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NEW JERSEY REGISTER

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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 18
September 17, 1990 Indexed 22 N.J.R. 2861-3072
(Includes adopted rules filed through August 24, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JULY 16, 1990
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT AUGUST 20, 1990

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Interested persons may submit comments, information or arguments concerning any of the rule proposals in this issue until **October 17, 1990.** Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 12(1990)

Human Resource Development Institute
Issued: August 21, 1990.
Effective: August 21, 1990.
Expiration: Indefinite.

WHEREAS, New Jersey State Government is committed to improving its methods of administration and promoting efficiency and economy on its operations; and

WHEREAS, the Governor's Management Review Commission in cooperation with the New Jersey Department of Personnel has undertaken a comprehensive operational review of the State's employee training and education efforts; and

WHEREAS, the Governor's Management Review Commission's Subcommittee on Statewide Training Issues was formed and charged with the responsibility to conduct a comprehensive review of the State's training efforts and to recommend changes that would reduce costs while improving the quality, quantity and delivery of training; and

WHEREAS, the study concluded that training could be more effectively and equitably planned, managed and delivered to the State's employees through the consolidation of State training activities under a Human Resource Development Institute established in the Department of Personnel; and

WHEREAS, the Commissioner of Personnel is authorized by law to develop programs to improve the efficiency and effectiveness of the public service including, but not limited to, employee training, development, assistance and incentives; and

WHEREAS, the coordination of training and education programs for all State agencies through the establishment of a Human Resource Development Institute within the Department of Personnel will result in the most efficient use of the State's resources;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established within the Department of Personnel a Human Resource Development Institute. The Human Resource Development Institute shall be responsible for the overall administration, coordination and conduct of all agency generic and specific type training and education programs for all State employees, including the management of media and audio-visual operations, quality control, facilities and administrative support for such programs.

2. The Human Resource Development Institute is authorized to consolidate under its auspices the operational responsibilities of existing employee training and education programs and the media and audio-visual operations currently housed within all State agencies. The technical law enforcement training and education of the State Police and Corrections Officers shall remain a function of their respective agencies except that the Human Resource Development Institute shall exercise oversight responsibilities and establish guidelines and standards for the quantity and quality of such employee training, consultant usage and support services.

3. The Commissioner of Personnel is authorized to direct the orderly transfer of personnel, facilities and equipment of employee training and education programs and media and audio-visual operations from throughout the Executive Branch of State Government to the Human Resource Development Institute.

4. The Human Resource Development Institute may furnish training and education services to counties, municipalities, commissions, boards and other public entities upon request.

5. The Commissioner of Personnel shall organize the work of the Human Resource Development Institute in such units as he determines to be necessary for the efficient operation of the Institute and the effective training and education of State employees. In addition to the functions, powers and duties set forth herein, the Human Resource Development Institute shall exercise such other education and training functions as authorized by the Commissioner of Personnel.

6. Each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commissioner of Personnel and to make available to him such information, personnel and assistance as necessary to accomplish the purposes of this Order.

7. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 13(1990)

New Jersey-Atlantic City Coordinating Council
Issued: August 23, 1990.
Effective: August 23, 1990.
Expiration: Indefinite.

WHEREAS, the continued economic growth and revitalization of Atlantic City and its surrounding area are of critical importance to all of the citizens of the State of New Jersey; and

WHEREAS, the development of Atlantic City from a gaming center into a worldwide resort and convention center is fundamental to its continued economic growth and revitalization; and

WHEREAS, this further development of Atlantic City will require that major decisions be made concerning the construction of housing, public facilities and other infrastructure, transportation, the environmental impact of further development and the means of funding such further development, which decisions must carefully assess the City's, region's and State's needs; and

WHEREAS, there exist many municipal, regional and State entities that have an impact on Atlantic City and its environs and that can and must participate in the decision making and implementation process; and

WHEREAS, the major decisions concerning the growth and revitalization of Atlantic City and the region must be made in the context of a unified and coordinated effort, and

WHEREAS, the establishment of a Coordinating Council with a broad-based representation will ensure that the development occurs in a thoughtful and cohesive manner;

NOW, THEREFORE, I, JAMES J. FLORIO, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. There is hereby established the New Jersey-Atlantic City Coordinating Council. The Council shall provide the leadership necessary to develop Atlantic City into a resort, tourism and convention center while simultaneously providing for residents' housing needs and preserving existing neighborhoods. The Council shall ensure the coordination and cooperation between and among the State, regional and municipal agencies engaged in development activities in and around Atlantic City.

2. The Council shall be headed by the Commissioner of the Department of Commerce, Energy and Economic Development and the Mayor of Atlantic City who shall serve as its co-chairpersons. The membership of the Council shall also include the chairpersons of the Casino Reinvestment Development Authority, the Casino Control Commission, the Atlantic County Improvement Authority, the Atlantic County Transportation Authority, the Atlantic County Convention Hall Authority and the Small, Women, and Minority Business Authority, the Commissioners of Transportation and Environmental Protection, the County Executive of Atlantic County and the Director of the Governor's Authorities Unit.

3. The co-chairpersons of the Council may appoint business representatives and any other appropriate local representatives to be members of the Council.

4. The Council shall identify development priorities for Atlantic City and Atlantic County. It shall review the City-Wide Study conducted by the Casino Reinvestment Development Authority, the plans of Atlantic County Improvement Authority for a convention hall and housing development and the plans of the Atlantic City Housing Authority, the Corridor Development Team and Atlantic County Transportation Authority. The process shall also include discussions with the business community to identify its concerns, priorities and suggested solutions to investment and development issues.

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5. Particular emphasis shall be placed on the following development projects:

a. Atlantic City International Airport;

b. Transportation improvements;

c. Continued housing development in the Northeast Inlet;

d. Preservation of existing neighborhoods;

e. Revitalization of Atlantic Avenue and the development of other commercial areas; and

f. Construction of a convention center at the foot of the Atlantic City Expressway.

6. The co-chairpersons of the Council shall communicate with private developers, investors and banks to encourage appropriate investment and development in Atlantic City and the surrounding areas.

7. The Commissioner of the Department of Commerce, Energy and Economic Development shall inquire of any State department to identify sources of financial assistance applicable to Atlantic City development projects with the purpose of committing those funds toward priority projects.

8. To the extent not inconsistent with law, each department, office, division or agency of this State is hereby directed to cooperate with the Council, and upon request of the Council to furnish such information and assistance as is necessary to accomplish the purposes of this Order.

9. This Order shall take effect immediately and shall supersede any prior Executive Order with which it is inconsistent.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF ADMINISTRATION

Departmental Administration and Organization Rules of Practice

Proposed New Rules: N.J.A.C. 2:1

Authorized By: State Board of Agriculture and
Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Authority: N.J.S.A. 52:14B-3(1) and (2) and 52:14B-4(b).
Proposal Number: PRN 1990-446.

Submit comments by October 17, 1990 to:
John J. Gallagher, Director
Division of Administration
N.J. Department of Agriculture
CN-330
Trenton, New Jersey 08625
Telephone: (609) 292-6931

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:1 expired on September 3, 1990. Due to this expiration, and in accordance with N.J.A.C. 1:30-4.4(g), the Department is proposing new rules at N.J.A.C. 2:1-2 and 3. As N.J.A.C. 2:1-1 is redundant to other rules, the Department is allowing its expiration to stand.

The expired rules at N.J.A.C. 2:1-2 contained the organization of the Department, as does proposed new N.J.A.C. 2:1-2, with differences to the expired rules reflecting changes in the Department's organization and functions. Numerous provisions of the Department's expired Rules of Practice, N.J.A.C. 2:1-3, are incorporated into proposed new N.J.A.C. 2:1-2, as relating to the Department's organization. Proposed N.J.A.C. 2:1-3.3 sets forth the procedure to petition the Department for a rule. Information may be obtained from the Department under proposed N.J.A.C. 2:1-3.6. Public records and copies thereof may be obtained pursuant to proposed N.J.A.C. 2:1-3.7, which also provides that the Department will charge the costs of expedited delivery of copies, and that telefacsimile transmittal of copies is available for $5.00 per page.

Social Impact

The social impact of the proposed new rules will be beneficial. The rules will provide the public a clearer understanding of the Department, its organization, function and structure. This understanding may lead to greater public participation.

Economic Impact

The Department sees little economic impact from the proposed new rules either to the Department or the general public since the rules simply detail departmental organization, structure and practice. The rules impose fees for the rapid communication of information if such service is requested. The imposition of costs for these services is as a method of serving more people by conserving the taxpayers' funds by requiring those persons who demand more rapid communication of information to pay for them. The costs for transmittal by other means are consistent with the Right to Know Act, N.J.S.A. 47:1A-1 et seq.

Regulatory Flexibility Analysis

The Department believes almost all farmers in the State are small businesses under the definition of the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, et seq. The proposed new rules place no new requirements on the persons or businesses regulated by the rules. The Department notes that the bulk of the rules deal with internal procedures and processes of the Department which have a minimal impact on the public. The cost to the petitioner in the petition for rulemaking is only that involved in composing and filing the petition. The rules impose two fees for services requested by the Department. After review of the Department's records, it is apparent that the costs of supplying information in the past few years has skyrocketed due to the requests for faster transmittal of information, specifically overnight delivery and facsimile service. These costs, particularly when supplied as a voluntary service, impose upon the taxpayers of this State a needless burden that should best be born by the requestor of the service. The Department notes that delivery by regular postal service in this State is usually two to three days at most, and considerably less costly than the express services. Therefore, the Department feels that the reimbursement required is both realistic and equitable to the persons served by the Department.

Full text of the proposed new rules follows:

SUBCHAPTER 1. (RESERVED)

SUBCHAPTER 2. ORGANIZATION

2:1-2.1 Department responsibilities

The State Department of Agriculture is responsible for development, regulatory, service, promotion and information programs in support of agriculture and agribusiness and those natural and renewable resources associated with agriculture and open lands for the benefits of all citizens as prescribed in Titles 4, 5, 13, 24, 54 and other applicable titles in the New Jersey Statutes Annotated.

2:1-2.2 Tables of organization

Tables showing the organization of the Department and the major sections within each Division are appended to the end of this chapter.

2:1-2.3 Functions of departmental units

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

1. The State Board of Agriculture is the head of the Department and consists of eight farmers of the State engaged in the production of farm crops or livestock. The State Board of Agriculture, with the approval of the Governor, appoints the Secretary of Agriculture who serves as the principal executive officer of the Department and secretary to the Board. The Board has the authority to establish rules and regulations for its own proceedings and for the government, control and program performance of the Department.

2. The Office of the Secretary includes the Secretary of Agriculture, an Assistant Secretary and an Associate Secretary. It is responsible for the executive management policy development, legislative liaison, public information programs and rules for the Department and the State Board of Agriculture.

3. The Division of Administration provides personnel, budget, accounting, training and administrative support services to the Divisions.

4. The Division of Animal Health is responsible for programs for the prevention, control and eradication of livestock and poultry diseases affecting such livestock, livestock products, and human health.

5. The Division of Dairy Industry is responsible for fostering a stable and competitive dairy industry, including the regulation and enforcement of the production and distribution of fluid dairy products.

6. The Division of Markets provides market development services, market news, support for agricultural cooperatives, equine programs, product promotion, and distributes Federal donated food to schools, institutions and qualified individuals.

7. The Division of Plant Industry is responsible for programs to prevent, control and eradicate pests and diseases of plants and trees; conducts beneficial insect development and production, and provides seed certification and control.

8. The Division of Regulatory Services is responsible for the quality assurance of animal feeds, fertilizers, agricultural liming materials, agricultural product grading and inspection, and the regulation of credit buyers of perishable agricultural products.

9. The Division of Rural Resources provides programs and services to support farming, agricultural and rural development, soil and water conservation, agricultural statistics, farmland retention, and conducts studies on rural issues through the Rural Advisory Council.

10. Functions of units assigned to the State Department of Agriculture are as follows:

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i. The State Agriculture Development Committee is independent of, but allocated within the Department of Agriculture. It administers the Farmland Preservation Program which consists primarily of cooperative easement purchase programs with local government and a soil and water conservation cost-share program with landowners.

SUBCHAPTER 3. RULES OF PRACTICE

2:1-3.1 Purpose of rules of practice

The State Board of Agriculture and the New Jersey Department of Agriculture, in order to more fully represent and carry out their duties and functions, adopts this subchapter as its rules of practice.

2:1-3.2 Development of rules

(a) Rules shall be clear and concise to encourage the maximum amount of voluntary compliance by those who are regulated.

(b) Rules may be established by the Board for its own proceedings, for the governing and control of the Department, its programs, and the officers and employees of the Department.

(c) The Department shall provide the maximum amount of public participation in the review of existing or establishment of proposed rules.

2:1-3.3 Procedure to petition for a rule

(a) An interested person may petition for the promulgation, amendment or repeal of any rule of the Department of Agriculture. A petition shall be in writing, shall be legible and intelligible and shall be signed by the petitioner. Each petition shall contain the following information:

1. The full name and address of the petitioner;
2. The substance or nature of the rulemaking which is requested;
3. The reasons for the request; and
4. The statutory authority under which the Department of Agriculture may take the requested action.

(b) The Department of Agriculture shall immediately date stamp and log each document submitted as a petition. Upon filing, the Department of Agriculture shall forthwith publish the notice of petition for a rule in the New Jersey Register pursuant to the requirements of N.J.A.C. 1:30-3.6(a).

(c) No later than 30 days after receiving a petition, the Department of Agriculture shall mail to the petitioner and file for publication in the New Jersey Register, a notice of action on the petition which shall contain the information prescribed by N.J.A.C. 1:30-3.6(b). The notice of action shall include either:

1. A statement denying the petition;
2. A notice of proposed rule or a notice of pre-proposal for a rule for publication in the Register; or
3. A statement that the matter is being referred for further deliberations, the nature of which shall be specified and which shall conclude upon a date certain. The results of these further deliberations shall be mailed to the petitioner and shall be submitted for publication in the Register.

2:1-3.4 Hearings

(a) Any person who feels aggrieved by any action or inaction of the Department may request an informal meeting with the Department to settle any dispute, or seek clarification of the Department's rules and regulations. The Department shall respond, in writing, to any such request stating the reasons for its determination.

(b) If any dispute is required by law or regulation to be heard formally, or if the Department determines the matter a contested one, the matter shall be treated in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

2:1-3.5 Instructions for Departmental forms on file

A description and instructions for use of the forms used in carrying out the Department's responsibilities may be obtained from the Office of the Secretary, Department of Agriculture, Trenton, N.J. 08625.

2:1-3.6 Information available to public

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

(b) An annual report of all Department activities is made to the Governor and Legislature. Copies are available from the Public Information Office, N.J. Department of Agriculture, Trenton, N.J. 08625.

2:1-3.7 Public records; copies; fees

(a) All records which are required by law to be made, maintained, or kept on file shall be considered public records. This includes records of all public meetings of the New Jersey State Board of Agriculture and all other Boards, Committees or Councils of the Department. Such records are available for reasonable inspection, under supervision, during regular working hours at the main offices of the New Jersey Department of Agriculture, John Fitch Plaza, Trenton, New Jersey.

(b) Any person may obtain copies of public records by written request upon payment of a fee as follows:

1. First page to tenth page: $0.50 per page;
2. Eleventh page to 20th page: $0.25 per page;
3. All pages over 20: $0.10 per page.

(c) The Department may charge the costs of any delivery service over and above ordinary Postal Service rates for any requested overnight, express or other special delivery service.

(d) Records may be requested for transmittal by a telefacsimile machine upon payment, for cost reimbursement, at the rate of $5.00 per page.

(e) Payment shall be made by check payable to the New Jersey Department of Agriculture.

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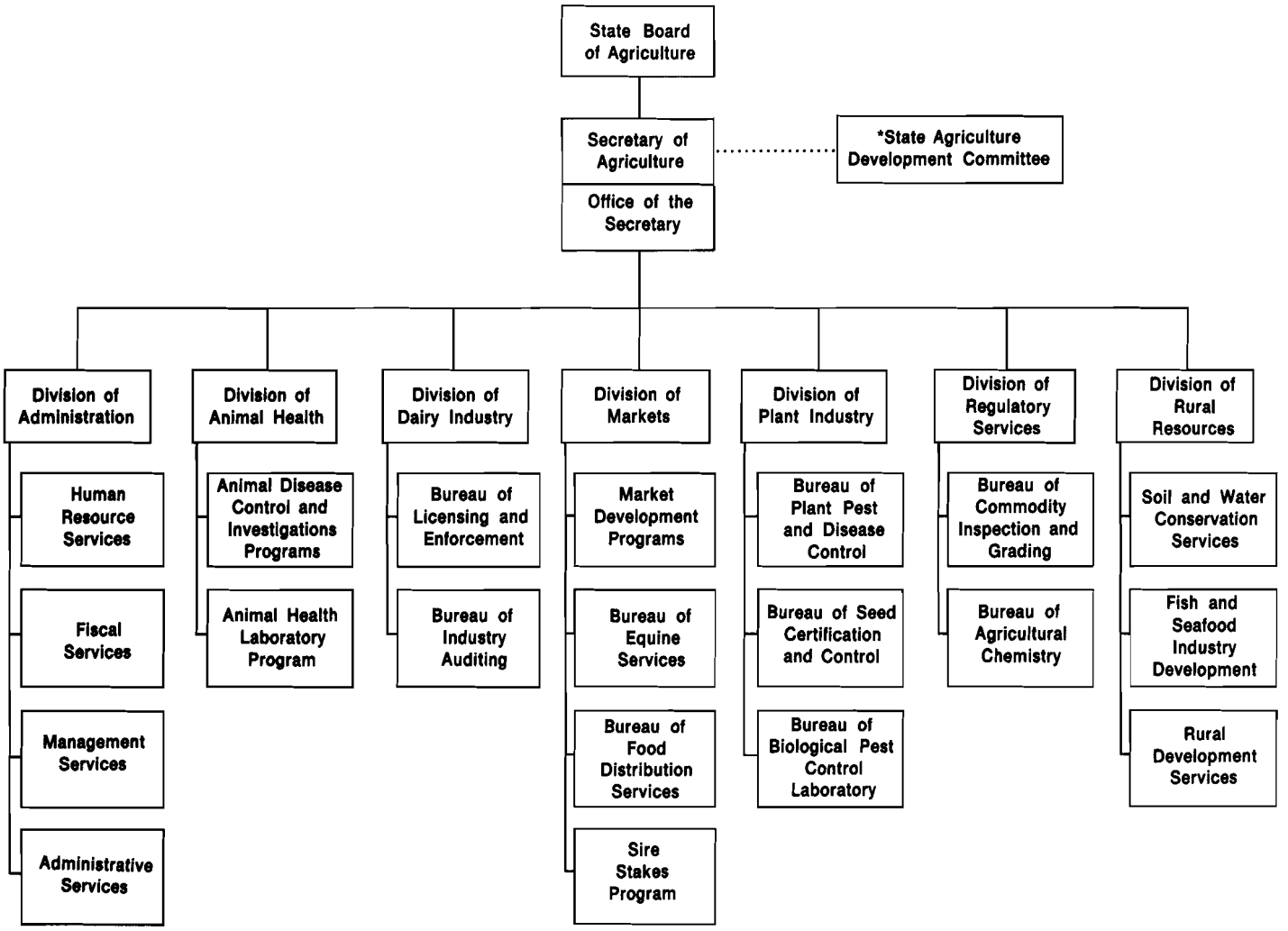
NEW JERSEY DEPARTMENT OF AGRICULTURE



*The State Agriculture Development Committee is independent of, but allocated within, the Department of Agriculture.

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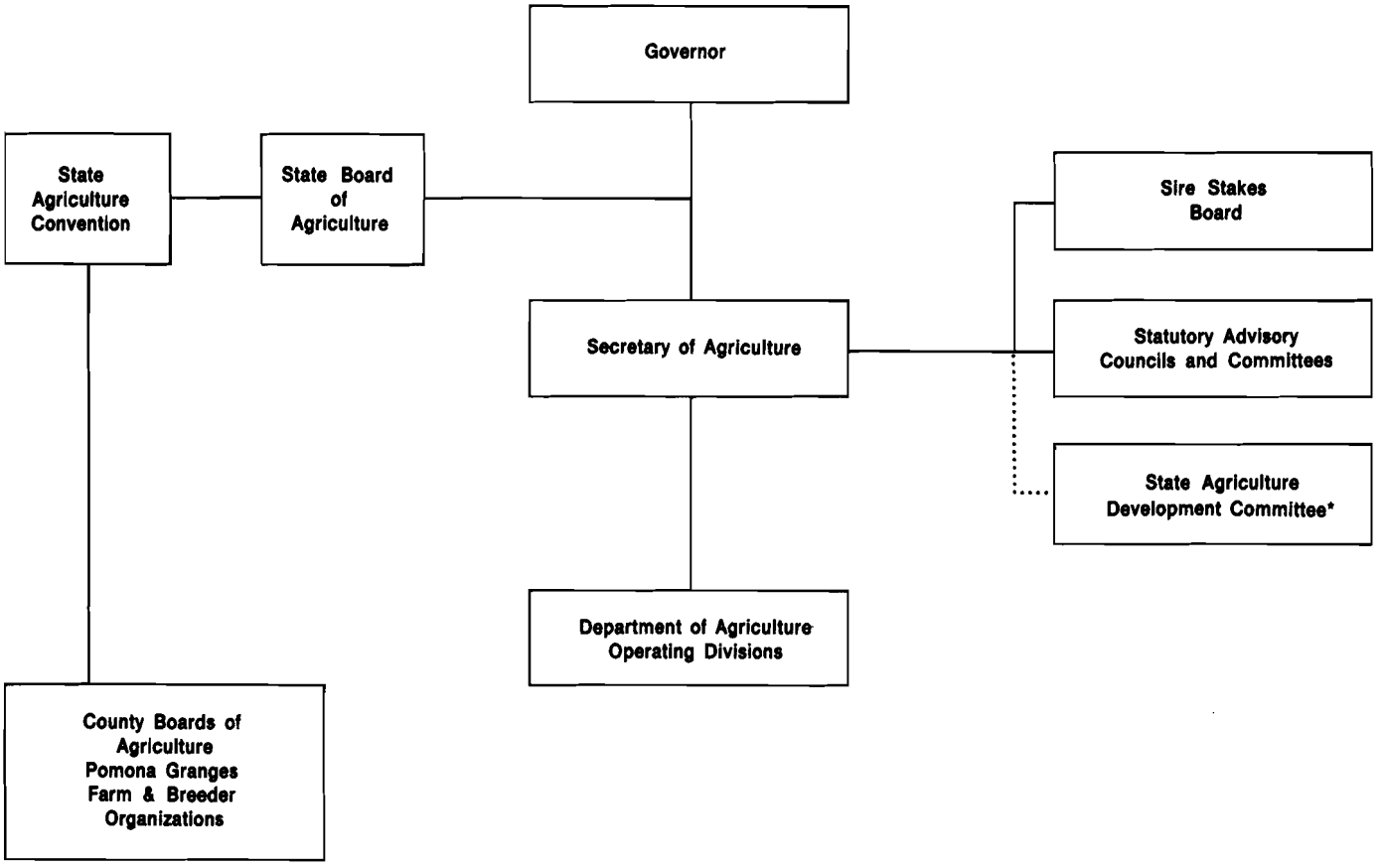
NEW JERSEY DEPARTMENT OF AGRICULTURE



*The State Agriculture Development Committee is independent of, but allocated within, the Department of Agriculture.

BANKING

(a)

DIVISION OF REGULATORY AFFAIRS

Mortgage Bankers and Mortgage Brokers Secondary Mortgage Licensees Surety Bond

Proposed Amendments: N.J.A.C. 3:18-10.5 and 3:38-1.5

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

Authority: N.J.S.A. 17:1-8.1, 17:11A-54 and 17:11B-13.

Proposal Number: PRN 1990-477.

Submit comments by October 17, 1990 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The proposed amendments would codify the Department's current position that the surety bond required for mortgage bankers and brokers and secondary mortgage licensees is for the benefit of consumers injured by the wrongful acts of mortgage bankers and brokers and secondary mortgage licensees, and for the benefit of the Department.

Both the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq. and the Secondary Mortgage Loan Act, N.J.S.A. 17:11A-34 et seq., were enacted to protect consumers who seek to obtain home mortgage loans from licensees. For example, these acts protect borrowers from abuses which would arise from an uncontrolled fee structure. As part of these protections, both Acts require the licensee to obtain a surety bond. To further the goal of these Acts to protect consumers, the Department views these bonds as pertaining to consumer claims, but not to business claims.

Social Impact

To the extent that the surety bond is made more accessible to consumers, the proposed amendments will have the beneficial social impact of advancing the protections contained in the applicable licensing statutes.

Economic Impact

The amendments will have a beneficial impact on consumers and the Department, since surety bonds will be reserved for only their claims. The amendments will have a corresponding negative impact on general creditors of these licensees who will not be able to assert claims against the bonds.

Regulatory Flexibility Analysis

The proposed amendments do not affect or impose reporting, recordkeeping or compliance requirements on small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Surety bonds are already required by statute. Therefore, a regulatory flexibility analysis is not required.

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

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3:18-10.5 Bonds

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

(c) The bond shall run to the State, pro rata, for the benefit of the Department and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of a licensee, or a person acting on behalf of the licensee, in the course of activity as a licensee. The bond shall not be payable for claims made by business creditors.

3:38-1.5 Bonds

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

(d) The bond shall run to the State, pro rata, for the benefit of the Department and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation of the mortgage banker, mortgage broker or solicitor in the course of activity as a licensee or solicitor. The bond shall not be payable for claims made by business creditors.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Barrier-Free Subcode
Parking Spaces; Platform Lifts
Proposed Amendments: N.J.A.C. 5:23-7.13 and 7.18.

Authorized By: Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 27D-124.

Proposal Number: PRN 1990-479.

A **public hearing** on this proposal will be held on Tuesday, October 16, 1990 at 10:00 A.M.

Construction Code Element
3131 Princeton Pike
Lawrenceville, New Jersey

Persons wishing to be scheduled to testify at this hearing are advised to contact Mrs. Emily Templeton, Code Development Officer, Construction Code Element at (609) 530-8789.

Submit written comments by October 31, 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. 5:23-7.18(a)3, which took effect on November 3, 1986, provides that "Changes in level of greater than three-quarter inch are to be connected by ramp, curb, elevator or platform lift meeting criteria of this subchapter. However the maximum change in level within a building which may be bridged by a ramp shall be 60 inches." The following additional language was proposed but not adopted: "Platform lifts may be used to bridge any level differential in modification and/or renovation work. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances."

Advocates for the disabled challenged the deletion of the language that was not adopted on the grounds that the deletion improperly expanded the scope of the proposal in a manner unfavorable to their clients. The Appellate Division, in the case of *Community Health Law Project, et al. vs. New Jersey Department of Community Affairs,* Dkt. No. A-1496 86T7 (App. Div. 1988), *certif. den.* 113 *N.J.* 343 (1988), allowed the rule, as adopted, to remain in effect temporarily, but directed the Commissioner to repropose the rule so as to allow an opportunity for comment. The rule was reproposed on September 5, 1989, with the language deleted from the original proposal italicized and shown as being deleted (see 21 N.J.R. 2774(a), specifically page 2777). The rule was adopted as proposed, that is, without the italicized words being added, on August 6, 1990, at 22 N.J.R. 2267(a), but with the proviso that a proposal would be published in the New Jersey Register to give both the disabled community and affected industry groups a further opportunity to present oral and/or written comments as to what limitations on the use of lifts would be appropriate. The proposed amendment to N.J.A.C. 5:23-7.18 which follows would prohibit the use of platform lifts on accessible routes between major floor areas or accessible entrances in new construction, and would permit the use of platform lifts to bridge any level differential in modification and/or renovation work.

The rule on signs designating parking spaces for the handicapped is proposed to be amended so that the signs will be the same as those required by N.J.S.A. 39:4-197. The Handicapped Parking Act, P.L. 1989, c.201, requires that there be two signs to mark handicapped parking spaces, one having the international symbol of accessibility and one stating the penalties for violation of the restrictions on the parking space.

Social Impact

Prohibition of the use of platform lifts on accessible routes between major floor areas or accessible entrances in new construction has been consistently supported by advocates for the disabled on the grounds that disabled people experience great difficulty when these lifts are inoperable or not operating properly. The advocates contend that such problems occur frequently enough as to make platform lifts inadequate as a response to the problems of the disabled and, indeed, to be a serious source of problems.

Uniform compliance with handicapped parking space sign requirements will facilitate enforcement that will help make these spaces available for the intended users.

Economic Impact

Manufacturers of platform lifts will clearly suffer substantial economic loss, if the use of their products is severely limited in New Jersey. Persons who violate the handicapped parking restrictions will be fined $100.00 for the first offense, a minimum of $100.00 for any subsequent offense, and/or up to 90 days of community service. Additionally, a car parked in a handicapped zone without displaying a valid identification is subject to towing. All of these penalties will have a negative economic impact upon those who violate the provisions of the rule.

Regulatory Flexibility Analysis

Manufacturers of platform lifts and builders, some of whom may be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., could be negatively affected by the proposed ban of platform lifts along accessible routes in new construction. However, the Department does not believe that it is appropriate to provide any exemptions to the requirements of the rule, due to considerations of public safety and welfare. The requirements of the rule on handicapped parking reiterate statutory requirements placed upon parking lot and garage owners subject to N.J.A.C. 5:23-7.12. No exemption in these requirements can be provided by rule.

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

5:23-7.13 Parking spaces

(a) (No change.)

(b) Each parking space shall be [identified with a sign] **marked with an R7-8 sign from the Manual of Uniform Traffic Control Devices** displaying the International Symbol of Accessibility. [and appropriate wordage to include "DISABLED PERSONS WITH VALID ID ONLY."

1. Each sign shall be a minimum of 12 inches by 18 inches and shall be mounted with its bottom edge]

1. Beneath the R7-8 sign, each parking space shall also be marked with an R7-8P sign, as required by N.J.S.A. 39:4-197.3c, containing the following language:

"PENALTY
$100 FIRST OFFENSE
SUBSEQUENT OFFENSES
$100 MINIMUM AND/OR
UP TO 90 DAYS
COMMUNITY SERVICE
TOW-AWAY ZONE"

2. The bottom edge of the R7-8 sign shall be mounted approximately 60 inches above the parking lot surface.

(c) (No change.)

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5:23-7.18 Accessible routes: change in level

(a) All changes in level or grade on accessible routes, walks, or floors, shall comply with the following:

1.-2. (No change.)

3. Changes in level of greater than three-quarter inch are to be connected by ramp, curb ramp, elevator or platform lift meeting criteria of this subchapter. However, the maximum change in level within a building which may be bridged by a ramp shall be 60 inches.

i. Platform lifts may be used to bridge any level differential in modification and/or renovation work.

ii. In new construction, platform lifts shall be utilized only for access to special purpose areas and shall not be used on accessible routes between major floor areas or accessible entrances.

4. (No change.)

(b) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Sewage Infrastructure Improvement Act Grants
Water Pollution Control Act
Stormwater Management

Proposed New Rules: N.J.A.C. 7:22A-1.7 and 7:22A-4

Proposed Amendments: N.J.A.C. 7:22A-1.1, 1.2, 1.3, 1.4, 3.1 and Appendix A; 7:14-8.1, 8.2, and 8.5; 7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5 and 3.6

Authority: (as to N.J.A.C. 7:22A:) N.J.S.A. 58:25-23 et seq., 58:10A-1 et seq., 58:11A-1 et seq., 13:1D-1 et seq., 40:55D-93 et seq., P.L. 1989, c.181 and P.L. 1990, c.28; (as to N.J.A.C. 7:8:) N.J.S.A. 40:55D-93 et seq. and 58:10A-1 et seq.

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection.

DEP Docket Number: 028-90-08.

Proposal Number: PRN 1990-496.

Public hearings concerning this proposal will be held on:

October 10, 1990 at 10:00 A.M.
Ocean County Administration Building
101 Hooper Avenue
Toms River, New Jersey

October 12, 1990 at 1:00 P.M.
New Jersey State House Annex
Room 403
125 West State Street
Trenton, New Jersey

Submit written comments by November 1, 1990 to:

Laurie J. Sands, Senior Environmental Specialist
Bureau of Water Quality Planning
Division of Water Resources
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Environmental Protection ("Department") is proposing new rules to implement the Sewage Infrastructure Improvement Act ("Act"), N.J.S.A. 58:25-23 et seq. The Act requires certain municipalities to prepare a final map of their stormwater sewer and sanitary sewer systems in order to identify stormwater pollution sources. The proposed rules in N.J.A.C. 7:22A-4 set forth the requirements for preparing the final maps and performing monitoring of water quality at stormwater outfalls. The proposed rules also include application procedures for the final mapping grants available under the Act.

The Act, which became effective on August 3, 1988, is designed to address nonpoint and point sources of pollution which discharge from stormwater sewer systems and combined sewer overflow points. The Act required all municipalities with stormwater sewer systems discharging into the salt waters of Monmouth, Ocean, Atlantic or Cape May counties ("affected municipalities") to adopt a final map of their stormwater sewer system on or before February 3, 1990. The Act also included a requirement that the Department establish standards for the preparation of a final map by February 3, 1989. Although the Act requires the establishment of final mapping guidelines and the adoption of a final map, the Department was not able to complete the standards for final mapping by the date established in the Act.

As an interim measure, the Department adopted rules, effective February 5, 1990, in N.J.A.C. 7:22A which set forth the requirements for the preliminary mapping and inventory of stormwater sewer systems, for the planning and design for abatement of combined sewer overflows, and for the grants available under the Act (see 22 N.J.R. 368(a)). These rules provided $1,045,400 in grant money to the affected municipalities for the preparation of a preliminary map and inventory of their stormwater sewer systems. The preliminary map and inventory will be used to facilitate the preparation of the final map. In response to concerns regarding the February 3, 1990 deadline in the Act to adopt a final map, the Department stated that it would require affected municipalities to adopt a final map within 12 months of the adoption of final mapping rules (see 22 N.J.R. 371-372). Therefore, the Department is now proposing a requirement in N.J.A.C. 7:22A-4.1 that all affected municipalities adopt a final map of their stormwater sewer and sanitary sewer lines which are part of a stormwater sewer system on or before 12 months after the effective date of these new rules or before the deadline established in the final mapping grant agreement.

As required by the Act, the final map shall locate all stormwater sewer and sanitary sewage lines within the geographical boundaries of the municipality, which are part of any stormwater sewer system that discharges into surface waters. The final maps shall also identify all cross-connections and interconnections between stormwater and sanitary sewer systems. The Department has allocated $5,535,000 in grant funds for the final mapping of stormwater sewer systems, subject to the availability of funding. The proposed new rules for final mapping include procedures for the application and distribution of these final mapping grants. The Act requires affected municipalities, upon completion of the final map, to monitor at least every three months the water quality at the outfall locations for any stormwater sewers discharging into salt waters. N.J.S.A. 58:25-26. As set forth in N.J.A.C. 7:22A-4.15, the Department will not provide any funding to perform such monitoring. Given the limited funding available under the Act, the Department has determined that the preparation of the final map is the crucial aspect in locating pollution sources; therefore, the final mapping should be fully funded. The Department has also determined not to provide funding for quarterly monitoring due to the fact that performing quarterly monitoring is a continuous requirement under the Act. Municipalities should be responsible for budgeting this ongoing self-monitoring requirement.

The Act additionally requires the affected municipalities to eliminate or cause to be eliminated all unpermitted cross-connections and interconnections before February 3, 1991. N.J.S.A. 58:25-27. Lastly, the Act requires that affected municipalities take appropriate measures to abate nonpoint sources of pollution directly entering salt waters of the State. N.J.S.A. 58:25-27. One of the final mapping requirements is to identify the sources of bacterial pollution which are attributable to nonpoint sources. The Department, in the future, will be proposing an additional subchapter to N.J.A.C. 7:22A which will address the specific measures that the affected municipalities must take to abate nonpoint source pollution in stormwater.

The Department is also proposing amendments to N.J.A.C. 7:22A-1 and N.J.A.C. 7:14-8 to include provisions for the enforcement of the Act by the Department, municipalities and other public entities. Lastly, the Department is proposing amendments to the stormwater management rules in N.J.A.C. 7:8 in order to update the enforcement authority of the Department with respect to municipal stormwater plans and ordinances, eliminate outdated program information, and revise the general standards for one kind of residential detention facility.

CHAPTER 22A—SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 1. GENERAL PROVISIONS

The Department is proposing an amendment to N.J.A.C. 7:22A-1.1 which clarifies the purpose of the rules. The proposed amendments to N.J.A.C. 7:22A-1.2 and 1.3 specify that the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., constitutes additional statutory authority for the Department under the entire chapter. The Department is proposing

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amendments to N.J.A.C. 7:22A-1.4 in order to incorporate new definitions used in the proposed new rules and amendments. With respect to the bacterial sampling requirements, the Department has defined "domestic pollutants", "excessive bacteria level", "grab sample", "industrial pollutants", "pollutant", and "viral indicator test". For the final mapping requirements, the Department is proposing to include the following definitions: "cesspool", "hazardous waste facility", "individual subsurface sewage disposal system", "industrial establishment", "nonpoint source", "recycling center", and "solid waste facility". The Department is also proposing definitions for "NJPDES" and "person".

The proposed enforcement section in N.J.A.C. 7:22A-1.7 establishes the requirements and procedures to enforce the provisions of the Act. The Act requires the adoption of a final map, the quarterly monitoring of stormwater outfalls, the elimination of interconnections and cross-connections, the abatement of nonpoint source pollution, and the appropriate abatement of combined sewer overflows. In order to enforce the above requirements, the Act provides the Department with the authority to use the penalty provisions in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. The penalty provisions in the Act and the amendments to N.J.A.C. 7:22A-1.2, 1.3, and 1.7 clarify the Department's authority to use the penalty provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. and the Department's civil administrative penalty rules in N.J.A.C. 7:14-8. Municipalities and public entities operating or controlling a stormwater sewer system are also authorized to use the civil penalty provisions of the Water Pollution Control Act to seek the elimination of illegal connections to their stormwater sewer system.

CHAPTER 22A—SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

The Department is proposing an amendment to N.J.A.C. 7:22A-3.1 which requires that all affected municipalities prepare and submit a preliminary map in accordance with N.J.A.C. 7:22A-3.10 and 3.11. This requirement is necessary for the preparation of investigative priority listing of stormwater outfalls in N.J.A.C. 7:22A-4.4.

CHAPTER 22A—SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

The applicability of this subchapter is set forth in N.J.A.C. 7:22A-4.1. All affected municipalities, as defined by N.J.A.C. 7:22A-1.4 and listed in Appendix A of N.J.A.C. 7:22A, are required to prepare and adopt a final map of their stormwater sewer and sanitary sewer system in accordance with the requirements of this subchapter. The Act's requirement for the affected municipalities to adopt a final map and perform quarterly monitoring is separate from and not dependent upon the availability of grants. Therefore, N.J.A.C. 7:22A-4.1 states that all affected municipalities shall adopt a final map and perform quarterly monitoring regardless of whether they have applied for or received a grant under the Act. All affected municipalities are also required to submit their final map and all other reporting requirements for stormwater monitoring within the specific timeframes established in N.J.A.C. 7:22A-4.2.

N.J.A.C. 7:22A-4.3 establishes the final mapping standards. The Act requires affected municipalities to locate, list and number all public and private stormwater sewer lines and sanitary sewer lines that are part of the stormwater sewer system within the geographical boundaries of the municipality. The affected municipality is required to include on the final map its entire stormwater sewer system including the stormwater lines, outfalls, catch basins, management basins, manholes, and other appurtenances. The final map shall include the location of various industrial facilities, solid waste facilities, and lots served by septic systems or cesspools. The final map must also include all of the sanitary sewer system which has previously been mapped by the municipality. Only through the mapping of both the stormwater lines and the sanitary sewer lines can interconnections and cross-connections between the sanitary and stormwater sewer systems be identified, located, and abated.

Cross-connections are defined in N.J.A.C. 7:22A-1.4. Examples of cross-connections include connections where a building's domestic wastewater line or an industry's process wastewater line is directly discharging to the stormwater sewer system. A cross-connection may also include a physical connection which discharges stormwater that has been contaminated by industrial pollutants. In cases where industrial process wastewater or contaminated stormwater discharges to the stormwater sewer system, the dischargers should have a NJPDES permit issued by the Department in accordance with N.J.A.C. 7:14A. As required by the Act and in order to insure that these discharges are properly permitted, the final map shall also identify whether the cross-connections have received a permit from the Department. Where a cross-connection discharging domestic pollutants is identified during the final mapping process, the affected municipality shall require the elimination of the connection.

Interconnections are defined in N.J.A.C. 7:22A-1.4 as non-physical connections of a sanitary sewer system with a stormwater sewer system and thus include any flow, leak or overflow from a stormwater or sanitary sewer system into the other. An example of an interconnection is a discharge of domestic wastewater from a manhole which runs into the stormwater sewer system. It is unlikely that these types of connections will be issued a NJPDES permit by the Department. Rather, the person responsible for the interconnection shall apply to the Department for a treatment works approval under N.J.A.C. 7:14A-12 in order to remediate such connections. When affected municipalities identify any interconnection, they shall require the elimination of the interconnection.

In N.J.A.C. 7:22A-4.3, the affected municipalities are also required to submit additional information about the stormwater sewer and sanitary sewer system along with the final map such as ownership, direction of flow, and street names. The final map shall also identify the location of any industrial establishments, solid waste facilities, recycling centers, and hazardous waste facilities. These facilities shall be identified on the final map regardless of whether they are regulated or exempted under the relevant Departmental rules. The additional information will allow the affected municipality to determine where point sources and nonpoint sources may be causing stormwater contamination. The Department is requiring, in N.J.A.C. 7:22A-4.3(*l*), that after the adoption of a final map, the affected municipalities update the portions of their final maps that have changed. The updating of the final maps is necessary to incorporate any changes to the stormwater sewer or sanitary sewer systems, any newly discovered sources of bacterial contamination, and deletion of any interconnections and cross-connections which have been remediated.

