in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.).

3. Upon the filing of a petition by any person for revocation or suspension of a certificate with the State Board of Examiners against a certificate holder pursuant to (a) above:

i. The petitioner shall furnish to the Secretary of the State Board of Examiners evidence of proof of service of petition to the other party or parties involved; and

ii. The petition shall be accompanied by a sworn statement that the affiant has firsthand knowledge supporting the charges set forth in the petition.

(b) The Secretary of the State Board of Examiners shall notify the certificate holder that an answer must be filed with the State Board of Examiners no later than 20 days from the receipt of that notice. Upon timely filing of an answer, the board shall determine whether the matter is a contested case. Each contested case shall be referred to the Office of Administrative Law for a hearing in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.). Cases that are not contested shall be referred by the Secretary of the State Board of Examiners for determination of revocation or suspension of the certification.

(c) Nothing in the foregoing shall preclude the State Board of Examiners from issuing an Order to Show Cause on its own initiative where said Board has reason to believe that grounds for revocation or suspension exist.

(d) After the State Board of Examiners has acted upon the initial decision of the administrative law judge in accordance with N.J.S.A. 18A:6-38 where the decision of the board has resulted in revocation or suspension of a certificate, the Secretary of the State Board of Examiners shall notify the following:

1. The 50 states and territories and other such agencies which are part of the Interstate Certification Project;

2. The county superintendent of schools;

3. Appropriate governmental pension and annuity funds, or retirement services; and

4. The chief school administrator in the employing district.

(e) Certificates that have been revoked or suspended shall be surrendered to the Secretary of the State Board of Examiners within 15 days after receipt of revocation or suspension order.

(f) A suspended certificate may be reinstated at the end of the suspension period, provided that the certificate holder has met all conditions set forth by the State Board of Examiners and has no other pertinent charges or cases pending before the State Board of Examiners or the State of New Jersey. The State Board of Examiners may require satisfactory evidence that the reasons for the suspension have ceased to be a factor in the performance or conduct of the teacher. The decision for reinstatement or reissuance shall include reasons therefor, and any terms and conditions that the State Board of Examiners deems appropriate to impose as a condition of reinstatement or reissuance.

(g) Where an applicant for certification indicates that he or she previously held a certificate issued by the State Board of Examiners, which certificate was revoked, the Board of Examiners may require the applicant to set forth the pertinent circumstances relating to the revocation, and require the applicant to demonstrate to the Board rehabilitation or other evidence that he or she no longer poses a threat to children that are entrusted in his or her care.

6:11-3.7 Appeal of decisions

Final decisions made by the State Board of Examiners shall be appealable to the State Board of Education pursuant to the provisions of N.J.S.A. 18A:6-28.

6:11-3.11 Minimum degree and age requirement

[In addition to meeting other requirements specified in these rules, applicants] **Applicants** for teachers certificates must be at least 18 years old, have been graduated from an approved high school or have an equivalent education as determined by the State Board of Examiners and have received a baccalaureate degree from an accredited institution of higher education [except in certain vocational fields as indicated in N.J.A.C. 6:11-6.3]. **The requirement of a baccalaureate degree shall not apply to applicants for the vocational endorsements in N.J.A.C. 6:11-8.1.**

6:11-3.14 Replacement of lost certificates

Replacement of a lost certificate requires completion of the appropriate application form, **a notarized statement of loss** and payment of required fee.

6:11-3.15 Methods of appeal

(a) An applicant who has reason to believe that his or her application has not been given proper consideration **by the Office of Teacher Certification** has the right to appeal the decision. [The applicant may be accompanied by a personal representative of his or her choice.]

(b) [Information concerning procedure for making such an appeal may be secured from the Secretary of the State Board of Examiners or the office of the county superintendent of schools.] **The appeal shall take the form of a written petition accompanied by a sworn statement stating evidence supporting the applicant's preparation to complete the certification requirement in question.**

1. The applicant shall provide in writing evidence that substantiates the appeal.

(c) The State Board of Examiners shall review the information provided by the applicant and shall render a decision no later than the second meeting after the information has been received by the Secretary. The decision shall be communicated in writing by the Secretary to the applicant.

6:11-3.16 Validation of college degrees and professional preparation

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

(c) Professional preparation required for New Jersey [teacher's] certificates will be accepted from;

1.-3. (No change.)

(d) (No change.)

6:11-3.19 Issuance of a certificate

(a) The appropriate certificate will be issued by the [Bureau] **Division** of Teacher Preparation and Certification upon completion of all requirements. The certificate should always be kept in the possession of the teacher.

(b) (No change.)

6:11-3.23 **Notice of certification deficiency reguarding substitution** of alternative [edcuational] **educational** background and/or experience

[(a) Notice of certification deficiency rules are:]

[1.] The Secretary of the State Board of Examiners (**Secretary**) shall notify all unsuccessful applicants for certification of the

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certification requirements lacking and of the procedures set forth in [(b) below] **N.J.A.C. 6:11-3.24** for submitting evidence of alternative education and/or experience.

[(b) Offer] **6:11-3.24 Substitution** of alternative education and/or experience [rules are:]

[1.]**(a)** Any applicant lacking required preparation may [supply] **provide** the State Board of Examiners with evidence of alternative education and/or experience except that such education and/or experience may not be substituted for a passing score on the State certification test nor may the State Board of Examiners in any circumstances waive the test requirement.

[2.]**(b)** [Such material shall be supplied on forms provided by the Bureau of Teacher Preparation and Certification. These forms must be requested by the successful applicant within 15 days of the date of the Secretary's notice that the certificate has been denied.] **The applicant shall submit his or her request in writing to the secretary for review of substitution of alternative educational background and/or experience by the State Board of Examiners.**

[3. The applicant wishing to substitute alternative education and/or experience for routine credentials shall complete and return 25 copies of the forms supplied pursuant to paragraph 2 above within 30 days of their receipt.] **(c) The Secretary shall provide review procedures (see N.J.A.C. 6:11-3.25 through 3.30) to the applicant upon request.**

(d) The applicant shall submit to the Secretary for review by the Board, 20 copies of information and documentation for consideration of substitution of alternative educational background and/or experience.

[(c)] **6:11-3.25** Review of alternative education and/or experience by State Board of Examiners [rules are:]

[1.]**(a)** The Secretary shall review [said forms] **information submitted by the applicant** for sufficiency and transmit [them] **it** to the State Board of Examiners[, which shall] **for** review [their contents] no later than its second regular meeting after [said forms have] **the information has** been received by the Bureau.

[2.]**(b)** In reviewing the applicant's alternative education and/or experience, the Board of Examiners may request written commentary by appropriate members of the staff of the Department of Education[.], **who shall have direct knowledge of and who shall be able to document the alternative education and/or experience of the applicant.** Copies of any such commentary shall be supplied to the applicant.

[(d)] **6:11-3.26** Public discussion of alternative education and/or experience [rules are:]

[1.]**(a)** The Secretary shall give an applicant not less than [10] **15** days' notice of the Board of Examiners' meeting at which his or her application for certification based on alternative education and/or experience [is to] **will** be considered.

[2.]**(b)** The applicant may be present at [said] **the** meeting and may be accompanied by a [personal] representative of his or her choice **who has direct knowledge of his or her experience**.

[3.]**(c)** The applicant may be questioned by the Board of Examiners and shall be given an opportunity to be heard [personally or through a representative].

[(e) Decision rules are:] **6:11-3.27 Rendering of decisions on applications for substitution**

[1.]**(a)** The Board of Examiners shall render its decision on each application for substitution **of educational background and/or experience** no later than [its] **the** first regular meeting after the [application has been considered publicly] **information provided by the applicant was reviewed by the Board of Examiners**.

[2.]**(b)** (No change in text.)

[(f)] **6:11-3.28** Appeal [rules are:] **of decisions on applications for substitution**

[1. Said decision] **Decisions** shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24-1[1 et seq.].

6:11-[3.24]**3.29** (No change in text.)

6:11-[3.25]**3.30** Procedure for provisional staff contesting of [certification recommendations of mentors] **recommendations for standard certification**

(a) When the Secretary of the State Board of Examiners receives any adverse recommendation concerning the standard certification of a provisional staff member, the Secretary shall notify the provisional staff member of the date upon which the State Board of Examiners will consider such recommendation. If the adverse recommendation has not already been contested by the provisional staff member pursuant to N.J.A.C. 6:11-[10.8]**9.5**(b)6v or N.J.A.C. 6:11-[5.7]**5.5**(e), the Secretary shall allow the provisional staff member an additional opportunity to provide the State Board of Examiners with written materials documenting the reasons why the provisional staff member believes standard certification should be awarded.

(b)-(d) (No change.)

SUBCHAPTER 4. TYPES OF CERTIFICATES

6:11-4.1 Standard certificate

[Certificates with lifetime validity are issued to candidates who meet New Jersey Standards for standard certification.] **The standard certificate is a permanent certificate issued to candidates who have met all requirements for State certification.**

6:11-4.2 Provisional certificate

[(a) A provisional certificate is a substandard one-year certificate issued to an applicant who is not eligible for a standard certificate. A provisional certificate may be issued under certain circumstances to an applicant whose preparation does not meet completely the New Jersey requirements for standard certification.] **The provisional certificate is a temporary one-year certificate issued to candidates who have met requirements for initial employment as part of State-approved district training program or residency leading to standard certification.**

[(b) To be eligible for the provisional certificate in instructional fields the applicant shall:

1. Hold a bachelor's degree from an accredited college or university (except in certain technical fields as noted in N.J.A.C. 6:11-6.3(c));

2. Pass a subject matter test for teaching field(s) or a test of general knowledge for the elementary endorsement. In order to be eligible to take a subject field test, the applicant must have completed at least 30 semester hours in a coherent major or five years of experience in the subject fields; and

3. Have been offered employment in a New Jersey public school district approved by the commissioner at the recommendation of the Board of Examiners to offer a certification training program;

(c) Persons who pass the appropriate test as set forth in (b)2 above shall be granted a formal document which will enable them to seek employment as provisional teachers in the public schools.

(d) To be eligible for the provisional certificate for admission to a Principal Residency Program pursuant to N.J.A.C. 6:11-10.8(b), the applicant shall:

1. Hold a master's degree in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. In order to be accepted for certification, the degree program must provide study in the following topics, which represent those areas of management that are directly related to education and the principalship: leadership and human resource management; communications; quantitative decision-making; finance; and law. Degree programs may provide study in other areas at the discretion of the sponsoring institution and its faculties. This requirement shall be effective (upon adoption of this amendment).

2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communications, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiencies that are validated as being most directly relevant to education and the essential duties of school principals. This requirement shall be effective September 1, 1989;

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3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises which simulate the duties of school principals, and authorize the state to release the written results of this assessment to potential sponsoring districts and schools. In particular, there shall be a formal assessment of each candidate's teaching competencies that are essential to principals' ability to lead and supervise instruction and curriculum. The State Department of Education shall, with appropriate professional input, develop and validate the criteria, instruments, and procedures for conducting such assessments. This requirement shall be effective September 1, 1989; and

4. Obtain an offer of employment in a position requiring the principal endorsement in a school or district which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

5. Applicants who meet the requirements of (d)1 through 3 above shall receive eligibility papers which will permit the applicant to seek employment in positions that require the principal endorsement.

(e) To be eligible for the provisional certificate in the field of speech-language pathology, the applicant shall:

1. Hold a master's degree in the field of speech-language pathology; and

2. Pass a State-administered examination of knowledge in the area of speech-language pathology.]

6:11-4.3 Emergency certificate

(a) An emergency certificate is a substandard one-year certificate issued only in the field of educational services, teacher of the handicapped, teacher of the blind and partially sighted, **and** teacher of the deaf and hard of hearing [and certain technical fields (see N.J.A.C. 6:11-8.3)].

(b) (No change.)

6:11-4.4 Certificate of eligibility

(a) A certificate of eligibility is a permanent certificate that may be issued to persons who meet academic degree and examination requirements for provisional employment. Holders of certificates of eligibility shall not assume responsibility for a job assignment until they have been issued provisional certificates.

(b) A certificate of eligibility with advanced standing is a permanent certificate issued to candidates for standard certificates who have completed certain requirements of a State-approved district training or residency program through advance completion of an approved college preparation program.

6:11-[4.4]**4.5** (No change in text.)

6:11-[4.5]**4.6** Paraprofessional approval

(a) School aides and/or classroom aides, assisting in the supervision of pupil activities under the direction of a principal, teacher or other designated certified professional personnel, shall be approved [in accordance with regulations and procedures adopted by the State Board of Education in February, 1968. Copies of these procedures are available from the Bureau of Teacher Preparation and Certification or the offices of] **by the** county superintendent of schools.

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

SUBCHAPTER 5. REQUIREMENTS FOR INSTRUCTIONAL CERTIFICATE

6:11-5.1 Requirements for the provisional certificate

(a) To be eligible for the provisional certificate in instructional fields, **except as indicated in N.J.A.C. 6:11-8,** the candidate shall:

1.-4. (No change.)

(b) Candidates who complete the requirements in (a)1 through [4] **3** above shall be issued Certificates of Eligibility which will permit them to seek provisional employment in positions requiring instructional certification.

(c) (No change.)

6:11-5.2 Requirements for the standard certificate

(a) To be eligible for the standard certificate in instructional fields, **except as indicated in N.J.A.C. 6:11-8,** the candidate shall:

1.-2. (No change.)

(b) (No change.)

6:11-5.3 Requirements for State-approved district training programs

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

(f) Each State-approved district training program shall provide essential knowledge and skills to provisional teachers through the following phases of training:

1. A full-time seminar/practicum of no less than 20 days duration which takes place prior to the time at which the provisional teacher takes full responsibility for a classroom. This seminar/practicum shall provide formal instruction in the essential areas for professional study listed in [N.J.A.C. 6:11-8.2] **(g) below.** It should introduce basic teaching skills through supervised teaching experiences with students. The seminar and practicum components of the experience shall be integrated and shall include an orientation to the policies, organization and curriculum of the employing district. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).

2. A period of intensive on-the-job supervision beginning the first day on which the provisional teacher assumes full responsibility for a classroom and continuing for a period of at least 10 weeks. During this time, the provisional teacher shall be visited and critiqued no less than one time every two weeks by members of a Professional Support Team (see (h) below) and shall be observed and formally evaluated at the end of [the five weeks and at the end of] 10 weeks by the appropriately certified members of the team. At the end of the 10-week period, the provisional teacher shall receive a formal written progress report from the chairperson of the Support Team.

3. (No change.)

(g) Approximately 200 hours of formal instruction in the following topics shall be provided in all three phases of the program combined. This requirement shall not apply to provisional teachers who are holders of Certificates of Eligibility with Advanced Standing pursuant to N.J.A.C. 6:11-5.1(c).

Recodify existing i.-iii. as **1.-3.** (No change in text.)

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

6:11-5.5 Recommendation for certification of provisional teachers

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

(d) The Support Team chairperson shall provide the provisional teacher with a copy of the provisional teacher's written evaluation report and certification recommendation before submitting it to the [Bureau] **Division** of Teacher Preparation and Certification.

(e) If the provisional teacher disagrees with the chairperson's recommendation, the provisional teacher may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the chairperson written materials documenting the reasons why the provisional teacher believes standard certification should be awarded or a recommendation of insufficient granted. The chairperson shall forward all such documentation to the [Bureau] **Division** of Teacher Preparation and Certification along with the evaluation report and recommendation concerning certification. The provisional teacher may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-[3.25]**3.30.**

(f) (No change.)

SUBCHAPTER 6. ENDORSEMENTS ON THE INSTRUCTIONAL CERTIFICATE

6:11-6.2 Endorsements and authorizations

(a) Teaching endorsements and authorizations are listed below:

1.-19. (No change.)

20. Science:

[i. Comprehensive: This endorsement authorizes the holder to teach science (comprehensive) in all public schools. Comprehensive science normally includes: physics, chemistry, biological sciences, earth and space sciences other than geography;]

[ii.]**i.** Biological science: This endorsement authorizes the holder to teach biological **and general** science in all public schools. Biological science includes: botany, anatomy and physiology, zoology, biology;

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[iii.]**ii.** Earth science: This endorsement authorizes the holder to teach earth **and general** science in all public schools. Earth science includes: astronomy, geology, meteorology, oceanography, physical geography and space science;

[iv.]**iii.** Physical science: This endorsement authorizes the holder to teach physical **and general** science in all public schools. Physical Science includes: physics, chemistry, and earth and space sciences other than geography;

21. (No change.)

22. Special education:

i.-ii. (No change.)

iii. Teacher of the handicapped: This endorsement authorizes the holder to teach [physically limited, socially and emotionally maladjusted, mentally retarded (educable and trainable children), or children with multiple handicaps] **pupils classified as handicapped in all public schools**;

23. (No change.)

24. Teacher of agricultural occupations: This endorsement authorizes the holder to teach [designated] agricultural occupations in all public schools. [See listing of agricultural occupations below:

i. Agricultural mechanics;

ii. Agricultural sales and service;

iii. Animal husbandry;

iv. Crop production;

v. Greenhouse management;

vi. Landscaping;

vii. Natural resources occupations;

viii. Nursery management;]

25. (No change.)

26. Teacher of production, personal or service occupations: This endorsement authorizes the holder to teach [designated occupations] **vocational courses in the areas of his or her State-approved occupational experience** in all public schools. [See listing of production, personal or service occupations below:

i. Barbering;

ii. Building maintenance;

iii. Clothing, apparel and textile management, production, and services;

iv. Cosmetology;

v. Custodial training (includes buildings and grounds);

vi. Dental assisting;

vii. Dental receptionist;

viii. Food management;

ix. Food production;

x. Food services;

xi. Health occupations;

xii. Hotel motel (front desk clerk);

xiii. Hotel motel management;

xiv. Laundering, cleaning, and pressing;

xv. Medical assisting;

xvi. Medical receptionist;

xvii. Nursing assistance;

xviii. Service station attendant;

xix. Small animal care;

xx. Small engine repair;

xxi. Warehousing;

xxii. Machine operator (assembly);]

27. Teacher of skilled trades: This endorsement authorizes the holder to teach [a designated] skilled trade **courses in the area of his or her State-approved occupational experience** in all public schools. [See listing of skilled trades below:

i. Air conditioning and refrigeration;

ii. Aircraft mechanics (air frame and power plant);

iii. Auto body repair;

iv. Auto mechanics;

v. Baking;

vi. Brick and masonry;

vii. Cabinet making;

viii. Carpentry;

ix. Commercial art;

x. Commercial photography;

xi. Diesel mechanic;

xii. Drafting;

xiii. Electrical trades;

xiv. Electricity and electronics;

xv. Electronic motor repair;

xvi. Electronic products servicing;

xvii. Fire science;

xviii. Heating and ventilating (includes oil and gas burner mechanic);

xix. Heavy duty equipment mechanic;

xx. Machine shop;

xxi. Maintenance mechanic (includes industrial maintenance mechanic and industrial mechanic);

xxii. Marine trades;

xxiii. Millwright;

xxiv. Office machine repair;

xxv. Painting and decorating;

xxvi. Plumbing and pipefitting;

xxvii. Printing;

xxviii. Radio and television repair;

xxix. Sheet metal;

xxx. Stationary engineering;

xxxi. Tool and die making;

xxxii. Upholstering;

xxxiii. Water waste water;

xxxiv. Welding;

xxxv. Television broadcasting (issued to teachers of television broadcasting who teach trade and industry courses);]

28. Teacher of technical occupations: This endorsement authorizes the holder to teach [a designated] technical occupation **courses in the area of his or her State-approved occupational experience** in all public schools. [See listing of technical occupations below:

i. Agricultural technology;

ii. Air conditioning technology;

iii. Automotive technology;

iv. Basic aviation and instrumentation (includes aviation mechanic);

v. Chemical technology;

vi. Computer science technology;

vii. Construction technology;

viii. Drafting and design technology;

ix. Electrical technology;

x. Electronic technology;

xi. Engineering technology;

xii. Food technology;

xiii. Highway technology;

xiv. Instrumentation technology;

xv. Laboratory technology;

xvi. Metallurgical technology;

xvii. Power plant technology;

xviii. Radio and television broadcast technology;

xix. Telecommunications technology;]

29. (No change.)

30. Vocational-technical part-time teacher: This endorsement authorizes the holder to teach on a part-time basis in any approved vocational-technical evening, apprentice, extension, industrial-in-plant training or short-term preemployment program.

[6:11-6.3 Endorsements: requirements

(a) Holders of standard instructional certificates, except as noted in (b) below shall obtain additional instructional endorsements by:

1. Presenting evidence of having acquired a baccalaureate degree at an accredited institution (except as noted in N.J.A.C. 6:11-6.3(c)1); and

2. Passing a State test in the subject field or a State test of general knowledge for an elementary or nursery endorsement. In order to be eligible to take a subject field test, the applicant must have completed at least 30 semester hours in a coherent major or five years of experience in the subject field.

(b) The following subject field endorsements, while requiring a baccalaureate degree, constitute exceptions to the requirements in (a) above (see N.J.A.C. 6:11-8.3):

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1. Typewriting endorsement applicants must hold a valid New Jersey instructional endorsement in business education and demonstrate proficiency in typing.

2. Driver education endorsement candidates shall hold a New Jersey instructional endorsement in another subject field and a current New Jersey driver's license. Also required are three years of automobile driving experience and evidence of a driver education training program approved by the New Jersey State Department of Education.

3. Military science endorsement requires official evidence of 20 years of military service and recommendation by the branch of service in which the applicant served a minimum of 20 years.

(c) Exceptions to the requirements of a baccalaureate degree (see N.J.A.C. 6:11-5.1(a)1 and 2):

1. In the following endorsement areas, work experience is accepted in lieu of the baccalaureate degree in accordance with N.J.A.C. 6:11-8.3(c).

i. Agricultural occupations;

ii. Skilled trades;

iii. Personal production and service occupations;

iv. Practical nursing;

v. Technical occupations.

(d) Applicants who receive official transcript evaluations before September 1, 1985, shall be permitted to fulfill requirements by taking the college courses indicated or by taking the appropriate State test and State-approved training program where applicable. Such applicants who choose to complete college courses must do so by September 1, 1990, after which they must take the State test. No new transcript evaluations will be issued after September 1, 1985 in fields in which State-approved training programs are authorized.]

SUBCHAPTER 7. STANDARDS FOR [STATE APPROVAL OF] **NEW JERSEY COLLEGE** TEACHER PREPARATION **PROGRAMS**

6:11-7.1 Procedures for accreditation or approval

(a) The State Board of Education authorizes the use of Standards for State Approval of Teacher Education of the National Association of State Directors of Teacher Education and Certification (NASDTEC), in the evaluation of teacher preparation programs in colleges and universities of the State. The 1983 edition of NASDTEC (future editions, subsequent amendments and supplements) is hereby authorized for use in the evaluation of teacher preparation programs, and is hereby adopted as a rule.

1. This document is available for review at the Bureau of Teacher Preparation and Certification, New Jersey State Department of Education, 225 West State Street, CN 500, Trenton, New Jersey 08625, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.

2. This document may be purchased from NASDTEC, [Utah State Office of Education, Staff Development Section, 250 East Fifth South, Salt Lake City, Utah 84111]. **California State Department of Education, P.O. Box 2431, Sacramento, CA 95814.**

6:11-7.3 Curriculum

(a) Each approved undergraduate teacher preparation program shall provide approximately 60 semester credit hours of general education including electives. General education courses shall be distributed among the arts, humanities, mathematics, science, technology and the social sciences. There must be some study in each area. The inclusion of technology as an aspect of general education is intended to allow for the inclusion of courses and topics (such as computer literacy, the history of technology and the sociological impact of technological advancement) which would contribute to the general technical literacy of students. The purpose of general education is to develop the prospective teacher as an educated person rather than to provide professional preparation. This component of the program shall exclude courses which are clearly professional or vocational in nature.

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

(d) For purposes of certification, a central focus of the undergraduate teacher education program is the professional component. This component must meet [all] **appropriate** standards and study requirements of the National Association of State Directors of Teacher Education and Certification. In addition, each approved undergraduate teacher preparation program shall provide study in the essential behavioral/social science and professional education areas listed in N.J.A.C. 6:11-[8.2(a)]**5.3(g)1. through 3.** Approximately 30 credit hours of instruction shall be devoted to professional preparation; a minimum of nine credits must be devoted to study in the behavioral/social sciences, and may be included in the professional or liberal arts components of the program. The professional component of the undergraduate program shall provide students, normally beginning in the sophomore year, with practical experiences in an elementary or secondary school setting; these opportunities shall increase in intensity and duration as the student advances through the program and culminate with a student teaching experience.

(e) (No change.)

SUBCHAPTER 8. [NEW JERSEY INSTRUCTIONAL SUPPLEMENT TO STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION] **EXCEPTIONS FOR REQUIREMENTS FOR THE INSTRUCTIONAL CERTIFICATE**

[6:11-8.1 Scope

(a) This subchapter will be used by the Bureau of Teacher Preparation and Certification in the following ways:

1. In defining the essential areas of study to be included in the professional component of approved college programs and the formal instruction component of State-approved alternative training programs.

2. As the basis for performing transcript evaluations and issuing certificates in fields in which State-approved training programs are not authorized; and

3. As the basis for issuing certificates in certain technical fields in which the baccalaureate degree is not required.

6:11-8.2 Common requirements; all college teacher education programs and State-approved alternative programs

(a) Approved college programs and State-approved alternative programs shall include study in the following areas of professional education:

1. Curriculum: Studies designed to foster an understanding of the curriculum taught and the assessment of learning, including topics such as the following: the organization and presentation of subject matter, the development and use of tests and other forms of assessment, the evaluation and selection of instructional materials and the appropriate use of textbooks and teachers' guides, the use and interpretation of standardized tests and teacher-developed instruments, the reading process and other language art skill development appropriate to the field of specialization and grade level, and a knowledge of techniques and materials for fostering the development of reading and language art skills.

2. Student Development and Learning: studies designed to foster an understanding of students, their characteristics as individuals, and the ways in which they learn, including topics such as: student interests, motivation, preventing classroom disruption, creating a healthy learning climate, individual and group learning, language development, individual differences, and the role of technology in early learning.

3. The Classroom and the School: studies designed to foster an understanding of the school as a social unit and classroom management, including such topics as: the bureaucratic/social structure of public education, the making of teaching decisions, allocation of instructional time, setting of priorities, pacing of instruction, setting of goals, questioning techniques, student practice and independent work.

4. Bilingual/Bicultural Education: programs leading to the bilingual/bicultural endorsement shall provide approximately six credit hours of study in the following specialized topics: the historical and cultural backgrounds of limited English proficient students, the

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specialized instructional content of bilingual education, and techniques of teaching bilingual students.

5. English as a Second Language (ESL): programs leading to the English as a Second Language endorsement shall provide approximately 12 credit hours of study in the following specialized topics: the historical and cultural backgrounds of limited English proficient students, the specialized instructional content of ESL education, and techniques of teaching English as a second language.]

6:11-[8.3]**8.1** [Exceptions to requirements for standard certification]
Vocational Education Certification Requirements Effective Until August 31, 1992

(a) The following requirements pertain to candidates who apply prior to September 1, 1992 for any of the following endorsements: Teacher of Agricultural Occupations, Teacher of Practical Nursing, Teacher of Production, Personal or Service Occupations, Teacher of Skilled Trades, and Teacher of Technical Occupations. However, commencing on September 1, 1992, these rules expire and the rules set forth in N.J.A.C. 6:11-8.2 will apply to candidates seeking any of the endorsements listed above.

(b) Persons who are employed under emergency certification on September 1, 1992 shall have until September 1, 1997 to obtain standard certification under requirements in effect prior to September 1, 1992. Such persons may remain employed on an emergency basis until such time as they acquire standard certification but no later than September 1, 1997. However, beginning September 1, 1992 these individuals may choose to meet the newer requirements listed in N.J.A.C. 6:11-8.2 below.

(c) Persons who are enrolled in approved college programs on September 1, 1992 shall have until September 1, 1997 to obtain standard certification by completing the college program in which they are enrolled. However, beginning September 1, 1992 these individuals may choose to meet the newer requirements listed in N.J.A.C. 6:11-8.2 below.

(a)-(c) recodified as (d)-(f) (No change in text.)

6:11-8.2 Vocational education certification requirements effective September 1, 1992

(a) The following requirements apply to applicants for the following endorsements: Teacher of Agricultural Occupations, Teacher of Practical Nursing, Teacher of Production, Personal or Service Occupations, Teacher of Skilled Trades, and Teacher of Technical Occupations.

1. Each candidate for the provisional certificate shall be required to:

i. Possess at least four years of successful work experience in the relevant trade or occupation as approved by the employing district pursuant to criteria and procedures established by the State Department of Education. Each approval shall be filed with the Office of Certification and Academic Credentials and the county office of education;

ii. Pass a State test of basic communication skills; and

iii. Obtain and accept an offer of employment in a position that requires the relevant vocational endorsement.

iv. The requirement in (a)1i above shall not apply to candidates who hold baccalaureate degrees in the subject to be taught. The requirement in (a)1ii above shall not apply to candidates who hold baccalaureate degrees.

v. The Secretary of the State Board of Examiners may authorize the employment of apparently qualified candidates for a period of 60 days while their credentials are being processed by the Office of Certification and Academic Credentials. This 60-day authorization shall not be renewed unless the Office of Certification and Academic Credentials fails to process the candidate's credentials within the 60-day period.

2. Each candidate for the standard certificate shall be required to:

i. Possess a provisional certificate pursuant to (a)1 above; and

ii. Complete a State-approved district training program pursuant to N.J.A.C. 6:11-5.3 through 5.5.

(b) The requirements listed in (a) above are effective September 1, 1992.

(c) The issuance of emergency certificates to vocational teachers will cease on September 1, 1992.

(d) Vocational-technical related subjects: a minimum of two years of approved occupational experience is required. Requirements (a)1 and 2 above do not apply to this endorsement.

(e) Vocational-technical part-time teacher:

1. This certificate is required for vocational teachers who teach on a part-time basis in any approved vocational-technical evening, apprentice, extension, industrial-in-plant training or short-term preemployment program in any of the fields of vocational education, such as agriculture, distributive education, home economics, trades and industries of technical education, and who do not possess a certificate valid for teaching in an all-day program.

2. The applicant must have demonstrated evidence of practical experience to fit him or her for the particular position he or she is to fill. The adequacy will be evaluated by the particular supervisor in whose field the teaching is to be done and will be approved by recommendation of the State Director of Vocational-Technical Teacher Training to the State Board of Examiners.

3. The part-time vocational certificate is valid for five years from the date of issuance. Issuance of a standard certificate after five years will be predicated upon presenting evidence of the completion of an approved in-service program in methods of teaching vocational-technical subjects and a certificate of success as a teacher signed by the administrator or supervisor under whom the teaching was done.

6:11-8.3 Special education

(a) State-approved alternative training programs are not authorized in fields of special education. Teachers in these fields may be employed on an emergency basis in accordance with N.J.A.C. 6:11-4.3. The emergency certificate is a one-year certificate which is renewable annually for an indefinite period. Candidates in the fields of special education may obtain an endorsement by completing an approved program at a college or university, or by meeting the following requirements as determined by an evaluation of transcripts or other official documents:

1. Handicapped: This endorsement authorizes teaching the physically limited, socially and emotionally maladjusted, mentally retarded (educable and trainable) children, or children with multiple handicaps. Candidates for this endorsement must complete eighteen semester-hour credits in the education of handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, practices and materials in teaching the handicapped, and resources and community agencies available in teaching the handicapped.

2. Blind or partially sighted: Candidates for this endorsement must complete eighteen semester-hour credits in education of the handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching blind or partially sighted children, including typewriting and Braille, resources and community agencies available for teaching the handicapped.

3. Deaf or hard of hearing: Candidates for this endorsement must complete eighteen semester-hour credits in the education of the handicapped, twelve semester-hour credits in education electives, and student teaching. The eighteen credits in education of the handicapped must include study in each of the following areas: nature and causes of disabilities, curriculum and/or methods of teaching speech, speech reading, and language to the deaf or hard of hearing, resources and community agencies available in teaching the handicapped.

(b) The student teaching requirements in the fields of special education shall be waived for those candidates who:

1. Hold a valid standard New Jersey instructional certificate in another field; or

2. Present a baccalaureate degree, a valid regular certificate from another state, and evidence of at least one year of successful teaching experience in the other state; or

3. Have completed three years of successful classroom teaching experience in an approved or recognized school prior to the acceptance of public school employment in New Jersey; or

4. Have completed two consecutive years of successful teaching experience under an emergency certificate in a New Jersey public school district.

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6:11-8.4 [Teacher of] Bilingual/bicultural education
(a)-(e) (No change.)
(f) Requirements (a) through (f) above are effective September 1, 1991.

6:11-8.5 [Teaching of] English as a second language
(a)-(e) (No change.)
(f) Requirements (a) through (f) above are effective September 1, 1991.

6:11-8.6 [(Reserved)] **Driver education**
(a) Candidates for the standard driver education endorsement shall possess another standard New Jersey instructional certificate, hold a valid New Jersey driver's license, possess three years of automobile driving experience, and complete a training program approved by the State Department of Education pursuant to N.J.A.C. 6:11-7.1.
(b) Pursuant to N.J.S.A. 18A:26-2, holders of a driving instructor license issued by the New Jersey Department of Motor Vehicles may be employed to provide behind-the-wheel driver education in public schools. Such persons shall not provide classroom instruction in driver education.

6:11-8.7 [(Reserved)] **Military science**
Applicants for standard military science endorsement shall possess 20 years of military service and a positive recommendation from the branch of the service in which they served. Holders of this endorsement shall obtain additional endorsements to the instructional certificate by meeting all requirements of N.J.A.C. 6:11-5.

SUBCHAPTER [10.]**9.** [NEW JERSEY STANDARDS FOR CERTIFICATION OF] **REQUIREMENTS FOR** ADMINISTRATIVE [AND SUPERVISORY PERSONNEL] **CERTIFICATION**

6:11-[10.1]**9.1** (No change.)

6:11-[10.2]**9.2** (No change.)

[6:11-10.3 (Reserved)]

6:11-[10.4]**9.3** Authorization
(a) School administrator: This endorsement is required for [the position of superintendent of schools. The holder of this endorsement may also serve as assistant superintendent of schools, or supervisor.] **any position that involves services as a district-level administrative officer. Such positions shall include superintendent, assistant superintendent, executive superintendent and director. Holders of this endorsement are authorized to direct the formulation of district goals, plans, policies, and budgets, to recommend their approval by the district board of education, and to direct their district-wide implementation. Holders of this endorsement are authorized to recommend all staff appointments and other personnel actions, such as terminations, suspensions, and compensation, including the appointment of school business administrators, for approval by the district board of education. Holders of this endorsement are authorized to direct district operations and programs, and to supervise and evaluate building administrators and central office staff, including school business administrators. They are also authorized to oversee the administration and supervision of school-level operations, staff and programs.**
(b) Principal: This endorsement is required for [the positions of principal, vice-principal, and certain other administrative positions. Holders of this endorsement may supervise instruction.] **any position that involves service as an administrative officer of a school or other comparable unit within a school or district. Such positions shall include assistant superintendent for curriculum and instruction, principal, assistant principal, vice-principal and director. Holders of this endorsement are authorized to direct the formulation of goals, plans, policies, budgets and personnel actions of the school or other comparable unit, to recommend them to the chief district administrator, and to direct their implementation in the school or other comparable unit. Holders of this endorsement also are authorized to direct and supervise all school operations and programs, to evaluate school staff, including teaching staff members pursuant to N.J.A.C. 6:3-1.19 and 1.21, and to direct the activities of school-level supervisors.**
(c)-(d) (No change.)

[6:11-10.5 (Reserved)]

[6:11-10.6 (Reserved)]

[6:11-10.7 School administrator
(a) Successful completion of one of the following is required for school administrators:
1. A curriculum approved by the New Jersey State Department of Education as the basis for issuing this endorsement; or
2. A program of college studies in the areas indicated below, including 30 semester hour graduate credits, in addition to those required for a standard teacher's certificate, and including study in each of the areas in i through iii below. This study may be in either separate or integrated courses.
i. School administration: Included may be studies in such areas as general school administration, elementary, secondary and vocational administration, school law, school finance, school plant planning and design. These studies may be in either separate or integrated courses;
ii. Educational supervision;
iii. Curriculum development: A course in general principles of curriculum development, or a combination of specialized courses covering both elementary and secondary, vocational, or adult programs;
iv. The learner and the learning process;
v. Academic disciplines related to school administration, such as anthropology, business or public administration, economics, government, intercultural relations, group dynamics, psychology, sociology, labor relations, law, and community organization.
3. When candidates have completed their preparation for this endorsement in an out-of-State college or university, a doctor's degree in educational administration, or completion of an approved two-year graduate program for the preparation of school administrators leading to the specialist in education certificate or similar diploma or degree, from a program accredited by the National Council for Accreditation of Teacher Education (NCATE), will be accepted as meeting the college study requirements indicated above.
4. Successful completion of three years of educational administrative or supervisory experience, under a New Jersey administrative or supervisory endorsement or its equivalent, when spending at least half time in administrative or supervisory duties.
i. One year of this experience requirement will be waived to holders of the doctor's degree in educational administration, received from an accredited institution in a program approved by the Department of Education.
ii. One year of internship in a program approved by the Commissioner of Education may be submitted toward the fulfillment of this experience requirement.
5. A standard New Jersey teacher's certificate or its equivalent, and three years of successful teaching experience. Experience in New Jersey public schools must have been completed under an appropriate New Jersey teacher's certificate or its equivalent. This experience requirement shall not apply to candidates who hold New Jersey school principal endorsements.]

6:11-9.4 School administrator
(a) Each candidate for the provisional certificate as a school administrator shall be required to:
1. Hold a master's degree or its equivalent from an accredited institution in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. Study shall be completed, either within the master's program or in addition to it, in each of the following topics:
i. Leadership and human resource management;
ii. Communications;
iii. Quantitative decision-making;
iv. Finance; and
v. Law;

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2. Pass a State written examination of knowledge that is acquired through study of the topics listed in (a)1i through v above, and that is most directly related to the functions of superintendents as defined in N.J.A.C. 6:11-9.3(a);

3. Undergo an assessment of performance, conducted by State-approved assessors, through structured exercises that simulate the duties of superintendents, and authorize the release of the written results of this assessment to potential employers; and

4. Obtain an offer of employment in a position requiring the School Administrator endorsement in a district that has reviewed the candidate's assessment report.

(b) Each candidate for the standard certificate as school administrator shall be required to:

1. Possess a provisional certificate pursuant to (a) above; and

2. Complete a one-year State-approved district residency program while employed under provisional certification. The residency program shall:

i. Be conducted in accordance with a standard agreement issued by the State Department of Education and entered into by the Department, the employing school district, the candidate and the residency mentor;

ii. Be administered by a State-appointed mentor who is an experienced administrator who has completed a State-approved orientation and training program, and who shall supervise and verify completion of all required experiences and training by the candidate;

iii. Include a pre-residency training component that shall be completed before the candidate assumes full responsibility for the duties of his or her position. The pre-residency phase shall provide no fewer than 300 clock hours of structured exposures to important aspects of school administration. The State Department of Education shall, at the recommendation of the mentor and the employing district board of education, prescribe the content of each pre-residency. Such prescription shall be based upon the candidate's background experiences and shall be specified in the standard written agreement pursuant to (b)2i above. For candidates who lack practical teaching competency, the 300 hours of structured exposures to important aspects of school administration shall consist of teaching and teaching-related experiences. The pre-residency shall take place in a functioning district environment;

iv. Provide approximately 135 clock hours of training and instruction in the areas of district planning and policy formulation; board of education operations and relations; district financial, legal and business operations; management of district operations; school facilities; labor relations and collective bargaining; collegial management, participatory decision-making and professional governance; government and community relations; school law; supervision of districtwide programs of curriculum, instruction and student services; and the roles, supervision and evaluation of central office staff and school principals. Of the required 135 clock hours of formal instruction, 45 hours shall be completed during the pre-residency phase; and

v. Provide the mentor, candidate and school district with opportunities to propose modifications to the standard residency agreement for approval by the State Department of Education.

(c) Each candidate for the school administrator standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification. The first two evaluations shall be conducted mainly for diagnostic purposes. The final evaluation shall be the basis for issuance of the candidate's standard certificate. All evaluations shall be conducted in accord with State criteria and reported on State-developed forms. The mentor shall discuss each evaluation with the candidate, and the mentor and candidate shall sign each report as evidence of such discussion. Upon completion of each evaluation, the report shall be sent to the Secretary of the State Board of Examiners; the final evaluation shall be accompanied by the recommendation for certification pursuant to (d) below.

(d) Each mentor shall form an advisory panel of practicing educators and shall convene this panel on at least three occasions for purposes of reviewing the resident's progress and soliciting advice concerning the certification of the resident. The State Department of Education shall approve the composition of the advisory panel. The mentor may seek the informal input of the employing district board of education concerning the standard certification of the resident.

(e) The mentor shall meet with the resident superintendent at least once a week during the pre-residency phase and at least once a month during the residency. The mentor shall be available on a regular basis to provide assistance or advice upon request of the resident superintendent. The State Department of Education may require resident superintendents to pay fees to cover the cost of the training and mentoring services that will qualify them for certification and employment. The State Department of Education shall report annually to the State Board of Education all training fees charged to residents.

(f) Standard certification of school administrator certificate candidates shall be approved or disapproved pursuant to the following procedures:

1. Before the end of the residency year, the mentor shall submit to the Division of Teacher Preparation and Certification a comprehensive evaluation report on the candidate's performance using State-approval criteria and forms.

2. This final report shall include one of the following certification recommendations:

i. Approved: Recommends issuance of a standard certificate;

ii. Insufficient: Recommends that a standard certificate not be issued but that the candidate be allowed to continue the residency or seek admission to an additional residency for one additional year; or

iii. Disapproved: Recommends that a standard certificate not be issued and that the candidate be prevented from continuing or reentering a residency.

3. Mentors act as agents of the State Board of Examiners in formulating their certification recommendations. Those recommendations shall not be subject to review or approval by local boards of education.

4. Candidates who receive a recommendation of "approved" shall be issued a standard certificate.

5. The mentor shall provide the candidate with a copy of the candidate's written evaluation report and recommendation before submitting it to the Division of Teacher Preparation and Certification.

6. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded or a recommendation of insufficient granted. The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-3.30.

(g) Candidates who receive a recommendation of "disapproved" or two or more recommendations of "insufficient" may petition to the State Board of Examiners for approval of additional opportunities to seek provisional employment in districts other than those in which they received unfavorable recommendations. The candidate shall be responsible for demonstrating why he or she would be likely to succeed if granted the requested opportunity. Disapproval of any candidate's request by the State Board of Examiners may be appealed to the Commissioner of Education.

(h) The requirements listed in (a) and (b) above are effective September 1, 1992. The requirements shall not apply to persons who earn the school administrator endorsement before that date.

(i) Persons who are enrolled in formal State-approved New Jersey college preparation programs prior to September 1, 1992 shall be permitted until September 1, 1997 to attain standard certification by completing the college program in which they are enrolled.

6:11-[10.8]9.5 Principal

(a) Each candidate for the provisional certificate as a principal shall:

1. Hold a master's degree or its equivalent from an accredited institution in one of the recognized fields of leadership or management, such as educational administration, public administration, business administration, leadership or management science. Study shall be completed, either within the master's program or in addition to it, in each of the following topics which represent those areas of management that are directly related to education and the principalship. Degree programs may provide study in other areas at the discretion of the sponsoring institution and its faculties;

i. Leadership and human resource management;

ii. Communications;

iii. Quantitative decision-making; and

iv. Finance and law.

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2. Pass a State-administered examination of knowledge in the areas of leadership and human resource management, communication, quantitative decision-making, finance and law. Within these five topical areas, the examination shall assess leadership and management proficiencies that are validated as being most directly relevant to education and the essential duties of school principals;

3. Undergo an assessment of performance, conducted by State-approved assessors through structured exercises which simulate the duties of school principals, and authorize the release of written results to employing districts and schools. In particular, there shall be a formal assessment of each candidate's ability to lead and supervise instruction and curriculum. The State Department of Education shall, with appropriate professional input, develop and validate the criteria, instruments and procedures for conducting such assessments; and

4. Obtain an offer of employment in a position requiring the principal endorsement in a school or district that has agreed formally to sponsor the residency.

[(a)]**(b)** Each candidate for the [principal endorsement] **standard certificate as a principal** shall:

1. Possess a provisional certificate pursuant to [N.J.A.C. 6:11-4.2(d)] **(a) above**;

2. Complete a State-approved residency program pursuant to [(b)] **(c)** below while employed provisionally in a position requiring the principal endorsement. [This requirement shall be effective September 1, 1989; and

3. Possess an instructional certificate and three years of professional experience in education. This requirement shall cease to be in effect on September 1, 1989.]

[(b)]**(c)** The principal residency is a training program conducted under the direction of a State-approved mentor and the sponsorship of the public school district or nonpublic school that employs the certificate candidate.

1. In order to enter a residency program, the certification candidate shall:

i. Possess a provisional certificate pursuant to [N.J.A.C. 6:11-4.2(d)] **(a) above**; and

ii. Obtain an offer of employment in a position requiring the principal endorsement in a district or school which has reviewed the candidate's assessment report and has agreed formally to sponsor the residency.

2.-5. (No change.)

6. Standard certification of residents' shall be approved or disapproved pursuant to the following procedures:

i. Before the end of the residency year, the mentor shall submit to the [Bureau] **Division** of Teacher Preparation and Certification a comprehensive evaluation report on the resident's performance using State-approved forms and criteria.

ii.-iv. (No change.)

v. If the resident principal disagrees with the mentor's recommendation, the resident principal may within 15 days of receipt of the evaluation report and certification recommendation submit to the mentor written materials documenting the reasons why the resident principal believes standard certification should be awarded **or a recommendation of insufficient granted.** The mentor shall foward all such documentation to the [Bureau] **Division** of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification.

[(c)]**(d)** The requirements listed in (a) and (b) above shall not apply to persons who obtain New Jersey principal endorsements prior to October 1, 1988[.]; **and**

[(d)]**(e)** Persons who can document that they enrolled, before October 1, 1988, in a New Jersey college program approved by the Department for the preparation of principals, [shall have until October 1, 1992 to complete the program in lieu of the required master's degree in leadership/management (see N.J.A.C. 6:11-4.2(c)1.). Those who have not qualified for the principal endorsement by October 1, 1992, shall be required to obtain the required master's degree.] **may elect to complete the program in which they are enrolled in lieu of requirement N.J.A.C. (a)1. above. However, such persons must meet all other requirements of N.J.A.C. 6:11-9.5.**

[(e) All candidates shall be required to meet all other requirements of N.J.A.C. 6:11-4.2(c)2 through 5 and this section that became effective prior to date upon which they qualify for principal endorsements.]

6:11-[10.9]**9.6** (No change.)

6:11-[10.10]**9.7** School business administrator

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

(c) Each candidate for the standard certificate shall be evaluated formally by the mentor on at least three occasions for purposes of certification.

1.-2. (No change.)

3. The three evaluations required in this subsection shall be conducted using criteria and forms developed by the State Department of Education that will assess the candidate's ability to apply baccalaureate training (see (a) 1 i-iv above) and training acquired in the proposed residency (see (b) 2 i-v above) in performing essential duties listed in N.J.A.C. 6:11-[10.4]**9.3**(d).

4.-5. (No change.)

(d) Standard certification of candidates shall be approved or disapproved pursuant to the following procedures:

1.-4. (No change.)

5. If the candidate disagrees with the mentor's recommendation, the candidate may, within 15 days of receipt of the evaluation report and certification recommendation, submit to the mentor written materials documenting the reasons why the candidate believes standard certification should be awarded **or a recommendation of insufficient granted.** The mentor shall forward all such documentation to the Division of Teacher Preparation and Certification along with the written evaluation report and recommendation for certification. The candidate may contest the unfavorable recommendation pursuant to N.J.A.C. 6:11-[3.25]**3.30**.

(e) (No change.)

(f) Board secretaries who lack certification but were assigned prior to September 1, 1991 to perform business administration functions as described in N.J.A.C. 6:11-[10.4]**9.3**(d) shall be permitted to retain their positions in the districts in which they were employed prior to September 1, 1991 indefinitely. However, after September 1, 1991, they shall be required to meet certification pursuant to (a) through (d) above in order to seek employment in new positions in other districts.

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

[6:11-10.11 (Reserved)]

[6:11-10.12 Executive superintendent

(a) This certificate is required for the position of executive superintendent in a city of the first class with a population of over 325,000.

(b) The requirements are as follows:

1. Shall possess and be able to demonstrate a knowledge of the complex problems of an urban community, involving the educational, societal, fiscal and political aspects;

2. Shall possess a master's degree;

3. Shall have five years of administrative experience in which three years must be in an organization of comparable complexity and magnitude;

4. Shall have a knowledge of school board interrelationships, including negotiations;

5. Shall be able to demonstrate knowledge of accounting, school finance, school business administration and Federal programs;

6. Shall have a knowledge of long-range education planning, and a knowledge of planning for capital construction of educational facilities;

7. Shall possess knowledge of organization, curriculum and administration of public education;

8. Shall have a working knowledge of modern management techniques.]

[6:11-10.13 Assistant executive superintendent with specialization in supervision and curriculum

(a) This certificate is required for the position of assistant executive superintendent in a city of the first class with a population of over 325,000.

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(b) The requirements are as follows:
1. Certification to serve as principal issued by New Jersey State Board of Examiners; or in the alternative:
2. A standard New Jersey teacher's certificate or equivalent;
3. Teaching experience;
4. A master's degree;
5. A program of graduate studies including coursework in:
i. Administration of public education;
ii. School law, including collective negotiations;
iii. Public school curriculum;
iv. Supervision of instruction in public schools;
v. Administration and supervision of school personnel.]

[6:11-10.14 (Reserved)]

SUBCHAPTER [11.]**10.** BASES FOR ISSUANCE OF EDUCATIONAL SERVICES CERTIFICATES

6:11-[11.1]**10.1** (No change in text.)

6:11-[11.2]**10.2** (No change in text.)