In N.J.A.C. 7:22A-4.4, the Department's proposed new rule requires the affected municipalities to prioritize the order in which the stormwater sewer system lines shall be investigated for the presence of interconnections and cross-connections. The affected municipalities shall submit the investigative priority list for the Department's approval. Using the preliminary map developed in accordance with N.J.A.C. 7:22A-3.10, a priority list shall be developed which identifies the specifically numbered stormwater outfalls and the order in which the numbered outfalls will be investigated. The priorities shall be based upon factors such as bathing areas, shellfish areas, and other areas of local concern. For each outfall, the list shall also include the surface water quality classification of the receiving waterbody, as established in N.J.A.C. 7:9-4.15.

As required in N.J.A.C. 7:22A-4.5(b), the approved priority list shall be used to investigate at least one third of the affected municipality's stormwater outfalls prior to the adoption of the final map. After the adoption of the final map, and within three years of the effective date of N.J.A.C. 7:22A-4, the affected municipalities are required to investigate the remaining outfalls. In order to identify all interconnections and cross-connections, the affected municipality has three choices with respect to determining whether the stormwater discharging from the outfall is contaminated. The affected municipality may either sample the stormwater from the outfall for the presence of bacterial contamination, perform a viral indicator test for the presence of human contamination, or assume that the stormwater is contaminated and proceed with the actual investigation of the system.

In either of the above options, the affected municipality is required in N.J.A.C. 7:22A-4.5(d) to perform additional sampling or testing to isolate the area where the contamination originates. The viral indicator test is designed to specifically distinguish between human and non-human fecal contamination. The methodology for the test is presently not approved; however, the methodology is undergoing investigation and the Department is hopeful that approval will occur in time for its use in final mapping. The reason for the third option in N.J.A.C. 7:22A-4.5(c)3 is to allow the affected municipality to simply begin the investigation of those outfalls which are known or suspected sources of contamination. Under the first two options, the affected municipality will have to wait for analytical results before investigating the source of the contamination.

In N.J.A.C. 7:22A-4.5(d), the affected municipalities are required to identify the sources of contamination by performing an analysis of the stormwater and a physical investigation of the stormwater line. To perform an analysis of the stormwater and to properly isolate the source of the contamination, grab samples shall be taken at access points upstream of the outfall. Where the affected municipality chose, in ac-

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cordance with N.J.A.C. 7:22A-4.5(c)3, to begin the investigation without performing an initial analysis of the discharge, the affected municipality shall begin taking grab samples at the outfall. As provided in N.J.A.C. 7:22A-4.5(d), the affected municipality has the option to either have the grab samples analyzed for bacterial contamination or tested for human contamination using the viral indicator test. If the viral indicator test is not approved in time to use it during final mapping, the affected municipality will not have an option with respect to the analysis of the stormwater. In addition to either the analyzing or testing, the affected municipality shall use investigative techniques approved by the Department such as dye testing and videotaping to identify whether the contamination is caused by an interconnection, cross-connection or nonpoint source. Since both the bacterial analysis and the viral indicator test are designed to identify where there may be contamination from domestic pollutants, these investigative techniques are necessary to isolate the source of this contamination. In addition, these investigative techniques are necessary to identify sources of industrial pollutants.

Where the contamination originates from a nonpoint source, a list shall be developed that identifies the isolated source area. Where the contamination originates from an interconnection or cross-connection, the interconnection or cross-connection shall be identified on the final map. In addition to the identification of the connections on the final map, the affected municipality shall immediately eliminate, or cause to be eliminated, these connections. For all interconnections and cross-connections, the affected municipality or other public entity controlling the stormwater sewer system may seek the elimination of the connections through the procedures in N.J.A.C. 7:22A-1.7. Affected municipalities failing to take appropriate measures to eliminate or cause to be eliminated unpermitted cross-connections and interconnections shall be subject to the penalty provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq. With respect to the availability of grants to plan and design for the elimination of interconnections and cross-connections, the Department will, in the future, be proposing amendments to N.J.A.C. 7:22A which will establish grant procedures for these projects, should these monies be available.

N.J.A.C. 7:22A-4.6 establishes the parameters and the procedures that shall be used when sampling or testing the stormwater effluent to identify the possibility of cross-connections and interconnections. In order to identify whether pollutants are entering the stormwater system through cross-connections or interconnections, the affected municipalities are required to take one grab sample at every stormwater outfall discharging to surface water. The grab sample shall then be either tested using the viral indicator test or analyzed for the presence of total coliform, fecal coliform and enterococci. Before taking any grab samples, the affected municipalities shall submit a quality assurance program plan for the Department's approval. N.J.A.C. 7:22A-4.6(e) and (f) establish the procedures to take grab samples at submerged outfalls, to take wet weather grab samples, and to take dry weather grab samples.

N.J.A.C. 7:22A-4.7 establishes the levels of bacteria that shall be considered excessive if found during sample analysis. Sample results indicating excessive levels of these organisms may not provide conclusive evidence that the contamination originates from domestic pollutant sources. However, the Department has determined that whenever the analysis of a sample from a stormwater outfall indicates excessive levels of bacteria, affected municipalities shall comply with the requirements in N.J.A.C. 7:22A-4.5 and identify the origin of the contamination. Since many samples will result in excessive levels, it is important that the affected municipalities properly prioritize the sampling of all the stormwater outfalls as required in N.J.A.C. 7:22A-4.4. As a means of determining excessive levels of stormwater contamination, the Department has incorporated the surface water quality criteria, established in N.J.A.C. 7:9-4, for fecal coliform and enterococci. These criteria are being used to indicate a problem outfall and are not measures of compliance with the water quality standards. In order to determine if a discharge from a stormwater outfall is actually causing a violation of the surface water quality standards, an analysis of the amount of flow from the outfall, the water quality of the discharge and the mixing potential of the receiving water would have to be performed. Given the large number of stormwater outfalls, performing such an analysis for each outfall would be impracticable. It should be stressed that since the surface water quality criteria are based on ambient, or in-stream, criteria, the stormwater sampled at the outfall may not actually be causing a violation of a water quality standard.

As required by the Act and proposed rule N.J.A.C. 7:22A-4.8, all affected municipalities shall perform quarterly monitoring of every stormwater outfall that discharges to salt water beginning the first quarter after adopting the final map or the thirteenth month after the effective date of N.J.A.C. 7:22A-4, whichever comes first. Like the sampling for interconnections and cross-connections, the quarterly monitoring shall include the analysis of grab samples for total coliform, fecal coliform and enterococci. Where sample results indicate excessive levels of bacteria, the affected municipality shall notify the Department of the exceedance, identify the source of the bacteria, and seek the elimination of the illegal connections through the procedures in N.J.A.C. 7:22A-1.7. Interconnections, cross-connections and potential nonpoint source pollution identified through quarterly monitoring shall be included on the final mapping amendments in accordance with N.J.A.C. 7:22A-4.3. If an affected municipality has not yet sampled a stormwater outfall discharging to salt water prior to the first quarter of the quarterly monitoring requirement, the requirements for quarterly monitoring and prioritized sampling will overlap. In such a case, the affected municipality need only take one grab sample at the stormwater outfall in order to fulfill both the quarterly monitoring and prioritized sampling requirements.

N.J.A.C. 7:22A-4.9 establishes the eligibility criteria for an affected municipality to apply for a final mapping grant. For the purposes of eligibility, the Department will use the existing list of affected municipalities in Appendix A, which are those municipalities with stormwater sewer systems which discharge into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties. Any municipality not listed in Appendix A who considers itself eligible for a grant may petition the Department to be included as an affected municipality by submitting proof that their stormwater sewer system discharges into the salt waters of Atlantic, Cape May, Monmouth or Ocean counties.

In order to obtain a grant, the Act requires affected municipalities to provide at least 10 percent of the total allowable cost for the final mapping. The Department's grant, on the other hand, may cover up to 90 percent of the cost for the final mapping. Appendix A presently includes the maximum amounts that the Department may provide for each affected municipality to prepare a preliminary map and inventory in accordance with N.J.A.C. 7:22A-3. In accordance with N.J.A.C. 7:22A-4.10, the maximum grant amount available for each affected municipality for final mapping will be determined using a formula that includes percentages of public road mileage, developed acres and population. These percentages provide a comparison of the above factors within each affected municipality to all the affected municipalities. These percentages will be summed and multiplied by two giving this part of the equation added weight. The equation also includes the percentage of the developed acres within the affected municipality to the total land area in the affected municipality. The percentage of development in an affected municipality was multiplied by .5 in order to take into account the density of smaller municipalities. The Department believes that roads are a good indicator of the extent of stormwater sewer infrastructure and best represent the relative needs of the affected municipalities. The information on public road miles (1982 data) was provided by the New Jersey Department of Transportation. This data represents the most recent uniform assessment of public road miles in the State which could be used by the Department to equitably distribute the available funds for preliminary mapping and inventory. Appendix A is proposed to be amended to include population data for the affected municipalities. This data was obtained from the Department of Labor's report entitled "Population Estimates for New Jersey", July 1, 1988. This data provides the most recent population information available to the Department. In order to properly allocate the available funds, the Department has decided to establish a minimum grant amount of $20,000 and a maximum grant amount of $300,000. All resulting grant amounts will then be rounded to the nearest 50 dollar amount.

N.J.A.C. 7:22A-4.11 through 4.14 set forth the application procedures for the final mapping grants. Applicants for final mapping grants that did not receive a grant to complete the preliminary mapping and inventory must submit the development data required in N.J.A.C. 7:22A-4.12(b)5. Applicants shall also submit a resolution authorizing a signatory, committing the applicant to provide at least 10 percent of the project costs and committing the applicant to conform with the standards for the final mapping and monitoring as set forth in N.J.A.C. 7:22A-4. The application deadline for final mapping and inventory grants shall be 60 days from the effective date of this subchapter.

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CHAPTER 14—WATER POLLUTION CONTROL ACT
SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

The Department is proposing to amend the civil administrative penalty provisions of N.J.A.C. 7:14-8 and include penalty provisions for the enforcement of the Act. The Act authorizes the Department's use of the penalty provisions of the Water Pollution Control Act ("WPCA"), N.J.S.A. 58:10A-1 et seq., to enforce the requirements and deadlines established in the Act. Rather than include the name and citation of the Act in each section of the Department's civil administrative penalty rules, the Department has decided to include a new definition in N.J.A.C. 7:14-8.2 which sets forth rules issued pursuant to the WPCA. N.J.A.C. 7:14-8 presently allows the use of the Department's civil administrative penalties for any violation of any rule issued pursuant to the WPCA. The new definition of "rules issued pursuant to the Water Pollution Control Act" will be an aid to permittees and others subject to the list of the Department's rules in that they will more easily be able to identify which rules are enforceable through the WPCA civil administrative penalties.

The Department has determined that the penalty matrix provision in N.J.A.C. 7:14-8.5 is the appropriate mechanism for the enforcement of the Act. The penalty matrix presently includes a method to determine both the conduct of the violator and the seriousness of the violation. The Department is also proposing to amend the procedure for determining the seriousness of a violation in N.J.A.C. 7:14-8.5(e). The proposed additional method of establishing the seriousness of a violation measures the seriousness by determining the degree that the violation deviates from the requirements of the rules. The use of the degree of deviation is similar to the penalty rules in N.J.A.C. 7:26-5.5(g) for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq. The deviation standard will be very useful for any violation of the Act because municipalities are required to perform a specified task rather than meet certain numerical limitations.

CHAPTER 8—STORMWATER MANAGEMENT

The Department is proposing a small number of amendments to its existing stormwater management rules, N.J.A.C. 7:8. Because the purpose of these rules includes the prevention, control, and abatement of water pollution, the Department proposes to amend N.J.A.C. 7:8-1.1 and 1.2(a) to cite the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., as part of the authority for these rules. At N.J.A.C. 7:8-1.5 and 3.5, the Department proposes to update the name of the Department unit that provides information about these rules and receives reports of exemptions.

At N.J.A.C. 7:8-1.1, the Department is also proposing to delete the statement that no funds have been appropriated for the stormwater management grant program. This statement became outdated in April, 1985, when $1 million was appropriated for that program (P.L. 1985, c.124). On August 30, 1985, grants for 90 percent of the cost of preparing Phase I storm water management plans were made available by the Department to 180 municipalities that had high priority on the Department's municipal ranking list for these grants. Applications for these grants were accepted until November 1, 1985. On March 16, 1987, the Department made such grants available to 330 municipalities that had high priority on the Department's revised municipal ranking list. Applications for these grants were accepted until June 1, 1987. More than 90 municipalities applied for these grants in 1985 or 1987, and grant agreements were executed with 40 municipalities.

Proposed amendments to N.J.A.C. 7:8-2.2, 3.1(a)1ii, and 3.6 would make it clear that municipalities are obligated to complete stormwater management plans if the Department makes available a grant for 90 percent of the costs for the preparation of such plans, and to adopt stormwater control ordinances within one year of the completion of such plans, regardless of whether municipalities received grants for preparing those plans. Proposed amendments to N.J.A.C. 7:8-2.2 and 2.3(a) would make it clear that storm water management plans are "completed" when these plans are made an integral part of municipal master plans under N.J.S.A. 40:55D-28, and that municipalities submit "completed" stormwater management plans for county approval.

A proposed amendment to the second sentence of N.J.A.C. 7:8-3.4(a) would make it clear that the "objectives" that local plans and ordinances must meet are the objectives set forth in N.J.A.C. 7:8-2.1. A proposed amendment to N.J.A.C. 7:8-3.4(a)2ii would make it clear that the "water requirement" now mentioned in that subparagraph is a "water quality requirement" under N.J.A.C. 7:8-3.4(a)2.

At N.J.A.C. 7:8-3.4(a)2ii, the Department is also proposing to revise the standards for the zero runoff method of meeting the water quality requirement for residential development by requiring the bottom of the detention facility to be at least four feet (rather than two feet) above the seasonal high water table. Depth to the water table is an important factor in protection of ground water quality, and use of four feet of unsaturated soil to control water pollution is a commonly accepted groundwater management practice. For example, in the Department's standards for individual subsurface sewage disposal systems, a four foot separation distance has long been required between the bottom of the disposal field and the seasonal high water table. The proposed four foot separation distance is also consistent with the "Stormwater Management Facilities Maintenance Manual" (June 1989) prepared for the Department by the Ocean County Planning and Engineering Departments and Killam Associates, which stated that the lowest point in the detention facility bottom should be at least four feet above the seasonal high water table to promote complete emptying and prevent standing water or soggy surfaces.

A proposed amendment to N.J.A.C. 7:8-3.6 would more clearly provide that the Department may supply municipalities with updated Model Storm Water Control Ordinances. These updated model ordinances may differ from those that the Department sent to municipalities in 1985 and 1987.

Social Impact

The Department's proposed new rules and amendments to N.J.A.C. 7:22A will have a beneficial social impact. The stormwater sewer and sanitary sewer mapping requirements will give the affected municipalities a technical data base on which to subsequently implement pollution abatement measures for their stormwater sewer systems. There will be $5,535,000 in grants available to the affected municipalities to prepare a final map. The requirement to perform the final mapping, investigate cross-connections and interconnections, and perform quarterly monitoring at stormwater outfalls will provide the affected municipalities with the information needed to reduce bacteria, toxics and sediment levels presently discharging into the surface waters of the State. The citizens of New Jersey along with the State's many seasonal visitors will benefit through improvements to the health, safety, aesthetic value and recreational attributes of the surface waters of the State.

The proposed amendments to N.J.A.C. 7:14-8 will have a positive social impact because it will discourage noncompliance with the Water Pollution Control Act and clarify the Department's use of the penalties associated with the violation of any rules issued pursuant to the Water Pollution Control Act. Affected municipalities will be given clear notice of the penalties associated with any violation of the rules in N.J.A.C. 7:22A.

The proposed amendments to N.J.A.C. 7:8 would generally have a beneficial social impact. Citing the Water Pollution Control Act as part of the authority for N.J.A.C. 7:8 would give municipalities an additional incentive to meet their obligations under N.J.A.C. 7:8 and thereby avoid possible penalties under it. As a result, municipal compliance with N.J.S.A. 40:55D-93 et seq. should improve. Other proposed amendments to N.J.A.C. 7:8 would be beneficial because they would eliminate outdated program information, clarify municipal obligations to complete stormwater management plans and adopt stormwater control ordinances, and clarify the Department's ability to improve its Model Storm Water Control Ordinance.

Only one of the proposed amendments to N.J.A.C. 7:8 would affect the contents of stormwater management plans and stormwater control ordinances. This is the proposed amendment to N.J.A.C. 7:8-3.4(a)2ii that would revise the standards for the zero runoff method of meeting the water quality requirement for residential development by requiring the bottom of the detention facility to be at least four feet (rather than two feet) above the seasonal high water table.

The Department expects that the positive social impacts from this proposed amendment to N.J.A.C. 7:8-3.4(a)2ii would outweigh the negative social impacts. On the positive side, the proposed amendment should reduce groundwater contamination from detention facilities for some residential developments. The effectiveness of some of these facilities in detaining stormwater may also be improved. On the other hand, the unavailability of the zero runoff detention method in areas with high water tables may require some residential developers to use other, sometimes more costly, means of satisfying the water quality requirement in N.J.A.C. 7:8-3.4(a)2. There may also be increased discharges to surface waters of stormwater from residential developments in such areas. (However, such discharges would have to satisfy the water quality requirement

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in N.J.A.C. 7:8-3.4(a)2i, which would minimize the adverse impact of such discharges on surface waters.) The unavailability of the zero runoff detention method in areas with high water tables may likewise reduce the quantity of stormwater recharged into groundwater from residential development in such areas.

Economic Impact

The proposed new rules in N.J.A.C. 7:22A, by providing $5,535,000 in grants for the final mapping, will enable the affected municipalities to identify and map their stormwater sewer and sanitary sewer systems. All affected municipalities are required to complete the final mapping requirements of the Act; however, they may apply for a grant to fund up to 90 percent of the final mapping costs. In turn, the grant recipients will be responsible for at least 10 percent of the project costs in order to fulfill the requirements of the Act. These new rules will provide a positive economic impact by providing funding to begin the planning process of upgrading estuarine and coastal water quality. By maintaining the unique recreational and aesthetic value that a clean coastal environment creates, real estate and tourism income will not be adversely affected. In some cases the costs of the final mapping may not be sufficiently covered by the grant award, thereby resulting in an adverse impact to the financial resources of municipalities. The costs of the quarterly monitoring must be fully borne by the municipality, thereby resulting in a negative economic impact. The costs of performing the quarterly monitoring will be approximately $30.00 for each stormwater outfall. The Department has determined not to fund the quarterly monitoring requirements because the limited funds in the Act should be used for the preparation of the final map. The Department has also determined that since quarterly monitoring is a continuous requirement under the Act, municipalities should fund this self-monitoring requirement. The Legislature, in enacting the Act, showed a clear desire to have the affected municipalities continue to monitor the quality of the stormwater discharging to salt water. Although the affected municipalities will expend municipal funds to administer the quarterly monitoring requirement, the savings gained from an improved coastal water quality should ultimately result in a positive economic impact.

The proposed amendments to N.J.A.C. 7:14-8 will have no economic impact on those who do not violate the rules issued pursuant to the Water Pollution Control Act. The amendments should provide an economic incentive to those who are in compliance with these rules to stay in compliance and will have a beneficial deterrent effect through the imposition of administrative penalties to violators. For those who cause violations and are assessed civil administrative penalties, the extent of the economic impact will depend on the conduct of the violator, the seriousness of the violation, and the category of the violation.

The proposed amendments to N.J.A.C. 7:8 would generally have only minimal economic impacts. The proposed amendments would not affect the award of stormwater management grants to municipalities. Although the proposed amendments would clarify municipal obligations to complete stormwater management plans and adopt stormwater control ordinances, these obligations were created by N.J.S.A. 40:55D-93 et seq. and would not be created by these amendments. Although the proposed amendments would make noncomplying municipalities subject to possible penalties under the Water Pollution Control Act, municipalities can avoid such penalties by complying with N.J.S.A. 40:55D-93 et seq. and N.J.A.C. 7:8. In 1985 and 1987, grants for 90 percent of the cost of preparing Phase I storm water management plans were made available by the Department to many municipalities.

The Department expects positive and negative economic impacts from the proposed amendment to N.J.A.C. 7:8-3.4(a)2ii. On the positive side, the proposed amendment should reduce adverse economic impacts due to groundwater contamination from detention facilities for some residential developments. Maintenance problems with some of these facilities may also be reduced. The unavailability of the zero runoff detention method in areas with high water tables would not necessarily have a significant economic impact upon residential developers and their customers. Residential development that satisfies the water quality requirement can still be built by using the detention method described in N.J.A.C. 7:8-3.4(a)2i, or by using appropriate alternatives to detention basins pursuant to N.J.A.C. 7:8-3.4(a)4. However, these other means of satisfying the water quality requirement may be more costly in some cases than the zero runoff detention method.

Environmental Impact

The proposed rules in N.J.A.C. 7:22A will have a positive environmental impact by insuring that affected municipalities identify stormwater sewer system pollution sources. Untreated sewage and nonpoint source pollution are discharged from stormwater sewer systems during and after storm events. The coastal waters of the State are, in turn, subject to elevated levels of bacteria, nutrients, toxics, oil and grease, and other pollutants. Controlling these pollution sources by eliminating, or causing to be eliminated, unpermitted point and nonpoint sources of pollution introduced into a stormwater sewer system will result in coastal water quality improvements. The final mapping requirements, if properly administered, shall provide the affected municipalities with information that can be used to improve stormwater quality. The improvement in water quality will benefit the coastal environment through improvements in the health and preservation of the aquatic ecosystem. This will preserve the natural value of coastal resources including shellfisheries, finfisheries and other aquatic life.

The proposed amendments to N.J.A.C. 7:14-8 will have a beneficial environmental impact. The imposition of penalties for violation of the Department's rules and requirements will provide a deterrent effect on those who would cause environmental degradation. This deterrent effect will in turn promote activity by the regulated community which is in conformance with the Department's rules and is environmentally beneficial.

The proposed amendments to N.J.A.C. 7:8 would have a beneficial environmental impact in that municipalities would be given an additional incentive to comply with N.J.S.A. 40:55D-93 et seq., and municipal obligations to complete stormwater management plans and adopt stormwater control ordinances would be clarified.

The Department expects that the positive environmental impacts from the proposed amendment to N.J.A.C. 7:8-3.4(a)2ii would outweigh the negative environmental impacts. On the positive side, the proposed amendment should reduce groundwater contamination from detention facilities for some residential developments. The effectiveness of some of these facilities in detaining stormwater may also be improved. On the other hand, the unavailability of the zero runoff detention method in areas with high water tables may lead to increased discharges to surface waters of stormwater from residential developments in such areas. However, such discharges would have to satisfy the water quality requirement in N.J.A.C. 7:8-3.4(a)2i, which would minimize the environmental impact of such discharges on surface waters. The unavailability of the zero runoff detention method in areas with high water tables may likewise reduce the quantity of stormwater recharged into groundwater from residential development in such areas. Based on the above analysis, the Department has balanced the environmental impacts and has determined that the proposed amendment to N.J.A.C. 7:8-3.4(a)2i is appropriate.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these proposed new rules and amended rules in N.J.A.C. 7:22A will not impose reporting, record keeping or other compliance requirements on small businesses; therefore, no regulatory flexibility analysis is required. The purpose of the rules in N.J.A.C. 7:22A is to provide certain municipalities with standards and grants for the final mapping of stormwater sewer systems and require the quarterly monitoring of stormwater outfalls.

The proposed amendments to N.J.A.C. 7:14-8 will not impose reporting, record keeping or other compliance requirements on small businesses; therefore no regulatory flexibility analysis is required. The purpose of the proposed amendments to N.J.A.C. 7:14-8 is to clarify which rules are subject to the Department's penalties and provide a new method for determining the seriousness of a violation. Businesses will not be required to comply with these rules as long as they do not violate the rules issued pursuant to the Water Pollution Control Act.

The proposed amendments to N.J.A.C. 7:8 will not impose reporting, record keeping or other compliance requirements on small businesses because the stormwater management rules only apply to municipalities preparing stormwater management plans in accordance with the New Jersey Storm Water Management Act, P.L. 1981, c.32, which amends and supplements the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq.

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

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CHAPTER 8
STORMWATER MANAGEMENT

SUBCHAPTER 1. GENERAL PROVISIONS

7:8-1.1 Purpose and authority

This chapter [shall implement the] **implements the** provisions of the New Jersey Storm Water Management Act, P.L. 1981, c.32, which amends and supplements the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., **and of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.** These Storm Water Management regulations establish minimum requirements and controls to compensate for the differences in the hydrologic response of the watershed from the undeveloped to the developed condition. [The Storm Water Management Act further creates a State grant program, however, no funds have been appropriated for this purpose as of this time.] Nothing in this chapter shall change the assigned duties of counties and municipalities responsible for approval of storm water management provisions, submitted as part of site plans, and subdivisions as established by the Municipal Land Use Law.

7:8-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory [function] **functions** under the New Jersey Storm Water Management Act, P.L. 1981, c.32, **and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.**

(b) (No change.)

7:8-1.5 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the [Water Supply and Watershed Management Administration] **Bureau of Water Quality Planning**, Division of Water Resources, New Jersey Department of Environmental Protection, CN 029, Trenton, New Jersey 08625.

SUBCHAPTER 2. PROCEDURES FOR PREPARATION OF PLANS AND ORDINANCES

7:8-2.2 Schedule for completion and submission of plans and ordinances

If a grant for 90 percent of the costs for the preparation of the plan has been made available by the Department pursuant to section 6 of the Act (N.J.S.A. 40:55D-98), the storm water management plan shall be completed by the municipality by the next reexamination of the municipality's master plan required pursuant to N.J.S.A. 40:55D-89. The **completed** storm water management plan shall be an integral part of each municipal master plan as provided by N.J.S.A. 40:55D-28. Each storm water control ordinance or ordinances implementing the storm water management plan [prepared under such a grant] shall be adopted by the municipality within one year of the completion of the storm water management plan and shall be revised thereafter as needed. Such a storm water management plan, control ordinance or resolution prepared by counties, municipalities or designated regional agencies shall be prepared in accordance with this chapter.

7:8-2.3 County review process

(a) Each municipality shall submit its **completed** storm water management plan and implementing ordinance adopted pursuant to this Act to the county agency or county water resources association designated by the freeholders for approval. The implementing ordinance shall not take effect without county approval.

(b) (No change.)

SUBCHAPTER 3. ELEMENTS OF PLAN AND ORDINANCE

7:8-3.1 Planning phases

(a) Planning for storm water management is designed in two phases. The Phase I plan is targeted at preventive measures to be applied to the site plan and subdivision review process. It shall identify existing control requirements and establish plans and ordinances in order to meet the standards in these regulations for at least the short term. The Phase II plan shall provide for the long-term comprehensive planning of alternative preventive storm water management measures in conjunction with remedial storm water management measures.

1. Phase I:

i. (No change.)

ii. Within one year following the completion of the Phase I plan, municipalities shall adopt ordinances which are to be consistent with the policies and principles of the Phase I plan. These ordinances shall be amended, as required, following the adoption of the Phase II plan. Such ordinances must be adopted if the Department [provides] **has made available** a grant pursuant to section 6 of the Act.

2. (No change.)

7:8-3.4 General standards

(a) The following standards are specified for general use as minimums to be applied to major developments. Local plans and ordinances which require a greater degree of control or require retention for a greater period of time, or apply to classes of developments in addition to those specified herein, will be acceptable as long as the objectives **in N.J.A.C. 7:8-2.1** are met. Plans and ordinances expressed in different terms but which are considered by the Department to achieve substantially the same objectives will also be acceptable.

1. (No change.)

2. Water quality control:

i. (No change.)

ii. Where soils have sufficient permeability, the production of zero runoff from the site under conditions of the 1/4-inch quality storm will be considered sufficient to meet the water **quality** requirement for residential developments, provided that the seasonal high groundwater does not rise to within [two] **four** feet of the bottom of the detention facility. For other than residential developments, approvals will be on a case-by-case basis after technical review by the designated authority. The object of this review will be to avoid pollution of groundwater. Other technology may be substituted pursuant to (a)4i below.

3.-9. (No change.)

7:8-3.5 Variance [of] **or** exemption from the standards

If a municipality grants a variance or exemption from the standards set forth in their storm water management plan and control ordinance, a written report shall be made to the county detailing the nature of the variance, the change(s) requested, and an explanation of the decision. An exemption from the county ordinance or regulations or resolutions shall be reported in the same fashion to the [Administrator, Water Supply and Watershed Management Administration] **Chief, Bureau of Water Quality Planning,** Division of Water Resources, Department of Environmental Protection.

7:8-3.6 Storm water control ordinance

The storm water control ordinance is required to be adopted by the municipality within one year of the completion of a storm water management plan [funded pursuant to section 6 of the Act (N.J.S.A. 40:55D-98)]. It is an implementation document for the plan. The ordinance shall conform with all requirements of this chapter. [Upon adoption of this chapter, the] **The** Department will supply each municipality with a Model Storm Water Control Ordinance as a guide for municipalities to prepare their own ordinances.

CHAPTER 14
WATER POLLUTION CONTROL ACT

SUBCHAPTER 8. CIVIL ADMINISTRATIVE PENALTIES AND REQUESTS FOR ADJUDICATORY HEARINGS

7:14-8.1 Authority and purpose

(a) This subchapter shall govern the Department's assessment of civil administrative penalties for violations of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq., including violation of any rule, water quality standard, effluent limitation, administrative order or permit issued pursuant to the Water Pollution Control Act, [violation of the rules governing laboratory certification and standards of performance, N.J.A.C. 7:18,] and for violations of the Water Supply

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and Wastewater Operators' Licensing Act, N.J.S.A. 58:11-64 et seq., the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., and N.J.S.A. 58:10A-21 et seq. (also known as the New Jersey Underground Storage of Hazardous Substances Act). This subchapter shall also govern the procedure for requesting an adjudicatory hearing on a notice of civil administrative penalty assessment or an administrative order.

(b)-(d) (No change.)

7:14-8.2 Definitions

As used in this subchapter, the following words and terms shall, in addition to those provided in N.J.A.C. 7:14A-1.9, have the following meanings unless the context clearly indicates otherwise:

"Any rules issued pursuant to the Water Pollution Control Act" means, but is not limited to, the following rules:

Industrial Survey Project, N.J.A.C. 7:1F;

Freshwater Wetlands, N.J.A.C. 7:7A;

Stormwater Management, N.J.A.C. 7:8;

Water Pollution Control, N.J.A.C. 7:9;

Standards for Individual Subsurface Sewage Disposal Systems, N.J.A.C. 7:9A;

Safe Drinking Water Act, N.J.A.C. 7:10;

Flood Hazard Area Control, N.J.A.C. 7:13;

Water Pollution Control Act, N.J.A.C. 7:14;

The New Jersey Water Pollution Control Act, N.J.A.C. 7:14A;

Statewide Water Quality Management Planning, N.J.A.C. 7:15;

Regulations Governing Laboratory Certification and Standards of Performance, N.J.A.C. 7:18; and

Sewage Infrastructure Improvement Act Grants, N.J.A.C. 7:22A.

. . .

7:14-8.5 Civil administrative penalty determination

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

(e) The seriousness of the violation shall be determined as major, moderate or minor as follows:

1. Major shall include:

i. Any violation which has caused or has the potential to cause serious harm to human health or the environment; [or]

ii. Any violation of an effluent limitation which is measured by concentration or mass for any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows:

(1) By more than 50 percent for a hazardous pollutant; or

(2) By more than 100 percent for a non-hazardous pollutant; or

iii. Any violation which seriously deviates from a requirement of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; serious deviation shall include, but not be limited to, those violations which are in complete contravention of the requirement, or if some of the requirement is met, which severely impair or undermine the operation or intent of the requirement.

2. Moderate shall include:

i. Any violation which has caused or has the potential to cause substantial harm to human health or the environment; [or]

ii. Any violation of an effluent limitation which is measured by concentration or mass of any discharge exceeding the effluent limitation set forth in a permit or administrative order as follows:

(1) By 26 to 50 percent for a hazardous pollutant; or

(2) By 51 to 100 percent for a non-hazardous pollutant; **or**

iii. Any violation which substantially deviates from a requirement of the Water Pollution Control Act, the New Jersey Underground Storage of Hazardous Substances Act, or any rule, water quality standard, effluent limitation, administrative order or permit now or hereafter issued pursuant thereto; substantial deviation shall include, but not be limited to, those violations which are in substantial contravention of the requirement or which substantially impair or undermine the operation or intent of the requirement.

3. (No change.)

(f)-(g) (No change.)

CHAPTER 22A
SEWAGE INFRASTRUCTURE IMPROVEMENT ACT GRANTS

SUBCHAPTER 1. GENERAL PROVISIONS

7:22A-1.1 Purpose

(a) This chapter prescribes the rules of the Department for the distribution of grant moneys to affected municipalities and other local government units to implement the requirements of the Act. The purpose of the [measures] **rules** is to prevent, control and abate water pollution caused by the discharge of untreated sewage and point and nonpoint source pollutants from stormwater sewer systems and combined sewer systems.

(b) (No change.)

7:22A-1.2 Scope

(a) This chapter shall constitute the rules governing the Department's implementation of the Sewage Infrastructure Improvement Act, N.J.S.A. 58:25-23 et seq. and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

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

(d) Any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory of their stormwater sewer system **or prepare a final map in accordance with N.J.A.C. 7:22A-4.**

(e) (No change.)

7:22A-1.3 Construction of rules

This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the Act **and the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.**

7:22A-1.4 Definitions

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

. . .

"Cesspool" means a type of covered pit as defined in N.J.A.C. 7:9A-2.1.

. . .

"Domestic pollutant" means a pollutant which results from the discharge of household, commercial or other wastes from bathrooms, toilet facilities, home laundries and kitchens which are predominantly the result of natural human waste elimination associated with bodily function and food preparation.

. . .

"Excessive bacteria level" means a bacteria level above the standards set forth in N.J.A.C. 7:22A-4.7.

. . .

"Grab sample" means a single sample collected at a particular time and place.

. . .

"Hazardous waste facility" means a facility used for treating, storing, or disposing of hazardous waste as defined in N.J.A.C. 7:26-1.4.

"Individual subsurface sewage disposal system" means a type of septic system as defined in N.J.A.C. 7:9A-2.1.

"Industrial establishment" means any place of business or real property as defined in N.J.A.C. 7:26B-1.3.

"Industrial pollutants" means any non-domestic pollutants, including but not limited to, those pollutants regulated under Section 307(a), (b) or (c) of the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq. and any amendments thereto.

. . .

"NJPDES" means the "New Jersey Pollutant Discharge Elimination System" as defined in N.J.A.C. 7:14A-1.9.

"Nonpoint source" means a contributing factor to water pollution as defined in N.J.A.C. 7:14A-1.9.

"Person" means an individual, corporation, company, partnership, firm, association, political subdivision of this State and any state, Federal or interstate agency, or an agent or employee thereof.

. . .

"Pollutant" means the same definition of pollutant at N.J.A.C. 7:14A-1.9.

. . .

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"Recycling center" means a facility designed to process recyclable materials as defined in N.J.A.C. 7:26-1.4.

. . .

"Solid waste facility" means any system, site, equipment or building which is utilized for the storage, collection, processing, transfer, transportation, separation, recycling, recovering or disposal of solid waste but shall not include a recycling center.

. . .

"Viral indicator test" means an analytical methodology using the F+ RNA coliphages to distinguish between human and non-human contamination by serotyping the phages detected.

. . .

7:22A-1.7 Enforcement [(Reserved)]

(a) Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, grant agreement, license, permit, or administrative order may result in a penalty assessed by the Department in accordance with N.J.A.C. 7:14-8 or any other enforcement action provided in the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

(b) Any municipality or public entity controlling or operating a stormwater sewer system with an unpermitted interconnection or cross-connection may bring an action in their name to require the elimination of these connections to their stormwater sewer systems in accordance with the penalty provisions of the Water Pollution Control Act, N.J.S.A. 58:10A-1 et seq.

SUBCHAPTER 3. PRELIMINARY MAPPING AND INVENTORY

7:22A-3.1 Applicability

(a) All affected municipalities shall adopt a final map as required by N.J.S.A. 58:25-25 and N.J.A.C. 7:22A-4.

(b) To facilitate the preparation of a final map, any affected municipality may apply to the Department for a grant to prepare a preliminary map and inventory. As required by N.J.A.C. 7:22A-4.2(c), all affected municipalities shall prepare and submit a preliminary map in accordance with N.J.A.C. 7:22A-3.10 and 3.11, regardless of whether they received a grant to prepare a preliminary map and inventory.

SUBCHAPTER 4. FINAL MAPPING AND MONITORING REQUIREMENTS

7:22A-4.1 Applicability

(a) All affected municipalities shall prepare and adopt a final map of their stormwater sewer and sanitary sewer system and perform monitoring of their stormwater in accordance with the requirements of this subchapter.

(b) Affected municipalities may apply for a grant to satisfy the final mapping requirements of this subchapter. However, if for any reason an affected municipality does not receive a grant, the affected municipality is not relieved of the requirement to comply with this subchapter.

7:22A-4.2 Reporting requirements

(a) Within 12 months of the effective date of this subchapter or within the timeframe established in an executed final mapping grant agreement, whichever comes later, all affected municipalities shall submit a copy of the final map, adopted by the governing body of the affected municipality and prepared in accordance with N.J.A.C. 7:22A-4.3, to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625. The affected municipality shall submit any other submittals required by N.J.A.C. 7:22A-4.3 at the time of submittal of the final map.

(b) Within 12 months of the submittal of the final map in (a) above and yearly thereafter, all affected municipalities shall submit updated portions of the final map in accordance with N.J.A.C. 7:22A-4.3(l), to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

(c) Within four months of the effective date of this subchapter, all affected municipalities which did not receive a grant for preliminary mapping shall submit the information required under N.J.A.C. 7:22A-3.10 and 3.11 to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

(d) Within four months of the effective date of this subchapter, all affected municipalities shall submit an investigative priority list in accordance with N.J.A.C. 7:22A-4.4 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625.

(e) All affected municipalities shall submit a copy of the sampling data collected in accordance with N.J.A.C. 7:22A-4.5 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625.

(f) All affected municipalities shall submit a copy of the quarterly monitoring data collected in accordance with N.J.A.C. 7:22A-4.8 to the Division of Water Resources, Bureau of Monitoring Management, CN-029, Trenton, New Jersey 08625. The submission shall note where sample analysis indicates that there are excessive levels of bacteria, as specified in N.J.A.C. 7:22A-4.7.

(g) All affected municipalities shall submit a quality assurance program plan and have the plan approved by the Department, in accordance with N.J.A.C. 7:22A-4.6(a), prior to taking any grab samples as required by N.J.A.C. 7:22A-4.5 and 4.8. The affected municipalities shall include the project specific information and submit the completed quality assurance program plan to the Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625.

7:22A-4.3 Final mapping

(a) The affected municipality shall prepare a final map which:

1. Delineates all public and private stormwater sewer lines that are located within the geographic boundaries of the affected municipality; and

2. Includes any previously mapped public and private sanitary sewage lines located within the geographical boundaries of the affected municipality.

(b) The scale of the final map shall be no larger than 1:1200 (one inch = 100 feet) and no smaller than 1:4800 (one inch = 400 feet). The final map shall be submitted on stable base mylar.

(c) All features delineated on the final map shall be accurate to within 25 feet.

(d) The affected municipality shall include with the final map a narrative description of the field work (remote sensing, surveying, etc.) performed to locate the features delineated on the final map.

(e) The affected municipality shall include on the final map the following features associated with their stormwater sewer system:

1. The location of stormwater sewer pipes, including the lengths, sizes and types of pipes;

2. The location of stormwater outfalls, including the surface water classification, as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9-4, of the receiving water body at each outfall;

3. The location of any interconnection or cross-connection, including the access points where grab samples were taken in accordance with N.J.A.C. 7:22A-4.5(c) and (d);

4. Arrows indicating direction of flow within the pipe;

5. All stormwater sewer appurtenances, such as manholes, siphons, pumping stations, catch basins, stormwater management basins, and inlet structures. These shall be designated on the final map by suitable symbols and referenced by a legend near the title;

6. Elevations of street surfaces, sewer inverts, manhole rims and inlet structures, if known;

7. The delineation of all lots presently served by individual subsurface sewage disposal systems or cesspools;

8. The location of all industrial establishments, hazardous waste facilities, solid waste facilities and recycling centers; and

9. Street names.

(f) The affected municipality shall include on the final map the following features, associated with the sanitary sewer system:

1. The location of previously mapped sanitary sewage pipes, including the lengths, grades, sizes and types of pipes;

2. Arrows indicating direction of flow within the pipe;

3. All sanitary sewer manholes whether previously mapped or not;

4. All previously mapped sanitary sewer appurtenances, such as siphons and pumping stations. These shall be designated on the final map by suitable symbols and referenced by a legend near the title;

5. Elevations of street surfaces, sewer inverts, manhole rims and inlet structures, if known; and

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6. Street names.

(g) The affected municipality shall establish a numerical reference system for the structures located on the final map.

(h) The affected municipality shall submit the NJPDES permit number of any permitted cross-connection identified on the final map. Where an unpermitted cross-connection discharges industrial pollutants, the affected municipality shall submit the name and address of the person responsible for the cross-connection. Where an unpermitted cross-connection discharges domestic pollutants, the affected municipality shall eliminate or cause to be eliminated the cross-connection.

(i) The affected municipality shall submit the list of the potential nonpoint sources of pollution as required by N.J.A.C. 7:22A-4.5(e)2.

(j) The affected municipality may choose to produce two separate maps, one of their separate stormwater sewer system and one of their sanitary sewage system. These maps shall be produced at the same scale and shall follow the requirements of this section. These maps shall contain, at a minimum, four registration points to allow alignment of the maps when overlaid.

(k) The affected municipality shall identify all features on the final map which are neither owned nor operated by the municipality. For those features, the affected municipality shall include a separate list of the owners and/or operators.

(l) After the submission of the final map, all affected municipalities shall maintain and annually update any portion of the final map to incorporate changes or additions to the stormwater and sanitary sewer systems. The updated maps shall also incorporate any interconnections or cross-connections discovered or eliminated after adoption of the final map.

7:22A-4.4 Investigative priority listing

(a) All affected municipalities shall submit a priority list for the Department's approval which identifies the order in which the stormwater sewer systems will be investigated. The priority list shall include for each stormwater outfall the surface water classification, established in the Surface Water Quality Standards, N.J.A.C. 7:9-4, for the waterbody into which the outfall discharges. The priority list shall include the stormwater outfall number established in N.J.A.C. 7:22A-3.10(a) and shall be based on the following priorities, unless the affected municipality demonstrates to the satisfaction of the Department that other priorities should be used due to site-specific conditions:

1. Dry weather discharges from stormwater outfalls discharging to ocean front waters in or adjacent to bathing areas;

2. Dry weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to bathing areas;

3. Wet weather discharges from stormwater outfalls discharging to ocean front waters in or adjacent to bathing areas;

4. Wet weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to bathing areas;

5. Dry weather discharges from stormwater outfalls discharging to estuarine waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;

6. Dry weather discharges from stormwater outfalls discharging to ocean waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;

7. Wet weather discharges from stormwater outfalls discharging to estuarine waters or ocean waters in or adjacent to approved, seasonal or special restricted shellfish growing waters (in that order) as established in N.J.A.C. 7:12;

8. Any other dry weather discharges from stormwater outfalls; and

9. All other wet weather discharges from stormwater outfalls.

(b) After the submission of the final map in accordance with N.J.A.C. 7:22A-4.3, the affected municipality may, based on information discovered through final mapping, submit an updated priority list.

7:22A-4.5 Identification of interconnections and cross-connections

(a) All affected municipalities shall identify all interconnections and cross-connections by investigating, in the order established in the priority list approved in N.J.A.C. 7:22A-4.4, the stormwater sewer systems within the municipality.

(b) Prior to the submission of the final map in accordance with N.J.A.C. 7:22A-4.3, all affected municipalities shall investigate at least one third of the stormwater outfalls in accordance with (c) and (d) below. The affected municipality shall investigate the remaining stormwater outfalls within three years of the effective date of this subchapter.

(c) All affected municipalities shall investigate for the presence of interconnections and cross-connections by either:

1. Taking one grab sample of the discharge from the stormwater outfall and analyze that sample for the presence of bacterial contamination in accordance with N.J.A.C. 7:22A-4.6. If the sampling indicates excessive levels as specified in N.J.A.C. 7:22A-4.7, the affected municipality shall identify the source of the contamination in accordance with (d) below; or

2. Taking one grab sample of the discharge from the stormwater outfall and performing a viral indicator test on that sample in accordance with N.J.A.C. 7:22A-4.6. If the test indicates that the stormwater is contaminated by a human source, the affected municipality shall identify the source of the human contamination in accordance with (d) below. If the test indicates that the stormwater is not contaminated by a human source, the affected municipality shall comply with the requirements in (e)2 below; or

3. Not performing any initial sampling or testing at the stormwater outfall, thereby foregoing the need to wait for analytical results, and assume that the discharge from the stormwater outfall would either indicate excessive levels of bacterial contamination or indicate contamination by a human source. Using this option, the affected municipality may forgo the sampling or testing of each stormwater outfall required in (c)1 or 2 above and proceed to identify any sources of contamination in accordance with (d) below. In no case shall any affected municipality forgo the sampling or testing on the assumption that the discharge from the stormwater outfall is not contaminated.

(d) The affected municipality shall isolate and identify the source of the contamination as follows:

1. Taking grab samples throughout the stormwater sewer system and doing one of the following:

i. Analyzing the samples for the presence of bacterial contamination in accordance with N.J.A.C. 7:22A-4.6. Where sampling has been performed in accordance with (c)1 above, the affected municipality shall continue taking grab samples at access points, such as manholes or catch-basins, upstream in the stormwater collection system until excessive levels of bacteria are no longer evident. Where outfall sampling has not been performed in accordance with (c)1 above, the affected municipality shall begin taking grab samples at the stormwater outfall; or

ii. Performing the viral indicator test in accordance with N.J.A.C. 7:22A-4.6. Where testing has been performed in accordance with (c)2 above, the affected municipality shall continue taking grab samples at access points, such as manholes or catch-basins, upstream in the stormwater collection system until the test no longer indicates human contamination. Where outfall testing has not been performed in accordance with (c)2 above, the affected municipality shall begin taking grab samples at the stormwater outfall; and

2. Using smoke testing, dye testing, video investigations, or any other analysis approved by the Department. If the tests indicate that the contamination results from an interconnection or cross-connection, the affected municipality shall comply with the requirements in (e)1 below. If the tests indicate that the contamination does not result from an interconnection or cross-connection, the affected municipality shall comply with the requirements in (e)2 below.

(e) Once the affected municipality identifies the source:

1. All affected municipalities shall eliminate, or cause to be eliminated, any interconnection or unpermitted cross-connection identified within the boundaries of the municipality. Any affected municipality or public entity controlling or operating the stormwater sewer system may require the elimination of any interconnection or unpermitted cross-connection with the use of the penalty procedures in N.J.A.C. 7:22A-1.7.

2. Contamination which does not originate from an interconnection or cross-connection (that is, nonpoint source pollution) shall be identified on a list containing the following:

i. The isolated source area of the contamination using a narrative reference to the final map; and

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ii. A listing of the possible nonpoint sources of contamination based on observations and conclusions derived from investigating the isolated source area.

7:22A-4.6 Sampling and testing requirements

(a) Prior to taking any grab samples as required by N.J.A.C. 7:22A-4.5 and 4.8, all affected municipalities shall submit a quality assurance program plan and have the plan approved by the Department. Any method used for sampling, testing or investigation shall be a method approved by the Department.

(b) All affected municipalities shall have all grab samples analyzed by a State certified laboratory which utilizes analytical methods approved by the Department pursuant to N.J.A.C. 7:18. For a laboratory performing the viral indicator test, the laboratory shall be certified in the microbiological category.

(c) All affected municipalities shall include the following information along with the data collected in accordance with N.J.A.C. 7:22A-4.5 and 4.8:

1. The number assigned to the outfall where the sample was collected;

2. The location of the outfall where the sample was collected;

3. The date and time the sample was collected; and

4. The method used to analyze the sample.

(d) All affected municipalities shall perform sampling or testing in accordance with N.J.A.C. 7:22A-4.5 and 4.8 as follows:

1. When performing sampling in accordance with N.J.A.C. 7:22A-4.5(c)1 and (d)1i or quarterly sampling in accordance with N.J.A.C. 7:22A-4.8, a grab sample shall be sampled for the presence of the following bacterial indicators:

i. Total coliform;

ii. Fecal coliform; and

iii. Enterococci.

2. When testing in accordance with N.J.A.C. 7:22A-4.5(c)2 and (d)1ii, a grab sample shall be tested using the viral indicator test, if the test is approved by the Department.

(e) When sampling or testing a stormwater outfall which is submerged or partially submerged, grab samples shall be collected at the manhole closest to the outfall which is not influenced by the receiving water.

(f) Wet weather grab samples shall be collected from the stormwater discharge resulting from a storm event that is greater than .1 inch and at least 72 hours from the previously measurable (greater than .1 inch) storm event. Grap samples shall be collected within the first thirty minutes the storm event. Dry weather grab samples are required to be taken when an outfall is discharging stormwater 72 hours after the previously measurable (greater than .1 inch) storm event.

7:22A-4.7 Excessive bacterial levels for sample analysis

(a) Based on the surface water classification of the receiving water body as set forth in the Surface Water Quality Standards, N.J.A.C. 7:9-4, bacteria levels shall be considered excessive for the purposes of this subchapter where the grab sample analysis indicates:

1. Fecal coliform levels greater than:

i. 50 counts/100 ml for SC waters;

ii. 200 counts/100 ml for FW2 and SE1;

iii. 770 counts/100 ml for SE2; and

iv. 1500 counts/100 ml for SE3;

2. Enterococci levels greater than:

i. 33 counts/100 ml for FW2; and

ii. 35 counts/100 ml for SE1 and SC; or

3. Bacterial indicator levels greater than the standard for approved shellfish waters as established by the National Shellfish Sanitation Program as set forth in its current manual of operations for all shellfish waters in N.J.A.C. 7:12.

7:22A-4.8 Quarterly monitoring

(a) All affected municipalities shall initiate the quarterly monitoring of their stormwater outfall lines in the first month following the submittal of the final map or thirteenth month after the effective date of this subchapter, whichever comes first. The affected municipality shall, on a quarterly basis, take a grab sample at all stormwater outfalls for any stormwater sewer system discharging into salt water in accordance with N.J.A.C. 7:22A-4.6(d)1.

(b) Quarterly monitoring shall be performed in accordance with the sampling procedures outlined in N.J.A.C. 7:22A-4.6. For those outfalls where quarterly monitoring, as required in (a) above, and sampling as required by N.J.A.C. 7:22A-4.5(c)1 or (d)1i, will occur during the same quarter, only one grab sample need be taken.

(c) Quarterly monitoring shall also include monitoring of any dry weather discharges identified from the stormwater outfalls.

(d) In the event that there is no sufficient rainfall to produce flow from any given outfall during the scheduled quarterly monitoring, the affected municipality shall perform the monitoring during the next storm event to produce a sufficient flow as established in N.J.A.C. 7:22A-4.6(f).

(e) The affected municipality shall submit to the Department all quarterly monitoring data and specify any excessive levels of bacteria, as set forth in 7:22A-4.7, found during quarterly monitoring as required in N.J.A.C. 7:22A-4.2(f).

(f) After the completion of the investigation of all the stormwater outfalls in the municipality, as required in N.J.A.C. 7:22A-4.5(b), the affected municipality shall identify the source of the contamination in accordance with N.J.A.C. 7:22A-4.5 whenever excessive bacterial levels are found during the quarterly monitoring events.

(g) The affected municipality, after locating the source of the contamination, shall identify the person responsible for, and promptly eliminate or seek the elimination of the contamination in accordance with N.J.A.C. 7:22A-4.5(e).

7:22A-4.9 Applicant eligibility for final mapping grants

(a) Subject to (b) below, any affected municipality, listed in Appendix A, may apply for a grant to prepare a final map.

(b) Any municipality may challenge the Department's inclusion or omission from Appendix A by submitting documentary evidence which proves to the Department's satisfaction that the municipality's stormwater sewer system either does or does not directly discharge into the salt waters of Atlantic, Cape May, Monmouth, or Ocean counties. A municipality may contest the Department's decision on the petition in accordance with N.J.A.C. 7:22A-1.16(b).

7:22A-4.10 Funding

(a) Grant amounts from the Department for final mapping are based on the applicant's estimated project costs. The minimum grant amount available to an affected municipality for final mapping will be $20,000 and the maximum will be $300,000. The minimum grant amount available shall be adjusted based upon certain development factors in the following formula:

$$\text{Maximum grant amount} = \frac{[(2(R+D+P) + .5(L))}{4} \times (F)] + \$20{,}000$$

Where:

$$R = \frac{\text{road mileage in Appendix A of affected municipality}}{\text{total road mileage of all applicant municipalities}}$$

$$D = \frac{\text{developed acres of affected municipality}}{\text{total developed acres of all applicant municipalities}}$$

$$P = \frac{\text{population in Appendix A of affected municipality}}{\text{total population of all applicant municipalities}}$$

$$L = \frac{\text{developed acres of affected municipality}}{\text{land area of affected municipality in acres}}$$

$$F = \$5{,}535{,}000 - \$20{,}000 \text{ (total applicant municipalities)}$$

(b) The resulting amount developed pursuant to (a) above shall be rounded to the nearest 50 dollar amount and shall not exceed $300,000. If necessary, the resulting amount shall be adjusted based on the total amount of grant funding available.

(c) The Department may provide only up to 90 percent of the allowable project costs and the applicant shall provide at least 10 percent of the allowable project costs.

7:22A-4.11 Pre-application meeting

(a) Prior to submission of a grant application, applicants may request a pre-application conference to discuss application procedures. This conference is not part of the application procedures and verbal

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statements made by the Department during the conference shall not bind the Department.

(b) Unless otherwise specified, any questions concerning the final mapping requirements shall be directed to the Department of Environmental Protection, Division of Water Resources, Bureau of Water Quality Planning, CN-029, Trenton, New Jersey 08625, (609) 633-7021.

7:22A-4.12 Application procedures

(a) Applications for final mapping grant moneys shall be submitted to the Department within 60 days of the effective date of this subchapter or as otherwise extended by the Department.

(b) Each applicant shall include full and complete documentation in the application, including, but not limited to:

1. A brief description of how the grant shall be used and the method of accomplishing the requirements of this subchapter;

2. A description of how the applicant plans to pay for its share of the project costs, including those costs in excess of the grant award necessary to fully complete the project;

3. A description of the steps the applicant plans to take before receiving grant moneys that shall guarantee that at the time of signing of the grant agreement that the applicant shall be irrevocably committed to pay its share of the project costs;

4. An estimated budget of the applicant's project costs;

5. If the applicant did not participate in the preliminary mapping and inventory phase of the Act, the affected municipality's developed acres, undeveloped acres and total land area in acres. Each category of acreage shall specify the land use and the density of that land use; and

6. Any other supplementary materials that the Department may require.

(c) Each applicant shall submit a certified true sealed copy of a resolution adopted by the governing body of the affected municipality. The resolution shall:

1. Authorize the filing of an application for grant moneys for final mapping;

2. Specify the individual, by title, authorized to sign the application on behalf of the applicant;

3. Commit the applicant to providing at least 10 percent of the project costs and certify that the applicant has available the 10 percent match or more, if necessary; and

4. Commit the applicant to comply with the Department's standards for the final mapping as specified in N.J.A.C. 7:22A-4.

7:22A-4.13 Application evaluation

(a) Each application shall be subject to:

1. Preliminary administrative review to determine the completeness of the application. Incomplete applications shall be returned to the applicant with a letter detailing the deficiencies. Incomplete applications which are not amended to conform to the comments of the Department and resubmitted within the time frame established by the Department may be denied;

2. Budget evaluation to ensure that the proposed project costs are reasonable, applicable and allowable; and

3. Final administrative evaluation.

(b) During the evaulation process, the recipient shall, upon the request of the Department, submit supplemental documents or information necessary for the Department to complete its full review and decision on the application. The Department may suspend its evaluation until the additional information or documents have been received. Failure to submit the additional information or documents may be grounds for denial of the grant application.

7:22A-4.14 Department approval or disapproval

(a) After a final evaluation of a completed application, the Department shall take one of the following actions:

1. Approve the application for a grant and initiate the preparation of a grant agreement; or

2. Disapprove the application.

(b) The applicant shall be notified in writing of the Department's decision to disapprove an application.

(c) An applicant may amend and resubmit an application disapproved by the Department within the time frame established by the Department.

7:22A-4.15 Allowable costs

(a) Project costs shall be allowed to the extent permitted by this subchapter and the grant agreement. The quarterly monitoring requirements under N.J.A.C. 7:22A-4.8 will not be an allowable cost under the final mapping grant award. Allowable project costs may include:

1. Work performed by the recipient's personnel, or any party to a subagreement after the effective date of this subchapter, including salaries and fringe benefits for the recipient's personnel or persons hired to complete the project; and

2. Equipment and supplies used solely to complete the project which shall include, but not be limited to, video equipment, surveying equipment, vehicle operating costs, and protective clothing.

(b) Notwithstanding (a) above, the Department shall not allow costs for work that the Department determines is not in compliance with or relevant to this chapter or the specifications or requirements of subagreements or grant agreements. Costs for work not in compliance with or relevant to this chapter, the subagreements, or grant agreements are unallowable.

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APPENDIX A

AFFECTED MUNICIPALITIES	ROAD MILEAGE	MAXIMUM GRANT AMOUNT PRELIMINARY MAPPING	POPULATION
ATLANTIC COUNTY			
Absecon City	47.29	$ 8,600	**7,972**
Atlantic City	104.91	$19,100	**35,014**
Brigantine City	59.76	$10,900	**10,565**
Corbin City	9.85	$ 5,000	**257**
Egg Harbor City	54.81	$10,000	**4,676**
Egg Harbor Township	222.52	$40,500	**23,485**
Estell Manor City	55.57	$10,100	**1,128**
Galloway Township	223.75	$40,750	**21,405**
Hamilton Township	250.41	$45,000	**14,072**
Linwood City	39.88	$ 7,250	**6,503**
Longport Borough	13.40	$ 5,000	**1,196**
Margate City	40.99	$ 7,450	**8,808**
Pleasantville City	66.99	$12,200	**14,738**
Port Republic City	19.26	$ 5,000	**933**
Somers Point City	51.29	$ 9,350	**10,565**
Ventnor City	35.82	$ 6,500	**11,364**
Weymouth Township	34.09	$ 6,200	**1,530**
CAPE MAY COUNTY			
Avalon Borough	41.73	$ 7,600	**2,396**
Cape May City	28.58	$ 5,200	**5,912**
Cape May Point Borough	7.67	$ 5,000	**287**
Dennis Township	81.06	$14,750	**5,093**
Lower Township	152.53	$27,750	**20,495**
Middle Township	147.53	$26,850	**14,113**
North Wildwood City	35.35	$ 6,450	**4,945**
Ocean City	107.23	$19,500	**15,562**
Sea Isle City	32.34	$ 5,900	**2,955**
Stone Harbor Borough	23.93	$ 5,000	**1,327**
Upper Township	102.23	$18,600	**9,483**
West Cape May Borough	12.90	$ 5,000	**1,260**
West Wildwood Borough	5.75	$ 5,000	**360**
Wildwood City	33.60	$ 6,100	**4,969**
Wildwood Crest Borough	31.87	$ 5,800	**4,074**
MONMOUTH COUNTY			
Aberdeen Township	58.77	$10,700	**18,937**
Allenhurst Borough	5.04	$ 5,000	**884**
Asbury Park City	35.81	$ 6,500	**15,790**
Atlantic Highlands	23.33	$ 5,000	**5,011**
Avon-By-The-Sea Borough	12.95	$ 5,000	**2,230**
Belmar Borough	24.34	$ 5,000	**6,194**
Bradley Beach Borough	14.42	$ 5,000	**4,768**
Brielle Borough	24.05	$ 5,000	**4,561**
Deal Borough	18.04	$ 5,000	**1,790**
Fair Haven Borough	23.37	$ 5,000	**5,536**
Hazlet Township	65.37	$11,900	**22,939**
Highlands Borough	16.82	$ 5,000	**5,149**
Keansburg Borough	26.99	$ 5,000	**10,645**
Keyport Borough	22.69	$ 5,000	**7,426**
Little Silver Borough	32.22	$ 5,850	**5,662**
Loch Arbor Village	2.05	$ 5,000	**341**
Long Branch City	87.00	$15,850	**29,224**
Manasquan Borough	26.38	$ 5,000	**5,316**
Matawan Borough	31.18	$ 5,700	**8,566**
Middletown Township	318.13	$45,000	**69,526**
Monmouth Beach Borough	13.87	$ 5,000	**3,686**
Neptune City	18.32	$ 5,000	**5,134**
Neptune Township	121.23	$22,050	**29,289**
Oceanport Borough	27.03	$ 5,000	**6,381**
Red Bank Borough	29.75	$ 5,400	**11,407**
Rumson Borough	48.22	$ 8,800	**7,185**
Sea Bright Borough	6.66	$ 5,000	**1,847**

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Sea Girt Borough	16.74	$ 5,000	**2,556**
Shrewsbury Borough	17.49	$ 5,000	**3,098**
Spring Lake Borough	28.79	$ 5,250	**4,360**
Spring Lake Heights	16.87	$ 5,000	**5,434**
Tinton Falls Borough	60.81	$11,050	**11,980**
Union Beach Borough	24.47	$ 5,000	**6,435**
Wall Township	152.79	$27,800	**20,084**
OCEAN COUNTY			
Barnegat Light Borough	9.80	$ 5,000	**662**
Barnegat Township	80.81	$14,700	**11,401**
Bay Head Borough	10.52	$ 5,000	**1,307**
Beach Haven Borough	20.41	$ 5,000	**1,765**
Beachwood Borough	52.10	$ 9,500	**8,551**
Berkeley Township	206.84	$ 37,650	**35,323**
Brick Township	282.16	$45,000	**62,825**
Dover Township	392.86	$45,000	**74,198**
Eagleswood Township	22.31	$ 5,000	**1,121**
Harvey Cedars Borough	9.24	$ 5,000	**386**
Island Heights Borough	11.42	$ 5,000	**1,604**
Lacey Township	166.84	$ 30,350	**20,175**
Lavallette Borough	16.94	$ 5,000	**2,220**
Little Egg Harbor Township	95.96	$17,450	**12,533**
Long Beach Township	66.20	$12,050	**3,783**
Mantoloking Borough	6.36	$ 5,000	**441**
Ocean Gate Borough	12.80	$ 5,000	**1,482**
Ocean Township	48.98	$ 8,900	**4,291**
Pine Beach Borough	14.98	$ 5,000	**1,771**
Point Pleasant Beach	23.64	$ 5,000	**5,541**
Point Pleasant Borough	77.03	$14,000	**18,272**
Seaside Heights Borough	12.27	$ 5,000	**2,188**
Seaside Park Borough	17.18	$ 5,000	**1,800**
Ship Bottom Borough	16.16	$ 5,000	**1,567**
South Toms River Borough	15.49	$ 5,000	**3,851**
Stafford Township	140.40	$ 25,550	**13,276**
Surf City Borough	17.80	$ 5,000	**1,619**
Tuckerton Borough	18.92	$ 5,000	**2,897**

(a)

DIVISION OF SOLID WASTE MANAGEMENT
DIVISION OF HAZARDOUS WASTE MANAGEMENT
BOARD OF PUBLIC UTILITIES

Division of Waste Management Rules

Proposed Readoption: N.J.A.C. 7:26

Authorized By: Judith A. Yaskin, Commissioner, Department of Environmental Protection, and, as to N.J.A.C. 7:26-6 only, the Board of Public Utilities, Scott Weiner, President.

Authority: N.J.S.A. 13:1E-1 et seq., N.J.S.A. 13:1B-3 and N.J.S.A. 13:1D-9.

DEP Docket Number: 027-90-08.

Proposal Number: PRN 1990-468.

Submit comments by October 17, 1990 to:
Mark A. Wenzler, Esq.
Division of Regulatory Affairs
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to the requirements and criteria of Executive Order 66(1978), N.J.A.C. 7:26 expires on November 4, 1990. The New Jersey Department of Environmental Protection (hereafter "the Department") has reviewed these rules and has determined that they are necessary, reasonable, and proper for the purpose for which they were originally promulgated. The Department, therefore, proposes to readopt these rules.

N.J.A.C. 7:26 was adopted to establish rules for the management of solid waste including hazardous waste. N.J.A.C. 7:26 constitutes the rules of the Department which govern the following activities: the registration, operation, maintenance and closure of solid and hazardous waste facilities; the registration, operation and maintenance of solid and hazardous waste transportation vehicles; fees charged for services provided by the Department to solid and hazardous waste facilities, generators and transporters; civil administrative penalty assessments and requests for adjudicatory hearings; the designation by the Department and the Board of Public Utilities of intradistrict and interdistrict solid waste flows which specify the geographic areas to be served by solid waste facilities; the criteria for siting new major commercial hazardous waste facilities; the implementation of various statutory loan programs; the disclosure and integrity review of solid and hazardous waste facilities and transporters; and the availability of information received by the Department in administering the hazardous waste program.

N.J.A.C. 7:26 was originally entitled Bureau of Solid Waste Management and was filed and effective prior to September 1, 1969 pursuant to authority delegated at N.J.S.A. 26:2C-1 et seq. and N.J.S.A. 26:2D-1 et seq. on June 28, 1974. Revisions were filed pursuant to N.J.S.A. 13:1E-1 et seq. as R.1974 d.2, effective July 1, 1974 (see 5 N.J.R. 369(b), 6 N.J.R. 305(c)). Subsequently, on July 2, 1984 the chapter was extensively amended to implement a new licensing program required under N.J.S.A. 13:1E-126 et seq. (the Disclosure Act). At that time, the chapter was redesignated Division of Waste Management (see 16 N.J.R. 1766(a)). This chapter was then substantially amended effective June 1, 1987 as R.1987 d.235 (see 18 N.J.R. 883(a), 19 N.J.R. 928(b)). The rules effected were amendments to N.J.A.C. 7:26-12.11 and 12.12; repeals of N.J.A.C. 7:26-2.1 through 2.6(a)-(d), 2.7, 2.8, 2.11, 2.12, 2.14, and 7:26-5; new rules at N.J.A.C. 7:26-2.1 through 2.14, and 7:26-2A and 2B; and amendments of N.J.A.C. 7:26-2.6(e) through 7:26-2A.8(1), 7:26-2.9 through 7:26-2A.9 and 7:26-2.10 through 7:26-2.12.

The rules have enabled the Department to effectively manage the collection, transfer, treatment, processing, recycling, reuse and disposal of solid waste. This includes the registration, licensing, operation, maintenance and closure of solid and hazardous waste facilities and transporters. The following is a summary of each chapter.

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N.J.A.C. 7:26-1 sets forth the general provisions of the rules, including the scope, construction, purpose, definitions and the right of the Commissioner or Director to exercise the discretionary powers of the Department or Division within the authority of N.J.S.A. 13:1E-1 et seq. in matters concerning solid waste management not governed by the rules. The subchapter also provides the definition of solid waste which is similar to the federal definition at 40 C.F.R. 261.2 which is part of the Federal program implementing the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 et seq. This subchapter also sets forth the classes of solid waste operations and activities which are exempted from solid waste facility permitting. The conditions for a temporary certificate of authority to operate (TCAO) are specified for facilities which meet the criteria for exemption. Finally, the subchapter sets forth the criteria for transfer station facility master performance permits.

N.J.A.C. 7:26-2 sets forth the procedures for obtaining, maintaining, and modifying a solid waste facility permit. This subchapter sets forth the submission requirements for an environmental and health impact statement (EHIS), the general engineering design requirements and the general operational requirements for solid waste facilities. Further, the subchapter establishes the criteria for registration of solid waste facilities. This subchapter does not apply to hazardous waste facilities but specifically applies to disposal of all non-hazardous solid waste except for that waste which is exempted in Subchapter 1. The subchapter provides specific generator requirements for disposal of asbestos-containing wastes.

N.J.A.C. 7:26-2A sets forth the additional, specific engineering design requirements and standards as well as operational, maintenance, inspection and monitoring requirements for sanitary landfills. The engineering design requirements and standards and the operational and maintenance requirements and standards were established to ensure the proper design, construction, operation and maintenance of sanitary landfills so that adverse impacts are minimized and controlled and so that pollution of the environment is prevented. Further, the subchapter establishes the engineering design and construction criteria, as well as the financial requirements for closure of sanitary landfills.

N.J.A.C. 7:26-2B sets forth the additional specific engineering design requirements and standards for thermal destruction facilities, transfer stations, materials recovery facilities, and composting/co-composting facilities. This subchapter also establishes the additional specific operational and maintenance requirements for thermal destruction facilities. The regulatory standards in this subchapter were established to ensure minimization of adverse impacts from the regulated solid waste facilities and to prevent pollution of the environment.

N.J.A.C. 7:26-3 sets forth the registration requirements for the transportation of solid and hazardous waste in New Jersey and establishes the conditions for non-applicability of the rules to certain types of waste transportation. The subchapter sets forth the general and specific transporter requirements to ensure the proper operation and maintenance of solid waste vehicles.

N.J.A.C. 7:26-3A defines "regulated medical waste" and sets forth the requirements for the handling, transportation, treatment, storage and disposal of regulated medical waste. The subchapter requires the manifesting of regulated medical waste by generators, transporters and disposal facilities. Further, this subchapter establishes an exemption from certain requirements of the rule for small quantity generators and establishes the registration and fee requirements for generators, transporters, intermediate handlers and owners/operators of destination facilities.

N.J.A.C. 7:26-4 sets forth the fee schedule for activities related to solid waste facilities and solid waste transporters. This subchapter also establishes the county enforcement activity fees for solid waste control programs. This subchapter is not applicable to hazardous waste.

N.J.A.C. 7:26-4A establishes a fee schedule for hazardous waste services rendered to generators, transporters, and treatment, storage or disposal facilities. Fees help cover the costs of inspections, manifest processing, permit application and processing, waste classifications, and general hazardous waste program administration.

N.J.A.C. 7:26-5 contains the civil administrative penalty assessment procedures and amounts for violations of the Solid Waste Management Act, N.J.S.A. 13:1E-1 et seq., or of any rule promulgated, any administrative order, permit, license or other operating authority issued, any district solid waste management plan approved, or any Part A permit application filed, pursuant to the Act.

N.J.A.C. 7:26-6 sets forth the interdistrict and intradistrict solid waste flow rules as approved by the Department and the Board of Public Utilities (BPU). These rules designate specific solid waste facilities to serve specific geographic areas set out by county. This subchapter also designates the solid waste types, as identified in N.J.A.C. 7:26-2.13(g), that may be accepted at each facility and lists the types of solid waste that are exempted from the waste flow rules. Further, this subchapter establishes the procedures for modifying a waste flow pursuant to an amendment to a district solid waste management plan. The procedures for implementing an emergency direction or redirection of solid waste flow as determined by the Department and approved by the BPU are also addressed. Although the Department and BPU cooperate on waste flow as described herein, BPU does not exercise authority over or responsibility for any other regulations in N.J.A.C. 7:26.

N.J.A.C. 7:26-7 establishes vehicle placard requirements for vehicles transporting hazardous wastes and sets forth hazardous waste container requirements. In addition, subchapter 7 delineates the specific responsibilities for hazardous waste generators, transporters and facility operators with respect to the use of hazardous waste manifests, recordkeeping and reporting. Included in this subchapter is general information and requirements for the use of the manifest forms such as which shipments need a manifest and where the forms may be obtained, exemptions from the manifesting requirements and a statement regarding the applicability of the Department's penalty authority to certain actions of persons subject to this subchapter.

N.J.A.C. 7:26-8 contains the definition of hazardous waste and describes the criteria and requirements for listing hazardous wastes and determining if a waste is hazardous. Also in this subchapter are conditional exemptions for small quantity generators of hazardous waste and exclusions from regulation as hazardous waste for certain materials. If a solid waste is not a listed hazardous waste, it is still subject to testing for exhibiting a characteristic of hazardous waste. The standards for determining whether a waste is a characteristic hazardous waste (ignitability, corrosivity, reactivity, EP toxicity) are found at N.J.A.C. 7:26-8.9 through 8.12. Lists of hazardous wastes and hazardous constituents are found in N.J.A.C. 7:26-8.13, 8.14 and 8.16. The delisting procedure to exclude a waste from the lists is found in N.J.A.C. 7:26-8.17.

N.J.A.C. 7:26-9 governs the operation, closure and post-closure of hazardous waste facilities. Subchapter 9 begins with a precise definition of which waste management activities must be permitted as hazardous waste facilities, such as treatment, storage or disposal of hazardous waste. Also included in this subchapter are restrictions on the accumulation of hazardous wastes, general operational standards for the facility, and requirements for a groundwater monitoring system. N.J.A.C. 7:26-9.6 and 9.7 delineate preparedness and prevention requirements for safe operation of a facility, as well as the requirement for a contingency plan and emergency procedures at a hazardous waste facility. Finally, subchapter 9 describes the general, financial and liability requirements for closure and post-closure of a hazardous waste facility.

N.J.A.C. 7:26-10 contains additional operational and design standards which apply to all permitted and new hazardous waste facilities. The operational and design standards in subchapter 10 cover the use and management of containers, treatment and storage tanks, surface tanks, surface impoundments, hazardous waste incinerators and hazardous waste landfills. Also included are regulations governing location standards for new hazardous waste facilities.

N.J.A.C. 7:26-11 applies to existing hazardous waste facilities as defined in N.J.A.C. 7:26-1.4 and 7:26-12. Operational and design standards are set forth for hazardous waste treatment or storage tanks, surface impoundments, hazardous waste landfills and incinerators. Standards are also set for facilities involved with thermal, chemical, physical and biological treatment of hazardous waste.

N.J.A.C. 7:26-12 describes in detail which facilities must apply for a hazardous waste facility permit, specifies permit and application requirements, and details permit standards for all hazardous waste facilities. In addition, this subchapter governs the permit requirements and procedures for the transfer of ownership of a hazardous waste facility, and the modification, revocation, reissuance and termination of permits. The Department's decision-making process and timetables, including public participation in the permit process, are also covered by subchapter 12.

N.J.A.C. 7:26-13 establishes siting criteria for new major commercial hazardous waste facilities to prevent any significant threat to human health and the environment. The criteria were adopted pursuant to the Major Hazardous Waste Facility Siting Act, N.J.S.A. 13:1E-49 et seq., and the Administrative Procedure Act, N.J.S.A. 54:14B-1 et seq., and were adopted by the Department after consultation with the Hazardous Waste Advisory Council. The criteria are designed to protect the residents of the State, ensure structural stability for new major commercial hazardous waste facilities, protect surface water, protect groundwater, provide

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for the safe transportation of hazardous waste to new facilities, protect environmentally sensitive areas, and protect air quality.

N.J.A.C. 7:26-13A describes the policies and procedures used by the Hazardous Waste Facilities Siting Commission in regard to the siting of new major commercial hazardous waste facilities. Included are the procedures to be followed for designating a facility site at the request of a hazardous waste industry, and procedures for resolving disputes over payment of the gross receipts tax pursuant to N.J.S.A. 13:1E-80.

N.J.A.C. 7:26-14 sets forth the procedures for the distribution of bond funds appropriated pursuant to the Natural Resources Bond Act, P.L. 1980, c.70, for the development and implementation of resource recovery projects through grants or loans to Solid Waste Management Districts or their implementation agencies. This subchapter establishes the procedures to ensure that the funds are spent in a manner which is consistent with the laws and policies of the State. However, the subchapter is applicable only to grants or loans executed pursuant to P.L. 1985, c.330, c.331, and c.335 prior to the effective date of N.J.A.C. 7:26-14A.

N.J.A.C. 7:26-14A sets forth the procedures for the distribution of funds appropriated from the Resource Recovery and Solid Waste Disposal Facility Fund, established by the Resource Recovery and Solid Waste Disposal Facility Bond Act, P.L. 1985 c.330, c.331 and c.335. The Fund is also the depository for $50,000,000.00 from the Natural Resources Bond Fund established pursuant to P.L. 1980, c.70. The distribution of funds is to be in the form of loans to local government units within the State to help defray the cost of constructing resource recovery facilities and environmentally sound sanitary landfill facilities. This subchapter establishes the procedures to ensure that the funds are spent in a manner that is consistent with the laws and policies of the State and for the intended purpose. Further, this subchapter establishes minimum standards of conduct to prevent conflicts of interest and to ensure proper administration and accounting procedures for the loans. The subchapter is applicable to loans which are executed pursuant to P.L. 1985, c.330, c.331 and c.335 after June 20, 1988.

N.J.A.C. 7:26-15 sets forth the requirements governing the disposition of recycling grants and loans from the State Recycling Fund pursuant to N.J.S.A. 13:1E-92 et seq. The distribution of funds is in the form of planning, program and education grants to municipalities, counties, nonprofit groups or authorized regional recycling coalitions; as loans or loan guarantees to eligible recycling businesses and industries in New Jersey; and as tonnage grants for eligible municipalities based upon the tonnage of recyclable material generated by and recovered for recycling in the municipality. This subchapter establishes the procedures to ensure that the funds are spent in a manner that is consistent with the laws and policies of the State. Further, this subchapter establishes the standards to ensure proper administration and accounting procedures for the grants and loans.

N.J.A.C. 7:26-16 sets forth the licensing and revocation criteria pursuant to the Disclosure Act, N.J.S.A. 13:1E-126 et seq., for the solid and hazardous waste industry. This subchapter establishes the procedures for filing a disclosure statement by license applicants and the criteria for disqualification from licensing to be utilized by the Department. This subchapter establishes the procedures for the review of the disclosure statement by the Attorney General's Office and the Department, the fees to be charged by the Attorney General and the Department for that review and the procedure for handling confidential information associated with disclosure statements. Further, this subchapter establishes the requirements for revocation of a license issued to any solid or hazardous waste facility or transporter.

N.J.A.C. 7:26-16A sets forth the procedures for the submission of a disclosure statement by existing licensees and for applications pending before the Department prior to July 2, 1984 (the effective date of this subchapter). Additionally, the subchapter cross-references the criteria of the integrity review of the disclosure statement in accordance with the requirements of N.J.A.C. 7:26-16.

N.J.A.C. 7:26-17 sets forth the procedures and fees for making information received by the Department in administering the hazardous waste program available to the public, and establishes the criteria for maintaining confidentiality of certain business information.

Social Impact

Once readopted, the rules will continue to provide reasonable and necessary standards for the regulation and management of solid and hazardous waste.

The rules will continue to provide a positive social impact by delineating the specific procedures for regulating the collection, transportation, storage, handling, transferring, treatment, processing, utilization, recycling, recovery, and disposal of solid and hazardous waste. These regulations allow for the management of solid and hazardous waste in a manner which protects the public health, welfare and safety.

Economic Impact

The readoption of N.J.A.C. 7:26 will continue the effect of regulatory standards and criteria regarding permitting and registration for solid and hazardous waste landfills, surface impoundments, treatment, storage and disposal facilities, thermal destruction facilities, transfer stations, materials recovery facilities, composting facilities, regulated medical waste generators and facilities, and collection and transportation operations. Additionally, the readoption will continue the economic impact of fee programs and of resource recovery and recycling grant and loan programs. These impacts are addressed more specifically below.

All applicants for a solid waste facility permit (SWF permit) must comply with the information submittal requirements of N.J.A.C. 7:26-2, 2A and 2B, including the preparation of an environmental and health impact statement (EHIS) and an engineering design. The costs associated with the preparation of these documents will vary according to the size and nature of the facility, but will generally pose a substantial economic impact to the applicant. An applicant will likely require a consultant to prepare the EHIS and a significant amount of time will be necessary to prepare the engineering design submissions. Although the costs associated with all aspects of preparing and submitting a SWF permit application are significant, the Department has determined that the information is necessary to properly evaluate the environmental impact and safety of a proposed solid waste facility. Accordingly, the economic impact on SWF permit applicants will continue with the readoption of the regulatory standards at N.J.A.C. 7:26-2, 2A and 2B.

Applicants for a hazardous waste treatment, storage or disposal (TSD) facility permit must supply the information required by N.J.A.C. 7:26-12.2, including a general description, process description, inspection schedule, contingency plan, engineering design, training programs, closure and post-closure cost estimates, and financial assurance. The costs associated with the preparation of these documents will vary according to the size and nature of the facility, but will generally pose a substantial economic impact to the applicant. Many of the documents which must be submitted will usually require professional consulting services, especially for the engineering design. Although the costs associated with preparing and submitting the required information are significant, the Department has determined that the information is necessary to properly evaluate the environmental impact and safety of a proposed hazardous waste facility. Accordingly, the economic impact on TSD permit applicants will continue with the readoption of N.J.A.C. 7:26-12.

The readoption of N.J.A.C. 7:26 will also continue the economic impact of operational standards, including recordkeeping, applicable to solid and hazardous waste facilities and transporters. Specifically, N.J.A.C. 7:26-2 contains operational standards which apply to solid waste facilities, while N.J.A.C. 7:26-9 and 10 pertain to hazardous waste facilities. N.J.A.C. 7:26-3 sets out the standards applicable to solid and hazardous waste collectors and transporters, and N.J.A.C. 7:26-7 contains additional standards applicable to hazardous waste transporters. These standards provide the minimum operational criteria that solid and hazardous waste facilities must meet, and the recordkeeping and other information reporting requirements that approved facilities and transporters must comply with on a regular basis. Although these operational and recordkeeping standards represent a significant cost of operating a solid or hazardous waste facility or transportation business, the Department has determined that the standards are necessary to ensure that such facilities or businesses are operated in an environmentally sound manner. Therefore, the readoption of N.J.A.C. 7:26 will continue the economic impact of these requirements.

Solid and hazardous waste facility operators will experience costs related to compliance with the engineering design and other technical criteria set out in N.J.A.C. 7:26 when constructing solid and hazardous waste facilities. Specifically, N.J.A.C. 7:26-2A contains the engineering criteria for sanitary landfills, and N.J.A.C. 7:26-2B contains the criteria for the construction of thermal destruction facilities, transfer stations, materials recovery facilities and composting facilities. N.J.A.C. 7:26-9 contains the engineering criteria for hazardous waste facilities. While the engineering criteria in these subchapters will result in costs to the facility operators during construction, these costs are necessary to ensure that solid and hazardous waste facilities are constructed in a manner which protects the public health and safety as well as the environment.

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Solid and hazardous waste facility operators will experience direct costs associated with the fees established in N.J.A.C. 7:26. N.J.A.C. 7:26-4 sets out registration and annual fees for solid waste facilities and transporters, while N.J.A.C. 7:26-4A establishes a fee schedule for certain hazardous waste services. Additionally, N.J.A.C. 7:26-3A contains the regulatory requirements for regulated medical waste, including a fee for generators, transporters, intermediate handlers and destination facilities that deal with regulated medical waste. N.J.A.C. 7:26-16 contains a fee schedule applicable to all solid and hazardous waste business concerns which must undergo disclosure and integrity review pursuant to N.J.S.A. 13:1E-126 et seq. (the "A-901" law). The Department has determined that the fees contained in N.J.A.C. 7:26 are necessary to partially fund the personnel and other costs incurred by the Department in administering the various programs established by the chapter. These fees, and hence the costs to regulated parties, will be continued by the readoption of N.J.A.C. 7:26.