SUBCHAPTER [12.]**11.** [NEW JERSEY EDUCATIONAL SERVICES SUPPLEMENT TO STANDARDS FOR STATE APPROVAL OF TEACHER EDUCATION] **REQUIREMENTS FOR EDUCATIONAL SERVICES CERTIFICATION**

6:11-[12.1]**11.1** Scope
(a) This subchapter is used by the [Bureau] **Division** of Teacher Preparation and Certification in the following ways:
1. In conjunction with the Standards for [State Approval of] **New Jersey College** Teacher Education **Programs**, N.J.A.C. 6:11-7, to evaluate and approve educational services programs in New Jersey colleges.
2.-4. (No change.)
Existing N.J.A.C. 6:11-12.2 through 6:11-12.4 recodified as **6:11-11.2 through 6:11-11.4** (No change in text.)

6:11-[12.5]**11.5** Substance awareness coordinator
(a) (No change.)
(b) The requirements for the substance awareness coordinator endorsement are as follows:
1.-2. (No change.)
3. Satisfactory completion of a State-approved school district residency requirement lasting at least six months, but no more than one year. Candidates who meet the bachelor's degree requirement may be employed provisionally pursuant to N.J.A.C. 6:11-4.2 while they complete the residency requirement. **The residency requirement shall not apply to persons who have served successfully as substance awareness coordinators under emergency certification for one or more years.**
i.-ii. (No change.)
iii. The State-approved administrator or supervisor shall evaluate and verify the completion of all required experiences according to the terms and conditions of the residency agreement.
(1)-(2) (No change.)
(3) If the candidate disagrees with the residency administrator or supervisor's recommendation, the candidate may within 15 days of receipt of the evaluation report and certification recommendation submit to the [Bureau] **Division** of Teacher Preparation and Certification written materials documenting the reasons why the candidate believes standard certification should be awarded.
4. Demonstration of knowledge of the preparation areas contained in (b)2 above through the achievement of a passing score on an examination as approved by the State Department of Education.
(c)-(d) (No change.)
(e) The emergency certificate authorized under this section will cease on October 1, [1990]**1992**, the effective date of the substance awareness coordinator endorsement.

[6:11-12.6 (Reserved)]

6:11-[12.7]**11.6** (No change in text.)

[6:11-12.8 (Reserved)]

6:11-[12.9]**11.7** (No change in text.)

6:11-[12.10]**11.8** (No change in text.)

6:11-[12.11]**11.9** Speech-language specialist
(a) [The] **Either the speech correctionist or the** speech-language specialist endorsement is required to provide service as a speech-language specialist in all public schools. The speech-language specialist must possess the professional preparation and experience to:
1.-4. (No change.)
(b) Requirements for the speech-language specialist endorsement become operative September 1, 1988 and do not affect those individuals who already possess the **speech-correctionist** endorsement or whose official applications [have been] **for that endorsement were** received and validated by the Office of Certification prior to that date.
(c) (No change.)

6:11-[12.12]**11.10** (No change in text.)

6:11-[12.13]**11.11** (No change in text.)

6:11-[12.14]**11.12** School psychologist
(a) (No change.)
(b) The requirements are:
1.-2. (No change.)
3. An externship of 450 clock hours. The externship should be in a school clinic, a child guidance clinic or other clinic approved by the Commissioner of Education and supervised by a qualified school psychologist or by personnel approved by the Commissioner of Education. This externship experience shall include at least 100 clock hours in testing mentally retarded children (see N.J.A.C. 6:11-[12.14] **11.12**(d)). Persons with experience endorsed by the Commissioner of Education as equivalent to the above externship may be exempt from the externship.
(c)-(d) (No change.)
Recodify existing N.J.A.C. 6:11-12.15 through 12.17 as **6:11-11.13 through 11.15** (No change in text.)

[6:11-12.18 (Reserved)]

[6:11-12.19 (Reserved)]

Recodify existing N.J.A.C. 6:11-12.20 through 12.22 as **6:11-11.16 through 11.18** (No change in text.)

6:11-[12.23]**11.19** Policies governing issuance of endorsements in educational media
(a)-(b) (No change.)
(c) Procedures for administering (a)1 and (b)1 above are:
1. Use the procedure explained below except that for the educational media specialist endorsement, the school librarian authorization will be extended to include the rights and privileges of an educational media specialist endorsement (N.J.A.C. 6:11-[12.21]**11.17**).
2. The holder of a standard or permanent New Jersey teacher librarian endorsement may receive an extension of the authorization of this certificate to include the functions of the associate educational media specialist endorsement. This can be accomplished by the issuance of an extending authorization form to read as follows:
i. The authorization of the teacher librarian endorsement of (name) is hereby extended to include all of the rights and privileges of the associate educational media specialist certificate (N.J.A.C. 6:11-[12.22]**11.18**).

6:11-[12.24]**11.20** (No change in text.)

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HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION

Long-Term Care Licensing Standards

Proposed Amendments: N.J.A.C. 8:39-8.1, 8.2, 8.4, 9.2, 11.2, 13.1, 18.4, 19.3, 19.7, 19.8, 23.2, 24.1, 27.1, 27.5, 28.1, 28.2, 29.4, 32.1, 35.2, 37.3, 38.1 and 41.3

Authorized By: Frances J. Dunston, 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-5.

Proposal Number: PRN 1990-326.

Submit comments by July 18, 1990 to:
Robert J. Fogg
Director, Standards and Quality Assurance
Health Facilities Evaluation
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

The chapter "Long-Term Care Licensing Standards," N.J.A.C. 8:39, became effective June 20, 1988. The standards were developed through a series of regulatory innovations by the Department's Licensure Reform Project. The licensure reform process involved the regulated community and health care professionals fully in the development of licensing standards in order to assure the validity of these standards of care. One mechanism used to obtain input from the nursing home community was a written opinion survey used to evaluate each proposed standard for its importance to patient care. After the survey results were tabulated and analyzed, a Nursing Home Advisory Group, consisting of selected industry and professional participants as well as Department personnel, reviewed the results and made further refinements of the standards.

A major innovation of licensure reform is the use of advisory standards in each area. While mandatory standards fulfill the usual licensure role of prescribing minimally acceptable levels of performance, advisory standards constitute standards of superior achievement or excellence.

Since the adoption of N.J.A.C. 8:39 in 1988, the Nursing Home Advisory Group has continued to meet periodically and to evaluate both mandatory and advisory standards in terms of their contribution to patient care. On the basis of recommendations from the Nursing Home Advisory Group, as well as review of the effectiveness of the standards by the Department, a number of amendments are believed to be necessary and are now being proposed. A summary of the proposed amendments follows.

The Department proposes to amend subchapter 8, Advisory Patient Activities, by deleting N.J.A.C. 8:39-8.1(b) and (c), which have presented some difficulties with interpretation, and by adding new text at N.J.A.C. 8:39-8.1(b) which is intended to encourage advance planning of activities programs as well as implementation and evaluation of such programs. An additional amendment at N.J.A.C. 8:39-8.2(b) expands the standard to include the National Council of Therapeutic Recreation Certification as a certifying organization for activities professionals. The advisory standard at N.J.A.C. 8:39-8.4(e), which recommends a menu committee composed of patients, has been recodified as part of advisory patient dietary services, at N.J.A.C. 8:39-18.4(f). N.J.A.C. 8:39-8.4(g) has been amended to indicate that staff, family and others should be involved, as well as patients, in the development and modification of patient activities programs.

In order to facilitate the collection of financial and statistical data from long-term care facilities, a new standard requiring such data has been proposed at N.J.A.C. 8:39-9.2(d).

Part of the standard at N.J.A.C. 8:39-23.2(b) has been recodified as subsection (b) under N.J.A.C. 8:39-11.2, Mandatory policies and procedures for patient assessment and care plans, since the content is more appropriately located in this section of the rules. N.J.A.C. 8:39-11.2(b) has been recodified as N.J.A.C. 8:39-11.2(c), and the remaining standards in the section have also been recodified.

A new mandatory standard has been proposed at N.J.A.C. 8:39-13.1(e), which requires that the attending physician be notified of substantial changes in the patient's medical condition.

A new advisory standard has been added at N.J.A.C. 8:39-18.4(f), which includes content deleted from subchapter 8.

N.J.A.C. 8:39-19.3(c) through (h) have been amended and updated to reflect current laws regarding regulated medical waste; the remainder of the section has been recodified. N.J.A.C. 8:39-19.7(e) has been amended to specify a minimum temperature of 100 degrees Fahrenheit for hot running water. N.J.A.C. 8:39-19.8(g) has been deleted, and (h) has been recodified as N.J.A.C. 8:59-19.8(i) and amended to be consistent with regulated medical waste laws. The remaining standards of the section have been recodified.

The mandatory standard at N.J.A.C. 8:39-23.2 has been shortened and part of the content has been recodified as N.J.A.C. 8:39-11.2(b). This standard is concerned with the execution of physician's orders and is more appropriately included with standards for patient assessment and care plans.

Advisory standard N.J.A.C. 8:39-24.1(b), which states that a qualified nephrologist should make periodic visits if the facility has one or more renal dialysis patients, has been deleted. The standard was considered to be vague as to the duties of the nephrologist and not sufficiently indicative of the quality of patient care.

The portion of mandatory N.J.A.C. 8:39-27.5(g) which requires documentation of patient baths has been deleted, as documentation of baths does not in itself ensure quality of patient care.

Proposed amendments to subchapter 28, Advisory Patient Care, include deletion of N.J.A.C. 8:39-28.1(a) which requires nursing staff to wear uniforms, since the standard does not appear to represent the attainment of a superior quality of patient care. N.J.A.C. 8:39-28.1(c), also recommending bath records, has been deleted. The advisory standard N.J.A.C. 8:39-28.1(d) has been deleted and the standard has been recodified as a new mandatory standard at N.J.A.C. 8:39-27.1(c). The addition of N.J.A.C. 8:39-27.1(c) will contribute to patient care by requiring that the family or guardian be notified when a physician initiates an order for the patient to be restrained. A new advisory standard has been added at N.J.A.C. 8:39-28.1(c) which suggests that the facility should develop and implement a restraint free policy. This new advisory standard is based upon Nursing Home Advisory Group discussions of current research concerning restraint free environments for long-term care patients. Additionally, N.J.A.C. 8:39-28.2(b), regarding privacy for conjugal visits, has been deleted, as the content duplicates that of the mandatory standard at N.J.A.C. 8:39-4.1(a)16.

An amendment has been made to N.J.A.C. 8:39-29.4(h) which allows for either a licensed practical nurse or a registered professional nurse to witness drug destruction, along with a pharmacist.

The advisory standard at N.J.A.C. 8:39-32.1 has been amended to state that there should be a smoke-free policy in all patient areas. The amendment is intended to promote additional protection of the health and safety of patients and to encourage healthy behavior of staff and patients.

The word "legible" has been added to N.J.A.C. 8:39-35.2(e), so that the standard now requires entries into the patient's medical record to be legible as well as dated and signed in ink.

Standards at N.J.A.C. 8:39-37.3 and 38.1(c) have been amended to include execution, within 48 hours, of the physician's orders for speech therapy, occupational therapy, and audiology, in addition to physical therapy.

Mandatory standards at N.J.A.C. 8:39-41.3 have been amended in accordance with New Jersey law, which requires facilities to maintain a temperature of no more than 82 degrees Fahrenheit, to provide adequate ventilation in all patient areas and to provide air conditioning in all patient areas by September 1, 1991.

Social Impact

No substantial social impact is foreseen. The proposed amendments, generally, constitute technical amendments made to clarify the standards, deletions resulting from duplications which were discovered following adoption of the standards, relocations of standards to subchapters more appropriate to their content, additions or deletions based upon current thinking or practices in long-term care facilities, or change from an advisory to a mandatory standard in order to strengthen the standard and better protect patient's safety.

All of the proposed amendments have been reviewed by and carry the recommendation of the Nursing Home Advisory Group, consisting of long-term care providers as well as Departmental personnel. The

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proposed amendments will not have any adverse impact upon patient care or patient health and safety.

The proposed amendments will have the positive effect of strengthening, simplifying and clarifying the long-term care licensure standards. Adoption of these amendments will benefit providers of long-term care services in the 364 facilities currently licensed in New Jersey, approximately 40,000 patients residing in those facilities, and Department of Health personnel who are involved in the regulatory process, as a result of changes which will not only strengthen the rules, but will also make the rules more efficient to use, more understandable and more enforceable.

Economic Impact

Long-term care facilities are already providing services in accordance with Long-Term Care Licensing Standards, N.J.A.C. 8:39. Substantial additional expenditures are not expected to be required as a result of the proposed amendments to the rules. Several of the amendments, for example, consist of deletions of advisory standards or relocation of present standards, and would, therefore, not change present costs of operation. The proposed new mandatory standard requiring notification of families when the patient's condition changes should not result in significant additional costs to facilities. Deletion of requirements for documentation of patient baths may result in small savings of nursing staff time.

Regulatory Flexibility Statement

Approximately half of New Jersey's 364 long-term care facilities may be considered small businesses, as the term is defined in N.J.S.A. 52:14B-16 et seq. The proposed amendments do not significantly change the record keeping, reporting and other compliance requirements already placed upon small businesses by the current rules, N.J.A.C. 8:39. Required services must be documented when provided to the patient. Financial reports and statistical data are already being collected by facilities. Laws requiring the facilities to maintain records of the handling of regulated medical waste are already in place. Changes in the rules have been designed to minimize the adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department of Health has determined that compliance with the proposed amendments is necessary for all facilities which provide long-term care services, in the interest of public health and safety, and that there should be no differentiation based on business size.

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

8:39-8.1 Advisory policies and procedures for patient activities

(a) (No change.)

[(b) Participation in activities should be encouraged, and levels of patient involvement should be monitored and discussed by the patient activities staff.

(c) Each patient's responses to patient activities programs should be periodically assessed.]

(b) There should be a formal, continuously implemented mechanism for activities program planning, implementation, and evaluation.

8:39-8.2 Advisory staff qualifications for patient activities

(a) (No change.)

(b) The director of patient activities should hold current certification from the National Certification Council for Activity Professionals **or the National Council of Therapeutic Recreation Certification.**

8:39-8.4 Advisory patient services for patient activities

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

[(e) A menu committee composed of patients should participate in meal planning.]

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

[(g)](f) Patient activities programs should be developed and modified [partly] on the basis of input from patients, **as well as staff, family, and others.**

8:39-9.2 Mandatory policies and procedures for administration

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

(d) The following documents shall be submitted to the New Jersey State Department of Health:

1. An annual financial report or a Medicaid cost report; [shall be submitted to the New Jersey State Department of Health.] **and**

2. Statistical data, such as patient census and facility characteristics, in a format provided by the Department.

(e)-(h) (No change.)

8:39-11.2 Mandatory policies and procedures for patient assessment and care plans

(a) (No change.)

(b) Each physician order shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service, as appropriate. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours, or as specified by the physician.

Recodify (b) through (j) as (c) **through** (k) (No change in text.)

8:39-13.1 Mandatory communication policies and procedures

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

(e) The facility shall notify the attending physician promptly of substantial changes in the patient's medical condition.

8:39-18.4 Advisory patient dietary services

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

(f) A menu committee composed of patients should participate in meal planning.

[(f)](g) The facility should sponsor a guest meal program.

8:39-19.3 Mandatory waste removal policies and procedures

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

(c) [Medical waste that is not incinerated or disposed of as outlined in previous standards shall be sterilized by steam sterilization, or by a method approved by the New Jersey State Department of Health. Maintenance, repair, and biological monitoring of steam sterilizers used for medical waste shall be carried out in accordance with Department of Health autoclave standards for hospitals.] **Regulated medical waste shall be collected, stored, handled, and disposed of in accordance with applicable Federal and State laws and regulations.**

(d) The facility shall comply with the provisions of 42 U.S.C. 6903 et seq., the Medical Waste Tracking Act of 1988, and N.J.S.A. 13:1E-48.1 et seq., the Comprehensive Regulated Medical Waste Management Act, and all rules and regulations promulgated pursuant to the aforementioned Acts.

[(d) Medical waste sterilized in a steam autoclave shall be sterilized using at least the following minimum exposure times and temperatures:

Temperatures	Spore-Kill Time
240	60 minutes
245	36 minutes
250	30 minutes
257	16 minutes
270	4 minutes

(e) Medical waste shall be stored in a room where unauthorized persons do not have access to or contact with the waste.

(f) All reusable containers used for storage of medical waste shall be sanitized.]

[(g)](e) The infection control committee shall develop and implement written policies and procedures for collection, storage, handling, and disposal of all solid waste that is not **regulated** medical waste.

[(h)](f) All **solid** waste that is [non-medical solid] **not regulated medical** waste, including vacutainers, shall be disposed of in a sanitary landfill approved by the Department of Environmental Protection. Disposal shall be as frequent as necessary to avoid creating a nuisance.

8:39-19.7 Mandatory space and environment for water supply

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

(e) Hot ([90]**100** to 110 degrees Fahrenheit) and cold running water shall be provided. At no time shall the temperature of running water in patient care areas exceed 110 degrees Fahrenheit.

8:39-19.8 Mandatory space and environment for sanitation and waste management

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

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[(g) No medical waste shall be transported in such a way as to create a contamination hazard.]

[(h)](**g**) [Non-medical solid] **Solid** waste **which is not regulated medical waste** shall be stored within the containers provided for it outside the facility or in a separate room that is maintained in a clean and sanitary condition. Waste shall be collected from the storage room regularly to prevent nuisances such as odors, flies, or rodents, and so that the waste shall not overflow or accumulate beyond the capacity of the storage containers.

Recodify (i)-(j) as (**h**)-(**i**) (No change in text.)

8:39-23.2 Mandatory policies and procedures for medical services

(a) (No change.)

(b) Each physician order shall be properly entered into the patient's medical record. [and shall be executed by the nursing, dietary, social work, activities, rehabilitation or pharmacy service. If a physician's order is not executed, the record shall contain an explanation, and the physician shall be notified within 24 hours or as specified by the physician.]

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

8:39-24.1 Advisory structural organization for medical services

(a) (No change.)

[(b) If the facility has one or more renal dialysis patients, arrangements should be made for periodic visits by a qualified nephrologist.]

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

8:39-27.1 Mandatory restraint policies and procedures

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

(**c**) **The family or guardian shall be notified when a physician initiates an order that the patient be physically or chemically restrained.**

8:39-27.5 Mandatory patient services for personal care

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

(g) Each patient shall receive at least one bath (tub or shower) per week unless contraindicated[, and all baths shall be documented].

(h)-(n) (No change.)

8:39-28.1 Advisory policies and procedures for patient care

[(a) All nursing staff members shall wear uniforms.]

[(b)](**a**) (No change in text.)

[(c) The facility should maintain a bath record.]

[(d) The family or guardian should be notified when a physician initiates an order that the patient will be physically or chemically restrained.]

(**b**) **The facility should develop and implement a restraint-free policy for all residents.**

8:39-28.2 Advisory patient care services

[(a)] There should be patient programs provided on at least a quarterly basis, open to families, for the maintenance of physical and mental well-being, the prevention of deterioration, and the teaching of self-care.

[(b) Patients should be afforded privacy for conjugal visits.]

8:39-29.4 Mandatory pharmacy control policies and procedures

(a)-(g) (No change.)

(h) The pharmacist consultant or director of pharmaceutical services and **either** a registered professional nurse **or a licensed practical nurse** shall witness all drug destruction in the facility.

(i)-(j) (No change.)

8:39-32.1 Policies and procedures

[There should be no smoking by staff members in public areas of the facility or patient rooms.]

There should be a smoke-free policy in all areas of the facility, except that, at the facility's option, controlled smoking by patients may be permitted in an enclosed designated area with adequate outside ventilation.

8:39-35.2 Mandatory policies and procedures for medical records

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

(e) Each entry into the patient's medical record shall be **legible and** dated and signed in ink with name and title.

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

8:39-37.3 Mandatory rehabilitation staffing amounts and availability

Speech-language pathology evaluation, [Physical] **physical** therapy evaluation**, occupational therapy evaluation, and audiology evaluation** shall take place within 48 hours of the original physician order, excluding weekends, in all facilities with more than 60 beds.

8:39-38.1 Advisory rehabilitation staff qualifications

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

(c) If the facility has 60 or fewer beds, it, nevertheless, should provide:

1. (No change.)

2. **Speech-language pathology evaluation,** [Physical] **physical** therapy evaluation**, occupational therapy evaluation, and audiology evaluation** within 48 hours of the original physician order, excluding weekends;

3. (No change.)

8:39-41.3 Mandatory fire and emergency preparedness

(a)-(n) (No change.)

(o) The facility shall establish a written heat emergency action plan which specifies procedures to be followed in the event that the indoor air temperature is [85] **82** degrees Fahrenheit or higher for a continuous period of four hours or longer.

1.-2. (No change.)

3. In implementing a heat emergency action plan, a facility shall not prevent a patient from having a room temperature in his or her patient room in excess of [85] **82** degrees Fahrenheit if the patient and the patient's roommate, if applicable, so desire, and if the patient's physician approves.

4. A heat emergency plan need not be implemented if the patient care areas are not affected by an indoor temperature in excess of [85] **82** degrees Fahrenheit.

5. (No change.)

(**p**) **The facility shall provide for and operate adequate ventilation in all areas used by patients. By September 1, 1991, all areas of the facility used by patients shall be equipped with air conditioning and the air conditioning shall be operated so that the temperature in these areas does not exceed 82 degrees Fahrenheit.**

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Hospital Policy Manual

Proposed Amendments: N.J.A.C. 8:43I-1.3 and 1.11

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1990-327.

Submit comments by July 18, 1990 to:
John Gontarski, Chief
Health Systems Review, Room 604
New Jersey Department of Health
CN 360
Trenton, NJ 08625-0360

The agency proposal follows:

Summary

The proposed amendments are intended to clarify the differences between two types of licensed obstetric beds (labor-delivery-recovery-postpartum (LDRP) and postpartum) and adjust the minimum and optimal occupancy rate standards for licensed obstetric beds to more accurately reflect the differences in usage between LDRP and postpartum beds. The amendment to N.J.A.C. 8:43I-1.3 will establish definitions for LDRP and postpartum beds which, heretofore, were subsumed under the single category of obstetric beds. The amendment to N.J.A.C. 8:43I-1.11 will establish two sets of minimum and optimal occupancy rates within the obstetrical bed category. One set of rates will apply to LDRP beds and one set will apply to postpartum beds. These changes will not affect the licensure category of obstetric beds, but will merely create distinctions

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between different modes of obstetrical delivery for purposes of more accurately evaluating utilization.

Social Impact

The proposed amendments are designed to promote appropriate and efficient utilization of inpatient obstetric units. By so doing, the Department will ensure an adequate supply of obstetric beds in the State. No negative social impact is anticipated.

Economic Impact

It is not anticipated that the proposed amendments will impose any additional economic burdens on hospitals, consumers, payers, or on any Department of the State government. Rather, the amendments are intended to provide for the efficient utilization of inpatient beds, thus reducing unnecessary capital and operational expenditures.

Regulatory Flexibility Analysis

Facilities affected by the proposed amendments are acute general hospitals, which typically employ well over 100 full-time employees. Therefore, these facilities do not fall into the category of small businesses, as defined in N.J.S.A. 52:14B-16 et seq., the New Jersey Regulatory Flexibility Act.

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

8:43I-1.3 Definitions

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

. . .

"Labor-delivery-recovery-postpartum (LDRP) bed" means a licensed obstetrical bed, the primary function of which is to accommodate an obstetrical patient during the entire course of labor, delivery, recovery, and postpartum.

. . .

"Postpartum bed" means a licensed obstetrical bed, the function of which is to accommodate a postpartum or antepartum patient.

8:43I-1.11 Standards regarding occupancy rates

(a) For purposes of review of certificate of need applications, the minimum and optimal occupancy rates based upon licensed beds for an acute general hospital, by service category, shall be:

	Minimum	Optimal
Medical/Surgical	75%	90%
Obstetrics	[60%]	[85%]
Units of less than 20 beds		
LDRP	**50%**	**70%**
Postpartum	**60%**	**80%**
Units of 20 and above		
LDRP	**50%**	**75%**
Postpartum	**60%**	**85%**
Pediatrics		
Units of less than 40 beds	60%	85%
Units of 40 and above	65%	90%
ICU/CCU	60%	85%
Psychiatric	70%	90%

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

(a)

DIVISION OF OCCUPATIONAL AND ENVIRONMENTAL HEALTH

Worker and Community Right to Know Act

Proposed Amendment: N.J.A.C. 8:59-1.3
Proposed New Rules: N.J.A.C. 8:59-12

Authorized By: Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health.

Authority: N.J.S.A. 34:5A-1 et seq., specifically N.J.S.A. 34:5A-13.

Proposal Number: PRN 1990-325.

Submit comments by July 18, 1990 to:

Richard Willinger, Manager
Right to Know Program
Division of Occupational and Environmental Health
New Jersey Department of Health
CN 368
Trenton, New Jersey 08625-0368
(609) 984-2202

The agency proposal follows:

Summary

The goals of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., are to train public workers how to handle hazardous substances safely and respond to emergencies, to inform public workers and community residents about the health effects of hazardous substances so as to reduce the incidence of chemically-related injuries and illnesses, and to train emergency responders how to respond to spills and other chemical emergencies. Such information allows workers and community residents to make informed decisions about their activities which may reduce their exposure to hazardous substances.

Right to Know Surveys indicate that there are thousands of facilities where public employees are exposed or potentially exposed to hazardous substances. All public employees who are exposed or potentially exposed to hazardous substances are required to receive initial and annual Right to Know education and training programs, pursuant to N.J.S.A. 34:5A-13 and N.J.A.C. 8:59-6. Some programs are provided by in-house staff, while some employers contract outside consultants to conduct the training programs. It is necessary to provide adequate training for these employees in the use of those substances which present a hazard to them at the worksite.

To ensure the quality of the required education and training programs about hazardous substances given to public employees by outside consultants, an amendment to the Right to Know Act was enacted on August 11, 1989. This amendment provides for certification of consultants and consulting agencies who provide Right to Know education and training programs and their curriculums to public employees. Certification of consultants and consulting agencies by the State Department of Health will promote a standardization of materials and presentations for employee education and training as well as the qualifications of instructors.

Since some public employers depend upon outside agents to provide services, they should have some assurances that their money is well spent and that they will not be likely to receive penalties for noncompliance with the law. Proposed N.J.A.C. 8:59-12 sets up procedures for certifying consultants who act as individual instructors and consulting agencies which provide Right to Know education and training programs. The parameters which define and differentiate a consultant and a consulting agency are specified. "Conducting" a Right to Know education and training program means the actual teaching of the program, while "providing" a Right to Know education and training program means the selling of a written program along with corresponding materials to a public employer. It is the intention of the Department of Health to ensure that public employers receive a fully acceptable Right to Know education and training program and retain a technically qualified instructor when contracting services for employee training under the Worker and Community Right to Know Act. The purpose of this subchapter is to protect the public employer from consultants who cannot provide a training course that is in compliance with the Right to Know regulations. The Department wants to prevent a public employer from having to spend additional time and money in supplementing a training program after making a good faith payment for what it thought was a proper program.

The proposed subchapter will directly affect consultants and consulting agencies which provide Right to Know education and training programs for public employers. Definitions for "consultant," "consulting agency," "instructor," "providing," and "shall" have been added to N.J.A.C. 8:59-1.3.

Proposed N.J.A.C. 8:59-12.1 explains the general provisions for those who apply for and maintain current certification for conducting Right to Know education and training. Those persons whose normal work responsibilities at a public agency involve outreach and information programs, such as Right to Know training to other public agencies, are exempt from these rules. Consultants and consulting agencies will be required to attend update meetings and allow access for on-site evaluations of training programs by Department representatives. The Right to Know education and training program that is presented must conform to established rules as set forth in N.J.A.C. 8:59-6.

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The process of application for certification, described in N.J.A.C. 8:59-12.2, lists the simple steps to be taken to apply for consultant and consultant agency certifications. All application forms shall be issued by the Department of Health.

N.J.A.C. 8:59-12.3 through 12.8 specify the required documentation for consultant and consulting agency certifications and their renewal. All individual instructors must conform to the qualifications of a technically qualified person as set forth in N.J.A.C. 8:59-1.3. Only permanent certifications shall be renewed. Renewal applications must contain any additions, changes or deletions which have occurred since the previous application. All renewals shall be for two years.

Fees are detailed in N.J.A.C. 8:59-12.9. There is a limit of $500.00 for those consultants who also apply as consulting agencies.

N.J.A.C. 8:59-12.10 discusses rejection of applications. If an application for certification is rejected, the consultant or consulting agency may resubmit or add to the original application according to the determination of the Department. Should an application be rejected three times, the consultant or consulting agency will have the option of an informal hearing as specified in N.J.A.C. 8:59-12.12.

The reasons for suspension or revocation of a certification are specified in N.J.A.C. 8:59-12.11 and include incompetence, false statements or inadequate presentation of topics required in N.J.A.C. 8:59-6, or any other infraction of N.J.A.C. 8:59 related to the education and training program.

In cases of suspension, revocation or denial of certification, the consultant or the consulting agency shall have the right to an administrative hearing according to N.J.S.A. 52:14B-1 et seq. and N.J.A.C. 1:1-1. This is discussed in N.J.A.C. 8:59-12.12.

Social Impact

The purpose of the proposed amendment and new rules is to assure public employers that contract services received are adequate, appropriate and are at a uniform level of hazardous substance training for their employees so as to be in compliance with the Worker and Community Right to Know Act.

Certification of consultants and consulting agencies will have a beneficial effect for both the public employer and the specific consultant or agency. Certification will assure the public employer that contract services will meet the requirements for Right to Know employee education and training as specified in N.J.A.C. 8:59.

In order to qualify for certification, each applicant must meet minimum standards set by the Department of Health. Consultants and consulting agencies will have the assurance that continued certification will provide evidence of adherence to the standards required by the Department. Certification will give consultants and consulting agencies a professional recognition which would be accepted not only by their peers but also by the public. Competition for meeting the education and training program needs of public employers will be confined to those consultants and agencies which have received certification.

It is anticipated that the impact of this subchapter will have a positive affect on public employees. Standardized Right to Know employee education and training in the safe handling of hazardous substances should reduce the number of accidents and the severity of injuries sustained. Knowledge of the safe use of chemicals is paramount to reducing the number of and preventing the causes of chemically-induced illnesses and injury.

Economic Impact

Initially, consultants and consulting agencies will experience a financial expenditure in submitting the application fee. Since consultants who are already providing Right to Know education and training programs are well versed in the law, occupational health, hazardous substances and training methods, any fees incurred through certification should be recouped by the increased business as a result of certification and should not be used for an increase in charges.

Public employers must comply with the provisions of the Right to Know Act, such as the training of their employees. In order to comply with the law, some public employers presently are relying on outside consultants to train employees properly. The use of these consultant services is seen as an economically efficient method to comply with such a technical requirement of the law for many of the public employers.

A public employer should not experience any additional expense if Right to Know consultant services are already being used. Since it is anticipated that many consultants and consulting agencies will receive certification, there should be significant competition to prevent fee increases by consultants and consulting agencies because they have their certification.

Regulatory Flexibility Analysis

The proposed amendments and new rules will impose reporting, record keeping and other compliance requirements on Right to Know education and training consultants and consulting agencies which provide programs to public employers. Some of the consultants and consulting agencies may be considered small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules require that specific standards be met prior to certification and that reporting of planned education and training programs be done at six-month intervals. The cost of copying and submitting the required documents to the Department should be minimal. Fees, as specified in N.J.A.C. 8:59-12.9, have been established by law. The Department has established a maximum fee of $500.00 at N.J.A.C. 8:59-12.9(d) for those individual consultants who are requesting certification as consulting agencies, but has established no other differential requirements for small businesses. The Department believes that, in the interest of public health and safety, the proposed rules should be uniformly applied and no other differential requirements should be permitted.

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

8:59-1.3 Definitions

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

. . .

"Consultant" means a person who is a technically qualified person, as specified in N.J.A.C. 8:59-1.3, who conducts Right to Know education and training programs for public employees, pursuant to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. "Conducting" means the actual teaching of the program.

"Consulting agency" means an individual who meets, or a corporation or partnership which employs persons who meet, the criteria for a technically qualified person as specified in N.J.A.C. 8:59-1.3, and which develops and provides training objectives, outlines, teaching materials and evaluation tools for the Right to Know education and training program to public employers according to N.J.A.C. 8:59-6 and 12, for the purpose of remuneration. An individual consultant may also be a consulting agency at the same time.

. . .

"Instructor" means a person who meets the requirements described in the definition of technically qualified person in N.J.A.C. 8:59-1.3.

. . .

"Providing" means the selling of a written program along with corresponding materials.

. . .

"Shall" means a mandatory requirement.

. . .

SUBCHAPTER 12. CERTIFICATION OF CONSULTANTS AND CONSULTING AGENCIES

8:59-12.1 General provisions

(a) Consultants who conduct and consulting agencies which provide the Right to Know education and training program to a public employer shall possess a current certification, in good standing, issued by the Department of Health.

(b) This subchapter shall affect only those consultants who conduct, and consulting agencies which provide, Right to Know education and training programs for remuneration and shall not include Right to Know education and training programs performed by employees of public agencies for other public agencies for the purpose of compliance with the Right to Know law.

(c) Training conducted by a consultant or provided by a consulting agency that is regulated by this subchapter shall not be limited to initial and annual Right to Know education and training programs but shall also include 30-hour Train-the-Trainer courses or any other courses provided to the public employer in compliance with the Right to Know law.

(d) The Department of Health shall determine if the 30 hours of hazardous substance training required by N.J.A.C. 8:59-1.3 for a technically qualified person are met. Documentation, such as course

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certificates and course outlines, shall be submitted to the Department with the application for certification. Right to Know education and training programs shall cover all topics as specified in N.J.A.C. 8:59-6.

(e) Application for renewal shall be received by the Department 60 days prior to the expiration date of the permanent certification.

(f) Consultants and consulting agencies shall be present at any update meetings sponsored by the Department of Health in order to ensure uniformity and accuracy in Right to Know education and training programs.

(g) All consultants and consulting agencies shall inform the Department of Health, every six months, of upcoming Right to Know education and training programs to be conducted, and shall permit representatives of the Department of Health to attend, evaluate and monitor the Right to Know education and training programs.

(h) Any advertisement by a consultant or consulting agency of their Right to Know certification by the Department of Health shall specify that the certification only applies to New Jersey Right to Know education and training of public employees and shall specify provisional or permanent status.

(i) All consultants and consulting agencies shall cooperate fully with the Department of Health in all matters which pertain to this rule.

8:59-12.2 Process for application

(a) All applications for certification shall be typewritten on an application form issued by the Department and accompanied by the fee specified by N.J.A.C. 8:59-12.5. The fee may be in the form of a check or a money order, made payable to Treasurer, State of New Jersey.

(b) The application shall include, but not be limited to, the applicant's name, address, copy of resume, certification of completion of courses required to qualify as a technically qualified person pursuant to N.J.A.C. 8:59-1.2, as well as class outlines, teaching methods, and evaluation tools. All Right to Know education and training programs provided to or conducted on behalf of public employers shall conform to the requirements of N.J.A.C. 8:59-6.

(c) Applicants shall, by signature on the application form, attest to the accuracy of the information submitted.

8:59-12.3 Provisional certification of consultants

(a) An applicant for provisional certification as a consultant shall submit a completed application form and appropriate fee, as required in N.J.A.C. 8:59-12.2, and written documentation of the possession of education and experience as specified in the definition of a technically qualified person at N.J.A.C. 8:59-1.3. Documentation of a degree shall include a transcript and a copy of the diploma granted. Documentation of 30 hours of hazardous substance training shall include the number of hours for each course, a copy of the certificate of completion, and a copy of the course outline. Documentation of the methods used to develop the applicant's understanding of health risks associated with exposure to hazardous substances, as defined in N.J.A.C. 8:59-1.3 shall also be submitted.

(b) Provisional certification of consultants shall be effective until permanent certification is granted or denied, but shall in no case be effective for more than two years.

8:59-12.4 Permanent certification of consultants

An applicant for permanent certification as a consultant shall submit a completed application form and appropriate fee, as required in N.J.A.C. 8:59-12.2, and written documentation of the possession of education and experience as specified in the definition of a technically qualified person at N.J.A.C. 8:59-1.3. An applicant shall also possess a current provisional certificate and shall demonstrate, during one or more Right to Know education and training programs, the knowledge, skills and ability to effectively convey the information required by N.J.A.C. 8:59-6 to employees participating in the program.

8:59-12.5 Renewal of permanent certification of consultants

(a) An applicant for renewal of permanent certification as a consultant shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form, as specified by N.J.A.C. 8:59-12.2;

2. A declaration of any additions, deletions or changes occurring since the previous application; and

3. The fee specified by N.J.A.C. 8:59-12.9.

(b) An applicant for permanent certification as a consultant shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.6 Provisional certification of consulting agencies

(a) An applicant for provisional certification as a consulting agency shall submit the completed application form and appropriate fee required in N.J.A.C. 8:59-12.2, and a list of instructors who will conduct the Right to Know education and training programs for the agency. The consulting agency shall also submit written documentation of the education and experience of such instructors, as specified in the definition of "technically qualified person" found at N.J.A.C. 8:59-1.3, and of the instructors' provisional or permanent certification as a consultant.

(b) Provisional certification of consulting agencies shall be effective until permanent certification is granted or denied, but shall in no case be effective for more than two years.

8:59-12.7 Permanent certification of consulting agencies

(a) An applicant for permanent certification as a consulting agency shall submit, with the completed application form and appropriate fee required in N.J.A.C. 8:59-12.2, evidence of the possession of a current provisional certificate as a consulting agency and shall demonstrate, during one or more Right to Know education and training programs, that the instructors possess the knowledge, skills and ability to effectively convey the information required by N.J.A.C. 8:59-6 to the employees participating in the program.

(b) An applicant for permanent certification as a consulting agency shall comply with all requirements of N.J.A.C. 8:59-6 and 8:59-12.

8:59-12.8 Renewal of permanent certification of consulting agencies

(a) An applicant for renewal of permanent certification as a consulting agency shall submit the following to the Department 60 days prior to the expiration of the certification:

1. A completed application form as specified by N.J.A.C. 8:59-12.2;

2. A declaration of any additions, deletions or changes occurring since the previous application; and

3. The fee specified by N.J.A.C. 8:59-12.9.

8:59-12.9 Fees

(a) Fees for certification and renewal shall be submitted with the application and shall be non-refundable.

(b) Fees for an individual consultant shall be as follows:

1. Provisional certification—$200.00;

2. Permanent certification—$100.00; and

3. Renewal of permanent certification—$100.00.

(c) Fees for a consulting agency shall be as follows:

1. Provisional certification—$500.00;

2. Permanent certification—$200.00; and

3. Renewal of permanent certification—$200.00.

(d) For a person applying for certification or renewal as both a consultant and a consulting agency, the fees charged in accordance with (b) above shall not exceed $500.00.

8:59-12.10 Rejection of applications

(a) An application from an individual consultant or consulting agency may be rejected by the Department if the application does not meet the requirements of N.J.A.C. 8:59-12.

(b) Rejection shall be based on deficiencies in documentation of the requirements of N.J.A.C. 8:59-1.3, 6, and 12. The Department retains the right to request supplemental information to the application.

(c) Any rejected application may be resubmitted with additional information within a year of receipt of the original application without additional fees incurred.

(d) If an application is rejected three times, the consultant or consulting agency may exercise the right to an informal hearing, as specified in N.J.A.C. 8:59-12.8.

8:59-12.11 Suspension or revocation of certification

(a) A consultant may have his or her certification suspended or revoked for:

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1. Incompetence;

2. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or any other materials required by the Department of Health pursuant to N.J.A.C. 8:59-6.3(c);

3. Submitting false information on an application;

4. Failure to comply with the rules in this chapter; or

5. Any violations of N.J.S.A. 34:5A-1 and 34:5A-13, and any rules adopted pursuant to the law.

(b) A consulting agency may have its certification suspended or revoked for:

1. Failure to adequately present either the topics set forth in N.J.A.C. 8:59-6, or to present any other materials required by the Department of Health pursuant to N.J.A.C. 8:59-6.3(c);

2. Submitting false information on an application;

3. Failure to comply with the rules promulgated under N.J.A.C. 8:59; or

4. Any violations of N.J.S.A. 34:5A-1, 34:5A-13, and any rules adopted pursuant to the law.

8:59-12.12 Hearings for consultants and consulting agencies when certification has been denied, revoked or suspended

(a) When the Commissioner of Health proposes to deny an application for certification, or revoke or suspend a certification, the consultant or consulting agency shall have the right to an informal hearing under (b) below or a formal hearing under (c) below or both.

(b) An informal hearing before the Commissioner of Health or his or her designee may be held provided a written request is submitted within 20 days after the notice has been received that the Commissioner of Health proposes to deny an application for certification, or to revoke or suspend a certification. When the hearing is held before the Commissioner of Health or his or her designee, the Commissioner or his or her designee shall state his or her findings and conclusions in writing and transmit a copy to the consultant or consulting agency.

(c) A formal hearing before the Office of Administrative Law may be held provided a written request is submitted within 20 days after notice to deny an application for certification, or to revoke or suspend a certification has been received by the Commissioner, pursuant to N.J.S.A. 34:5A-31. The procedures governing all formal hearings shall be in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and, N.J.S.A. 34:5A-1 et seq., and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1.

CORRECTIONS

(a)

THE COMMISSIONER

Juvenile Detention Facilities

Juvenile Population Capacity

Proposed Amendment: N.J.A.C. 10A:32-4.2

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

Authority: N.J.S.A. 30:1B-6, 30:1B-10, 2A:4A-44d and *County of Monmouth v. Department of Corrections,* Dkt. No. A-6351-88T3F (App. Div. 11-16-89)

Proposal Number: PRN 1990-315.

Submit comments by July 18, 1990 to:
Elaine W. Ballai, Esq.
Chief, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:32-4.2 is necessitated by a ruling of the Court in *County of Monmouth v. Department of Corrections,* Docket No. A-6351-88T3F, November 16, 1989, (N.J. App. Div.). The Court remanded this matter to the Commissioner, New Jersey Department of Corrections, with the direction that the Commissioner establish regulations under which the Department of Corrections will promptly comply with court ordered commitments of juveniles to State facilities by removing sentenced juveniles from county detention facilities to State facilities as expeditiously as possible upon notification of the court's disposition. This amendment establishes a three-day limit for the transportation of juveniles, in these circumstances, to be transported by the county to the State facility.

Social Impact

The Division of Juvenile Services has experienced a 91 percent increase in the number of juveniles assigned to the Division's custody from December 1984 to May 1989, from 908 commitments to 1,445 commitments. In addition, lengths of sentences have increased and are a major contributory factor to the current shortage of bed space.

The Division of Juvenile Services is committed to creating alternative programs to incarceration for appropriate juveniles committed to Division custody. Although three such projects are underway, which will increase the capacity of the Division by 95 beds, these are long term solutions which cannot as yet alleviate the crowding in facilities expected to be exacerbated by the Appellate Division's Order. Other on-going projects, including renovation of a building at the New Jersey Training School with 40 beds, will not be completed for 12 to 18 months.

Thus, while relieving somewhat the stress being experienced by overcrowded county juvenile facilities, this amendment will increase the stress on State juvenile facilities.

Economic Impact

The economic impact of this amendment can be assessed only in retrospect because it is dependent on the number of juveniles committed to State facilities, the number of juveniles who can be placed in existing or newly created community programs, and the court's approval of a three working day grace period for transfer of juveniles from the juvenile county facility to the New Jersey Training School.

It is, however, anticipated that costs will increase in proportion to population and bed space increases due to the need for expanded services.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does 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 amendment impacts on juvenile inmates and the New Jersey Department of Corrections and has no effect on small businesses.

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

10A:32-4.2 Juvenile population capacity

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

(d) A juvenile who receives a State sentence of incarceration shall be transported to the juvenile intake unit at the New Jersey Training School for Boys no later than three working days after the Department of Corrections receives notification from the county that the juvenile has been sentenced. The county official who is responsible for transporting the juvenile shall contact the New Jersey Department of Corrections, Division of Juvenile Services, to ascertain the date on which such transfer may be effected.

LABOR

(b)

DIVISION OF EMPLOYMENT SECURITY

Scope

Proposed Readoption with Amendments: N.J.A.C. 12:15

Authorized By: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e), 43:21-3(c), 43:21-4(e), 43:21-7(b)(3), 43:21-7.3(e), 43:21-19(t), 43:21-27, 43:21-40 and 43:21-41.

Proposal Number: PRN 1990-335.

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Submit comments by July 18, 1990 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. 12:15 expires on August 19, 1990. The Department has reviewed the rules and has determined that they are necessary, reasonable and proper for the purposes for which they were originally promulgated, as required by the Executive Order. To ensure continuation of these rules, the Department proposes to readopt these rules with one definitional change.

N.J.A.C. 12:15-1.1 sets forth the purpose and scope of the rules, which are designed to assist in the implementation of the basic provisions of the laws pertaining to unemployment compensation and temporary disability benefits, N.J.S.A. 43:21-1 et seq.

N.J.A.C. 12:15-1.2 is a definitions section. The Department proposes to amend the definition of "controller" to conform with a more accurate definition as contained in N.J.A.C. 12:19.

N.J.A.C. 12:15-1.3 states the 1990 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

N.J.A.C. 12:15-1.4 sets forth the 1990 taxable wage base for the purpose of contributions under the Unemployment Compensation Law in accordance with N.J.S.A. 43:21-7(b)(3).

N.J.A.C. 12:15-1.5 states the 1990 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

N.J.A.C. 12:15-1.6 outlines the amount of earnings required in 1990 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

Finally, N.J.A.C. 12:15-1.7 states the amount of base year earnings required to establish an individual's eligibility for unemployment compensation and State Plan temporary disability benefits, in those instances in which the individual has not established 20 base weeks.

N.J.A.C. 12:15-1.3 through 1.7 are amended annually to reflect current statistics.

Social Impact

The proposed readoption of N.J.A.C. 12:15-1.1 and 1.2, as they are statements of applicability and definition, have no social impact in and of themselves.

The proposed readoption of N.J.A.C. 12:15-1.3 will ensure that payments to unemployment and disability insurance recipients entitled to maximum benefits will increase in line with the upward trend of wages in the State's economy, thus preserving the real purchasing power of their benefits.

The proposed readoption of N.J.A.C. 12:15-1.4 will generate revenues for the Unemployment Insurance and Disability Insurance Trust Funds. These revenues are needed to offset the increased level of benefits for these programs, which are statutorily indexed to the upward trend of wages in the State's economy.

The proposed readoption of N.J.A.C. 12:15-1.5 merely sets forth the contribution rate for governmental entities, and thus its readoption will have no social impact on the public.

The proposed readoption of N.J.A.C. 12:15-1.6 and 12:15-1.7 provides for the base week amount and the amount of earnings to establish eligibility, respectively, to be indexed to wage increases as benefit payments have been indexed since 1969. Some claimants who work temporarily or intermittently may not qualify for benefits under these tightened eligibility standards.

Economic Impact

N.J.A.C. 12:15-1.1 and 1.2 have no economic impact in and of themselves.

The proposed readoption of N.J.A.C. 12:15-1.3 sets forth the weekly benefit rates received by individuals eligible for the maximum weekly benefit rate under the Unemployment Compensation Law and under the Temporary Disability Benefits Law beginning January 1, 1990, in compliance with statutory provisions which automatically adjust these benefit rates each year in accordance with changes in the Statewide average weekly wage. The maximum weekly benefit for Unemployment Compensation is computed as 56 and 2/3 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1990, the maximum weekly benefit increased from $258.00 to $279.00, which resulted in an increase in benefits for claimants.

The maximum weekly benefit for State Plan Temporary Disability is computed as 53 percent of the Statewide average weekly wage in the second preceding calendar year. As of January 1, 1990, the maximum weekly benefit increased from $241.00 to $261.00, again increasing the amount of benefits for claimants.

The proposed readoption of N.J.A.C. 12:15-1.4 establishes $13,900 as the wage amount of an individual employee of an employer that is subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1990. An increase or decrease in this amount is directly proportional to an increase or decrease in the contributions due from employees and employers.

The proposed readoption of N.J.A.C. 12:15-1.5 states the contribution rate for governmental entities. This will, other things being equal, result in lower costs to State and local government units that choose this financing option, as the rate was lowered from 1.1 percent in 1989 to 0.8 percent in 1990.

The proposed readoption of N.J.A.C. 12:15-1.6 states the amount an individual must earn to establish a base week under the Unemployment Compensation and Temporary Disability Benefits Laws. The amount is computed as 20 percent of the Statewide average weekly wage in the second preceding calendar year and is set at $99.00 for benefit years and periods of disability commencing January 1, 1990.

Finally, the proposed readoption of N.J.A.C. 12:15-1.7 outlines the alternative earnings eligibility standard under the law in those situations where the individual has not established 20 base weeks in the base year period. The amount increased to $6,000 in 1990. The alternative earnings test is indexed each year at 12 times the Statewide average weekly wage in the second preceding calendar year.

The Department does not expect to experience any economic impact as a result of the proposed readoption.

Regulatory Flexibility Statement

The proposed readoption does not impose any reporting, recordkeeping or compliance requirements on businesses, including small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed readoption will only set forth benefit and contribution levels under the Unemployment Compensation and Temporary Disability Benefits Laws. Thus, a regulatory flexibility analysis is not required.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:15.

Full text of the proposed amendments follows (deletions indicated in brackets [thus]):

12:15-1.2 Definitions

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

"Controller" means the [Office of the Assistant Commissioner for Finance and] Controller of the Department of Labor.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

State Aid to Counties and Municipalities

Proposed Readoption: N.J.A.C. 16:21

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 27:8-1 to 9.

Proposal Number: PRN 1990-330.

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Submit comments by July 18, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Bureau of Policy & Legislative Analysis
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), N.J.A.C. 16:21, State Aid to Counties and Municipalities, will expire on September 3, 1990. The rules have been reviewed by the staff of the Bureau of Local Highway Design and were found to be adequate, necessary, and required for the purpose for which they were originally promulgated. These rules were adopted as new rules, effective September 3, 1985 (see 17 N.J.R. 566(a), 17 N.J.R. 2143(b).) The chapter is summarized as follows:

N.J.A.C. 16:21-1 outlines the general provisions of the chapter concerning appropriation of funds, standards, applications, and agreements, procedure and contracts.