Regulated medical waste generators, transporters, intermediate handlers and destination facilities are subject to regulation pursuant to N.J.A.C. 7:26-3A. This subchapter requires generators, transporters, and facilities to register with the Department and pay an annual fee. Costs associated with this program include tracking, packaging, storage, recordkeeping, and reporting. These costs will vary according to the size and nature of the regulated entity; however, costs of complying with this regulatory scheme may be substantial in some cases. Although the costs associated with this program may be significant, the Legislature and the Department have determined that these regulations are necessary to prevent the uncontrolled disposal of medical waste and beach wash-ups. Accordingly, the economic impact on medical waste generators, transporters, and destination facilities will continue with the readoption of N.J.A.C. 7:26-3A.

Environmental Impact

The readoption of N.J.A.C. 7:26 will continue to provide for the environmentally sound management of solid and hazardous waste facilities and vehicles. The readoption of these rules will continue to have a positive environmental effect.

This positive impact will be realized through continued regulation of the collection, transportation, storage, handling, transfer, treatment, processing, utilization, reuse, recycling, recovery and disposal of solid and hazardous waste in a manner that ensures protection of the environment and the health, safety and welfare of the general public. The readoption of these rules will ensure that properly designed, constructed, operated and maintained facilities and vehicles are in place for the environmentally sound management of solid and hazardous waste and that these facilities, once terminated, are properly closed.

Regulatory Flexibility Analysis

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a majority of the businesses regulated by N.J.A.C. 7:26 are small businesses and will be impacted by the rules. Although the readoption of the rules will not impose additional reporting and recordkeeping or other compliance requirements on small businesses, small businesses which are not currently in compliance with the regulatory standards or which are new businesses will have to expend whatever funds are necessary to comply with the applicable regulatory standards. In addition, the readoption of N.J.A.C. 7:26 will require small businesses to expend funds to ensure continued compliance with the equipment standards, operational standards, information submittal requirements, recordkeeping requirements, licensing requirements and fees set out in N.J.A.C. 7:26.

No blanket exemption to the rules can be granted to small businesses due to the necessity to protect public health and safety and the environment. However, the rules do allow for a scaled-down registration and permit review procedure for solid waste facilities based on the limited quantity of tonnage that they receive. In addition, certain classes of solid waste facilities and vehicles are exempted from the rules based on their limited impact to the environment and the health, safety and welfare of the general public. The fees in N.J.A.C. 7:26-16 are structured so that smaller businesses pay proportionally less of the total program costs than larger businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:26.

LABOR

(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

1991 Maximum Weekly Benefit Rates
1991 Taxable Wage Base under the Unemployment Compensation Law
1991 Contribution Rate of Governmental Entities and Instrumentalities
1991 Base Week
1991 Alternative Earnings Test
Proposed Amendments: N.J.A.C. 12:15-1.3, 1.4, 1.5, 1.6, and 1.7

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 1990-495.

Submit comments by October 17, 1990 to:
Linda Flores
Special Assistant for External & Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 12:15-1.3 establishes the 1991 maximum weekly benefit rate for benefits under the Unemployment Compensation Law and for State Plan benefits under the Temporary Disability Benefits Law.

The proposed amendment to N.J.A.C. 12:15-1.4 establishes the 1991 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).

The proposed amendment to N.J.A.C. 12:15-1.5 establishes the 1991 contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law.

The proposed amendment to N.J.A.C. 12:15-1.6 raises the amount of earnings required in 1991 to establish a base week for an individual's claim for unemployment compensation and State Plan temporary disability benefits.

Finally, the proposed amendment to N.J.A.C. 12:15-1.7 raises 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.

Social Impact

The proposed amendment to 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 amendment to N.J.A.C. 12:15-1.4 will generate increased revenues for the Unemployment Insurance and Disability Insurance Trust Funds 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 amendment to N.J.A.C. 12:15-1.5 will lower the contribution rate for governmental entities that elect to pay contributions under the Unemployment Compensation Law, and will have no social impact on the public.

The proposed amendments to N.J.A.C. 12:15-1.6 and 12:15-1.7 provide 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.

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Economic Impact

The proposed amendment to N.J.A.C. 12:15-1.3 will increase 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, 1991, 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, 1991, the maximum weekly benefit will increase from $279.00 to $291.00.

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, 1991, the maximum weekly benefit will increase from $261.00 to $272.00.

The proposed amendment to N.J.A.C. 12:15-1.4 will increase from $13,900 to $14,400 the wages of an individual employee of an employer that are subject to employer and worker contributions under the Unemployment Compensation Law, beginning January 1, 1991. The taxable wage base is computed as 28 times the Statewide average weekly wage in the second preceding calendar year.

The proposed amendment to N.J.A.C. 12:15-1.5, which will lower the contribution rate for governmental entities to 0.6 percent of taxable wages for 1991 from 0.8 percent for 1990, will result in lower costs to State and local government units that choose this financing option, provided that all other factors that might influence the level of contributions remain the same.

The proposed amendment to N.J.A.C. 12:15-1.6 will increase 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 will increase from $99.00 to $103.00 for benefit years and periods of disability commencing January 1, 1991.

The proposed amendment to N.J.A.C. 12:15-1.7 increases 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 will increase from $6,000 to $6,200 in 1991. 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 amendments.

Regulatory Flexibility Statement

The proposed amendments do not impose any reporting, recordkeeping or 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 amendments affect 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 proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

12:15-1.3 Maximum weekly benefit rates

(a) In accordance with the provisions of the Unemployment Compensation Law, the maximum weekly benefit rate for benefits under the Unemployment Compensation Law is hereby promulgated as being [$279.00] **$291.00** per week.

(b) The maximum weekly benefit rate for State Plan benefits under the Temporary Disability Benefits Law is hereby promulgated as being [$261.00] **$272.00** per week.

(c) These maximum benefits shall be effective for the calendar year [1990] **1991** on benefit years and periods of disability commencing on or after January 1, [1990] **1991**.

12:15-1.4 Taxable wage base under the Unemployment Compensation Law

In accordance with the provisions of N.J.S.A. 43:21-7(b)(3), the "wages" of any individual with respect to any one employer for the purpose of contributions under the Unemployment Compensation Law shall include the first [$13,900] **$14,400** during the calendar year [1990] **1991**.

12:15-1.5 Contribution rate of governmental entities and instrumentalities

(a) In accordance with the provisions of N.J.S.A. 43:21-7.3(e), the contribution rate for all governmental entities and instrumentalities electing to pay contributions under the Unemployment Compensation Law is hereby promulgated as being [eight-tenths of one percent (0.8 percent)] **six-tenths of one percent (0.6 percent)** for the entire calendar year.

(b) This contribution rate shall be effective on taxable wages paid in the calendar year [1990] **1991**.

12:15-1.6 Base week

In accordance with the provisions of N.J.S.A. 43:21-19(t), the base week amount is hereby promulgated as being [$99.00] **$103.00** per week for benefit years and periods of disability commencing on or after January 1, [1990] **1991**.

12:15-1.7 Alternative earnings test

In accordance with the provisions of N.J.S.A. 43:21-4(e) and 43:21-41, in those instances in which the individual has not established 20 base weeks, the alternative earnings amount for establishing eligibility is hereby promulgated as being [$6,000] **$6,200** for benefit years and periods of disability commencing on or after January 1, [1990] **1991**.

(a)

DIVISION OF WORKERS' COMPENSATION

1991 Maximum Workers' Compensation Benefit Rates

Proposed Amendment: N.J.A.C. 12:235-1.6

Authorized by: Raymond L. Bramucci, Commissioner, Department of Labor.

Authority: N.J.S.A. 34:1-5, 34:1-20, 34:1A-3(e) and 34:15-12a.

Proposal Number: PRN 1990-494.

Submit comments by October 17, 1990 to:
Linda Flores
Special Assistant for External and Regulatory Affairs
Office of the Commissioner
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

The agency proposal follows:

Summary

The proposed amendment establishes the 1991 maximum workers' compensation benefit rates for temporary disability, permanent total disability, permanent partial disability, and dependency.

Social Impact

The proposed amendment will ensure that payments to workers' compensation 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.

Economic Impact

The proposed amendment will increase from $370.00 to $385.00 the weekly benefit rate received by individuals eligible for the maximum weekly benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency under the Workers' Compensation Law.

The effect of this change will be to raise the employers' workers' compensation insurance costs, provided that all other factors that might influence workers' compensation insurance costs remain the same.

The Department does not expect to experience any economic impact as a result of the proposed amendment.

Regulatory Flexibility Statement

The proposed amendment does not impose any reporting, recordkeeping or 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 amendment increases benefit rates to individuals. Thus, a regulatory flexibility analysis is not required.

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

12:235-1.6 Maximum workers' compensation benefit rates

(a) In accordance with the provisions of N.J.S.A. 34:15-12(a), the maximum workers' compensation benefit rate for temporary disability, permanent total disability, permanent partial disability, and dependency is hereby promulgated as being [$370.00] **$385.00** per week.

(b) This maximum compensation shall be effective as to injuries occurring in the calendar year [1990] **1991.**

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Regulation of InterLATA Telecommunications Carriers

Reproposed Amendments: N.J.A.C. 14:10-5

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 48:2-13.

BPU Docket Number: TX89090796.

Proposal Number: PRN 1990-501.

A **public hearing** on the proposed amendments will be held on Monday, October 15, 1990 at 10:00 A.M. at the following location:

Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:

Chrys Wilson
Secretary
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities (Board) is proposing to amend the rules governing the adjustment of rates by telecommunications interexchange carriers (IXCs). Under the current regulatory scheme, an IXC may raise or lower any rate by up to 25 percent without express Board approval, provided the new rates do not result in the IXC realizing a return on equity 300 basis points, or more, above that authorized by the Board. Certain notice requirements must be met and the Board may suspend a proposed rate adjustment and institute a rate proceeding in accordance with N.J.S.A. 48:2-21.

After a review of the current rules and the changing nature of the telecommunications industry, the Board authorized publication of adjustments to the rules as they exist. The services provided by IXCs are becoming more competitive and the Board solicited input on the appropriate manner of regulation. The Board previously published proposed amendments to these rules in the November 20, 1989 New Jersey Register at 21 N.J.R. 3631(a). Comments were received from AT&T Communications of New Jersey, MCI, US Sprint, Teleconnect Long Distance Services and Systems Company, New Jersey Bell Telephone Company, and the Division of Rate Counsel, Department of the Public Advocate. Based upon the comments received, the Board has made further amendments to the rules as originally published. The Board believes it is appropriate to republish the amendments for further comment and to establish a more complete record on the competitiveness of the New Jersey telecommunications market prior to making any changes in the current text of the rules. Therefore, the Board has also determined that a public hearing will be held on the proposed amendments as indicated above.

The proposed amendments would eliminate the 25 percent increase or decrease band and the 300 basis points analysis in determining when the Board would institute a rate proceeding. Instead, the Board proposes that rate adjustments would be permitted to go into effect, unless the Board institutes a proceeding on its own motion, or based on a properly filed letter of opposition. In making its determination, the Board would review the level and degree of competition for the carrier and services in question. Such a determination would use appropriate economic and other criteria to measure market share. The Board intends to use data, which would be contained in reports to be filed by the IXCs on a quarterly basis, which includes information on revenues, access, customers, minutes of use and number of calls by service category. Recognizing that much of this information is proprietary market data, the Board proposes that the reports be treated as confidential.

The rules as proposed for amendment herein would also include the following revisions: (1) the rules would be extended to apply to volume discount and rate structure adjustments in addition to the adjustment of rates; (2) the timing of notification requirements; (3) the removal of the requirement for any cost support data; (4) the modification of the reporting requirements to allow uniform reporting; and (5) various language clarifications.

Social Impact

The proposed amendments affect the procedures IXCs follow in implementing adjustments of rates, volume discounts, and rate structures. Certain restrictions for seeking prior Board approval are removed and additional reporting requirements are imposed. It is anticipated that IXCs will have greater flexibility in pricing their services under the proposed amendments.

Economic Impact

The proposed amendments will require IXCs to incur additional record keeping and administrative costs and the Board will be required to check and monitor the reports filed and the information contained in those reports. However, the Board anticipates these costs will be more than offset by corresponding reductions in costs from the relaxation of the necessity of filing full rate proceedings. The Board anticipates the amendments' impact on subscriber rates will be neutral.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since based on the information available to the Board, none of the current IXCs to which the rulemaking would apply are small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., being too large and/or not based in New Jersey.

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

SUBCHAPTER 5. REGULATION OF INTERLATA TELECOMMUNICATIONS CARRIERS

14:10-5.1 Scope

The regulations in this subchapter govern the adjustment of rates, **volume discounts, and rate structures** by telecommunications interexchange carriers subject to the jurisdiction of the New Jersey Board of Public Utilities. The regulations will apply to the adjustment of rates, **volume discounts, and rate structures** [for only those services which are clearly competitive] for all intrastate interLATA carriers, after initial tariffs have been approved by the Board. Connection, service discontinuance, and other matters, unless expressly stated herein, will continue to be governed by existing sections of Title 14 of the New Jersey Administrative Code.

14:10-5.2 Construction and amendment

(a) These rules[, for the regulation of rates for intrastate interLATA carriers,] shall be construed **so as** to allow maximum flexibility in setting rates, **volume discounts, and rate structures** for interexchange carriers, consistent with relevant case law and statutes[, in light of the competitive environment in which interexchange carriers operate].

[(b) These rules will be operative for a period of five years. Prior to the end of that period, the Board will evaluate and review their effectiveness to determine if they should be continued.]

(b) Nothing herein shall preclude the Board from reinstituting rate base/rate of return regulation in compliance with New Jersey Statutes Annotated Title 48, if deemed necessary.

14:10-5.3 Definitions

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

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"Actual service" means the date on which the proposed adjustment(s) is/are served on the Office of the Board's Secretary, the Office of Rate Counsel and all other interexchange carriers.

"Board" means the New Jersey Board of Public Utilities.

"Geographically averaged rates" means rates that are based on distance without regard to specific geographic location, that is, calls of equal distance shall be priced at the same rate.

"Geographically deaveraged rates" means rates that are not averaged and are route specific or differ depending upon a specific geographic location.

"Intrastate interLATA carriers" and "interexchange carriers" mean AT&T Communications of New Jersey, MCI, [GTE-] US Sprint, [USTS,] **CSI,** RCI, [Western Union] **Teleconnect Long Distance Services and Systems Company** and other common carriers (OCC's) authorized by the Board to provide intrastate interLATA telecommunications service in New Jersey.

"Rate structures" means an established schedule of rates contained in an approved intrastate tariff referencing individual service elements on a per unit basis.

["Return on equity" is the percentage return on equity set by the Board for each individual interexchange carrier or a general rate set by the Board for all interexchange carriers. The return on equity as set by the Board shall be the midpoint of a range of returns on equity approved by the Board. The range of returns on equity shall be plus or minus 300 basis points over or under the midpoint set by the Board.]

14:10-5.4 [Initial rates] **Rate deaveraging**

[Initial rates for interexchange carriers currently authorized to operate in New Jersey shall be the rates in effect upon Board adoption of these regulations. For any additional carriers that may subsequently be authorized to provide intrastate interLATA service, initial rates shall be those contained in the initial tariffs approved by the Board. Initial rates, as used herein shall be the midpoint of the range of rates approved for each interexchange carrier. The range of rates approved for each carrier is hereby determined to be plus or minus 25 percent over or under each individual initial rate approved by the Board.] **Under no circumstances shall any changes pursuant to these rules create geographically deaveraged rates unless specifically authorized by the Board.**

14:10-5.5 [Upward] **Requirements for** adjustments in rates[; notice] **and/or adjustments in volume discounts and/or adjustments in rate structures which create increased charges to any customer(s)**

(a) [Upward adjustments] **Adjustments** in [individual] rates [of up to 25 percent over initial rate or rates set after a rate proceeding, held according to appropriate statutory requirements,] **and/or adjustments in volume discounts and/or adjustments in rate structures which create increased charges to any customer(s)** shall be allowed without the requirement of a rate proceeding before the Board, **except as otherwise provided herein.** Such [upward] adjustments may be effective [14] **21** days after the required notice of the proposed adjustment **as described in (b) below,** absent Board determination to postpone implementation of the [rate change] **adjustment.**

(b) The notice requirement for an [upward rate] adjustment **as described in (a) above** shall be by direct mail to all affected customers or by publication in newspapers of general circulation throughout the affected service area, **within 24 hours of** [and] actual service [of notice] of the proposed [rates served] **adjustment** on Rate Counsel, [and] the Board's Secretary, **and all other interexchange carriers.**

[(c) Regular mail notices of proposed rates must be sent to all other interexchange carriers no later than the date of actual service on the Board's Secretary.]

[(d)] **(c)** Board's Staff, Rate Counsel, or any other interested party may, upon [notice] **review** of the proposed [upward] adjustment, oppose the change in writing [at any time] **no less than seven days** prior to the proposed effective date. **Such letter of opposition shall be filed with the Board's Secretary clearly setting forth a substantially sufficient reason for not allowing the adjustment.** [A Commissioner, or the] **The** Board ['s designee, upon receipt of such objection] may[, by letter,] **postpone implementation of the proposed** [rates for two weeks] **adjustment(s) up to 30 days** from the proposed effective date **after receipt of such written objection.** Further suspension [of rates,] by procedures similar to those outlined in N.J.S.A. 48:2-21 may be authorized by the Board.

(d) Any proposed adjustment as described in (a) above, submitted to the Board, shall include the precise magnitude of the change; a statement of the reasons for the change; a list of comparable service alternatives available to affected customers from competitors; and a cross-reference to the quarterly data submitted as required in N.J.A.C. 14:10-5.8, to corroborate the reasons described in the filing.

14:10-5.6 [Downward] **Requirements for** adjustments in rates[; notice] **and/or adjustments in volume discounts and/or adjustments in rate structures which do not create increased charges to any customer(s)**

(a) [Downward adjustments] **Adjustments** in [individual] rates [of up to 25 percent, below initial rates or rates set after a rate proceeding, held according to appropriate statutory requirements,] **and/or adjustments in volume discounts and/or adjustments in rate structures which do not create increased charges to any customer(s)** shall be allowed without the requirement of a rate proceeding before the Board. Such [downward] adjustments may be effective [five] **seven** days after the required notice **of the proposed adjustments as described in (b) below,** absent Board determination to postpone implementation of the [rate change] **adjustment.**

(b) The notice requirement for [a downward rate] **an** adjustment **as described in (a) above** shall be actual [notice] **service** of the proposed [rates served] **adjustment** on Rate Counsel [and], the Board's Secretary, **and all other interexchange carriers.**

[(c) Regular mail notice of proposed rates must be sent to all other interexchange carriers no later than the date of actual service on the Board's Secretary.]

(c) Board's Staff, Rate Counsel, or any other interested party may, upon review of the proposed adjustment, oppose the change in writing no less than two days prior to the proposed effective date. Such letter of opposition shall be filed with the Board's Secretary clearly setting forth a substantially sufficient reason for not allowing the adjustment. The Board's Secretary may, in writing, postpone implementation of the proposed adjustment(s) up to 30 days from the proposed effective date. Further, suspensions may be authorized by the Board in a manner similar to those outlined in N.J.S.A. 48:2-21.

[(d) Opposition to a proposed downward adjustment and disposition thereof, shall be in accordance with the method outlined in N.J.A.C. 14:10-5.5 for opposition to upward rate adjustments.]

14:10-5.7 Rate proceedings

[(a) A rate proceeding shall be instituted:

1. Upon suspension of a rate adjustment by the Board;

2. Upon total proposed upward adjustments of individual rates of greater than 25 percent above initial rates or rates set after a rate proceeding; or

3. Upon realization of a return on equity 300 basis points or more above that authorized by the Board.]

[(b)] **(a)** The Board may institute a rate proceeding **upon**:

1. [Upon its] **Its** own motion [or a properly filed petition];

[2. Upon a proposed downward adjustment of greater than 25 percent; or]

2. Consideration of a properly filed letter of opposition as described in N.J.A.C. 14:10-5.5(c) or 5.6(c) above;

[3. Upon realization of a return on equity 300 basis points or more below that authorized by the Board.]

3. Suspension of any proposed adjustment;

4. A Board finding that the market concentration for an individual carrier results in a service(s) no longer being effectively competitive; or

5. A Board finding that an interexchange carrier is not providing safe, adequate, and proper, and/or reasonably priced service based on an evaluation of customer complaints by Board's Staff.

[(c)] **(b)** A rate proceeding authorized under this regulation shall be held in accordance with the appropriate statutory requirements for adjustment of rates.

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(c) In deciding whether to institute a rate proceeding, the Board may:

1. Review each individual service category or offering to determine the level and breadth of competition among interexchange carriers;

2. Consider using an economic measure of concentration or any other appropriate economic indicator to measure market share and the competitiveness of individual firms or services; or

3. Use the information collected pursuant to N.J.A.C. 14:10-5.8 to conduct an analysis as to whether markets are becoming more or less competitive; specifically, monitoring the shares of interexchange carriers as measured by revenues, number of calls, minutes of use, and number of customers; in addition, evaluate the conditions of entry/exit in various market segments.

14:10-5.8 Reporting requirements

[Board Staff, in conjunction with Rate Counsel and the interexchange carriers, shall within six months of the effective date of these rules develop appropriate reporting mechanisms to insure proper notification on and oversight of earnings, return on equity and the rate changes contemplated herein. These reporting mechanisms shall be placed upon the Board's Agenda for approval.]

(a) Every interexchange carrier providing intrastate telecommunications service in New Jersey shall provide to the Board information on a quarterly basis and shall include:

1. Intrastate revenues by service category;

2. Intrastate access (local interconnection) costs;

3. Total company income statement for telecommunications services including operating revenues, operating expenses, other expenses and interest expense;

4. Total number of intrastate customers by service category;

5. Total intrastate minutes of use by service category;

6. Total intrastate number of calls by service category;

7. A description of each intrastate service offering;

8. A description of each intrastate complaint by service category; and

9. Any further support deemed necessary by the Board.

(b) All background and supporting documentation used to develop the information required by (a) above shall be maintained during the pendency of these rules and available for inspection by the Board upon request.

(c) In addition, each interexchange carrier shall provide an annual summary of each category listed in (a) above.

(d) The reports filed with the Board pursuant to (a) above are considered proprietary and shall not be deemed as public records pursuant to the provisions of N.J.S.A. 47:1A-1 et seq. (the Right to Know Law). The Board's Staff shall take appropriate measures to maintain the confidentiality of the records and access to such records shall be limited to agents, employees, and attorneys of the Board, and, in the discretion of the Board, any other appropriate governmental agency. All such governmental agencies shall be subject to the confidentiality requirements contained in this subsection. In addition, the Director of the Division of Rate Counsel, Department of the Public Advocate, shall be permitted to receive copies of such reports provided that the Director agree to consider the information contained in the reports proprietary and confidential.

14:10-5.9 Discontinuance of service offerings

(a) Any interexchange carrier[, unless it is the sole provider of the service in question,] may, [unless otherwise directed by the Board,] upon 30 days notice to the Board and its customers, discontinue any service offering[.] **unless:**

1. It is the sole provider of the service in question; or

2. Otherwise directed by the Board.

(b) If directed by the Board, the carrier will be provided an opportunity to state its reasons why the Board should not require continuation of the service within 30 days of the Board's decision. Hearings may be held if deemed necessary by the Board.

[(b)] **(c)** Service offerings, provided solely by a single interexchange carrier, may be discontinued only upon **a properly filed** petition, [approved] **and affirmative action** by the Board.

[(c) Petitions for discontinuance must be served upon the Board in accordance with the provisions of N.J.A.C. 14:10-5.5.]

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television

Petitions for Approval to Curtail Service

Proposed New Rule: N.J.A.C. 14:17-6.22

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-483.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule clarifies the procedure for suspension, curtailment or discontinuance of service in the event of signal leakage in violation of acceptable limits as imposed by the Federal Communications Commission 47 C.F.R. Sections 76.605 and 613. The proposed new rule sets forth a procedure for the cable operator to follow which includes notice, testing and the processing of the operator's leakage complaint as a contested access proceeding. The affected subscriber's rights to notice and due process are fully preserved. The rule effectively places a significant burden of proof on the cable operator prior to any curtailment of cable TV service due to signal leakage, except in the most dire cases of harmful interference, where Federal governmental action is involved.

Social Impact

In recent New Jersey court proceedings, subscribers' rights to due process prior to service curtailment, even in the face of documented signal leakage, have been preserved. In response, the Board has amended its rules to provide for the curtailment of service due to signal leakage only after adequate subscriber notice and due process proceedings. The OCTV believes these changes properly regulate the impact service curtailment actions can have on subscribers who have little or no knowledge of signal leakage issues, while providing a clearer avenue of relief for cable operators.

The basis for the proposed new rule is the need for formal policy insuring due process to all interested parties when a cable company must curtail service temporarily. It has been developed based on the OCTV's experience and court decisions in the *Boardwalk 5000 v. Sammons*, BPU Docket Nos. 89090746, 89090748, and *Sammons v. Shore Club Condominium Association*, BPU Docket Nos. 89030313, 89060531, matters.

Economic Impact

The proposed new rule clarifies the existing notification and due process procedures designed to adequately protect subscribers' rights to same in the event of service curtailments are necessary due to excessive signal leakage. There will be some economic burden on cable operators seeking to curtail, principally related to the performance and compilation of test results and filing of petitions with the Board. However, the OCTV maintains that the rule requirements are important for the protection of subscriber rights and the limited economic burden is, therefore, justified.

Regulatory Flexibility Analysis

As the proposed new rule clarifies as administrative procedure, the requirements of such procedure must be followed by those seeking approval for suspension, curtailment or discontinuance of service in the event of signal leakage. Parties to such activities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are two small cable television companies to which this proposed amendment may apply. While the preparation and filing of petitions is normally done by an attorney, such professional represen-

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tation is not a requirement; a person or entity may act on its own behalf. While small businesses will incur expenses associated with field testing to ascertain the degree of signal leakage and for notifying affected subscribers of the petition for curtailment, these expenses are far outweighed by the potential for public harm should signal leakage remain unremedied. No differentiation in requirements is, therefore, provided based upon business size.

Full text of the proposed new rule follows:

14:17-6.22 Petitions for approval to curtail service

(a) Petitions filed pursuant to N.J.S.A. 48:5A-37, for approval to curtail cable television service to all or part of the cable television system due to signal leakage, shall state whether curtailment is necessary:

1. Because of the existence of harmful interference as defined by the Federal Communications Commission at 47 C.F.R. Section 76.613;

2. In order to comply in good faith with any State or Federal governmental order, directive or notification including those issued pursuant to 47 C.F.R. Section 76.613; and/or

3. Because of signal leakage in excess of the requirements of 47 C.F.R. Section 76.605.

(b) All petitions filed pursuant to (a) above shall include:

1. The results of field testing, supported by affidavit, indicating the amount of signal leakage, the source of the signal leakage, the equipment and methods used to conduct the test, the frequencies measured and the location of each measurement;

2. Copies of any appropriate governmental order, directive or notification;

3. A description of remedial actions taken to correct the signal leakage;

4. A description of remedial actions proposed to be taken to correct the signal leakage; and

5. A copy of the notice supplied to affected subscribers of the petition for curtailment, a description of the method of service of said notice and proof of service.

(c) Additionally, in instances where access to multi-unit residences is required to effectuate repairs or to take other remedial action, a copy of the petition shall be served on the owner, operator or manager of the property.

1. Such a petition shall also include a specific description of the method of access for purposes of remedial action.

2. The petition shall include proof of service upon the owner, operator or manager.

(d) Any related person or entity wishing to contest the petition for curtailment shall file a complaint or objection with the Board, and shall thereby be afforded the right to be heard consistent with the provisions of N.J.S.A. 48:5A-37 and, where applicable, N.J.S.A. 48:5A-49.

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Requests for Service; Seven Day Installation
Proposed Amendment: N.J.A.C. 14:18-3.2

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-484.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment would require cable companies to make installation of service within seven days of a subscriber's order instead of 20 days, or provide an explanation why it cannot be provided.

Social Impact

A maximum of seven days for installation is consistent with the cable industry's current standards and guidelines. The Board agrees with comments in its generic proceeding on cable television regulations, but determined that changing to the seven day standard was a substantive change requiring publication of further notice and an additional comment period. See, Readoption of N.J.A.C. 14:18 with Adoption of Concurrent Amendments and New Rules, R.1990 d.415, BPU Docket No. CX89120973, Notice of Readoption at 22 N.J.R. 2575(a), August 20, 1990, New Jersey Register. As the Board has previously noted, in that matter utilities generally target a three-day standard, and telephone companies are required to complete 75 percent of their installation within five days (N.J.A.C. 14:11-7.4).

Economic Impact

The proposed amendment imposes a more stringent operational requirement upon cable operators, and therefore will have some cost impact. The degree of that impact will depend on whether a cable operator already has standards for providing service within seven days. Most operators do, but some may require additional personnel.

Regulatory Flexibility Analysis

There are presently two small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the proposed amendment would apply. As the amendment proposes the minimum industry standards, which make no distinctions based on the size of the business, it is not appropriate to make exclusions for small businesses. As small businesses, they will have proportionately lower numbers of orders for new service which can be performed by the same employees or contractors now performing the work.

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

14:18-3.2 Requests for service

(a) (No change.)

(b) Within [20] **seven business** days of ordering service, a subscriber is entitled to one of the following:

Recodify existing i.-iii. as **1.-3.** (No change in text.)

(c) (No change.)

(b)

OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Outage Credit
Proposed Amendment: N.J.A.C. 14:18-3.5

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-485.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

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Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment will clarify the Board's intent in connection with the calculation of the time period which must elapse before cable television companies are required to credit a subscriber's account for service outages. The proposed amendment provides cable television subscribers a means to receive credit for service outages when such service outages accumulate to six hours or more within a 24-hour period. Cable television companies are currently interpreting this rule to mean that subscribers are only entitled to a credit when service is interrupted on a six-hour continuous basis. The industry's interpretation of this rule is contrary to the Office of Cable Television's (OCTV's) intent upon the original drafting and has proven to be unduly burdensome to subscribers. "Outages" are defined as the total loss of the audio and visual portion of any level of cable television service for which the company imposes a separate charge. It includes only interruptions affecting the company's distribution plant. The distribution plant is the hardware, wires, electronics, passive equipment and other instrumentalities which deliver the cable television signal to the drop line feeding an individual subscriber's home.

Social Impact

The proposed amendment which requires the application of credit in connection with service outages be based on a six-hour accumulated basis as opposed to a six-hour continuous basis addresses the realities of the industry and provides subscribers with a remedy on a more equitable basis. Both individual and municipal comments from hearings on the Board's Chapter 18 Regulations (N.J.A.C. 14:18) indicate the present rule does not provide enough redress for chronic interruptions. The proposed amendment will also have a positive impact on the OCTV by reducing the number of complaints, thus reducing the amount of time expended in mediating settlements in these matters.

This amendment has been proposed to address inadequacies of the present outage credit rule which have been pointed out to the Board in comments to its N.J.A.C. 14:18, Regulations of Cable Television, readoption proposal, BPU Docket No. CX89120973, (see 22 N.J.R. 2575(a)) as well as cumulative complaints and comments to the OCTV since the inception of the outage credit requirement.

Economic Impact

Cable television subscribers will realize economic benefit upon promulgation of this proposed amendment inasmuch as they will no longer be paying for service not received. Cable television companies will incur no additional administrative expenses as existing mechanisms for the application of credit to a subscriber's account need not be altered to comply with this proposed amendment. Cable television companies will realize lost revenues as a result of the crediting requirements but will not incur any out of pocket expenses. The OCTV will be impacted positively through a reduction in the number of complaints it will be required to resolve in connection with service outage matters.

Regulatory Flexibility Analysis

There are two cable television companies that are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which the proposed amendment will apply. No new professional services will need to be employed to comply with this proposed amendment as the administrative mechanisms for the application of credit to a subscriber's account are already in place. Although small businesses will incur lost revenues associated with the calculation of time period which must elapse before cable television companies are required to credit a subscriber's account, such lost revenues are commensurate with the number of customers served. Therefore, the burden of administrative expense falls equally on both small and large businesses.

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

14:18-3.5 Outage credit

(a) The cable television operator shall credit subscribers for outages, as defined in these rules, as follows:

1. In the event **the cable system experiences** [an] outages [lasting] **or interruptions of service that accumulate to** six or more hours **within a 24-hour period,** the company shall make an appropriate credit on the subscriber's bill.

2.-6. (No change.)

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

(g) If service is interrupted less than six hours during a 24-hour period, no credit will be issued the subscriber.

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Prompt Restoration Standards
Proposed New Rule: N.J.A.C. 14:18-3.13

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-486.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rule would require cable companies to begin reasonable corrective action within two hours of notification of any system outages affecting five or more subscribers. This requirement would apply 24 hours a day for systems serving over 10,000 subscribers. Further, all operators, regardless of size, must respond immediately to emergency situations at the request of police, fire authorities and governmental agencies. Systems having less than 10,000 subscribers are required to respond to outages affecting five or more subscribers as expeditiously as possible.

The rule recognizes that in certain situations a two hour response time might be impracticable due to reasons of safety or equipment access. For example, company crews would not be expected to work on plant during severe lightning storms until the storm has abated. In these cases, operators must respond as soon as the situation would allow.

Social Impact

Complaints to the Board's Office of Cable Television show that some subscribers experience cable system service outages which are extensive. In general, the length of time an outage persists is due in large part to the operator's response time. Many cable consumers rely on cable television services as a principal source of information and entertainment. These subscribers are entitled to reliable service, including the expectations that an outage will be corrected as quickly as possible. Moreover, subscriber viewing times extend well into the late evening and in some cases, very early A.M. hours. For this reason, the rule is operative 24 hours a day.

Economic Impact

The proposed new rule would have little impact on many of the larger systems in New Jersey which already respond promptly 24 hours a day to most outages. The new rule requires a two hour response only in the event five or more subscribers from a contiguous area are interrupted. This would allow the operators some discretion in deciding whether to respond to small, scattered outages where only a few individuals are without service. Most companies respond within a reasonable time to outages affecting one or a few subscribers. However, outages which cause a loss of service for five or more customers warrant a more immediate

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response, not only because more subscribers are affected but because they also may be indicative of more severe system problems. For example, a single subscriber tap failure might interrupt service to only two or three households while an outage which affects five or more customers could be a result of plant damage or electronic failure which, by definition, could affect more customers.

There could be some economic burden to those systems which have not developed adequate outage response mechanisms or have limited personnel available. However, the Board believes systems over 10,000 subscribers have the capability and financial resources to accommodate a two hour response time on a 24 hour basis.

Regulatory Flexibility Analysis

There are two cable television companies which are small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., to which this proposed new rule will apply. These small businesses have subscriber bases well under 10,000 and, therefore, would not be affected by the most stringent requirement of the rule, which is the two hour response time criteria. The two small businesses would be required to comply with the remaining section of the rule, which essentially requires expediency in responding to outages. As such, it is not appropriate to waive the requirements of the proposed new rule for small businesses.

Full text of the proposed new rule follows (deletion indicated in brackets [thus]):

14:18-3.13 [(Reserved)] Prompt restoration standards

(a) For systems having over 10,000 subscribers, the cable television operator shall begin reasonable corrective action within two hours of notification of any outage affecting five or more subscribers in a contiguous area of the system:

1. In situations where it is not practicable to respond for reasons of safety or access to equipment, then the company shall respond as soon as the situation would allow.

2. Systems having less than 10,000 subscribers shall begin reasonable corrective action in response to outages affecting five or more subscribers in a contiguous area as promptly as possible.

3. All operators shall respond immediately to emergency situations at the request of police, fire, rescue or other governmental authorities or utilities.

4. All operators shall respond with reasonable corrective action as promptly as possible to any service interruptions or service deficiencies within the control of the operator, which interrupt one or more programming services to subscribers.

(a)

OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Notice of Rate Change
Proposed Amendment: N.J.A.C. 14:18-3.16

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-487.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment permits the issuance of a waiver to a cable operator for the requirement to notify the Office, municipalities, and the subscribers of a rate decrease, and does not allow a waiver of timely compliance to be issued for a rate increase.

Social Impact

The proposed amendment allows, without timely notice, a waiver for a cable television company in the instance of a rate decrease. The rules prohibit the issuance of a waiver for notification of a rate increase and thereby insures adequate and proper notice to the subscriber.

This amendment has been proposed by the OCTV based on the numerous rate change notice waiver requests filed by cable operators. Waiver requests on such a wide scale defeat the purpose and intent of the notice requirement.

Economic Impact

Although the cable operator may incur cost as a result of being unable to obtain a waiver for a rate increase, that operator is not otherwise restricted in the ability to raise rates. Therefore, the operator is relieved of any economic burden by filing proper notification of a rate increase to the Office and the subscribers. By allowing issuance of a waiver of notification requirements for a rate decrease, operators are saved the expense of such notification.

Regulatory Flexibility Analysis

The proposed amendment does not place any additional reporting, recordkeeping or compliance requirement on any operator. It is not appropriate to waive requirements of this rule for small businesses as it prohibits the issuance of waiver in any instance of a rate increase.

The OCTV believes the notification provision is necessary to protect subscribers.

Full text of the proposed amendment follows (additions indicated in boldface **thus**):

14:18-3.16 Notice of rate change

(a) (No change.)

(b) Cable television operators may be issued a waiver for any notification provision pursuant to this requirement in the instance of rate decrease. In no instance will a waiver of timely compliance be issued for a rate increase.

(b)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Reimbursement for Lost, Stolen or Damaged Equipment
Proposed New Rule: N.J.A.C. 14:18-3.23

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities, Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-488.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

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The agency proposal follows:

Summary

The Office of Cable Television (OCTV), in proposing this rule for reimbursement for lost, stolen and damaged equipment, would establish a maximum charge which cable operators could impose on subscribers for lost, stolen or damaged equipment. The rule also prohibits the company from charging subscribers for damage associated with the normal wear and tear or the company's operation or maintenance activities. Additionally, the rule requires cable operators to notify all new customers, and customers receiving new or additional equipment, of their responsibilities while using the equipment. In specifying allowable replacement cost as the cost to the operator at the time of replacement rather than at the time of installation, the rule encourages deliberate care of the equipment by the subscriber.

Social Impact

This new rule would clarify the respective responsibilities and rights of both cable operators and subscribers concerning lost, stolen or damaged equipment owned by the cable operator and used by the subscriber. It would clarify the obligations of subscribers for equipment they use and would specify the maximum amount they could be charged in the event the equipment is lost, stolen or damaged. It would clarify the right of cable television operators to receive compensation in instances where their equipment is lost, stolen or if the equipment is unreasonably damaged. The rule recognizes the investment which cable television operators must make in equipment. Subscribers would also be notified of their right to refer the matter to the Office of Cable Television should they feel the charge is not warranted.

In the course of its preproposal review of the cable television regulations, the OCTV concluded that a uniform rule is preferable to case by case settlement both from an equitable and practical standpoint.

Economic Impact

The proposed new rule would impose some administrative burden on cable operators. The notification provisions require notification to all new subscribers and to subscribers accepting new or additional equipment. It also requires notice to those subscribers who will actually be charged. Since virtually all cable operators require subscribers to sign such notification already, and because OCTV estimates the number of situations where subscribers will actually be charged is small, the Board believes the economic burden on the industry will be small but necessary in view of the subscriber's right to full disclosure. This will codify the existing policies of many cable operators which impose these charges on subscribers and will protect the subscriber from inordinant charges if equipment is lost, stolen or damaged. There will be a reduction in time spent by the OCTV in handling disputes over reimbursement.

Regulatory Flexibility Analysis

Two cable television operators are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule is proposed to determine cost and compensation in replacing auxiliary equipment and further to notice subscribers of the rights and responsibilities in accepting such equipment. It is expected that a minimal number of subscribers will be affected and the administrative cost of notification thereby would be small. Accordingly, it is not necessary to waive the requirements of the rule for cable operators who qualify as small businesses.

Full text of the proposed new rule follows:

14:18-3.23 Reimbursement for lost, stolen or damaged equipment

(a) The cost charged to subscribers by cable television operators to replace lost or stolen converters or other auxiliary equipment shall be in an amount not to exceed the actual cost or the cable television operator's replacement cost, whichever is greater, of the equipment at the time the equipment was installed in the subscriber's home.

(b) The cost charged to subscribers by cable television operators for damaged equipment shall not exceed the reasonable repair costs or actual replacement cost, whichever is lesser.

(c) A cable television company shall not charge a subscriber for any damage to converters or other auxiliary equipment which may have resulted from the design, operation or maintenance of the equipment or from normal wear and tear.

(d) In the event the cable television company seeks to impose a charge for a subscriber pursuant to this section, the company shall give written notice to the subscriber of the amount sought and the reasons for the charge. The subscriber shall also be notified of the opportunity to refer the matter to the Office of Cable Television or the appropriate complaint officer pursuant to N.J.S.A. 48:5A-26.

(e) Cable television operators shall provide written notification to all new subscribers and subscribers receiving new or additional equipment of the rights and obligations of this section.

(a)

BOARD OF PUBLIC UTILITIES
OFFICE OF CABLE TELEVISION
Regulation of Cable Television
Late Fees and Charges
Proposed New Rule: N.J.A.C. 14:18-3.24

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-489.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room—10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Telephone 201-648-2670

The agency proposal follows:

Summary

The Office of Cable Television (OCTV) is proposing a new rule on guidelines for cable television companies which plan to impose a charge for past due bills. The proposed rule will establish uniform guidelines as to when late fees can be charged by cable television companies in New Jersey. The proposed rule specifies that any late fee or penalty charge shall be itemized on the subscriber's bill. The rule also states that if a late charge is to be imposed, it shall not be imposed sooner than 45 days from the due date of the balance of an account.

Social Impact

Under certain conditions, if an operator imposes a late fee, a notification and explanation of such should be imposed so that the affected subscribers clearly understand the circumstances which have led to the imposition of the charge.