N.J.A.C. 16:21-2 outlines the local government responsibility regarding plans and specifications.

N.J.A.C. 16:21-3 provides the method and requirements for the award and payment of contracts.

N.J.A.C. 16:21-4 outlines the conditions required for the State's participation in the cost of projects.

N.J.A.C. 16:21-5 establishes the requirement for an audit to be undertaken by an independent auditor or public accountant for local municipalities.

Social Impact

The rules proposed for readoption impact on counties and municipalities, since they outline the procedures to be followed in disbursing State aid to local governments, as appropriated by the Legislature. The rules are necessary to provide and promote uniformity in disbursement of the funds and avoid ambiguity or confusion in the procedure and disbursement.

Economic Impact

The local government will continue to incur direct and indirect costs in having complete audits conducted by an independent auditor or public accountant who meets the requirements of the State Single Audit Policy. The costs incurred to comply with these requirements will not be reimbursed by the State. Should the Department request additional audit requirements above the minimum Federal and State requirements, the Department would be responsible for the additional audit work performed. The funds under this program are appropriated by the Legislature out of the State's share of the costs for construction and reconstruction, of county and municipal roads and bridges, and allocated according to the formula set forth in the legislation. Any reduction in funding would adversely affect the Department's capability to fund counties and municipalities which would further affect the economic well-being of the populace they serve.

Regulatory Flexibility Analysis

The proposed readoption will continue the compliance requirements relating to the auditing standards prescribed by the State Single Audit Policy, the receiving of funds to undertake specific projects in the counties or municipalities and the standards and design criteria which must be followed in improvement projects. There are no compliance requirements on small businesses, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The purpose of these rules is to set standards and requirements for counties and municipalities to follow.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:21.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Routes U.S. 9 in Cape May and Monmouth Counties; N.J. 15 in Morris County and N.J. 21 in Passaic County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.11 and 1.65

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, 39:4-197.5 and 39:4-199.

Proposal Number: PRN 1990-310.

Submit comments by July 18, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish additional "no parking" bus stop zones along Routes U.S. 9 in Marlboro Township, Monmouth County and N.J. 21 in Passaic City, Passaic County; "restricted parking" space for handicapped persons along Route U.S. 9 in Middle Township, Cape May County; and "no stopping or standing" zone along Route N.J. 15 in the Town of Dover, Morris 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 along the highway system, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of additional "no parking" bus stop zones along Route U.S. 9 in Marlboro Township, Monmouth County and N.J. 21 in Passaic City, Passaic County; a "restricted parking" space for handicapped persons along Route U.S. 9 in Middle Township, Cape May County; and "no stopping or standing" zone along Route N.J. 15 in the Town of Dover, Morris County, were warranted.

The "no parking" bus stop zones, along Routes U.S. 9 and N.J. 21 provide additional areas wherein bus passengers may on/off load safely without fear of danger. The "restricted parking" space zone for handicapped persons along Route U.S. 9 affords a designated parking space in front of the First Methodist Church in Cape May Court House to provide access, egress and preferential parking to those persons who have handicapped license plates or vehicle identification cards issued by the Division of Motor Vehicles.

The "no stopping or standing" zone along Route N.J. 15 in Dover will enhance safety by providing for adequate sight distance for those vehicles exiting a driveway at 158 West Clinton Street onto Route 15.

The Department therefore proposes to amend new rule N.J.A.C. 16:28A-1.7, 1.11 and 1.65, based upon the requests from the local government and the traffic investigations.

Social Impact

The proposed amendments will establish "no parking" bus stop zones along Routes U.S. 9 in Marlboro Township, Monmouth County and N.J. 21 in Passaic City, Passaic County; "restricted parking" space for handicapped persons along Route U.S. 9 in Middle Township, Cape May County; and "no stopping or standing" zone along Route N.J. 15 in the Town of Dover, Morris 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, and special designated parking space for handicapped persons. Appropriate signs will be erected to advise the motoring public in the areas designated along the highway system.

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Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no stopping or standing" zones signs and the local officials will bear the costs for "no parking bus stop" and "handicapped parking" zones signs. The cost factors for the procurement of signs depicting the respective restriction are variable. Approximate costs for single-post signs are $117.00 for planning, engineering and installation and approximately $7.00 per square foot for the fabrication of the sign. Motorists who violate the rules will be assessed the appropriate fine, in accordance with N.J.S.A. 39 and the State of New Jersey "Statewide Violations Bureau Schedule," issued pursuant to New Jersey Court Rule 7:7-3.

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) (No change.)

(b) The certain parts of State highway Route U.S. 9 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-4. (No change.)

5. Along the easterly (northbound) side in Marlboro Township, Monmouth County:

i. Mid-block bus [stop] **stops**:

(1) Beginning at a point 375 feet south of the prolongation of the southerly curb line of Longfellow Terrace and extending 135 feet southerly therefrom.

(2) (Off ramp at Union Mill Road)—Beginning 96 feet from the southerly curb line of Union Mill Road to a point 106 feet southerly therefrom;

ii. Near side bus stop:

(1) Beginning at the southerly curb line of County Route 520 and extending 225 feet southerly therefrom.

6.-39. (No change.)

(c) The certain parts of State highway Route U.S. 9 described in this subsection are designated and established as "restricted parking" space, for the use of persons who have been assigned handicapped vehicle identification license plates or cards by the Division of Motor Vehicles. No other person shall be permitted to park in these areas. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established handicapped parking space:

1. Restricted Parking Space zone in Middle Township, Cape May County:

i. Along the southbound (westerly) side:

(1) Beginning at a point 55 feet south of the southerly curb line of Church Street and extending 22 feet southerly therefrom.

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

(a) (No change.)

(b) The certain parts of State highway Route 21 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 stop:

1. Along (River Road) southbound (westerly) side in Passaic City, Passaic County:

i. Near side bus stop:

(1) Union Avenue—Beginning at the northerly curb line of Union Avenue and extending 105 feet northerly therefrom.

16:28A-1.65 Route 15

(a) The certain parts of State highway Route 15 described in this [section] **subsection** shall be designated and established as "[no parking] **no stopping and 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.)

3. No stopping or standing in the [town] **Town** of Dover, Morris County:

i. (No change.)

ii. Along the southbound (westerly) side:

(1) Beginning at a point 65 feet north of the prolongation of the northerly curb line of Goodale Avenue and extending 110 feet northerly therefrom.

4.-5. (No change.)

(a)

DIVISION OF PROCUREMENT

Construction Services

Debarment, Suspension and Disqualification of a Person(s)

Definitions; Cause for Debarment of a Person(s)

Conditions Affecting the Debarment of a Person(s)

Proposed Amendments: N.J.A.C. 16:44-8.1, 8.2 and 8.3

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1-1 and 14:15-2.

Proposal Number: PRN 1990-311.

Submit comments by July 18, 1990 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 is required to review its existing rules periodically to update, repeal, and determine that they are current, useful, and necessary. Accordingly, such a review of rules contained in N.J.A.C. 16:44 was accomplished by the Staff of the Bureau of Construction Services, Division of Procurement, which revealed that the rules applied to contractors and persons performing work under contract with the Department, and in review of current practices vendors meeting the established criteria were excluded from the rules and should be included.

The proposed amendments effectuate the mandate of Executive Order No. 189 (1988) and establish additional ethical standards in conformity with which vendors must conduct themselves in doing business with the State.

The amendments provide for the debarment of a vendor who engages in any of the activities prohibited by Executive Order No. 189(1989), including offering a gift to, engaging in business with, or attempting to influence or seek favors from any State employee and any vendor who does not comply with the requirements to report any State employee who solicits anything of value of that vendor.

Social Impact

The proposed amendments will establish additional ethical standards which apply to the vendors. Failure to meet the established standards will result in an exclusion from New Jersey Department of Transportation contracting. The general public will be served by the implementation of additional safeguards to assure that the Department does not contract with unscrupulous business persons.

Economic Impact

The proposed amendments may have a negative impact on vendors who are debarred by the Department and who may suffer a loss in revenues. Additionally, the vendors will appear on a State Treasury list, possibly affecting their ability to do business with other State agencies.

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Regulatory Flexibility Analysis

The proposed amendments do not place any record keeping requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments do place requirements on vendors who provide or seek to provide goods or services or to perform any contract for any State agency, in that such vendors are required to report any attempt by any State employee to solicit anything of value and to refrain from offering anything of value to any State employee. Some of the vendors may be small businesses; however, the Department has not provided a differentiation based on business size in the rule, since the provisions of Executive Order No. 189(1989) do not allow for any exemptions of any kind.

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

16:44-8.1 Definitions

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

. . .

"Vendor" means any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

16:44-8.2 Causes for debarment of a person(s)

(a) (No change.)

(b) In the public interest, the New Jersey Department of Transportation shall debar a vendor for violation of any of the following prohibitions on vendor activities or for breach of any of the following affirmative obligations:

1. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of 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.

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

3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g.

4. Any relationship subject to the provisions of (b)3 above shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.

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

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

7. The provisions cited in (b)1 through 6 above shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines promulgated by the Executive Commission on Ethical Standards.

16:44-8.3 Conditions affecting the debarment of a person(s)

(a) The following conditions shall apply concerning debarment:

1.-4. (No change.)

5. The existence of a cause set forth in [section 2(a)9 through 12] **N.J.A.C. 16:44-8.2(a)9 through 12 and (b)** of this subchapter shall be established by evidence which the NJDOT determines to be clear and convincing in nature.

6. (No change.)

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF AVIATION

Air Safety and Hazardous Zoning Amended and Special Standard Somerset Airport, Bedminster Township, Somerset County

Proposed New Rule: N.J.A.C. 16:62-7.2

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-32 and Air Safety and Hazardous Zoning Act of 1983, P.L. 1983, c.260, N.J.S.A. 6:1-80 et seq.

Proposal Number: PRN 1990-324.

Submit comments by July 18, 1990 to:

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

The agency proposal follows:

Summary

The rules for the Air Safety and Hazardous Zoning Act of 1983, N.J.A.C. 16:62, establish minimum standards for the control of airport and aeronautical hazards and for land use adjacent to public use airports, which the municipalities of this State must implement. Under Section 5 of the Air Safety and Hazardous Zoning Act of 1983, the Commissioner may adopt an amended or special standard for an airport when it is determined that local conditions require it. N.J.A.C. 16:62-7.1, states that the special standards shall be adopted under the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq., and that any amended and special standard which is adopted shall be made part of N.J.A.C. 16:62-7.2.

The Bridgewater Township Council adopted a resolution, dated September 18, 1989, requesting a special standard to amend the limits of the air safety zone for Somerset Airport to the western border of Bridgewater Township, Somerset County. The basis for the request for the special standard is that the portion of Bridgewater Township which is currently located within the delineated safety zone of Runway 30 of the Somerset Airport is already a developed neighborhood which contains single family homes. The safety zone is delineated as outlined in N.J.A.C. 16:62-3 and 4.

The New Jersey Department of Transportation in discussions with township officials and in an on-site survey has verified that the portion of Bridgewater Township, Somerset County, which is located within the delineated safety zone of Runway 30 of the Somerset Airport is already a developed neighborhood which contains single family homes. This area of Bridgewater Township, Somerset County, is zoned R-40 (single family dwellings) for a maximum structure height of 35 feet and for 40,000 square feet lots, and each lot currently contains a single family residence. According to local ordinance, no other use is permitted.

N.J.A.C. 16:62 primarily addresses future development near airports. The Department concludes that the adoption of this special and amended

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standard will not substantially impair the intent of the provisions of N.J.A.C. 16:62 subject to the following conditions:

1. The lots which fall within the originally delineated safety zone cannot be further subdivided.

2. Within the originally delineated safety zone, no person shall build, rebuild, create or cause to be built or rebuilt or created any man-made structure which will exceed a height of 35 feet nor shall any person plant, or cause to be planted or permit to grow, any tree or vegetation which will exceed a height of 50 feet.

The Department therefore proposes a new rule at N.J.A.C. 16:62-7.2 to adopt a special standard for Bridgewater Township which limits the safety zone for Runway 30 for Somerset Airport to the western boundary of Bridgewater Township.

Social Impact

The proposed amendment will limit the boundaries of the safety zone to the western border of Bridgewater Township thus alleviating the perception of municipal officials and property owners that the rules are punitive, as a result of the application of N.J.A.C. 16:62-3. The specific land area impacted is the approach end of Runway 30 and the western boundary of Bridgewater Township. The local government will continue to incur direct and indirect costs associated with the monitoring process regarding height standards.

Economic Impact

The proposed amendment will have a positive economic impact on Bridgewater Township in that the township will not have to undergo the expense of adopting an ordinance implementing the standards of N.J.A.C. 16:62. There would be no economic impact on the public, except in the unlikely event that if any lot in the zone would qualify before the township for subdivision, such subdivision would not be permitted by this amendment.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting or recordkeeping requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.A.C. 52:14B-16 et seq. The new rule effects a special standard for Bridgewater Township, Somerset County, since the area is zoned R-40 and currently contains single family residences. Since the purpose of these rules is to set a special standard applicable only to conditions existing in Bridgewater Township, Somerset County, any differentiation of the standards contained in these rules would serve to defeat the standardization. No such differentiation is therefore provided by these rules.

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

16:62-7.2 Amended and special standards [(Reserved)]

(a) The runway end subzone for Runway 30 of Somerset Airport shall end at the western border of Bridgewater Township, Somerset County, subject to the following conditions:

1. The lots which fall within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, shall not be further subdivided.

2. Within the safety zone of Bridgewater Township, Somerset County, delineated pursuant to N.J.A.C. 16:62-3, no person shall build, rebuild, create or cause to be built or rebuilt or created any structure which will exceed a height of 35 feet nor shall any person plant, or cause to be planted, or permit to grow any tree or vegetation which will exceed height of 50 feet.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Supplemental Annuity Collective Trust

Proposed Readoption with Amendments: N.J.A.C. 17:8

Authorized By: Supplemental Annuity Collective Trust Council, Patricia Chiacchio, Acting Secretary.

Authority: N.J.S.A. 52:18A-111 et seq., specifically 52:18A-111.

Proposal Number: PRN 1990-320.

Submit comments by July 18, 1990 to:

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

The agency proposal follows:

Summary

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:8, which concerns the Supplemental Annuity Collective Trust program. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operations of the program, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. The current rules at N.J.A.C. 17:8 will expire, in accordance with the provisions of Executive Order 66(1978), on June 27, 1990.

The Supplemental Annuity Collective Trust of New Jersey was established under N.J.S.A. 52:18A-107 through 124, P.L. 1963, c.123. This program includes active members of the several State-administered retirement systems, who agree to make voluntary additional contributions through their pension funds to purchase variable retirement annuities in order to supplement the benefits provided by their basic systems or whose employers agree to purchase for certain eligible public employees tax-sheltered annuities for the same purpose.

After careful scrutiny of the current rules in N.J.A.C. 17:8, the Division is satisfied that they are necessary and needed for the efficient operation of the Police and Firemen's Retirement System. There are some proposed amendments that are necessary to update the current rules to conform to court decisions, changes in the laws or changes in administrative policies. Accordingly, the Division of Pensions, in conjunction with the Supplemental Annuity Collective Trust Council, proposes to adopt the proposed amendments to N.J.A.C. 17:8 in order to update some of the current rules; and to readopt the remaining current rules within N.J.A.C. 17:8.

The current rules within N.J.A.C. 17:8 deal with administration, enrollment and contributions, retirement and termination and qualified voluntary employee contributions. The proposed amendments involve the renaming of the "Variable Reserve Account" as the "Income Distribution Summary," the reinforcement of current procedures that state that a designation of beneficiary is effective until the Division of Pensions receives a revised designation, and attempts to clarify the meanings of terms or procedures already in existence. None of these changes would significantly alter the current SACT program.

Social Impact

The rules governing the Supplemental Annuity Collective Trust affect and work to the benefit of the past, present and future public employees of the State, counties, municipalities and other public agencies, by allowing retirement benefits to be supplemented through the purchase of annuities. The taxpaying public is affected by these rules in the sense that public funds are used to fund the system.

Economic Impact

While the readoption of the rules by themselves will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

Regulatory Flexibility Statement

The rules of the Supplemental Annuity Collective Trust only affect public employers and employees. Thus, this proposed readoption with amendments does not impose any reporting, record keeping or other compliance requirements upon small businesses. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:8.

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

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17:8-1.4 Variable annuity; general description

(a) (No change.)

(b) Three accounts are maintained in order to account properly for the accumulation of the contributions received, the annuity payments to be made, and the gains and losses and earnings of the investment portfolio.

1.-2. (No change.)

3. [A variable reserve account] **An income distribution summary** is maintained to record the changes in the value of the assets in the Variable Division.

17:8-1.5 Variable Accumulation Account

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

[(c) Participant's contributions for the first quarter of operations of the Supplemental Annuity Collective Trust shall be converted into a number of equity units at a stated value of $10.00 per equity unit.]

[(d)]**(c)** [Succeeding participant's] **Participant's** contributions shall be converted into equity units quarterly on the basis of the value per equity unit at the end of the quarter during which the contributions [is] **are** made.

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

[(f)]**(e)** In the event of termination of an accumulation account due to retirement [of other than] **prior to** the end of a quarter, contributions since the first of the quarter shall be converted into equity units on the basis of the value per equity unit as of the end of the month of termination.

Recodify (g)-(h) as **(f)-(g)** (No change in text.)

17:8-1.6 Variable Benefit Account

(a)-(i) (No change.)

(j) The number of equity units in force will be reviewed at least once in every three-year period and, if necessary, adjusted to equal the total present value in equity units of all annuities in force on the basis of actuarial valuation. The mortality gain or loss for the period shall be allocated to the [Variable Reserve Account] **Income Distribution Summary** and the apportioned to the Variable Accumulation Account and the Variable Benefit Account as herein provided.

17:8-1.7 [Variable Reserve Amount] **Income Distribution Summary**

(a) The [Variable Reserve Account] **Income Distribution Summary** shall be the account to which the investment income and gains or losses of the Variable Division shall be credited or charged. Such gains or losses shall reflect appreciation and depreciation in the market value of investments.

(b) (No change.)

17:8-2.1 Enrollment; exceptions

[(a) Enrollment is to be effective only at the beginning of a calendar quarter except that:

1. Ten-month employees of boards of education may enroll as of September 1;

2. New employees may enroll at the time of enrollment in a basic retirement system.]

Enrollment is to be effective only at the beginning of a calendar quarter except 10-month employees of boards of education may enroll as of September 1. In each case, an employee must be enrolled in a State-administered retirement system prior to enrolling in the Supplemental Annuity Collective Trust.

17:8-2.2 Enrollment applications

Each employee participating in the **regular and** tax-sheltered [program] **programs** shall file [an] **a Supplemental Annuity Collective Trust** enrollment application on the prescribed form, which shall be completed and certified by the employer.

17:8-2.3 Salary reduction; exceptions

[(a)] As a condition of enrollment **in the tax-sheltered annuity plan,** salary reduction agreements on the approved form shall be entered into by **the** eligible employee and the employer. Such agreements shall commence only at the beginning of a calendar quarter, except [that: 1. ten] 10-month employees of boards of education may enroll as of September 1[;]. **In each case, an employee must be enrolled in a State-administered retirement system prior to enrolling in the Supplemental Annuity Collective Trust.** [2. New employees may enroll at the time of enrollment in the basic retirement system.]

17:8-2.4 Contributions; limitations

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

(c) In the event an employee is eligible to participate in both the regular supplemental annuity plan and the tax-sheltered annuity plan, the combined contributions may not exceed 10 percent of base salary.

17:8-2.5 Salary reduction; limitations

(a) The rate of salary reduction shall be stated as a percentage of base salary [of] from one percent to 10 percent; no fractional percentages are permitted.

(b) (No change.)

17:8-2.7 Salary reduction change; **tax-sheltered supplemental annuity**

(a) (No change.)

(b) Changes in the rate of contribution may be made thereafter as of the start of a calendar quarter [and the revised agreement must be continued in force contributions in the third month of any calendar quarter in dollar amounts of $50.00 or more, be made] **and will remain in force for one year without modification.**

(c) If contributions are suspended, the participant is eligible to resume reductions six months following the effective date of the suspension.

[(c)]**(d)** Notice of the change shall be filed with the trust at least 30 days prior to [the effective date] **calendar quarter.**

[(d)]**(e)** Salary reductions and modifications shall become effective upon certification from the Division of Pensions.

17:8-2.8 Lump-sum contribution; limitation

(a) Participants who are contributing through payroll deductions **to the regular supplemental annuity collective plan, not the tax-sheltered annuity plan** may make lump-sum contributions in the third month of any calendar quarter in dollar amounts of $50.00 or more. [However, as provided by statute, no] **No** participant may contribute in excess of 10 percent of base salary by lump-sum and payroll deductions combined in any fiscal year.

(b) (No change.)

17:8-2.9 [Contributions; percentage limitation] **(Reserved)**

[In the event an employee is eligible to participate in both the tax-sheltered and non-tax-sheltered programs, the combined contributions may not exceed to percent of base salary.]

17:8-2.12 Redeposit and reinstatement

If a participant's withdrawal or retirement from the Supplemental Annuity **Collective** Trust has been processed and a check has been issued to him **or her** covering the value of his **or her** account in the Supplemental Annuity **Collective** Trust and he **or she** subsequently cancels his **or her** withdrawal or retirement application from the basic retirement system, his **or her** supplemental annuity account may be reinstated by the redeposit of the funds withdrawn within 15 days after such cancellation. In this event, the amount redeposited shall be converted into equity units on the basis of the value of an equity unit as of the end of the month or redeposit. If a timely redeposit is not made, the employee may reenroll as a new participant at the beginning of any calendar quarter.

17:8-2.13 Beneficiary designation

(a) If the basic retirement system provides for return of accumulated deductions **upon** the death of the member, the primary and contingent beneficiaries of active participants shall be the same for the trust, unless a separate designation of beneficiary on a form prescribed for the program is filed with the trust. **The original nomination of beneficiaries on file with the Supplemental Annuity Collective Trust will remain effective unless a subsequent designation of beneficiary form is filed with the Supplemental Annuity Collective Trust.**

(b) In those retirement systems which do not provide for the return of accumulated deductions [on] **upon** the death of a member, the participant may designate a primary and contingent beneficiary in the Supplemental Annuity **Collective** Trust on prescribed forms, or, in the absence of such designation, his **or her** estate shall be so designated.

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17:8-2.15 Approved annuity

A participant shall have the right to withdraw, [or] cancel or change the **Supplemental Annuity Collective Trust** application for retirement at any time before his **or her** annuity becomes due and is paid; thereafter, the annuity shall stand as approved.

17:8-3.1 Retirement options

(a) At retirement a participant shall be paid a variable life annuity unless he **or she** files a written application prior to retirement requesting:

1. A [single cash payment] **lump-sum settlement**; or

2. The actuarial equivalent as a lesser annuity for life with the provision that:

i.-ii. (No change.)

iii. Upon his **or her** death, the same variable annuity shall be continued throughout the life of and paid to [such] **a natural** person as he **or she** shall nominate by written designation duly acknowledged and filed with the [council] **Trust** at the time of his **or her** retirement.

iv.-v. (No change.)

3. (No change.)

(b) At retirement a participant may select only a single retirement option for the settlement of his **or her** account. If a participant has both a tax-sheltered and a [non tax sheltered] **regular supplemental annuity collective trust**, such retirement option shall be for the settlement of the combined accounts.

17:8-3.3 Withdrawal of retirement; effective date and form

(a) [A participant's completed application for withdrawal or retirement from the basic retirement system, including the certification of the employer, will be deemed as a withdrawal or retirement from the Supplemental Annuity Collective Trust.] **Withdrawal or retirement from the Supplemental Annuity Collective Trust is contingent upon the participant's completion of the appropriate forms required by the basic retirement system. In addition, if a retirement option is selected, the appropriate Supplemental Annuity Collective Trust forms shall be filed prior to retirement.**

(b) The [withdrawal or] retirement value of the participant's account shall be determined as of the close of the month in which the [completed withdrawal or retirement application is received by the Division of Pensions or the date of termination of employment covered by the basic retirement system, whichever is later. However, the filing of the proper withdrawal or retirement from with the Trust is required] **retirement becomes effective**.

(c) The withdrawal value of the participant's account shall be determined as of the close of the month in which the participant ceases to be a member of a State-administered retirement system.

[(c)]**(d)** In the event that an eligible participant elects a lump sum payment of his or her account and the determination of the unit value is delayed past the normal valuation date, the participant [will be advised than an] **may request, in writing, that** an amount up to 90 percent of his or her [last] computed equity may be paid initially and the balance paid, once the unit value has been established. **Partial payment is contingent upon the receipt of the necessary Supplemental Annuity Collective Trust settlement forms and all information necessary for retirement from the State-administered retirement system.**

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

17:8-3.6 Termination; transfer to suspense

If a participant's account in his **or her** basic retirement system is terminated and **later** placed in suspense, the value of his **or her** account in the Supplemental Annuity Collective Trust shall be determined as of the close of the month in which his **or her** account in the basic retirement system was terminated and he **or she** shall no longer participate in earnings or losses.

17:8-3.7 Separate pension accounts; transfer to trust

[(a) Contributions received by the various pension systems for participants shall be recorded in a separate account and deposited into the trust.

(b) Any balance in the account at the end of a month shall be transmitted to the trust within the first 10 days of the succeeding month.]

Participants' contributions received by the various pension systems are directly deposited to the Trust as received. Contributions are separately recorded and accounted for by pension system and Supplemental Annuity type (regular supplemental annuity contributions and tax-sheltered supplemental annuity contributions).

17:8-4.1 Qualified voluntary employee contribution account

(a) (No change.)

(b) An individual account [will] **shall** be maintained for each participant.

[(c) Participant's contribution shall be converted into equity units, which units shall be increased, converted and determined, all in accordance with the provisions of N.J.A.C. 17:8-1.5.]

[(d)]**(c)** At the retirement of a participant, the number of equity units in the participant's account as of the date of retirement shall be transferred, determined, and payable [as an annuity], all in accordance with the provision of N.J.A.C. 17:8-1.6.

Recodify (e)-(f) as **(d)**-**(e)** (No change in text.)

17:8-4.2 Participant contributions

[(a) A participant may contribute during a calendar year, or if he or she so elects, on or before April 15 of the succeeding calendar year, an amount up to $2,000 but not more than 100 percent of his or her compensation, which shall be deemed a "qualified voluntary employee contribution", as that term is defined in Section 219 of the Internal Revenue Code, with respect to the calendar year, provided that the total contributions made by the participant to the Supplemental Annuity Collective Trust for all purposes does not exceed 10 percent of such participant's annual salary as stipulated in N.J.S.A. 52:18A-113. The participant shall specify the amount, if any, to be contributed by payroll deduction, or he or she may make those contributions in a lump sum. The participant's qualified voluntary employee contributions shall be remitted to the Trust as soon as practicable after they are made.

(b) Subject to the approval of the council, participant may transfer to the account maintained under this subchapter an amount from a plan of his or her immediately-preceding employer, provided:

1. Such other plan either was qualified under Section 401(a) of the Internal Revenue Code or consisted of employer-sponsored individual retirement accounts; and

2. Such amount is attributable to qualified voluntary employee contributions made under such other plan or individual retirement account.

(c) The participant may also transfer to the account maintained under this subchapter amounts held in any other individual retirement account established to accept qualified voluntary employee contributions on or after January 1, 1982. As a result, such amounts shall be deemed to be qualified voluntary employee contributions under the account maintained under this subchapter. That portion of any amount so transferred which was treated under such other plan or individual retirement account as qualified voluntary employee contributions with respect to the calendar year of transfer, shall reduce the $2,000 limit on contributions that a participant may make under (a) above with respect to that calendar year.

(d) Notwithstanding the provisions of N.J.A.C. 17:8-3.5, a participant may designate an amount of his or her contributions previously made on or after January 1, 1982, pursuant to N.J.A.C. 17:8-2, as qualified voluntary employee contributions. That designation shall be made with respect to any calendar year not later than April 15 of the succeeding calendar year. In no event shall a participant's qualified voluntary employee contributions with respect to a calendar year from all sources exceed $2,000, or, if less, his or her total remuneration from all employers during that calendar year.]

Due to the Income Tax Reform Act of 1986, qualified voluntary employee contributions were discontinued as of January 1, 1987. The balance of a participant's account continues to be maintained and participates in the gains and losses of the fund until the participant qualifies for distribution.

17:8-4.3 [Changes in election] **(Reserved)**

[(a) Subject to the provisions of N.J.A.C. 17:8-4.2, a participant may change the amount of his or her authorized payroll deduction under N.J.A.C. 17:8-4.2 by giving at least 30 days prior written notice

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to the Division of Pensions. Such change shall become effective beginning with the payroll period or month specified by the participant commencing after the expiration of the notice period.

(b) A participant may suspend his or her payroll deductions under N.J.A.C. 17:8-4.2 by giving at least 30 days prior written notice to the Division of Pensions. Such suspension shall become effective with the payroll period or month specified by the participant commencing after the expiration of the notice period. A participant who has suspended his or her payroll deductions may apply to have them resumed in accordance with N.J.A.C. 17:8-4.2 by giving at least 30 days prior written notice to the Division of Pensions; provided that no resumption of payroll deductions shall occur within six or seven biweekly payroll periods of three months of the date the contributions were suspended.]

17:8-4.4 [Order of distributions] **Tax information**

[Any distributions from the Trust shall not be treated as being attributable to qualified voluntary employee contributions until the value of all amounts not so attributable have first been distributed; unless, with respect to his or her distribution, a participant shall otherwise direct in writing filed with the council.] For tax reporting purposes, any amount attributable to the participant's qualified voluntary employee contributions shall be reported separately from other amounts distributed from the Trust.

(a)

DIVISION OF PENSIONS

State Health Benefits Program
Full-Time Employees
Proposed Amendments: N.J.A.C. 17:9-4.2

Authorized By: State Health Benefits Commission,
Patricia A. Chiacchio, Acting Secretary.
Authority: N.J.S.A. 52:14-17.27.
Proposal Number: PRN 1990-328.

Submit comments by July 18, 1990 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The purpose of the proposed amendment is to permit deputy attorneys general, who are working part-time, to continue to be covered by the State Health Benefits Program. In 1987, the Department of Law and Public Safety instituted a pilot program, primarily for those deputy attorneys general with child care responsibilities, to work less than the normal workweek usually required for the position, but at least 20 hours per week. The primary purpose of the program was to enable the Department to retain dedicated and experienced lawyers who might otherwise have to terminate their service with the Department. The rules of the State Health Benefits Commission at the time that the program was enacted did not authorize coverage in this type of situation. The rules were amended October 17, 1988, to cover those deputy attorneys general who had child care responsibilities and worked at least 20 hours per week (see 20 N.J.R. 741(a), 20 N.J.R. 2590(b)). The provisions were effective from April 1, 1988 to March 31, 1990.

The Department is now evaluting its experience with its part-time program. Until that review is completed, the program is ongoing and the Department would like to be able to continue, without interruption, the provision of health care coverage to the deputies participating in the program, and to further expand the pilot program by deleting the requirement that the deputies have child care requirements in order to be eligible. The proposed amendment provides that deputy attorneys general within the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a pilot program of part-time employment for deputy attorneys general and who are paid for a minimum of 20 hours per week, shall be considered "full-time" employees for the purposes of coverage under the State Health Benefits Program. The adoption of this amendment will permit the continuation of health benefits coverage for those deputies in the part-time programs, without a child care eligibility requirement, until June 30, 1992.

Social Impact

This amendment will benefit the affected deputy attorneys general by permitting them to continue their health care coverage while they continue to work for the Department. It will also provide the State with the ability to retain experienced members of its legal staff, and to provide for expansion of the pilot program to those without child care requirements.

Economic Impact

No significant economic impact upon the State Health Benefits Program is anticipated from the adoption of this proposal. Any increase in cost from extending coverage to employees who would not otherwise be eligible for the coverage will be more than offset by the avoidance of loss of experienced employees and the loss in productivity which accompanies such losses.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendement does not impose reporting, recordkeeping or other compliance requirements upon small businesses. Since the rules of the Division of Pensions only impact upon public employers and/or public employees, this amendment will not have any effect upon small business, or private industry in general.

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

17:9-4.2 State: full-time defined

(a) For purposes of State coverage, "full-time" shall mean:

1. through 6. (No change.)

7. [For the time period beginning April 1, 1988, and ending March 31, 1990, deputy attorneys general in the Office of the Attorney General and the Division of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a pilot program of part-time employment for deputy attorneys general with child care responsibilities conducted by the Department and are paid for a minimum of 20 hours per week, notwithstanding N.J.A.C. 17:9-4.4.] **Deputy attorneys general in the Office of the Attorney General and the Divisions of Criminal Justice, Gaming and Law in the Department of Law and Public Safety, who are participating in a pilot program of part-time employment for deputy attorneys general conducted by the Department and are paid for a minimum of 20 hours per week, notwithstanding the provisions of N.J.A.C. 17:9-4.4, until June 30, 1992.**

(b)

DIVISION OF PENSIONS

State Health Benefits Program
Retirement
Proposed New Rule: N.J.A.C. 17:9-6.7

Authorized By: State Health Benefits Commission,
Patricia A. Chiacchio, Acting Secretary.
Authority: N.J.S.A. 52:14-17.27.
Proposal Number: PRN 1990-317.

Submit comments by July 18, 1990 to:
Peter J. Gorman
Administrative Practice Officer
CN 295
Trenton, N.J. 08625

The agency proposal follows:

Summary

The purpose of this proposed new rule is to implement Chapter 271, Laws of 1989. This law provides that the State shall pay the health insurance premiums in employer-sponsored health insurance plans for the surviving spouses and children of members of the Police and Firemen's Retirement System and the State Police Retirement System who are receiving accidental death benefits. To guarantee and insure uniformity of coverage as well as State payment of the premiums, this rule will

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implement the law by providing coverage at State expense in the State Health Benefits Program. The eligible persons would participate in the retiree group of the program. Children would participate as dependents of a surviving spouse or as members if there is no eligible surviving spouse.

Eligibility for coverage would be as of February 1, 1990, or the effective date for accidental death benefits under the retirement system of the deceased member, whichever is later. February 1, 1990 is the first available coverage date after the effective date of the law. An eligible person would receive a refund of premiums paid for health insurance coverage comparable to that provided under the program for the period from the date of eligibility for coverage to the effective date of enrollment, but the refund is limited to the cost of coverage in the program. An eligible person who is covered by Part B of the Federal Medicare program would receive a refund for the amount paid for Part B.

Social Impact

This proposed new rule will benefit the surviving spouses and children of members of the Police and Firemen's Retirement System and the State Police Retirement System who are killed as a result of a traumatic event while on duty. P.L. 1989, c.271 provides that the State shall pay the cost for health insurance coverage in employer-sponsored health insurance plans for the survivors. This rule guarantees coverage for all eligible survivors by providing it through the State Health Benefits Program. It also assures uniformity of coverage and cost.

Economic Impact

There are currently 142 persons eligible for coverage under this new rule. It is estimated that the current annual cost for providing the coverage is approximately $266,160. State payment of the cost for this coverage is required by P.L. 1989, c.271.

Regulatory Flexibility Statement

The rules of the State Health Benefits Commission affect only public employers and employees. Thus, this proposed new rule will not have any effect upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., or private industry in general. A regulatory flexibility analysis is not required.

Full text of the proposal follows:

17:9-6.7 Coverage for PFRS and SPRS accidental death benefit recipients

(a) For the purposes of this section, "eligible person" means the widow or widower and child, as defined in N.J.S.A. 43:16A-1, of a member of the Police and Firemen's Retirement System, to or for whom an accidental death benefit is payable under N.J.S.A. 43:16A-10, and the surviving spouse and child, as defined in N.J.S.A. 53:5A-3, of a member of the State Police Retirement System, to or for whom an accidental death benefit is payable under N.J.S.A. 53:5A-14.

(b) An eligible person may participate in the State Health Benefits Program regardless of whether the member's employer is a participating employer. The premiums for the coverage shall be paid by the State of New Jersey, as provided in P.L. 1989, c.271.

(c) Persons eligible to participate in the program under this section shall participate in the retiree group. If there is a widow or widower, or surviving spouse, eligible children shall participate as dependents of the widow or widower, or surviving spouse. If there is no widow or widower, or surviving spouse, eligible children shall participate as members of the program, and their eligibility to participate shall continue as long as they qualify as children under the laws governing the retirement system of the deceased member.

(d) An eligible person, as defined in (a) above, shall be eligible for coverage under the program as of February 1, 1990, or the effective date for an accidental death benefit under the retirement system of the deceased member, whichever is later. An eligible person shall receive a refund for premiums paid for health insurance coverage comparable to that provided under the program for the period from the date of eligibility for coverage under this section and the effective date of enrollment, but the refund shall not exceed the cost of the coverage under the program. An eligible person who is covered under Part B of the Federal Medicare program shall receive a refund for the amount paid for Part B. While an application for an accidental death benefit is pending, an eligible person enrolled in the program may continue coverage on a direct payment basis. If an accidental death benefit is granted, the eligible person shall receive a refund of the payments made.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Investment Companies
Proposed Amendments: N.J.A.C. 18:7-1.15 and 3.8

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:10A-27.

Proposal Number: PRN 1990-312.

Submit comments by July 18, 1990 to:
Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 18:7-1.15 is intended to give additional guidance to taxpayers who claim the benefits of investment company status. The amendment compresses into one subsection and restructures the definition of investment company. The amendment also describes qualified investment activities and qualified investment assets and investment assets which will not be included in the numerator of any test. For purposes of N.J.A.C. 18:7-1.15, further guidance is also given on the meaning of the terms receipts, reimbursements, and timeliness of elections. Additional examples are also supplied at the end of the rule and current examples are updated to conform to changes in forms used by the Division. The amendment also explicitly incorporates in the rule several principles contained in the opinions *National Wax Paper Company v. Director,* MC-539-78 (Tax Court 1981), and *Milton Management, Inc. v. Director,* MC-386-72 (Division of Tax Appeals, 1975), and *Department of Environmental Protection v. Franklin Township,* 3 *N.J. Tax* 105, 119 (Tax Court 1981), *aff'd* 5 *N.J. Tax* 476 (App. Div. 1983).

N.J.A.C. 18:7-3.8 has been amended to delete the tax rate of 7-1/2 percent and to add the phrase "provided by law", in order to provide consistency with tax rates established by statute.

Social Impact

The proposed amendment to N.J.A.C. 18:7-1.15 will give notice to all potential claimants of investment company status and benefits of the proper application and scope of the statutory provisions. It will assist taxpayers in planning activities since it offers greater certainty to all taxpayers as to various nonpermitted, nonqualifying activities.

Economic Impact

The proposed amendment to N.J.A.C. 18:7-1.15 will have a positive economic impact on taxpayers and return preparers since it will enable them to perform their tasks of tax planning and preparation more quickly and with greater uniformity. Similarly, the Division of Taxation's administrative costs may be somewhat reduced through the decreased need to process requests for information about investment companies. In addition, there may be some revenue increase to the State since, in accordance with applicable law, the amendment makes clear that, as to investment companies, statutory tax benefits are to be construed to exist only when such a legislative intention is clear and unmistakable.

Regulatory Flexibility Analysis

The proposed amendments describe qualifications and place filing requirements on those corporations electing to file as an investment company. Some of the corporations may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. However, the Division of Taxation does not believe that any differentiation based on business size is appropriate in the rules, since the amendment simply clarifies the definition of an investment company and the investment company election itself is not mandatory. The Division antici-

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pates that the proposed amendments will not increase small business capital costs or their need for professional services.

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

18:7-1.15 Investment company; definition

[(a) "Investment company" means any corporation whose business during the period covered by its report consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities for its own account.]

(a) "Investment company" means any corporation:

1. Whose business for the period covered by its return consisted to the extent of at least 90 percent of "qualified investment activities" which are: investing or reinvesting in stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities or the holding thereof after investing or reinvesting therein for its own account. As used in this rule, "qualified investment assets" are stocks, bonds, notes, mortgages, debentures, patents, patent rights, and other securities;

2. Which had for the period covered by the return 90 percent or more of its average gross assets in New Jersey, at cost, invested in "qualified investment assets" referred to in (a)1 above;

3. Which meets the numerical tests in (f) below;

4. Which is not a banking corporation as defined by the act;

5. Which is not a financial business corporation as defined by the act; and

6. Which is not a merchant or dealer in stocks, bonds, or other securities, and which is regularly engaged in buying and selling such securities to customers.

[(b) For purposes of the Act, "investment company" does not include any corporation which:

1. Is a merchant or dealer in stocks, bonds and other securities, and which is regularly engaged in buying and selling such securities to customers; or

2. Had less than 90 percent of its average gross assets in New Jersey, during the period covered by the return, at cost, either invested in stocks, bonds, debentures, mortgages, notes, patents, patent rights or other securities, or consisting of cash on deposit; or

3. Is a banking corporation or a financial business corporation as defined in the Act and these rules.]

(b) "Qualified investment assets" are measured by the taxpayer's assets as reported for book purposes at cost on a separate legal entity basis for balance sheet purposes. "Qualified investment activities" are measured by gross receipts and expenses as reported for Federal income tax purposes, and by adding thereto, Federal, state, municipal, and other obligations included in determining New Jersey entire net income, but not otherwise included in Federal taxable income. "Qualified investment activities" and "qualified investment assets" do not include the following specific assets or activities:

1. The making and/or negotiating of loans. These activities are generally considered as either banking and/or financial business activities;

2. The renting or leasing of real or tangible personal property. These activities are generally considered financial business activities or other than investment activities;

3. The investment in general partnerships since the status of a general partner is not considered as consistent with a qualified investment activity and investments in general partnerships are not statutorily enumerated assets;

4. The direct day to day management of operations of affiliated corporations or the actual providing of services, directly or as an intermediary, for the benefit of affiliated corporations;

5. The buying and/or selling of stocks, bonds, notes, and other securities for the corporation's customers;

6. The buying and/or selling of real or tangible personal property whether it is classified as inventory, as operating assets, or as capital assets;

7. The direct investment in collectibles, including but not limited to stamps, pottery, cars, gold coins; or

8. The direct investment in trademarks or similar assets. The receipts, direct and indirect expenses and assets connected with the above will not be included in the numerator of any test.

(c) "Receipts" include, but are not limited to, the gross payments received from others (affiliated or not) regardless of whether the receipt is accounted for as an item of income or reduction in expense:

1. For services performed;

2. For the sale or transfer of assets;

3. For income recognized from the liquidation of liabilities; and

4. From the investment or reinvestment of capital in stocks, bonds, notes, mortgages, debentures, patents, patent rights and other securities, includible in computing entire net income.

(d) "Reimbursements" received are payments having no element of profit in a transaction or element of covering indirect costs, and are received from others for expenses made on their behalf and are the true expenses of the entity making the reimbursement; hence, neither the expense nor its recovery should appear on the taxpayer's income statement for Federal purposes. Where taxpayer's accounting method displays such items on its income statement, such items will be removed from any calculations required under the regulations for the taxpayer receiving the reimbursement and included on the reimbursing company's return.

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within two years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame presented above.

[(c)]**(f)** (No change in text.)

Example No. 1
Corporation A

Adjusted Income Test:			
Sch. A—6 Other Interest	$56,205	Sch. A—11 Total Income	$65,152
Sch. A—29 Interest on Exempt Securities	31,385	Sch. A—29 Interest on Exempt Securities	31,385
Total Investment Income	$87,590	Sch. D—Selling Price $71,000 Less Gain—$8,947	62,053
Sch. A—9(a) Capital gain (*)	8,947		
Total Income	$96,537	Total Income—Adjusted	$158,590

(*)From sale of non-investment type assets.

Ratio of Investment Income ($87,590) to Total Income Adjusted ($158,590) equals 55%

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Unadjusted Income Test:

Sch. A—6 Other Interest	$56,205	Sch. A—6 Other Interest	$56,205
Sch. A—29 Interest on Exempt Securities	31,385	Sch. A—9(a) Capital Gain	8,947
Total Investment Income	$87,590	Sch. A—29 Interest on Exempt Securities	31,385
Sch. A—9(a) Capital Gain (*)	8,947		
Total Income	$96,537	Total Income—Unadjusted	$96,537

(*)From sale of non-investment type assets.

Ratio of Investment Income ($87,590) to Total Income Unadjusted ($96,537) equals 91%

Deduction Test:

Sch. A—13 Salaries	$24,000	Sch. A—13 Salaries		$24,000
Sch. A—17 Tax (Investment related)	1,000	Sch. A—17 Taxes	**1,000**	[2,200]
Total related to Investments	$25,000	Sch. A—27 Total Deductions	**$25,000**	[$26,200]
Sch. A—17 Taxes (Real Estate)	1,200			
Sch. A-27 Total Deductions	$26,200			

Ratio of Investment Related Deductions ($25,000) to Total Deductions ($26,200) equals 95%

Assets Test—[Sch. L (Col. B)] **CBT-100 Schedule B (restated at cost)**

[Item No. 1] Cash	$21,558
[Item No. 5] Bonds, Notes & Mortgages	123,821
[Item No. 6] N.J. State & Local Governmental Obligations	27,140
[Item No. 7] All Other Governmental Obligations	1,067,874
[Item No. 12] Total Intangible Personal Property	$1,240,393
[Item No. 13] Land	5,000*
[Item No. 14] Buildings	30,000*
[Item No. 15] Machinery & Equipment	17,000*
[Item No. 18] Total Real and Tangible Personal Property	$52,000
[Item No. 19] Total Assets	$1,292,393

(*)Sold during accounting period

Ratio of Total Intangible Assets to Total Assets equals 96%

Corporation A does not qualify since it did not meet the adjusted Income Test.

Example No. 2
Corporation B

Adjusted Income Test:

Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A—11 Total Income—Adjusted	$82,722

Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:

Sch. A6 Other Interest	$82,722	Sch. A6 Other Interest	$82,722
Total Income from Investments	$82,722	Sch. A—11 Total Income—Unadjusted	$82,722

Ratio of Investment Income to Total Income—Unadjusted equals 100%

Deductions Test:

Sch. A—17 Taxes	$1,709		
Sch. A—18 Interest Expense	37		
Total Investment related deductions	$1,746	Sch. A—27 Total Deductions	$1,746

Ratio of Investment Related Deductions equals 100%

Assets Test: [Sch. L (Col. B)] **CBT-100 Schedule B (restated at cost)**

[Item No. 1] Cash	$26,482
[Item No. 5] Bonds, Notes & Mortgages	365,444
[Item No. 7] All Other Governmental Obligations	499,254
Total. Investment Type Assets	$891,180
[Item No. 18] Total Real and Tangible Personal Property	—0—
[Item No. 19] Total Assets	$891,180

Ratio of Investment Type Assets to Total Assets equals 100%

Corporation B qualifies as an investment company since it met each test.

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Example No. 3
Corporation C

Adjusted Income Test:

Sch. A—5 Interest on Gov't Obligations	$9,000	Sch. A—11 Total Income	$32,000
Sch. A—6 Other Interest	$5,000	Sch. A—2 Cost of Goods Sold	$1,000
Sch. A—8 Gross Royalties	8,000	Sch. A—9(a) Sales Price $10,000	
Sch. A—9(a) Capital Gain	2,000	Gain 2,000 equals	(Basis)8,000*
Sch. A—29 Interest on Other Obligations	500	Sch. A—29 Interest on Other Obligations	500
Total Income from Investments	$24,500	Total Income—Adjusted	$41,500
Add: Basis of Asset Sold	8,000*		
Gross Investment Income	$32,500		

*Investment type asset
Ratio of Gross Investment Income to Total Income—Adjusted equals 78%

Unadjusted Income Test:

Sch. A—11 Total Income	$32,000	Sch. A—11 Total Income	$32,000
Sch. A—3 Gross Profit	(1,000)*	Sch. A—29 Interest on Other Obligations	$500
Sch. A—7 Gross Rents	(6,000)*		
Sch. A—29 Interest on Other Obligations	500		
Total Income—from Investments	$25,500	Total Income—Unadjusted	$32,500

(*)Non-investment income
Ratio of Investment Income to Total Income—Unadjusted equals 78%

Deduction Test:

Sch. A—12 Compensation of Officers	$2,000	Sch. A—12 Compensation of Officers	$2,000
Sch. A—13 Salaries & Wages	10,000	Sch. A—13 Salaries & Wages	10,000
Sch. A—17 Tax	10,000	Sch. A—17 Taxes	12,000*
		Sch. A—21 Depreciation	1,100
Total Investment Related Deductions	$22,000	Sch. A—27 Total Deductions	$25,100

*Includes $2,000 real estate tax
Ratio of Investment Related Deductions to Total Deductions equals 88%

Assets Test: [Sch. L (Col. B)] **(CBT-100 Schedule B (restated at cost)**

[Item No. 1] Cash	$5,000	
[Item No. 5] Bonds, Notes & Mortgages	50,000	
[Item No. 6] NJ State & Local Gov't Obligations	10,000	
[Item No. 7] All Other Gov't Obligations	100,000	
[Item No. 8] Patents & Copyrights	1,000	
Total Investment Type Assets	$166,000	
[Item No. 13] Land	50,000	
[Item No. 14] Bldgs. & Improvements	200,000	
[Item No. 18] Total Real and Tangible Personal Property	$250,000	(non investment type assets)
[Item No. 19] Total Assets	$416,000	

Ratio of Investment Type Assets to Total Assets equals 40%
Corporation C does not qualify as an investment company since it did not meet all tests.