The rule is proposed in response to comment during proceedings on cable television regulations that cable companies should include the amount of late charges on the monthly bill to a subscriber (see 22 N.J.R. 2575(a)). The OCTV's staff experience in logging complaints notes this request is reiterated.

Economic Impact

For those companies which currently impose charges for late payment, it is anticipated that the economic impact will be minimal. The only additional cost involved would be the cost to modify the subscriber's bill to include the information required. For those companies which do not impose late charges there will be no impact. OCTV time spent handling these disputes will be reduced.

Regulatory Flexibility Analysis

Two cable television operators are small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The provision of notice and calculation through billing to the subscriber of any late charge can be performed through the company's existing billing distribution. It is therefore anticipated that no additional burden in personnel or administrative costs would result from the proposed rule. As such, no waiver for small businesses is necessary or appropriate.

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Full text of the proposal follows:

14:18-3.24 Late fees and charges

(a) In the event a cable television operator imposes an additional fee or charge or penalty to a subscriber for billing balances which are considered past due or late, the cable television operator shall clearly specify the amount of the fee, charge or penalty on the subscriber's bill. The cable television company shall also specify the method of calculation of the fee, charge or penalty on the bill.

(b) A cable television operator shall not impose an additional fee, charge or penalties specified in (a) above on any account balance less than 45 days past due.

(a)

OFFICE OF CABLE TELEVISION
Regulations of Cable Television
Location
Proposed Amendment: N.J.A.C. 14:18-5.1

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-490.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed amendment will require cable television companies to apply to the Board for permission to close or relocate an office. Such application shall demonstrate that such office closure or relocation is not unreasonable and will not unduly prejudice the public interest. The application shall also set forth the means by which customers and other interested parties are notified of relocation or closure. The cable company shall simultaneously notify its customers and affected municipalities of the pending application for approval to relocate or close the subject office. In addition, cable operators must maintain a toll free number for use by subscriber for billing, service and sales purposes.

Social Impact

A requirement that cable television companies apply to the Board 60 days prior to the closure or relocation of an office and notify its customers of the pending application will allow the Board to ensure that cable television customers are given adequate notice and an opportunity to be heard in connection with said office closure, or relocation. All subscribers should be provided with a toll free telephone number when the local business office is out of the local exchange area.

This amendment is proposed in coordination with a Board-wide initiative to revise rules governing local business offices for cable and utilities. It has been formulated in response to various comments made at the hearings concerning the readoption of N.J.A.C. 14:18, Regulations of Cable Television (see 22 N.J.R. 2575(a)).

Economic Impact

Cable television companies will incur administrative expenses associated with filing a petition for Board approval of office closure or relocation as well as costs associated with posting notice of the pending application. Said notice shall be by means of newspaper notice and by posting notice at the office location. There may be a cost for those cable television companies which do not maintain a business office in the local telephone exchange in maintaining a toll free number. This is not anticipated to be burdensome since many municipal consent ordinances contain such a requirement. The cost of the newspaper notice is estimated at $100.00 to $200.00.

Regulatory Flexibility Analysis

As the proposed amendment imposes an administrative process, the requirements of such process must be followed by those seeking approval of an office closure or relocation. Parties to such activities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is anticipated that the proposed readoption and proposed amendment will affect two cable television operators which are defined as small businesses. The compliance requirements are to ensure that the cable television operator supplies safe, adequate and proper service. The OCTV has reviewed the proposed rules and it is the OCTV's belief that they are necessary to protect the subscriber or to ensure the companies deliver a proper level of service. Additionally, these companies have only one office each. As such, it is not appropriate to waive the requirements of the proposed rule readoptions for small businesses.

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

14:18-5.1 Location **and closing**

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

[(c) No local business office shall be closed or relocated without approval of the Board after 30 days notice to subscribers and municipalities in the affected service area.]

(c) At least 60 days prior to the closing or relocation of an office described in (a) or (b) above, a cable television company shall file a petition for approval with the Board demonstrating such closure or relocation is not unreasonable, will not unduly prejudice the public interest, and setting forth the means upon Board approval of the petition, by which customers and other interested parties will be adequately notified of the closing or relocation and alternatives available in the case of a closed office. The cable television company shall simultaneously notify its customers and the clerk of each affected municipality of the pending application for permission to relocate or close the subject office by means of posting notice at the office location and, within three days of filing the petition, by placing notice of the office closing or relocation in the newspaper(s) serving the affected area. Said notice shall inform customers of their right to present to the Board, in writing, any objections they may have to the office closure or relocation. The notice shall specify a date certain for submission of comments which date shall not be less than 20 or more than 30 days after publication and posting. Such office shall not be closed or relocated until the utility has been informed, in writing, that the Board has approved such request.

(d) Cable television companies are required to maintain and provide toll free or local exchange telephone numbers for use by the general public and subscribers affected by an office closing or relocation for billing, service and sales inquiries.

(b)

OFFICE OF CABLE TELEVISION
Regulation of Cable Television
Procedures for Use of Public, Educational and Governmental Access (PEG) Channels
Proposed New Rule: N.J.A.C. 14:18-7.5

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-491.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

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Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Telephone: (201) 648-2670

The agency proposal as follows:

Summary

The franchising authority, which is the Board of Public Utilities, is permitted by law to require under appropriate terms and conditions, guidelines for use of channels reserved for access purposes, including public, educational, government and leased access channels. The proposed new rule establishes the publishing of written guidelines pertaining to the administrative use and restrictions designated access channels as well as production facilities and equipment use. The rule would require operators to maintain records for a two year period, including the name, address and telephone number of all users of these designated public educational, governmental and leased access channels at the operation's local business office. Each operator shall establish a written procedure which would include scheduling use of access production equipment provided by the cable operator and a scheduling of cablecasting of all programming on the designated access channel. These guidelines would address identifying each available channel, to whom they are available, serving what particular communities and the cost, if any, for use.

Social Impact

This proposed new rule would enable all parties to be subject to guidelines in the use of designated access channels. These guidelines are intended to provide for the opportunity of expression by providing on a non-discriminatory basis for the use of access channels, equipment and technical and production assistance through the development of operating rules. The Office of Cable Television (OCTV) recognizes in its experience the importance of written guidelines addressing the rights and responsibilities of both the operator and the access users. Especially when a channel is shared by more than one municipality, the need exists for guidelines as to how time is made available for use and cablecasting of access programming.

There is a societal interest in ensuring the continuation of cable subscribers having access to noncommercial channels as a source of local and diverse points of view and community values and information exchange.

Comments from municipal officials during the Board's recent broad review of its cable regulations support a rule outlining requirements for written protocols governing the management and use of public, educational, and governmental access channels ("PEG") (see 22 N.J.R. 2575(a)).

Other comments recommended mandatory PEG access channel requirements. PEG access protocols are addressed in the proposed new rule. The access needs regarding channel assignment vary considerably from one municipality to another. These needs are now being addressed through renewal proceedings both on a municipal and regional basis. The question of a Statewide access channel will be addressed in a separate proceeding later in the autumn of 1990.

Economic Impact

The result of the operator's publishing rules and establishing procedures for the use of access channels will be limited to providing personnel on a basis on need and related administrative costs to keeping records of access users.

Federal law recognizes the validity of negotiating access provisions in franchises and encourages access channel availability. The industry has not opposed access arrangements in New Jersey. Any administrative costs would be outweighed by benefits to the community, as access channels cannot operate in chaos.

Regulatory Flexibility Analysis

Two cable television operators in New Jersey are small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule imposes compliance and recordkeeping requirements on all cable television operators. The operators are required to develop written procedures for PEG access channels, covering those areas set forth in proposed subsection (a); to keep a record of all users of access channels for two years; and to notify the OCTV, the municipality and all affected parties of changes in the procedures. The costs to the operators will be as set forth in the Economic Impact statement; no professional services should be required. Because of the need for established procedures concerning the use of access channels, no lesser requirements or exemptions can be provided for small business operators.

Full text of the proposal follows:

14:18-7.5 Written procedures for use of public, educational and governmental access channels

(a) All cable television operators shall develop written guidelines concerning the use of channel capacity designated as public, educational and/or governmental access channels. These guidelines shall contain information on the following:

1. The designation of and restrictions upon any channels available for such use;
2. The number of channels available for such use;
3. The municipalities served by each channel;
4. The procedure by which persons arrange to use each channel;
5. The cost, if any, for use of each channel;
6. The method by which persons deliver programming for insertion of on channel;
7. The studio and production equipment available, including costs and restrictions on use;
8. The method by which persons arrange to use any available studio or production equipment;
9. The training which is available in use of any studio or production equipment;
10. A written agreement between user groups, operators, and companies which states the rights and responsibilities of each; and
11. A specified contact person to see that interested parties are accommodated.

(b) Each cable television operator shall keep a record of all users of access channels available for public inspection at the local business office of the cable television operator. This record shall contain the names, addresses, and telephone numbers of access users, and shall be kept for a period of two years.

(c) A cable television operator shall provide a copy of the revision to the OCTV and the municipality within 30 days of any revision to the procedural rules for the use of a channel. All parties affected by the revision shall be provided immediate written notice by the operator.

(d) These guidelines shall be posted and available at local business offices and studios in the cable system.

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television Telephone System Information and Performance Proposed New Rules: N.J.A.C. 14:18-7.6 and 7.7

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-492.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The proposed new rules are a result of research, public hearing, and comments submitted in pre-proposal hearings, docket numbers

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CX87091172 and CX89120973 (see 19 N.J.R. 2125(b) and 22 N.J.R. 327(c)).

Proposed N.J.A.C. 14:18-7.6 would require cable companies to annually submit certain information to the Board concerning the operation of their telephone systems. This information would include business office hours and location, customer service representative training and telephone assignment, a description of the telephone system and information about the telephone lines available for subscribers to use.

N.J.A.C. 14:18-7.7 further requires the filing of reports every 60 days detailing the performance of the operator's telephone system for six listed months of the calendar year. The telephone system performance information will serve to measure actual telephone system performance using such parameters as caller hold times, total calls received, callers receiving busy signals and rates at which callers abandon their calls. The performance data are requested for each hour of each day every other month and the busy hour of each day must also be identified. The proposed rule also requires an operator to submit an explanation of events which cause extraordinary changes in telephone traffic.

Social Impact

Complaints to the Office of Cable Television (OCTV) show subscribers have difficulty reaching their cable operators. The OCTV believes it is appropriate to examine the operational components of each operator's telephone system along with the actual performance of the telephone systems by requiring the operators to measure, record and file certain performance data. The OCTV believes that analysis of this data and of corresponding complaints about telephone accessibility may suggest an appropriate performance standard which will serve the needs of cable subscribers and other members of the public needing access to the cable company.

The proposed new rules are an outgrowth of comments in the Board's recent review of its substantive regulations as well as comments from an earlier pre-proposal proceeding in Docket No. CX87091172, specifically examining consumers ability to reach cable TV offices.

Economic Impact

The telephone system information is readily available to the cable operator and there will be some small administrative cost associated with compiling and sending information to the Board. Since information must be submitted only once annually, the reporting burden it places on an operator is, again, minimal. There will be some cost to the BPU in monitoring compliance with these rules.

The data reporting requirements of N.J.A.C. 14:18-7.7 regarding telephone system performance, are repetitive filings submitted to the Board six times each year (every 60 days). The OCTV recognizes that this empirical data on telephone system performance is already gathered and used by many cable operators through the capabilities of their existing telephone switches. Additionally, the OCTV recognizes that ancillary devices can also be employed by cable operators which can supply performance data and further, telephone utilities and service suppliers can provide the empirical data being requested in the rule. For the most part, cable operators will not need to purchase new expensive equipment in order to meet the filing requirements.

The OCTV understands that no single performance factor is dispositive of true telephone performance and that a study of multiple factors over time is needed to allow a full appreciation of and proper response to the telephone accessibility problem. The OCTV also recognizes that some cable operators may be unable to provide some of the data requested and those systems may request specific waivers pursuant to N.J.A.C. 14:18-7.7(g) should it be impossible, impracticable or unduly burdensome for the operator to supply certain information. The OCTV also believes the industry itself will benefit from the collection, filing and analysis of this data as it will influence decisions made by the operator to improve their own telephone system and traffic management.

In summary, the OCTV contends that the economic implications for most cable operators will be minimal and that those systems unduly burdened can seek waivers of specific rule requirements.

Regulatory Flexibility Analysis

The proposed new rules will affect two cable television operators defined as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

As outlined in the Summary section of the notice, the rules impose reporting and record keeping requirements on cable television operators. These include collection of and filing of information to the OCTV. The OCTV has reviewed the proposed rules and it is the OCTV's belief that it is necessary to protect the subscriber and insure the companies deliver a proper level of service. As such, it is not appropriate to waive the requirement of the proposed rules for small businesses.

Many requirements of the rules could be performed by employees of the company. A small cable television company may need to retain outside professional services to some extent, but OCTV believes this will be limited, and further, any burden could be mitigated through the waiver provision contained in the rules.

Full text of the proposed new rules follows:

14:18-7.6 Telephone system information

(a) Each cable television operator shall provide the Office of Cable Television the following information concerning the operation of the company's telephone system:

1. The location of each office from which telephone calls from subscribers and the general public are normally received and the number of subscribers served by the office;

2. The days of the week and the hours in which an office is open to conduct business with the public and receive telephone calls;

3. The telephone numbers by which subscribers may call the cable television operator;

4. The method by which subscribers are informed of the telephone number(s) used to contact the cable operator;

5. Whether subscribers are requested to dial a single telephone or separate numbers depending on the nature of their inquiry;

6. Whether inward telephone traffic is grouped to individual departments (that is, service, billing, etc.), along with the total number of such departments and the identification of each department;

7. The total number of inward telephone trunk lines assigned to each telephone number used by the cable television operator;

8. Whether the operator's telephone system is designed to re-route incoming telephone calls to an alternate path in the event the primary incoming trunks are blocked or otherwise inaccessible and whether this alternate route is dedicated for this purpose;

9. A brief description of the type of telephone system used in the office and the manufacturer and model number of any equipment used.

10. Whether the office has an on-premises private branch exchange (PBX) or other private switching device and whether the device handles all telephone traffic for the office;

11. The total number of functional lines on the line side (telephone extension/CSR side) of the PBX or other private switching device and, if segregated by department, the number of functional lines assigned to each department;

12. The total number of customer service representatives (CSRs) normally available to answer calls. If CSRs are segregated by department, the total number of CSRs available for each department;

13. If the assignment of CSRs varies by hour, day or other time period, the cable operator shall describe the variation in the assignment;

14. A brief description of the initial and ongoing training provided to the CSRs;

15. Whether the CSRs have access to computer terminals for billing or service information and, if so, a brief description of the information available to the CSR;

16. Whether the telephone system serving the office has automatic call distribution (ACD) capability for the entire office or for specific departments. If so, the cable television operator shall supply a brief description on the method of call distribution;

17. Whether the telephone system places incoming calls in queue so that an incoming caller is held for an available CSR, and the maximum number of callers that can be placed in queue;

18. Whether the telephone system provides recorded messages to callers on the status of the call and whether a message is periodically repeated while callers are in queue (on hold);

19. The total number of telephone trunk lines dedicated to outgoing calls;

20. Whether telephone answering machines or devices are used, the hours which they are used and the departments in which they are used; and

21. The name and address of the answering service, if used, and the hours in which the service is used. Also, indicate whether the answering service receives all incoming calls or specific departments.

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(b) The information required pursuant to (a) above shall be provided to the Office of Cable Television within 60 days of the effective date of this rule and annually thereafter.

(c) Each cable television company shall inform the Office of any substantive change in the information filed pursuant to this section.

14:18-7.7 Telephone system performance

(a) Each cable television operator shall provide the Office with the following information for each inward dialed telephone number normally used by subscribers and the general public for every office it maintains:

1. The total number of incoming calls received during each one hour period (that is, 1:00-2:00, 2:00-3:00, etc.) for each day of the listed month;

2. The total number of incoming calls received during each day of the listed month;

3. The average number of calls received during each day for the listed month;

4. The total number of attempted inward dialed telephone calls which receive a busy signal, or are otherwise blocked, for each one hour period for each day during the listed month;

5. The total number of attempted inward dialed telephone calls which receive a busy signal, or are otherwise blocked for each day for the listed month;

6. The total telephone usage as measured in 100 call seconds (CCS units) for each one hour period for each day of the listed month;

7. The percentage of time in which an inward dialed telephone call would receive a busy signal, or be otherwise blocked for each one hour period for each day of the listed month;

8. The percentage of time in which an inward dialed telephone call would receive a busy signal, or be otherwise blocked for each day of the listed month;

9. The one hour period with the most total telephone usage (busy hour) for each day of the listed month;

10. The average length of time of incoming calls measured from the time of initial connection to the time of completion for each one hour period for each day of the listed month;

11. The average length of time of incoming calls measured from the time of initial connection to the time of completion for each day of the listed month;

12. The average length of time incoming calls are held in queue for each one hour period for each day of the listed month;

13. The average length of time of incoming calls held in queue for each day of the listed month; and

14. The percentage of inward dialed calls terminated by the caller (abandoned) while the call is held in queue during each day of the listed month.

(b) The data requested by (a) above shall be provided for the calendar months of January, March, May, July, September and November.

(c) Reports of the information required by (a) above shall be filed by each cable television operator within 15 days of the end of the month for which the report is filed.

(d) The Office may direct a cable operator to record and submit data or to conduct, or have conducted, other or more detailed telephone traffic analyses, if circumstances so require.

(e) All averages and percentages compiled pursuant to (a) above shall consider only the hours in which the cable television company's office is open to receive incoming calls.

(f) A cable operator shall submit an explanation of any extraordinary change in telephone traffic patterns as indicated by the data provided to the Office.

(g) A cable television operator may request, in writing, a waiver of one or more of the reporting requirements of (a) from the Director. Any such waivers will be for periods of up to one year and are renewable. In considering such requests, the Director shall consider factors such as the size of the system, the burden on the cable television operator for providing the information, the capability of the operator's telephone system and the nature and type of alternative information the operator intends to provide.

(a)

OFFICE OF CABLE TELEVISION

Regulations of Cable Television

Pole Plant Rearrangement Verification

Proposed New Rule: N.J.A.C. 14:18-12.2

Authorized By: Celeste M. Fasone, Director, Office of Cable Television (with the approval of the Board of Public Utilities; Scott A. Weiner, President).

Authority: N.J.S.A. 48:5A-10.

Proposal Number: PRN 1990-493.

A **public hearing** concerning the proposal will be held on:
Friday, October 5, 1990 at 10:00 A.M.
Board of Public Utilities
Hearing Room, 10th Floor
Two Gateway Center
Newark, New Jersey 07102

Submit comments by October 17, 1990 to:
Celeste M. Fasone, Director
Office of Cable Television
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Office of Cable Television (OCTV), through this proposed new rule, would require pole attachment cost estimates prior to the granting of a certificate of approval in order to establish a factual basis upon which an applicant may accurately base its financial projections. The OCTV believes financial projections which form the basis of determining an applicant's viability are influenced by projected pole make-ready costs. The proposed rule, therefore, permits the OCTV and the applicant to have available more accurate information on a significant cost factor in the construction of a dual, or over-build cable television system. The rule also would assist the Board in determining the extent of disruption caused by the construction of a second cable system.

Social Impact

The proposed new rule would set forth the responsibilities of any new applicant concerning pole rearrangement estimates. It would allow the cable franchise applicant to be more complete in its projected financing needs apportioned to make-ready costs which could otherwise result in a significant degree of uncertainty between factual and theoretical findings. With such a requirement, a new operator would avoid greatly underestimating the extent of these expenses. It also permits the Board to weigh the possible disruptive results of a second cable entrant. Although the rule would impose an additional requirement on proposed over-builds, on balance the OCTV believes the development of the required information will assist the applicant and is necessary to avoid certification of non-viable applicants.

This new rule will formalize existing policy regarding make-ready requirements for applications for additional cable systems in areas already served. It is derived from the OCTV's experience in the Paterson Cable Network, Choice Cable, and Shore Cable matters, and is consistent with the Board's stated desire to have rules to guide parties rather than ad hoc decisions.

Economic Impact

This proposed new rule would require the applicant to incur the cost of performing a make-ready survey. The costs would include labor and technical support to conduct the survey. In the case of full surveys, the applicant could use the survey as a basis for actual make-ready in the event certificates are awarded. Hence, in this case, there would be minimal economic burden.

If the applicant used a statistical method, the Board does not estimate the cost to be excessive in light of overall construction cost. However, the OCTV believes this requirement and related cost is necessary for the full assessment of the public interest issues raised by the certification of a second cable applicant.

Regulatory Flexibility Analysis

There are two cable television companies which are small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A.

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52:14B-16 et seq., to which this proposed new rule will apply. Such small businesses may need to employ contractors to comply with the requirements to conduct field studies to develop verifiable cost estimates of projected aerial utility and cable television plant rearrangement. It is the OCTV's belief that such cost projections are necessary to ensure that cable television companies have accurate information of a significant cost factor in the construction of a dual or overbuild cable television system. Such information is also necessary to avoid certification of non-viable applicants. As such, it is not appropriate to waive the requirements of the proposed new rule for small businesses.

Full text of the proposed new rule follows:

14:18-12.2 Requirements for plant rearrangement verification

(a) Applicants for a certificate of approval for an additional cable television franchise shall submit verifiable cost estimates of projected aerial utility and cable television plant rearrangement needed (make-ready work) to permit the attachment of the proposed cable television system.

(b) The estimates shall be compiled by one of the following methods:

1. A field survey conducted by the applicant of all utility poles on which the applicant may attach in the proposed service area;

2. A field survey conducted by the applicant of at least 10 percent of the poles on which the applicant may attach using a statistical random sampling method and extrapolation process. The sample shall include the full range of all make-ready work categories which the applicant can reasonably expect to encounter in the proposed service area; or

3. A field survey conducted by the pole-owning utility.

(c) Any survey shall be submitted in a form permitting verification by the pole owning utility, the Office or an independent party with experience in conducting utility make-ready. All surveys shall contain the underlying facts and assumptions determining the cost estimate and a description of the process for conducting the survey.

TRANSPORTATION

(a)

FINANCE AND ADMINISTRATION
OFFICE OF CIVIL RIGHTS/CONTRACT COMPLIANCE

Disadvantaged Business and Female Business Participation in State Construction Contracts as Subcontractors

Proposed New Rules: N.J.A.C. 16:4

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 27:1B-24 et seq.

Proposal Number: PRN 1990-497.

Submit comments by October 17, 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 new rules implement specific provisions of the Transportation Trust Fund Authority Act of 1984, at N.J.S.A. 27:1B-24, which specifies that provision will be made for disadvantaged and female owned businesses' participation on wholly State funded construction projects. These rules are in accordance with this requirement.

Until recently, this requirement was met by utilizing procedures developed consistent with Federal law for Federally assisted construction projects. However, recent judicial decisions require the proposed adoption utilizing procedures for wholly State-funded construction projects separate from those procedures for Federally assisted construction projects.

In *City of Richmond v. J.A. Croson Company*, ____ U.S. ____, 109 S. Ct. 706, 102 L. Ed. 2d 854 (1989), the United States Supreme Court held that a minority set-aside program administered by the City of Richmond violated the 14th Amendment. Upon review of *City of Richmond*, the Attorney General has advised to proceed with these proposed new rules.

The proposed chapter is summarized as follows:

N.J.A.C. 16:4-1.1 provides definitions of words and terms used in the rules.

N.J.A.C. 16:4-1.2 explains that these rules are applicable on wholly State funded projects.

N.J.A.C. 16:4-1.3 describes the standards of eligibility for disadvantaged and female owned businesses wishing to participate in the program.

N.J.A.C. 16:4-1.4 establishes procedures by which disadvantaged and female owned businesses may register for inclusion in the program.

N.J.A.C. 16:4-1.5 describes the agency review of the registration materials submitted by registrants.

N.J.A.C. 16:4-1.6 explains the manner by which target levels of participation by disadvantaged and female owned businesses are to be met by bidders on wholly State funded projects.

N.J.A.C. 16:4-1.7 provides responsibilities of the bidder after award to ensure adherence to the target level.

N.J.A.C. 16:4-1.8 outlines severability.

N.J.A.C. 16:4-1.9 establishes the review process.

Social Impact

The proposed new rules will have a significant beneficial social impact upon the general public. The proposed new rules recognize the State's interest in eliminating unlawful discrimination felt by disadvantaged and female owned businesses, and encouraging affirmative action in the construction contracting area. The elimination or reduction of discrimination along with the provision of outreach measures has a positive social impact and fosters equal opportunity.

Economic Impact

The proposed new rules will help ensure equal opportunity for disadvantaged and female owned businesses in securing construction contracts. This will improve the growth potential of such firms, thereby creating job opportunities and generating additional tax revenue. The Department will incur direct and indirect costs involved in the administration of the rules.

Regulatory Flexibility Analysis

The proposed new rules establish additional paperwork requirements for construction firms, some of which may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., bidding on State contracts. The Department does not believe that the additional requirements are unduly burdensome, and has, therefore, made no differential provisions for small businesses in these rules. Bidders will be required to submit an additional form listing disadvantaged and female owned businesses it intends to use to meet the target. Bidders who fail to meet target levels will be required to submit an additional form detailing the reasonable outreach efforts it made to meet the target. It is anticipated that the additional time and cost of this required paperwork will be minimal, in any event, and will be far outweighed by the substantial public benefits generated by this program. Further, it is possible bidders will find that complying with these State rules, which are procedurally similar to existing Federal rules, will be easier than having to distinguish between the two programs.

Full text of the proposed new rules follows:

CHAPTER 4
DISADVANTAGED BUSINESS AND FEMALE BUSINESS PARTICIPATION IN STATE CONSTRUCTION CONTRACTS AS SUBCONTRACTORS

SUBCHAPTER 1. GENERAL PROVISIONS

16:4-1.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Transportation of the State of New Jersey, acting directly or through

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duly authorized representatives, acting within the scope of the particular duties delegated to them.

"Construction contract" means any contract funded by 100 percent State funds to which the Department of Transportation of the State of New Jersey is a party and which involves any construction, renovation, reconstruction, rehabilitation, alteration, conversion, extension, demolition, repair or other changes or improvements of any kind whatsoever to any highway, structure or facility. The term also includes the supervision, inspection and other on-site functions incidental to actual construction.

"Contractor" means the individual, partnership, firm, corporation, or any acceptable combination thereof contracting with the Department for performance of the prescribed work.

"Department" means the Department of Transportation of the State of New Jersey.

"Disadvantaged business" means a sole proprietorship, partnership, or corporation:

1. Which is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

"Female business" means a sole proprietorship, partnership or corporation:

1. Which is owned by women or in the case of a publicly owned business, at least 51 percent of the stock of which is owned by women; and

2. Whose management and daily business operations are controlled by women who own it.

"Socially and economically disadvantaged individuals" means those individuals who are Black, Hispanic American, Asian American, American Indian, Alaskan Native, or Portuguese defined as follows:

1. Black American is a person having origins in any of the black racial groups of Africa.

2. Hispanic American is a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

3. Asian American is a person having origins in any of the original peoples of the Far East, Southeast Asia, and Indian subcontinent, Hawaii or the Pacific Islands.

4. American Indian or Alaskan Native is a person having origins in any of the original peoples of North America and who maintains cultural identification through tribal affiliation or community recognition.

5. Portuguese is a person of Portuguese, Brazilian, or other Portuguese culture or origin, regardless of race.

"Subcontractor" means an individual, partnership, firm or corporation, or any acceptable combination thereof, to which the contractor subcontracts part of the work under the applicable contract specifications.

"Work" means the furnishing of all labor, services, materials, equipment, tools, transportation, supplies and other incidentals necessary or convenient to the successful completion by the contractor of the construction described in the contract documents and the carrying out of all duties and obligations imposed by the contract documents on the contractor.

16:4-1.2 Applicability

(a) These rules apply only to Department construction contracts funded with 100 percent State funds and are not applicable to the award of Department contracts for the purchase of goods and services.

(b) Applications and questions regarding eligibility as a disadvantaged business and/or female business should be addressed to:

Office of Civil Rights/Contract Compliance
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

16:4-1.3 Standards of eligibility for disadvantaged business and female business

(a) A business may be eligible for designation as a disadvantaged business, a female business, or both.

(b) In order to be eligible as a disadvantaged business, a business must satisfy the definition of a disadvantaged business in N.J.A.C. 16:4-1.1.

(c) In order to be eligible as a female business, a business must satisfy the definition of a female business in N.J.A.C. 16:4-1.1.

16:4-1.4 Registration procedures for disadvantaged business and female business

(a) A business may apply to the Department at any time to be registered as a disadvantaged business or female business. Such application must be made on the application form supplied by the Department.

(b) If a business is to be considered as a disadvantaged business or female business for the purpose of meeting the target levels for a specific contract, it must have submitted an application completed in its entirety to the Department for purposes of registration no later than the day of the bid.

(c) As part of its application to the Department, a business shall document its independent status and character of its ownership and control to the satisfaction of the Department. All applications must be completed in their entirety before they will be considered by the Commissioner.

1. Failure by the applicant to supply additional information as requested by the Department within 15 days of the request shall result in the application being returned without processing to the applicant.

2. If an applicant knowingly supplies false or inaccurate information, the applicant shall be disqualified under these rules, and may be subject to further penalties as provided by law.

16:4-1.5 Approval or rejection as a disadvantaged business or female business

(a) When an applicant is approved by the Commissioner as a disadvantaged business or female business, the business will be notified in writing of such approval. The approval shall be effective as of the date the applicant submitted a completed application and said approval shall be valid for one year unless revoked by the Commissioner. Businesses shall be required to reapply each year for approval as disadvantaged or female businesses.

(b) When an applicant is rejected as a disadvantaged or female business, it shall be notified in writing of the reasons for that decision. The applicant may appeal in writing within 10 days of the receipt of said notice. No applicant shall be eligible to participate in the program during the pendency of its appeal and the rejected applicant may not be used by a contractor to satisfy the target during the pendency of the appeal.

(c) If an applicant appeals the rejection of its application, the Department shall schedule a meeting at which time the applicant may present additional information in support of its application. This additional information shall be reviewed by the Commissioner and the applicant shall be notified of the Commissioner's approval or rejection in writing within 10 State business days of the meeting. If the applicant is approved by the Commissioner such approval shall be effective as of the date of the receipt by the Department of the additional information which was the basis for the approval.

(d) If the Department has reason to believe that there has been a change in the ownership or control of a disadvantaged or female business which has been approved for participation in the program, the Department may request that business demonstrate its continued eligibility for participation in the program. Businesses failing to demonstrate such continued eligibility to the satisfaction of the Commissioner shall have their approval revoked, and shall be ineligible to reapply to the program for one year.

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16:4-1.6 Subcontracting targets

(a) The Department shall set target levels for participation of disadvantaged businesses and female businesses as subcontractors for each construction contract.

(b) Each contractor submitting a bid for a construction contract shall include the subcontracting target information in the form and at the time required by the bid proposal.

(c) If the target levels are met by the bidder, the bidder will be presumed not to be engaging in unlawful race and sex discrimination in the selection of subcontractors and will be presumed to have engaged in reasonable outreach efforts.

(d) If the target levels are not satisfied by a bidder, the Department shall review the subcontracting practices of the bidder to determine if it has engaged in reasonable outreach efforts to obtain female and disadvantaged subcontractors and if it is engaging in unlawful race or sex discrimination in the selection of subcontractors. A determination that the bidder has not made reasonable outreach efforts will be considered evidence that the bidder has engaged in unlawful race or sex discrimination. If it is determined that the bidder has engaged in unlawful race or sex discrimination, the bid may be rejected and the bidder subject to such other penalties as are provided by law, including suspension, debarment or reduced classification.

(e) A bidder which fails to meet the target levels for disadvantaged and female business shall document the reasonable outreach efforts it made to meet the targets. Reasonable outreach efforts shall include, but not be limited to:

1. Attendance at a pre-bid meeting, if any, scheduled by the Department to inform potential bidders and disadvantaged and female businesses of subcontracting opportunities under a given solicitation;

2. Solicitations of disadvantaged and female businesses as subcontractors for the project, including advertisements in general circulation media, trade association publications, and minority focus media. Such solicitations shall be made at a sufficient length of time before the date set for receipt of bids to permit a meaningful response from disadvantaged and female businesses. Contractors shall maintain records regarding each disadvantaged or female business contacted as a potential subcontractor and the reasons why that business was not used by the bidder;

3. Efforts made to identify work categories capable of being performed by disadvantaged or female businesses;

4. Efforts made to use the services of available community organizations, contractor groups and local, State, and Federal agencies that provide assistance in the recruitment and placement of minority and female businesses.

(f) In determining whether a bidder has satisfied the target levels, the award of a subcontract may count toward only one target. For example, the award of a subcontractor to a business owned by a black woman may be counted either toward the disadvantaged business target or the female business target.

16:4-1.7 Responsibility after award

(a) The contractor shall advise the Department of change regarding the work to be performed by a disadvantaged or female business which it intended to use to meet the target.

(b) If a disadvantaged or female business which was to be used by the contractor to meet the target does not perform the work, the contractor shall attempt to replace that disadvantaged or female business with another female or disadvantaged business. If the contractor fails to replace the business with a female or disadvantaged business, it shall document to the Department the reason for such a failure and the Department shall review the contractor's subcontracting practices to determine if it is engaging in unlawful race or sex discrimination.

(c) If a contractor is found to have engaged in unlawful race or sex discrimination, it may be subject to all penalties provided by law. Additionally, the contractor may be subject to suspension, debarment, termination, or reduced classification.

16:4-1.8 Severability

If any section, subsection, provision, clause or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

16:4-1.9 Review

The operation of the construction subcontract target level program contained in this subchapter and the need for its continuation shall be reviewed by the Commissioner every two years.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

Cost of Right-of-Way Acquisition

New Jersey Transportation Trust Fund Authority Act Federal Aid Urban System Substitution Program: County and Municipal Aid

Proposed Amendment: N.J.A.C. 16:20A-4.4

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47, 27:7-13.1 et seq. and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:1B-1 et seq.

Proposal Number: PRN 1990-478.

Submit comments by October 17, 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 amendment will revise and update the language presently existing in N.J.A.C. 16:20A-4.4(j), referencing the outdated provisions of the Department of Community Affairs' relocation assistance law, and provide new regulatory provisions to comport with the new relocation statute, P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq.).

The law cited above was passed as a requirement by the United States Congress and the Federal Highway Administration for the New Jersey Department of Transportation and those recipients of aid from the Department.

The language change proposed by the Department would be general enough to encompass the new State statute (P.L. 1989, c.50) and the Department's recently promulgated relocation assistance rules (N.J.A.C. 16:6), as well as law which might apply where projects receive Federal funds.

The Department therefore proposes to amend N.J.A.C. 16:20A-4.4(j) to incorporate such changes.

Social Impact

The proposed amendment will revise the language presently existing in N.J.A.C. 16:20A-4.4(j), concerning the outdated provisions of the Department of Community Affairs' relocation assistance law and provides new regulatory provisions to comport with the new relocation statute, P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq.). Additionally, the amendment makes general applicability to the rule with the Department's recently promulgated relocation assistance rules (N.J.A.C. 16:6), as well as any Federal law which would be applicable where projects receive Federal funds. Persons involved in the relocation process will be pleased to see that there is uniformity in the regulatory process by the Department.

Economic Impact

The Department will incur direct and indirect costs for personnel involved in the rulemaking process. The costs are part of the Department's administrative budget and there will be no costs incurred by the general public.

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Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects a technical and inconsequential language change to conform the rule to the current state of the law.

Full Text of the proposal follows (addition indicated in boldface **thus;** deletion indicated in brackets [thus]):

16:20A-4.4 Cost of right-of-way acquisition

(a)-(i) (No change.)

(j) Where owners or tenant occupants of any property being acquired for the project will be displaced, the county or municipality shall provide a Relocation Plan and accomplish Relocation Assistance [in accordance with the State Department of Community Affairs Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., and with all published procedures, conditions and requirements of the State Department Community Affairs pertaining to the statute]. **If relocation assistance is involved, relocation assistance shall be provided in accordance with prevailing statutes and regulations.**

(k)-(m) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL HIGHWAY DESIGN

Cost of Right-of-Way Acquisition

New Jersey Transportation Trust Fund Authority Municipal Fund

Proposed Amendment: N.J.A.C. 16:20B-4.3

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47, and the New Jersey Transportation Trust Fund Authority Act, N.J.S.A. 27:18-1 et seq.

Proposal Number: PRN 1990-469.

Submit comments by October 17, 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 amendment will revise and update the language presently existing in N.J.A.C. 16:20B-4.3(j), referencing the outdated provisions of the Department of Community Affairs relocation assistance law, and provide new regulatory provisions to comport with the new relocation statute, P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq.).

The law cited above was passed as a requirement by the United States Congress and the Federal Highway Administration for the New Jersey Department of Transportation and those recipients of aid from the Department.

The language change proposed by the Department would be general enough to encompass the new State statute (P.L. 1989, c.50) and the Department's recently promulgated relocation assistance rules, N.J.A.C. 16:6, as well as law which might apply where projects receive Federal funds.

The Department therefore proposes to amend N.J.A.C. 16:20B-4.3(j) to incorporate such changes.

Social Impact

The proposed amendment will revise the language presently existing in N.J.A.C. 16:20B-4.3(j), concerning the outdated provisions of the Department of Community Affairs relocation assistance law and provides new regulatory provisions to comport with the new relocation statute, P.L. 1989, c.50 (N.J.S.A. 27:7-72 et seq.). Additionally, the amendment makes general applicability to the rule with the Department's recently promulgated relocation assistance rules, N.J.A.C. 16:6, as well as any Federal law which would be applicable where projects receive Federal funds. Persons involved in the relocation process will be pleased to see that there is uniformity in the regulatory process by the Department.

Economic Impact

The Department will incur direct and indirect costs for personnel involved in the rulemaking process. The costs are part of the Department's administrative budget and there will be no costs incurred by the general public.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects a technical and inconsequential language change to conform the rule to the current state of the law.

Full text of the proposal follows (addition indicated in boldface **thus:** deletion indicated in brackets [thus]):

16:20B-4.3 Cost of right-of-way acquisition

(a)-(i) (No change.)

(j) Where owners or tenant occupants of any property being acquired for the project will be displaced, the county or municipality shall provide a Relocation Plan and accomplish Relocation Assistance [in accordance with the State Department of Community Affairs Relocation Assistance Act, N.J.S.A. 20:4-1 et seq., and with all published procedures, conditions and requirements of the State Department Community Affairs pertaining to the statute]. **If relocation assistance is involved, relocation assistance shall be provided in accordance with prevailing statutes and regulations.**

(k)-(m) (No change.)

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF LOCAL AID DISTRICT OPERATIONS

New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act of 1989 Rules

Proposed New Rules: N.J.A.C. 16:21B

Authorized By: Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-13, 27:7-47 and the New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act of 1989, P.L. 1989 c.180.

Proposal Number: PRN 1990-475.

Submit comments by October 17, 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 new rules will establish the procedures required for counties and municipalities to receive State bond funds for the construction, reconstruction, removal, replacement, improvement, repair, rehabilitation or evaluation of bridges carrying State, county or municipal roads, including railroad overhead bridges.

The Department of Transportation, in compliance with the provisions of the New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act of 1989, P.L. 1989 c.180, and appli-

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cable regulations, must ensure and maintain a safe and reliable transportation system. A safe and reliable system of rail and road transportation is essential to the well-being of the citizens and the economy of the State. The State's system is one of the busiest in the world, providing a corridor for goods and passengers to and from the Northeast region, and to and from distant points in other regions of our nation. A large majority of commuters rely daily on the State's roads and highways for transportation to and from their places of employment. Due to the destructive effect of the elements and the structural pressures of regular heavy usage, bridges in the State rail and road systems are in need of rehabilitation and improvement.

The rehabilitation and improvement of bridges in the State's rail and road systems are critical to preserve the stability and continuity of an efficient highway and rail system, and the enhancement of public safety and interest.

The funding resources for this program are to be appropriated by the Legislature.

The chapter is summarized as follows:

Subchapter 1 contains general provisions regarding funding, project shares, standards and audits.

Subchapter 2 sets forth the responsibilities of counties and municipalities to obtain bridge bond funds.

Subchapter 3 details the responsibility of the Department of Transportation for State projects.

Subchapter 4 contains general provisions for funding for railroad overhead bridge projects involving a jurisdictional assignment.

Subchapters 5 and 6 are reserved for possible future use.

Social Impact

These proposed new rules will provide a framework for the distribution of added revenues to the counties and municipalities in the rehabilitation and improvement of bridges. The rules will also assist in providing a safe and reliable system of transportation which is essential to the well-being of the citizens and the economy of the State.

Economic Impact

The Department and local government will incur direct and indirect costs for its workforce in the processing of plans and specifications, costs of engineering, contractual agreements and cost sharing regarding the specific rehabilitation or improvement project. Additionally, local governments will incur costs required in the selection of an independent auditor or public accountant required to perform a single audit. These costs, however, may be significantly outweighed by the prospect of receipt of much needed funding to address bridge repairs.

Regulatory Flexibility Statement

The proposed new rules 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 rules primarily affect counties and municipalities.

Full text of the proposed new rules follows:

CHAPTER 21B
NEW JERSEY BRIDGE REHABILITATION AND IMPROVEMENT AND RAILROAD RIGHT-OF-WAY PRESERVATION BOND ACT OF 1989 FUNDING RULES

SUBCHAPTER 1. GENERAL PROVISIONS, BRIDGE FUNDING

16:21B-1.1 Bridge bond funds

(a) This chapter implements bridge funding provisions of the New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Bond Act of 1989, P.L. 1989, c.180. Funds for rehabilitation or improvement means the construction, reconstruction, demolition, removal, replacement, improvement, repair, rehabilitation, or rebuilding of bridges carrying State, county or municipal roads, including railroad overhead bridges (highway over rail), as appropriated by the Legislature. These funds shall be referred to in this chapter as "bridge bond funds".