Example No. 4
Corporation D

Adjusted Income Test:

Sch. A—4 Dividends	$14,000		
Sch. A—5 Interest on Gov't Obligations	12,000		
Sch. A—6 Other Interest	11,000		
Sch. A—8 Gross Royalties	11,000	Sch. A—11 Total Income	$48,000
Sch. A—11 Total Income	$48,000	Deduct: Capital loss per Federal Sch. D	(10,050)*
Add: Sales price of assets sold	50,000	Add: Basis of capital asset sold	60,050*
Total Investment Income	$98,000	Total Income—Adjusted	$98,000

(*)Investment type asset sold at a loss
Ratio of Investment Income to Total Income—Adjusted equals 100%

Unadjusted Income Test:

Total Income from investments	$48,000	Sch. A—11 Total Income Unadjusted	$48,000

Ratio of Total Investment Income to Total Income—Unadjusted equals 100%

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Deductions Test:

Total Investment Related Deductions	$30,250	Investment Related Deductions	$30,250
		Sch. A—17 Real Estate Tax	675
		Sch. A—21 Depreciation	120
		Sch. A—27 Total Deductions	$31,045

Ratio of Investment Related Deductions to Total Deductions equals 97%

Assets Test: [Sch. L (Col. B)] **CBT-100 Schedule B (restated at cost)**

[Item No. 1] Cash	$11,000
[Item No. 2] Accounts & Notes Receivable	12,000
[Item No. 4] Corporate Stocks	30,000
[Item No. 5] Bonds, Mortgages & Notes	30,000
[Item No. 6] NJ State & Local Gov't Obligations	15,000
[Item No. 8] Patents & copyrights	20,000
[Item No. 11] All Other Intangible Personalty	$60,000
Total Investment Type Assets	$178,000
[Item No. 13] Land	$15,000
[Item No. 15] Furniture & Equipment	1,200
[Item No. 18] Total Real and Tangible Property	$16,200
[Item No. 19] Total Assets	$194,200

Ratio of Investment Type Assets to Total Assets equals 92%

Corporation D qualifies as an investment company since it met each test.

Example No. 5: Corporation A negotiates and discounts loans as opposed to merely investing in notes that were negotiated by others. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights and other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business for purposes of the Act.

Example No. 6: Corporation B makes or deals in secured or unsecured loans and discounts. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since it is, in fact, in competition with the business of national banks in employing moneyed capital with the object of making profit by its use as money and as such is a financial business prohibited by the Act from qualifying for the election.

Example No. 7: Corporation C rents or leases property in transactions that approximate secured loans. It may not include the income from that activity in the numerator in determining whether its business "consisted to the extent of at least 90 percent of holding, investing and reinvesting in stocks, bonds, notes, mortgages, debentures, patent rights or other securities for its own account" since this is considered a financial business activity.

Example No. 8: Corporation D provides and charges Corporation O and other affiliates for general and administrative services it performs on behalf of Corporation O and the affiliates. The charges cover the cost, which includes a percentage of Corporation D's wages, depreciation expense, as well as other direct and indirect expenses incurred by Corporation D to provide these services. Corporation D must include such receipts in the denominator, but not the numerator, in calculating the tests provided under the rule. The charges made to O go beyond actual reimbursements and, while considered receipts, are not considered receipts from qualified investment activities within the meaning of the rule. Where such inclusion causes the percentage to drop below the 90 percent requirement, the corporation will be denied its claim to investment company status.

18:7-3.8 Investment company; tax assessed and payable

(a) The tax assessed to and payable by an investment company, entitled and electing to report as such, is the sum of:

[a]**1.** A tax measured by 25 percent of its entire net worth multiplied by the following tax rates:

Recodify 1. through 4. as **i. through iv.** (No change in text.)

[(b)]**2.** A tax measured by 25 percent of its entire net income at the rate [of 7-1/2 percent] **provided by law.**

[(c)]**3.** (No change in text.)

(a)

DIVISION OF TAXATION

Spill Compensation and Control Tax

Proposed Readoption with Amendments: N.J.A.C. 18:37

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 58:10-23.11 et seq.

Proposal Number: PRN 1990-323.

Submit comments by July 18, 1990 to:

Nicholas Catalano
Chief Tax Counselor
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:37 expires on August 5, 1990. The Division of Taxation has reviewed the rules and, with the following exceptions, has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated, as required by the Executive Order.

Tax liability under the Spill Compensation and Control Act (P.L. 1976, c.141), effective April 1, 1977, is incurred when hazardous substances are transferred to a major facility or vessel within the jurisdiction of the State of New Jersey from another major facility located outside or within New Jersey.

The tax burden falls upon the operator or owner of the receiving major facility or vessel irrespective of the ownership of the hazardous substance transferred (except for transfers to certain major facilities designated as public storage terminals).

Spill compensation and control tax liability is limited to the first transferee of a hazardous substance within New Jersey. Secondary and later transferees of the same hazardous substance (or any product derived therefrom) are exempt from tax liability if they are in receipt of a valid Secondary Transfer Certificate from the transferor.

The Spill Compensation and Control Act has been amended four times since its original enactment.

Effective January 18, 1979, P.L. 1979, c.6 amended the Act to provide that in the event of a transfer of a hazardous substance to a major facility operating as a "public storage terminal" in New Jersey, the owner of the substance upon receipt at the terminal, rather than the owner or operator of the terminal, is held to be the transferee and taxpayer. The amendment was designed to relieve those terminals merely providing warehousing facilities from taxpayer status.

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The amendment did not change the taxpayer status of major facilities that own hazardous substances stored at their facility and lease a portion of their tankage space to another company. In such an instance the owner or operator of the major facility and not the owner of the hazardous substance is liable for tax payment on all taxable transfers into their facility.

P.L. 1979, c.346, signed into law on January 23, 1980 and applicable to transfers occurring on and after April 1, 1980, was designed to alleviate the imbalance of revenues received by the Spill Compensation and Control Fund from the petroleum and chemical industries by applying an alternate tax rate to non-petroleum hazardous substance transfers.

The tax rate was $0.01 per barrel for all taxable transfers of hazardous substances, whether petroleum or non-petroleum, occurring between April 1, 1977 and March 31, 1980. P.L. 1979, c.346 amended the tax rate for taxable transfers of hazardous substances other than petroleum products occurring on and after April 1, 1980 to $0.01 per barrel or 0.4 percent of fair market value of the substance, whichever is greater.

Chapter 346 further provided that in the event that revenues collected from transfers of hazardous substances other than petroleum products exceeded $7 million during any calendar year, the excess should be refunded or credited, except under certain conditions, to the taxpayers who paid such taxes in proportion to all taxes paid by all taxpayers on such transfers.

The definition of "major facility" was also amended. A major facility is a facility used to refine, produce, store, handle, transfer, process or transport hazardous substances, as defined in the Act, and which has a total combined above ground or buried storage capacity of 400,000 gallons or more for all hazardous substances, including petroleum products. However, effective April 1, 1980, the Act was amended to reduce the storage capacity to 50,000 gallons or more for hazardous substances other than petroleum products. The 400,000 gallon threshold remained as a storage capacity requirement for petroleum products.

Chapter 346 also amended the Act to provide tax liability on the transferor, rather than on the transferee, for transfers of hazardous substances other than petroleum, on and after April 1, 1980, which have not been previously taxed, and are transferred from a major in-State facility to a facility which is not a major facility.

P.L. 1980, c.73, effective July 22, 1980 and applicable to transfers on or after April 1, 1980, imposed a tax rate of $0.01 per barrel on transfers of hazardous substances other than petroleum products which are, or contain, any precious metals to be recycled, refined or rerefined in New Jersey, or which are transferred into New Jersey subsequent to being recycled, refined or rerefined. Precious metals mean gold, silver, osmium, platinum, palladium, iridium, rhodium, ruthenium and copper.

P.L. 1980, c.73 also amended the "petroleum or petroleum products" definition to include substances or additives to be utilized in the refining or blending of crude petroleum or petroleum stock in New Jersey. These substances would, therefore, be taxed at the $0.01 per barrel petroleum tax rate.

Due to the condition of the Fund balance in October 1980 the tax rates, as required by subsection 9(b) of the Act, were revised for the November 1980 taxable period and thereafter to: (1) Nonpetroleum hazardous substances—the greater of $0.04 per barrel transferred or 0.8 percent of the fair market value of the substance; (2) Precious metals—$0.04 per barrel transferred; and (3) Petroleum products—remained at $0.01 per barrel transferred. The condition of the Fund balance in July 1982 was such that the tax rates were again revised for the August 1982 tax period and thereafter to: (1) Nonpetroleum hazardous substances—the greater of $0.01 per barrel transferred or 0.4 percent of the fair market value of the substance; (2) Precious metals—$0.01 per barrel transferred; and (3) Petroleum products—remained unaffected at $0.01 per barrel transferred. The condition of the Fund balance in May 1985 was such that the tax rates were again revised for the June 1985 tax period and thereafter to: (1) Nonpetroleum hazardous substances—the greater of $0.04 per barrel transferred or 0.8 percent of the fair market value of the substance; (2) Precious metals—$0.04 per barrel transferred; and (3) Petroleum products—remained unaffected at $0.01 per barrel transferred.

P.L. 1986, c.143 provided significant changes to the tax provisions of the act, effective February 1, 1987. The tax on transfers of petroleum products increased from $0.01 per barrel transferred to $0.0125 per barrel transferred. The tax on transfers of hazardous substances other than petroleum products increased to the greater of $0.0125 per barrel transferred or one percent of the fair market value. The tax on transfers of hazardous substances other than petroleum products which are or contain any precious metals to be recycled, refined or rerefined in this State, or which are transferred into this State subsequent to being recycled, refined or rerefined increased to $0.0125 per barrel transferred.

This amendment revised the definition of a major facility by lowering the storage capacity thresholds from 50,000 gallons to 20,000 gallons for facilities storing chemical hazardous substances, and from 400,000 gallons to 200,000 gallons for facilities storing petroleum products. Also, two new lists of hazardous substances were added to the previous lists, thereby imposing the tax on many additional chemical substances.

P.L. 1986, c.143 also provided that all taxpayers that had paid spill compensation and control taxes in 1986 would have their tax liability for 1987 and all subsequent years capped at 125 percent of the tax due and payable for the 1986 tax year. Taxpayers that transferred, during the 1986 tax year, hazardous substances which are directly converted to and comprise more than 90 percent by weight of a non-hazardous final product would, in 1987 and subsequent years, pay no more than 100 percent of the tax due and payable on such substances by that taxpayer in the 1986 tax year.

N.J.A.C. 18:37 contains the administrative rules which implement the tax act, its legislative purpose and its amendments. Since their initial adoption in 1980, these rules have been amended in 1980, 1985 and 1988 in response to statutory revisions. Pursuant to Executive Order No. 66(1978), the Division of Taxation proposes to readopt these rules since they are adequate, reasonable and necessary for their originally intended purpose. The social and economic impacts, in general, remain the same as they have been since the original promulgation of the rules.

Subchapter 1 deals with the imposition of the tax and subchapter 2 contains the tax rates. N.J.A.C. 18:37-1.1 is amended to include reference to P.L. 1986, c.143, to correct the quantities in paragraphs (c)1 and 2 in accordance with that Act and to correct misspellings. N.J.A.C. 18:37-2.1(b) is amended to clarify that a requisite to a lower tax rate is that such rate be sufficient to produce revenue to pay outstanding claims against the fund within one year of such levy.

Social Impact

The Spill Compensation and Control Act (P.L. 1976, c.141) was enacted to protect the citizenry of New Jersey from the adverse effects of environmental mishaps which may result from spills of petroleum products or other hazardous substances. To expedite the clean-up process and provide adequate compensation to victims when spills occur, the legislature established a special fund within the Department of the Treasury and since transferred to the Department of Enviromental Protection, supported by the spill compensation and control tax. These rules are being readopted to provide taxpayers in the petrochemical industry guidance and assistance in preparing tax returns and to assist Division of Taxation personnel in auditing such returns.

Economic Impact

The proceeds from the spill compensation and control tax constitute a fund, the New Jersey Spill Compensation Fund, to insure compensation for cleanup costs and damages associated with the discharge of petroleum products and other hazardous substances.

This tax has produced the following revenue since its inception:

Fiscal Year	Revenue
1978	$ 6,429,830
1979	6,402,848
1980	6,850,324
1981	12,788,846
1982	15,346,938
1983	10,510,454
1984	9,817,014
1985	9,768,637
1986	12,028,616
1987	12,859,351
1988	19,143,993
1989	22,472,396

Regulatory Flexibility Analysis

The rules apply to small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as well as to businesses employing more than 100 people. The reporting, record keeping and other compliance requirements in the act must apply uniformly; any action to exempt taxpayers who may be small businesses as defined in the Regulatory Flexibility Act would not be in compliance with applicable statutes. Therefore, no differential requirements based on business size have been established.

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Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:37.

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

18:37-1.1 Tax imposed on transfer of hazardous substances

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

(c) The transferee is an owner or operator of a major facility, except as provided in (e) below, which receives a transfer of a hazardous substance. For the purpose of this chapter a major facility, as defined in the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11, et seq., as amended by [P.L. 1979, c.346] **P.L. 1986, c.143**, is a facility that has a combined above ground or buried storage capacity of:

1. [50,000] **20,000** gallons or more for hazardous substances which are other than petroleum or petroleum products; or

2. [400,000] **200,000** gallons or more for hazardous substances of all kinds.

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

(f) Effective on and after April 1, 1980, for purposes of (a) above, in the case of the transfer of hazardous substances other than petroleum or petroleum products which are or contain any precious metals to be recycled, refined or [redefined] **rerefined**, such [previous] **precious** metals shall mean gold, silver, osmium, [paltinum] **platinum**, palladium, iridium, rhodium, ruthenium and copper.

18:37-2.1 Tax rates on the transfer of petroleum or petroleum products

(a) (No change.)

(b) In the event of a major discharge or series of discharges of petroleum or petroleum products resulting in claims against the Spill Compensation Fund which exceeded the existing balance of the fund, a tax rate of $0.04 per barrel on transfers of petroleum or petroleum products shall be levied until the revenue produced by such increased rate equals 150 percent of the total dollar amount of all pending reasonable claims resulting from the discharge of petroleum or petroleum products. The tax rate as herein set forth may be less than $0.04 per barrel transferred if, as provided by the Spill Compensation Law, the revenue produced by such lower rate shall be sufficient to pay outstanding claims against the fund within **one** year of such levy. Under no circumstances shall this rate be levied prior to February 1, 1988.

OTHER AGENCIES

(a)

PUBLIC EMPLOYMENT RELATIONS COMMISSION

Ordering a Transcript

Proposed Amendments: N.J.A.C. 19:11-6.1, 7.2, 7.3; 19:14-6.5, 7.2 and 7.3

Authorized By: Public Employment Relations Commission, James W. Mastriani, Chairman.

Authority: N.J.S.A. 34:13A-5.2; 34:13A-6(f) and 34:13A-6(g).

Proposal Number: PRN 1990-321.

Submit comments by July 18, 1990 to:
James W. Mastriani, Chairman
Public Employment Relations Commission
495 W. State Street
CN 429
Trenton, NJ 08625-0429

The agency proposal follows:

Summary

The Public Employment Relations Commission proposes to adopt amendments to N.J.A.C. 19:11-6.1(d), 7.2 and 7.3(c)3, 19:14-6.5, 7.2 and 7.3(b). The proposed amendments to the Commission's rules require that a party ordering an official transcript of a Commission proceeding have the reporter service file a copy of the transcript with the Commission. These amendments will dramatically reduce the Commission's costs for reporter services by relieving the Commission of the need to order transcripts in cases where a party has already ordered a transcript. The proposed amendments conform the Commission's rules to the rules of the Office of Administrative Law (OAL) which require that whenever an OAL transcript is ordered, a copy for the OAL must be ordered (see N.J.A.C. 1:1-14.11).

If the transcript is ordered before a recommended decision is issued, the copy must be filed with the hearing officer or hearing examiner. If the transcript is ordered for the purposes of filing exceptions to a recommended decision, the copy must be filed with the director of representation in a representation case or with the Commission in an unfair practice case.

Social Impact

The proposed amendments affect all parties to Commission proceedings ordering hearing transcripts. They require that a party ordering a transcript arrange to have the reporter service file a copy of the transcript with the Commission. Before the proposed amendments, ordering parties received an original and one copy. Under the proposed amendments, they will receive only an original transcript. The Commission perceives no significant adverse social impact in the parties receiving an original rather than an original and one copy, except where the parties desire an original and a copy. That is the prevailing practice before the OAL.

Economic Impact

The proposed amendments will have a significant economic impact on the Commission and the public. It will reduce the number of transcripts that the Commission will order and therefore reduce the Commission's professional services expenditures.

The proposed amendment will have no significant economic impact on the parties. The proposed amendments affect only parties that would otherwise be ordering transcripts. Parties seeking an original and a copy will have to pay for the additional costs for a copy.

The proposed amendments will have an economic impact on the reporter services that provide transcripts for Commission proceedings. The proposed amendments will reduce the number of transcripts sold to the Commission.

Regulatory Flexibility Statement

The proposed amendments impose requirements upon public employees or their representatives. The proposed amendments impose no reporting or recordkeeping requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. They do, however, require the filing with the Commission of a copy of any transcript ordered by a party to a Commission proceeding. Compliance with this requirement is necessary to achieve the desired cost savings.

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

19:11-6.1 Who shall conduct; to be public unless otherwise ordered

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

(d) Copies of the transcript may be purchased by arrangement with the official reporter, or examined in the Commission's offices during normal working hours. **If a transcript of the proceedings is ordered before a recommended decision has been issued, the ordering party shall, at the time of ordering, notify the Hearing Officer that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the Hearing Officer for inclusion in the record.**

19:11-7.2 Record in the case

The record shall include the petition, notice of hearing, motions, rulings, orders, **any** official transcript of the hearing, stipulations, documentary evidence, together with the hearing officer's report and recommendations and any exceptions, cross-exceptions, briefs and answering briefs in support thereof.

19:11-7.3 Exceptions; cross-exceptions; briefs; answering briefs

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

(c) Exceptions to a hearing officer's report shall:

1.-2. (No change.)

3. Designate by precise citation of page the portions of the record relied on, state the grounds for the exceptions, and include the citation of authorities, unless set forth in a supporting brief. **If a transcript of the proceedings is ordered for the purposes of filing exceptions**

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to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the director of representation.

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

19:14-6.5 Rights of parties

Any party shall have the right to appear at such hearing in person or by authorized representative to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing examiner. Five copies of documentary evidence shall be submitted, unless the hearing examiner permits a reduced number of copies upon good cause shown. **If a transcript of the proceedings is ordered before a recommended decision has been issued, the party ordering the transcript shall, at the time of ordering, notify the Hearing Examiner that a transcript has been ordered and shall have the reporter service file a copy of the transcript with the Hearing Examiner for inclusion in the record.**

19:14-7.2 Record in the case

The record in the case shall consist of the charge and any amendments thereto, the complaint and any amendments thereto, notice of hearing, answer and any amendments thereto, motions, rulings, order, **any** official transcript of the hearing, stipulations, exhibits, documentary evidence, and depositions, together with the hearing examiner's recommended report and decision and any exceptions, cross-exceptions, and briefs and answering briefs in support thereof.

19:14-7.3 Exceptions; cross-exceptions; briefs; answering briefs

(a) (No change.)

(b) Each exception shall set forth specifically the questions of procedure, fact, law, or policy to which exception is taken; shall identify that part of the recommended report and decision to which objection is made; shall designate by precise citation of page the portions of the record relied on; and shall state the grounds for the exception and shall include the citation of authorities unless set forth in a supporting brief. Any exception which is not specifically urged shall be deemed to have been waived. Any exception which fails to comply with the foregoing requirements may be disregarded. **If a transcript of the proceedings is ordered for the purposes of filing exceptions to a recommended decision, the ordering party shall have the reporter service file a copy of the transcript with the Commission for inclusion in the record.**

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

(a)

CASINO CONTROL COMMISSION

Applications
Employee Licenses
Proposed Amendment: N.J.A.C. 19:41-1.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 70c.

Proposal Number: PRN 1990-313.

Submit comments by July 18, 1990 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, N.J. 08625

The agency proposal follows:

Summary

Casino Control Commission rule N.J.A.C. 19:41-1.3 requires that casino key employees and casino employees wear their employee license credentials at all times while working in the casino area. The rule directs casino licensees to provide such employees with a license credential holder bearing the name of the casino hotel. The proposed amendment to N.J.A.C. 19:41-1.3(f) eliminates the present requirement that the license credential holder be numerically controlled by the casino licensee. The Commission has determined that numerical control of the credential holder is unnecessary in view of the other controls currently utilized for employee licenses and employee access badges.

Social Impact

The proposed amendment will benefit the casino industry by eliminating the additional time and expense involved in numerical control of the employee license credential holders.

Economic Impact

The proposed amendment will reduce expenses for the casino industry by eliminating the costs associated with numerical control of employee license credential holders.

Regulatory Flexibility Statement

The proposed amendment affects only the operations of casino licensees, none of which are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

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

19:41-1.3 Employee licenses

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

(f) Each casino licensee shall provide each such employee with a holder for the Commission license credential which shall contain the name of the casino hotel complex[, shall be numerically controlled] and shall permit the prominent display of the information contained on the license credential. Thirty days prior to the use of any such holder, a casino licensee shall submit a prototype to the Commission along with a narrative description of the proposed manner in which employees will be required to wear such holder.

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

(b)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Redemption of Checks By Agents
Proposed Amendments: N.J.A.C. 19:45-1.1 and 1.26
Proposed New Rule: N.J.A.C. 19:45-1.26A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69 and 5:12-70(g), (l) and (m).

Proposal Number: PRN 1990-314.

Submit comments by July 18, 1990 to:
David C. Missimer, Senior Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendments and new rule were initiated as the result of a petition for rulemaking filed with the Casino Control Commission by Trump Plaza Associates ("TPA") (see 21 N.J.R. 3677(b)). After receipt and review of TPA's original proposal, the Commission's staff suggested substantial modifications to the proposal. TPA subsequently agreed to amend its rulemaking petition to include these modifications and the amended proposal was approved for publication by the Commission on May 9, 1990.

The proposed amendment to N.J.A.C. 19:45-1.26 is intended to clarify the provisions of that section which govern the use of personal checks and Counter Checks in redemption, consolidation and substitution transactions. The requirements for personal checks which may be accepted in partial redemptions, consolidations and substitutions are set forth in subsection (a). Pursuant to the terms of the amendment, such checks shall be referred to as "replacement checks." A reference definition for this term, and a definition for "replacement check voucher," are added at N.J.A.C. 19:45-1.1.

Although the proposed amendment to N.J.A.C. 19:45-1.26 generally does not substantively alter the current requirements of that section, the

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amendment does codify for the first time various requirements concerning the return of original Counter Checks and replacement checks to the drawer (see N.J.A.C. 19:45-1.26(h)). It should be noted that two alternative versions of N.J.A.C. 19:45-1.26(h)1ii are being published for public comment. This subparagraph addresses the type of verification of the drawer's identity which must occur before the casino licensee may return the original check to the drawer. Alternative I would require the casino licensee to perform either a signature comparison or an examination of the patron's identification credentials. Alternative II would also allow the casino licensee to verify the drawer's identity by comparing the patron's actual appearance to the physical description in the drawer's credit file or by having a cage supervisor attest to the drawer's identity. Only one of the two alternatives will be adopted by the Commission.

The proposed new rule, N.J.A.C. 19:45-1.26A, would establish standards and procedures for the redemption of checks by an agent of the drawer. No partial redemptions would be permitted under this section. The authority of the agent to redeem checks on behalf of the drawer would have to be established by the submission of a written agency agreement signed by the drawer. All agent redemption transactions would have to occur at the general cashier's cage. Subsections (d) through (f) of the proposed new rule set forth detailed procedures which would govern the processing of agent redemptions. Upon payment, the agent of the drawer would be provided with a receipt by the casino licensee for any funds received; the original redeemed replacement check or Counter Check would have to be returned directly to the drawer by the casino licensee. Subsection (h) of the proposed new rule establishes limitations on who may act as a redemption agent for a drawer and prohibits a casino licensee from requiring a drawer to designate an agent for purposes of redemption.

Social Impact

According to the petitioner, the authorization of redemption transactions by agents will facilitate the repayment of credit obligations by casino patrons. The proposed new rule may be of particular benefit to patrons who live a considerable distance from Atlantic City and thus find it difficult to appear at the casino cage to redeem checks prior to deposit. A more speculative benefit may be experienced by casino licensees through a possible reduction in the number of checks which are deposited and dishonored.

Economic Impact

It would be speculative, at best, to project the economic impact of the proposed new rule and amendments on casino patrons, casino licensees or those persons who directly benefit from the taxes imposed on casino gross revenues, the senior and disabled residents of New Jersey. Casino licensees may incur some minor expenses associated with the implementation of agent redemption procedures. It is not anticipated that the proposed new rule and amendments will have any economic impact on the operations of the regulatory agencies.

Regulatory Flexibility Statement

The proposed new rule and amendments will affect only the operations of casino licensees, none of which qualify as a small business under the terms of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not necessary.

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

19:45-1.1 Definitions

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

. . .

"Replacement check" is defined in N.J.A.C. 19:45-1.26.

"Replacement check voucher" refers to any documentation or recordation method approved for use in a casino licensee's system of accounting and internal controls as a means of tracking and controlling the acceptance and processing of a replacement check.

. . .

19:45-1.26 Procedure for redemption, consolidation or substitution of checks submitted by gaming patrons

(a) The drawer of an undeposited Counter Check may use a personal check to substitute for or partially redeem such Counter Check, or to consolidate two or more undeposited Counter Checks, if the personal check is drawn on a bank account which has been verified pursuant to N.J.A.C. 19:45-1.27, complies with the requirements of N.J.A.C. 19:45-1.25(c) and is deposited or redeemed in accordance with the requirements of this chapter. For purposes of N.J.A.C. 19:45-1.26A and this section, a personal check which is used by a drawer for substitution, partial redemption or consolidation shall be referred to as a "replacement check."

[(a)] **(b)** The drawer of a Counter Check **or a replacement check** may redeem it:

1. In its entirety by exchanging cash, cash equivalents, gaming chips, **or** plaques **in an amount equal to the amount of the check being redeemed** [, or any combination of another check, cash]; **or**

2. In part by exchanging:

i. Another Counter Check or replacement check in a lesser amount; and

ii. Cash, cash equivalents, gaming chips or plaques **in an amount which equals the difference between the check exchanged in (b)2i above and the amount of the check being partially redeemed.**

(c) If a drawer has more than one **undeposited** Counter Check **or replacement check** outstanding, such checks shall be redeemed in reverse chronological order (the most recently dated **Counter Check or replacement** check shall always be redeemed first). If more than one check bears the same date, the drawer may choose the order in which he **or she** wishes to redeem the identically dated **Counter Checks or replacement** checks.

[(b)] **(d)** The drawer of a **Counter Check or replacement** check may consolidate some or all **undeposited** Counter Checks **or replacement checks** by exchanging another **Counter Check or replacement** check in an amount equal to the total **amount of the outstanding Counter Checks or replacement** checks [previously exchanged] **being consolidated**.

[(c) The drawer of a Counter Check may substitute a personal check for the Counter Check.]

[(d)] **(e)** All consolidations, total or partial redemptions or substitutions of checks by gaming patrons shall be made at the general cashiers' cage. Consolidation or redemption of non-gaming checks shall not be allowed.

[(e)] **(f)** No casino licensee or any other person licensed under the [Casino Control] Act, or any other person acting on behalf of or under any arrangement with a casino licensee or other person licensed under the [Casino Control] Act, shall accept any check or series of checks in redemption, consolidation or substitution of another check or checks for the purpose of avoiding or delaying the deposit of a check or checks in a bank for collection or payment within the time periods specified in N.J.A.C. 19:45-1.28.

[(f)] **(g)** [Under] **Upon** acceptance of cash or cash equivalents, gaming chips and plaques, or another check in redemption, consolidation or substitution of a [check(s)] **check or checks**, the [general cashier] **casino licensee** shall [immediately] return [to the gaming patron] the [check(s)] **check or checks** being redeemed, consolidated or substituted **to the drawer in accordance with the requirements established in (h) below.** If such redemption, consolidation or substitution is accomplished by the acceptance of another check, the general cashier accepting such check shall date and time stamp the check, place his **or her** initials on the check, and record on the check the serial number of the Counter [Check(s)] **Check or the voucher number of the replacement check** being redeemed, consolidated or [replaced] **substituted**.

(h) Any Counter Check or replacement check which may be returned to the drawer as the result of a redemption, consolidation or substitution shall be returned directly to the drawer by one of the following methods:

1. If the drawer personally appears at the cage and requests the return of the check, the general cashier shall:

i. Obtain the original Counter Check or replacement check from the check bank cashier;

ALTERNATIVE I

ii. Verify the identity of the drawer through signature comparison or examination of identification credentials; and

ALTERNATIVE II

ii. Verify the identity of the drawer through signature comparison, examination of identification credentials, comparison of the drawer's

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actual appearance to the physical description in the drawer's credit file or personal attestation by a cage supervisor as to the identity of the drawer; and

iii. Return the check to the drawer; or

2. If the drawer requests the return of the check in a signed written communication, the check bank cashier shall:

i. Obtain the original Counter Check or replacement check;

ii. Compare the signature on the check to the signature on the written request; and

iii. Present the original check to a cage supervisor who shall mail the check to the drawer's current address as indicated in his or her credit file.

19:45-1.26A Procedures for the redemption of checks by an agent of the drawer

(a) The drawer of a Counter Check or replacement check may, in accordance with the requirements of this section, authorize an agent of the drawer to redeem a Counter Check or replacement check in its entirety by exchanging cash, cash equivalents, gaming chips or plaques in an amount equal to the amount of the check being redeemed. No partial redemption of a Counter Check or replacement check by an agent shall be permitted.

(b) The authority of the agent to act on behalf of the drawer shall be established as follows:

1. An original document, signed by the drawer, which clearly establishes the authority of the agent to make redemption payments on behalf of the drawer ("agency agreement") shall be presented to and reviewed by a general cashier at the cashiers' cage;

2. The drawer's signature on the original agency agreement shall be verified by a cage supervisor by comparing it to the original signature of the drawer in the drawer's credit file and the casino licensee shall maintain documentation supporting the verification; and

3. The original agency agreement shall be retained by the casino licensee in the drawer's credit file or in some other location approved by the Commission; provided, however, the casino licensee may make and retain a photocopy of the agency agreement, in lieu of the original, if the general cashier who examined the original agency agreement signs the photocopy which is being retained.

(c) All redemptions of Counter Checks or replacement checks by an agent shall be made at the general cashiers' cage and only after verification of the agency as required in (b) above.

(d) Prior to accepting payment from the agent, the general cashier who reviewed the agency agreement shall prepare a receipt, a four-part serially prenumbered form which shall include, at a minimum, the following information. The general cashier shall record thereon, at a minimum, the information required by (d)1 through 8 below:

1. The date, time and shift of preparation;

2. The name of the drawer of the Counter Check or replacement check and the drawer's credit account number;

3. The name of the agent;

4. The total amount of the payment received;

5. The method of payment;

6. The serial number of the Counter Check or the voucher number of the replacement check being redeemed and the amount of each check;

7. The signature of the agent;

8. The signature of the general cashier; and

9. The signature of the check bank cashier.

(e) Prior to obtaining the agent's signature on each copy of the receipt, the general cashier shall examine the agent's identification credentials and shall maintain documentation supporting that examination.

(f) After securing the agent's signature on the receipt, the general cashier shall forward the agency agreement and all copies of the receipt to the check bank cashier, who shall:

1. Obtain the appropriate Counter Check or replacement check being redeemed, verify all the documents for accuracy and sign each copy of the receipt;

2. Time and date stamp the redemption copy of the Counter Check or the replacement check voucher, mark the back of the redemption copy "Redeemed by drawer's agent" and initial it;

3. Attach the original receipt to the original Counter Check or the replacement check being redeemed and update the drawer's credit account;

4. Maintain the original Counter Check or replacement check in the check bank until returned to the drawer in accordance with N.J.A.C. 19:45-1.26;

5. Forward the redemption copy of the Counter Check or replacement check voucher to the accounting department at the end of the gaming day for agreement with the accounting and issuance copies of the Counter Check or replacement check voucher or stored data;

6. Forward the duplicate receipt to the accounting department at the end of the gaming day so that it may be mailed to the drawer as evidence of the redemption of the Counter Check or replacement check by the agent;

7. Return the triplicate receipt to the general cashier to be maintained as a balancing item until the end of the shift; and

8. Return the quadruplicate receipt to the general cashier, who shall provide it to the agent as a receipt for payment.

(g) If the drawer, in accordance with N.J.A.C. 19:45-1.26, requests the return of the original redeemed Counter Check or replacement check:

1. In person at the cage, the general cashier shall:

i. Obtain the original receipt and redeemed check from the check bank cashier;

ii. Require the drawer to sign the original receipt upon return of the redeemed check to the drawer; and

iii. Return the original receipt to the check bank cashier;

2. By mail, the check bank cashier shall:

i. Note the date that the redeemed check was mailed to the drawer on the original receipt; and

ii. Present the redeemed check to a cage supervisor who shall mail it to the drawer.

(h) Any agent authorized by this section to redeem checks on behalf of the drawer must act for the sole benefit of the drawer. No junket representative, junket enterprise, employee or agent of a junket enterprise, casino licensee or employee or agent of a casino licensee may act as an agent for a drawer of a check pursuant to this section. No casino licensee, or employee or agent thereof, may require the drawer of a check to designate an agent for purposes of redemption as a pre-condition to granting credit to the drawer or for any other reason whatsoever.

(i) Any agency established pursuant to this section shall remain in effect until revoked in writing by the drawer, unless the term of the agency is specifically limited by the agency agreement.

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RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

Grades and Standards
Fruit and Vegetable Fees and Charges
Adopted Amendments: N.J.A.C. 2:71-2.28, 2.29, 2.30 and 2.32

Proposed: April 16, 1990 at 22 N.J.R. 1242(c).
Adopted: May 23, 1990 by the State Board of Agriculture, Arthur R. Brown, Jr., Secretary.
Filed: May 25, 1990 as R.1990 d.318, **without change.**
Authority: N.J.S.A. 4:10-6 and 4:10-13.
Effective Date: June 18, 1990.
Expiration Date: July 8, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

2:71-2.28 Charges for inspection or grading and certification services; written agreements for single commodity inspection

(a) Charges for inspection or grading and certification services of five or more consecutive days duration, performed pursuant to a written agreement between the New Jersey Department of Agriculture and the requestor of the services, shall be made according to the following schedule:

1. Basic schedule for all products:

i. A charge of $380.00 per five day week (Monday through Friday) or 40 hours or less for each inspector;

ii. A charge of $14.25 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. An additional charge of $14.75 per hour, or portion thereof, for the actual hours worked by each inspector on legal State holidays occurring Monday through Friday;

iv. A charge of $14.25 per hour, or portion thereof, for each inspector working on Saturday and/or Sunday. There will be a four hour minimum charge for each inspector working on Saturday and/or Sunday;

v. (No change.)

2. Charges for inspection or grading and certification of fruit and vegetables other than potatoes for fresh market:

i. A charge of $0.06 will be made for all packages inspected or graded and certified in excess of 3,170 packages during the seven day week (Saturday through Friday).

3. Charges for inspection or grading and certification of potatoes for the fresh market:

i. A charge of $0.03 per hundredweight for all hundredweights inspected or graded and certified in excess 2,715 hundredweights during the seven day week (Saturday through Friday).

2:71-2.29 Written agreements for multiple commodity inspection

(a) Charges for written agreements shall be made according to the following schedule:

i. A charge of $760.00 per five day week (Monday through Friday) or 40 hours or less for each inspector for the inspection and/or grading of more than one commodity;

ii. A charge of $28.50 per hour, or portion thereof, for all hours worked over 40 in the five day week (Monday through Friday), or for all hours over eight hours per day;

iii. There will be at least a four hour minimum charge of $114.00 assessed for each inspector assigned work on Saturday and/or Sunday;

iv. A charge of $28.50 per hour, or portion thereof, for the hours worked by each inspector on legal State holidays occurring Monday through Friday;

v. There will be at least a four hour minimum charge of $114.00 assessed for each inspector assigned work on legal State holidays occurring Monday through Friday;

vi. A charge of $0.06 will be made for all packages (other than potatoes) inspected or graded and certified in excess of 6,335 packages during the seven day week (Saturday through Friday).

2:71-2.30 Charges; oral agreements; trailer, car, warehouse and storage lots

(a) Charges for inspection or grading and certification services performed to an oral agreement between the New Jersey Department of Agriculture and the requestor, for all trailer, car, warehouse and storage lots, shall be made according to the schedule detailed below. A minimum of $20.00 for inspection or grading and certification services shall be charged. However, if the conditions listed in N.J.A.C. 2:71-2.30 are met, the charges shall be calculated according to the hourly rate schedule set out in N.J.A.C. 2:71-2.31.

1. Basic charge schedule for products other than potatoes:

i. A charge of $0.12 per container for all containers;

2. Basic charge schedule for potatoes:

i. A charge of $0.14 per hundredweight;

ii. All other size containers and bulk loads shall be converted to hundredweight equivalents. Charges for these equivalents shall be at the rate of $0.14 per hundredweight.

3. (No change.)

4. Delayed inspections: Delayed inspections are those inspections requiring more than two hours to complete (exclusive of travel time) due to delays of any kind not attributable to the inspector. Additional charges for delayed inspections shall be assessed according to the following schedule:

i. $15.00 per hour charged in half hour increments.

ii. The minimum charge shall be $7.50.

5. Saturday, Sunday and legal State holiday inspections: For inspections performed on Saturdays, Sundays or legal State holidays a per man-hour rate will be charged in addition to the regular fee and shall be assessed according to the following schedule:

i. $10.00 per hour charged in half hour increments.

ii. The minimum charge shall be $5.00.

2:71-2.32 Hourly rate charges

(a) The hourly rate charges shall be made according to the following schedule:

1. A charge of $18.50 per hour, or portion thereof, for regular work hours, 8:00 A.M. to 5:00 P.M. on regular workdays, Monday through Friday;

2. A charge of $27.75 per hour, or portion thereof, for work started or completed between 6:00 P.M. and 7:00 A.M. on regular workdays, Monday through Friday;

3. A charge of $27.75 per hour, or portion thereof, for work performed on Saturdays, Sundays, or legal State holidays at the request of the requestor.

BANKING

(a)

DIVISION OF EXAMINATIONS

Pawnbrokers
Sale at Public Auction
Adopted Amendment: N.J.A.C. 3:16-2.3

Proposed: April 2, 1990 at 22 N.J.R. 1015(a).
Adopted: May 11, 1990 by Jeff Connor, Commissioner, Department of Banking.
Filed: May 16, 1990 as R.1990 d.302, **without change.**
Authority: N.J.S.A. 45:22-11 and 45:22-26.

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Effective Date: June 18, 1990.
Expiration Date: June 18, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

3:16-2.3 Auction
(a) When an unredeemed pledge is sold at public auction, the pledge book shall show in the column provided for redemption date, the words "sold at auction" and the date of such sale.
(b) All auctions of unredeemed pledges shall be conducted in a commercially reasonable manner.
(c) A licensee shall allow public inspection of all unredeemed pledges for at least five days after the last date of publication of the notice of auction of the pledges.

PERSONNEL

(a)

MERIT SYSTEM BOARD

Appeals, Discipline and Separations
General Causes; Misuse of Public Property
Adopted Amendment: N.J.A.C. 4A:2-2.3

Proposed: April 2, 1990 at 22 N.J.R. 1015(b).
Adopted: May 15, 1990 by the Merit System Board, Andrew Weber, Commissioner, Department of Personnel.
Filed: May 16, 1990 as R. 1990, d.308, **without change.**

Authority: N.J.S.A. 11A:2-20; Executive Order No. 4(1990).

Effective Date: June 18, 1990.
Expiration Date: October 5, 1992.

Summary of Public Comments and Agency Responses:
COMMENTS: Representatives of Locals 1033 and 1039, Communications Workers of America, spoke in opposition to the amendment at a public hearing held on April 19, 1990. They both stated that the amendment was unnecessary, and that its adoption could single out employees who drive State cars for discipline.

Opposition to the amendment was also expressed in written comments by a representative of Local 195, International Federation of Professional and Technical Engineers. He argued that the amendment was not needed, since the current rule allows discipline of employees "for other sufficient cause."

RESPONSE: Executive Order No. 4 requires the Department of Personnel to promulgate such rules which may be necessary for the discipline of State employees who misuse State cars. The proposed amendment is responsive to the Executive Order, and does not direct blame at any employee or group of employees. An employee retains appeal rights to any discipline under this section. Therefore, the Board has decided to adopt this amendment as proposed.

Full text of the adoption follows.

4A:2-2.3 General causes
(a) An employee may be subject to discipline for:
1.-6. (No change.)
7. Neglect of duty;
8. Misuse of public property, including motor vehicles; and
9. Other sufficient cause.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Industrialized and Modular Buildings

Adopted Amendments: N.J.A.C. 5:23-1.1, 1.4, 3.11, 4.1, 4.12, 4.13, 4.14, 4.15, 4.21, 4.22, 4.24, 4.26, 4.29, 4.31 and 4.39
Adopted Repeals: N.J.A.C. 5:23-4.25, 4.27, 4.28, 4.30, 4.32, 4.33, 4.34, 4.35, 4.36, 4.37 and 4.38
Adopted New Rules: N.J.A.C. 5:23-4A

Proposed: March 5, 1990 at 22 N.J.R. 691(a).
Adopted: May 17, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: May 21, 1990 as R.1990 d.313, **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. 52:27D-124, 135 and 136.

Effective Date: June 18, 1990.
Operative Date: July 1, 1990.
Expiration Date: March 1, 1993.

Summary of Public Comments and Agency Responses:
COMMENT: Mark Line Industries, a manufacturer of premanufactured construction, commends the Department for its effort to adopt a set of rules closely following the Model Rules of the Joint Council on Industrialized/Modular Buildings. It asks whether the deletion of the exclusion of public school facilities is intended to eliminate Department of Education plan review, points out that the word "does" in the sixth line of N.J.A.C. 5:23-4A.11(a) should be followed by "not," and asks if it is indeed the Department's intention to require New Jersey DCA licensing for plan reviewers employed by independent agencies or other states and, if so, if there are any exceptions.

RESPONSE: The deletion of the exception for public schools is intended merely to conform to the deletion of that exception in the State Uniform Construction Code Act by P.L.1983, c.496; it does not change the role of the Department of Education in plan review. The inadvertent omission of the word "not" has been corrected. The licenses required under N.J.A.C. 5:23-4A.25 are indeed New Jersey DCA licenses and there is no provision for exceptions at this time.

COMMENT: NTA, Inc., an engineering, planning and consulting firm, inquires as to the meaning of "qualified" as used in N.J.A.C. 5:23-4A.8(b)1.

RESPONSE: This term was previously contained in N.J.A.C. 5:23-4.29(d)1 and means authorized by the Department of Community Affairs to review and approve the premanufactured documents for Class I or Class II construction.

COMMENT: T.R. Arnold & Associates, Inc., an in-plant inspection agency, compliments the Department for the preparation of a very comprehensive and workable set of rules, but points out that N.J.A.C. 5:23-4A.17 might be misinterpreted as requiring P.E. registration for each discipline and that the definitions of "component" and "element" ought to be clarified.

RESPONSE: It is not the Department's intention to require P.E. registration for each discipline, and the Department has changed the rule to make this clear. Additional language has also been added to N.J.A.C. 5:23-4A.4 to make it clear that components are items such as bathroom or kitchen modules, while elements are items such as trusses, fire walls, wall panels, prestressed or prefabricated floor or roof panels, or pre-engineered structural frames.

COMMENT: The New Jersey Builders Association (NJBA) is concerned that there might be some confusion due to the fact concerning premanufactured construction will continue to be found in subchapter 4, as well as the new subchapter 4A, and points out certain inconsistencies in terminology and possible sources of confusion due to renumbering. The NJBA is also concerned that there be no reduction in standards as a result of certification through reciprocity and that the code not allow modular builders more time to comply with new code standards than is allowed for other builders.

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RESPONSE: Subchapter 4A is intended to follow the model rules as closely as possible and it was considered most feasible to retain supplementary provisions that were not part of the model rules themselves in subchapter 4. The Department is satisfied that any confusion will be quickly resolved and doubts that the renumbering will really cause any significant problem. The terminological inconsistencies that were pointed out have been corrected and necessary cross-references have been added. The effect of the rules is to have all builders subject to the same effective date for compliance with code revisions, despite necessary differences in procedure for site-built and factory-built construction. As far as reciprocity is concerned, it is authorized by N.J.S.A. 52:27D-136 with the proviso that it be done in a manner consistent with the Act. Before granting reciprocity to any other state, the Department will evaluate that state's program to make sure that equivalency exists.

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

5:23-1.1 Title, division into subchapters
(a) (No change.)
(b) The regulations consist of the following subchapters:
1.-4. (No change.)
5. "Industrialized/Modular Buildings and Building Components which may be cited throughout the regulations as N.J.A.C. 5:23-4A and when referred to N.J.A.C. 5:23-4A may be cited as this subchapter.
Recodify existing 5.-8. as 6.-9. (No change in text.)

5:23-1.4 Definitions
The following words and terms, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise.
. . .
"Premanufactured system" or "premanufactured construction" means an assembly of materials or products that is intended to comprise all or part of a building or structure and that is assembled off-site by a repetitive process under circumstances intended to insure uniformity of quality and material content. The term shall include, but not be limited to, manufactured homes and industrialized/modular buildings.
. . .
"Private inplant inspection agency"***, or "evaluation and inspection agency",*** means a business entity authorized pursuant to N.J.A.C. 5:23-4 ***or 4A*** to *[approved]* ***approve*** premanufactured *[components, systems or assemblies]* ***construction***.
. . .

5:23-3.11 Enforcement activities reserved to the State
(a) The Department of Community Affairs shall be the sole plan review agency for the following structures:
1-6. (No change.)
7. All premanufactured *[system components]* ***systems*** for Class 1 and Class 2 structures other than those authorized to be approved by an inplant inspection agency licensed to perform Class 1 and Class 2 plan review as provided in N.J.A.C. 5:23-4.29(a) and N.J.A.C. 5:23-4A.8 and all onsite installation of Class 1 and Class 2 premanufactured construction.
(b)-(f) (No change.)

5:23-4.1 Title; scope; intent
(a)-(b) (No change.)
(c) This subchapter and N.J.A.C. 5:23-4A shall control matters relating to: the structure, organization, and procedures of municipal, State, and interlocal enforcing agencies; their interrelationships; the structure, organization, and procedures of boards of appeal; the approval of premanufactured construction *[or industrialized/modular buildings]*; private enforcing agencies; and the establishment of fees.
(d) (No change.)

5:23-4.12 Private enforcing agencies—establishment
(a) (No change.)
Recodify (c) as (b) (No change in text.)

5:23-4.13 Private enforcing agencies—organization
(a) (No change.)

5:23-4.14 Private enforcing agencies—administration and enforcement
(a) (No change.)

5:23-4.15 Suspension and revocation
(a) General:
1. In addition to any other remedies provided by the regulations, the Department may suspend or revoke its authorization of any private on-site agency if the Department determines that the authorization or reauthorization was based on the submission of fraudulent or materially inaccurate information, or that the authorization or reauthorization was issued in violation of the regulations, or that a change of facts or circumstances make it unlikely that the inspection agency can continue to discharge its responsibilities under the regulations in a satisfactory manner, or that the inspection agency has violated the regulations.
2. (No change.)
(b) (No change.)
(c) Revocation without suspension:
1. (No change.)
2. No such agency shall reapply for approval as an on-site agency until the expiration of one year from the date of the order of revocation.
(d) (No change.)
(e) (No change in text.)
(f) (No change.)

5:23-4.21 Private enforcing agency authorization and reauthorization fees
(a) Authorization fee: Any onsite inspection agency submitting an application to the Department under N.J.A.C. 5:23-4.12 for approval as an inspection agency shall pay a fee of $2,000 for each subcode for which authorization is sought.
(b) Reauthorization fee:
1. (No change.)

5:23-4.22 Building element and manufactured home add-on unit insignia of certification fees
(a) Building element insignia of certification fee: An inplant inspection agency requesting the Department to issue component insignia(s) of certification for building elements shall pay a fee of $50.00 for each such insignia.
(b) Manufactured (Mobile) Home add-on unit insignia of certification fee: An inplant inspection agency requesting the Department to issue insignia(s) of certification for manufactured (mobile) home add-on units shall pay a fee of $50.00 for each such insignia.

5:23-4.24 Plan review; Department of Community Affairs
(a) Rules concerning establishment are:
1. (No change.)
2. Plan review:
i.-ii. (No change).
iii. Premanufactured construction: Department plan review and release shall be required for all modular construction other than those authorized to be approved by an inplant inspection agency as provided in N.J.A.C. 5:23-4.29(a) and 5:23-4A.***8.***
(b) (No change.)

5:23-4.25 (Reserved)

5:23-4.26 Certification of manufactured homes***,*** *[and]* building elements ***and manufactured home add-on units***
(a) Manufactured *[home and]* ***homes,*** building elements ***and manufactured home add-on units*** shall be certified in accordance with the following provisions:
1. Manufactured Home (formerly called mobile home): Single family dwelling built in accordance with the Federal Manufactured Home Construction and Safety Standards and bearing a Federal insignia of certification.
2. Building elements***,*** such as trusses, fire walls, fire separation walls, wall panels, pre-stressed/prefabricated floor or roof panels ***and*** pre-engineered structural frames***,*** built in accordance with

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the New Jersey Uniform Construction Code*,* may be approved by any of the following options:

i. Approval for both design and construction by a nationally recognized laboratory. The local municipal subcode official has the authority to accept such approvals based on the evidence, test and/or documentation presented to him or her.

ii. Approval for both design and construction by a professional engineer licensed either in the State of New Jersey or in the state of manufacture. The local municipal subcode official has the authority to accept such approvals based on the evidence, of test and/or documentation presented to him or her.

*[3.]**iii.* Approval for both design and construction by a New Jersey inplant inspection agency. The evidence of such approval shall be in the form of premanufactured component insignia of certification attached to the component(s) as provided in N.J.A.C. 5:23-4A.

*[4.]**3.* (No change.)

5:23-4.27 (Reserved)

5:23-4.28 (Reserved)

5:23-4.29 Approval of *[manufactured home add-on units and building elements]* ***premanufactured systems*** documentation

(a) An inplant inspection agency is authorized to review and approve the premanufactured system documentation for the types of industrialized/modular buildings and building components listed in N.J.A.C. 5:23-4A.8, building elements as defined in accordance with N.J.A.C. 5:23-4.26(a)2, and manufactured (mobile) home add-on units.

(b) The inplant inspection agency shall approve a set of manufactured home add-on unit and building element documentation if the agency determines that such documentation conforms to all applicable requirements of the State Uniform Construction Code. The manufactured home add-on unit and building element documentation shall include all of the drawings, design calculations, specifications, details, and shop drawings required for code compliance review. Such documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacture or in New Jersey.

(c) The compliance assurance program requirements for building elements and manufactured home add-on units shall be as set forth in N.J.A.C. 5:23-4A.8(d), 4A.15 and 4A.16.

5:23-4.30 (Reserved)

5:23-4.31 Insignia of certification for manufactured home add-on unit and building element

(a) If the building element is approved in accordance with N.J.A.C. 5:23-4.26(a)2, then each such element shall require a premanufactured component insignia of certification. For elements inspected and grouped in one lot of not more than 25 elements, one premanufactured component insignia of certification shall be required for each lot.

(b) Manufactured (mobile) home add-on units shall each require a mobile home add-on unit insignia of certification.

5:23-4.32 (Reserved)

5:23-4.33 (Reserved)

5:23-4.34 (Reserved)

5:23-4.35 (Reserved)

5:23-4.36 (Reserved)

5:23-4.37 (Reserved)

5:23-4.38 (Reserved)

5:23-4.39 Enforcement of Federal manufactured home standards

(a) The authority of the Department of Community Affairs as the State Administrative Agency to enforce Federal manufactured home construction and safety standards is hereby delegated to the Bureau of Code Services (the "Bureau"), CN 816, Trenton, New Jersey 08625.

(b)-(k) (No change.)

(l) Nothing in this chapter shall be read to conflict with any provision of the Federal Manufactured Housing Construction and Safety Standards Act of 1974, (P.L. 93-383) as amended, and Federal regulations promulgated thereunder (42 U.S.C. § 5401 et seq.). Whenever it shall appear that a provision of these rules is in conflict with any Federal standard or requirement under the Federal Manufactured Housing Construction and Safety Standards Act, Federal law shall govern.

SUBCHAPTER 4A. INDUSTRIALIZED/MODULAR BUILDINGS AND BUILDING COMPONENTS

5:23-4A.1 Purpose

(a) The purposes of this subchapter are to establish uniformity in compliance requirements, to promote the use of new technologies, techniques and materials, and to increase the availability of safe, decent and affordable housing and other types of buildings.

(b) No approval, ruling, action, order or notice issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall be rendered invalid or unenforceable by reason of the adoption of this subchapter or the repeal of rules superseded by this subchapter. Any approval issued in accordance with rules in effect prior to the effective date of the adoption of this subchapter shall continue in effect for the period for which it was granted, but any subsequent approval shall be in accordance with this subchapter.*

5:23-4A.2 Objective

The objective of this subchapter is to facilitate the interstate and intrastate transportation and utilization of industrialized/modular buildings and building components. Use of uniform administrative procedures and technical standards can provide assurance that industrialized/modular buildings and building components comply with applicable codes, that building systems are adequate, and that evaluation and inspection agencies are competent and are performing adequately.

5:23-4A.3 Scope

(a) This subchapter governs the design, manufacture, handling, storage, delivery, and installation of industrialized/modular buildings and building components intended for installation in this State or in any other state or local governmental jurisdiction in which such buildings or building components and the labels thereon are accepted. Industrialized/modular buildings or building components may be sold for, delivered to, or installed on building sites located in any jurisdiction of this State, if such buildings or building components have been approved and certified pursuant to N.J.A.C. 5:23.

1. Industrialized/modular buildings and building components that are manufactured and installed within an enforcing agency's jurisdiction may be inspected and approved by the enforcing agency, if qualified, upon approval from the Department.

(b) Industrialized/modular buildings and building components certified pursuant to N.J.A.C. 5:23 shall be deemed to comply with the requirements of all laws, ordinances, rules, and regulations that govern the matters within the scope of the approval and certification, regardless of the provisions of any other such law, ordinance, rule, or regulation. Nothing in this subchapter shall be read to invalidate the requirements of the State conflict of interest restrictions at N.J.A.C. 5:23-4.5(h) that shall apply to the inspectors and evaluators of products to be sold in New Jersey pursuant to this subchapter, as if those inspectors or evaluators were employed in positions specifically listed in that subsection.

5:23-4A.4 Definitions

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

"Building component," as used with reference to industrialized/modular buildings, ***means*** any subsystem, subassembly, or other system of closed construction designed for use in or as part of a structure, that may include structural, electrical, mechanical, plumbing, and fire protection systems and other systems affecting health and safety ***and shall include items such as bathroom modules and kitchen modules***.

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"Building systems" means the method of constructing a type of industrialized/modular buildings or building components described by plans, specifications, and other documentation that together establish a set of limits meeting the building codes, standards, and other requirements of N.J.A.C. 5:23 for that type of industrialized/modular buildings or building components, that may include structural, electrical, mechanical, plumbing, fire protection systems, and other systems affecting health and safety.

"Certification" of industrialized/modular buildings means the process by which enforcing agencies are assured that elements of closed construction, not practical to inspect on site, have been properly reviewed and inspected by the Department or an approved agency and conform to applicable construction codes.

"Closed construction" for industrialized/modular buildings means any building, building component, assembly, or system manufactured in such a manner that concealed parts or processes of manufacture cannot be inspected at the site without disassembly, damage, or destruction. The definition shall not include products, such as electrical and plumbing fixtures and equipment that are tested, listed, labeled and certified by a nationally recognized testing laboratory.

"Compliance assurance program" means the policies and procedures that assure that industrialized/modular buildings and building components, including their manufacture, storage, delivery, assembly, handling, and installation, conform with the construction codes and N.J.A.C. 5:23.

"Evaluation and inspection agency" means an approved person or organization, private or public, determined by the Department to be qualified by reason of facilities, personnel, experience, and demonstrated reliability and independence of judgment, to inspect, investigate and evaluate industrialized/modular buildings, building components, building systems, or compliance assurance programs, pursuant to N.J.A.C. 5:23. ***Unless otherwise specifically provided, the terms "evaluation agency", "inspection agency" and "inplant inspection agency" shall be deemed to be synonymous with "evaluation and inspection agency" and with each other.***

. . .

"Independence of judgment" means not being affiliated with or influenced or controlled by building manufacturers or by producers, suppliers, or vendors of products or equipment used in industrialized/modular buildings and building components, in any manner that is likely to affect capacity to render reports and findings objectively and without bias.

"Industrialized/modular building" means any building that is of closed construction and is made or assembled in manufacturing facilities, off the building site, for installation, or assembly and installation, on the building site. This definition shall not be construed to include any structure labeled in accordance with the Federal Manufactured Home Construction and Safety Standards Act of 1974 (P.L. 93-383; 42 U.S.C. §5401 et seq.).

"Installation" means the process of affixing, or assembling and affixing, industrialized/modular buildings or building components on the building site.

"Label" means an approved insignia or seal evidencing certification, in accordance with N.J.A.C. 5:23.

5:23-4A.5 Standards

(a) Industrialized/modular buildings, building components and building systems, as defined for the purpose of this subchapter, shall:

1. Comply with all applicable provisions of the State Uniform Construction Code; or

2. Be certified pursuant to N.J.A.C. 5:23-4A.21.

(b) N.J.A.C. 5:23-4A is not intended to prevent the use of any technology, techniques, or materials not specifically prescribed by the subcodes if an alternate has been approved by the enforcing agency. The Department or the local enforcing agency may approve any alternate if it finds that the proposed design complies with the provisions of N.J.A.C. 5:23 and that the material, method or work offered, is, for the purpose intended, consistent with the State Uniform Construction Code concerning quality, strength, effectiveness, fire resistance, durability and safety. The Department shall require that sufficient evidence or proof be submitted to substantiate any claims that may be made regarding the use of any alternate.

(c) Industrialized/modular buildings that have never been occupied and that serve for model or demonstration purposes for the manufacturer shall not be required to bear an insignia of certification pursuant to this chapter, until such time as such buildings are offered for sale, lease or occupancy.

(d) Industrialized/modular buildings that are intended for prototype, experimental or demonstration purposes in or on a site in the State designated by the Department as a test facility may be installed without bearing insignia(s) of certification. Subsequent sale or lease of such buildings shall require prior approval and bear insignia(s) of certification in accordance with the appropriate provisions of this chapter.

5:23-4A.6 Amendments

(a) The Department may amend these rules pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq..

(b) Any proposed amendments to national codes adopted by reference in these regulations shall be undertaken pursuant to N.J.A.C. 5:23-3.13, State-sponsored code change proposals.

5:23-4A.7 Administration and enforcement

(a) The Department shall administer and enforce all provisions of these rules. The Department shall have responsibility for evaluating and approving building systems and for inspecting and certifying industrialized/modular buildings and building components for compliance with N.J.A.C. 5:23. The Department shall allow the use in the State of New Jersey of industrialized/modular buildings, building components and systems and compliance assurance programs labeled and certified by approved evaluation and inspection agencies in accordance with this chapter.

(b) The Department shall approve industrialized/modular buildings, building components, and building systems that comply with the State Uniform Construction Code and shall approve compliance assurance programs that comply with the requirements of this chapter. The Department may delegate to evaluation agencies all or part of the evaluation of building systems and compliance assurance programs, in accordance with N.J.A.C. 5:23-3.

5:23-4A.8 Approvals of building systems and compliance assurance programs

(a) Approved evaluation agencies shall be permitted to approve building systems and compliance assurance programs for the following types of industrialized/modular buildings and building components, including, without limitation, the factory built portions of the buildings of the Use groups listed in the Class 3 agency schedule set forth at N.J.A.C. 5:23-3.10(c)1:

1. Factory built portions of Use group B less than 7,200 square feet, two stories and 30 feet high;

2. Factory built portions of Use group M less than 4,800 square feet, one story and 20 feet high;

3. Factory built portions of Use group S-1 less than 4,200 square feet, one story and 20 feet high;

4. Factory built portions of Use group S-2 less than 7,200 square feet, two stories and 30 feet high;

5. Factory built portions of one- and two-family detached dwellings of Use group R-3 as defined in the building subcode or Use group R-4 as defined in the one- and two-family dwelling subcode;

6. Factory built portions of buildings of Use group R-3 of types 5A or 5B construction meeting the requirements of Section 910.3 of the 1987 edition of the building subcode and not exceeding 4,800 square feet per floor;

7. Factory built portions of buildings of Use group R-2 of types 5A or 5B construction not exceeding 4,800 square feet per floor;

8. Building elements, as defined in accordance with N.J.A.C. 5:23-4.26(a);

9. Kiosks, parking lot attendant booths, toll and telephone booths, and similar structures not exceeding 25 square feet in area; and

10. Manufactured (mobile) home add-on units.

(b) Approval for factory built portions of projects not addressed in N.J.A.C. 5:23-4A.8(a) may be obtained from:

1. An approved inplant evaluation and inspection agency qualified as Class I or II in accordance with N.J.A.C. 5:23-3, as required for

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the specific project*[. (The evidence of such approval shall be in accordance with this subchapter.)]**;* or

2. The Department.

(c) Building systems shall be evaluated as follows:

1. In order to obtain approval for industrialized/modular buildings and building components, a manufacturer shall submit a building system for evaluation to an approved evaluation and inspection agency in accordance with the requirements of this subchapter.

2. The evaluation and inspection agency shall perform a complete evaluation and issue its evaluation report on the complete building system, as submitted.

i. In the event that the building system is found to be unsuitable for evaulation, the applicant shall be notified in writing of such unsuitability and the basis thereof within 15 calendar days of the date the building system was received by the evaluation and inspection agency. Subsequent submissions shall each be treated as a new application.

ii. In the event that the building system is found to be suitable for evaluation, a complete evaluation shall be performed within 30 calendar days of the date the building system was received by the evaluation and inspection agency. The applicant shall be notified in writing of the results of the evaluation, upon completion.

3. The evaluation and inspection agency may require tests to determine whether a building system meets the requirements of this chapter, if that determination cannot be made from evaluation of plans, specifications, and documentation alone. The building system test procedures used shall be reviewed and evaluated by the evaluation and inspection agency.

4. Approval of building systems shall be evidenced by the stamp and date of approval of the evaluation and inspection agency and the signature of a designated employee of the agency, on each sheet of the building system documentation. One copy of all approved plans, specifications, documentation, and a building system approval letter shall be returned to the applicant and one copy shall be forwarded to the Department. The documentation shall require the signature and seal of a professional engineer or architect registered in the state of manufacture or in New Jersey.

5. An approved building system shall not be varied without prior authorization by the evaluation and inspection agency. All approved changes shall be made a part of the written record of the approval. Authorization changes shall be in writing or be confirmed in writing within 10 calendar days of any oral authorization.

6. No regulatory amendments to N.J.A.C. 5:23 shall apply retroactively. The Department shall notify all manufacturers with approved building systems and ***all*** evaluation agencies of record of all such changes. Publication constituting legal notice within the State shall constitute notice for *[the purpose]* ***purposes*** of this regulation. Each manufacturer shall have 180 calendar days following the sending of such notification, or such additional time as the Department shall deem reasonable, to submit appropriate design changes to the evaluation and inspection agency in order to implement the code changes in its already approved building system(s).

7. Amendments to building systems may be proposed by submitting appropriate plans, specifications, or documentation to the evaluation and inspection agency for approval.

8. The evaluation and inspection agency may suspend or revoke the approval of any building system whenever the approval was issued in error, was issued on the basis of incorrect information, or was issued in violation of this chapter, or is later found to be in violation of this chapter. Notice to the manufacturer, evaluation and inspection agency and the Department of such suspension or revocation of the approval shall be in writing with the reasons for suspension or revocation set forth therein. A listing of all certified units that are not in compliance, due to the suspension or revocation of the approval of a building system, shall be provided by the manufacturer to the evaluation and inspection agency and the Department. The manufacturer shall correct the nonconformances of these units in accordance with this chapter.

9. If a building system is disapproved, the evaluation and inspection agency shall notify the applicant with a written explanation of the reasons for disapproval attached thereto.

(d) Compliance assurance programs shall be required, as follows:

1. A manufacturer shall obtain approval for a compliance assurance program for its building system. Industrialized/modular buildings or building components shall be manufactured in accordance with an approved program in order to be certified. Compliance assurance programs shall be submitted to the evaluation and inspection agency for approval, in accordance with N.J.A.C. 5:23-4A.

2. Prior to full evaluation, the evaluation and inspection agency shall determine that the quality assurance program submitted is suitable for processing, pursuant to the requirements of this subchapter.

i. In the event that the quality assurance program is found to be unsuitable for processing, the applicant shall be notified in writing of such unsuitability and the basis thereof within 15 calendar days of the date it is received by the evaluation and inspection agency. Any subsequent submission shall be treated as a new application.

ii. In the event that the quality assurance program is found to be suitable for processing, it shall receive full evaluation within 30 calendar days of the date the application ***for approval*** was received by the evaluation and inspection agency. The applicant shall be notified in writing of the results of the evaluation, upon completion.

3. Compliance assurance programs submitted for approval shall be evaluated for compliance with this chapter.

4. If a compliance assurance program is disapproved, the evaluation and inspection agency shall notify the applicant, with a written explanation, of the reasons for disapproval.

5. Approval of compliance assurance programs shall be evidenced by the stamp of approval of the evaluation and inspection agency on each sheet of the program documents. One copy of the approved quality assurance program and documentation shall be returned to the applicant.

6. A compliance assurance program or any amendment thereto that has been approved shall not be varied in any way without prior authorization by the evaluation and inspection agency. All approved amendments shall be made a part of the written record of the approval. Such authorization shall be in writing or be confirmed in writing within 10 calendar days of any oral authorization.

7. The evaluation and inspection agency may suspend or revoke or cause to be suspended or revoked, its approval of any compliance assurance program whenever the approval was issued in error, or was issued on the basis of incorrect information, or was issued in violation of this chapter. If the evaluation and inspection agency determines that industrialized/modular buildings or building components manufactured pursuant to an approved building system do not comply with the State Uniform Construction Code and the manufacturer fails to comply in response to notice and an order, the evaluation and inspection agency may suspend or revoke, or cause to be suspended or revoked, the approval of the manufacturer's compliance assurance program. Notice to the manufacturer, and the inspection agency, and the Department of suspension or revocation of approval shall be in writing with the reasons for suspension or revocation set forth therein.

5:23-4A.9 Certification

(a) Industrialized/modular buildings or building components, accepted by the Department or by an approved inspection agency as having been manufactured according to an approved building system and an approved compliance assurance program, shall be certified by the Department as complying with the requirements of this chapter.

(b) The Department may delegate to evaluation and inspection agencies all or part of the inspection or the issuance or attachment of labels to industrialized/modular buildings or building components (or groups of components).

(c) A label for each industrialized/modular building or building component (or group of components) that is certified pursuant to this subchapter shall be permanently attached thereto, one certification label located in the kitchen sink base cabinet, master bedroom closet, or, if such locations are not practical, near the building entry or in another easily accessible location. The location of the label should be indicated on the approved building system.

1. An approved label shall indicate:

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i. Certification that the building, or building component, has been manufactured in accordance with an approved building system and compliance assurance program under the auspices and approval of the State of New Jersey;

ii. The label serial number; and

iii. The Department of Community Affairs or the name of the approved agency issuing the label. At the discretion of the Department, labels may be limited in size for components whose shape or size does not permit the full information to be placed thereon.

2. The approved label shall be issued by the Department or its agents in accordance with the following:

i. When the Department delegates the issuance of labels to an approved evaluation and inspection agency, the agency shall be required to obtain approval from the Department for the procedures by which it issues labels;

ii. Labels shall be serially numbered;

iii. A manufacturer's compliance assurance program, approved in accordance with this subchapter, shall include requirements for issuance, possession of, attachment of, and accounting for all labels to assure that labels are attached only to buildings or building components manufactured pursuant to an approved building system and inspected pursuant to an approved compliance assurance program; and

iv. The Department or approved evaluation and inspection agency may entrust labels to the custody of one or more designated employees of the manufacturer, who shall be charged with controlling the use of such labels. Such employees shall not be given custody of more labels than are necessary to accommodate the manufacturer's anticipated production. If the conditions of custody of N.J.A.C. 5:23-4A.9(c)2iv are violated, the Department or the approved evaluation and inspection agency shall immediately regain possession of all labels that have not been attached to the industrialized/modular buildings or building components and shall take such further action with respect to buildings or components already labeled, and with respect to future labeling, as it may deem necessary to assure compliance with this chapter.

3. Permanent records shall be kept of the handling of labels, indicating, at a minimum, the number of labels that have been attached to buildings or building components (or groups of components); the serial numbers of labels that have been attached to buildings or building components and the types of buildings to which they have been attached; the disposition of any damaged or rejected labels, the location and custody of all unused labels; and the first destination of labeled buildings or building components. Records shall be maintained by the manufacturer or by the evaluation and inspection agency. A copy of all records for each label shall be sent to the Department monthly.

4. The Department or the approved evaluation and inspection agency shall attach labels to buildings or building components manufactured in accordance with an approved building system, and meeting the requirements of an approved compliance assurance program. Manufacturers may attach labels to industrialized/modular buildings or building components manufactured in accordance with an approved compliance assurance program, if custody of the labels has been entrusted to them, in accordance with this subchapter.

(d) The following information shall be placed on the permanent manufacturer's data plate located in the vicinity of the certification label:

1. The name and address of the manufacturer;
2. The manufacturer's identification number (serial number);
3. The manufacturer's plan approval number (model number);
4. The State label audit control number;
5. The construction type;
6. The occupancy type;
7. The seismic zone;
8. The gas type, if appropriate;
9. The wind velocity load;
10. The roof live load;
11. The name and date of applicable nationally recognized code(s) complied with; ***and***

[12. The serial numbers of insignias of inplant inspection agency for other modules forming part of the entire certified industrialized/modular buildings project; and]

*[13.]****12.*** A reference to any manual, if appropriate.

(e) If, in the judgement of the Department, the shape or size of a building component is such that the information required by (d) above cannot be attached to it permanently, the information may be recorded in a manual crated with the component or, if the information is not such that a future occupant of the building should be aware of it for safe occupancy, on a tag attached to the crate in which the component is shipped. Information recorded in a manual shall be presented to the occupant upon transfer of possession. If life safety is involved, the item in question shall be plainly labeled.

(f) The following provisions relate to violations and remedial actions:

1. Regarding individual nonconformances:

i. Whenever the Department or an approved evaluation and inspection agency shall have reason to believe that an individual building or dwelling unit constructed under N.J.A.C. 5:23-4 and 4A fails to conform to the Uniform Construction Code, the Department or the evaluation and inspection agency shall notify the manufacturer of the nonconformance and shall afford the manufacturer an opportunity to correct the nonconformance in a manner acceptable to the Department or to the evaluation and inspection agency. If the nonconformance is first noticed by the Department, the Department shall notify the evaluation and inspection agency, which shall carry out its responsibilities under N.J.A.C. 5:23.

ii. If the manufacturer fails to successfully resolve a problem or correct a nonconformance within 30 calendar days following notification by the Department or such reasonable additional time as set by the evaluation and inspection agency, then the evaluation and inspection agency shall notify the Department of the failure. The Department shall order the manufacturer to correct the nonconformance.

iii. If a nonconformance involves a building for which a certificate of occupancy has not been issued, the approved evaluation and inspection agency shall affix or cause to be affixed an invalidation to the label and shall notify the enforcing agency that the label has been invalidated and that *[the]* ***no*** certificate of occupancy should be *[revoked]* ***granted***. If nonconformance does not create a clear and present hazard to the health or safety of the intended occupants of the building, an approved evaluation and inspection agency may advise the local agency that the invalidation should not prevent the issuance of a temporary certificate of occupancy***,*** provided that the evaluation and inspection agency shall specify a time within which the nonconformance shall be corrected.

iv. When a manufacturer fails to correct a nonconformance within a reasonable period of time, as specified by the Department or by an approved evaluation and inspection agency, that failure shall be grounds to subject the manufacturer to the penalties provided by N.J.A.C. 5:23.

2. Regarding class nonconformance:

i. Whenever the Department has reason to believe that a class of industrialized/modular buildings or building components may not conform to the requirements of the State Uniform Construction Code, the Department shall order the manufacturer to correct the class nonconformance at all buildings or building components affected by it.

ii. A condition shall be a class nonconformance if:

(1) The building system approval under which a building or building component was constructed did not provide for compliance with the State Uniform Construction Code, or a series of individual nonconformances establishes that there has been a failure of the compliance assurance program under which the building or building component was manufactured; and

(2) The nonconformance constitutes a real and present hazard to the health and safety of the occupants or intended occupants of the building or building component or the nonconformance constitutes a major structural defect that impairs the ability of any load-bearing portion of the building or building component to carry the loads intended in accordance with the requirements of the code.

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iii. Failure of a manufacturer to correct all instances of a class nonconformance in such reasonable time as may be fixed by the Department shall subject the manufacturer to the penalties provided by N.J.A.C. 5:23. In addition, the Department may find that the failure to correct a class nonconformance constitutes a program nonconformance and it may apply the sanctions provided in this subchapter.

3. Regarding program nonconformance:

i. Whenever the Department or an approved evaluation and inspection agency shall discover a pattern or practice of failure to follow the provisions of an approved quality assurance program, or when the Department or an approved agency shall discover a serious violation of the State Uniform Construction Code in an approved building system that cannot be corrected while production continues, the Department shall order the suspension or revocation of the approval of the building system and of the quality assurance program, and shall invalidate all labels attached to any building or building component covered by the suspended approval. A determination as to whether a suspension or revocation is to be issued shall be based on the following:

(1) A suspension shall be ordered when the Department finds that the problems that lead to the suspension can be corrected and production then resumed.

(2) A revocation shall be ordered when the Department finds that the failure or refusal to adhere to the approved quality assurance program has been habitual, whether that habitual failure has been deliberate or the result of negligence on the part of the manufacturer, its agents, or its employees.

(3) A revocation shall also be ordered where the revocation results from the failure or refusal of a manufacturer to correct a class nonconformance in accordance with this subchapter.

ii. After suspension of any building system or quality assurance program, no label shall be attached to any industrialized/modular building or building component manufactured pursuant to the building system or compliance assurance program. Upon reinstatement, labels may be attached after the date upon which approval is reinstated. Any building or building component manufactured during a period of suspension for which an appeal is pending shall not be labeled unless the appeal is resolved in favor of the manufacturer, and the Department, approved evaluation agency, or an approved inspection agency has approved the building or building component, and all requirements for attaching a label have been met.

iii. The manufacturer shall return all labels allocated for any building or building component under suspension to the issuing agency within 10 calendar days of the effective date of the suspension. The manufacturer shall be entitled to a refund of any applicable label fees that may have been paid for the returned labels.

iv. A request for a stay of any order of suspension or revocation shall be appealed in writing, filed first with the agency that issued the order, setting forth the appellant's position. Then, if denied, further appeal to the office or court having jurisdiction to hear the appeal. Appeals from suspensions or revocations issued by the Department shall be reviewed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(g) Industrialized/modular buildings or building components certified and labeled pursuant to this chapter shall not be altered in any way prior to the issuance of a certificate of occupancy unless the alteration to the unit has been submitted and approved by an approved evaluation and inspection agency or a construction permit for the alterations has been obtained from the enforcing agency having jurisdiction. An approved evaluation and inspection agency shall inspect alterations made to the industrialized modular building or building component wherever it is located, and the inspection may include tests or destructive or non-destructive disassembly that the approved evaluation and inspection agency deems necessary to assure compliance with this chapter. Enforcing agencies may be designated as evaluation and inspection agencies for this purpose.

5:23-4A.10 Inspection by the Department or by an approved agency

(a) The Department***, or an approved evaluation and inspection agency,*** shall make, or cause to be made, such inspections of the entire process of manufacturing, certifying, handling, storing, and delivering industrialized/modular buildings or building components produced pursuant to approved building systems as it deems necessary.

(b) As part of the process of evaluating building systems and compliance assurance programs, the Department or approved evaluation and inspection agency shall inspect the manufacturing facilities in which the buildings or building components are manufactured.

(c) The Department or approved evaluation and inspection agency shall make such inspections as may be required by an approved compliance assurance program or as may be deemed necessary by the Department.

(d) Prior to the issuance of a certificate of occupancy, the Department or approved evaluation and inspection agency shall inspect, or cause to be inspected, industrialized/modular buildings or building components that it determines to have been sufficiently damaged after certification to warrant such inspection and to take such action with regard to such buildings or building components as is authorized under this subchapter or as is otherwise necessary to eliminate dangerous conditions.

1. The Department shall require industrialized/modular buildings or building components that are so damaged that they no longer comply with the State Uniform Construction Code to be brought into compliance promptly. If such buildings or building components are not brought into compliance with the State Uniform Construction Code within a reasonable time, or if they are so damaged that they cannot be brought into compliance, the Department shall order that the labels be removed from the noncomplying buildings or building components. Irreparably damaged buildings or building components shall be disposed of in accordance with applicable law.

(e) No inspection requiring disassembly, damage to, or destruction of certified industrialized/modular buildings or building components shall be conducted except to implement (d) above.

5:23-4A.11 Enforcing agency procedures and inspections

(a) Enforcing agencies shall issue construction permits for certified industrialized/modular buildings prior to installation, and shall not withhold issuance of construction permits for buildings containing certified building components that in all other respects comply with all applicable construction codes, provided that any industrialized/modular building*[s]* or building component that the Department finds does ***not*** comply with this chapter shall be brought into compliance before installation. An application to an enforcing agency for a construction permit shall, when requested, in addition to any other requirements, contain:

1. A statement that the work to be performed under the permit includes the installation of a certified industrialized/modular building or building component in accordance with the provisions of the State Uniform Construction Code. The statement shall be signed by the applicant or his agent, with the signatory's current address;

2. Schematic floor plan layouts and typical elevations showing the arrangement and layout of the specific building to be manufactured and installed wherein the manufacturer cites the Department's identifying numbers for the building, building systems, or building component approval. A schematic floor plan layout and typical elevation need not include sections, construction details, or structural, plumbing, mechanical, and electrical layouts or details typical to the building, building systems and building components approved by the Department. These schematic plans need not be prepared and sealed by an architect or engineer;

3. Detailed plans prepared by an architect or engineer licensed pursuant to law in the State of New Jersey for any site-built construction related to the installation of the industrialized/modular buildings or building components. All elements of the certified industrialized/modular buildings or building components that are not described or included in the approved building system documentation shall be subject to review, inspection and approval by the local enforcement agency. The plans for all on-site construction required in connection with the proper setup and erection of the certified industrialized/modular buildings or building component shall include without limitation, foundation system, basement or crawl space, external utility systems, hook-ups and connections of various

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modules (boxes) and/or components. The review and approval of such plans shall be completed by:

i. The Department; or

ii. The local enforcement agency for the types of industrialized/modular buildings and building components listed in N.J.A.C. 5:23-4A.8(a) provided the agency is classified in accordance with N.J.A.C. 5:23-3.10 and its classification meets the level of the specific project; and

4. A copy of any installation instructions for the industrialized/modular building or building component as set forth in N.J.A.C. 5:23-4A.16(d).

(b) Enforcing agencies shall inspect work performed on site, including foundations and the structural, mechanical, plumbing, and electrical connections for compliance with this chapter.

(c) Enforcing agencies shall inspect all industrialized/modular buildings or building components upon, or promptly after, installation at the building site to determine whether all site-built construction is in accordance with the plans filed with the permit application, the installation instructions, and the conditions listed on the manufacturer's data plate. This inspection shall include nondestructive plumbing and electrical tests in accordance with this subchapter and visual inspection for any damage that occurred during transportation.

1. Destructive disassembly of certified buildings and building components shall not be performed in order to conduct such tests or inspections, nor shall the enforcing agency impose any standards or test criteria different from those adopted by the Department;

2. Non-destructive disassembly may be performed only to the extent of opening access panels and cover plates; and

3. Systems tested during manufacture shall not be subjected to retesting at the building site unless damage is suspected.

(d) Enforcing agencies shall issue certificates of occupancy for certified industrialized/modular buildings and for buildings containing certified building components that otherwise comply with all applicable construction codes after they have been installed, inspected and approved in accordance with this chapter, provided that any industrialized/modular building or building component found not to comply with the plans and specifications filed with the permit shall be brought into compliance before a certificate of occupancy shall be issued.

(e) If the enforcing agency finds violations, it shall report the details of the violations in writing to the Department. Where violations are hazardous to occupants, a certificate of occupancy shall not be issued and the building shall not be occupied before such hazards are corrected. If the violations are not hazardous, temporary certificate of occupancy shall be issued. Upon being recertified by the Department or by an approved evaluation and inspection agency, a certificate of occupancy shall be issued.

(f) The enforcing agency shall accept relocated industrialized/modular buildings or building components labeled in accordance with this chapter provided the buildings comply with N.J.A.C. 5:23-2.6(a).

(g) Industrialized/modular buildings or building components when repaired or altered shall conform to the requirements of N.J.A.C. 5:23-2.4.

(h) A change in use of an industrialized/modular building or building component shall be in accordance with N.J.A.C. 5:23-2.6.

5:23-4A.12 Fees for labels; labels

(a) Fees for labels shall be as follows:

1. An approved evaluation and inspection agency requesting the Department to issue labels of certification for industrialized/modular buildings shall pay a fee of $100.00 for each label.

2. An approved evaluation and inspection agency requesting the Department to issue component labels of certification for building components shall pay a fee of $50.00 for each label.

3. Payments shall be made pursuant to N.J.A.C. 5:23-4.23.

(b) Only one modular unit label of certification shall be required for each dwelling unit in any residential modular construction even if the construction is comprised of two or more modules and/or components. However, each module shall be properly identified by the manufacturer's serial number *[and the inplant inspection agency's insignia]*.

(c) All industrialized/modular buildings other than residential modular construction ***and building components*** shall require Department label(s) of certification as follows:

1. Each module (box) shall require a separate modular unit label of certification for modular construction.

2. In case of a multimodule (multibox) project, the data plate on each module (box) shall identify the serial numbers of the Department label of certification of all other modules (boxes) that form part of the entire project.

3. *[Components]* ***Building components,*** such as bathroom or kitchen modules*,* shall each require a building component label of certification.

5:23-4A.13 Notification of changes in name, address, ownership or location

(a) Manufacturers shall notify the Department and evaluation and inspection agency in writing within 30 calendar days of any of the following occurrences:

1. The corporate name is changed;

2. The address of the headquarters of the company or its State of incorporation is changed;

3. The location of any manufacturing facility is changed; or

4. A new manufacturing facility is established.

(b) Each approved evaluation and inspection agency shall notify the Department in writing within 30 calendar days of any of the following occurrences:

1. The company name is changed;

2. The address of the headquarters of the company or its State or incorporation is changed;

3. There is a change in 25 percent or more of the ownership interest or control of the company within a 12 month period;

4. The location of any testing facility is changed;

5. A new testing facility is established; or

6. There are changes in principal officers or other key supervisory or responsible personnel of the firm.

5:23-4A.14 Proprietary information

All information relating to building systems and compliance assurance programs that the manufacturer or any other party considers proprietary shall be so designated at the time of its submission, and shall be kept confidential, to the extent permitted by law, by the Department and by any approved evaluation and inspection agency, and local enforcement agency, unless the Department determines, in a given case, that disclosure is necessary to carry out its responsibilities under the State Uniform Construction Code. The Department shall make reasonable efforts to obtain the written consent of the owner prior to the release of any confidential information.

5:23-4A.15 Requirements for submission of compliance assurance programs

(a) A compliance assurance program shall be approved if it meets the requirements of this section and of N.J.A.C. 5:23-4A.16.

(b) It is a manufacturer's nondelegable duty to comply with every requirement of this section and of N.J.A.C 5:23-4A.16, and to comply with corrective orders. No contract between a manufacturer and its evaluation and inspection agency shall diminish or alter a manufacturer's duty under this subsection.

(c) A manufacturer shall cooperate with its evaluation and inspection agency by providing all requested information such as reports, documents and records; shall allow access to all facilities and equipment; shall supply samples as requested; and shall otherwise comply with the requests of its evaluation and inspection agency made pursuant to this chapter.

(d) A manufacturer's compliance assurance documentation, as required in N.J.A.C. 5:23-4A.16, shall be submitted in a detailed form that completely and accurately describes all the compliance assurance activities of both the manufacturer and the evaluation and inspection agency.

1. Documentation shall be comprehensively indexed; and

2. Documentation shall detail all features required by this chapter.

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5:23-4A.16 Building system documentation, quality control program requirements and on-site installation instructions requirements

(a) Building system documentation shall be submitted in the following manner and shall include the following:

1. Six sets of plans, specifications and other documentation shall be submitted;

2. All documents submitted shall bear the manufacturer's name;

3. Manufacturer's submitted plans shall show all elements of specific systems on identifiable sheets;

4. Structural connections and connection of systems, equipment and appliances to be performed on-site shall be identified, detailed and distinguished from work to be performed in the manufacturing facility;

5. Plans shall indicate the method of interconnection between industrialized/modular buildings or components and the location of such connections;

6. Design calculations and test reports shall be submitted when required by the evaluation agency;

7. Documents shall indicate the location of the approved label;

8. Plans shall be dated and identified and shall include an index that indicates whether the set is complete; and

9. Documents shall indicate graphically or as a notation: occupancy or use; area, height, and number of stories; type of construction and loads (wind, floor, snow and seismic).

(b) Required construction details shall be documented. Documents for industrialized/modular buildings or components shall indicate graphically or as a notation, the details listed in (b)1 through 6 below. Only the minimum documentation necessary to show each alternative within the system shall be required.

1. General requirements, which shall include:

i. Details and methods of installation of industrialized/modular buildings or components on foundations and/or to each other;

ii. Floor plan(s) and typical elevation(s);

iii. Cross sections necessary to identify major building components;

iv. Details of flashing, such as at openings and at penetrations through roofs and subcomponent connections. Flashing material and gauge to be used shall be indicated;

v. Attic access and attic ventilation, when required by N.J.A.C. 5:23;

vi. Exterior wall, roof and soffit material;

vii. Interior wall and ceiling material;

viii. Barrier-free provisions, if applicable;

ix. The size, location and type of doors and windows; and

x. Suggested foundation plans, vents and underfloor access.

2. Fire safety requirements, which shall include:

i. Details of fire rated assemblies, including reference listing or test report for all stairway enclosures, doors, walls, floors, ceilings, partitions, columns, roof and other enclosures;

ii. Means of egress, including details of aisles, exits, corridors, passageways, and stairway enclosures;

iii. The flame spread and smoke developed classification of interior finish materials;

iv. The location of required draftstops and firestops;

v. Opening protectives in fire resistance rated systems and assemblies; and

vi. Plans of fire suppression systems, standpipes, fire alarms, and detection systems, when required.

3. Structural detail requirements, which shall include:

i. Calculations of structural members and/or test results, where appropriate except where compliance can be demonstrated through code tables, accepted handbooks, or listing documents;

ii. Details of structural elements, including framing details, spacing, size and connections;

iii. The grade, species and specifications of materials;

iv. A typical foundation plan and details, including details or reinforcing steel and assumed design soil bearing value;

v. The schedule of roof, floor, wind and seismic loads upon which design is based; and

vi. The column loads and column schedule.

4. Mechanical detail requirements, which shall include:

i. The location of all equipment, appliances and baseboard radiation units, indicating equipment and appliance listing or labeling agencies;

ii. Energy conservation calculations;

iii. The make, model number and input/output rating of all equipment and appliances, as appropriate;

iv. Duct and register locations, sizes and materials, as appropriate;

v. The method of providing combustion air, if required; and

vi. The location of flues, vents and chimneys; and clearances from air intakes, combustible materials, and other vents and flues.

5. Plumbing detail requirements, which shall include:

i. Schematic plans of the plumbing layout, including, but not limited to, size of piping; fittings; traps and vents; cleanouts and valves; and gas, water and draining systems; and

ii. Plumbing materials and location of all equipment, appliances and safety controls to be used. Make, model number, rating and capacity of equipment and appliances. Indicate equipment and appliance listing or labeling agencies.

6. Electrical detail requirements, which shall include:

i. Details of service equipment;

ii. The method of grounding service equipment;

iii. Load calculations for service and feeders;

iv. Sizes of branch circuit conductors;

v. The size, rating and location of main disconnect and overcurrent protection devices; and

vi. The location of outlets, junction boxes, fixtures and appliances.

(c) The manufacturer's production quality control program manual shall include:

1. Organizational requirements as follows:

i. The manufacturer's name, corporate office address, state of incorporation, and the address of each manufacturing facility;

ii. A table of contents with the evaluation and inspection agency's dated stamp of approval on the initial sheet and on any revised pages;

iii. A depiction of the organizational structure for implementing and maintaining the compliance assurance program and its functional relationship to other parts of the manufacturer's organization. The compliance assurance program shall function independently of the production department.

(1) Managerial employees in the compliance assurance program shall be identified and their training and qualifications specified.

(2) When required, employees of evaluation and inspection agencies shall be certified;

iv. A uniform system of monitoring and evaluation to insure the program is effective;

v. A serial numbering system for industrialized/modular buildings or building components; and

vi. The method of safekeeping, handling and attaching labels.

2. Materials control requirements as follows:

i. Procedures for inspection of materials, supplies and other items when received;

ii. The method for protection and storage of materials when received; and

iii. The procedure for disposal of nonconforming materials, supplies and other items.

3. Production control requirements as follows:

i. Procedures for timely remedial and preventive action to assure product quality;

ii. The provision, maintenance and use of testing and inspection equipment to assure compliance with approved building system specifications;

iii. The frequency of sampling inspections;

iv. The delegation of authority to reject defective work and to carry out compliance assurance functions notwithstanding production goals;

v. A description of the manufacturing process indicating the timing of inspections performed;

vi. Inspection and test procedures, including accept and reject criteria, and mandatory inspection standards; and

vii. The procedure for disposition of rejected material.

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4. Finished product control requirements as follows:

i. Procedures for handling and storing all finished industrialized/modular buildings or components at the manufacturing plant or other storage site; and

ii. Procedures for packing and shipping operations and related inspections.

(d) A manufacturer shall submit on-site installation instructions that specify the materials and methods required to install industrialized/modular building or component in accordance with applicable codes and standards, including:

1. Specifications for anchoring to an approved foundation;

2. Structural connections between buildings and components;

3. Connections necessary to complete mechanical and utility systems; and

4. Any special conditions or requirements concerning other structural elements.

5:23-4A.17 Approval of evaluation and inspection agencies

(a) An evaluation and inspection agency seeking approval shall submit an application accompanied by the fee established pursuant to this chapter to the Department that shall include the following items:

1. The original articles of incorporation of the agency and all subsequent amendments thereto, along with copies of any additional information filed in the state of incorporation;

2. The bylaws of the organization, if any;

3. The names, addresses, and business of all members of the Board of Directors and of top management personnel;

4. Certification by the agency that:

i. Its board of directors, as a body, and its technical personnel, as individuals, can exercise independence of judgment;

ii. Its activities pursuant hereto will result in no financial benefit to the agency via stock ownership, or other financial interests in any producer, supplier, or vendor of products involved, other than through standard published fees for services rendered; and

iii. The evaluation and inspection agency will not perform design or quality assurance program approvals for any manufacturer whose design or quality assurance program has been created in whole or in part by members of the evaluation and inspection agency or any affiliated organization;

5. The names, years of experience, state(s) in which professionally registered, and other qualifications of the directors of inspection or evaluation programs. Registration in more than one state is not required;

6. The names and years of experience of employees practicing in the following disciplines: architecture, structural engineering, mechanical engineering, electrical engineering, other branches of engineering***,*** and fire protection; ***if registered,*** the state(s) in which *[each is registered]* ***registration is held***; and the duties of each. New Jersey Department of Community Affairs licensure requirements at N.J.A.C. 5:23-5 shall be met and documented;

7. An organizational chart showing management and supervisory personnel including the number of graduate engineers and architects, and the names of all consulting engineers or architects, designating which are full-time and which are part-time engineers;

8. The number and location of factory inspectors, supervisors, and other technicians, including evaluators of factory inspectors and the qualifications of each specialized group, including records of work experience, licenses held, and other pertinent qualifications; descriptions of the duties of each group and the duties each technician is expected to perform; and the qualifications of each group and the qualifications of each technician to perform the duties assigned;

9. A statement from the agency to assure that all inspectors, evaluators, and other technicians are properly trained and licensed to do each job assigned to them;

10. An outline of the general procedures for supervision of inspectors and evaluators, including checking and evaluation of their work;

11. The names of all engineers, technicians, and other personnel such as consultants to the agency who are not its employees, and the supervisory and other relationships that each will have to the agency;

12. The type of products, components, equipment, structures, and other items that the organization has evaluated, tested, or inspected, the number of years of experience the organization has had with each, and the codes, standards, specifications, and requirements with respect to which the organization has had experience in providing evaluation, inspection, or testing services, and the number of years of experience with each;

13. A description of the record-keeping system the agency proposes to use with particular regard to the ability of the Department to access all records and the agency's capacity to render reports to the Department. The agency shall record all design approvals and inspections and shall conform its record retention policies to the Department's requirements;

14. A description of the frequency with which the agency performs inspections or evaluations;

15. A list of the states in which the agency is now approved to inspect or evaluate industrialized/modular buildings or building components; and

16. Certification that the agency is able to evaluate building systems for compliance with the State Uniform Construction Code and this subchapter.

(b) Each evaluation and inspection agency shall:

1. Carry liability insurance, at least in the amount of $1,000,000 for each person and each occurrence to satisfy claims or judgements for property damage and/or personal injury arising out of the failure of its employees to properly discharge their duties and responsibilities; and

2. Carry to full completion all projects initiated prior to the termination of their contract with the manufacturer by reason of nonrenewal unsuccessful bidding, Department authorization disapproval or other reason except suspension of revocation.

5:23-4A.18 Procedures for approving evaluation and inspection agencies and delegating authority to them

(a) The Department may approve evaluation and inspection agencies that meet the requirements of N.J.A.C. 5:23 and that the Department finds otherwise qualified to perform the functions proposed to be delegated to them.

(b) Prior to a full evaluation of an application for approval, the Department shall determine whether such application is suitable for processing. In the event the application is found to be unsuitable for processing, pursuant to N.J.A.C. 5:23, the applicant shall be notified in writing of such unsuitability and the basis thereof within 30 calendar days of the date the application is received by the Department. In such event, the findings of unsuitability shall be without prejudice. In the event the application is found to be suitable, the applicant shall be notified in writing within 30 calendar days and the evaluation shall be conducted within 60 calendar days of the date the application is received by the Department.

(c) In the event an evaluation and inspection agency is not approved, the Department shall return one complete application to the applicant with a written explanation of the reasons for such disapproval attached thereto.

(d) Approval of evaluation and inspection agencies shall be evidenced by a letter to the applicant indicating such approval and stating specifically the functions that the applicant has been approved to perform.

(e) Authorization shall be valid for a period of one year.

(f) The total fee for an application for authorization as an evaluation and inspection agency shall be $500.00.

5:23-4A.19 Continued approval of evaluation and inspection agencies

(a) The Department or its agent shall monitor each approved evaluation and inspection agency at any reasonable time, with or without prior announcement, in order to assess the reliability of each agency. Each review shall investigate the adequacy of all evaluative procedures including engineering evaluation of plans, specifications and test results, testing, and analysis of compliance assurance programs. The results of such review shall be kept on file at the Department. Copies of evaluation reports shall be sent to the evaluation and inspection agency. Agencies shall be specifically notified of any

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deficiencies and of the manner in and time by which deficiencies shall be eliminated. If deemed necessary by the Department, approval of an evaluation and inspection agency may be suspended or revoked as provided for in this subchapter. Reviews shall also be conducted before reapproving an evaluation and inspection agency.

(b) The Department or its agent shall monitor each approved evaluation and inspection agency, at any reasonable time, with or without prior announcement, at either the evaluation and inspection agency's office or at a manufacturers' place of business, in order to measure the performance of each agency and of its monitoring of the manufactuer's compliance assurance program. Each such review shall investigate the adequacy of all procedures used by the agency in the monitoring activity including personnel selection, training, supervision, reporting accuracy, use of approved documents, evaluation of reports, decision criteria, and all other activities that measure the effectiveness of the manufacturer's program. The results of such reviews shall be kept on file at the Department. Copies of evaluation reports shall be sent to the evaluation and inspection agency. The evaluation and inspection agency shall be specifically notified of any deficiencies and the means and time by which deficiencies must be eliminated. If deemed necessary by the Department, an agency's approval may be suspended or revoked in accordance with these regulations. Monitoring reviews shall also be conducted before the approving of an evaluation and inspection agency.

(c) Each reauthorization shall expire one year from the date of the current authorization from the Department.

(d) The total fee for reauthorization as an evaluation and inspection agency shall be $250.00.

5:23-4A.20 Suspension and revocation; evaluation and inspection agencies

(a) Grounds for suspension and/or revocation shall be as follows:

1. If the Department determines that an evaluation and inspection agency has failed to perform its functions properly, the Department shall notify the evaluation and inspection agency and shall arrange for a conference.

2. The Department may suspend or revoke its approval of any evaluation and inspection agency if the approval was issued on the basis of incorrect information or issued in violation of N.J.A.C. 5:23. Appeals from suspensions or revocations shall be reviewed in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

3. No agency whose approval was revoked shall reapply for approval as an evaluation and inspection agency until the expiration of one year from the date of the order of revocation.

(b) If the Department suspends or revokes the approval of an evaluation and inspection agency, the manufacturers being evaluated or inspected by the agency shall be given notice in writing after the dispositon of any appeal of the suspension or revocation with the reasons set forth therein.

(c) An evaluation and inspection agency for which approval has been suspended or revoked shall, within 30 calendar days of the suspension or revocation, deliver to the custody of the Department all labels and other required documents in the agency's possession, under its control, or for which it is responsible, pursuant to the State Uniform Construction Code.

(d) Under the suspension or revocation of any evaluation or inspection agency, the Department, at the request of any manufacturer affected, shall establish a temporary arrangement by which the manufacturer can continue to manufacture, sell, lease, deliver, and install industrialized/modular buildings or building components in conformance with the State Uniform Construction Code until suspension or revocation is rescinded or, in the event of sustained revocation, arrangements are made to use another approved evaluation and inspection agency.

5:23-4A.21 Reciprocity

If the Department finds that the standards for the manufacture and inspection of industrialized/modular buildings or building components prescribed by statute or by the rules or regulations of another state, or other governmental agency, meet the objectives of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and N.J.A.C. 5:23 and are enforced satisfactorily by the other state or other governmental agency, or by its agents, the Department shall accept industrialized/modular buildings or building components that have been certified by the other state or governmental agency, and shall assure that the appropriate label is attached thereto. The standards of another state or governmental agency shall not be deemed to be adequately enforced unless the other state or governmental agency provides for notification of the Department of suspensions or revocations of approvals issued by the other state or governmental agency in a manner satisfactory to the Department.

5:23-4A.22 Procedures for granting or refusing reciprocity to another jurisdiction

(a) If the Department finds that the standards prescribed by the statute and regulations of another state or other governmental agency meet the objectives of the State Uniform Construction Code Act and that these regulations are satisfactorily enforced, it shall extend reciprocity to that jurisdiction by:

1. Giving notice to any requesting manufacturer; and

2. Giving notice to the appropriate authorities in the other jurisdiction.

(b) If the standards of another state or *[governmetnal]* ***governmental*** agency do not meet the objectives of the State Uniform Construction Code Act, or are inadequately enforced, or both, reciprocity shall not be extended. In that event, the Department shall notify any requesting manufacturer and appropriate authority of the other state of the refusal and the reasons therefor.

5:23-4A.23 Procedures for reciprocal certifcation of industrialized/modular buildings or building components

A manufacturer from a jurisdiction to which reciprocity has been extended shall submit to the Department evidence that its building system and compliance assurance program have been approved by its state or governmental agency. The Department shall verify the approval and shall notify the manufacturer in writing of the verification and of the fact that properly labeled (New Jersey label along with state of manufacture label) buildings or building components that it has manufactured will be accepted.

5:23-4A.24 Suspension and revocation; reciprocal certification

The Department shall suspend or revoke, or cause to be suspended or revoked, its acceptance and certification of any reciprocally certified industrialized/modular buildings or building component if it determines that the standards for the manufacture and inspection of any industrialized/modular buildings or building component of another state or other governmental agency do not meet the objectives of the State Uniform Construction Code Act, N.J.S.A. 52:27D-119 et seq., and these regulations, or that such standards are not being enforced to the satisfaction of the Department. If another state or governmental agency or its agents suspend or revoke its approval and certification, the acceptance or certification or both granted reciprocally under this section shall be deemed to be revoked or suspended accordingly. Notice to the manufacturer and to the appropriate authority of another state of a suspension or revocation shall be in writing with the reasons for the suspension or revocation set forth therein. Appeals from suspensions or revocations shall be reviewed in an administrative hearing conducted in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Adminstrative Procedure Rules, N.J.A.C. 1:1.