(b) The Commissioner of Transportation, after consultation with applicable local officials, shall make the final selection of projects to be funded with bridge bond funds.

(c) Bridge projects for which bridge bond funds have been appropriated shall be advanced and under contract within three years of the appropriation. In the event that a bridge project for which funds have been appropriated is not under contract after three years, the appropriated funds for that project shall be returned to the Commissioner, for reallocation as provided by law.

(d) A bridge, for the purposes of this chapter, is a structure with a minimum clear span of five feet.

16:21B-1.2 Project shares

(a) Bridge bond funds shall defray 100 percent of the cost of those bridges which carry State highways and which are constructed, owned or maintained by the State and those railroad overhead bridges over and across a railroad or electric railway operated by the State.

(b) Bridge bond funds shall defray not more than 90 percent of the cost of rehabilitation and improvement, with the county or municipality defraying not less than 10 percent of the cost, of those bridges which carry county or municipal roads, except those railroad overhead bridges carrying county or municipal roads which are provided for in (a) above.

(c) Notwithstanding the provisions of chapter 12 of Title 48 of the Revised Statutes, the railroad company whose tracks or right-of-way the bridge crosses, shall furnish, at its own expense, necessary track safety services and engineering reviews for railroad overhead bridges.

(d) Cost sharing prescribed in this section shall be determined after first reducing the cost of rehabilitation and improvement of bridges by the amount of Federal funding, when Federal funding is involved in a project.

16:21B-1.3 Standards

(a) Bridge projects shall conform to applicable design criteria of the American Association of State Highway and Transportation Officials (AASHTO) or applicable New Jersey Department of Transportation Standards. Any exceptions to these design criteria must be justified by the engineer responsible for the project to be in the public interest.

(b) Construction and materials shall conform with the applicable New Jersey State Department of Transportation Standard Specifications for Road and Bridge Construction.

(c) Evaluations, ratings, and reports shall conform to the national bridge inspection standards as contained in the current AASHTO Manual for Maintenance Inspection of Bridges.

16:21B-1.4 Audits

(a) Entities receiving bridge bond funds shall comply with audit requirements of the New Jersey Department of the Treasury and of the New Jersey Department of Transportation, and with any Federal audit requirements associated with Federal funding of projects.

(b) Local governments shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

(c) A single audit of a local government shall be performed annually by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

(d) Department of Transportation agreements shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual."

(e) Audit costs incurred by such entities to comply with this section shall not be reimbursable from the Department.

SUBCHAPTER 2. STATE AID TO LOCAL GOVERNMENTS FOR BRIDGE PROJECTS

16:21B-2.1 Applications for bridge bond funding

(a) Any county or municipality may submit project applications which contain executed agreements and resolutions for bridge bond funds to the New Jersey Department of Transportation through the Local Aid District Office for review and project approval for those State aid projects funded in accordance with N.J.A.C. 16:21B-1.2(b).

(b) Applications containing agreements and resolutions are available to local governments at the Local Aid District Office.

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(c) All approved applications with executed agreements and resolutions for funding shall be implemented by contract in accordance with N.J.A.C. 16:21B-2.3 and 2.4 unless otherwise approved by the State.

16:21B-2.2 Procedure

(a) The application with agreement and resolution shall provide an engineering description of the existing road and bridge and the description of the proposed improvement indicating the length of span, proposed load limit, right-of-way width, paved and graded widths, shoulder widths, type and depth of proposed pavement, and an estimate of the cost of the proposed work for both the bridge and approach roadways. The Department may make a field investigation of all projects for which applications have been received.

(b) Applications will be reviewed and evaluated by the staff of the Local Aid District Office. Recommendations for approval will be presented to the Commissioner of Transportation or designee for execution.

16:21B-2.3 Local government responsibility

(a) The local government shall be responsible for engaging a professional engineer registered in the State of New Jersey to prepare construction plans and specifications and to provide construction engineering and inspection and material testing as required for the project.

(b) The local government shall provide such maps, reports, construction plans and specifications, and contract documents, as may be required by the State.

(c) The local government unit shall be responsible for obtaining all necessary permits, right-of-way, easements, and slope rights required.

(d) The local government unit shall have the following bridge evaluation responsibilities:

1. Be responsible for engaging a qualified consulting engineering firm to inspect, rate, and prepare reports;

2. Prior to executing an agreement with a consulting firm, submit two copies of the consultant proposal to the Local Aid District Office for review and approval; and

3. Make available for review any reports, ratings or other information as may be required by the State.

16:21B-2.4 Award of contract

(a) The local government shall advertise and award the contract, subject to the approval of the State, in accordance with the provisions of the Local Public Contracts Law, N.J.S.A. 40A:11-1 et seq.

(b) The local government shall submit the following to the Local Aid District Office 15 calendar days prior to the time of advertisement for construction bids:

1. Two copies of contract plans and specifications;

2. Two copies of the engineer's estimate of costs; and

3. Two copies of the responsible engineer's justification for any exceptions to the applicable design standards, or certification that none is involved.

(c) The local government shall submit the following to the Local Aid District Office within 30 calendar days of receipt of construction bids:

1. Two copies of the summary of construction bids; and

2. A resolution awarding the contract to the lowest responsible bidder, subject to the approval of the Department.

(d) The local government shall be advised of the approval of the award of the contract when all information relative to the bidding has been approved by the State.

16:21B-2.5 Contract completion and payment

(a) The State may disburse funds after acceptance of completed work by the local government unit and the Department. Progress payments may be made on a monthly basis when authorized by the Department and when the requested progress payment exceeds $10,000.

(b) The local government will prepare and submit the following to the Local Aid District Office, when all work has been completed satisfactorily:

1. A statement by the local government unit's engineer certifying that the work performed is accepted and approved upon completion of the work;

2. A certification by the local government unit's chief financial officer that all expenditures are supported by valid documentation and conform with the terms of the State's agreement, and a statement that the project is contained in the annual audit;

3. A request for reimbursement by the State, on vouchers to be supplied by the State; and

4. For bridge evaluations, the following information is also required:

i. An inventory listing of the structures inspected, including the structure identification number, the intersecting feature, the route number, and the municipality for each structure; and

ii. A notification of the filing location of the final study reports and any instructions for arrangements to review them.

(c) Action shall be taken to reimburse the local government unit after a final inspection of the completed work by the State.

(d) The local government unit shall maintain complete documentation of the project for a period of three years after receiving reimbursement by the State. An evaluation of the acceptability of the work by the Department and a determination of the extent of State participation in the cost thereof will be based on an inspection of the completed project and a review of documentation maintained by the local government unit.

16:21B-2.6 Cost of construction

(a) The State participation in the eligible cost of the completed rehabilitation and improvement work shall be as provided in P.L. 1989, c.180, any applicable legislative appropriation acts, and this chapter, in accordance with the availability of funds, concerning those bridges which carry county or municipal roads which are constructed, owned, or maintained by a county or municipality.

(b) Actual construction costs including construction supervision and material testing costs shall be eligible for reimbursement. The State shall participate in construction supervision and material testing costs in accordance with the current practices of the Department. The maximum State participation shall be limited to the lesser of:

1. Ninety percent of the total participating project cost including construction, design engineering and right of way acquisition costs;

2. One hundred percent of the participating construction cost including construction supervision and materials testing; or

3. The allotment amount as approved in the executed agreement or subsequent approved revisions or supplements.

16:21B-2.7 Cost of engineering, right-of-way, and bridge evaluation

(a) Design engineering and right-of-way costs are not eligible for reimbursement by the State; however, they may be included in the total project cost for calculation of the maximum State share.

(b) Consultant services for the evaluation of bridges with clear spans less than 20 feet will be eligible for reimbursement. Costs incurred by the local government unit for negotiation and administration of the consultant agreement shall not be eligible for reimbursement and shall not be included in the total project cost for calculation of the maximum State share. The maximum State participation shall be limited to the lesser of:

1. Ninety percent of the participating consultant agreement costs; or

2. The allotment amount as approved in the executed agreement or subsequent approved revisions or supplements.

16:21B-2.8 Emergency bridge projects

The New Jersey Department of Transportation will evaluate applications received from municipalities and counties throughout the State for projects of an emergency nature. Rapid construction, reconstruction, or rehabilitation of projects of this type will reduce undue hardships to the traveling public or correct unsafe conditions in a timely fashion. The requirements of this chapter shall pertain to emergency projects.

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SUBCHAPTER 3. STATE ADMINISTERED BRIDGE BOND PROJECTS

16:21B-3.1 State projects

Projects involving State owned bridges or where the Department of Transportation is the lead agency will be governed by the Department's policy and procedures for State projects.

SUBCHAPTER 4. RAILROAD OVERHEAD BRIDGE PROJECTS INVOLVING JURISDICTIONAL ASSIGNMENTS

16:21B-4.1 General provisions

(a) The Department of Transportation shall be the lead agency, when a railroad overhead bridge project involves a jurisdictional assignment. Project funding shall be in accordance with N.J.A.C. 16:21B-1.2. The 10 percent local match requirements shall only apply to the direct design, right-of-way, construction, and inspection costs of the project.

(b) Responsibilities and jurisdictional assignments for railroad overhead bridges shall be governed by P.L. 1988, c.171 (N.J.S.A. 27:5G-5 et seq.), the Railroad Overhead Bridge Act of 1988, and by N.J.A.C. 16:53B.

(c) The Department may accept or assign full or partial permanent jurisdictions or responsibilities to either the Department or to a county or municipality as provided in accordance with P.L. 1988, c.171 (N.J.S.A. 27:5G-5 et seq.) for those railroad overhead bridges whose ownership is not determined or is in doubt. The Department may assign responsibility for routine roadway maintenance to the governmental entity with jurisdiction for the approaching roadways. Jurisdiction or responsibility for other than roadway maintenance shall be accepted by the Department except in those cases where the Department determines by a preponderance of the evidence that a county or municipality already owns or has jurisdiction for a bridge.

(d) The provisions of (c) above shall not restrict interested parties from entering into voluntary jurisdictional agreements or allocations of responsibilities.

(e) The Department of Transportation through the Division of Right-of-Way shall administer and direct all phases of the real property or right-of-way acquisition in the event that a project requires the purchase of additional real property or right-of-way. Purchase of right-of-way or additional needed real property shall be made in accordance with the statutory requirements of N.J.S.A. 20:3-1 et seq. If relocation assistance is required, it shall be provided in accordance with applicable statutes and regulations. Unless determined otherwise by the Commissioner, real property or right of way shall be acquired in the name of the entity with approach road jurisdiction.

16:21B-4.2 Procedure

(a) The applicable local government unit(s) shall execute a cost sharing and jurisdictional agreement(s) with the Department of Transportation prior to work commencing on a project. The agreement(s) shall conform to the requirements of N.J.A.C. 16:53B.

(b) The agreement(s) shall provide an engineering description of the existing road and bridge, a description of the proposed improvement, and an estimate of the cost of the proposed work for both the bridge and approach roadways.

(c) Agreements shall be reviewed and evaluated by the staff of the Department of Transportation. Recommendations for approval will be presented to the Commissioner of Transportation or designee for execution.

16:21B-4.3 Emergency bridge projects

The New Jersey Department of Transportation shall evaluate situations throughout the State for projects of an emergency nature. Rapid construction, reconstruction, or rehabilitation of projects of this type will reduce undue hardships to the traveling public or correct unsafe conditions in a timely fashion.

SUBCHAPTER 5. GENERAL PROVISIONS, RAILROAD RIGHT-OF-WAY PRESERVATION (RESERVED)

SUBCHAPTER 6. STATE AID FOR RAILROAD RIGHT-OF-WAY PRESERVATION (RESERVED)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 1 in Middlesex County and N.J. 33 in Mercer County

Proposed Amendments: N.J.A.C. 16:28A-1.1 and 1.23

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, and 39:4-138.1 and 39:4-139.

Proposal Number: PRN 1990-472.

Submit comments by October 17, 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 "no stopping or standing" zones along Routes U.S. 1 in South Brunswick Township, Middlesex County, and N.J. 33 in Hightstown Borough, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no stopping or standing" zones along Routes U.S. 1 in South Brunswick Township, Middlesex County, and N.J. 33 in Hightstown Borough, Mercer County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.1 and 1.23 based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendment and new rule will establish "no stopping or standing" zones along Route U.S. 1 in South Brunswick Township, Middlesex County, and N.J. 33 in Hightstown Borough, Mercer County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments 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. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, as established by the State of New Jersey Statewide Violations Bureau Schedule, issued under 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 and those responsible for enforcement of the rules.

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

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16:28A-1.1 Route U.S. 1

(a) The certain parts of [the] State Highway Route U.S. 1 described in this subsection shall be designated and established as "no stopping or standing" zones where stopping or standing is prohibited at all times, **except as provided in N.J.S.A. 39:4-139**.

1. (No change.)

2. No stopping or standing in South Brunswick Township, Middlesex County:

i. [Along the southbound side] **Along both sides**:

(1) [From the center line of Black Horse Lane, to the center of Henderson Road.] **For the entire length within the corporate limits of South Brunswick Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops.**

3.-5. (No change.)

(b) (No change.)

16:28A-1.23 Route 33

(a) The certain parts of State Highway Route 33 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times, except as provided in N.J.S.A. 39:4-139.

1. No stopping or standing in the Borough of Hightstown, Mercer County:

i. (No change.)

ii. Along the eastbound side:

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

(4) Beginning at the easterly curb line of Grape Run Road to a point 50 feet east of the easterly curb line of Broad Street.

iii. (No change.)

2.-7. (No change.)

(c) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 9 in Ocean County; U.S. 30 in Camden County; N.J. 34 in Monmouth County; and N.J. 54 in Atlantic County

Proposed Amendments: N.J.A.C. 16:28A-1.7, 1.21, 1.24, and 1.105

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 and 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1990-498.

Submit comments by October 17, 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 "no stopping or standing" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; N.J. 34 in Colts Neck Township, Monmouth County; and N.J. 54 in the Town of Hammonton, Atlantic County, and a "no parking" bus stop zone along Route U.S. 30 in Berlin Borough, Camden 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 and the Department's ongoing review of current conditions along the highway system, the Department's Bureau of Traffic Engineering and Safety Programs conducted surveys and traffic investigations. The investigations and surveys proved that the establishment of "no stopping or standing" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County, N.J. 34 in Colts Neck Township, Monmouth County, and N.J. 54 in the Town of Hammonton, Atlantic County, and "no parking" zones along Route U.S. 30 in Berlin Borough, Camden County, were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.7, 1.21, 1.24, and 1.105 based upon the requests from the local governments, the surveys and traffic investigations.

The rules regarding stopping or standing along Routes U.S. 9 in Little Egg Harbor, N.J. 34 in Colts Neck, and N.J. 54 in the Town of Hammonton have been amended to increase sight distances along various highways. Additionally, N.J. 54 in the Town of Hammonton has been amended to include a time frame and days when stopping or standing is prohibited. The no parking zone along Route U.S. 30 in Berlin Borough has been amended to add a time frame and days of no parking at the bus stop. Additional changes are being made to conform the rules to current Department rule format, which organizes traffic rules by county and municipality.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes U.S. 9 in Little Egg Harbor Township, Ocean County; N.J. 34 in Colts Neck Township, Monmouth County; N.J. 54 in the Town of Hammonton, Atlantic County, and a "no parking" bus stop zone along Route U.S. 30 in Berlin Borough, Camden County, for the safe and efficient flow of traffic, the enhancement of safety, the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for "no stopping or standing" zones signs and the local governments will bear the costs for "no parking bus stop" zones signs. Installation and cost for each sign will vary based upon the materials used, the size required, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule", issued under 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 and the government entities responsible for enforcement of the rules.

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

AGENCY NOTE: The text of N.J.A.C. 16:28A-1.24(a)5i reproduced below reflects the text of the subparagraph as adopted by the Department (see 14 N.J.R. 982(a) and 15 N.J.R. 2045(b)). The erroneous text currently in the New Jersey Administrative Code will be corrected through the adoption of this proposal.

16:28A-1.7 Route [US] **U.S.** 9

(a) The certain parts of State highway [US] Route **U.S.** 9 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.-18. (No change.)

19. No stopping or standing in Little Egg Harbor Township, Ocean County:

[i. Along the west side:

(1) Between a point 200 feet north of Railroad Avenue to a point 200 feet south of Railroad Avenue.

ii. Along both sides:

(1) Beginning at the northerly curb line of Giffordtown Road and extending to a point 150 feet north of the northerly curb line of Gale Road. Except in approved Bus Stop areas.]

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i. Along both sides:

(1) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated Bus Stops and Time Limit Parking Areas. Signs to be posted only in areas where an official township resolution has been submitted.

20. (No change.)

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

16:28A-1.21 Route U.S. 30

(a) (No change.)

(b) The certain parts of State highway Route U.S. 30 described in this subsection shall be designated and established as "no parking" zones where parking is prohibited at all times**, and as specified**. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1.-7. (No change.)

8. Along the north side in Berlin Borough, Camden County:

i. Beginning 105 feet from the westerly curb line of East Broad Avenue extending 60 feet west therefrom 8:00 A.M. to 5:00 P.M. Monday through Saturday.

Recodify existing 8.-29. as **9.-30.** (No change in text.)

16:28A-1.24 Route 34

(a) The certain parts of State highway Route 34 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1.-4. (No change.)

5. No stopping or standing in Colts Neck Township, Monmouth County:

i. Along both sides:

(1) From the southerly curb line of County Road No. 537-522 to a point 3,600 feet southerly thereof.

(2) (No change.)

(3) From the intersection of Flock Road-Phalanx Road to the intersection of Conover Road-Laird Road.

16:28A-1.105 Route 54

(a) The certain parts of State highway Route 54 described in this [section are] **subsection shall be** designated and established as "[no parking] **no stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-139].

1. No stopping or standing in [Buena Vista Township,] Atlantic County:

i. Along both sides:

(1) In Buena Vista Township:

[(1)](A) (No change in text.)

(2) In the Town of Hammonton:

(A) Beginning at the southerly curb line of Second Road to a point 3,870 feet south therefrom.

(B) Beginning at the southerly curb line of Tilton Street to the northerly curb line of Third Street between the hours of 6:00 A.M. and 6:00 P.M., Monday through Friday.

(b) (No change.)

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Restricted Parking and Stopping
Routes N.J. 10 in Essex County; N.J. 17 in Bergen County; N.J. 47 and N.J. 77 in Cumberland County; and U.S. 40-322 in Atlantic County
Proposed Amendments: N.J.A.C. 16:28A-1.8, 1.9, 1.33, 1.41 and 1.104

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 and 39:4-138, 139.4-197.5 and 39:4-199.

Proposal Number: PRN 1990-382.

Submit comments by October 17, 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 proposed amendments will establish "no stopping or standing" zones along Routes N.J. 10 in Livingston Township, Essex County; N.J. 47 in Vineland City, Cumberland County; "no parking bus stop" zones along Routes N.J. 17 in Upper Saddle River Borough, Bergen County and U.S. 40-322 in the City of Atlantic City, Atlantic County; and "restricted parking space" for the handicapped and "no parking" zones for cleaning purposes during certain hours on appropriate days along Route N.J. 77 in Bridgeton City, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety along the highway system, the well-being of the populace and the safe on/off loading of passengers at established bus stops.

The Department's Bureau of Traffic Engineering and Safety Programs, in its ongoing efforts to update the traffic conditions along the highway system in the interest of safety, and upon requests from the local governments, conducted re-surveys and traffic investigations. The results of the surveys and the traffic investigations proved that the establishment of "no stopping or standing" zones along Route N.J. 10 in Essex County; N.J. 47 in Cumberland County; "no parking bus stop" zones along Routes N.J. 17 in Bergen County and U.S. 40-322 in Atlantic County; and "restricted parking space" for the handicapped and "no parking" zones for cleaning purposes during certain hours on appropriate days along Route N.J. 77 in Cumberland County was warranted. The Department therefore proposes to amend N.J.A.C. 16:28A-1.8, 1.9, 1.13, 1.33, 1.41 and 1.104, as a result of the surveys and traffic investigations, and requests from the local governments.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes N.J. 10 in Livingston Township, Essex County; N.J. 47 in Vineland City, Cumberland County; "no parking bus stop" zones along Routes N.J. 17 in Upper Saddle River Borough, Bergen County, and U.S. 40-322 in the City of Atlantic City, Atlantic County; and "restricted parking space" for the handicapped and "no parking" zones for cleaning purposes during certain hours on appropriate days along Route N.J. 77 in Bridgeton City, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety along the highway system, the well-being of the populace and the safe on/off loading of passengers at established bus stops. The appropriate signs will be erected in the designated areas to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements in the installation of signs. The Department will bear the costs for "no stopping and standing" zones signs which will cost approximately $117.00 for planning, engineering and installation, and approximately $7.00 per square foot for fabrication. The local governments will bear the costs for "no parking

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bus stops", "restricted parking space: handicapped," and "no parking" during certain hours on designated days, zones signs. The costs of these signs will vary depending upon the method the local governments use in the procurement process. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule", issued under 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 and the governmental entities responsible for enforcement of the rules.

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

16:28A-1.8 Route 10

(a) The certain parts of State [highway] **Highway** Route 10 described in this [section] **subsection** shall be designated and established as "no [parking] **stopping or standing**" zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-1.39].

1. (No change.)

2. No stopping or standing in Livingston Township, Essex County:

i.-ii. (No change.)

iii. Along both sides:

(1) East Mt. Pleasant Avenue—From the boundary line of the Town of West Orange and the Township of Livingston to the boundary line of Livingston Township and East Hanover Township.

(2) West Mt. Pleasant Avenue—From the boundary line of the Town of West Orange and the Township of Livingston to the boundary line of Livingston Township and East Hanover Township.

3.-7. (No change.)

(b) (No change.)

16:28A-1.9 Route 17

(a) (No change.)

(b) The certain parts of State [highway] **Highway** Route 17 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. 39:4-1.99, permission is granted to erect appropriate signs at the following established bus stops:

1.-8. (No change.)

9. [Along the westerly (southbound) side in] **In** Upper Saddle River Borough, Bergen County:

i. [Far side bus stop] **Along the westerly (southbound) side**:

(1) Mid-block bus stop:

[(1)]**(A)** [Lake Street—Beginning at the southerly curb line of Lake Street and extending 135 feet southerly therefrom.] **Between Ramp G and Ramp F (Relocated East Crescent Avenue/Lake Street).**

ii. Along the easterly (northbound) side:

(1) Mid-block bus stop:

(A) Between Ramp A and Ramp E (Exit to Mountainview Road).

10.-12. (No change.)

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

16:28A-1.33 Route 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. (No change.)

2. No stopping or standing in Cumberland County:

i. (No change.)

ii. In the City of Vineland:

(1) (No change.)

(2) Along the northbound (easterly) side:

(A) Delsea Drive—From the northerly curb line of Walnut Road (eastern connection) to a point 200 feet north thereof.

(3) Along the southbound (westerly) side:

(A) Delsea Drive—From a point 125 feet south of the projected center line of Walnut Road (eastern connection) to a point 225 feet north thereof.

3.-10. (No change.)

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

16:28A-1.41 Route 77

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

(c) The certain parts of State highway Route 77 [in the City of Bridgeton] described [herein below] in this subsection shall be [and hereby are] designated and established as "no parking" zones for cleaning purposes during certain designated days and hours [except as provided in N.J.S.A. 39:4-139].

1. In the City of Bridgeton, Cumberland County:

[1.]**i.** No parking 7:00 A.M. to 12:00 noon Monday, along the east side [of Route 77] between Washington Street and [the Bridgeton City—Upper Deerfield Township corporate line] **Mulford Drive.**

[2.]**ii.** No parking 7:00 A.M. to 12:00 noon, Tuesday, along the west side [of Route 77] between Washington Street and [the Bridgeton City—Upper Deerfield Township corporate line] **Mulford Drive.**

[3.]**iii.** No parking 2:00 A.M. to 6:00 A.M. [along both sides of Route 77 between Washington Street and Broad Street.]

(1) Along the northbound side—Beginning 101 feet north of the northerly curb line of East Commerce Street to a point 140 feet from the southerly curb line of Washington Street.

(2) Along the southbound side—Beginning at 106 feet from the southerly curb line of Washington Street to a point 165 feet from the northerly curb line of East Commerce Street.

(d) The certain parts of State Highway Route 77 described in this subsection shall be designated and established as restricted parking space, for use of persons who have been issued special Vehicle Identification 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 spaces.

1. Restricted parking in the City of Bridgeton, Cumberland County:

i. Along the northbound (easterly) side:

(1) Beginning 84 feet from the northerly prolongation of Rose Street and extending 22 feet northerly therefrom.

(2) Beginning 198 feet from the northerly curb line of Myrtle Street and extending 22 feet northerly thereform.

ii. Along the southbound (westerly) side:

(1) Beginning 428 feet from the northerly curb line of Myrtle Street and extending 22 feet northerly therefrom.

16:28A-1.104 Route U.S. 40-322

(a) (No change.)

(b) The certain parts of State highway Route U.S. 40-322 described in this [section] **subsection** shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus [stop] **stops**:

1.-3. (No change.)

4. In the City of Atlantic City, Atlantic County:

i. Along the eastbound (southerly) side:

(1) Mid-block bus stop:

(A) Entrance to Sun and Surf Motel—Beginning 45 feet west of the westerly entrance curb line of Sun and Surf Motel and extending 150 feet westerly therefrom.

(2) Near side bus stops:

(A) Entrance to Spencer Gifts—Beginning at the easterly curb line of the westerly entrance (at pedestrian crossing) of Spencer Gifts and extending approximately 120 feet easterly therefrom.

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Route N.J. 77 in Cumberland County
Proposed Amendment: N.J.A.C. 16:28A-1.41

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, and 39:4-138.1 and 39:4-139.

Proposal Number: PRN 1990-470.

Submit comments by October 17, 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 amendment will establish "no stopping or standing" zones along Route N.J. 77 in Upper Deerfield Township, Cumberland County, for the safe and efficient flow of traffic and the well-being of the populace.

Based upon request from the local government in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted a traffic investigation. The investigation proved that the establishment of "no stopping or standing" zones along Route N.J. 77 in Upper Deerfield Township, Cumberland County, was warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.41 based upon the request from the local government and the traffic investigation.

The proposed amendment effects no stopping or standing along both sides of Route N.J. 77 in Upper Deerfield Township, instead of the various distances depicted for northbound and southbound traffic.

Social Impact

The proposed amendment will establish "no stopping or standing" zones along Route N.J. 77 in Upper Deerfield Township, Cumberland County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department 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. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public and the governmental entities responsible for enforcement of the rule.

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

16:28A-1.41 Route 77

(a) The certain parts of State Highway Route 77 described in this subsection are designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in Upper Deerfield Township, **Cumberland County:**

[i. Along the northbound side:

(1) From a point 1,550 feet south of the southerly curb line of Cornwell Drive (north intersection) to the southerly curb line of Cornwell Drive (north intersection):

(2) From a point 1,550 feet south of the southerly curb line of Hoover Road:

(3) From a point 100 feet south of the southerly curb line of Old Deerfield Road to a point 700 feet south of the prolongation of the southerly curb line of Friesbury Road.

ii. Along the southbound side:

(1) From a point 1,650 feet north of the northerly curb line of Cohansey Road to the northerly curb line of Old Deerfield Road;

(2) From a point 100 feet north of the prolongation of the northerly curb line of Hoover Road to a point 600 feet south of the prolongation of the southerly curb line of Hoover Road.

(3) From the southerly curb line of Cornwell Drive (north intersection) to a point 1,550 feet south of the southerly curb line of Cornwell Drive (north intersection).]

i. Along both sides:

(1) For the entire length within the corporate limits of Upper Deerfield Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

3.-5. (No change.)

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

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping
Routes U.S. 40-322 in Atlantic County
Proposed Amendment: N.J.A.C. 16:28A-1.104

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, and 39:4-138.1 and 39:4-199.

Proposal Number: PRN 1990-471.

Submit comments by October 17, 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 amendment will establish a "no parking" bus stop zone along Routes U.S. 40-322 in Egg Harbor Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace and the safe on/off loading of passengers at established bus stops.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of a "no parking" bus stop zone along Routes U.S. 40-322 in Egg Harbor Township, Atlantic County was warranted.

The amendment primarily adds a far side bus stop at Fire Road in Egg Harbor Township.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.104 based upon the requests from the local governments and the traffic investigations.

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Additional changes are being made to conform the rules to current Department rule format, which organizes traffic rules by county and municipality.

Social Impact

The proposed amendment will establish a "no parking" bus stop zone along Route U.S. 40-322 in Egg Harbor Township, Atlantic County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace and the safe on/off loading of passengers at established bus stops. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local government will incur direct and indirect costs for mileage, personnel and equipment requirements. The cost factors for the procurement and installation of signs are variable, based upon the method of obtaining the signs and size required. The local officials will bear the costs for "no parking bus stop" zones signs. Motorists who violate the rules will be assessed the appropriate fine, as established by the State of New Jersey Statewide Violations Bureau Schedule, issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment does not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public and those responsible for enforcement of the rules.

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

16:28A-1.104 Route U.S. 40-322

(a) (No change.)

(b) The certain parts of State Highway [route] **Route** U.S. 40-322 described in this [section] **subsection** shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus [stop] **stops**:

[1. Along the southerly (eastbound) side of the City of Pleasantville, Atlantic County at the mid-block bus stop between Noahs Road and Doughty Road beginning 150 feet east of the easterly curb line of Noahs Road and extending 135 feet easterly therefrom.

2. Along the eastbound (southerly) side in Egg Harbor Township, Atlantic County:

i. At the mid-block bus stop between Delancy Avenue and Fire Road, beginning 713 feet west of the westerly curb line of Delancy Avenue and extending 135 feet westerly therefrom.

ii. At the near side bus stop beginning at the westerly curb line of Palermo Avenue and extending 105 feet westerly therefrom.

iii. At the far side bus stop beginning at the easterly curb line of Victory Drive and extending 100 feet easterly therefrom.

3. Along the westbound (southerly) side in Egg Harbor Township, Atlantic County:

i. At the far side bus stop beginning at the westerly curb line of County Lane and extending 100 feet westerly therefrom.

ii. At the near side bus stop beginning at the easterly curb line of Fire Road and extending 105 feet easterly therefrom.]

1. Along the southerly (eastbound) side in Atlantic County:

i. In the City of Pleasantville:

(1) Mid-block bus stop:

(A) Between Noahs Road and Doughty Road beginning 150 feet east of the easterly curb line of Noahs Road and extending 135 feet easterly therefrom.

ii. In Egg Harbor Township:

(1) Mid-block bus stop:

(A) Between Delancy Avenue and Fire Road beginning 713 feet west of the westerly curb line of Delancy Avenue and extending 135 feet westerly therefrom.

(2) Far side bus stop:

(A) Fire Road—beginning at the easterly curb line of Fire Road and extending 100 feet easterly therefrom;

(B) Beginning at the easterly curb line of Victory Drive and extending 100 feet easterly therefrom.

(3) Near side bus stop:

(A) Beginning at the westerly curb line of Palermo Avenue and extending 105 feet westerly therefrom.

2. Along the westbound (southerly) side in Atlantic County:

i. In Egg Harbor Township:

(1) Far side bus stop:

(A) Beginning at the westerly curb line of County Lane and extending 100 feet westerly therefrom.

(2) Near side bus stop:

(A) Beginning at the easterly curb line of Fire Road and extending 105 feet easterly therefrom.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

No Passing Zones

Routes N.J. 15 in Sussex County; N.J. 7 in Bergen and Essex Counties; N.J. 10 in Essex County; and N.J. 50 in Cape May County

Proposed Amendment: N.J.A.C. 16:29-1.47

Proposed New Rules: N.J.A.C. 16:29-1.68, 1.69 and 1.70

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, and 39:4-201.1.

Proposal Number: PRN 1990-500.

Submit comments by October 17, 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 amendment and new rules will establish "no passing" zones along Routes N.J. 15 in Sparta, Lafayette and Franklin Townships, Sussex County; N.J. 7 in the Town of Kearny, Hudson County, North Arlington Borough, Bergen County, and the Towns of Nutley and Belleville, Essex County; N.J. 10 in the Town of West Orange and Livingston Township, Essex County; and N.J. 50 in Upper Township, Cape May County, for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no passing" zones along Routes N.J. 15 in Sussex County, N.J. 7 in Bergen and Essex Counties, N.J. 10 in Essex County and N.J. 50 in Cape May County was warranted.

The Department therefore proposes to amend N.J.A.C. 16:29-1.47 and all new rules N.J.A.C. 16:29-1.68, 1.69 and 1.70 based upon the requests from the local governments and the traffic investigations.

Agency Note: The drawings referenced in the proposed amendment and new rules were filed with the Office of Administrative Law as part of this notice of proposal. They may be inspected at the Office of Administrative Law, Quakerbridge Plaza, Building 9, Trenton, New Jersey.

Social Impact

The proposed amendment and new rules will establish "no passing" zones along Routes N.J. 15 in Sparta, Lafayette, and Franklin Townships, Sussex County; N.J. 7 in the Town of Kearny, Hudson County, North Arlington Borough, Bergen County, and the Towns of Nutley and Belleville, Essex County; N.J. 10 in the Town of West Orange and Livingston Township, Essex County; and N.J. 50 in Upper Township,

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Cape May County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no passing" zones signs and the appropriate pavement marking along the highway system. Motorists who violate the rules will be assessed the appropriate fine, as established by the State of New Jersey Statewide Violations Bureau Schedule, issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendment and new rules 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 rules primarily affect the motoring public and those responsible for enforcement of the rules.

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

16:29-1.47 Route 15

(a) The following certain parts of State Highway Route 15 shall be designated and established as "No Passing" zones:

1. (No change.)

2. That part within the Townships of Sparta, Lafayette and Franklin, Sussex County, and described in drawing #HNPZ-111 dated October 20, 1989.

16:29-1.68 Route 7

(a) The following certain parts of State Highway Route 7 shall be designated and established as "No Passing" zones:

1. That part within the Town of Kearny, Hudson County and North Arlington Borough, Bergen County and described in drawing #HNPZ-113 dated November 8, 1989.

2. That part within the Towns of Belleville and Nutley, Essex County and described in drawing #HNPZ-114 dated November 8, 1989.

16:29-1.69 Route 10

(a) The following certain parts of State Highway Route 10 shall be designated and established "No Passing" zones:

1. That certain part within the Town of West Orange and Livingston Township, Essex County and described in drawing #HNPZ-112 dated October 27, 1989.

16:29-1.70 Route 50

(a) The following certain part of State Highway Route 50 shall be designated and established as "No Passing" zones:

1. That part within the Township of Upper, Cape May County and described in drawing #HNPZ-115 dated March 2, 1990.

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Turns

Routes N.J. 35 in Monmouth County and N.J. 4 in Bergen County

Proposed Amendment: N.J.A.C. 16:31-1.4

Proposed New Rule: N.J.A.C. 16:31-1.28

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, 39:4-123 and 39:4-183.6.

Proposal Number: PRN 1990-499.

Submit comments by October 17, 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 amendment and new rule will establish turn prohibitions, "no left turn" along Route N.J. 35 in Shrewsbury Borough, Monmouth County, and "no right turn" along Route N.J. 4 (Westbound Marginal Road) in River Edge Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace.

Based upon requests from the local governments in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the establishment of "no left turn" along Route N.J. 35 in Shrewsbury Borough, Monmouth County, and "no right turn" along Route N.J. 4 (Westbound Marginal Road) in River Edge Borough, Bergen County, was warranted.

The Department therefore proposes to amend N.J.A.C. 16:31-1.4 and all new rule 16:31-1.28 based upon the requests from the local governments and the traffic investigations.

The rules regarding no left turn along Route 35 in Shrewsbury have been amended to add the restriction into the Market Place Shopping Center. Additional changes are being made to conform the rules to current Department rule format, which organizes traffic rules by county and municipality.

Social Impact

The proposed amendment and new rule will establish turn prohibitions, "no left turn" along Route N.J. 35 in Shrewsbury Borough, Monmouth County, and "no right turn" along Route N.J. 4 (Westbound Marginal Road) in River Edge Borough, Bergen County, for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

Economic Impact

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "no left turn" and "no right turn" signs. Installation and cost for each sign vary based upon materials used, the size required, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule", issued under the New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed amendments and new rule 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 rules primarily affect the motoring public and the governmental entities responsible for enforcement of the rules.

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

Full text of the new rule follows:

16:31-1.4 Route 35

(a) Turning movements of traffic on the certain parts of State highway Route 35 described in this [section] **subsection** are regulated as follows:

1. No left turn:

[i. North on Route 35 to west of Prospect Avenue, Matawan Township;

ii. South on Route 35 to east on Prospect Avenue, Matawan Township;

iii. North on Route 35 to west on Riverdale Drive, Matawan Township;

iv. North on Route 35 to west into driveway of the Hovnanian office building in Middletown Township;

v. North on Route 35 at 8th Avenue to west into driveway of Marine Basin, Borough of Belmar;

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vi. North on Route 35 at 9th Avenue to west into driveway of Marine Basin, Borough of Belmar;

vii. North on Route 35, 50 feet north of 7th Avenue to west into driveway of Marine Basin, Borough of Belmar;

viii. South on Route 35 to east on 7th Avenue, Borough of Belmar;

ix. South on Route 35 to east on Williams Place in the Borough of Mantoloking, Ocean County.

x. North to west onto Haddon Avenue in Shrewsbury Borough, Monmouth County.

xi. From the exit of Shrewsbury Office Plaza to north on Route 35 in Shrewsbury Borough, Monmouth County.

xii. North to west into the Amboy Cinema driveway in Sayreville Borough, Middlesex County.

2. No left turn in Old Bridge and Aberdeen Townships and Keyport Borough, Monmouth County:

i. For the entire length for both directions of traffic in the undivided sections between mileposts 43.9 to 44.7 and mileposts 45.0 to 47.0.

3. No "U" turn in Shrewsbury Borough, Monmouth County:

i. Between a point 200 feet north of White Street and a point 400 feet south of Obre Place.]

i. In Monmouth County:

(1) Aberdeen Township:

(A) For the entire length for both directions of traffic in the undivided sections between mileposts 43.9 to 44.7 and mileposts 45.0 to 47.0.

(2) Middletown Township:

(A) North on Route 35 to west into the driveway of the Hovnanian office building:

(3) Belmar Borough:

(A) North on Route 35 at 8th Avenue to west into the driveway of Marine Basin.

(B) North on Route 35 at 9th Avenue to west into the driveway of Marine Basin.

(C) North on Route 35, 50 feet north of 9th Avenue to west into the driveway of Marine Basin.

(D) South on Route 35 to east on 7th Avenue.

(4) Shrewsbury Borough:

(A) North to west onto Haddon Avenue.

(B) From the exit of Shrewsbury Office Plaza to north on Route 35.

(C) Southbound on Route 35 to westbound into the Market Place Shopping Center.

(5) Old Bridge Township:

(A) For the entire length for both directions of traffic in the undivided sections between mileposts 43.9 to 44.7 and mileposts 45.0 to 47.0.

(6) Keyport Borough:

(A) For the entire length for both directions of traffic in the undivided sections between mileposts 43.9 to 44.7 and mileposts 45.0 to 47.0.

ii. In Ocean County:

(1) Mantoloking Borough:

(A) South on Route 35 to east on Williams Place.

iii. In Middlesex County:

(1) Sayreville Borough:

(A) North to west into the Amboy Cinema driveway.

2. No "U" turn:

i. In Monmouth County:

(1) Shrewsbury Borough:

(A) Between a point 200 feet north of White Street and a point 400 feet south of Obre Place.

16:31-1.28 Route 4 (Westbound Marginal Road)

(a) Turning movement of traffic on the certain parts of State Highway Route 4 (Westbound Marginal Road) described in this subsection are regulated as follows:

1. No right turn:

i. In Bergen County:

(1) River Edge Borough:

(A) From Route 4 (Westbound Marginal Road) to Bogert Road northbound.

(B) From Route 4 (Westbound Marginal Road) to Lakeview Road northbound.

(a)

NEW JERSEY TRANSIT CORPORATION

Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures

Proposed Readoption with Amendments: N.J.A.C. 16:78

Authorized By: New Jersey Transit Corporation, George Warrington, Acting Executive Director.

Authority: N.J.S.A. 27:25-5(e) and 27:25-32(a).

Proposal Number: PRN 1990-474.

Submit comments by October 17, 1990 to:

Albert R. Hasbrouk, III, Asst. Executive Director
New Jersey Transit
P.O. Box 10009
Newark, N.J. 07101

The agency proposal follows:

Summary

On January 17, 1984, the Senior Citizen and Disabled Resident Transportation Assistance Act (N.J.S.A. 27:25-25) became effective. The Act authorized New Jersey Transit to use a portion of the taxes derived from the taxation of gambling establishments in Atlantic City to provide additional or expanded transportation services or benefits to senior citizens and to the disabled. New Jersey Transit, consistent with this statutory authority, and in conjunction with its Special Services Citizen Advisory Committee, and the 21 counties, established a program that is consistent with, and meets the requirements of, the Senior Citizen and Disabled Resident Transportation Assistance Act.

In accordance with N.J.S.A. 27:25-32(a), New Jersey Transit adopted guidelines and procedures for the Senior Citizen and Disabled Resident Transportation Assistance Act Program. These rules were approved by the New Jersey Transit Board of Directors and the Special Services Citizen Advisory Committee and became effective October 7, 1985. There were no comments during the regulatory process (see 17 N.J.R. 2445(a).)

In accordance with Executive Order No. 66(1978), New Jersey Transit has evaluated the Senior Citizen and Disabled Resident Transportation Assistance Act Program Guidelines and Procedures and has determined that they are necessary, reasonable and proper for the purpose for which they were originally promulgated, with the exception of two proposed major changes and several technical corrections. The readoption with amendments has been approved by the New Jersey Transit Board of Directors, as well as the Special Services Citizen Advisory Committee. The content of the proposed readoption and the amendments being proposed follows:

Subchapter 1, General Overview, consists of a description of the purpose of the program and definition of terms used in the chapter. The definition for eligible counties has been amended to include the recipient agency duly designated by the county.