5:23-4A.25 State licensure and training

(a) Employees of private or reciprocally approved evaluation and inspection and enforcement agencies that perform inspection and enforcement functions under this subchapter shall be licensed pursuant to N.J.A.C. 5:23-5.

(b) Licensing of such employees shall be through the office established puruant to N.J.A.C. 5:23-5.2.

(c) All licensure requirements, examination requirements, continuing education requirements, fees, renewals, suspension and revocation procedures for employees of private or reciprocally approved evaluation and inspection and enforcement agencies identified in (a) above shall be identical to those for State employees in N.J.A.C. 5:23-5.

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5:23-4A.26 Appeals

(a) Any person, firm, or corporation acting on behalf of itself or a class adversely affected by any rule, regulation, decision of, or action by any evaluation and inspection agency or the Commissioner may file an appeal.

(b) An application for a hearing must be filed within 15 days of receipt of a ruling, action order or notice by the applicant who has received the ruling, action, order or notice complained of.

(c) The notice of appeal may be filed either in person or by mail and may be addressed to the Hearing Coordinator, Division of Housing and Development, CN 802, Trenton, NJ 08625.

(d) The application shall be in writing and shall set forth the rule under which the appeal is being brought and the facts and circumstances of the case.

(e) The application shall include, where appropriate, the following information and documentation:

1. A copy of the law or regulation, written instruction, decision, direction, ruling, or order that is the subject of the appeal;
2. A copy of the building system, compliance assurance program, or other document involved;
3. A description of the industrialized/modular building or building component affected;
4. A statement of the relief sought by the appellant; and
5. In the event of an appeal from an action or decision of an evaluation and inspection agency, the application shall contain a copy or, if that is unavailable, a written statement, of the prior decision or other action of the agency being appealed.

5:23-4A.27 Conduct of hearings

Hearings in contested cases shall be conducted by the Office of Administrative Law pursuant to 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.

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure: Public Notice Requirements

Adopted Repeal and New Rules: N.J.A.C. 5:100

Reproposed: April 2, 1990 at 22 N.J.R. 1016(c).
Adopted: May 24, 1990 by William R. Abrams, Acting Ombudsman.
Filed: May 24, 1990 as R.1990 d.316, **without change**.
Authority: N.J.S.A. 52:27G-1 et seq.
Effective Date: June 18, 1990.
Expiration Date: June 18, 1995.

Summary of Public Comments and Agency Responses:

The Office of the Ombudsman for the Institutionalized Elderly ("Office") received comments on its reproposal from the following:

American Association of Retired Persons
Ashbrook Nursing Home
Bridgeway Convalescent Center
Citizens Committee on Biomedical Ethics
Community Health Law Project
Essex County Medical Society
Hunterdon Convalescent Center
Legal Center for Defense of Life, Inc.
Lincoln Park Nursing & Convalescent Home
Medical Society of New Jersey
Overlook Hospital
Jean Paashaus
Anne M. Perone
New Jersey Association of Health Care Facilities
New Jersey Association of Non-Profit Homes for the Aging
New Jersey Catholic Conference
New Jersey Commission on Legal & Ethical Problems in the Delivery of Health Care
New Jersey Hospital Association
New Jersey Right to Life Committee
New Jersey State Bar Association
New Jersey Department of Human Services, Division of Medical Assistance & Health Services
New Jersey Department of Law & Public Safety, Division of Consumer Affairs, Board of Medical Examiners
New Jersey Department of the Public Advocate
Society for the Right to Die

Some of these comments were received before the May 2, 1990 deadline for the submission of public comments and others were received after that date. However, the Office considered and responsed to all of the comments that it received.

The Office wishes to thank all of the commenters for their many insightful comments. While the Office has decided to adopt the reproposal without incorporating any of the suggestions received in the form of the comments which were submitted following the reproposal's April 2, 1990 publication, the Office will not ignore the commenters' input.

The Office views the processes of successful government and the making of sound public policy as evolutionary processes. As such, the Office pledges to periodically review its rules to ensure that they continue to coincide with the current law and the public's desires.

A summary of the comments received and the Office's responses to those comments followed:

COMMENT: Several commenters requested that N.J.A.C. 5:100-2 be amended to direct that the nursing home receive a copy of the reports of the two independent physicians, so that those reports may be included as part of the resident's medical chart.

RESPONSE: The Office respectfully declines this request. In an effort to ensure the effectiveness of its procedures, the Office must maintain the confidentiality of the names of the two independent physicians and the content of their reports. Confidentiality is essential to ensure that physicians will be willing to assist in the process, and that there will be independent assessment of the patient's condition. As such, disclosure of the physician's reports to the facility could jeopardize the process.

COMMENT: Two commenters suggested that the qualifications of the Office's field staff be included in the reproposed new rules.

RESPONSE: The Office respectfully declines this suggestion. The Office sees no need to specify the qualifications of its field personnel in the new rules. Office field representatives are hired and trained to inquire into the various allegations that come to the Office's attention. The Office takes very seriously any complaint that arises regarding the actions of its personnel. All such complaints are investigated and appropriate personnel action is taken if a complaint regarding the action of an Office representative is substantiated.

COMMENT: One commenter stated that the Office lacks the requisite authority to "discover a deficiency" in a facility, and the corresponding provision should be removed from the new rules.

RESPONSE: The Office respectfully disagrees. The language of the rules corresponds to that of the Office's enabling statute. Moreover, Office personnel are trained in the law and regulations governing long-term health care facilities. As such, any deficiency that is cited is based upon an Office representative's understanding and interpretation of appropriate rules.

COMMENT: One commenter stated that in N.J.A.C. 5:100-2.4(e)7iv, where Medicare and Medicaid are listed as possible sources of compensation to the independent physicians, the Office cannot supplement a physician's compensation if that physician accepts Medicaid reimbursement.

RESPONSE: The Office recognizes that if a physician accepts Medicaid reimbursement, that will be the sole source of payment. The intent of the subsection was to list sources of compensation cumulatively. It was not the Office's intention to attempt to supercede Federal and State law.

COMMENT: Several commenters suggested that the definition of "life-sustaining treatment" should expressly include artificially provided nutrition and hydration.

RESPONSE: The Office respectfully declines this suggestion. The Office sees no need to specify that "life-sustaining treatment" includes artificially provided nutrition and hydration. It is the Office's intent to define the term generically, not by specific example.

COMMENT: Several commenters suggested that the Office set time frames for completion of inquiries into proposals to withhold or withdraw life-sustaining treatment, particularly when an advance directive exists.

RESPONSE: The Office respectfully declines this suggestion. Unfortunately, the changing nature of the Office's budget, personnel and workload precludes the Office from setting time frames. However, the Office clearly understands the emotional and serious nature of these

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inquiries. As such, the Office will endeavor to act as efficiently and effectively as possible, keeping in mind that the primary purpose of each inquiry is to gather the resident's intent and the medical evidence required under the *Conroy* and *Peter* decisions and to ensure that the resident's wishes are respected.

COMMENT: Several commenters stated that the definition of "surrogate decisionmaker" was overbroad and should be narrowly defined.

RESPONSE: The Office respectfully disagrees. The Office believes that the rules are sufficiently clear in defining "surrogate decisionmaker." A determination of who is a "close and caring family member" or "a person designated by the resident" will differ in many cases, as it should. An appropriate "surrogate decisonmaker" will be determined by the facts of each case, and in conformity with the guidelines established by the New Jersey Supreme Court.

COMMENT: Several commenters questioned the Office's ability to adequately protect the rights of the institutionalized elderly from unscrupulous relatives if the rules are adopted.

RESPONSE: The Office believes that the procedures established by the New Jersey Supreme Court, and clarified in the new rules, provide sufficient safeguards to ensure that life-sustaining treatment decisions based upon ill motives will not occur.

COMMENT: One commenter stated that the New Jersey Supreme Court in *In re Jobes*, 108 *N.J.* 394 (1987), did not require the concurrence of three physicians in order to verify that the resident is in a persistent vegetative state.

RESPONSE: This is one possible interpretation of the *Jobes* case. However, that reading of the case law is based upon the assumption that a resident will not have an attending physician. This is not the case in nursing homes. As such, a requirement that the attending physician concur with the conclusions of the two consulting physicians that the resident is in a persistent vegatative state is a reasonable interpretation of the law and is not overly burdensome to the resident.

COMMENT: One commenter suggested that the Office should provide clear guidance on the procedures involving the proposals to withdraw or withhold treatment, including the family's responsibility for the payment of the physicians' fees.

RESPONSE: At the outset of the procedure, Office staff provide guidance to the resident's family on all the procedures to be followed. This includes the family's responsibility for payment of the physicians' fees.

COMMENT: One commenter stated that "Living Wills" are illegal in New Jersey and should not be considered.

RESPONSE: The Office respectfully disagrees. "Living Wills" are not illegal, but are the best evidence of a resident's intent. A "Living Will" is the first document that Office representatives look for in their resident intent inquiry. Unfortunately, there does not yet exist a statute formally codifying the existence of "Living Wills" and making them binding on third parties, including the Office.

COMMENT: One commenter stated that the new rules supercede the law.

RESPONSE: The Office respectfully disagrees. The new rules attempt to interpret the law pertaining to the responsibility of the Office of the Ombudsman for the Institutionalized Elderly in decisions to withhold or withdraw life-sustaining treatment. The Office believes that, as an executive agency of State government, it is incumbent upon the Office to do so. The Office also takes as its duty the responsiblity to make as clear as possible to residents, their families and friends, the public, health care professionals and the health care industry, what can be expected from the Office.

COMMENT: One commenter suggested that the new rules be amended to specifically prohibit the withholding or withdrawing of artificially provided fluids and nutrition if such withdrawal will ultimately result in death.

RESPONSE: The Office finds it necessary to specifically address proposals to withhold or withdraw artifically provided food and nutrition. The Office is in full agreement with the New Jersey Supreme Court in viewing artificially provided food and nutrition in the same light as any other form of life-sustaining treatment. Moreover, regarding artificially provided fluids and nutrition differently from other forms of life-sustaining treatment would specifically deviate from the direction provided to the Office by the New Jersey Supreme Court.

COMMENT: One commenter suggested that the new rules should include professional and institutional conscience clauses.

RESPONSE: The Office is unable to honor this request. As an administrative agency, the Office's duty is to interpret the law, not make new law. As such, the purpose of N.J.A.C. 5:100-2 is to clarify the Office's role in proposals to withhold or withdraw life-sustaining treatment from persons age 60 or older who reside in long-term health care facilities and lack the capacity to make life-sustaining treatment decisions on their own behalf. Since the Office does not regulate long-term health care facilities or health care professionals, the Office has no jurisdiction to provide in subchapter 2 for a professional or institutional conscience exception. Additionally, since the New Jersey Supreme Court did not specifically create a professional and institutional conscience exception in its decisions, the Office cannot unilaterally do so.

COMMENT: One commenter was concerned that the new rules would invite the withdrawal of fluids and nutrition based on a third party's assessment of the quality of a resident's life.

RESPONSE: The Office respectfully disagrees. The New Jersey Supreme Court cases and the new rules are intended to make clear that decisions to withhold or withdraw life-sustaining treatment shall be based solely upon the evidence of *the resident's* intent and a confirmation of *the resident's* medical condition.

COMMENT: One commenter requested that the new rules give guidance on proposals to withhold or withdraw treatment from incompetent persons.

RESPONSE: The Office believes that subchapter 2 is quite clear that the procedures set forth in N.J.A.C. 5:100-2.3, 2.4 and 2.5 will apply only to long-term health care residents age 60 or older who lack the capacity to make life-sustaining treatment decisions.

COMMENT: Several commenters inquired into what treatment is provided to a resident during the period when the Office is inquiring into a case pursuant to N.J.A.C. 5:100-2.4 and 2.5.

RESPONSE: The Office believes that, as a matter of professional responsibility, health care professionals have a duty to sustain the resident during the pendency of an inquiry under N.J.A.C. 5:100-2.4 or 2.5.

COMMENT: One commenter asked who would be responsible for the fees of the two independent physicians obtained to examine the resident.

RESPONSE: This issue is specifically addressed in N.J.A.C. 5:100-2.4(e)7 and 2.5(e)6.

COMMENT: One commenter wanted to know the effects of including a "Living Will" in a resident's chart.

RESPONSE: This inquiry goes beyond the scope of the reproposal. It is a question that relates directly to long-term health care facility procedures and therefore is within the jurisdiction of the Department of Health, not the Office. However, the Office interprets current law as holding that "Living Wills" are the best evidence of a resident's intent. As such, the existence of a "Living Will" is an inquiry of first priority when Office representatives embark upon the procedures set forth in N.J.A.C. 5:100-2.4 or 2.5 and inquire into a resident's intent.

COMMENT: Some commenters recommended that N.J.A.C. 5:100-2.3 should be clarified to limit the number of individuals required to report to the Office.

RESPONSE: The Office respectfully declines this recommendation. The Office believes that this section is sufficiently clear. Additionally, in instances in which someone contacts the Office under N.J.A.C. 5:100-2.3(a), (b) or (c), despite the fact that an exception set forth in N.J.A.C. 5:100-2.3(d) applies, any misunderstanding will be promptly rectified through communication between all parties involved.

COMMENT: One commenter stated that the definition of "life-sustaining treatment" that is "medically indicated" is vague.

RESPONSE: The Office respectfully disagrees. By defining "life-sustaining treatment" as "medically indicated treatment," the new rules intend to clarify that a physician has a duty to provide treatment which, in his or her reasonable medical judgment, is medically necessary for the resident.

COMMENT: Two commenters suggested that the new rules include an express requirement that all failures to provide diagnostic services to a resident be specifically reportable to the Office.

RESPONSE: The Office respectfully declines to adopt this request. The provision of diagnostic services should be viewed as all other medical procedures encompassed by the Office's enabling law, New Jersey Supreme Court caselaw, and the new rules. As such, only where the deprivation of diagnostic services constitutes an "abuse" or is "medically indicated" treatment that would inappropriately be forgone, should same be reported to the Office.

COMMENT: Three commenters suggested that the term "competence" should be substituted for the term "capacity to make a health care decision."

RESPONSE: The Office respectfully disagrees. The Office believes that the term "capacity to make a health care decision" and, most importantly,

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the manner in which it is defined, lend additional clarity, not confusion, to the procedures set forth in the new rules.

COMMENT: Three commenters requested that the "*Farrell* test" should be specifically required by N.J.A.C. 5:100-2.3(d)2.

RESPONSE: The Office has no authority to require that a physician use the *Farrell* standard. Certainly, a physician can feel comfortable and receive immunity from civil and criminal liability by utilizing the *Farrell* procedure. However, the *Farrell* procedure is not the only way in which "capacity" can be determined. It is the duty of physicians, utilizing their medical training and judgment, to determine what must be done to determine whether a resident has the capacity to make a health care decision.

COMMENT: Three commenters stated that the exceptions set forth in N.J.A.C. 5:100-2.3(d) are illegal, given the directives issued by the New Jersey Supreme Court to the Office in the *Conroy* case.

RESPONSE: The Office respectfully disagrees. It is the responsibility of an administrative agency to interpret and implement the law. Accordingly, the Office believes that N.J.A.C. 5:100-2.3(d) represents a reasonable and practical interpretation of the law.

COMMENT: Three commenters stated that there was inconsistency between N.J.A.C. 5:100-2.3(a) and 2.3(d).

RESPONSE: The Office respectfully disagrees. The provisions of these subsections are sufficiently clear. In an instance where a health care professional reports a proposal to withhold or withdraw life-sustaining treatment to which an exception under N.J.A.C. 5:100-2.3(d) applies, communication between the parties will expeditiously resolve any differences of opinion.

COMMENT: Three commenters asserted that the *Conroy* decision requires that the only person eligible to be a surrogate decisonmaker for a resident who is incapable of making health care decisions but is not in a persistent vegetative state is a court-appointed guardian.

RESPONSE: While this is one possible interpretation of the *Conroy* ruling, the Office believes that it is too narrow a reading of the relevant caselaw. The pertinent portion of the *Conroy* opinion should not be read "in a vacuum," but must be interpreted in conjunction with the New Jersey Supreme Court's *Farrell*, *Jobes* and *Peter* opinions. Accordingly, the Office has interpreted the caselaw to authorize one of three parties specified in N.J.A.C. 5:100-2.2 to act as a surrogate decisionmaker, regardless of whether the resident is in a persistent vegetative State.

COMMENT: Three commenters asserted that the Office's promise of immunity in N.J.A.C. 5:100-2.4 is erroneous because this section does not comply with the *Conroy* ruling.

RESPONSE: The Office respectively disagrees. The Office believes that this section complies with the *Conroy* ruling and, as such, civil and criminal immunity would apply to all persons involved in the decision to withdraw or withhold life-sustaining treatment under the New Jersey Supreme Court's *Conroy* ruling.

COMMENT: Three commenters intimated that the new rules take away substantive rights such as the Constitutional right to a judicial hearing under the Fifth and Seventh Amendments to the United States Constitution.

RESPONSE: The Office respectfully disagrees. While the *Conroy* and *Peter* procedures represent an alternative to court proceedings, they do not prohibit people from seeking a court's determination on a proposal to withold or withdraw life-sustaining treatment. The Office has not taken away the Constitutional right to trial set forth in the Fifth and Seventh Amendments of the United States Constitution by promulgating the new rules.

COMMENT: Two commenters stated that the Office has no legal authority in N.J.A.C. 5:100-2.4(e)7 to require the resident's family or the surrogate decisionmaker to pay for the physicians' services.

RESPONSE: N.J.A.C. 5:100-2.4(e)7 is not a legal directive from the Office, but merely reflects a part of the procedure set forth by the New Jersey Supreme Court.

COMMENT: Some commenters suggested that the Office should establish a procedure of prioritizing cases that are reported under subchapter 2 and to expedite the review of some of these cases.

RESPONSE: As an administrative agency, the Office has a duty to interpret and implement the law, not unilaterally make new law. The Office believes that any procedure that would either prioritize cases reported pursuant to subchapter 2 or that would expedite the review of any of these cases, in derogation of the guidelines provided by the New Jersey Supreme Court, would be an *ultra vires* act. Accordingly, the Office declines to do so.

COMMENT: Some commenters suggested that N.J.A.C. 5:100-2.4(e) and 2.5(e) should be amended to allow families and facilities the ability to select the independent consulting physicians, so that the Office would then have the opportunity to decide whether to defer to the physicians' determinations.

RESPONSE: The Office declines to implement this recommendation. The Office believes that such a procedure would be contrary to the guidelines set forth by the New Jersey Supreme Court and would compromise the confidentiality and objectivity that is so necessary to the procedures set forth in subchapter 2.

COMMENT: Two commenters stated that N.J.A.C. 5:100-2.4(e)2 is unnecessary and should be deleted.

RESPONSE: N.J.A.C. 5:100-2.4(e)2 has been included in the new rules because verifying the diagnosis of persistent vegetative state may sometimes prove difficult. One of the two independent medical consultants utilized by the Office under N.J.A.C. 5:100-2.4(e) may conclude that the resident is in a persistent vegetative state, while the other concludes that the resident is not. By requiring each physician to provide the information set forth in N.J.A.C. 5:100-2.4(e)2, it may be possible to honor a resident's wishes under the procedure set forth in N.J.A.C. 5:100-2.5.

COMMENT: Two commenters suggested that N.J.A.C. 5:100-2.4(e)2i and vi, 2.5(e)1ii and xi, and 2.5(e)2i, should be deleted since these are threshold requirements to determine "capacity." As such, the independent medical consultants should not be required to address these issues in their examinations.

RESPONSE: The Office respectfully disagrees and interprets the caselaw as requiring the independent medical consultants to address these issues as an additional safeguard to protect the welfare of the resident.

COMMENT: Two commenters recommend that N.J.A.C. 5:100-2.4(f) and 2.5(f) should be amended to allow for additional medical consultants where the first two consultants disagree.

RESPONSE: The Office respectfully declines to adopt this recommendation since such an amendment would be contrary to the guidelines set forth by the New Jersey Supreme Court and would compromise the objectivity of the procedure under those guidelines.

COMMENT: Two commenters recommended that N.J.A.C. 5:100-2.4(h) and 2.5(h) should be amended to place a resident's children ahead of the resident's parents in the order of priority.

RESPONSE: Neither commenter provided a rationale for its position. Accordingly, the Office is not persuaded that such a change is warranted at this time.

COMMENT: One commenter questioned whether the Office's statute and proposed new rules give it the authority to enter offices of a professional licensing board.

RESPONSE: The new rules were not intended to expand the scope of the Office's authority under its enabling statute. N.J.S.A. 52:27G-8(d)3 does not allow the Office access to professional board offices and the documents kept therein.

COMMENT: Two commenters questioned whether incompetency is synonymous with a lack of capacity to make a health care decision for the purpose of the new rules.

RESPONSE: The two terms are synonymous for the purposes of the new rules.

COMMENT: Two commenters asked if N.J.A.C. 5:100-2.3 is limited only to nursing home residents.

RESPONSE: N.J.A.C. 5:100-2.3 encompasses all persons 60 years of age and older residing in a "health care facility," as the term is defined in the new rules and in the Office's enabling statute.

COMMENT: Two commenters asked whether N.J.A.C. 5:100-2.3(a) through (c) is specifically intended to allow persons other than surrogate decisonmakers to initiate the process for withdrawing or withholding treatment.

RESPONSE: That was not the intent of the new rules. N.J.A.C. 5:100-2.3(a) through (c) applies to those individuals or groups mentioned in each subsection, regardless of whether they may also be surrogate decisionmakers.

COMMENT: Two commenters questioned whether N.J.A.C. 5:100-2.3(d)2 applies only to residents having the capacity to make their own life-sustaining treatment decisions.

RESPONSE: That section is applicable for as long as the capacity to do so exists. The Office interprets current law as recognizing oral or written "Living Wills" as only the best evidence of resident intent. Since there does not yet exist a statute codifying "Living Wills," they are not binding on third parties.

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COMMENT: Two commenters asked whether N.J.A.C. 5:100-2.3(d)3 requires the reporting of treatment that will not improve the underlying condition or afford palliative care.

RESPONSE: Reporting is not required in such circumstances, since this is not "medically indicated treatment," as that term is defined in the new rules. In addition, medically indicated treatment need be reported only if there is a proposal to withhold or withdraw it.

COMMENT: Two commenters asked whether, at the end of an inquiry, the Office reports its findings to the surrogate decisionmaker, family, attending physician or the facility.

RESPONSE: The Office reports its findings to the surrogate decisionmaker, the attending physician and the facility administrator.

COMMENT: Two commenters stated that it was unclear, under N.J.A.C. 5:100-2.4, whether the family is to concur during the Office's intent inquiry or after the Office reaches its conclusion. The commenter stated that it is unclear how the family would receive notice of that conclusion and within what time frame the family must bring a challenge.

RESPONSE: Family concurrence will be obtained after the Office reaches a decision on deferral. Notice to a family member who is not also the surrogate decisionmaker will be provided after the Office reaches a decision on deferral. The issue of a "time frame for challenge" to the Office's decision on deferral cannot be considered within the scope of the new rules. The appropriate time frame for challenge will be based upon the provisions of the New Jersey Administrative Procedure Act.

COMMENT: One commenter questioned whether the new rules prohibit the consulting physicians from discussing a case with the attending physician or the family.

RESPONSE: Such communication is not prohibited, so long as the consulting physician requests it.

COMMENT: Several commenters suggested that the term "abuse" requires further clarification.

RESPONSE: The Office respectfully declines this suggestion. The Office believes that no further clarification is necessary at this time.

COMMENT: One commenter stated that the definition of the term "act" was unnecessary.

RESPONSE: The Office respectfully disagrees. In addition, the definition of "act" in the new rules merely coincides with the definition of "act" in the Office's enabling law.

COMMENT: One commenter asked whether the term "facility" includes developmental centers, supervised apartments, supportive living arrangements and group homes.

RESPONSE: The Office has protective and advocacy jurisdiction in any facility or institution, whether public or private, which provides health or health-related services to persons age 60 or older and is subject to regulation, visitation, inspection or supervision by any government agency.

COMMENT: One commenter stated that the Office's definition of the scope of its authority in N.J.A.C. 5:100-1.1 is overbroad and should be redefined.

RESPONSE: The Office respectfully disagrees. N.J.A.C. 5:100-1.1 is not overbroad, and properly describes the Office's role as defined in the law.

COMMENT: One commenter suggested that N.J.A.C. 5:100-1.4(a) should be amended to require the written acknowledgment of all complaints.

RESPONSE: The Office currently provides a written acknowledgment for every written complaint it receives. The Office believes that a written acknowledgment of every telephonic complaint received is unnecessary and, given the limits of the Office's fiscal resources, such a requirement would be unrealistic.

COMMENT: One commenter suggested that N.J.A.C. 5:100-1.5(c)2 should be amended to require consent of the elderly person who is the subject of an allegation, before disclosure is made to the facility.

RESPONSE: The Office understands and takes very seriously its duty to protect the confidentiality of a person who is the subject of a complaint. However, in this instance, such a consent requirement would thwart the over all purpose of this provision. When disclosure is made to the facility, usually only the identity of the suspect will be disclosed, so that the safety of all residents can be protected until the investigation is completed. It will be only a vary rare case where disclosure of the identity of the person who allegedly has been abused or exploited will prove necessary.

COMMENT: One commenter suggested that N.J.A.C. 5:100-2.3(a) should be amended to make the duty to report discretionary, rather than mandatory.

RESPONSE: The Office respectfully disagrees. The Office interprets the guidelines set forth by the New Jersey Supreme Court as making the duty in N.J.A.C. 5:100-2.3(a) mandatory, unless one of the exceptions set forth in N.J.A.C. 5:100-2.3(d) apply.

COMMENT: One commenter suggested that N.J.A.C. 5:100-2.5 should be amended to require a judicial determination of incompetency, before a surrogate decisionmaker is appointed.

RESPONSE: The Office respectfully disagrees with this interpretation of the *Conroy* case, when assessed in conjunction with the *Farrell, Peter* and *Jobes* decisions. While a determination of "incapacity" to make a life-sustaining treatment decision is a necessary prerequisite, it need not be adjudicated by a court. The attending physician may utilize the *Farrell* procedure or any other reasonable procedure. Requiring an adjudication of incompetency in every case will not only impede the procedures created by the New Jersey Supreme Court, but is contrary to the intent of those procedures, which is to provide an alternative to court proceedings.

COMMENT: Two commenters asked if N.J.A.C. 5:100-2.4 applies to a resident who suffers from Alzheimer's Disease.

RESPONSE: N.J.A.C. 5:100-2.4 will apply only to a resident in a persistent vegetative state. As such, this section may or may not apply to a resident who is an Alzheimer's victim, depending upon whether he or she is in a persistent vegetative state.

COMMENT: Two commenters questioned whether the Ombudsman should defer to the surrogate decisionmaker even where the Ombudsman feels that the treatment decision in question is morally wrong.

RESPONSE: The Office's role in cases involving proposals to withhold or withdraw life-sustaining treatment is *not* to make decisions. Rather, its role is to oversee procedures established by the New Jersey Supreme Court in order to ensure that all resident intent and medical evidence is gathered. Accordingly, if the procedures set forth by the New Jersey Supreme Court have ben satisfied, and the parties to the decision have acted in good faith, the Ombudsman's "feelings" regarding a proposal are irrelevant.

COMMENT: Two commenters suggested that the determinations required under N.J.A.C. 5:100-2.5(f) should not be made by just the surrogate decisionmaker.

RESPONSE: While it is the surrogate decisionmaker who will ultimately make the decision to withhold or withdraw life-sustaining treatment from a resident who lacks the capacity to make the decision, N.J.A.C. 5:100-2.5(f) merely delineates the intent and medical evidence that is required under the New Jersey Supreme Court procedures. The Office will determine whether N.J.A.C. 5:100-2.5(f)1, 2 or 3 is satisfied in concluding whether to defer to the wishes of the surrogate decisionmaker, on behalf of the resident.

COMMENT: Two commenters stated that N.J.A.C. 5:100-2.5(g) and (h) do not allow nursing home personnel the right of appeal from the Office's decision not to defer.

RESPONSE: N.J.A.C. 5:100-2.5(g) and (h) do not limit anyone's right of appeal. In fact, as an administrative agency, the Office lacks the ability to limit appeals. Any party having the legal standing to do so can appeal an administrative decision.

COMMENT: One commenter suggested that the definition of "medically indicated treatment" should be amended to delete reference to treatment that is necessary to provide palliative care.

RESPONSE: The Office respectfully disagrees. The Office believes that treatment designed to alleviate suffering and discomfort, but not to cure, is "medically indicated" treatment.

COMMENT: One commenter suggested that N.J.A.C. 5:100-2.4(i) and 2.5(i) should be deleted because the Office lacks the statutory authority to grant civil and criminal immunity.

RESPONSE: In N.J.A.C. 5:100-2.4(i) and 2.5(i), the Office does not purport to unilaterally grant immunity to participants in the procedures established by the New Jersey Supreme Court. N.J.A.C. 5:100-2.4(i) and 2.5(i) merely restate the immunity recognized by the New Jersey Supreme Court which attaches to persons who appropriately follow the Court's guidelines.

COMMENT: One commenter suggested that N.J.A.C. 5:100-2.5(f)1 should be amended to clarify that, where there exists clear and convincing evidence of a resident's intent, evidence of medical condition and life expectancy is irrelevant.

RESPONSE: This is one possible interpretation of the relevant caselaw. However, the Office interprets the caselaw as requiring evidence of appropriate medical condition and life expectancy in N.J.A.C. 5:100-2.5(f)1 as a threshold requirement, to ensure that the procedures in this section apply. If the requisite medical and life expectancy evidence

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is present, the Office will defer to the surrogate decisionmaker's decision where there exists clear and convincing evidence of the resident's non-treatment preference.

COMMENT: One commenter suggested that the definition of the term "fully informed" be expanded.

RESPONSE: The Office believes that the definition set forth in the new rules is sufficiently clear and is consistent with the guidance given on this concept by the New Jersey Supreme Court in its opinion in the *Farrell* case.

COMMENT: One commenter stated that N.J.A.C. 5:100-2.4(h) and 2.5(h) are unnecessary if there is a judicially-appointed surrogate decisionmaker or a resident-appointed attorney-in-fact.

RESPONSE: The Office respectfully disagrees and interprets the New Jersey Supreme Court caselaw as requiring concurrence by the family in certain instances, even if there exists a judicially-appointed surrogate decisionmaker or a resident-appointed attorney-in-fact.

COMMENT: One commenter stated that the procedures set forth in N.J.A.C. 5:100-2.4 and 2.5 are onerous.

RESPONSE: The Office respectfully disagrees. The Office believes that the procedures accurately reflect the direction given to the Office by the New Jersey Supreme Court. Most importantly, the Office also believes that these procedures protect, rather than impede, the resident's right of self-determination.

COMMENT: One commenter suggested that it is unnecessary to have separate procedures under N.J.A.C. 5:100-2.4 and 2.5, since the procedures are very similar.

RESPONSE: While the Office recognizes that the separate procedures set forth in N.J.A.C. 5:100-2.4 and 2.5 make the rules more lengthy, the applicability of separate procedures enhance the clarity of the new rules and are necessary because N.J.A.C. 5:100-2.4 and 2.5 concern different factual scenarios.

COMMENT: One commenter suggested that the definition of the term "abuse" should include instances in which treatment is provided to a resident who previously, when competent, refused the treatment.

RESPONSE: The Office sees no need to amend the new rules' definition of the term "abuse." Where a resident having the capacity to make such choices expresses a desire to have life-sustaining treatment withheld or withdrawn, that resident's wishes will be honored, so long as the procedures set forth in N.J.A.C. 5:100-2.4 and 2.5 are followed. Additionally, if one or more of the exceptions set forth in N.J.A.C. 5:100-2.3(d) apply and coincide with the resident's desire to decline treatment, the resident's wishes will be honored.

COMMENT: One commenter stated that the Office should be more specific in the manner in which it reports complaints received and reports its findings to appropriate government agencies, complainants and facilities.

RESPONSE: The Office believes that its current form of reporting is appropriate at this time. However, the Office will continue to monitor its procedures and will refine them to the extent possible, given its resources and caseload.

COMMENT: One commenter suggested that the Office should view the competent resident who has a "Living Will" but later becomes incompetent as an autonomous, independent decisionmaker, because the "Living Will" stands on its own and speaks for itself.

RESPONSE: The Office respectfully disagrees with this interpretation of current law. While a "Living Will" certainly represents the "best evidence" of a resident's wishes, it cannot yet be recognized as conclusive evidence of those wishes and, therefore, become legally binding on a third party. The Office has a responsibility to observe current law in this area. However, the Office joins with this and other commenters in supporting S-1211 in the 1990-91 Legislative Session. However, until such legislation becomes law, the Office is bound to adhere to existing law.

COMMENT: One commenter stated that N.J.A.C. 5:100-1.3(f) and (g) should direct the Office to immediately embark upon a comprehensive Statewide educational initiative to inform the public and the health care industry about the Office and the rights of persons age 60 or older residing in health care facilities under the Office's jurisdiction.

RESPONSE: The Office agrees that it is vitally important for the public and the health care industry to be well informed about such issues. Under the current administration, Acting Ombudsman Abrams and the Office's staff have traveled throughout the State to inform the public and health care industry about the Office, as well as the rights of persons age 60 and older who reside in health care facilities under the Office's jurisdiction. The Office pledges to continue to work aggressively, within its budgetary and personnel limitations, to do whatever is necessary to adequately educate the public and the health care industry.

COMMENT: One commenter stated that N.J.A.C. 5:100-2.4(d)4 and 2.5(d)4 should be deleted.

RESPONSE: The Office respectfully declines to adopt this recommendation. The Office addresses each inquiry involving a proposal to withhold or withdraw life-sustaining treatment individually. As such, the Office needs flexibility within its procedures to do whatever is necessary to gather all available intent evidence and thereby ensure that the resident's wishes will be honored.

COMMENT: Several commenters recommended that N.J.A.C. 5:100-2.4(e) and 2.5(e) be limited to circumstances in which there is disagreement between the family or surrogate decisionmaker and the attending physician.

RESPONSE: The Office's role, as an administrative agency, is to interpret and to implement the law, not unilaterally make new law. The New Jersey Supreme Court's decisions clearly mandate that two consulting physicians not associated with the resident's case be secured, regardless of whether there is decisional agreement or disagreement among the parties. Accordingly, the Office has a duty to follow the law.

COMMENT: One commenter recommended that the Office select the independent consulting physicians from a list prepared by the Medical Society of New Jersey.

RESPONSE: The Office welcomes the assistance and cooperation of the Medical Society, which would certainly enhance the efficiency and effectiveness of the process.

COMMENT: One commenter stated that N.J.A.C. 5:100-2.4(e)4 and 2.5(e)3 should be modified to make the assistance of the Office discretionary, rather than mandatory.

RESPONSE: The Office appreciates the commenter's concern that the Office not expend its resources unwisely. However, the consulting physicians secured by the Office deserve all of the assistance the Office can give to aid them with their difficult task. Accordingly, the Office believes that the physicians deserve to know that they can depend on the Office's staff. Accordingly, a mandatory duty is appropriate in this instance.

COMMENT: One commenter recommended that the Office form a Professional Advisory Committee to assist it with its work.

RESPONSE: The Office agrees with this recommendation and has regularly called upon colleagues in government, medicine, social work, nursing, long-term care and upon the public for input on the various public policy issues with which the Office continues to wrestle. The Office will continue to call upon these groups for their honest and insightful input.

Full text of the adoption follows.

CHAPTER 100
OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY PRACTICE AND PROCEDURE RULES

SUBCHAPTER 1. GENERAL PROVISIONS

5:100-1.1 Scope

The basic objective of the Office of the Ombudsman for the Institutionalized Elderly is of promoting, advocating and ensuring, as a whole and in particular cases, the adequacy of the care received, and the quality of life experienced, by elderly patients, residents and clients of facilities offering health or health-related services for the institutionalized elderly within New Jersey. The Office of the Ombudsman advocates for the health, safety and welfare, and the civil and human rights of the institutionalized elderly, age 60 or over, and takes such actions as are necessary, and within its jurisdiction, to secure same.

5:100-1.2 Definitions

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish; unreasonable confinement; or the willful deprivation of services which are necessary to maintain a resident's physical and mental health. "Abuse" shall also mean imposing treatment upon a resident who has the capacity to make healthcare decisions, after the resident has made a voluntary and informed choice regarding

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such treatment. "Abuse" shall also mean providing to a resident treatment that is not medically indicated. However, no resident shall be deemed to be abused for the sole reason that he or she is being furnished non-medical remedial treatment by spiritual means through prayer alone, in accordance with a recognized religious method of healing, in lieu of medical treatment, if it is shown through the Office's review that the resident subscribes to such religious method of healing. "Abuse" also shall not mean the withholding or withdrawal of life-sustaining treatment in accordance with the provisions of N.J.A.C. 5:100-2.

An "act" of any facility or government agency shall be deemed to include any unlawful failure or refusal to act by such facility or government agency.

"Administrator" means any person who is charged with the general administration or supervision of a facility, whether or not such person has an ownership interest in such facility, and whether or not such person's functions and duties are shared with one or more other persons.

"Caregiver" means a person employed to provide care or services to an elderly person, and includes, but is not limited to, the administrator of a facility.

"Exploitation" means the act or process of using a person or his or her resources for another person's profit or advantage without legal entitlement to do so.

"Facility" means any facility or institution, whether public or private, offering health or health-related services for the institutionalized elderly, and which is subject to regulation, visitation, inspection, or supervision by any government agency. Facilities include, but are not limited to, nursing homes, skilled nursing homes, intermediate care facilities, extended care facilities, convalescent homes, rehabilitation centers, residential healthcare facilities, class "C" and "D" boarding homes, special hospitals, veterans' hospitals, chronic disease hospitals, psychiatric hospitals, mental hospitals, mental retardation centers or facilities, day care facilities for the elderly, and medical day care centers. "Facility" shall not mean an acute care hospital.

"Government agency" means any department, division, office, bureau, board, commission, authority, or any other agency or instrumentality created by the State or to which the State is a party, or by any county or municipality, which is responsible for the regulation, visitation, inspection or supervision of facilities, or which provides services to patients, residents or clients of facilities.

"Institutionalized elderly," "elderly" or "elderly person" means any person 60 years of age or older, who is a patient, resident or client of any facility.

"Office" means the Office of the Ombudsman for the Institutionalized Elderly.

"Ombudsman" means the administrator and chief executive officer of the Office of the Ombudsman for the Institutionalized Elderly.

"Resident" means any elderly person who is receiving treatment or care in any facility in all its aspects, including, but not limited to, admission, retention, confinement, commitment, period of residence, transfer, discharge and any instances directly related to such status. "Resident" shall also mean a patient or client who is receiving treatment or care in any facility.

5:100-1.3 Contact with the Office; information about rights and entitlements; communications

(a) Any person may contact the Office to report any complaints concerning the health, safety and welfare, and the civil and human rights of institutionalized elderly persons.

(b) The Office may be contacted by calling its toll-free telephone number (800-624-4262), 24 hours per day, any day of the year; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, CN 808, Trenton, New Jersey, 08625-0808.

(c) Any correspondence or written communication from any resident of a facility to the Office shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to the Office. Any correspondence or written communication from the Office to any resident of a facility shall, if delivered to or received by the facility, be promptly forwarded, unopened, by the facility to such resident.

(d) The Office shall prepare and distribute to each facility written notices which set forth the address and telephone number of the Office, a brief explanation of the function of the Office, the procedure to follow in filing a complaint, and other pertinent information.

(e) The administrator of each facility shall ensure that such written notice is given to every resident or his or her next of kin or guardian, as appropriate, upon admission to the facility and to every person already in residence or his or her next of kin or guardian, as appropriate. The administrator shall also post such written notice in a conspicuous, public place in the facility.

(f) The Office shall from time to time publicize its existence, function and activities by informing residents, their families and friends, facility staff and other caregivers, government agencies and representatives, private organizations and community groups, and the general public, about the Office and its function and activities, through "in-service training" presentations at facilities and elsewhere, participation in seminars or other informational programs, contact with the press and other media, and direct communication, in person or in writing, including the submission for publication of scholarly and informational articles and other materials concerning the Office, its functions and activities.

(g) The Office shall make itself available for the purpose of informing and educating interested individuals and groups about general issues of concern affecting the civil and human rights of the institutionalized elderly.

5:100-1.4 Complaint procedure

(a) The Office shall acknowledge all complaints. If the Office does not have jurisdiction, the Office shall so advise the person making the complaint and shall promptly refer the complaint to the appropriate government agency.

(b) Upon receiving and acknowledging a complaint, the Office shall investigate any act, practice, policy or procedure of any facility or government agency that does or may adversely affect the health, safety, welfare or civil or human rights of any resident of a facility.

(c) The Office need not investigate any complaint where it determines that:

1. The complaint is trivial, frivolous, vexatious or not made in good faith;

2. The complaint has been too long delayed to justify present investigation;

3. The resources available, considering the Office's established priorities, are insufficient for an adequate investigation; or

4. The matter complained of is not within the investigatory authority of the Office.

(d) During the course of any investigation conducted by the Office, the Office may:

1. Make the necessary inquiries and obtain such information as it deems necessary;

2. Hold private hearings or public hearings;

3. Enter without notice and, after notifying the person in charge of its presence, inspect the premises of a facility or government agency and inspect there any books, files, medical records or other records that pertain to residents, which are required by law to be maintained by the facility or government agency;

4. Compel at a specific time and place, by subpoena, the appearance and sworn testimony of any person who the Office reasonably believes may be able to give information relating to a matter under investigation; and

5. Compel any person to produce at a specific time and place, by subpoena, any documents, books, records, papers, objects, or other evidence which the Office reasonably believes may relate to a matter under investigation.

(e) Upon completing an investigation of a complaint, the Office shall take one or more of the following courses of action, as appropriate:

1. If Office representatives are unable to substantiate a complaint, the Office shall so advise the complainant and the facility or government agency against whom the complaint was brought, as appropriate;

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2. If Office representatives are able to substantiate a complaint, they may work with facility or government agency representatives, as appropriate, to remedy the problem(s) that exist.

3. In the event that a complaint of a resident or class of residents of a facility or facilities cannot be resolved satisfactorily through negotiation with the facility or the appropriate government agency, or that an act, practice, policy or procedure of a facility or government agency does or may adversely affect the health, safety, welfare or civil or human rights of a resident or class of residents of a facility or facilities, the Office may recommend to the appropriate authorities civil litigation on behalf of such resident or class of residents, as it deems appropriate. The Office may also institute such actions for injunctive relief or civil damages as it deems appropriate.

4. If the Office discovers a deficiency in compliance with State or Federal laws or regulations or rules administered by any government agency, the Office shall refer the matter directly to the appropriate government agency for action.

5. If the Office discovers facts which the Office determines warrant the institution of civil proceedings by a government agency against any person or governmental agency, the matter shall be referred to the government agency with authority to institute such proceedings.

6. If the Office discovers information in relation to the misconduct or breach of duty of any officer or employee of a facility or a government agency, the matter shall be referred to the appropriate authorities for such action as may be necessary.

7. If the Office discovers information or facts indicating the commission of criminal offenses or violations of standards of professional conduct, it shall refer the matter, as appropriate, to the Attorney General, county prosecutor, or any other law enforcement official who has jurisdiction to prosecute the crime, and to the relevant professional licensing board.

(f) The government agency, prosecuting agency or professional licensing board to whom a substantiated allegation has been referred shall report to the Office on its findings and actions with respect to all such referrals within 30 days after receipt thereof and every 30 days thereafter until final action on each such referral. The Office may make disclosure of such information as appropriate and as may be necessary to resolve the matter referred.

(g) Where the Office has substantiated the allegations set forth in a complaint, it shall notify the complainant and the facility or government agency concerning which the complaint was lodged, in writing, of its findings and action taken. Such notification to a facility or government agency concerning which a complaint was lodged shall not include the identity of the complainant, resident or witnesses, unless such persons authorize, in writing, such disclosure.

5:100-1.5 Reporting requirements and complaint procedures under the Mandatory Adult Abuse and Exploitation Reporting Law, N.J.S.A. 52:27G-7.1 et seq.

(a) Any caregiver, social worker, physician, registered or licensed practical nurse, or other professional, who, as a result of information obtained in the course of his or her employment, has reasonable cause to suspect or believe that an institutionalized elderly person is being or has been abused or exploited, shall report such information to the Office. Any other person having reasonable cause to suspect or to believe that an elderly person is being or has been abused or exploited may report such information to the Ombudsman or to the person designated by the Ombudsman to receive such report.

(b) Any report of actual or suspected elderly abuse or exploitation shall be made verbally or in writing and shall contain, if known:

1. The name, address and age of the elderly person who is the subject of the suspected abuse or exploitation;

2. The name of the person accused of committing the alleged abuse or exploitation;

3. The name and address of the facility involved;

4. A description of the nature of the suspected abuse or exploitation;

5. The date, time and specific location of the occurrence;

6. The name and address of any witness to the suspected abuse or exploitation; and

7. Any other information which might be helpful in an investigation of the case and the protection of such elderly person.

(c) The Office complaint procedure is as follows:

1. Within 24 hours of receipt of a report of abuse or exploitation, the Office shall notify the Commissioner of Human Services and any other government agency which regulates or operates the facility.

2. Whenever practicable, upon receiving such report, the Office shall advise the Administrator of the facility in which the victim is residing, or his or her designee, of a report of abuse or exploitation. Unless authorized under (e) below, the name of the person reporting the suspected abuse or exploitation shall not be disclosed.

3. The Office shall investigate a complaint alleging elderly abuse or exploitation by utilizing the procedure set forth in N.J.A.C. 5:100-1.4. In addition, an investigation shall include a visit with the elderly person who has allegedly been abused or exploited and consultation with others who have knowledge of the particular case.

(d) Upon completing its investigation, the Office shall report its findings, in writing, to:

1. The person who reported the suspected abuse or exploitation;

2. The Commissioner of Human Services;

3. The facility in which the elderly person who was allegedly abused or exploited is residing. Such notification shall contain a general description of the Office's investigation and its findings, but shall not include the identity of the complainant, the victim or witnesses, unless such persons authorize, in writing, such disclosure;

4. Where the Office has substantiated the allegations of the complaint, and where appropriate, the county prosecutor's office or any other appropriate prosecuting agency; and

5. Where the Office has substantiated the allegations of the complaint, and where appropriate, the government agency or agencies having regulatory or licensing authority over either the person accused of the abuse or exploitation or over the facility in which the elderly person is residing.

(e) The name of any person who reports suspected abuse or exploitation pursuant to this subchapter shall not be disclosed, unless:

1. The person who reported the abuse or exploitation specifically authorizes such disclosure; or

2. A judicial proceeding results from such report; or

3. Disclosure is authorized under N.J.A.C. 5:100-1.6(a).

(f) Any person who reports suspected abuse or exploitation pursuant to this subchapter or who testifies in any administrative or judicial proceeding arising from such report or testimony shall have immunity from any civil or criminal liability on account of such report or testimony, unless such person has acted in bad faith or with malicious purpose.

(g) Pursuant to N.J.S.A. 52:27G-7.1(f), any person required to report suspected abuse or exploitation, as required herein, who fails to make the reports required by this section, may be fined up to $5,000. Such penalty will be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq. Each violation of this section shall constitute a separate offense.

(h) No provision of this section shall be deemed to require the disclosure of, or penalize the failure to disclose, any information which would be privileged pursuant to the provisions of Sections 18 through 23 inclusive of P.L.1960, c.52 (N.J.S.A. 2A:84A-18 through 2A:84A-23).

(i) The Office shall maintain a central registry of all reports of suspected abuse or exploitation and of all investigations, findings and recommended actions. No information received and compiled in such registries shall be construed as a public record.

(j) Where the report alleging elderly abuse or exploitation pertains to the withholding or withdrawal of life-sustaining treatment from an elderly incompetent institutionalized resident, reporting shall be governed by N.J.A.C. 5:100-2.

5:100-1.6 Confidentiality of information; privileged communications

(a) The Office shall maintain confidentiality with respect to all matters in relation to any complaint or investigation, together with the identities of the complainants, witnesses or residents involved, unless such persons authorize, in writing, the release of such information, except for such disclosures as the Ombudsman deems necessary to enable the Office to perform its duties and to support any

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opinions or recommendations that may result from a complaint or investigation. The investigatory files of the Office, including all complaints and responses of the Office to complaints, shall be maintained as confidential information. Release of pertinent records shall be at the discretion of the Ombudsman.

(b) Any statement or communication made by the Office relevant to a complaint received by, proceedings before, or investigative activities of, the Office, and any complaint or information made or provided in good faith by any person, shall be absolutely privileged and such privilege shall be a complete defense in any action which shall allege libel or slander.

5:100-1.7 Prohibition of discriminatory, disciplinary or retaliatory action

No discriminatory, disciplinary or retaliatory action shall be taken against any officer or employee of a facility or government agency by such facility or government agency, or against any resident of a facility or guardian or family member thereof, or independent contractor providing care or services to a resident, or volunteer, for any communication by him or her with the Office or for any information given or disclosed by him or her in good faith to aid the Office in carrying out its duties and responsibilities.

5:100-1.8 Hindrance of Office or refusal to comply; penalties

Any person who willfully hinders the lawful actions of the Office or willfully refuses to comply with any of its lawful demands, including the demand of immediate entry into and inspection of a facility or government agency or the demand of immediate access to a resident thereof, may be fined up to $5,000. Such penalty shall be collected and enforced by the Office in a summary proceeding brought pursuant to the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et seq., upon complaint of the Office or any other person. Each violation of this section shall constitute a separate offense.