Subchapter 2, Apportionment, deals with the method of allocating funds to the counties, and includes a funding formula. N.J.A.C. 16:78-2.2(b) and 2.3(a) and (c) have been amended to conform to New Jersey Transit's policy change to administer the program on a calendar year basis, as requested by the counties and the designated recipients. N.J.A.C. 16:78-2.4 has been amended to provide that any funds received under the Act by a county or designated agent for a county which have not been expended by the end of a particular calendar year will be placed in a special project account, to be allocated as deemed appropriate by New Jersey Transit. Special projects would include, but not be limited to, those one-time expenses for items or services which cannot be accommodated in the regular budget, for example, purchase of a communications system to improve the dispatch of services to clients, or other new equipment which would improve service delivery. All counties and designated agencies would be eligible and would be notified of the availability of these special project funds at the time the funds become available. (It is possible that such funds may never become available, due to the complete expenditure of allocated funds during the calendar year.) The counties and designated agencies would apply for the funds and would have their applications evaluated under the same rules as the original allocations, N.J.A.C. 16:78.

Subchapter 3, Eligibility, describes the eligibility requirements for recipients, service areas and activities, as well as coordination plan require-

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ments. N.J.A.C. 16:78-3.4(e) has been revised to clarify the requirements for a planning document.

Subchapter 4, Program Development and Management, contains the methods and requirements for program development, and covers regional public hearings, annual audits, technical assistance, and reporting requirements. N.J.A.C. 16:78-4.1 has been revised to correct typographical errors in the New Jersey Administrative Code.

Subchapter 5, Local Assistance Application, contains requirements for the submission of an application by the counties, or their designates, for local assistance under the Senior Citizen and Disabled Resident Transportation Assistance Act. The subchapter includes a description of the eligible entities, the elements of the required description of proposed services, budget, coordination of services, description and certification of maintenance of effort, and requirements for public involvement and resolution by the governing body. N.J.A.C. 16:78-5.3 and 5.4(a) have been amended to conform to New Jersey Transit's policy change to administer the program on a calendar year basis, as requested by the counties and the designated recipients.

Social Impact

The Senior Citizen and Disabled Resident Transportation Assistance Act Program has provided additional and new transportation services to the elderly and handicapped and has had, and will continue to have, a positive effect on this segment of the population. The program enables this segment of the population to access services in their own communities, whether they are rural or urban, and to more readily remain a part of their communities. To a certain extent, the provision of these services enables such persons to remain in the community, rather than residing in more restrictive living arrangements. The proposed readoption will continue to have a positive effect on the population served. The amendments will also have a positive effect, in that there will now be provisions for the funds left unexpended at the end of the calendar year which will allow for new service projects for the benefit of the elderly and the handicapped, rather than having the money revert to the General Casino Fund. This provision will encourage the counties to program, obligate and expend the funds provided in an efficient and effective manner. The proposed change to a calendar year contract period will make it easier for the counties to administer the program, because it will be on the same contract year as all of the other county programs.

Economic Impact

The readoption of this chapter will provide a funding mechanism to each county for the benefit of the eligible elderly and handicapped residents of that county. The counties receive 75 percent of the budgeted amount for services, in accordance with the allocation formula contained in the rules, with 25 percent of the funding remaining with New Jersey Transit for administrative costs. Over the past five years, the total allocations have been as follows:

1986	$11,458,000
1987	$13,500,000
1988	$13,950,000
1989	$14,963,000
1990	$16,725,000

For Fiscal Year 1991, the program has been allocated a total of $18,060,000. The economic benefits of this allocation accrue to the eligible elderly and handicapped residents, as well as to local services and businesses patronized by them and the construction and equipment suppliers who assist in the provision of services. The elderly and handicapped persons who utilize the transportation services will be able to continue to access services in their communities without having to expend portions of their own fixed, usually limited, incomes or forgo availing themselves of needed medical, social or other services.

Regulatory Flexibility Analysis

The proposed readoption and amendments will affect all counties within New Jersey, as well as the two designated agencies in Warren and Camden Counties. The two designated agencies can be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments changing the administration of the program to a calendar year were made at the requests of the counties and the designated agencies, and will have the effect of reducing their costs in several areas, particularly in reporting and recordkeeping. Since the entire regulated group consists of either governmental entities (counties) and two agencies which are small businesses and which are dominant in their field, New Jersey Transit has determined that any differentiation in the rules based upon business size would not be appropriate.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:78.

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

16:78-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

. . .

"Eligible counties" means counties**, or the recipient designated by a county,** submitting a proposal meeting the program guidelines.

. . .

16:78-2.2 Formula

(a) (No change.)

(b) The amount of money which each eligible county may receive will be based upon the number of persons 60 years of age and older residing in that county expressed as a percentage of the whole number of persons in this State of 60 years and older, as provided by the U.S. Bureau of Census. As similar data becomes available for the disabled population, such data will be used in conjunction with the senior citizens data to determine the county allocation formula. No eligible county will receive less than $150,000 nor more than 10 percent of the total funds available for allocation to the counties during a fiscal year under this program. **NJ TRANSIT's Office of Special Services shall establish a minimum and maximum allocation at the start of each fiscal year.** No matching funds are required.

16:78-2.3 Funds availability

(a) Available funds must be committed by [June 30] **December 31** of each year or they will revert back to the General Casino Fund.

(b) (No change.)

(c) The funds will be committed to a county upon notification of a grant awarded by NJ TRANSIT to the designated recipient.

1. The county or its designated recipient [must] **shall** submit an application to NJ TRANSIT prior to [March] **May** 15 for funds available for the [state fiscal] **calendar** year starting the following [July] **January** 1. [For the state fiscal year 1986, the Office of Special Services may extend the application deadline when warranted. In no case will an extension be given beyond July 15, 1985.]

2. County contracts [must coincide with a] **will run from** [June 30 fiscal] **January 1 through December 31** [year-end] and require at least quarterly financial reports to be submitted within 30 days of the end of the quarter. This is a reimbursement program. Requests for reimbursement may be **submitted** monthly. When warranted, monthly advances may be given, but payments will be withheld if financial reports are not received when due.

3. [The]**Starting with the contract period which ends December 31, 1990, the** balance of county funds remaining unexpended **and/or unobligated** by the county **will be returned to NJ TRANSIT**. [on June 30 can be used by the county in the succeeding fiscal year by having the succeeding fiscal year contract modified by NJ TRANSIT. In no case can a county carry-over more than the previous years allocation to that county, with the exception of carry-over fiscal years 1984 and 1985 funds to fiscal year 1986. These carry-over contract modifications will only be approved by NJ TRANSIT if the services to be provided have been included in the most recently approved county plan. Newly proposed services that have been subject to the same review process as the county plan may also be approved as a modification.] Unexpended county funds [in excess] **at the end** of the [previous years allocation] **contract period** will be reallocated as specified in N.J.A.C. 16:78-2.4.

16:78-2.4 Transfer of allocations

[Any funds either not applied for by the deadlines specified in N.J.A.C. 16:78-2.3(c) or excess unexpended funds will be made available for reallocation to those counties which have an application on file by the deadline, and have not reached the maximum allocation for that fiscal year (see N.J.A.C. 16:78-2.2(b)).] **Any unexpended funds**

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remaining at the end of the contract period will, after appropriate close-out and audit, be placed into a special project account. Each county will be eligible to submit an application for any and/or all available funds in this account. Applications will be reviewed on a competitive basis by NJ TRANSIT.

16:78-3.4 Coordination plan requirements

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

(e) [Beginning with the Fiscal Year 1987 application, the recipient must include a plan] **The application for funds must comply with a comprehensive planning document** as described in (d) above. The plan must be updated annually **or as needed** and a copy of the updated plan included in subsequent applications for funding.

(f)-(h) (No change.)

16:78-4.1 General

NJ TRANSIT in conjunction with the NJ TRANSIT Special Services Citizen Advisory Committee, its other advisory bodies, representatives and associations of counties, and other interested parties, has developed these regulations for transportation assistance to senior citizens and the disabled. The instrumentalities of local government, particularly the counties of this State, should play a major role in facilitating the provision of that transportation assistance[,]. NJ TRANSIT [in conjunction with the New Jersey Department of Transportation's Office of Coordination,] and the counties[,] should coordinate existing transportation services provided at the local level including, but not limited to, those services funded by any other State agency, and establish coordinated inter-county transportation services.

16:78-5.3 Budget

The application must contain a program budget which identifies expense categories as identified in *Coordinating Transportation Services for the Elderly and Handicapped, Volume 2, A Model Uniform Billing and Accounting System for Coordinated Transportation Systems.* This publication is sponsored by the United States Department of Transportation and is available from the National Technical Information Service, Springfield, Virginia 22161. These categories must be aggregated into Administration, Planning, Operation, and Capital expense functions. Two budgets should be submitted. The first should include program expenses. The second budget should only reflect the Senior Citizen and Disabled Resident Transportation Assistance Program expenses. Both budgets should be prepared using a [July] **January** 1 to [June 30] **December 31** [fiscal] **calendar** year.

16:78-5.4 Coordination

(a) The application must include a description of the means by which the applicant will coordinate intra-county transportation, inter-county transportation and existing accessible fixed route services described in (b) through (d) below. This description should show that the recipient is implementing the comprehensive planning document described in N.J.A.C. 16:78-3.4 [beginning with the Fiscal Year 1987 application].

(b)-(d) (No change.)

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Procedures for Transportation Expense Reimbursements
Proposed Amendment: N.J.A.C. 19:45-1.9A

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69 and 102m.

Proposal Number: PRN 1990-480.

Submit comments by October 17, 1990 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to subsection 102m of the Casino Control Act (Act), N.J.S.A. 5:12-1 et seq., a casino licensee may reimburse its gaming patrons for documented transportation expenses provided that the licensee complies with Casino Control Commission (Commission) regulations to ensure that such expenses are paid for or reimbursed only once (see N.J.S.A. 5:12-102m(2)). On November 22, 1989, the Commission adopted a new rule (effective December 18, 1989), at N.J.A.C. 19:45-1.9A, to implement subsection 102m(2) of the Act by establishing documentation procedures for the issuance of transportation expense reimbursements (see 21 N.J.R. 3931(b)).

On June 15, 1990, Boardwalk Regency Corporation (BRC) filed a petition for rulemaking pursuant to N.J.S.A. 5:12-69c, requesting that the Commission promulgate amendments to N.J.A.C. 19:45-1.9A to establish procedures for transportation expense reimbursement by mail (see 22 N.J.R. 2367(a)). The proposed amendment is intended to address those situations where the documentation required by current regulations to complete a Travel Disbursement Voucher (Voucher) is unavailable during the patron's visit to the casino, or where the casino licensee is unable to evaluate the patron's player rating in time to approve a transportation reimbursement before the patron leaves the casino. The proposed amendment permits the casino licensee to partially complete the Voucher, which is maintained in the casino cage pending receipt of all necessary information or documentation. As soon as all outstanding information is received by the casino licensee, the Voucher is to be completed in accordance with N.J.A.C. 19:45-1.9A, and a cage disbursement check is forwarded by mail to the patron. The proposed amendment requires that all partially completed Vouchers must be completed within 60 days of the date of the patron's request for reimbursement.

Social Impact

The proposed amendment will benefit those casino patrons who have, in the past, been precluded from receiving travel reimbursement in those instances where information required by Commission regulations to complete the reimbursement transaction is unavailable during the patron's visit to the casino. The proposed amendment accommodates these situations while ensuring adequate documentation of transportation reimbursements.

Economic Impact

The proposed amendment is not expected to result in any significant economic impact on the casino industry, since the documentation procedures in N.J.A.C. 19:45-1.9A have already been implemented and no additional costs of compliance should be incurred. The proposed amendment will provide an economic benefit to casino patrons who have been unable to receive travel reimbursements where the requisite information or documentation is unavailable until after such patron has departed from the casino.

Regulatory Flexibility Statement

The proposed amendment affects only the operation of casino licensees, and, therefore, do not impact on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:45-1.9A Procedures for transportation expense reimbursements

(a) All transportation expense reimbursement transactions, **except as otherwise provided in (h) below,** shall be performed at the casino cage.

(b) Whenever a patron requests a casino licensee to reimburse transportation expenses, a Travel Disbursement Voucher ("Voucher") shall be prepared. Vouchers shall be maintained in a secure location approved by the Commission. Access to Vouchers, prior to use, shall be restricted to those individuals authorized by the licensee to approve such disbursements. Prior to the transportation expense reimbursement, an individual authorized to approve

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the disbursement shall examine the original tickets, invoices or receipts presented by the patron in support of the request for valid transportation expense reimbursement. Such tickets, invoices or receipts shall:

1. (No change.)

2. Be dated within 30 days of [presentation] **the request for reimbursement;** provided, however, reimbursements may be made for tickets, invoices or receipts which are dated more than 30 days but no more than 180 days prior to the date of request for reimbursement if an explanation is included on the Voucher as to why presentation was delayed.

3.-4. (No change.)

(c) (No change.)

(d) Vouchers shall be manually prepared or computer generated and shall contain, at a minimum, the following information:

1.-9. (No change.)

10. The patron's signature, indicating [receipt of reimbursement and] acknowledgment of the following statement which shall be included on the Voucher: "I affirm that the expenses for which I am seeking reimbursement are supported by genuine tickets, invoices or receipts which I [(have provided)] **(will provide)** to (insert name of licensee) and I have not received reimbursement for these expenses from any other source. I am aware that this Voucher is required to be prepared by the regulations of the Casino Control Commission and I may be subject to civil or criminal liability if any material information provided by me is willfully false."

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

(h) If a transportation expense reimbursement transaction cannot be completed at the casino cage due to the unavailability of required information or documentation, a casino licensee may perform a transportation expense reimbursement transaction by mail by complying with the requirements of (a) through (g) above except as otherwise modified below:

1. The authorizer shall record the date of request for reimbursement and the information noted in (d)2 above on the Voucher, and present the partially completed Voucher to the general cashier.

2. The general cashier shall obtain the patron's signature on the Voucher, verify the requesting patron's identity in accordance with (d)8 above, stamp the term "mail in" on the Voucher and sign the Voucher. Any partially completed Voucher shall be maintained by the casino licensee in a secure location within the casino cage, and shall be processed as soon as all required information or documentation is available.

3. The authorizer, upon receipt of all information and documentation required to complete the Voucher in accordance with (d) above, shall obtain the partially completed Voucher from the general cashier, and shall:

i. Record the information noted in (d)1 and (d)3 through (d)5 above;

ii. Sign the Voucher; and

iii. Present the original and duplicate Voucher, and original ticket, invoice, receipt or other documents to the general cashier.

4. The general cashier shall complete the Voucher in accordance with (g) above and sign the Voucher; provided, however, that the general cashier shall attach the cancelled ticket, invoice, receipt or any other additional documentation provided in accordance with (b)4 above, to the original Voucher, and shall return such documentation to the patron upon request; and the general cashier shall mail the corresponding reimbursement check to the requesting patron.

5. Any partially completed Voucher which is not completed within 60 days from the date of request for reimbursement shall be voided in accordance with (c) above.

Recodify [(h)] as (i) (No change in text.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

Proposed Amendment: N.J.A.C. 19:46-1.6

Authorized by: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c).

Proposal Number: PRN 1990-481.

Submit comments by October 17, 1990 to:

Deno R. Marino
Deputy Director—Operations
Casino Control Commission
CitiCenter Building—4th floor
1300 Atlantic Avenue
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 19:46-1.6(g) requires a member of the casino's security department to be present during the destruction of gaming chips and plaques. In addition, the proposed amendment to N.J.A.C. 19:46-1.6(g) would require that each casino licensee maintain a log which shall include the name and license number of all casino personnel and the name and address of all non-casino personnel involved with the chip destruction process. These changes provide for increased security over the gaming chips and plaques to be destroyed.

Social Impact

The proposed amendment would serve to increase the security over the destruction of gaming chips and plaques and would have no social impact of any significance.

Economic Impact

The proposed amendment would have no significant economic impact since the change regarding the presence of security formalizes an existing practice in the industry and the change requiring the maintenance of a log would be of a nominal cost to casino licensees.

Regulatory Flexibility Statement

This proposed amendment will only affect the operation of New Jersey casino licensees, and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

(a)-(f) (No change.)

(g) Prior to the destruction of gaming chips and plaques, the casino licensee shall notify the [commission] **Commission** and the [division] **Division,** in writing, of the date and the location at which the destruction will be performed, the denomination, number and amount of value chips and plaques to be destroyed, the description and number of non-value chips to be destroyed and a detailed explanation of the method of destruction. Unless otherwise authorized by the [commission] **Commission**, the destruction of gaming chips and plaques shall be carried out in the presence of at least four people, one of whom shall be from the accounting or auditing department of the casino, **one of whom shall be from the security department of the casino** and one of whom shall be an agent of the [commission] **Commission.** The denomination, number and amount of value chips and plaques or, in the case of non-value chips, the description and number so destroyed shall be recorded in the chip inventory ledger together with the signatures of the individuals carrying out such destruction and the date on which said destruction took place. **The casino licensee shall also maintain, at a minimum, the name and license number of all casino personnel and the name and address of all non-casino personnel, excluding the Commission representative, involved with the chip and plaque destruction process.**

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

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HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Community Mental Health Services Act Rules

Proposed Readoption: N.J.A.C. 10:37

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:9A-10.

Proposal Number: PRN 1990-482.

Submit comments by October 17, 1990 to:
Alan G. Kaufman, Director
Division of Mental Health and Hospitals
CN-727—Capital Center
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:37 expires on November 4, 1990. The Department of Human Services has reviewed these 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.

The Community Mental Health Services Act, N.J.S.A. 30:9A-1 et seq., was originally enacted in 1957 and subsequently amended in 1967 and 1979 to provide for the establishment, development, improvement and expansion of community mental health services and for payment by the State of financial grants-in-aid for community mental health projects.

The present text of N.J.A.C. 10:37 became effective November 3, 1980 as R.1980 d.479 (see 12 N.J.R. 704(g)) and was readopted as R.1985 d.605, effective November 4, 1985, pursuant to Executive Order No. 66 (1978) (see 17 N.J.R. 2894 (a)). The purpose of the rules is to effectuate adequately the provisions of N.J.S.A. 30:9A-1 et seq., and the powers conferred upon the Department and its Commissioner by that act.

The chapter is divided into eight subchapters.

Subchapter 1 contains the introduction and purpose of the chapter.

Subchapter 2 concerns membership, functions the power to establish committees and scope of authority of the State Community Mental Health Citizens Advisory Board.

Subchapter 3 establishes and describes the membership, attendance, conflicts of interest, roles and responsibilities of the county mental health boards, the Professional Advisory Committee, county mental health administrators, reimbursement and county administration of services.

Subchapter 4 delineates consumer requirements for all community mental health program elements.

Subchapter 5 lists program element requirements by article. Topics include funding priorities and target populations, emergency service, screening, outpatient program, residential care program, partial care program, inpatient program, consultation and education program, and the system advocacy program.

Subchapter 6 deals with general administrative requirements for all State-funded community mental health program elements. These are also listed by article. Topics include accessibility, affiliation agreements, compliance requirements waivers and appeals, consumer health education, continuity of services, governance, health system agencies: interfacing, individual services plan, least restrictive setting, medication, personnel practices, quality assurance and utilization review, records, reporting requirements, services requiring approval, site visit process, training and staff development, unified services requirements for State and county psychiatric hospitals and the unusual incident reporting system.

Subchapter 7 concerns fiscal administration, audit requirements and allowable costs methodology.

Subchapter 8 states the conditions governing State grants for construction assistance for community mental health facilities.

Appendix A is a continuum of mental health settings.

All aspects of the standards contained in these rules are being comprehensively reviewed by the Division through a process begun in 1989 involving extensive input and feedback from community mental health providers, consumers, academics, advocates and professional associations. The result of this process will be to determine which current standards should be confirmed as appropriate and which will be recommended for some form of modification.

Those modifications acceptable to the Department must then be put into the appropriate format as proposed amendments, repeals, or new rules for promulgation through the Office of Administrative Law. The appropriate appeals, amendments or new rules would be ready for proposal in 1991, as necessary. In the interim, the current standards are being readopted without amendments.

Social Impact

The rules provide standards governing the provision of services by community mental health programs receiving funding from the Department through the Division, as well as the standards governing membership and functioning of State and county mental health boards. Consumers of these mental health services are positively affected by the establishment of the parameters and standards contained in these rules since, in many instances, the rules operationalize various statutory rights or safeguards related to important issues, including, but not limited to, the administration of pyschotropic medication and the duty of confidentiality of recordkeeping. The general public is affected by these rules to the extent that they insure the efficient, effective and accountable spending of public funds.

Economic Impact

These rules establish the standards and parameters which provider agencies must meet and operate within in order to qualify for initial and continued funding from the Department. Approximately 140 providers of community mental health programs currently receive funding of more than $100,000,000 from the Department through the Division. Since the goal of these rules is to ensure quality mental health services for all State residents regardless of their ability to pay, indigent residents in need of mental health services may be expected to receive the greatest economic benefit from these rules.

Regulatory Flexibility Analysis

These rules impose reporting, recordkeeping and other compliance requirements on publicly funded providers of community mental health programs some of whom may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The purpose of the reporting, recordkeeping and compliance requirements is to ensure quality care for recipients of community mental health services. These various requirements include: maintenance of written client records (N.J.A.C. 10:37-6.73 et seq.) maintenance of Individual Service Plans for program clients (N.J.A.C. 10:37-6.42 et seq.); the submission of financial reports on a regular basis as required by the Division (N.J.A.C. 10:37-7.3(a)); maintenance of separate accounts for each funding allocation (N.J.A.C. 10:37-7.4(a)); and periodic submission of Unified Service Transaction Forms regarding service as required by the Division (N.J.A.C. 10:37-6.84(a)1.i).

The level of the public funding to each provider agency is intended to enable these providers to satisfy the various standards and requirements contained in these rules. Providers are expected to satisfy the various requirements of these rules with the public funding as well as their existing resources. Whether in each instance the funding given to the provider to supplement their existing resources is adequate to enable compliance with the standards in these rules is subject to ongoing discussion and negotiation between the Division and each provider agency.

Finally, the necessity to ensure the safety and general welfare of all the clients of publicly funded community mental health services requires high and uniform standards for all provider agencies regardless of their size.

Full text of the proposed readoption may be found in the The New Jersey Administrative Code at N.J.A.C. 10:37.

(b)

DIVISION OF DEVELOPMENTAL DISABILITIES

Manual of Standards for Private Licensed Facilities for the Mentally Retarded

Proposed Readoption: N.J.A.C. 10:47
Proposed Repeal: N.J.A.C. 10:47-2
Proposed New Rule: N.J.A.C. 10:47-2.1

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Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:1-12, 30:1-15, 30:15-1 and 30:6D-23 et seq.
Proposal Number: PRN 1990-473.

Submit comments by October 17, 1990, to:
James Evanochko
Administrative Practice Officer
Division of Developmental Disabilities
CN 726
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 10:47, Manual of Standards for Private Licensed Facilities for the Mentally Retarded, expires on November 4, 1990. As required by the Executive Order, the Department of Human Services has reviewed these rules and has determined them to be substantially necessary, reasonable and proper for the purpose for which they were originally intended. The Department has repealed Subchapter 2, Licensure Procedures, in order to update the requirements and to conform them with the Department of Health requirements at N.J.A.C. 8:39.

The subchapters are summarized as follows:

N.J.A.C. 10:47-1 provides the definitions used in the chapter as well as its scope.

N.J.A.C. 10:47-2 outlines the procedure to obtain a license. The Department deleted outdated text and has replaced it with text to conform with the Department of Health's rules for licensure of long-term-care facilities.

N.J.A.C. 10:47-3 describes the requirements for administrative policies addressing management organization, admission, release, personnel services and recordkeeping.

N.J.A.C. 10:47-4 establishes resident living standards for hygiene, meals, clothing and living arrangements.

N.J.A.C. 10:47-5 outlines requirements for general medical and health care.

N.J.A.C. 10:47-6 prescribes the responsibility for education, training, therapy services and Individualized Habilitation Plans.

N.J.A.C. 10:47-7 establishes requirements for the physical plant, sanitation, safety, transportation and fire safety.

Social Impact

The proposed readoption will have a positive social impact on the individuals served at the facilities, as well as the regulated facilities themselves, by allowing the Department of Human Services to continue the orderly licensure of private licensed facilities for the mentally retarded.

The private licensed facilities meet a set of state-regulated minimum standards and are inspected as necessary, but at least once a year, to protect the health, safety, welfare and rights of the individuals served at the facilities.

In accordance with the Individualized Habilitation Plan mandated for each client by N.J.S.A. 30:6D-12, the proposed readoption complies with the need for a program of care, training, treatment and education commensurate with the functioning level of the individual receiving services.

Economic Impact

The economic impact on the private licensed facilities is essentially unchanged. Facilities may not operate, nor receive reimbursement, without licensure. The licensing fees are established by the Department of Health. Applicants are charged $500.00 plus $3.00 per bed for initial application and for renewal. Department of Human Services staff will continue to survey the private facilities on an annual or as needed basis, and have budgeted $365,700 for Fiscal Year 1991.

Regulatory Flexibility Analysis

There are five licensed facilities for the mentally retarded in New Jersey, of which three may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. In order to operate in New Jersey, the facilities must conform to the requirements of N.J.A.C. 8:39, the Department of Health standards for long-term care facilities, and this chapter. The requirements of this chapter include: administration (management, admission and release, personnel policies, reporting and record-keeping), care, training and supervision of the residents, and support services (physical plant, sanitation, safety, transportation and fire safety). Also included in this chapter are the specific requirements to report unusual incidents to the Department, to keep client records and to keep records relating to the operation of the facility.

The Department considers exemptions based on the business size to be inappropriate, because of an overriding concern for the health, safety and welfare of the residents of the facilities for the mentally retarded. Therefore, no differentiation based upon business size has been provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:47.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 10:47-2.

Full text of the proposed new rule follows:

SUBCHAPTER 2. LICENSURE

10:47-2.1 Licensure requirements

(a) All facilities shall provide documentation of a license to operate a long-term care facility pursuant to the provisions of N.J.A.C. 8:39.

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Manual of Requirements for Children's Group Homes

Proposed Repeal and New Rules: N.J.A.C. 10:128

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:12-15 and N.J.S.A. 30:4C-4.
Proposal Number: PRN 1990-476.

Submit comments by October 17, 1990 to:
Richard Crane, Acting Chief
Bureau of Licensing
Division of Youth and Family Services
CN 717
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4, the Department of Human Services is authorized to inspect, evaluate and approve publicly or privately operated homes that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency. The proposed new rules constitute a comprehensive revision of the existing Manual of Standards for Group Homes, which was adopted prior to the implementation of Executive Order No. 66(1978).

The proposed new rules were developed with extensive input from the community, including representatives from group homes, supervised transitional living homes, teaching family homes, treatment homes, the medical profession, the legal profession and child advocacy groups including the New Jersey Association of Children's Residential Facilities (NJACRF), the professional consortium that represents this field. Over the past two years, an Ad Hoc Citizens' Advisory Committee participated in review meetings, draft reviews and initiated numerous comments and revisions. The final draft was distributed to members of this Ad Hoc Citizens' Advisory Committee, along with all group home, supervised transitional living home, teaching family home and treatment home providers, as well as to other New Jersey State agencies and child advocacy groups for review and comment. These rules reflect new requirements for restrictive behavior management practices, admission policies and treatment policies for children known to be infected with Human Immunodeficiency Virus (HIV), adventure (wilderness) activities; and homes that provide services to pregnant and parenting adolescents. Drafts of the rules or specific sections of the drafts were also distributed to and reviewed by licensing agencies from other states, the Child Welfare League of America, adventure activity groups/associations and clinicians.

Subchapter 1 (N.J.A.C. 10:128-1) cites the legal authority for the proposed new rules (N.J.A.C. 10:128-1.1), identifies the types of children's group homes (N.J.A.C. 10:128-1.2), and defines the terms used in this chapter (N.J.A.C. 10:128-1.3).

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Subchapter 2 (N.J.A.C. 10:128-2) outlines the application for the certificate of approval process (N.J.A.C. 10:128-2.1), describes the issuance of a certificate of approval (N.J.A.C. 10:128-2.1) and sets the criteria for denying, suspending, revoking or refusing to render a certificate of approval (N.J.A.C. 10:128-2.3). Subchapter 2 delineates an administrative hearing process when a home or agency fails to comply with the applicable provisions of these rules (N.J.A.C. 10:128-2.4), specifies the procedures of responding to complaints that may impact on a home's certificate of approval (N.J.A.C. 10:128-2.5) and notes the guidelines for public access to records maintained by the Division's Bureau of Licensing (N.J.A.C. 10:128-2.6).

Subchapter 3 (N.J.A.C. 10:128-3) specifies that the home or agency must develop a statement of purpose which describes the philosophy, goals, objectives, characteristics of the clients and treatment services available (N.J.A.C. 10:128-3.1). The rights of the children placed in the home are described (N.J.A.C. 10:128-3.2) as well as the kinds of information about the home which shall be given to parents and staff, including information about licensing requirements, abuse or neglect complaints, search and seizure policies, visitation, discipline practices and parental consents (N.J.A.C. 10:128-3.3). The home must participate in the community and have a governing board (N.J.A.C. 10:128-3.4), and the home or agency must set a conflict of interest policy in accordance with its contract with the Department of Human Services (N.J.A.C. 10:128-3.5). Subchapter 3 (N.J.A.C. 10:128-3) also specifies that the home establish an intake and admission policy for clients (N.J.A.C. 10:128-3.6), reporting requirements for suspected or actual child abuse or neglect, the hospitalization of a child, the death of a child, closing or relocation of the home, reportable diseases, damage to the home, change in the director or changes in the services offered (N.J.A.C. 10:128-3.7). The home or agency must maintain administrative records, client records and staff records (N.J.A.C. 10:128-3.8), and the home must have comprehensive general liability insurance coverage (N.J.A.C. 10:128-3.9).

Subchapter 4 (N.J.A.C. 10:128-4) specifies physical facility requirements, including the initial approval requirements for all homes located in New Jersey (N.J.A.C. 10:128-4.1) and the initial approval requirements for all homes located outside of New Jersey (N.J.A.C. 10:128-4.2). Subchapter 4 also specifies the maintenance and sanitation requirements for all homes wherever located (N.J.A.C. 10:128-4.3) and additional maintenance and sanitation requirements for all homes located in New Jersey such as requirements for heating, fireplaces, lighting, ventilation, toilets, lead paint, asbestos, kitchens, living space and swimming pools (N.J.A.C. 10:128-4.4). The home must develop guidelines for emergency evacuations, medical emergencies, fire prevention and first aid (N.J.A.C. 10:128-4.5). The home is required to establish guidelines for staff members, children, visitors and family members who use tobacco products (N.J.A.C. 10:128-4.6).

Subchapter 5 (N.J.A.C. 10:128-5) specifies the general requirements for the director of the home and staff members employed by the home. Staff must have references and must disclose criminal convictions. The director and staff are required to report suspected or actual abuse and neglect incidences involving the children and must cooperate with all investigations (N.J.A.C. 10:128-5.1). Staff must meet certain qualifications, including education, age, and experience requirements (N.J.A.C. 10:128-5.2). The homes must maintain staff to child ratios that may vary depending upon the time of day or if the children are off-grounds (N.J.A.C. 10:128-5.3). Requirements for staff training and development specify topics that must be covered including the home's statement of purpose, search and seizure policy, emergency procedures, protocols for medication, infection control procedures, behavior management techniques, alcohol and drug abuse, human sexuality, AIDS and suicide prevention (N.J.A.C. 10:128-5.4). The home must establish guidelines if it chooses to utilize volunteers and student interns with the children (N.J.A.C. 10:128-5.5).

Subchapter 6 (N.J.A.C. 10:128-6) specifies the program activities, including the treatment planning requirements for children in group homes, teaching family homes and treatment homes (N.J.A.C. 10:128-6.1) and the requirements for discharge planning as children complete their program and return to the community (N.J.A.C. 10:128-6.2). Case management plan requirements for children in supervised transitional living homes focus on goals that will enable the adolescent to achieve self-sufficiency so that they can live on their own (N.J.A.C. 10:128-6.3). Requirements that address work and employment (N.J.A.C. 10:128-6.4) and money and allowance (N.J.A.C. 10:128-6.5) are intended to help the client gain experience in the workplace, learn to handle money and learn the importance of banking. Requirements for visitation and communication (N.J.A.C. 10:128-6.6) outline the role of the treatment team and the placing agency in assessing the benefits and detriments, as well as the therapeutic value of visits and communication from family members and friends. Education requirements (N.J.A.C. 10:128-6.7) for the clients specify that all school-age children must receive an appropriate education. Recreation requirements specify that children must be afforded a balanced program of on-grounds and off-grounds activities (N.J.A.C. 10:128-6.8). Requirements for religion outline the home's responsibilities for ensuring that the clients have access to religious services as well as ensuring that clients are not forced or coerced into a particular religious activity or service (N.J.A.C. 10:128-6.9).

Subchapter 6 also identifies the basic needs to which clients are entitled to ensure safe, clean and comfortable sleep/rest as well as establishing minimum requirements for uninterrupted sleep (N.J.A.C. 10:128-6.10). Food and nutrition requirements (N.J.A.C. 10:128-6.11) specify the meals that need to be provided, proper methods for food storage and that the home have the ability to provide for individualized diets. Homes that choose to have pets must meet the requirements specified (N.J.A.C. 10:128-6.12), including making sure pets are domesticated, free from disease and appropriately vaccinated, as well as ensuring appropriate health and sanitary measures. The requirements for restrictive behavior management practices outline techniques that may be utilized by the home as an intervention to help the client gain control of their behavior. These interventions include physical restraint and exclusion. The use of mechanical restraint and/or a behavior management room for clients is prohibited by these rules (N.J.A.C. 10:128-6.13). Requirements for the discipline and control of the clients are intended to help clients develop self-control and conform to acceptable patterns of social behavior. These requirements prohibit corporal punishment, group punishment, mechanical restraint, chemical restraint, deprivation of meals/sleep/mail or clothing, verbal abuse, seclusion in a locked room, forced physical exercise, suspension from the program and refusal of entry to the home (N.J.A.C. 10:128-6.14). If the home chooses to conduct searches, screen for drugs or seize contraband or weapons the home must follow specific policies and procedures (N.J.A.C. 10:128-6.15). Requirements prohibit firearms and weapons from being maintained in group homes, transitional living homes, State-owned teaching family homes and State-owned treatment homes. Treatment homes and teaching family homes that are not State-owned may maintain firearms and weapons if they meet specific requirements including storing any weapons in a locked, steel gun vault (N.J.A.C. 10:128-6.16).

Subchapter 7 (N.J.A.C. 10:128-7) specifies the health requirements for children who are in placement in these homes and for the staff who are employed by these homes. The homes are required to develop and implement a comprehensive health plan for the children (N.J.A.C. 10:128-7.1). The homes must follow specific guidelines for physical examinations for admittance, yearly medical examinations and periodic dental check-ups (N.J.A.C. 10:128-7.2). The home is also required to adhere to general medical practices for routine and emergency care (N.J.A.C. 10:128-7.3). Requirements for prescribing, dispensing, documenting, storing, monitoring and disposing of medication (N.J.A.C. 10:128-7.4), as well as for psychotropic medication including informed consent (N.J.A.C. 10:128-7.5), are outlined for the homes to follow. Requirements for the health education and physical care for the children include instruction for the children in hygiene, grooming and personal care and the provision of hygiene supplies and clothing (N.J.A.C. 10:128-7.6). Health requirements for staff include testing for tuberculosis, a current physical examination and documentation from a physician that a staff member is able to return to work after physical or mental illness (N.J.A.C. 10:128-7.7). Requirements for environmental sanitation and staff hygiene outline methods of cleaning and disinfecting materials that come into contact with blood, vomit, urine, fecal matter and other body secretions and how staff should protect themselves during the clean-up process (N.J.A.C. 10:128-7.8).

Subchapter 8 (N.J.A.C. 10:128-8) specifies the transportation requirements for the homes that utilize motor vehicles. The homes must meet all applicable provisions of New Jersey Division of Motor Vehicles law, N.J.S.A. 39:1-1 et seq. (N.J.A.C. 10:128-8.1). The homes or agencies must maintain minimum vehicle liability insurance for every vehicle owned or leased that is used to transport children (N.J.A.C. 10:128-8.2). Subchapter 8 also outlines requirements for homes that transport physically handicapped, non-ambulatory children (N.J.A.C. 10:128-8.3). The home or agency must maintain records that reflect copies of driver's licenses, vehicle registrations, insurance policies and identifying information of the lessor or contractor if applicable (N.J.A.C. 10:128-8.4).

Subchapter 9 (N.J.A.C. 10:128-9) outlines the requirements that homes must follow if they utilize adventure activities as part of their program.

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These activities include biking, canoeing, kayaking, tubing, caving, hiking, horseback riding, ropes, rock climbing, sailing, boating, snow skiing, solos (solitary camping), swimming, water skiing and camping. The requirements specify that children must receive specific safety instructions, that parents must sign a consent form and that certain activities such as hunting and parachuting are prohibited (N.J.A.C. 10:128-9.1). Homes that engage in adventure activities must develop plans for emergency evacuation and search and rescue (N.J.A.C. 10:128-9.2). These plans include guidelines to determine if weather conditions are safe, whether a victim is ambulatory, construction of a litter in the event of an injury, procedures for evacuating children and staff, emergency phone numbers and other guidelines for dealing with emergencies. These plans also include detailed guidelines for conducting a search, in the event a child or staff member becomes lost during an activity. Section 9.3 (N.J.A.C. 10:128-9.3) describes the reporting requirements homes must follow, including providing written descriptions to the Bureau of all high and medium risk adventure activities prior to their implementation. When a home or agency offers biking as an activity, they must follow the requirements specified (N.J.A.C. 10:128-9.4) including safety inspections of the bikes, wearing protective helmets, rest breaks and safety and emergency equipment. Homes that provide canoeing, kayaking or tubing activities must ensure that the children wear approved life jackets, follow safety procedures, avoid waters that are unsafe and that water temperature must be above 55 degrees Fahrenheit (N.J.A.C. 10:128-9.5). Homes that permit children to visit and explore caves must provide helmets and ensure that staff are experienced in caving (N.J.A.C. 10:128-9.6). Requirements for hiking include treatment products for insect, animal and snake bites and weight limitations for back packs (N.J.A.C. 10:128-9.7). Children who engage in horseback riding (N.J.A.C. 10:128-9.8) must follow such safety practices as wearing boots and protective head gear. The requirements for ropes and rock climbing include inspections of the ropes, instruction in safety procedures, helmets and having certified staff implementing the activity (N.J.A.C. 10:128-9.9). The homes that engage in sailing or boating activities must ensure that all vessels meet applicable Federal, state and local laws, children must be provided with life jackets and staff must complete an approved boating course (N.J.A.C. 10:128-9.10). Requirements for snow skiing (N.J.A.C. 10:128-9.11) include ensuring that children are provided with appropriate ski equipment, clothing and eye protection and prohibitions against skiing in avalanche areas or in temperatures below zero degrees Fahrenheit. Homes that utilize solo camping must ensure that the children are physically capable, are provided with sufficient food and water and are closely monitored (N.J.A.C. 10:128-9.12). The requirements for swimming (N.J.A.C. 10:128-9.13) include staff certification in life-saving, ensuring that children are not permitted to swim at night, testing the children's ability to swim and ensuring that the water temperature is at least 55 degrees Fahrenheit. Water skiing requirements (N.J.A.C. 10:128-9.14) prohibit water skiing at night and in crowded areas and require that equipment be checked on a regular basis. The requirements for camping outline the guidelines for tents, the campsites, bathing, food storage, latrines and permits (N.J.A.C. 10:128-9.15). Requirements for wagon trains (N.J.A.C. 10:128-9.16) outline the proper care for animals and ensure that the wagons are in good repair. Section 9.17 (N.J.A.C. 10:128-9.17) outlines health and sanitary practices that ensure children are in good health prior to their participation in an adventure activity, the treatment of insect, snake and animal bites, food storage, drinking water requirements and the disposal of animal waste. The requirements for qualifications for staff supervising adventure activities include certification in CPR and certification or experience in a particular adventure activity (N.J.A.C. 10:128-9.18). The staff to child ratio requirements specify that at least two staff members must be present when two or more children are engaged in an adventure activity and when more than twelve children are present there must be at least one additional staff member for every additional six children (N.J.A.C. 10:128-9.19). Special requirements for communication and visits for those children involved in activities in remote areas, are specified (N.J.A.C. 10:128-9.20), including requirements that children can be reached by family member(s) in an emergency, affording the child privacy during a visit, access to the telephone and the receipt of mail.