SUBCHAPTER 2. PROCEDURES REQUIRED PRIOR TO WITHHOLDING OR WITHDRAWING LIFE-SUSTAINING TREATMENT FROM ELDERLY, INSTITUTIONALIZED RESIDENTS

5:100-2.1 Purpose

(a) The purpose of this subchapter is to clarify the Office's role in circumstances involving proposals to withhold or to withdraw life-sustaining treatment from nursing home patients, pursuant to guidelines set forth by the New Jersey Supreme Court in the cases of *Matter of Farrell,* 108 *N.J.* 335 (1987), *Matter of Peter,* 108 *N.J.* 365 (1987) and *Matter of Conroy,* 98 *N.J.* 321 (1985). The Office views its role as being twofold:

1. To oversee the processes established by the Court in *Peter* and in *Conroy;* and

2. To assist the institutionalized elderly, their families and friends, their healthcare providers and the facilities in which they reside in making life-sustaining treatment decisions that fully express the wishes of the resident.

5:100-2.2 Definitions

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

"Capacity to make a healthcare decision" means the ability to understand and appreciate the nature and consequences of a healthcare decision, including the resident's diagnosis and prognosis, the benefits and risks associated with the decision and alternatives to the decision, and having the ability to voluntarily reason and make judgments about that information.

"Fully informed" means being informed in language understandable to the resident of diagnosis and prognosis, the benefits, burdens and risks of the proposed treatment or non-treatment and its alternatives.

"Life-sustaining treatment" means any medical intervention that is administered to a resident in order to prolong life and delay death.

"Medically indicated treatment" means treatment that will improve the medical condition of the resident or is necessary to provide palliative care to the resident.

"Palliative care" means medical, surgical or other interventions designed to alleviate suffering and discomfort, but not to cure.

"Surrogate decisionmaker" means a guardian, a close and caring family member, or a person designated by the resident, who is willing and able to make a decision to withhold or to withdraw life-sustaining treatment on behalf of the resident.

5:100-2.3 Duty to report

(a) Any person who believes that withholding or withdrawing life-sustaining treatment from an elderly incompetent nursing home resident would effectuate the resident's wishes or would be in the resident's best interests shall notify the Office of the contemplated action.

(b) Any caregiver, social worker, physician, registered or licensed practical nurse or other professional who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would be an abuse of that resident shall report such information to the Office.

(c) Any other person who has reasonable cause to suspect that withholding or withdrawing life-sustaining treatment from an elderly, incompetent nursing home resident would be an abuse of the resident may report such information to the Office.

(d) The reporting procedures set forth in this section shall not apply when:

1. The resident is under age 60; or

2. The resident, being fully informed and having the capacity to make a healthcare decision, chooses to withhold or withdraw life-sustaining treatment. The resident's attending physician shall make the determination of whether the resident is fully informed and has the capacity to make a healthcare decision. The physician's determination shall be based on the physician's reasonable medical judgment and shall be documented on the resident's chart; or

3. The life-sustaining treatment is not medically indicated for the resident. The resident's attending physician shall make this determination. Such determination shall be based on the physician's reasonable medical judgment and shall be documented on the resident's chart; or

4. The proposal to withhold or withdraw life-sustaining treatment is being reviewed by, or has been reviewed favorably by, a court of competent jurisdiction.

5:100-2.4 Procedure for residents incapable of making healthcare decisions, who are in a persistent vegetative state

(a) Unless one or more of the circumstances set forth in N.J.A.C. 5:100-2.3(d) apply, the surrogate decisionmaker for the resident shall notify the Office, in writing, of a contemplated decision to withhold or to withdraw life-sustaining treatment from the resident.

(b) The resident's attending physician shall provide to the Office, in writing, evidence of the resident's condition.

(c) The Office shall advise the facility administrator, in writing, of the proposal to withhold or to withdraw life-sustaining treatment.

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;

2. Inquire into whether there exists any other declaration or designation including an oral declaration or designation;

3. Interview the resident's family and friends, the attending physician, healthcare providers, employees of the facility at which the resident is residing, and others having knowledge of the resident's intent; and

4. Do anything that the Office, in its discretion, deems necessary to discover the resident's intent.

(e) Concurrent with its intent inquiry, the Office shall engage the services of two physicians who are not associated with the resident's case to examine the resident:

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1. Prior to the examination, the Office shall provide to each physician, in writing, an explanation of the areas that must be covered in the report of the examination. The areas are:

i. The date(s) of the physician's examination(s) and the identity of anyone assisting or accompanying the physician;

ii. A synopsis of the physician's examination(s), the resident's medical history on which the physician bases his or her conclusions and any limitations on either, which the physician believes significant. The physician should also advise whether the medical history indicates whether the resident ever was competent during adult life;

iii. The resident's diagnosis and condition;

iv. The medical alternatives available including the various treatment options and the risks, side effects and benefits of each of those options;

v. The resident's prognosis for recovery, both with and without the life-sustaining treatment which has been proposed to now be withheld or withdrawn;

vi. Whether the resident is in a persistent vegetative state because there is no reasonable possibility of the resident's recovery to a cognitive, sapient state; and

vii. The likely outcome if treatment is discontinued or withheld.

2. The following areas shall also be addressed notwithstanding a determination that the resident is in a persistent vegetative state:

i. Whether the resident currently has the mental and communicative capacity to reasonably understand his or her own condition, the nature and effect of the medical treatment proposed to be withheld or withdrawn, the attendant risks in selecting such treatment, and to decide whether or not to submit to such treatment;

ii. A brief description of the resident and whether the resident was able to communicate anything about his or her own condition to the physician;

iii. The resident's present level of:

(1) Physical functioning;

(2) Sensory functioning;

(3) Emotional functioning; and

(4) Cognitive functioning;

iv. The degree of pain resulting from the resident's medical condition, the resident's medical treatment, and terminating or withholding treatment, including the degree, expected duration and constancy of pain (with and without treatment) and the possibility that the pain could be reduced by drugs or other means short of terminating or withdrawing the life-sustaining treatment;

v. The resident's life expectancy with and without the treatment in question. In particular, whether or not the resident, even with the life-sustaining treatment, probably will not live more than one year from the date of the physician's examination; and

vi. Whether the patient probably will regain competence.

3. After reviewing the Office's correspondence, each physician shall acknowledge, in writing, his or her agreement to perform the examination.

4. Each physician shall then travel to the facility and perform the examination. An Office representative shall be at the facility to assist each physician.

5. Upon completing the examination, each physician shall provide to the Office a written report of the examination.

6. The identity of each physician and the contents of each report shall be kept confidential.

7. Each physician shall be compensated by one or more of the following:

i. The resident's estate;

ii. The resident's family;

iii. The surrogate decisionmaker;

iv. Medicare or Medicaid; and/or

v. If the above sources are insufficient to compensate the physicians, the Office of the Ombudsman shall compensate the physicians, within the limitations of the Office's budget.

(f) Upon completion of the intent inquiry and the physicians' examinations, if both physicians conclude that the resident is in a persistent vegetative state, the surrogate decisionmaker may withhold or withdraw the life-sustaining treatment if:

1. There exists clear and convincing evidence that the resident would have refused the life-sustaining treatment in the circumstances involved; or

2. If there does not exist clear and convincing evidence regarding the resident's attitude toward life-sustaining treatment, the surrogate decisionmaker may withhold or withdraw the life-sustaining treatment if both physicians have also concluded that there is no reasonable possibility that the resident will recover to a cognitive, sapient state. Additionally, the attending physician must concur with the conclusion of both independent physicians.

(g) When either of (f)1 or (f)2 above is satisfied, the Ombudsman shall defer to the surrogate decisionmaker's decision. A surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the Ombudsman does not defer.

(h) When (f)2 above is satisfied, the resident's family member must also concur with the surrogate decisionmaker's decision, unless the family member is also the surrogate decisionmaker. "Family member" shall mean, in order of priority, the resident's spouse, parents, children, or next of kin, if any. A surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the resident's family member does not concur.

(i) In the absence of bad faith, no participant in the decisionmaking process shall be civilly or criminally liable.

5:100-2.5 Procedure for residents incapable of making healthcare decisions, who are not in a persistent vegetative state

(a) Unless one or more of the circumstances set forth in N.J.A.C. 5:100-2.3(d) apply, the surrogate decisionmaker for the resident shall notify the Office, in writing, of a contemplated decision to withhold or to withdraw life-sustaining treatment from the resident.

(b) The resident's attending physician shall provide to the Office, in writing, evidence of the resident's condition.

(c) The Office shall advise the facility administrator, in writing, of the proposal to withhold or to withdraw life-sustaining treatment.

(d) The Office shall then inquire into the resident's intent, if any, pertaining to the surrogate decisionmaker's proposal to withhold or to withdraw the life-sustaining treatment. In making its intent inquiry, the Office shall:

1. Inquire into whether there exists a written advance directive in the form of a Living Will or Durable Power of Attorney executed by the resident;

2. Inquire into whether there exists any other declaration or designation including an oral declaration or designation;

3. Interview family and friends, the attending physician, healthcare providers, employees of the facility at which the resident is residing, and others with knowledge of the resident's intent; and

4. Do anything that the Office, in its discretion, deems is necessary to discover the resident's intent.

(e) Concurrent with its intent inquiry, the Office shall engage the services of two physicians who are not associated with the resident's case to examine the resident.

1. Prior to the examinations, the Office shall provide to each physician, in writing, an explanation of the areas that must be covered in the report of the examination. The areas are:

i. The date of the physician's examination(s) and the identity of anyone assisting or accompanying the physician;

ii. Whether the resident currently has the mental and communicative capacity to reasonably understand his or her own condition, the nature and effect of the medical treatment proposed to be withheld or withdrawn, the attendant risks in selecting such treatment, and to decide whether or not to submit to such treatment;

iii. A synopsis of the physician's examination(s), the resident's medical history on which the physician bases his or her conclusions and any limitations on either, which the physician believes significant. The physician should also advise whether the medical history indicates whether the resident ever was competent during adult life;

iv. A brief description of the resident and whether the resident was able to communicate anything about his or her own condition to the physician;

v. The resident's present level of:

(1) Physical functioning;

(2) Sensory functioning;

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(3) Emotional functioning; and
(4) Cognitive functioning;
vi. The resident's diagnosis and condition;
vii. The degree of pain resulting from the resident's medical condition, the resident's medical treatment, and terminating or withholding treatment, including the degree, expected duration and constancy of pain (with and without treatment) and the possibility that the pain could be reduced by drugs or other means short of terminating or withdrawing the life-sustaining treatment;
viii. The medical alternatives available including the various treatment options and the risks, side effects and benefits of each of those options;
ix. The resident's life expectancy with and without the treatment in question. In particular, whether or not the resident, even with the life-sustaining treatment, probably will not live more than one year from the date of the physician's examination;
x. The resident's prognosis for recovery, both with and without the life-sustaining treatment which has been proposed to now be withheld or withdrawn;
xi. Whether the patient probably will regain competence; and
xii. The likely outcome if treatment is discontinued or withheld.
2. After reviewing the Office's correspondence, each physician shall acknowledge, in writing, his or her agreement to perform the examination.
3. Each physician shall then travel to the facility and perform the examination. An Office representative shall be at the facility to assist each physician.
4. Upon completing the examination, each physician shall provide to the Office a written report of the examination.
5. The identity of each physician and the contents of each report shall be kept confidential.
6. Each physician shall be compensated by one or more of the following:
i. The resident's estate;
ii. The resident's family;
iii. The surrogate decisionmaker;
iv. Medicare or Medicaid; and/or
v. If the above sources are insufficient to compensate the physicians, the Office of the Ombudsman shall compensate the physicians, within the limitations of the Office's budget.
(f) Upon completion of the intent inquiry and if both physicians find that: the resident is incapable of making a healthcare decision, the resident is suffering from severe and permanent mental and physical impairments, and the resident probably would have less than one year to live from the date of the examination with or without life-sustaining treatment, the surrogate decisionmaker, with the concurrence of the attending physician, may withhold or withdraw the life-sustaining treatment if:
1. There exists clear and convincing evidence that the resident would have refused the life-sustaining treatment in the circumstances involved; or
2. There exists some trustworthy evidence that the resident would have refused the life-sustaining treatment in the circumstances involved, and on the basis of the medical evidence, the surrogate decisionmaker is satisfied that it is clear that the burdens of the resident's continued life with the treatment outweighs the benefit of the resident's continued life; or
3. There exists no evidence of the resident's intent, but on the basis of the medical evidence, the net burdens of the resident's life with the treatment clearly and markedly outweigh the benefits that the resident would derive from life. Additionally, the recurring, unavoidable and severe pain of the resident's life with the treatment would be such that the effect of administering the life-sustaining treatment would be inhumane.
(g) When (f)1, f(2) or f(3) above is satisfied, the Ombudsman shall defer to the decision made by the surrogate decisionmaker. The surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the Ombudsman does not defer.
(h) When either of f(2) or f(3) above is satisfied, the resident's family member must also concur with the decision made by the surrogate decisionmaker, unless the family member is also the surrogate decisionmaker. "Family member" shall mean, in order of priority, the resident's spouse, parents, children, or next of kin, if any. The surrogate decisionmaker may seek a determination in a court of competent jurisdiction where the resident's family member does not concur.
(i) In the absence of bad faith, no participant in the decisionmaking process shall be civilly or criminally liable.

MILITARY AND VETERANS' AFFAIRS

(a)

THE ADJUTANT GENERAL

Leaves of Absence for Military Duty for and by Members of the National Guard

Readoption with Amendments: N.J.A.C. 5A:2

Proposed: April 16, 1990, at 22 N.J.R. 1185(b).
Adopted: May 17, 1990, by Major General Vito Morgano, The Adjutant General.
Filed: May 17, 1990 as R.1990 d.309, **without change.**
Authority: N.J.S.A. 38A:3-6(a) and (0); 38A:4-4(a) and (b).
Effective Date: May 17, 1990, Readoption; June 18, 1990, Amendments.
Expiration Date: May 17, 1995.

Summary of Public Comments and Agency Responses:
COMMENT: Comments were received from the general public to the effect that a strong objection exists to the "double-dipping" of military members who are granted paid leave from State jobs to participate in military duties. The hope was expressed that the readoption of above rules would rectify this expense.
RESPONSE: The Department agrees that "double-dipping" or the paying of public employees their normal salary and benefits should be reduced or controlled. The Department also recognizes that it was the intent of the Legislature to encourage and support membership in the New Jersey National Guard.
The rules herein adopted establish limits on military leave with pay and ensure that public employees are granted such leave only when military duty is absolutely mandatory. This results in a system which is fair and equitable, granting a strong benefit to members of the National Guard while ensuring that the Guard remains a viable force for National Defense and support to the civil authorities of the State of New Jersey.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 5A:2.

Full text of the adopted amendments follows.

SUBCHAPTER 1. GENERAL PROVISIONS

5A:2-1.1 Scope
This chapter is applicable to members of the New Jersey National Guard only.

5A:2-1.2 Purpose
(a)-(b) (No change.)
(c) The President of the United States, through the respective military service secretaries, and the Governor, through the Adjutant General, New Jersey Department of Military and Veterans' Affairs (NJDMAVA), as defined in N.J.S.A. 38A, are the proponents for the issuance of military orders for the New Jersey National Guard (NJNG) and its members, who enlist, are mobilized, attend military schools, conferences, training exercises, or perform any other duty ordered by the President or the Governor.
(d) The New Jersey Department of Military and Veterans' Affairs, must, by law, adhere and conform to State and Federal law and the regulations, forms, precedence, and usages of the United States Department of Defense, the Departments of the Army or the Air Force, and the National Guard Bureau concerning training requirements and other military duty.

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5A:2-1.3 Public and private employers

Every public and private employer is obligated to release a member of the New Jersey National Guard who has been ordered to military duty, through either the New Jersey Department of Military and Veterans' Affairs or the service secretaries of the United States Department of Defense. Military duty may be voluntary or involuntary and includes Initial Active Duty Training, Active Duty in State service, Active Duty in Federal service, Inactive Duty Training, and all forms of Active Duty for Training. Employers must grant excused absences from work for military duty without regard to shift or weekend work policies. The rescheduling of work to make up work lost is at the discretion of the employer. Failure to release an employee who has been so ordered may subject the employer to criminal prosecution or other penalties.

SUBCHAPTER 2. NEW JERSEY PUBLIC OFFICIALS AND EMPLOYEES

5A:2-2.1 General policy

(a) The New Jersey Department of Military and Veterans' Affairs recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law.

(b) It is therefore the policy of the New Jersey Department of Military and Veterans' Affairs that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written endorsement of their agency's appointing authority, as defined in N.J.A.C. 4A:1-1.3, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Military and Veterans' Affairs. The requirement to obtain a written endorsement does not apply to Initial Active Duty for Training (IADT), Inactive Duty Training (IDT), Federal Mobilization, Active Duty (AD), or other duty ordered by the Governor.

5A:2-2.2 Procedures for requesting orders

(a) (No change.)

(b) Unit commanders must obtain from the New Jersey public official or employee's appointing authority, a completed Notice of Leave of Absence for Military Duty, NJDMAVA Form 33, (see Appendix A) prior to the issuance of orders and the commencement of military duty to be performed by the New Jersey public official or employee. NJDMAVA Form 33 is not required for duty exempted in N.J.A.C. 5A:2-2.1(b).

(c) If the public official or employee's appointing authority declines to indorse a leave of absence for military duty, the employer must provide supporting reasons and return the NJDMAVA Form 33 to the unit commander not later than the date specified on the form. Failure of the appointing authority to return the NJDMAVA Form 33 will not prevent the issuance of military orders. The unit commander will forward the completed NJDMAVA Form 33, or the file copy indicating the failure of the appointing authority to return the original form, through military channels for review by the Adjutant General, New Jersey Department of Military and Veterans' Affairs. All requests will be reviewed on a case-by-case basis to determine the impact upon the mission readiness and capability of the unit concerned.

(d) Orders for military duty to be performed by a New Jersey public official or employee will not be issued pursuant to (a) above by any headquarters without the prior written approval of the Adjutant General contained on the NJDMAVA Form 33.

(e) To insure that appointing authorities have verification that the military duty to be performed by a public official or employee meets the mandatory criteria for military leave with pay, orders and NJDMAVA Form 33 will contain statements identifying the military duty in accordance with N.J.A.C. 5A:2-2.3(b).

(f) The Adjutant General, New Jersey Department of Military and Veterans' Affairs may, in his discretion, make a final determination to approve, modify, or disapprove any duty specified in the NJDMAVA Form 33 and will notify the appointing authority directly by providing a completed copy of that form.

5A:2-2.3 Military leave

(a) Military leave is authorized in accordance with N.J.S.A. 38A:4-4 and N.J.A.C. 4A:6-1.11, for all public officials and employees including those of the State of New Jersey, and of any county, school district, municipality, board, commission or authority, who are members of the New Jersey National Guard.

(b) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4A:6-1.10(b), the following Active Duty and Active Duty for Training in State service are mandatory and require that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time, not to exceed 90 days in the aggregate in any one year, and shall be in addition to the regular vacation allowed such officials and employees.

1.-2. (No change.)

(c) Pursuant to N.J.S.A. 38A:4-4 and N.J.A.C. 4A:6-1.10(b), all other duty ordered by the Governor is mandatory and requires that leaves of absence be granted to New Jersey public officials and employees without loss of pay or time and shall be in addition to regular vacation allowed such officials and employees.

(d) (No change.)

5A:2-2.4 Military orders for New Jersey public officials and employees

(a) The New Jersey Department of Military and Veterans' Affairs and Army and Air National Guard Administrative Headquarters will issue military orders to authorize the following duty by New Jersey public officials and employees:

1.-5. (No change.)

(b) (No change.)

(c) Subordinate headquarters of the New Jersey Department of Military and Veterans' Affairs are also authorized to issue unit orders, in either order or training schedule format, which require attendance at Inactive Duty Training (IDT) for specified periods of Unit Training Assemblies (UTA).

APPENDIX A: Notice of Leave of Absence for Military Duty (New Jersey Department of Military and Veterans' Affairs Form 33)

_____
Date

SUBJECT: Notice of Leave of Absence for Military Duty
Appointing Authority (as defined in N.J.A.C. 4A:1-1.3)

1. The individual listed below, an employee of your agency, is required to perform military duty for time and purpose indicated below in connection with his or her assignment as a member of the New Jersey Army/Air National Guard.

Name and Rank _____

Period of Duty _____

Possible Alternate Periods of Duty _____

Location _____

Purpose _____

Authority _____

(Cite a specific portion of N.J.A.C. 5A:2-2.3(b)2)

2. The New Jersey Department of Military and Veterans' Affairs recognizes that the calling of members of the National Guard to military service should not arbitrarily interfere with the operation of other New Jersey State, county or municipal agencies, be detrimental to the public interest, or permit salary payment to New Jersey public officials or employees for leaves of absence for military duty which are not authorized by State or Federal law. It is therefore the policy

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of the New Jersey Department of Military and Veterans' Affairs that New Jersey public officials and employees, who are members of the New Jersey National Guard, must obtain the written indorsement of their agency's appointing authority, as defined in N.J.A.C. 4A:1-1.3, for a leave of absence for military duty prior to the issuance of military orders by the New Jersey Department of Military and Veterans' Affairs.

3. It is requested that you provide your indorsement and/or comments regarding this leave of absence in the space provided below and return this form directly to this headquarters in the envelope provided not later than _____. In some cases, it may be necessary to postpone this duty to another time period due to circumstances beyond our control. Should this occur, the New Jersey Department of Military and Veterans' Affairs will notify you of the date change.

4. You will receive a completed copy of this form by return mail indicating the final action taken by the Adjutant General regarding the issuance of the orders for military duty. Your cooperation in this matter is appreciated.

_____
Signature

_____
Title

_____
Unit

_____
Date

Indorsement and/or comment

_____
Signature

_____
Typed Name

_____
Title

TO: Appointing Authority
SUBJ: Final Action of the Adjutant General, NJDMAVA

Issuance of orders is

_____ Approved

_____ Approved for alternate dates as follows:

_____ Disapproved

If approval of the issuance of orders is contrary to the appointing authority's comments or indorsement, the Adjutant General will notify the appointing authority of an opportunity to further discuss the matter.

By: _____
The Adjutant General
New Jersey Department of Military and Veterans' Affairs

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF COASTAL RESOURCES

Redelineation of Pond Run

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: December 18, 1989 at 21 N.J.R. 3843(b).
Adopted: May 23, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: May 25, 1990 as R.1990 d.319, **without change.**

Authority: N.J.S.A. 13:1B-3 and N.J.S.A. 58:16A-50 et seq.

DEP Docket Number: 054-89-11.

Effective Date: June 18, 1990.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:
Notice of the proposed amendment was published on December 18, 1989, in the New Jersey Register at 21 N.J.R. 3843(b). The notice advised that a public hearing had been scheduled for January 10, 1990 at 9:30 A.M. at the Division of Coastal Resources, Department of Environmental Protection, 501 East State Street, Trenton, New Jersey, to afford the public an opportunity to be heard. In addition, secondary notice of the proposal was published on December 15, 1989 in the Trenton Times. Both notices invited written comments to be submitted on or before January 17, 1990 and announced the holding of the public hearing. No members of the public attended the public hearing.

No comments received.

Full text of the adoption follows.

AGENCY NOTE: Maps and associated flood profiles, showing the location of the revised delineation flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey, and at the Department of Environmental Protection, Flood Plain Delineation Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway is identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY
AND FLOOD HAZARD AREA OF
POND RUN—PLATES P-1 and P-2

(b)

DIVISION OF COASTAL RESOURCES

Redelineation of Rowe Brook

Adopted Amendment: N.J.A.C. 7:13-7.1

Proposed: December 18, 1989 at 21 N.J.R. 3843(a).
Adopted: May 23, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: May 25, 1990 as R.1990 d.320, **without change.**

Authority: N.J.S.A. 13:1B-3, and N.J.S.A. 58:16A-50 et seq.

DEP Docket Number: 055-89-11.

Effective Date: June 18, 1990.
Expiration Date: July 14, 1994.

Summary of Public Comments and Agency Responses:
Notice of the proposed amendment was published on December 18, 1989 in the New Jersey Register at 21 N.J.R. 3843(a). The notice also advised that a public hearing concerning the proposed amendment was scheduled for January 10 at 11:00 A.M. at the Department's Division of Coastal Resources, 5 Station Plaza, 501 East State Street, Trenton, New Jersey. In addition, the Department advertised the notice of public hearing on December 13, 1989 in the Hunterdon Review, Clinton, and

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on December 14, 1989 in the Hunterdon County Democrat, Flemington. All three notices also invited written comments on the proposed amendment to be submitted on or before January 17, 1990.

Four people were in attendance at the above-mentioned hearing. No written comments were received during the comment period.

COMMENT: What is the reason behind any proposed increase in areas covered by the 100-year flood plain and New Jersey Flood Hazard Area delineations?

RESPONSE: The delineations were changed due to more accurate topography and cross section data information obtained by the Department.

COMMENT: The proposed flood hazard area has increased in size and more homeowners will be impacted.

RESPONSE: The Department's delineation may have previously understated the flood limits and the new areas now included would have flooded during a 100-year storm event even though it was not mapped as a flood hazard area.

Full text of the adoption follows:

AGENCY NOTE: Maps and associated flood profiles, showing the location of the redelineated flood hazard areas, may be reviewed at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey; and at the Department of Environmental Protection, Flood Plain Delineation Section, 5 Station Plaza, 501 E. State Street, Trenton, New Jersey.

The revised floodway and flood hazard areas are identified on the plate specifically identified:

STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES
DELINEATION OF FLOODWAY
AND FLOOD HAZARD AREA
TRIBUTARY A
TEWKSBURY TOWNSHIP
PLATE TA-1

HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Review of Long-Term Care Facilities and Services Policy Manual

Readoption: N.J.A.C. 8:33H

Proposed: March 19, 1990 at 22 N.J.R. 897(a).
Adopted: May 15, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).
Filed: May 16, 1990 as R.1990 d.303, **without change.**
Authority: N.J.S.A. 26:2H-5 and 26:2H-8.
Effective Date: May 16, 1990.
Expiration Date: May 16, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:33H.

HUMAN SERVICES

(b)

DIVISION OF ECONOMIC ASSISTANCE

Notice of Administrative Correction Assistance Standards Handbook Emergency Assistance

N.J.A.C. 10:82-5.10

Take notice that the Department of Human Services has discovered an error in the text of N.J.A.C. 10:82-5.10. Subparagraph (d)1viii was adopted on an emergency basis effective July 7, 1988 (see 20 N.J.R. 1956(a)) and expired on September 5, 1988. The subparagraph was erroneously not deleted from the Code after its expiration. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletions indicated in brackets [thus]):

10:82-5.10 Emergency assistance

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

(d) Needs of the eligible family may be recognized in accordance with the regulations and limitations in the following paragraphs:

1. Emergency shelter: The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter arrangements at the most reasonable rate available for a specified temporary period (see N.J.A.C. 10:81-7.1(k)6vii concerning notice requirements) not to exceed two calendar months following the month in which the state of homelessness first becomes known to the county welfare agency. Such emergency shelter, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, shelter as delineated above is not available within the municipality of customary residence, the recipient, as a condition of eligibility shall be obliged to accept shelter as delineated above which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the client and the agency (see (d)6 below), permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of (d)1vii below.

i.-vii. (No change.)

[viii. Time Limited Extension for EA Benefit: An extension shall be granted to eligible families who have been in receipt of EA since immediately prior to March 1988 in accordance with (a)1viii(1) below. This extension of EA benefits granted under this provision is unconditional and not subject to the requirements set forth in (d)1vii above.

(1) For families whose maximum period of eligibility for temporary shelter benefits ended:

(A) March 31, or will end on June 30, the last day of entitlement will be July 31, 1988.

(B) April 30, 1988, the last day of entitlement will be August 31, 1988.

(C) May 31, 1988, the last day of entitlement will be September 30, 1988.]

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

2.-6. (No change.)

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

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(a)

DIVISION OF ECONOMIC ASSISTANCE

Home Energy Assistance

General Provisions; Program Eligibility; Program Benefits Application Process; Other Program Requirements

Readoption with Amendments: N.J.A.C. 10:89

Proposed: February 20, 1990 at 22 N.J.R. 599(a).
Adopted: May 23, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: May 24, 1990 as R.1900 d.315, **without change.**
Authority: N.J.S.A. 30:4B-2.
Effective Date: May 24, 1990, Readoption; June 18, 1990, Amendments.
Expiration Date: May 24, 1995.

Summary of Public Comments and Agency Responses:

COMMENT: The Atlantic City Electric Company commented that inasmuch as the moratorium on disconnection of services imposed annually by the Board of Public Utilities does not usually end until mid-March or early April, the proposed revision shortening the application period for heating assistance from April 30 to March 31 may not allow potentially eligible customers sufficient time to file for assistance prior to having services disconnected. The commenter observes that many customers do not take action to file for assistance until they are in receipt of the "disconnect notice" which would not arrive in time to seek aid under the proposed limits.

RESPONSE: In response, the Department observes that this year the Low Income Home Energy Assistance Program (LIHEAP) was designed to accept applications through March 31 so as to assist as many households as possible with available funding. It would be fiscally unsound to continue to accept applications for which there would be no funds allocated. While the Department shares the commenter's concern about the reduced time limit for filing LIHEAP applications, it would not be authorized to spend more funds than allocated by the Federal government or otherwise available and would, therefore, be forced to reduce the application acceptance period.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:89.

Full text of the adopted amendments follows.

10:89-2.2 Eligibility requirements

(a) The household members shall be residents of New Jersey.

1.-3. (No change.)

4. Illegal aliens are ineligible for Home Energy Assistance benefits. In cases where an illegal alien resides within an applicant household, the alien must be excluded from the HEA household size. If the illegal alien has monthly income in excess of $255.00, the amount in excess of $255.00 shall be counted as income to the household, and must be added to all other household income in determining the household's gross monthly income.

5. Certain aliens legalized under the Immigration Reform and Control Act of 1986 are temporarily ineligible for HEA benefits (see also N.J.A.C. 10:87-3.8(a)1, and (a)8 through 11 for limitations.)

(b)-(d) (No change.)

10:89-2.3 Income eligibility

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

(g) Gross Income Eligibility Limits for Home Energy Assistance:

Household Size	Monthly Allowable Gross Income Limit
1	$ 748
2	1003
3	1258
4	1513
5	1768
6	2023
7	2278
8	2533
9	2788
10	3043
Each Additional Member	+255

10:89-3.1 Automatic payments to certain households

(a) Recipient households:

1. Certain households eligible for and receiving AFDC or non-public assistance (NPA) Food Stamps (FS) will receive automatic payments based on the information regarding income, household size, heating arrangement and fuel type contained in computer records maintained by the Division of Economic Assistance. Where the household receives FS as a public assistance (PA) household and the PA/FS household is greater than the AFDC eligible unit, the automatic payment shall be based on the PA/FS household size. This information will be collected from the head of the household at each application, reapplication or recertification for AFDC or FS and will be updated whenever the household reports a change. However, once a household becomes eligible for automatic payments, the entitlement cannot be adjusted.

i. (No change.)

ii. The entitlement will be paid in two installments to households found eligible for automatic payments prior to December 31. New cases found eligible after December 31 shall receive the entitlement in a single payment through March.

iii. (No change.)

2.-3. (No change.)

10:89-3.2 Special energy assistance

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

(c) No special assistance shall be authorized to households residing in publicly operated housing or receiving a rent subsidy, unless the household can demonstrate that it has direct responsibility for payment of its heating costs.

(d)-(f) (No change.)

10:89-3.4 Emergency energy assistance

(a) Emergency energy assistance is available to HEA eligible households and is subject to the following conditions:

1.-7. (No change.)

8. Emergency energy assistance will be authorized only during the months of December, January, February, March, and April.

(b)-(g) (No change.)

10:81-4.1 Opportunity and decision to apply

(a) Any individual(s) who believes he or she or his or her household is eligible for HEA must be given the opportunity to apply without delay. Heating assistance applications shall be accepted from November 1 through March 31 of each year. Cooling assistance applications shall be accepted from November 1 through May 31 of each year. Applicants will be informed about eligibility requirements and their rights and obligations in applying for and receiving assistance. The decision to apply rests with the applicant. The applicant has the right to withdraw the application before eligibility or ineligibility has been determined. Upon completion of the application process, the application shall be transmitted to DEA in accordance with (e) below.

1. (No change.)

(b) (No change.)

(c) Households desiring HEA assistance must complete a separate Form EP-1, Home Energy Assistance Application. The application must be completed and signed at sites designated by the CWA of the county in which the household resides. The application shall be signed by the household member responsible for payment of heating or cooling costs or by his or her authorized representative and by the CWA worker and supervisor.

1. Households consisting of persons who are 60 years of age or over, or persons who are disabled, may mail the application to the CWA. Other households may apply by mail at the discretion of the CWA.

2.-5. (No change.)

(d)-(j) (No change.)

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INSURANCE

(a)

DIVISION OF PROPERTY AND LIABILITY

Cancellation and Nonrenewal of Commercial Insurance Policies

Prohibition of Certain Cancellation and Nonrenewal Activity

Duration

Adopted Repeals: N.J.A.C. 11:1-20.12 and 22.4

Proposed: April 16, 1990 at 22 N.J.R. 1225(b).
Adopted: May 25, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: May 25, 1990 as R.1990 d.321, **without change.**

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14(a)1, 2 and 3, 17:29A-1 et seq., 17:29AA-1 et seq., 17:29B-4 and 17:29C-1 et seq.

Effective Date: June 18, 1990.

Summary of Public Comments and Agency Responses:
COMMENT: The Professional Insurance Agents of New Jersey (PIANJ) supports the proposed rulemaking, believing that commercial insurance continues to need monitoring and regulation concerning cancellation and nonrenewal of policies.
COMMENT: The New Jersey Association of Mutual Insurance Companies opposes the repeal of the sunset provisions and states that the commercial market "has now returned to one of active competition."
RESPONSE: The Department has received, and continues to receive, a substantial number of complaints concerning the cancellation and nonrenewal of commercial policies. In the Department's opinion, without the current rules, the commercial consumer would be unprotected against abuses by certain insurers. While the Department agrees that the commercial cycle varies, the instant rules may be necessary during both "tight" and unrestrained market periods, and form part of a sound regulatory policy.

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Reflectorized Registration Plates

Adopted New Rule: N.J.A.C. 13:20-40.1

Proposed: April 16, 1990 at 22 N.J.R. 1230(b).
Adopted: May 30, 1990 by Col. Clinton L. Pagano, Director, Division of Motor Vehicles.
Filed: May 30, 1990 as R.1990 d.322, **without change.**

Authority: P.L. 1989, c.202, §2 (N.J.S.A. 39:3-33.9).

Effective Date: June 18, 1990.
Expiration Date: December 18, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

SUBCHAPTER 40. REFLECTORIZED REGISTRATION PLATES

13:20-40.1 Additional annual fee
For purposes of P.L. 1989, c.202, §2, in addition to an annual motor vehicle registration fee, the Division of Motor Vehicles shall charge an additional annual fee of $0.40.

(c)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ARCHITECTS
LANDSCAPE ARCHITECT EXAMINATION AND EVALUATION COMMITTEE

Education and/or Experience Requirements for Certificate

Adopted Amendment: N.J.A.C. 13:27-8.6

Proposed: February 5, 1990 at 22 N.J.R. 325(a).
Adopted: May 10, 1990 by the Board of Architects, Frank H. Radey, Jr., Commissioner.
Filed: May 18, 1990 as R.1990 d.312, **without change.**

Authority: N.J.S.A. 45:3-3.

Effective Date: June 18, 1990.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:27-8.6 Education and/or experience requirements for certificate
(a) Each applicant for examination or certification as a landscape architect shall provide the committee with evidence satisfactory to it that:
1. The applicant is the holder of a bachelor's or higher degree in landscape architecture from a college or university having a landscape architecture curriculum approved by the committee; and
2. The applicant has engaged in landscape architectural work satisfactory to the committee to an extent that his or her combined college study and practical experience total at least six years, four years of which must be college study with three years in a landscape architecture curriculum and two years of which must be practical landscape architecture experience approved by the committee. The practical landscape architecture experience shall be obtained subsequent to completion of the educational requirements.
(b)-(c) (No change.)

(d)

DIVISION OF CONSUMER AFFAIRS
BOARD OF ACCOUNTANCY

New Jersey State Board of Accountancy Rules

Readoption: N.J.A.C. 13:29

Proposed: April 2, 1990 at 22 N.J.R. 1042(a).
Adopted: May 17, 1990 by the Board of Accountancy, Milton Brown, President.
Filed: May 23, 1990 as R.1990 d.314, **without change.**

Authority: N.J.S.A. 45:2B-6(g) and 45:2B-17.

Effective Date: May 23, 1990.
Expiration Date: May 23, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:29.

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(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF DENTISTRY

Electronic Claims Processing

Adopted Amendment: N.J.A.C. 13:30-8.12.

Proposed: January 16, 1990 at 22 N.J.R. 153(a).
Adopted: April 17, 1990 by the New Jersey Board of Dentistry, Samuel Furman, D.D.S., President.
Filed: May 18, 1990 and R.1990 d.311, **without change.**
Authority: N.J.S.A. 45:6-3.
Effective Date: June 18, 1990.
Expiration Date: March 12, 1995.

The Board of Dentistry afforded all interested parties an opportunity to comment on the reproposed amendment, N.J.A.C. 13:30-8.12, relating to dental insurance claim forms. The official comment period ended on February 15, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on January 16, 1990 at 22 N.J.R. 153(a). Announcements were also forwarded to the Star-Ledger, Trenton Times, Asbury Park Press, Courier Post, and Bergen Record, newspapers of general circulation, New Jersey Dental Hygiene Association, New Jersey Department of Health and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting William Gutman, Executive Director, Board of Dentistry, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One comment to the reproposal was received during the official 30-day comment period. Duane, Morris & Heckscher, attorneys for Oracare Dental Health Centers and Dental Images, a multi-dentist practice operating in selected counties in southern New Jersey, raised several objections to the reproposed amendment. A summary of these comments, together with the Board's responses, follows.

COMMENT: The Board lacks authority to promulgate this regulation. N.J.S.A. 45:6-3 authorizes the Board to adopt rules only for its own government and for the examination of candidates for licensure; it does not permit the Board to propose or adopt regulations affecting dental insurance forms.

RESPONSE: N.J.S.A. 45:6-3 provides the Board with the inherent authority to govern all aspects of dentistry under the Board's jurisdiction, including the disciplining of dentists. In addition, pursuant to N.J.S.A. 52:17B-119, the Board has the statutory duty to protect the public welfare. Because it has received many insurance fraud complaints, it has the authority to promulgate regulations enabling the Board to investigate and prosecute these complaints and to discipline dentists who do not properly complete claim forms. Further authority for the Board's rulemaking is found at N.J.S.A. 45:6-19.4 which provides that the Board shall adopt rules to carry out the provisions of The Dental Practice Act.

COMMENT: The proposed amendment is unnecessary. The existing provisions establish that it is professional misconduct for a dentist to submit an inaccurate or deceptive claim form; the proposed additional requirement of an actual signature would not ensure any more responsible conduct. Further, the civil penalties to which a licensee would be exposed under the proposed amendment seem harshly inappropriate for a failure simply to sign a claim form.

RESPONSE: This amendment was originally proposed because the Board found many instances of dentists attempting to avoid the consequences of the existing rule by claiming that since they had not prepared the claim form they were unaware it was inaccurate or deceptive. The amended rule, which permits an employee to prepare the form but requires the dentist, by signing, to take full responsibility for its accuracy, will eliminate this pattern of deception. The civil penalties are not merely for failure to sign the claim form but for the dentist's failure, by not signing, to take full responsibility for its accuracy. The Board believes the proposed amendment and the civil penalties for failure to comply are reasonable and necessary in order to maintain the high standards of professional practice that protect the consumer.

COMMENT: The proposed amendment provides no apparent benefit to third party payors; the requirements of the proposed amendment can be imposed by third party payors if they so choose.

RESPONSE: This comment is based on the erroneous assumption that the proposed amendment is intended to protect third party payors. The amendment is intended to protect the citizens of the State of New Jersey from fraudulent and unprofessional conduct.

COMMENT: The proposed amendment unfairly discriminates against multi-dentist, multi-location practices: It is not economical for a highly paid professional to devote additional time to preparing and reviewing claim forms. In addition, many dentists are employed part-time and may not be available when the claim form is being prepared, resulting in delayed claim form submissions.

RESPONSE: As stated, the Board believes this amendment is a reasonable response to the many complaints it has received of insurance fraud. Any adverse impact upon multi-dentist, multi-location practices is outweighed by the protection the amendment is intended to provide.

Full text of the adoption follows.

13:30-8.12 Dental insurance forms; professional misconduct

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

(d) All submissions to a third party payor, including, but not limited to, predetermination forms, claim forms, bills, or governmental assistance forms, shall be manually signed by the patient's treating dentist. The form may be completed by an employee for the signature of the treating dentist, but the treating dentist shall be responsible for the accuracy of all information contained on the form. In the event the patient is treated by more than one dentist in a multi-dentist practice, the duty to verify the accuracy of the information on the form and to manually sign the form shall be that of the designated dentist of record pursuant to N.J.A.C. 13:30-8.17.

(e) Subparagraph (d) above notwithstanding, a treating dentist need not manually sign individual claim forms if the respective third party payors have agreed in writing to an electronic method for claims submission. In that case, the treating dentist (or the dentist of record if one is so designated pursuant to N.J.A.C. 13:30-8.17) shall review and manually sign a written confirmation of the accuracy of the claim data no less frequently than every three months. The dentist shall keep copies of such written confirmations on file for a period of seven years.

(f) Any dentist who verifies claim data pursuant to (e) above is responsible for all of the claim data submitted as if it were submitted and a form manually signed on an individual claim basis.

(b)

DIVISION OF CONSUMER AFFAIRS BUREAU OF EMPLOYMENT AND PERSONNEL SERVICES

Fees

Adopted New Rule: N.J.A.C. 13:45B-6.1

Proposed: March 19, 1990 at 22 N.J.R. 906(a).
Adopted: May 18, 1990 by Patricia A. Royer, Director, Division of Consumer Affairs.
Filed: May 25, 1990 as R.1990 d.317, **without change.**
Authority: P.L. 1989, c.331; N.J.S.A. 56:8-1.1.
Effective Date: June 18, 1990.
Expiration Date: April 17, 1994.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed new rule, N.J.A.C. 13:45B-6.1, relating to the Bureau of Employment and Personnel Services fee schedule. The official comment period ended on April 18, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 19, 1990 at 22 N.J.R. 906(a). Announcements were also forwarded to the Star Ledger, the Trenton Times, the Mid-Atlantic Association of Personnel Consultants, the Association of Human Resource Consultants, the New Jersey Association of Personnel Consultants, New Jersey Home Health Services and Staffing, Inc., the Association for Temporary Services of New Jersey, the New Jersey Career Counselor Association, the Home Health Agency Assembly of New Jersey, Inc., and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting Charles Tantum, Chief, Bureau of Employment and Personnel

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Services, Room 518, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

One letter was received, from Ernest Bivona, CPC, immediate past president of the New Jersey Association of Personnel Consultants. Mr. Bivona made the following three comments:

COMMENT: Regulations should not interfere with the business of consulting and temporary service firms, inasmuch as the primary purpose of these firms is to fulfill company (business/client) needs and secondarily fit an interested individual (consumer) into that need. The client is the only entity with a financial relationship to the consulting and temporary service firms.

RESPONSE: In enacting the Bureau of Employment and Personnel Services (BEPS) Act, the Legislature has determined that there is a legitimate State interest in regulating all consulting and temporary service firms, regardless of the nature of the recipient of their services. It may also be noted that such agencies as the Board of Accountancy, the Board of Professional Engineers and Land Surveyors, and the Board of Professional Planners all regulate relationships between business clients and suppliers of services to business clients, in addition to relationships between individuals and practitioners.

As with all rulemaking, the Bureau's intent in proposing the fee schedule is to fulfill its statutory duty to implement and clarify an Act of the Legislature. No regulation can be proposed without appropriate authoritative basis.

As for temporary help service firms, whether independent or operated by a consulting firm, the BEPS Act does not exempt them from complying with N.J.S.A. 56:8-1 et seq. and rules promulgated pursuant to that law. A consulting firm operating a temporary help service firm must meet the same requirements as a free-standing provider of temporary help.

COMMENT: The law states that the fees should only be sufficient to fund the new Bureau, not the State's budget deficit. Also, the fees for those groups which require more intensive regulation and administration should be at the higher rate and those who do not, at a lower rate.

RESPONSE: The administrative cost to the Bureau of registering and regulating consulting firms is the same overall as the cost for licensing and regulating employment agencies, because included in the cost is the expense for enforcement of the statute and ensuing rules, such as the maintenance of records, the prosecution of unregistered or unlicensed firms, and investigatory time to verify compliance or as necessitated by consumer complaints. However, it should be noted that licensed firms do in fact pay more than registrants, to cover additional services. For example, licensed firms pay extra amounts for each agent licensed, agent transfers, law abstracts, and licensure examinations.

COMMENT: Commingled temporary service firms should not pay two full registrations.

RESPONSE: The Bureau presently charges only one fee to commingled firms.

Full text of the adoption follows.

SUBCHAPTER 6. FEES

13:45B-6.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	$250.00
Consulting firm annual registration	$250.00
Career consulting or outplacement firm annual registration	$250.00
Temporary help service firm annual registration, primary location	$250.00
Temporary help service firm, permit for operation of each other location	$10.00
Agent's annual license	$25.00
Agent's conditional license	$25.00
Transfer of agent's license	$10.00
Agent-registrants	$25.00
Fee for abstract of law	$5.00

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Notice of Administrative Correction
Speed Limits
Route N.J. 57 in Warren County
N.J.A.C. 16:28-1.38

Take notice that the Department of Transportation, upon review of its proposed amendment N.J.A.C. 16:28-1.38 concerning speed limits along Route N.J. 57 in Mansfield Township, Warren County, discovered an error wherein the street named "Water Street" should have been "Waters Road." The proposed amendment appeared in the March 5, 1990 New Jersey Register at 22 N.J.R. 787(a) and was adopted in the May 7, 1990 Register at 22 N.J.R. 1378(c). This notice of administrative correction is published pursuant to the provisions of N.J.A.C. 1:30-2.7.

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

16:28-1.38 Route 57

(a) The rate of speed designated for the certain part of State highway Route 57 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xi. (No change.)

xii. In Mansfield Township, Warren County:

(1) (No change.)

(2) Zone 12A: 45 miles per hour between 300 feet west of Komar Road and 1200 feet west of [Water Street] **Waters Road** (mileposts 13.80 to 15.53); thence

(3) Zone 12B: 50 miles per hour between 1200 feet west of [Water Street] **Waters Road** and Brantwood Terrace mileposts 15.53 to 18.93); thence

(4)-(5) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limit
Routes N.J. 172 and 171 in Middlesex County
Adopted Amendments: N.J.A.C. 16:28-1.80 and 1.86

Proposed: April 16, 1990 at 22 N.J.R. 1239(a).

Adopted: May 17, 1990, John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 30, 1990 as R.1990 d.297, **without change.**

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

Effective Date: June 18, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

16:28-1.80 Route 172

(a) The rate of speed designated for the certain part of State highway Route 172 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In the City of New Brunswick, Middlesex County:

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(1) 25 miles per hour between Commercial Avenue and Route N.J. 18 (Mileposts 0.00 to 0.81).

16:28-1.86 Route 171

(a) The rate of speed designated for the certain part of State highway Route 171 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In North Brunswick Township, Middlesex County:

(1) 35 miles per hour between Routes U.S. 1-U.S. 130 and the City of New Brunswick-Township of North Brunswick corporate line (milepost 0.00 to 1.00).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 30 in Camden County and N.J. 47 in Gloucester County

Adopted Amendments: N.J.A.C. 16:28A-1.21 and 1.33

Proposed: April 16, 1990 at 22 N.J.R. 1239(b).

Adopted: May 17, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 30, 1990 as R.1990 d.298, **without change.**

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

Effective Date: June 18, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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

(a) The certain parts of State highway Route U.S. 30 described in this subsection shall be designed and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1. (No change.)

2. No stopping or standing in the Borough of Berlin, Camden County:

i. Along both sides:

(1) From the Lindenwold Borough-Berlin Borough corporate line to the westerly curb line of Harker Avenue;

(2) From the easterly curb line of East Taunton Avenue to the Berlin Borough-Waterford Township corporate line.

ii. Westbound on the north side:

(1) From the easterly curb line of East Broad Street to a point 140 feet easterly therefrom.

3.-6. (No change.)

(b) (No change.)

16:28A-1.33 Route N.J. 47

(a) The certain parts of State highway Route 47 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times.

1.-2. (No change.)

3. No stopping or standing in Franklin Township, Gloucester County:

i.-iii. (No change.)

iv. Along both sides:

(1) Beginning at the southerly curb line of New Street to the southerly curb line of Marshall Mill Drive.

4.-10. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Time Limit Parking

Route N.J. 35 in Monmouth County

Adopted Amendment: N.J.A.C. 16:28A-1.25

Proposed: April 16, 1990 at 22 N.J.R. 1240(a).

Adopted: May 17, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 30, 1990 as R.1990 d.299, **without change.**

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

Effective Date: June 18, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.25 Route 35

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

(e) The certain parts of State highway Route 35 described in this subsection shall be designated and established as "time limit 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 time limit parking zones:

1. (No change.)

2. In the Borough of Red Bank, Monmouth County:

i. Two-hour time limit parking 8:00 A.M. to 6:00 P.M. daily:

(1) Along both sides:

(A) Maple Avenue—From Bergen Place to White Street.

(2) Along the northbound (westerly) side:

(A) Maple Avenue—From Water Street to West Front Street.

(3) Along the northbound (easterly) side:

(A) Riverside Avenue—From a point 35 feet north of the northerly curb line of Allen Place to a point 217 feet northerly therefrom.

(c)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Route U.S. 9W in Bergen County

Adopted Amendment: N.J.A.C. 16:28A-1.61

Proposed: April 16, 1990 at 22 N.J.R. 1241(a).

Adopted: May 17, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 30, 1990 as R.1990 d.300, **without change.**

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

Effective Date: June 18, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.61 Route U.S. 9W

(a) The certain parts of State highway U.S. 9W described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance

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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.-5. (No change in text.)

6. Within Alpine Borough, Bergen County:

i. Along the easterly (northbound) side:

(1) Far side bus stops:

(A) Hillside Avenue—Beginning at the prolongation of the northerly curb line of Hillside Avenue and extending 120 feet northerly therefrom;

(B) Montammy Road—Beginning at the prolongation of the northerly curb line on Montammy Road and extending 120 feet southerly therefrom.

(2) Near side bus stops:

(A) Closter Dock Road—Beginning at the prolongation of the southerly curb line of Closter Dock Road and extending 120 feet southerly therefrom;

(B) The Esplanade—Beginning at the prolongation of the southerly curb line of the Esplanade and extending 120 feet southerly therefrom;

(C) Glen Goin Drive—Beginning at the prolongation of the southerly curb line of Glen Goin Drive extending 120 feet southerly therefrom;

(D) Lamont Observatory—Beginning at the southerly curb line of the Lamont Observatory entrance and extending 120 feet southerly therefrom.

(3) Mid-block bus stops:

(A) Closter Dock Road—Beginning 579 feet north of the prolongation of the northerly curb line of Closter Dock Road and extending 135 feet northerly therefrom.

(B) Timberline Drive—Beginning 150 feet north of the prolongation of the northerly curb line of Timberline Drive extending 135 feet northerly therefrom.

ii. Along the westerly (southbound) side:

(1) Far side bus stops:

(A) Lamont Observatory—Beginning at the prolongation of the southerly curb line of the entrance to Lamont Observatory and extending 120 feet southerly therefrom;

(B) Montammy Road—Beginning at the southerly curb line of Montammy Road extending 120 feet therefrom;

(C) Closter Dock Road—Beginning at the southerly curb line of Closter Dock Road and extending 135 feet northerly therefrom.

(2) Near side bus stops:

(A) The Esplanade—Rio Vista Estate—Beginning at the northerly curb line of the Esplanade and extending 120 feet northerly therefrom;

(B) Timberline Drive—Beginning at the northerly curb line of Timberline Drive and extending 120 feet northerly therefrom;

(C) Glen Goin Drive—Beginning at the northerly curb line of Glen Goin Drive and extending 120 feet northerly therefrom;

(D) Hillside Avenue—Beginning at the northerly curb line of Hillside Avenue and extending 120 feet northerly therefrom;

(3) Mid-block bus stops:

(A) Closter Dock Road—Beginning 714 feet north of the northerly curb line of Closter Dock Road and extending 135 feet northerly therefrom;

7.-8. (No change.)

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Mid-block Crosswalk

Route N.J. 49 in Cumberland County

Adopted New Rule: N.J.A.C. 16:30-10.11

Proposed: April 16, 1990 at 22 N.J.R. 1242(a).

Adopted: May 17, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: May 28, 1990 as R.1990 d.301, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-34.

Effective Date: June 18, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-10.11 Route 49

(a) The certain parts of State highway Route N.J. 49 described in this subsection shall be designated as a mid-block crosswalk.

(1) In Fairfield Township, Cumberland County:

(a) From a point 2195 feet east of Gouldtown-Woodruff Road (Co. Rd. 553) to a point 10 feet easterly therefrom (approximate milepost 28.416).

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL

Corporate Obligations—Legal for Savings Banks Pension and Annuity Group; Static Group; Trust Group

Adopted Amendment: N.J.A.C. 17:16-7.2

Proposed: April 2, 1990 at 22 N.J.R. 1042(b).

Adopted: May 15, 1990 by the State Investment Council, Roland M. Machold, Director, Division of Investment.

Filed: May 16, 1990 as R.1990 d.304, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: June 18, 1990.

Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:16-7.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity or trust group fund in corporate obligations provided that:

1.-3. (No change.)

4. The obligor has a stockholders' equity, (consisting of the sum of equity accounts, capital surplus and earned surplus) of at least $50 million; and furthermore the long term debt ratio (defined as the ratio of long term debt to the sum of stockholders' equity and long term debt) of the obligor shall be less than 60 percent, except that in the case of telephone utilities the debt ratio shall be less than 60 percent.

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(a)

STATE INVESTMENT COUNCIL

Mortgage Backed Securities—Private Passthrough

Adopted Repeal and New Rules: N.J.A.C. 17:16-43

Proposed: April 2, 1990 at 22 N.J.R. 1043(a).
Adopted: May 15, 1990 by the State Investment Council,
Roland M. Machold, Director, Division of Investment.
Filed: May 16, 1990 as R.1990 d.305, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: June 18, 1990.
Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 43. MORTGAGE BACKED SECURITIES—PRIVATE PASSTHROUGH

17:16-43.1 Permissible investments
The Director may invest and reinvest the moneys of any fund in senior debt securities which are fully collateralized by mortgage securities. Not more than 25 percent of any one issue, which must be $50 million or more in size, may be purchased at the time of issue, except that this requirement may be waived by the State Investment Council.

17:16-43.2 Pension and annuity group; static group; trust group
(a) The Director may invest or reinvest the moneys of any pension and annuity or trust group fund in mortgage backed passthrough securities provided that:
1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;
2. The sponsor is incorporated under the laws of the United States or any state thereof, or of the District of Columbia;
3. The sponsor is not in default as to the payment of principal or interest upon any of its outstanding obligations;
4. The individual mortgage loans serving as collateral have an average loan-to-value ratio of 75 percent or less; the collateral is at least 90 percent single-family detached residential property and at least 95 percent owner-occupied residential property; and
5. The issue has a credit rating of Aa or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available.

17:16-43.3 Legal papers
Prior to any commitment to purchase obligations of the type described in this article, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this subchapter.

(b)

STATE INVESTMENT COUNCIL

U.S. Treasury Futures Contracts

Adopted New Rules: N.J.A.C. 17:16-50

Proposed: April 2, 1990 at 22 N.J.R. 1043(b).
Adopted: May 15, 1990 by the State Investment Council,
Roland M. Machold, Director, Division of Investment.
Filed: May 16, 1990 as R.1990 d.306, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: June 18, 1990.
Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 50. U.S. TREASURY FUTURES CONTRACTS

17:16-50.1 Definition of U.S. Treasury Futures Contract
As used in this subchapter, a "U.S. Treasury Futures Contract" is a legal agreement between a buyer and a seller in which the seller agrees to deliver and the buyer agrees to take delivery of a specified quantity of Treasury securities at a specified price (futures price) at a stated time in the future (delivery date). Prices are determined by competitive bids on the floor of the Chicago Board of Exchange. The terms of the contract are standardized and the Chicago Board of Exchange Clearinghouse takes the opposite side to each cleared transaction.

17:16-50.2 Permissible investments
(a) Subject to the limitations contained in this subchapter, the Director may purchase and sell U.S. Treasury Futures Contracts for the purpose of hedging U.S. Treasury Securities held in Common Pension Fund B.
(b) Any U.S. Treasury Futures Contract purchased or sold shall be listed on the Chicago Board of Trade.
(c) The Director may deliver U.S. Treasury Securities to satisfy contractual obligations pursuant to the Division of Investment's purchase and sale of U.S. Treasury Futures Contracts.

17:16-50.3 Limitations
(a) Net purchases of U.S. Treasury Futures Contracts shall not exceed the amount equal to 10 percent of the book value of Common Pension Fund B's underlying U.S. Treasury Bond holdings.
(b) Only Primary Government Securities Dealers may be used for executing transactions in U.S. Treasury Futures Contracts.

(c)

STATE INVESTMENT COUNCIL

Covered Put Options

Adopted New Rules: N.J.A.C. 17:16-52

Proposed: April 2, 1990 at 22 N.J.R. 1044(b).
Adopted: May 15, 1990 by the State Investment Council,
Roland M. Machold, Director, Division of Investment.
Filed: May 16, 1990 as R.1990 d.307, **without change.**

Authority: N.J.S.A. 52:18A-91.

Effective Date: June 18, 1990.
Expiration Date: December 2, 1990.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 52. COVERED PUT OPTIONS

17:16-52.1 Definition of covered put options
As used in this subchapter, "covered put options" means puts for common stocks held in the pertinent portfolio.

17:16-52.2 Permissible transactions
(a) Puts may be purchased only for stocks held in the pertinent portfolio.
(b) Any put purchased or sold shall be listed on the Chicago Board Option Exchange, the American Stock Exchange, the Philadelphia Stock Exchange or the Pacific Stock Exchange.

17:15-52.3 Applicable funds
(a) The following funds are applicable for the purchase of puts:
1. Common Pension Fund A; and
2. The Supplemental Annuity Collective Trust.

17:16-52.4 Limitations
Purchases of covered put options shall not exceed 10 percent of any one common stock holding, except in the case of holdings subject to divestment under the provisions of P.L. 1985, c.308 (N.J.S.A. 52:18A-89.1 through 89.3).

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TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Corporation Business Tax
Estimated Tax
Adopted Admendment: N.J.A.C. 18:7-3.13

Proposed: April 2, 1990 at 22 N.J.R. 1045(a).
Adopted: May 15, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.
Filed: May 15, 1990 as R.1990, d.296, **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. 54:10A-27.
Effective Date: June 18, 1990.
Expiration Date: March 14, 1994.

Summary of Public Comments and Agency Responses:
The proposed amendment was published on April 2, 1990. During the comment period the Division received one comment from a professional organization which supported the change in the rule. The amendment will clearly set forth the Division's policy on the application of overpayments to the following year's tax return.

Summary of Changes Between Proposal and Adoption:
In the course of adopting the amendment, the Division added one substantive change not detrimental to the public by specifying that it is the CBT-100 which is the return referred to in the rule.

Full text of the adoption follows (additions to proposal shown in boldface with asterisks ***thus***).

18:7-3.13 Estimated tax
(a)-(e) (No change.)
(f) Any amount overpaid and appearing on the face of the return ***CBT-100*** for the immediate preceding year may be applied in lieu of any payment of estimated tax otherwise due under this section where the taxpayer indicates on the face of such return that it elects to have such overpayment so applied. Such amount will be considered to be a payment of the first installment of the estimated tax for the next succeeding year unless the taxpayer designates otherwise on the face of the return for the year in which the overpayment was made.

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Making and Removal of Wagers; Approval of Minimum Wagers
Adopted Amendment: N.J.A.C. 19:47-1.3

Proposed: December 18, 1989 at 21 N.J.R. 3869(b).
Adopted: May 16, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.
Filed: May 17, 1990 as R.1990 d.310, **without change.**
Authority: N.J.S.A. 5:12-63(c), 5:12-69(c), 5:12-70(f) and 5:12-100(e).
Effective Date: June 18, 1990.
Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:
COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of the Sands Hotel and Casino, supports the proposed amendment to N.J.A.C. 19:47-1.3.
RESPONSE: Accepted.
COMMENT: Lisa Lavigna, Assistant Corporate Counsel of TropWorld Casino and Entertainment Resort, supports the proposed amendment to N.J.A.C. 19:47-1.3.
RESPONSE: Accepted.
COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:47-1.3.
RESPONSE: Accepted.

Full text of the adoption follows.

19:47-1.3 Making and removal of wagers; approval of minimum wagers
(a)-(c) (No change.)
(d) A Don't Come Bet and a Don't Pass Bet may be removed or reduced at any time but may not be replaced or increased after such removal or reduction.
(e)-(f) (No change.)

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PUBLIC NOTICES

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Notice of Effective Date of Model Code

Take notice that the 1990 edition of the BOCA National Energy Conservation Code is now available. The effective date for the use of this model code in New Jersey is hereby set at July 1, 1990, 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 Resolution
1990-91 Public Business Meetings and Public Hearing Sessions

RESOLUTION

WHEREAS, N.J.S.A. 18A:4-8 states that, "The state board shall hold public meetings at least once in each month at such times as its rules may prescribe and at such other times and such places within the state as in its judgment may be necessary, but no meeting may commence later than eight p.m., and

WHEREAS, N.J.A.C. 6:1-2.2 requires that regular meetings of the State Board of Education be held at such time, place, and on such dates as established by the state board, pursuant to N.J.S.A. 10:4-6 et seq., the Open Public Meetings Act and notice given to the public, now therefore be it,

RESOLVED, that the State Board of Education establishes the following meeting dates for its monthly business meetings and public hearings for the school year 1990-1991, and directs that a copy of the calendar be sent to the Governor and the Secretary of State for posting and to the news media for publication.

PUBLIC BUSINESS MEETINGS 1990-1991:

July 5 (Thurs.)	January 9
August 1	February 6
September 5	March 6
October 3	April 3
November 7	May 1
December 5	June 5

The state board will convene these meetings at 9:00 a.m. and, when necessary, adjourn immediately to executive session. No later than 10:00 a.m. the board will reconvene the public session. The sites of these meetings will be advertised at a later date. Information on meeting sites may be obtained by calling (609) 292-0739.

PUBLIC HEARING SESSIONS 1990-1991:

June 20	January 23
July 18	February 20
August 15	March 21 (Thurs.)
September 18 (Tues.)	April 17*
October 24*	May 15
November 19 (Mon.)	June 19
December 18 (Tues.)	

*Open Topic Sessions

MEMBERS OF THE PUBLIC MAY RESERVE TIME TO SPEAK AT THESE SESSIONS BY CALLING THE STATE BOARD OF EDUCATION OFFICE BY NOON ON THE FRIDAY BEFORE THE PUBLIC HEARING SESSION AT (609) 292-0739.

Notice of changes in the above will be made in compliance with the requirements of the Open Public Meetings Act.

ENVIRONMENTAL PROTECTION

(c)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Action on Petition for Rulemaking concerning Requirements for Hazardous Waste Storage Facilities
N.J.A.C. 7:26-9.2(b)1 and 2, and 7:26-9.3(b)8

Petitioner: Pharmacaps, Inc.
Authority: N.J.S.A. 13:1E-6(a)2; N.J.S.A. 52:14B-4(f).

Take notice that on April 9, 1990, the Department of Environmental Protection ("Department") received a petition from Pharmacaps, Inc. requesting amendments to N.J.A.C. 7:26-9.2(b)1 and 2 and N.J.A.C. 7:26-9.3(b)8, concerning storage tank requirements for liquid hazardous waste and the time period for storage of liquid hazardous waste in underground tanks.

A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on April 23, 1990 and appeared in the May 21, 1990 New Jersey Register at 22 N.J.R. 1632(d).

Specifically, the petitioner is requesting an amendment to N.J.A.C. 7:26-9.2(b)1 and 2 to allow the installation of a new underground storage tank for the purpose of containing a liquid hazardous waste, provided that such tank is double-walled and complies in all respects with the technical requirements of the proposed Underground Storage Tank regulations, N.J.A.C. 7:14B-1 et seq. (see 21 N.J.R. 2242(a), August 7, 1989). The petitioner also requests that the Department amend N.J.A.C. 7:26-9.3(b)8 to allow the storage of hazardous wastes for 90 days or less in an underground tank provided that such tank complies with the technical requirements of the proposed Underground Storage Tank requirements at N.J.A.C. 7:14B-1 et seq. N.J.A.C. 7:26-9.3(b)8 effectively prohibits the usage of underground storage tanks due to its requirement for visual inspection of the outside of the tank.

The Department would like to deliberate further on the suggestions raised by the petitioner. The technical requirements for the underground storage tank program, proposed on August 7, 1989, have not yet been adopted. Since the petitioner's recommendation must be considered in light of the rules, when adopted, it would be premature to grant or deny the petition at this time. Therefore, the Department will retain the petition pending the adoption of the technical rules for underground storage tanks. Once adopted, the Department will be in a position to evaluate the petitioner's request. The Department will deliberate on the petition and take action on it by October 30, 1990.

A copy of the notice of action has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Montague Township. That document allows for a new wastewater treatment plant, discharging to the Delaware River, to serve the existing and proposed development of the High Point Country Club. The WMP delineates the sewer service area of the proposed High Point Country Club treatment plant. The proposed wastewater flow from this service area is 720,000 gallons per day. The WMP also delineates the on-site groundwater disposal system service areas and individual subsurface sewage disposal system service areas within the Township.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information

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dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Water Resource Management Program, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Sussex County Board of Chosen Freeholders will hold a **public meeting** on the proposed Sussex County WQM Plan amendment. The public meeting will be held on Tuesday, June 26, 1990 at 7:30 P.M. in the Freeholder meeting room, County Administration Building, Plotts Road, Newton, New Jersey. **Interested persons** may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice or until 15 days following the public meeting, whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP therafter may approve and adopt this amendment without further notice.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan

Public Notice

Take notice that on March 19, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (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 adopts a Wastewater Management Plan for Lafayette Township. That document allows for the expansion of the Lafayette Township Elementary School wastewater treatment facility and inclusion of this facility in the on-site groundwater disposal system service area. The rest of the Township is designated as an individual subsurface sewage disposal system service area.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan

Public Notice

Take notice that on May 11, 1990 pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Northeast Water Quality Management (WQM) Plan was adopted by the Department. This amendment will incorporate Wanaque Borough's Wastewater Management Plan (WMP) into the Northeast WQM Plan. The WMP allows for an expansion of the Wanaque Valley Regional Sewerage Authority (WVRSA) Sewage Treatment Plant from 0.70 million gallons per day (mgd) to a projected wastewater flow of 1.566 mgd and establishes a sewer service area for that facility.

This amendment was noticed in the N.J. Register on February 21, 1989 and March 5, 1990. Comments on this amendment were received during the first public comment period, and are summarized below with the Department's response.

COMMENT: Concern was expressed regarding the impacts to environmentally constrained areas from the proposed Powder Hollow development and the cursory treatment that the WMP gives to the environmental constraints associated with the proposed expansion of the WVRSA treatment plant.

RESPONSE: Impacts to environmentally constrained areas, such as wetlands and floodplains, are not intended to be addressed in the WMP but through the permit process. The WMP is required to show appropriate wastewater treatment based on zoning. Therefore, the proposed Powder Hollow development, which is proposed to be developed for industrial use in an area zoned Industrial Research, is included in the future sewer service area of the WVRSA treatment plant.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that on March 9, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment adopts a Wastewater Management Plan (WMP) for Allamuchy Township (Township). The WMP addresses the expansion of the Pequest Sewer Company's sewer service area. A portion of the Township will be served by the Hackettstown Municipal Utilities Authority (HMUA) wastewater treatment facility. A portion of the Township is to be served by on-site groundwater disposal systems. The remainder of the Township will be served by individual on-site disposal systems.

Comments on this amendment were received during the public comment period, and are summarized below with the Department's response.

COMMENT: One commenter suggested that the area to be serviced by the HMUA be expanded to include more properties in the southeast corner of the Township, particularly properties along Route 517.

RESPONSE: The WMP identifies commercially and industrially zoned properties in the area of concern as being serviced by the Pequest Sewer Company or by on-site groundwater disposal systems. Large lot residential areas do not mandate the use of centralized sewerage systems and should be capable of utilizing individual on-site septic systems if properly designed and constructed. The majority of the area of concern is State owned Green Acres land, which would be inappropriate to designate for centralized sewerage facilities. Thus, the WMP has sufficiently addressed the wastewater management needs of this area based on the present zoning of these areas. In addition, the present WMP merely identifies the HMUA sewer service area which was previously approved in the HMUA WMP adopted in February 1988.

If, in the future, Allamuchy Township and the HMUA agree to expand the HMUA sewer service area further into Allamuchy Township an amendment to change the Allamuchy Township WMP may be proposed.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would transfer an 8-acre parcel of land bounded by Route 55, Wheaton Avenue, Doris Avenue and the Boulevard from the Landis Sewerage Authority service area in the City of Vineland to the City of Millville Sewer Utility service area.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

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Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Bordentown Township sewer service area to include a portion of the proposed Clifton Mills (Phase I) Subdivision, which is located in Bordentown Township, Block 93, Lot 1.01.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on February 16, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment adopts the expansion of the Evesham Township (Kings Grant Sewage Treatment Plant) sewer service area located in Burlington County. This area was mapped as part of the Kings Grant Service Area, but was not included in the Evesham Township Wastewater Management Plan (WMP). This amendment includes this area in the Evesham Township WMP.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Cape May County Water Quality Management Plan

Public Notice

Take notice that Cape May County has submitted for approval an amendment to the Cape May County Water Quality Management (WQM) Plan. This amendment would adopt a Wastewater Management Plan (WMP) for Middle Township. The WMP delineates existing sewered areas and proposed sewer service areas with treatment at either the Lower Township Sewage Treatment Plant or the Wildwood/Lower Regional Wastewater Treatment Plant, both are Cape May County Municipal Utilities Authority facilities. The remainder of the municipality is designated as a ground water discharge area utilizing on-site ground water disposal facilities for uses permitted under current zoning and individual subsurface systems. Existing and proposed on-site ground water disposal facilities are mapped.

This notice is being given to inform the public that a plan amendment has been proposed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment is located at the Cape May County Planning Board, Cape May Court House, New Jersey 08210, and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, Third Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Mr. Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested person may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 30 days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

HUMAN SERVICES

(d)

OFFICE OF CHILD CARE DEVELOPMENT

Notice of Available Grant Funds

School-Age Child Care—Planning, Development, Training

Title of Grant: Federal Dependent Care Grant

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Child Care Development, hereby announces the availability of the following grant program funds.

A. Name of Program: School-Age Child Care.

B. Purpose: To provide funding for the planning, development, establishment, expansion or improvement of school-age child care services as defined by the Human Services Reauthorization Act of September 1986 (P.L. 99-425, Sec. 670; (c)(7)).

C. Amount of Money in the Program: Approximately $85,000.

D. Organizations which may apply for funding under this program: Schools, private, non-profit organization(s), public agencies that provide or plan to provide non-sectarian school-age child care. (Note: all applicant agencies must provide or plan to provide non-sectarian school-age child care.)

E. Qualifications needed by an applicant to be considered for funding: Must have an established history of developing and/or providing school-age child care or child care services to children and families.

F. Procedure for eligible organizations to apply: All eligible organizations interested in applying should contact the project coordinator, Steven

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K. Rosen, at (609) 292-2404, and request that an application be sent to them.

G. Address to which applications must be submitted:

Department of Human Services
Office of Child Care Development
222 South Warren Street
CN 700
Trenton, New Jersey 08625
Attn: Steven K. Rosen

H. Deadline by which applications must be submitted: July 20, 1990.

I. Date by which applicant shall be notified of approval or disapproval: August 17, 1990.

TRANSPORTATION

(a)

DIVISION OF SYSTEMS PLANNING

Bureau of Access and Development Impact Analysis
Administrative Order Number 2
Transportation Development District
Hunterdon County

Take notice that on April 19, 1990, under the provisions of the New Jersey Transportation Development District Act of 1989, P.L. 1989 c.100 (N.J.S.A. 27:1C), Thomas M. Downs, Commissioner of Transportation, **ordered** that the I-78 and Route 22 Corridor in portions of Readington and Tewksbury Townships located in Hunterdon County is approved and designated as a Transportation Development District, and delineated its boundaries as set forth in the following text:

Hunterdon County submitted an application for the creation of a Transportation Development District in portions of Readington and Tewksbury Townships. The Transportation Development District (TDD) encompasses a high growth area, as evidenced by projected local traffic growth generated from new development in excess of 50 percent in a five-year period. The creation of the District establishes a public/private partnership for the funding of transportation improvements necessitated by the development and growth within the District. The Department has an official map of the designated Transportation Development District.

Hunterdon TDD Boundaries

The western boundary runs along the Readington/Tewksbury corporate line abutting Potterstown Road, crossing Route I-78 and Route 22 and continuing southerly along the Readington and Clinton Corporate line to the Lehigh Valley Railroad, including all properties to the east within Readington Township.

The southern boundary continues eastward along the northern right of way of the Lehigh Valley Railroad to the intersection of the Lehigh Valley Railroad and the Readington/Branchburg Corporate line. All properties north of the Lehigh Valley Railroad are included in the district.

The eastern boundary continues northward along the western right of way line of County Line Road, including parcels to the west of County Line Road to Route 22 and then continues north along the Readington/Branchburg Corporate line to the Lamington River. The eastern boundary proceeds northward along the west bank of the Lamington River including all parcels west of the Lamington River to the north of County Route 523 (Lamington Road). The eastern boundary continues along the Lamington River and along the Cold Brook about 3,000 feet. The District includes properties abutting both sides of Cold Brook Road from approximately 500 feet south of the intersection of Vlietown Road and Cold Brook Road.

The northern boundary runs along the northernmost property lines of Block 43, Lot 4; Block 42, Lot 4; and Block 42, Lot 5; then proceeds westerly to Joliet Road and continues around the property lines of Block 42, Lot 9.02 to County Road 523 and extends westerly to Oldwick Road, including parcels of both sides on Oldwick Road.

The northern boundary extends to the west beyond the intersection of County Route 523 and Oldwick Road approximately 1,200 feet and proceeds south along the rear property lines of those parcels abutting Rockaway Road. The boundary continues westerly to the Readington/Tewksbury corporate line near Potterstown Road.

The Department of Transportation has an official designated Transportation Development District map supplementing this written description with the boundaries delineated.

The County shall initiate the Joint Planning Process, as stated in N.J.S.A. 27:1C-5, to develop the Transportation Development District Plan.

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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 May 7, 1990 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.1990 d.1 means the first rule adopted in 1990.

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 APRIL 16, 1990

NEXT UPDATE: SUPPLEMENT MAY 21, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989	22 N.J.R. 1409 and 1648	May 21, 1990
21 N.J.R. 3585 and 3688	November 20, 1989	22 N.J.R. 1649 and 1806	June 4, 1990
21 N.J.R. 3689 and 3812	December 4, 1989	22 N.J.R. 1807 and 1964	June 18, 1990
21 N.J.R. 3813 and 3986	December 18, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:1-14.10	Interlocutory review of ALJ ruling	22 N.J.R. 590(a)	R.1990 d.219	22 N.J.R. 1353(a)
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:6A-4.2, 9.1	Scheduling of special education hearing	22 N.J.R. 1295(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)	R.1990 d.220	22 N.J.R. 1353(b)
	Most recent update to Title 1: TRANSMITTAL 1990-2 (supplement March 19, 1990)			
AGRICULTURE—TITLE 2				
2:52	Milk processors, dealers and subdealers	22 N.J.R. 888(a)	R.1990 d.271	22 N.J.R. 1553(a)
2:52-6, 7	Milk supply and sale	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:53-3, 4, 6, 7	Milk supply and sale	Emergency (expires 6-24-90)	R.1990 d.252	22 N.J.R. 1629(a)
2:69-1.11	Commercial values of primary plant nutrients	22 N.J.R. 1295(b)		
2:70-1	Classification of liming materials	22 N.J.R. 1411(a)		
2:71-2.2–2.6	Jersey Fresh Quality Grading Program	22 N.J.R. 1296(a)		
2:71-2.28, 2.29, 2.31	Fruits and vegetables: fees for inspection and grading	22 N.J.R. 1242(c)	R.1990 d.318	22 N.J.R. 1914(a)
2:76-6.2, 6.5, 6.6, 6.9–6.12, 6.15–6.17	Farmland preservation program	22 N.J.R. 1244(a)		
2:90	State Soil Conservation Committee rules	22 N.J.R. 1299(a)		
	Most recent update to Title 2: TRANSMITTAL 1990-3 (supplement April 16, 1990)			
BANKING—TITLE 3				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:2	Advertising by financial institutions	22 N.J.R. 690(b)	R.1990 d.236	22 N.J.R. 1353(c)
3:16-2.3	Pawnbrokers' sales of unredeemed pledges at public auction	22 N.J.R. 1015(a)	R.1990 d.302	22 N.J.R. 1914(b)
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:41-7.4	Temporary storage of human remains by cemetery company	22 N.J.R. 1185(a)		
	Most recent update to Title 3: TRANSMITTAL 1990-2 (supplement February 20, 1990)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
PERSONNEL—TITLE 4A				
4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)	R.1990 d.308	22 N.J.R. 1915(a)
4A:4-6.5	Psychological disqualification proceeding	22 N.J.R. 1300(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)		
4A:8-2.4	Family leave	22 N.J.R. 1300(b)		
	Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
COMMUNITY AFFAIRS—TITLE 5				
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)	R.1990 d.230	22 N.J.R. 1354(a)
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:19-4.3	Continuing care retirement communities: administrative correction	_____	_____	22 N.J.R. 1117(b)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)	R.1990 d.227	22 N.J.R. 1355(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12–4.15, 4.21, 4.22, 4.24–4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Hazard Subcode	21 N.J.R. 3696(a)	R.1990 d.226	22 N.J.R. 1356(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14–3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(b)	R.1990 d.253	22 N.J.R. 1554(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2–7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55–7.57, 7.61, 7.67, 7.68, 7.71–7.73, 7.75, 7.76, 7.80–7.82, 7.87, 7.94–7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-7.3, 7.50, 7.116	Barrier Free Subcode: administrative corrections	_____	_____	22 N.J.R. 1355(b)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:23-9.5	Uniform Construction Code: records retention by code office	22 N.J.R. 1455(a)		
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)		
5:25	New home warranties and builders' registration	22 N.J.R. 1701(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:26	Planned real estate development full disclosure	22 N.J.R. 1702(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)	R.1990 d.275	22 N.J.R. 1720(a)
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)	R.1990 d.274	22 N.J.R. 1720(b)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)	R.1990 d.282	22 N.J.R. 1720(c)
5:80	Housing and Mortgage Finance Agency	22 N.J.R. 277(b)	R.1990 d.248	22 N.J.R. 1556(a)
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)	R.1990 d.247	22 N.J.R. 1556(b)
5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)	R.1990 d.246	22 N.J.R. 1557(a)
5:91-1.2, 4.5, 6.2, 7.1–7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)	R.1990 d.254	22 N.J.R. 1557(b)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)	R.1990 d.316	22 N.J.R. 1926(a)
	Most recent update to Title 5: TRANSMITTAL 1990-4 (supplement April 16, 1990)			
MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A				
5A:2	Military leave for public employee members of National Guard	22 N.J.R. 1185(b)	R.1990 d.309	22 N.J.R. 1935(a)
	Most recent update to Title 5A: TRANSMITTAL 1990-1 (supplement April 16, 1990)			
EDUCATION—TITLE 6				
6:3-2.1, 2.2, 2.5–2.8	Pupil records	22 N.J.R. 1302(a)		
6:20	School business services	22 N.J.R. 1246(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)		
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)	R.1990 d.237	22 N.J.R. 1359(a)
6:28-1.1, 1.3, 1.4, 2.1, 2.3, 2.5–2.9, 3.3–3.7, 3.9, 4.1, 4.2, 4.4–4.8, 5.1, 5.2, 6.1–6.5, 7.1, 7.4, 8.1, 8.4–8.6, 9.2, 10.1, 11.5, 11.6, 11.11, 11.12	Special education	22 N.J.R. 1412(a)		
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)		
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)		
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)	R.1990 d.235	22 N.J.R. 1359(b)
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7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
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7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)	R.1990 d.292	22 N.J.R. 1743(a)
7:6-3.13, 4.9	Boating and water skiing on Budd Lake	Emergency (expires 6-29-90)	R.1990 d.269	22 N.J.R. 1631(a)
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
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7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)	R.1990 d.293	22 N.J.R. 1756(a)
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.1, 2.1, 3.2, 4.1, 4.2	Shellfish growing water classification	22 N.J.R. 1304(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)	R.1990 d.320	22 N.J.R. 1937(b)
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)	R.1990 d.319	22 N.J.R. 1937(a)
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)	R.1990 d.260	22 N.J.R. 1565(a)
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7:26-3A.8	Medical waste generator fees	22 N.J.R. 1478(a)		
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7:26-6.5	Interdistrict and intradistrict solid waste flow: Camden, Gloucester, Essex and Sussex counties	22 N.J.R. 284(a)		
7:26-7.2, 7.4, 8.1, 8.5, 8.7, 8.13, 8.20	Hazardous waste management: waste code hierarchy; waste determination; waste oils listing; container labeling	22 N.J.R. 288(a)		
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7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)	R.1990 d.259	22 N.J.R. 1558(a)
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7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)		
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7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
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8:40	Invalid coach and ambulance services	22 N.J.R. 595(a)	R.1990 d.239	22 N.J.R. 1364(a)
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8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
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8:57-2	Reporting of AIDS and HIV infection	21 N.J.R. 3905(a)	R.1990 d.244	22 N.J.R. 1592(a)
8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)	R.1990 d.245	22 N.J.R. 1595(a)
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)	R.1990 d.242	22 N.J.R. 1596(a)
8:60	Asbestos training courses	22 N.J.R. 736(a)	R.1990 d.278	22 N.J.R. 1773(a)

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8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a), 22 N.J.R. 214(b), 1137(a))	21 N.J.R. 1790(a)	R.1990 d.263	22 N.J.R. 1598(a)
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b))	21 N.J.R. 3292(a)	R.1990 d.264	22 N.J.R. 1597(a)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
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8:71	Interchangeable drug products	22 N.J.R. 1214(b)		
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9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		
9:14	Independent College and University Assistance Act rules	22 N.J.R. 116(a)	R.1990 d.234	22 N.J.R. 1364(b)

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10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)		
10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)		
10:82-5.10	Emergency Assistance: administrative correction	_____	_____	22 N.J.R. 1938(b)
10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34–2.38, 3.1, 3.6–3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31	Food Stamp Program administration	22 N.J.R. 139(a)	R.1990 d.270	22 N.J.R. 1599(a)
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10:89	Home Energy Assistance	22 N.J.R. 599(a)	R.1990 d.315	22 N.J.R. 1939(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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10:121	Adoption of children	21 N.J.R. 3047(b)		
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10:123	Social services program for individuals and families	22 N.J.R. 1520(a)		
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10:123-1	Financial eligibility for services through Social Services Block Grant program: extension of comment period	22 N.J.R. 310(b)		
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)	R.1990 d.277	22 N.J.R. 1724(c)
10:125	Youth and Family Services capital funding program: reopening of public comment period	22 N.J.R. 766(b)		
10:126A	Family day care standards	22 N.J.R. 13(a)	R.1990 d.223	22 N.J.R. 1377(b)
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)		
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)		

Most recent update to Title 10: TRANSMITTAL 1990-4 (supplement April 16, 1990)

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10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)		
10A:9-4.6	Reduced custody consideration: administrative correction	_____	_____	22 N.J.R. 1378(a)
10A:16-5.2, 5.5, 5.6, 5.7	Medical and health services: guardianship of an adult inmate	22 N.J.R. 1322(a)		
10A:16-11	Special Medical Units	22 N.J.R. 310(c)	R.1990 d.249	22 N.J.R. 1606(a)
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
10A:18-2.7	Inspection of outgoing correspondence	21 N.J.R. 3913(a)		
10A:22-2.6	Release of confidential inmate or parolee records	22 N.J.R. 898(a)	R.1990 d.284	22 N.J.R. 1725(a)
10A:71-1.3, 3.2, 3.21, 7.18	Parole Board rules	22 N.J.R. 899(a)	R.1990 d.257	22 N.J.R. 1609(a)

Most recent update to Title 10A: TRANSMITTAL 1990-4 (supplement April 16, 1990)

INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-20.12, 22.4	Cancellation and nonrenewal of commercial policies	22 N.J.R. 1225(b)	R.1990 d.321	22 N.J.R. 1940(a)
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2	Insurance group rules	22 N.J.R. 1673(a)		
11:2-17.7	Automobile coverage: payment of PIP claims	22 N.J.R. 1677(a)		
11:2-24	High-risk investments by domestic insurers	21 N.J.R. 3245(a)		
11:2-25	Insurer tie-ins	21 N.J.R. 3053(a)		
11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
11:2-28	Credit for property/casualty reinsurance	21 N.J.R. 3625(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
11:2-29	Orderly withdrawal of insurance business	21 N.J.R. 3622(a)		
11:2-29	Orderly withdrawal of insurance business: extension of comment period	22 N.J.R. 15(c)		
11:2-30	Product liability risk retention groups and purchasing groups	21 N.J.R. 3618(a)		
11:2-31	Premiums for perpetual homeowners insurance	22 N.J.R. 601(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-7.2, 7.4, 7.5, 14.2, 14.5, 15.1, 15.2, 15.3, 15.5, 15.6, 15.7, 15.9	Automobile Coverage Selection Form and Buyer's Guide	22 N.J.R. 1681(a)		
11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)		
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)		
11:3-31.5, App.	Private passenger automobile insurers: annual Financial Data Report	22 N.J.R. 1026(a)	R.1990 d.290	22 N.J.R. 1725(b)
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)	Expired	
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-35	Annual Medicare supplement coverage survey	22 N.J.R. 1226(a)		
11:5-1.25	Repeal (see 11:5-6)	22 N.J.R. 1421(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)		
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)		
11:10	Hospital/medical-dental services	22 N.J.R. 1691(a)		
11:13-6	Commercial insurance: rating plans for individual risk premium modification	21 N.J.R. 3430(a)		
11:13-7	Commercial lines policy forms	21 N.J.R. 3057(a)		
11:13-7	Commerical lines policy forms: extension of comment period	21 N.J.R. 3422(a)		
11:15-1.2, 2.2, 2.3, 2.4, 2.6, 2.9, 2.10, 2.23	Joint insurance funds for local jurisdictions	22 N.J.R. 16(a)		

Most recent update to Title 11: TRANSMITTAL 1990-4 (supplement April 16, 1990)

LABOR—TITLE 12

12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)		
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)		
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)		
12:45-1	Vocational Rehabilitation Services: procedures and standards	22 N.J.R. 1045(c)		
12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
12:46–12:49	Repeal (see 12:45-1)	22 N.J.R. 1045(c)		
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)	R.1990 d.258	22 N.J.R. 1610(a)
12:120	Asbestos training courses	22 N.J.R. 736(a)	R.1990 d.278	22 N.J.R. 1773(a)
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		

Most recent update to Title 12: TRANSMITTAL 1990-3 (supplement April 16, 1990)

COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A

12A:31-1	Development Authority for Small Businesses, Minorities' and Women's Enterprises: micro-loan program	22 N.J.R. 608(a)
12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)
12A:31-3	Development Authority: direct loans	22 N.J.R. 612(a)
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)

Most recent update to Title 12A: TRANSMITTAL 1990-1 (supplement April 16, 1990)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
LAW AND PUBLIC SAFETY—TITLE 13				
13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)		
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)		
13:13	Discrimination on the basis of handicap	22 N.J.R. 1436(a)		
13:18-1, 3-9, 11	Motor Vehicles: oversize and overwidth vehicles; Motor Fuels Use Tax; connecting devices; insurance termination; Bus Excise Tax; overhangs; uninsured motorists; Division organization	22 N.J.R. 614(a)	R.1990 d.225	22 N.J.R. 1378(b)
13:20-40.1	Motor vehicle registration: reflectorized plates fee	22 N.J.R. 1230(b)	R.1990 d.322	22 N.J.R. 1940(b)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:21-16	Motor vehicle counterpart fees	22 N.J.R. 1325(a)		
13:24-1.1, 2.3, 2.8, 4.1, 5.5	Equipment for emergency and other specified vehicles	22 N.J.R. 902(a)		
13:27-5.5, 5.6	Architecture pre-examination requirements	22 N.J.R. 1326(a)		
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)	R.1990 d.312	22 N.J.R. 1940(c)
13:29	Board of Accountancy rules	22 N.J.R. 1042(a)	R.1990 d.314	22 N.J.R. 1940(d)
13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)		
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)	R.1990 d.311	22 N.J.R. 1941(a)
13:32-1.2, 1.7, 1.8, 1.10, 1.11, 1.12	Licensed master plumbers: standards and practices	22 N.J.R. 784(a)		
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)	R.1990 d.291	22 N.J.R. 1738(a)
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)		
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)	R.1990 d.273	22 N.J.R. 1614(a)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)	R.1990 d.240	22 N.J.R. 1616(a)
13:40-5.1	Preparation of land surveys	21 N.J.R. 3715(a)		
13:40-5.1	Preparation of land surveys: extension of comment period	22 N.J.R. 157(a)		
13:41	Board of Professional Planners rules	22 N.J.R. 1438(b)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)	R.1990 d.279	22 N.J.R. 1739(a)
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)	R.1990 d.272	22 N.J.R. 1615(a)
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45A-21.4	Kosher poultry identification	22 N.J.R. 1439(a)		
13:45B-6.1	Private employment agencies and personnel services firms: license, registration, and other fees	22 N.J.R. 906(a)	R.1990 d.317	22 N.J.R. 1941(b)
13:46	Boxing, wrestling and sparring events	22 N.J.R. 1231(a)		
13:47A-10	Registration of securities	21 N.J.R. 2903(a)	R.1990 d.241	22 N.J.R. 1617(a)
13:47D	Repeal (see 13:47K)	22 N.J.R. 1440(a)		
13:47K	Weights and measures: packaged commodities	22 N.J.R. 1440(a)		
13:70-1.30	Thoroughbred racing: annual contribution to horsemen's pension program	22 N.J.R. 1232(a)		
13:70-1.30	Thoroughbred racing: "horseman" defined	22 N.J.R. 1232(b)		
13:70-3.41	Thoroughbred racing: employee compensation insurance	22 N.J.R. 1716(a)		
13:70-14A.9	Thoroughbred racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	22 N.J.R. 1716(b)		
13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-6.1	Harness racing: employee compensation insurance	22 N.J.R. 1717(a)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
13:71-23.8	Harness racing: administering medication to respiratory bleeders	22 N.J.R. 1718(a)		
13:80-1	Solid and hazardous waste information awards	21 N.J.R. 2911(a)		
13:81	Statewide 9-1-1 emergency telecommunication system	22 N.J.R. 1234(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
PUBLIC UTILITIES—TITLE 14				
14:0	Telecommunications for deaf: pre-proposal concerning Statewide 24-hour dual party relay center	21 N.J.R. 1653(a)		
14:0	Energy conservation: preproposal and public hearing	22 N.J.R. 1692(a)		
14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3	All utilities	22 N.J.R. 1112(a)		
14:3	All utilities: public hearing	22 N.J.R. 1330(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-4.11	Meter tampering: extension of comment period	22 N.J.R. 327(b)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9	Water and sewer utilities	22 N.J.R. 907(a)		
14:9	Sewer and water utilities: public hearing	22 N.J.R. 1330(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television	22 N.J.R. 1330(b)		
	Most recent update to Title 14: TRANSMITTAL 1990-2 (supplement March 19, 1990)			
ENERGY—TITLE 14A				
14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		
	Most recent update to Title 14A: TRANSMITTAL 1990-1 (supplement January 16, 1990)			
STATE—TITLE 15				
	Most recent update to Title 15: TRANSMITTAL 1989-1 (supplement February 21, 1989)			
PUBLIC ADVOCATE—TITLE 15A				
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		
15A:2-1.2	Petitions for rulemaking: extension of comment period	22 N.J.R. 1694(a)		
	Most recent update to Title 15A: TRANSMITTAL 1990-2 (supplement April 16, 1990)			
TRANSPORTATION—TITLE 16				
16:28-1.10, 1.38, 1.42	Speed limit zones along U.S. 46 in Independence Township, Route 57 in Mansfield Township, and Route 152 in Somers Point and Egg Harbor	22 N.J.R. 787(a)	R.1990 d.231	22 N.J.R. 1378(c)
16:28-1.20, 1.37, 1.81, 1.105	Speed limit zones along U.S. 322, Routes 182, 49, and 284	22 N.J.R. 1340(a)		
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)	R.1990 d.232	22 N.J.R. 1379(a)
16:28-1.38	Speed limit zones along Route 57 in Mansfield Township: administrative correction	———	———	22 N.J.R. 1942(a)
16:28-1.41, 1.55, 1.69, 1.132	Speed limit zones along U.S. 9 in Cape May County, Route 54 in Atlantic County, U.S. 130 in Camden County, and Route 47 in Cumberland, Gloucester and Camden counties	22 N.J.R. 1694(b)		
16:28-1.55, 1.104, 1.119	Speed limit zones along Routes 54 in Atlantic County, 26 in Middlesex County, and 83 in Cape May County	22 N.J.R. 1060(a)	R.1990 d.285	22 N.J.R. 1739(b)
16:28-1.57	Speed limit zones along U.S. 30 in Atlantic County	22 N.J.R. 788(b)	R.1990 d.233	22 N.J.R. 1379(b)
16:28-1.57	Speed limit zones along U.S. 30 in Camden County	22 N.J.R. 1343(a)		
16:28-1.80, 1.86	Speed limit zones along Routes 172 and 171 in Middlesex County	22 N.J.R. 1239(a)	R.1990 d.297	22 N.J.R. 1942(b)
16:28-1.94	Speed limit zones along Route 10 in Morris and Essex counties	22 N.J.R. 1697(a)		
16:28A-1.21, 1.33	No stopping or standing zones along U.S. 30 in Berlin and Route 47 in Franklin Township	22 N.J.R. 1239(b)	R.1990 d.298	22 N.J.R. 1943(a)
16:28A-1.25	Restricted parking along Route 35 in Red Bank	22 N.J.R. 1240(a)	R.1990 d.299	22 N.J.R. 1943(b)
16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, 1.62	Restricted parking and stopping along Routes 35 in Red Bank, U.S. 40 in Franklin Township, 49 in Salem, 77 in Harrison Township, U.S. 130 in Pennsauken and Delran, 168 in Gloucester Township, and 12 in Flemington and Kingwood	22 N.J.R. 913(a)	R.1990 d.251	22 N.J.R. 1625(a)
16:28A-1.33	Restricted stopping along Route 47 in Dennis Township	22 N.J.R. 1536(a)		
16:28A-1.55	Time limit parking along U.S. 202 in Bernardsville	22 N.J.R. 1536(b)		
16:28A-1.61	Bus stop zones along U.S. 9W in Alpine	22 N.J.R. 1241(a)	R.1990 d.300	22 N.J.R. 1943(c)
16:30-3.6	Shoulder lane usage along U.S. 1 in West Windsor and Plainsboro	22 N.J.R. 1345(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
16:30-10.11	Midblock crosswalk along Route 49 in Fairfield Township	22 N.J.R. 1242(a)	R.1990 d.301	22 N.J.R. 1944(a)
16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: preproposal	22 N.J.R. 157(b)		
16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
16:41B	Newspaper boxes on State highways	22 N.J.R. 1346(a)		
16:43	Junkyards adjacent to State highway systems	22 N.J.R. 1061(a)	R.1990 d.286	22 N.J.R. 1740(a)
16:47	State Highway Access Management Code	22 N.J.R. 1061(b)		
16:47	State Highway Access Management Code: public hearings	22 N.J.R. 1346(b)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1347(a)		
16:47	State Highway Access Management Code: extension of comment period	22 N.J.R. 1699(a)		

Most recent update to Title 16: TRANSMITTAL 1990-4 (supplement April 16, 1990)

TREASURY-GENERAL—TITLE 17

17:1-1.19, 1.21, 1.22, 1.23, 1.24	Pensioners' Group Health Insurance Plan	22 N.J.R. 1347(b)		
17:1-12.7	Police and Firemen's Retirement System: entry age limit and transfers	22 N.J.R. 1454(a)		
17:2-3.2, 6.24	Public Employees' Retirement System: computation of final compensation	22 N.J.R. 1348(a)		
17:3-6.16	Teachers' Pension and Annuity Fund: mandatory retirement	22 N.J.R. 329(a)	R.1990 d.283	22 N.J.R. 1740(b)
17:4	Police and Firemen's Retirement System	22 N.J.R. 908(a)		
17:4-1.1	Board meetings, Police and Firemen's Retirement System	22 N.J.R. 909(a)		
17:5-5.5	State Police Retirement System: outstanding loans at retirement	22 N.J.R. 1348(b)		
17:16-7.2	State pension fund investments: corporate obligations	22 N.J.R. 1042(b)	R.1990 d.304	22 N.J.R. 1944(b)
17:16-27.1	State funds investment: certificates of deposit	22 N.J.R. 1349(a)		
17:16-43	State pension fund investments: mortgage-backed passthrough securities	22 N.J.R. 1043(a)	R.1990 d.305	22 N.J.R. 1945(a)
17:16-50	State pension fund investments: U.S. Treasury futures	22 N.J.R. 1043(b)	R.1990 d.306	22 N.J.R. 1945(b)
17:16-51	State pension fund investments: guaranteed income contracts	22 N.J.R. 1044(a)		
17:16-52	State pension fund investments: use of covered put options	22 N.J.R. 1044(b)	R.1990 d.307	22 N.J.R. 1945(c)
17:32-3, 4	Municipal and county cross-acceptance of State Development and Redevelopment Plan	22 N.J.R. 621(c)		

Most recent update to Title 17: TRANSMITTAL 1990-3 (supplement April 16, 1990)

TREASURY-TAXATION—TITLE 18

18:1-1.3–1.8	Division of Taxation: procedures and operations	22 N.J.R. 159(a)	R.1990 d.288	22 N.J.R. 1740(c)
18:1-2	Division of Taxation: petitions for rules	22 N.J.R. 160(a)	R.1990 d.287	22 N.J.R. 1742(a)
18:7-3.13	Corporation Business Tax: application of overpayment to estimated tax	22 N.J.R. 1045(a)	R.1990 d.296	22 N.J.R. 1946(a)
18:7-3.18	Corporation Business Tax: recycling equipment credit	22 N.J.R. 789(a)		
18:12A-1.14	Local property tax revaluation and reassessment	22 N.J.R. 1350(a)		
18:21-1	Automobile insurance premium surtax	22 N.J.R. 1351(a)		

Most recent update to Title 18: TRANSMITTAL 1990-2 (supplement March 19, 1990)

TITLE 19—OTHER AGENCIES

19:4-6.28	Hackensack Meadowlands Development Commission: rezone sites in Ridgefield	22 N.J.R. 1699(b)		
19:16-5.7	Public Employment Relations Commission: interest arbitration	22 N.J.R. 330(a)	R.1990 d.221	22 N.J.R. 1380(a)
19:18	Contested transfer determinations	22 N.J.R. 790(a)	R.1990 d.255	22 N.J.R. 1626(a)
19:25-1.7, 7.8	Election Law Enforcement Commission: personal interest disclosure statement	22 N.J.R. 331(a)		
19:25-1.7, 7.8	Personal interest disclosure statement: public hearing	22 N.J.R. 1242(b)		
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19:46-1.18	Automatic shuffling device and reuse of vinyl playing cards: 90-day implementation	Expired 6-10-90	_____	22 N.J.R. 841(b)
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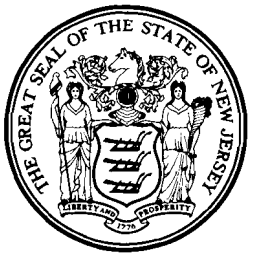

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