Subchapter 10 (N.J.A.C. 10:128-10) specifies the requirements for homes that provide services to pregnant and parenting adolescents. The general requirements (N.J.A.C. 10:128-10.1) identify the various program services that homes must provide and outline specific maintenance, safety and sanitation requirements such as safety-gates, standards for furniture, toilets, play areas, pets, and standards for cribs and playpens. Staff and staff ratio requirements specify that staff members must be at least 21 years of age, homes that serve three or more pregnant or parenting adolescents must have at least one staff member who is certified in CPR, and specifies the number of staff needed depending upon the particular mix of mothers and babies and time of day (N.J.A.C. 10:128-10.2). Requirements for staff development and training (N.J.A.C. 10:128-10.3) specify that staff must receive instruction in the home's statement of purpose and protocols for dispensing medication and stipulates that staff receive at least 24 hours of training each year in topics that are relevant to adolescent mothers and their children. Case management requirements (N.J.A.C. 10:128-10.4) outline the requirements for treatment of the adolescent and the children, including staff participation in the plan, assessments for strengths and weaknesses, parenting capabilities, academic progress, treatment goals, budgeting and job training. Requirements for planned and emergency discharges are specified (N.J.A.C. 10:128-10.5). The requirements for services regarding paternal involvement deal with the various issues of establishing paternity and specifies that the home discuss these issues at individual and group meetings. Requirements for services to the adolescent's family (N.J.A.C. 10:128-10.7) specify that the home must attempt in-person contacts with the parents of the adolescent to discuss their involvement with their daughter and grandchild. Requirements for parenting education (N.J.A.C. 10:128-10.8) outline the topics for the mother which include infant and child development, stimulation activities, health care, nutrition and maintaining relationships with their families. Infant stimulation requirements specify activities that the mother should implement with her child at the various stages of development (N.J.A.C. 10:128-10.9). The requirements for infant toys and equipment (N.J.A.C. 10:128-10.10) specify that toys and equipment must be safe, non-toxic and free of hazards and the home must have a choker tube available to ensure that the infants cannot swallow toys or parts of toys. The requirements for recreation specify that the home must teach the adolescent how to manage time and money and to use public transportation in order to participate in recreational activities in the community (N.J.A.C. 10:128-10.11). The requirements for money and allowance (N.J.A.C. 10:128-10.12) outline how adolescents can earn money, how to deal with property damage caused by the adolescent or her child and guidelines for restitution. Visiting and communication requirements are specified (N.J.A.C. 10:128-10.13), including having regular contact with family members and the infant's father, visiting hours and denial of visits. The requirements for behavior management prohibit corporal punishment, abusive language, ridicule, forced physical exercise, deprivation of meals, mechanical restraint and seclusion in a locked room (N.J.A.C. 10:128-10.14). The requirements for comprehensive health plans for pregnant adolescents outline the prenatal care for expectant mothers including visits to the obstetrician, referrals to the Supplemental Feeding Program for Women, Infants and Children (WIC) and making appropriate hospital arrangements for the delivery (N.J.A.C. 10:128-10.15). Comprehensive health plans for infants are specified (N.J.A.C. 10:128-10.16), including regular check-ups, immunizations and developmental screenings. The requirements for the comprehensive health care for adolescent mothers who are not pregnant specify that they receive regular physical examinations and dental care (N.J.A.C. 10:128-10.17). The care of sick infants, adolescents and staff requirements identify a variety of illnesses that require a physician's care (N.J.A.C. 10:128-10.18). General medical practices are outlined (N.J.A.C. 10:128-10.19), including explaining any medical, dental, psychological and psychiatric treatment to the adolescent and the home's responsibility to report serious illnesses and accidents to the Bureau and the adolescents' parents. The requirements for medication ensure that all medication is authorized by a physician, stored in a locked cabinet and documented in a medication log book after it has been dispensed (N.J.A.C. 10:128-10.20). The environmental sanitation requirements for disinfecting (N.J.A.C. 10:128-10.21) specify the types of disinfectant the home must utilize for cleaning toilet training chairs, sinks, diapering surfaces, toys, mops, and thermometers. The requirements for personal hygiene for adolescents and staff indicate washing their hands with soap and water before preparing or serving food and after diapering, toileting, and coming into contact with blood, fecal matter, urine, vomit or saliva (N.J.A.C. 10:128-10.22). The requirements for health education and physical care for adolescents and infants (N.J.A.C. 10:128-10.23) specify that adolescents receive training in personal care, hygiene and grooming habits as well as instructing them in the changing of their baby's diapers. Requirements for food and nutrition specify that balanced meals are provided, and the home follows individualized diets and feeding schedules (N.J.A.C. 10:128-10.24). Life skills development requirements specify the type of instruction a mother should receive prior to her discharge from the home

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including meal planning, meal preparation, food shopping and locating affordable housing (N.J.A.C. 10:128-10.25).

Social Impact

The Division anticipates that the adoption of this chapter will have a positive impact on the quality of care received by children who are placed in these homes for treatment. These requirements strengthen and clarify many of the guidelines, policies and procedures that homes utilize in the delivery of services to children and their families.

For the first time there are requirements that ensure parents are provided with current and accurate information about the home. The concept of informed consent as it applies to medication is clearly outlined in this chapter. Requirements for important health issues have been established around certain prohibitions for using tobacco products and environmental sanitation and staff hygiene. This chapter provides new guidelines that address adventure and recreational activities such as biking, boating, camping, hiking and rock climbing—activities that are becoming more frequently utilized as part of the treatment services for children to help them overcome emotional disturbances. This chapter also contains innovative requirements that will enable the Division to more effectively regulate homes that provide services to pregnant and parenting adolescents and their children.

Economic Impact

The Division does not anticipate any negative economic impact of the proposed rules on the approximately 85 agencies or homes that serve these children or on the Division, since the agencies or homes are already providing these services. Homes that choose to utilize adventure activities may incur some minor expenses for safety equipment and staff certifications. Maternity homes may need to slightly increase their staff to child ratios due to the new requirements, although a recent survey of these maternity homes indicated that any potential costs to meet staff to child ratios would not be significant.

Regulatory Flexibility Analysis

These proposed new rules affect approximately 85 group home providers and parent agencies that these group homes may be part of, all of which fall within the definition of a small business, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. It is not appropriate or necessary to establish differential regulations that would apply to larger and smaller entities, as all the regulated entities are considered small businesses.

While these proposed rules have clarified and expanded the requirements for group homes, they will not place any unnecessary, or excessive or overly stringent standards on the homes. The proposed new rules will establish minimum baseline reporting, recordkeeping and other requirements, as set forth in the Summary, with which these homes must comply in order to ensure a safe, healthy and therapeutic environment for the emotionally disturbed children served in these settings. These minimum baseline requirements are routine expectations that any home serving emotionally disturbed children should meet as part of its daily program operation. These routine program requirements are utilized by the Division as the main criteria for establishing the costs and for developing contracts.

In addition, the Division is preparing a Technical Assistance Handbook which will assist the group home providers in understanding and complying with the Manual of Requirements. This handbook contains sample forms that can be used to comply with the recordkeeping requirements; suggestions and recommendations for ensuring children's health, safety, care and development; and recommended methods and designs for behavior management approaches. The handbook will be distributed to all group home providers, teaching family homes, treatment homes and supervised transitional living homes.

Full text of the proposed new rule follows:

SUBCHAPTER 1. GENERAL PROVISIONS

10:128-1.1 Legal authority

(a) This manual is promulgated pursuant to N.J.S.A. 30:1-14 and 15 and N.J.S.A. 30:4C-4.

(b) Under N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4, the Department of Human Services is authorized to inspect, evaluate, and approve publicly or privately operated homes that provide board, lodging, care and treatment services for children who are placed and/or financed by the Division of Youth and Family Services or any other New Jersey State agency.

(c) Under N.J.S.A. 30:1-14, the following homes shall be subject to inspection, evaluation, and approval by the Department of Human Services, Division of Youth and Family Services:

1. New Jersey-based children's group homes, as defined in this manual, except homes that are licensed, approved or regulated pursuant to State law by the Division of Developmental Disabilities or the Division of Mental Health and Hospitals, both of the Department of Human Services, by the State Department of Health, by the State Department of Education, by the State Department of Corrections or by any other New Jersey State agency; and

2. Out-of-State children's group homes, as defined in this manual, that serve children under the supervision of the Division of Youth and Family Services. As a condition of approval by the Department, such group homes shall be licensed, certified, or otherwise approved to operate in the state where the home is located.

(d) In order to be approved, a children's group home shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent that it complies with all applicable provisions of this manual.

(e) Responsibility for ensuring that these homes comply with the provisions of the statutes cited in (a) above and of this manual is delegated by the Department of Human Services to the Division of Youth and Family Services, Bureau of Licensing. The Division is authorized to visit and inspect such homes, as described in N.J.A.C. 10:128-1.2(a) and (b), to determine the extent of their compliance with such provisions.

(f) Under N.J.S.A. 30:1-15, the Department of Human Services is also authorized to visit and inspect publicly or privately maintained institutions or other institutions and noninstitutional agencies that:

1. Provide board, lodging or care for children who are not placed or financed by the Division of Youth and Family Services or any other New Jersey State agency; and

2. Are not subject to licensing or regulation by any New Jersey State agency.

(g) The Division of Youth and Family Services is authorized to visit and inspect such homes as described in (f) above to assess the general health, safety, and well-being of the children and the care and treatment they are receiving, but cannot require their compliance with this manual and must secure an order from a court of competent jurisdiction, pursuant to N.J.S.A. 30:1-16, to compel correction of serious deficiencies.

10:128-1.2 Definition and types of children's group homes

(a) "Children's group home" or "home" means any public or private establishment other than a foster home that provides board, lodging, care and treatment services on a 24-hour basis to 12 or fewer children in a home-like, community-based setting.

(b) Children's group homes that are subject to the provisions of this manual are classified as follows:

1. Group home, which serves from six to 12 children with emotional, social, physical and/or behavioral needs who do not require a more restrictive facility for their own protection or that of others;

2. Supervised transitional living home, which serves 12 or fewer children who are 16 years of age or older, require minimum guidance from staff members in preparation to live independently, and demonstrate maturity to function with minimal adult supervision;

3. Teaching family home, which serves 12 or fewer children with emotional, behavioral or other disabilities and which is certified or in the process of being certified as a teaching family home in accordance with the standards of the National Teaching Family Association. Teaching family homes are used for children who require strong professional support and guidance to participate in the life of the community, but who do not require a more restrictive facility for their own protection or that of others; and

4. Treatment home, which is an agency-operated residence serving five or fewer children who are capable of community living but who need a small group environment and intensive supervision by staff members in order to ameliorate emotional, social and/or behavioral difficulties.

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10:128-1.3 Definitions

The following words and terms, when used in this chapter, shall have the following meanings:

"Adventure activity" means a planned activity of a wilderness or athletic nature that requires specially trained staff members and/or special equipment that is utilized with children to assist in their development of self-confidence and insight.

"Agency" means an organization which has received a certificate of approval from the Bureau to operate more than one group home, treatment home, and/or supervised transitional living home.

"Bureau" means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

"Child" means any person who is under 18 years of age and/or any person between the ages of 18 and 21 who is under the supervision of the Division in placement in a children's group home.

"Denial of a certificate" means the withholding by the Bureau of an initial certificate of approval for which a home or agency has applied.

"Department" means the New Jersey Department of Human Services.

"Director" means the on-site staff member responsible for the daily operation and management of a home.

"Division" means the Division of Youth and Family Services, New Jersey Department of Human Services.

"Exclusion" means removing a child to an area or room in the home where there is limited stimulation. This removal should be a therapeutic intervention and a time for the child to reflect on his or her behavior in order to gain control so he or she can return to the other children.

"Infant" means any person who is under the care of his or her adolescent mother in a home serving adolescent mothers.

"Manual of Requirements for Children's Group Homes" or "manual" means the provisions contained in N.J.A.C. 10:128-1.1 to 10.25. These provisions constitute minimum baseline requirements below which no home that is subject to the authority of N.J.S.A. 30:1-14 and N.J.S.A. 30:4C-4 is legally permitted to operate.

"Parent" means a birth or adoptive parent, legal guardian, or any other person having responsibility for, or custody of, a child.

"Person" means any individual, agency, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

"Placing agency" means an agency that assumes responsibility for payment of room and board for a child placed in a group home, teaching family home, supervised transitional living home, or treatment home.

"Refusal to renew a certificate" means the non-issuance of a certificate of approval by the Bureau to a home after its existing certificate has expired.

"Regular certificate of approval" or "regular certificate" means a document issued by the Bureau to a home, indicating that the home is in full compliance with all applicable provisions of this manual.

"Restraint" means the holding of a child so that he or she can not move all or part of his or her body.

"Restrictive behavior management practice" means the use of physical restraint and exclusion as part of a comprehensive treatment plan to help the child develop self-control, to reduce maladaptive behavior or to protect the child and others from harm.

"Revocation of a certificate" means a permanent removal of a home's current certificate of approval to operate.

"Shall" denotes a provision of this manual that a home or agency must meet to qualify for a certificate of approval.

"Should" denotes a recommendation reflecting goals towards which a home or agency is encouraged to work.

"Staff member" or "staff" means any person employed by or working for or at a home on a regularly scheduled basis. This includes full-time, part-time, substitute, volunteer, student intern, contract or consulting personnel, whether compensated or not.

"Suspension of a certificate" means a temporary removal of a home's current certificate of approval to operate.

"Temporary certificate of approval" or "temporary certificate" means a document issued by the Bureau, to a home that is in substantial compliance with all applicable provisions of this manual, provided that no serious or imminent hazard affecting the children exists in the home.

SUBCHAPTER 2. APPROVAL PROCEDURES

10:128-2.1 Application for a certificate of approval

(a) No person shall operate a children's group home that provides board, lodging, care and treatment services for children who are placed or financed by the Division or by any other New Jersey State agency without first securing a certificate of approval from the Bureau, except for homes that are subject to licensing or regulatory approval pursuant to State law by any other New Jersey State agency.

1. Each group home and supervised transitional living home serving six or more children and each teaching family home regardless of capacity shall obtain an individual certificate of approval.

2. Each agency operating more than one treatment home or more than one supervised transitional living home serving five or fewer children shall secure and maintain a single certificate for all such homes in its program. The Bureau-approved agency shall ensure and document that individual treatment homes and supervised transitional living homes serving five or fewer children comply with the provisions of this manual.

3. A single treatment home or supervised transitional living home serving five or fewer children and that is not part of a network or agency shall receive approval from the Division's Regional Office in the region in which the home is located.

(b) A home or agency applying to the Bureau for an initial certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(a), (b) and (c), at least 45 calendar days prior to the anticipated opening of a home.

(c) A home or agency applying to the Bureau for a renewal of its certificate of approval shall submit a completed application form to the Bureau, including the documentation specified in N.J.A.C. 10:128-4.1(d), at least 45 calendar days prior to the expiration of its existing regular certificate.

10:128-2.2 Issuance of a certificate of approval

(a) The Bureau shall issue a regular certificate of approval to a home or agency that has achieved full compliance with all applicable provisions of this manual.

(b) If the Bureau determines that a home or agency is in substantial compliance with, but does not meet all applicable provisions of, this manual, and provided that there is no serious or imminent hazard to the education, health, safety, well-being or treatment needs of the children, the Bureau shall issue a temporary certificate to the home or agency and indicate in writing the steps the home or agency must take to secure a regular certificate of approval.

(c) A temporary certificate may be issued for a period not to exceed six months. The Bureau may issue as many temporary certificates as it deems necessary.

(d) Each certification period, which may include the issuance of one or more temporary certificates or one regular certificate, shall be two years.

1. In determining the expiration date of the first regular certificate of approval, the Bureau shall compute the two-year approval period from the date of issuance of the first temporary or regular certificate.

2. In determining the expiration date of a renewed regular certificate, the Bureau shall compute the two-year approval period from the date on which the previous regular certificate expired. If, however, the home or agency has ceased to operate for a period of one year following the expiration date of its previous regular certificate, the Bureau shall compute the date of expiration from the date of issuance of a new certificate.

(e) The certificate of approval shall be issued to a specific home or agency and shall not be transferable.

(f) The home shall maintain its certificate of approval on file.

(g) No home or agency shall make claims either in advertising or in any written or verbal announcement or presentation contrary to its approval status.

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10:128-2.3 Denying, suspending, revoking or refusing to renew a certificate of approval

(a) The Bureau may deny, suspend, revoke or refuse to renew a certificate of approval for good cause, including, but not limited to, the following:

1. Failure to comply with the provisions of this manual;
2. Violation of the terms and conditions of a certificate of approval;
3. Fraud or misrepresentation in obtaining a certificate;
4. Refusal to furnish the Division with files, reports, or records as required by this manual;
5. Refusal to permit an authorized representative of the Division to gain admission to the home, agency or agency-approved home or to conduct an inspection or investigation;
6. Any activity, policy, or staff conduct that adversely affects or is deemed by the Bureau to be detrimental to the education, health, safety, well-being or treatment needs of children or that otherwise demonstrates unfitness by the owner or staff members of the home to operate a children's group home;
7. Failure of an out-of-state home, agency or agency-approved home to maintain a license, approval or certification in its own state; and
8. Failure by the agency or director to secure and maintain on file criminal conviction disclosures, as specified in N.J.A.C. 10:128-5.1(b)1.

(b) The Bureau shall provide written notice to the home or agency if it intends to deny, suspend, revoke or refuse to renew its application for a certificate. This notice shall specify the Bureau's reasons for such action.

(c) If the Bureau denies, revokes, or refuses to renew a certificate of approval, as specified in (a) above, the home or agency shall be prohibited from reapplying for a certificate of approval for one year from the date of certificate denial, revocation or refusal to renew. After the one-year period has elapsed, the home or agency may submit to the Bureau a new application for a certificate.

(d) If a certificate is suspended, the Bureau shall issue or reinstate the certificate once the home or agency achieves compliance with the provisions of this manual. In such a case, the Bureau shall not require the home or agency to submit a new application for a certificate unless such reapplication is expressly made a condition of the issuance or reinstatement of the certificate.

(e) Each certificate of approval issued by the Bureau to a home or agency remains the property of the State of New Jersey. If the Bureau suspends or revokes a certificate of approval, the home or agency shall return the certificate of approval to the Bureau immediately.

10:128-2.4 Administrative hearings

(a) If a home or agency fails to comply with all applicable provisions of this manual, the Bureau shall issue a directive ordering compliance. Prior to the Bureau's decision to deny, suspend, refuse to renew or revoke a home's or agency's certificate of approval, the home or agency shall have the opportunity to request an administrative hearing, 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.

(b) As long as the Division determines that children are not at risk and that no imminent dangers exist, the Bureau may permit a home or agency that has requested an administrative hearing, as specified in (a) above, to continue to operate until a final decision is rendered as a result of the hearing.

10:128-2.5 Complaints

(a) Whenever the Bureau receives a report questioning the approval status or compliance of a home or agency or alleging a violation of this manual, the Bureau shall ensure that the allegation is promptly investigated to determine whether the complaint is substantiated.

(b) After the report of the investigation has been completed, the Bureau shall notify the home or agency in writing of the results of the investigation within 15 days, pursuant to the State Public Records Law, N.J.S.A. 47:1A-1 et seq., with the exception of any information not permitted to be disclosed pursuant to the Child Abuse and Neglect Law, N.J.S.A. 9:6-8.10a, or any other State law.

(c) Whenever the Division, through its Bureau of Licensing, Institutional Abuse Investigation Unit or District Offices, conducts complaint investigations, the home or agency shall cooperate with all Division investigators.

10:128-2.6 Public access to the Bureau's licensing records

Licensing files maintained by the Bureau are public records and shall be readily accessible for examination by any person, under the direction and supervision of the Bureau, except when public access to records is restricted, in keeping with the State Public Records Law, N.J.S.A. 47:1A-1 et seq., or other applicable statutes.

SUBCHAPTER 3. ADMINISTRATION

10:128-3.1 Statement of purpose

(a) The home or agency shall maintain on file a written statement of purpose that shall identify the following:

1. The home's philosophy, goals, and objectives;
2. Characteristics of the children to be served;
3. Types of treatment services provided to the children, including those provided directly by the home and those provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for successful completion of the program.

(b) The home or agency shall give this statement of purpose to the parents of the children applying for services, to all staff members and to all persons who request this information.

(c) The home or agency shall secure and maintain on file a record of the parents' and staff members' signatures attesting to their receipt of the statement of purpose.

10:128-3.2 Rights of children

(a) The home or agency shall prepare a list of children's rights and shall post it in a prominent location in each home or give it to the children and document such in each child's record. At a minimum, the list shall specify the children's right to:

1. Receive prompt medical treatment;
2. Have access to an appropriate education;
3. Live in a safe, clean and healthy environment;
4. Be free of physical or sexual harassment or abuse and corporal punishment;
5. Attend religious services of their choice; and
6. Have unimpeded communication to the Division.

(b) The home or agency shall give this list of children's rights to the parents of the children applying for admission, to all staff members and to all persons who request this information.

(c) The home or agency shall secure and maintain on file a record of the parents' and staff members' signatures attesting to their receipt of the list of children's rights.

(d) If the home or agency chooses to develop a search and seizure policy, the home or agency shall give all children, staff and parents a copy of this policy, as specified in N.J.A.C. 10:128-6.15.

(e) The home or agency shall prepare, post or give to all staff members and children a written grievance procedure governing how the children may raise questions about or voice disagreements with and concerns about procedures, care, and specific incidents. The home or agency shall not take or threaten to take retaliatory or disciplinary action of any kind against a child who uses the grievance procedure or files a grievance. The home shall provide a procedure to explain the above to children who are developmentally disabled.

10:128-3.3 Information to parents and staff members

(a) The home or agency shall provide to every parent within five working days of his or her child's placement, and to every person upon becoming a staff member, a written document indicating that the home or agency is required to:

1. Secure a certificate of approval to operate from the Bureau of Licensing;
2. Comply with all applicable provisions of the manual;
3. Retain a current copy of the manual and make it available for review by parents of resident children;

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4. Indicate how parents may secure a copy of the manual by contacting the Bureau of Licensing, Division of Youth and Family Services, CN 717, Trenton, New Jersey 08625-0717;

5. Afford parents the opportunity and time to review and discuss with the home or agency director any questions or concerns about policies, requirements, provisions, or alleged violations of the manual;

6. Advise parents that if they believe or suspect that the home or agency is in violation of any provision of the manual, they may report such alleged violations to the Bureau;

7. Make available, upon request, for parents' review the Bureau's Inspection/Violation and Complaint Reports on the home or agency, as well as any letters of enforcement or other actions taken against the home or agency during the current certificate of approval period;

8. Inform parents that they may request a copy of the home's or agency's behavior management policy, including policies for searches, as specified in N.J.A.C. 10:128-6.13, 6.14, and 6.15;

9. Inform parents that the home or agency is required to provide the child's parents with copies of the home's or agency's visitation and communication policies, a copy of the procedure for expressing concern or registering complaints regarding their child's placement, and a description of its religious policies, including a statement that the child has a right to practice his or her religion;

10. Indicate through this document that any person who has reasonable cause to believe that a child residing in the home has been or is being subjected to any form of hitting, corporal punishment, abusive language, ridicule, or harsh, humiliating, or frightening treatment, or any other kind of child abuse, neglect or exploitation by any person, whether working at the home or not, is required by State law to report such allegations to the Division's Office of Child Abuse Control, TOLL FREE at 1-800-792-8610, or any District Office immediately, and indicate that such reports may be made anonymously;

11. Indicate through this document how parents and staff members may secure information about the prevention and reporting of child abuse and neglect by contacting the Division;

12. Inform parents that the home or agency must secure written consent from the child's parents before the home or agency may involve the child in fund-raising, publicity, or audiovisual activities related to the home or agency; and

13. Inform parents that the home will develop a visitation schedule for parents and children, as specified in N.J.A.C. 10:128-6.6, 9.19 and 10.13.

(b) The home or agency shall comply with the requirements specified in (a) above by:

1. Securing the parent's and staff member's signature on a record attesting to receipt of the document; and

2. Maintaining the record on file; or

3. Documenting in the record the attempts made to secure the parent's signature.

10:128-3.4 Community participation

(a) Every agency, group home and supervised transitional living home shall develop a governing board that offers advice and counsel to the home on its policies, staff recruitment and selection, physical environment, and program activities. Such a committee shall include representatives from the civic, business or educational community.

(b) The governing board shall establish policies that encourage and enhance community relations, such as having the home sponsor an open house.

(c) The director of the home shall ensure that community activities have been scheduled or completed and provide updates on community involvement to the governing board on a quarterly basis.

(d) The governing board shall meet at least quarterly. The home shall keep on file a list of current membership of the governing board and a record of its meetings.

10:128-3.5 Conflict of interest

(a) Any home or agency receiving funds from the Division shall adopt a written conflict of interest policy, as required by the home's or agency's contract with the Department of Human Services.

1. The home or agency shall ensure that a copy of the adopted policy, with its effective date, is forwarded to all governing board members and staff members and is posted in a prominent location or kept on file at the home or agency.

2. The governing board shall ensure that the conflict of interest policy is adhered to by home or agency directors through the governing board's review of the home's or agency's policies involving the purchasing of goods or services and hiring practices.

10:128-3.6 Intake and admissions

(a) The home or agency shall ensure that the child and his or her parents have an opportunity to visit the home prior to the child's placement.

(b) For all placements, the home or agency shall have the following information on file in the child's record upon the child's admission:

1. The child's full name, nicknames, if any, gender, date of birth, religion, and race;

2. The name, address, telephone number, and relationship to the child of the persons with whom the child was living at the time of admission;

3. The name, address, and telephone number of father, mother, foster parents, or legal guardians, if different from (b)2 above;

4 The name, address, and telephone number of the case manager of the Division's District Office or other placing agency;

5. The name, address, and telephone number of the person to notify in an emergency;

6. The names of siblings, their ages, and gender;

7. The reason for placement of the child;

8. A Medicaid card, if applicable; and

9. A statement signed by the parents or legal guardian, granting consent for emergency medical or surgical care, semi-annual dental care and annual physical examinations for the child.

(c) For non-emergency placements and emergency placements, in addition to (b) above the home or agency shall have the following information on file in the child's record within 30 calendar days of the child's admission:

1. Schools attended, grade level, and employer, if any;

2. Discharge summaries from previous placements, if any;

3. The child's medical history, including chronic conditions, past serious illnesses, allergies, medications, immunizations and special diet; and

4. A discharge plan, including the estimated duration of care.

(d) If the home or agency is unable to obtain the information specified in N.J.A.C. 10:128-3.6(c) within 30 calendar days of the child's admission, the home shall document in the child's file its efforts to obtain such information.

(e) Immediately following the child's admission, the home shall:

1. Give each child a secure place to store valuables;

2. Ask the child to sign or otherwise verify that a staff member explained house rules and regulations, children's rights as specified in N.J.A.C. 10:123-3.2, discipline policy and search and seizure policy, if any; and

3. Inform each child of fire exits and evacuation procedures.

10:128-3.7 Reporting requirements

(a) The director or any staff member shall notify verbally the Office of Child Abuse Control immediately whenever there is reasonable cause to believe that a child has been or is being abused or neglected by staff members, children or any other person, as required by the New Jersey Child Abuse and Neglect Law, N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14. Copies of the law and information about it are available from the Division, upon request.

(b) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence, to be followed by written notification to the Bureau within five working days:

1. Injury, accident or illness that results in the admittance of a child to a hospital;

2. The death of a child while the child was on the premises of the home or in the care of a home staff member or volunteer;

3. Temporary or permanent closing of a home or agency; and

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4. Any convictions or guilty pleas of any agency or home staff members that involve or affect any child or the operation of the home or agency, as specified in N.J.A.C. 10:128-5.1(b).

(c) The home or agency shall notify the Bureau verbally of any of the following changes or events by the next working day after the home or agency learns of their occurrence:

1. The occurrence of a reportable disease, as specified in Chapter 2 of the State Sanitary Code, N.J.A.C. 8:57;

2. Proposed relocation of the home to a site not approved by local municipal officials and the Bureau, as specified in N.J.A.C. 10:128-4.1;

3. Damage to the premises of the home or agency-approved home, caused by fire, accident or the weather; and

4. Proposed use of space involving rooms not approved by the Bureau, as specified in N.J.A.C. 10:128-4.1(a)5.

(d) The home or agency shall notify the Bureau in writing at least 30 calendar days before any of the following proposed changes or events:

1. The anticipated closing or relocation of a home, agency or agency-approved home for any reason other than temporary closings for holidays and vacations;

2. A change of director or administrator of the home;

3. A change of type of children served; or

4. A change of services offered, including the opening of a new treatment home or supervised transitional living home serving fewer than six children.

(e) The home or agency shall notify the Division and the child's parents within 24 hours of any unauthorized absence of a child from a home.

10:128-3.8 Records

(a) The home's or agency's records shall be open for inspection by authorized representatives of the Bureau, the Division's Institutional Abuse Investigation Unit (IAIU), the Division's contracting units and, provided that they may only secure information about children under the Division's supervision, Division case managers.

(b) The home or agency shall maintain on file the following administrative records until the expiration of its regular certificate of approval:

1. The following records shall be maintained in files located either at an agency's administrative office or at the home:

i. A record of comprehensive general liability insurance, as specified in N.J.A.C. 10:128-3.9;

ii. A record of performance of required monthly fire drills and/or evacuation drills, as specified in N.J.A.C. 10:128-4.5(c);

iii. A record of training sessions for staff members on evacuation procedures, the use of fire extinguishers, the location of fire alarms, and emergency medical procedures, as specified in N.J.A.C. 10:128-5.4(a)3;

iv. A copy of the home's or agency's vehicle insurance policy, as specified in N.J.A.C. 10:128-8.2; and

v. Transportation records, if transportation is provided to children residing in the home, as specified in N.J.A.C. 10:128-8.4.

2. The following records shall be maintained in files located at the home:

i. A current manual;

ii. A statement of purpose, as specified in N.J.A.C. 10:128-3.1 and 9.2;

iii. The Life/Safety and Program Inspection/Violation reports and Complaint Investigation Summary reports if applicable from the Bureau, as well as letters of enforcement or other actions taken against the agency or home if applicable, that cover the current certificate of approval period;

iv. The document providing information to parents, as specified in N.J.A.C. 10:128-3.3(a);

v. A record of each parent's signature attesting to the receipt of the information to parents document, as specified in N.J.A.C. 10:128-3.3(b)1;

vi. Documentation of the use of extermination services, if applicable, as specified in N.J.A.C. 10:128-4.3(a)7;

vii. Policies and procedures regarding behavior management, as specified in N.J.A.C. 10:128-6.13, 6.14 and 10.14;

viii. A record of in-service training conducted for staff members, as specified in N.J.A.C. 10:128-5.4 and 10.3;

ix. A record of all incidents and accidents, recorded on incident and accident report forms, noting all details of the incident and accident and any actions taken by the staff members, as specified in N.J.A.C. 10:128-6.13, 7.3(b) and 9.3(a) and (b);

x. A copy of the comprehensive health plan, as specified in N.J.A.C. 10:128-7.1, 10.15 and 10.16;

xi. Copies of menus of food served to the children, including special diets, as specified in N.J.A.C. 10:128-6.11 and 10.24;

xii. Aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge, as specified in N.J.A.C. 10:128-5.2(a)10;

xiii. A record of signed parental consent for children's participation in fund-raising, publicity, photography, or audiovisual activities related to the home, as specified in N.J.A.C. 10:128-3.2(a)11;

xiv. A copy of the children's grievance procedures, as specified in N.J.A.C. 10:128-3.2(d);

xv. A record of signed parental consent for medical treatment for each child, as specified in N.J.A.C. 10:128-3.6(b);

xvi. A daily log book, in which an on-duty staff member shall comment on the activities and events of each day and staff member response to those events, as specified in N.J.A.C. 10:128-5.2;

xvii. A daily log book, a separate log book or notation in the child's case record, in which all visits to the child shall be recorded, as specified in N.J.A.C. 10:128-5.2;

xviii. A copy of the staff members' work schedules and time sheets, as specified in N.J.A.C. 10:128-5.2;

xix. A medication log book, as specified in N.J.A.C. 10:128-7.4, 7.5 and 10.20;

xx. For group homes, a written daily schedule of planned recreational, leisure time and physical exercise activities, as specified in N.J.A.C. 10:128-6.8(b) and 10.11;

xxi. A record of pet vaccinations and the name and address of the licensed veterinarian providing care for the pets, as specified in N.J.A.C. 10:128-6.12;

xxii. A copy of the parenting education curriculum, as specified in N.J.A.C. 10:128-10.8;

xxiii. Documentation of the information received from the National Weather service and park service, as specified in N.J.A.C. 10:128-9.1(o) and (p);

xxiv. A copy of the plan for emergency evacuation procedures, as specified in N.J.A.C. 10:128-9.2(a);

xxv. A copy of the plan for search and rescue procedures, as specified in N.J.A.C. 10:128-9.2(b);

xxvi. Copies of biking permits, as specified in N.J.A.C. 10:128-9.4(a);

xxvii. Documentation that permission was obtained to enter a cave from the owner or public authority, as specified in N.J.A.C. 10:128-9.6(c);

xxviii. Documentation on the care of horses, as specified in N.J.A.C. 10:128-9.8(c);

xxix. Documentation on the safety of ropes used in climbing, as specified in N.J.A.C. 10:128-9.9(d);

xxx. A copy of the plan for boating activities, as specified in N.J.A.C. 10:128-9.10;

xxxi. Copies of all permits, certificates or licenses for camping, as specified in N.J.A.C. 10:128-9.15;

xxxii. A copy of the policy for treating snake, animal and insect bites and ingestion or contact with poisonous plants, as specified in N.J.A.C. 10:128-9.16(c);

xxxiii. A copy of the plan and procedures that enable children to receive an emergency message, and send and receive mail, as specified in N.J.A.C. 10:128-9.19(c);

xxxiv. Documentation that children were permitted to make free telephone calls, as specified in N.J.A.C. 10:128-9.19(e);

xxxv. A copy of the policy for visiting and communication for parents, as specified in N.J.A.C. 10:128-9.19(g); and

xxxvi. A copy of the feed plan for horses, as specified in N.J.A.C. 10:128-9.8 and 9.20(c).

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(c) The home or agency shall maintain on file the following staff records throughout a staff member's employment and for one year after the staff member has stopped working at the home.

1. The following records for the director and all staff members shall be maintained in files located either at an agency's administrative office or at the home:

i. Applications for employment, as specified in N.J.A.C. 10:128-5.1(b) and 9.17;

ii. References on the director and staff members, as specified in N.J.A.C. 10:128-5.1(b) and 9.17;

iii. A record of each staff member's signature attesting to his or her receipt of the policy statement on the disciplining of children by staff members, as specified in N.J.A.C. 10:128-3.3(b);

iv. A record of each staff member's signature attesting to his or her receipt of the information to parents document, as specified in N.J.A.C. 10:128-3.3(b);

v. Health information, as specified in N.J.A.C. 10:128-7.8; and

vi. A copy of a home study, as specified in N.J.A.C. 10:128-5.1(b)3.

2. The following staff records shall be maintained in files located at the home:

i. Current staff member attendance sheets;

ii. Reasons for discontinuance of employment, if applicable, as specified in N.J.A.C. 10:128-5.1;

iii. A full written disclosure of the director's and every staff member's background, previous work experience and criminal convictions, if any, as specified in N.J.A.C. 10:128-5.1(b) and 9.17;

iv. Documentation that every staff member received and reviewed a copy of the home's statement of purpose, grievance policy, children's bill of rights, fireplace policy and search and seizure policy, as specified in N.J.A.C. 10:128-3.1(b) and 3.3(b);

v. A written annual performance evaulation, as specified in N.J.A.C. 10:128-5.2; and

vi. Documentation of training received by staff members, as specified in N.J.A.C. 10:128-5.4 and 10.3.

(d) The home shall maintain on file the following children's records during the child's placement at the home or agency for at least three years following the discharge of the child.

1. The home or agency shall ensure the confidentiality of the following records for each child, in accordance with New Jersey State law:

i. Identifying information, as specified in N.J.A.C. 10:128-3.6(b) and (c);

ii. A copy of each treatment plan developed for the child, for group homes, teaching family homes or treatment homes as specified in N.J.A.C. 10:128-6.1; a copy of the case management plan for supervised transitional living homes, as specified in N.J.A.C. 10:128-6.3; and a copy of the case management plan for homes that serve pregnant and parenting adolescents, as specified in N.J.A.C. 10:128-10.4;

iii. Education records, as specified in N.J.A.C. 10:128-6.7;

iv. Reports of incidents, including, but not limited to, acts of aggression, violent or destructive behavior, discovery of contraband, suicidal threats, discovery of a weapon, inappropriate sexual behavior, involvement with the police and documentation of efforts made to locate runaways, as specified in N.J.A.C. 10:128-6.13, 6.14, 6.15 and 6.16;

v. Reports of accidents, as specified in N.J.A.C. 10:128-7.3 and 9.3(a) and (b);

vi. Documentation of the opening of a child's mail by a home staff member, as specified in N.J.A.C. 10:128-6.6;

vii. Medical records, as specified in N.J.A.C. 10:128-7.2 and 9.16(a) and (b);

viii. Explanations of medical treatment, as specified in N.J.A.C. 10:128-10.19;

ix. A discharge summary, as specified in N.J.A.C. 10:128-6.2 and 10.5;

x. An aftercare plan, as specified in N.J.A.C. 10:128-6.2 and 10.5;

xi. An infant's feeding schedule, as specified in N.J.A.C. 10:128-10.24;

xii. Documentation that an adolescent mother received life skills development training, as specified in N.J.A.C. 10:128-10.25; and

xiii. Documentation that a child received information on adventure activities, as specified in N.J.A.C. 10:128-9.1(c).

2. The home or agency shall ensure that all entries in the child's record indicate the entry date and the name and signature of the person making the entry.

N.J.A.C. 10:128-3.9 Comprehensive general liability insurance

A home or agency shall secure comprehensive general liability insurance coverage and shall maintain on file a copy of the insurance policy.

SUBCHAPTER 4. PHYSICAL FACILITY REQUIREMENTS

10:128-4.1 Physical facility initial approval requirements for all homes located in New Jersey

(a) An applicant seeking an initial certificate of approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Construction Code, as specified in N.J.A.C. 5:23 and hereinafter referred to as the NJUCC.

1. For newly constructed buildings, for existing buildings whose construction code use group classification would change from that which it had been, or for existing buildings that require major alteration or renovation, the home or agency shall submit to the Bureau a copy of a Certificate of Occupancy (CO) issued by the municipality in which it is located, reflecting the home's compliance with provisions of the NJUCC, for one of the following use group classifications:

i. R-2 (Residential) for buildings accommodating children 2½ years of age and older for more than 30 calendar days and having a total occupancy of more than five and fewer than 13 children; or

ii. I-2 (Institutional) for buildings accommodating six or more children less than 2½ years of age.

2. For homes or agencies that are planning to construct a new building, the home or agency shall submit to the Bureau:

i. Preliminary architectural drawings for review and comment prior to beginning construction; and

ii. If applicable, revised architectural or final drawings containing all required items listed in the preliminary plan review for final approval from the Bureau before the home can open.

3. For buildings constructed after the adoption of the NJUCC (1977), whose construction code use group classification is already R-2 or I-2 and that have not had major alterations or renovations since receipt of the CO, the home or agency shall obtain the CO issued by the municipality in which it is located at the time the building was originally constructed or approved for use in the NJUCC's R-2 or I-2 use group classification. The home or agency shall submit a copy of the building's CO to the Bureau.

4. For existing buildings, whose use prior to the adoption of the NJUCC (before 1977) was and continues to be for a home and that have not had major alterations or renovations, the home shall obtain a Certificate of Continued Occupancy (CCO) or a letter to this effect, issued by the municipality in which it is located, reflecting the building's compliance with provisions of the municipality's construction code requirements that were in effect at the time it was originally constructed or converted for use as a home. The home or agency shall submit a copy of the building's CCO or letter reflecting the building's compliance to the Bureau.

5. The home or agency shall obtain a new CO issued by the municipality in which it is located, reflecting the building's compliance with provisions of the applicable NJUCC use group classification, and submit a copy of the new CO to the Bureau whenever it takes any of the following actions:

i. Changes the building's use group classification to one other than the one prescribed on its original CO;

ii. Makes a major alteration or renovation, as defined by the NJUCC, of the building or premises where the home is located;

iii. Increases the floor area or the number of stories to the building or premises where the home is located; or

iv. Relocates to another site.

6. Whenever a municipality grants a home a written variation from any of the requirements of the NJUCC, the Bureau may accept such variations as meeting the applicable requirements of this manual.

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(b) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the New Jersey Uniform Fire Code, as specified in N.J.A.C. 5:18, 18A and 18B and hereinafter referred to as the NJUFC. The home or agency shall obtain the building's fire safety inspection certificate issued by the municipality in which it is located, based on a fire inspection conducted within the preceding 12 months, reflecting the home's compliance with all applicable provisions of the NJUFC. The home or agency shall submit a copy of the building's fire safety inspection certificate to the Bureau.

(c) An applicant seeking an initial approval, as specified in N.J.A.C. 10:128-2.1, to operate a home shall comply with all applicable provisions of the State Sanitary Code, as specified in N.J.A.C. 8:24. The home or agency shall obtain a certificate or statement of satisfactory health approval issued by the applicable municipal, county or State health agency, based on a health inspection conducted within the preceding 12 months, certifying that the home complies with applicable provisions of local, county and State health codes and poses no health hazard to the children served. The home or agency shall submit a copy of the certificate or statement of satisfactory health approval to the Bureau.

(d) An applicant seeking the renewal of a certificate of approval to continue operating a home shall obtain and submit to the Bureau, copies of:

1. A current fire safety inspection certificate for the building; and

2. A current certificate or statement of satisfactory health approval for the home.

10:128-4.2 Physical facility initial approval requirements for all homes located outside of New Jersey

(a) A home located in a state other than New Jersey shall submit with each application documentation that the home meets the provisions of all applicable codes governing building, fire, safety and health requirements in the state, county and municipality in which the home is located.

(b) All homes located in a state other than New Jersey shall also comply with the physical facility and life-safety requirements specified in N.J.A.C. 10:128-4, with the exception of N.J.A.C 10:128-4.4(c), (f)3, (g), (h), (i), and (l).

10:128-4.3 Maintenance and sanitation requirements for all homes

(a) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. The home is free of moisture resulting from water leaks or seepage;

2. All lally columns in areas used by the children have protective padding from the floor to a height of at least 72 inches;

3. Floors, walls, ceilings and other surfaces are kept clean and in good repair;

4. Stairways are free of hazards such as boxes, loose steps, torn carpeting or raised strips;

5. Carpeting is secured to the floor;

6. Garbage and food receptacles are:

i. Made of durable, leakproof and nonabsorbent materials;

ii. Covered in a secure manner;

iii. Emptied to the outdoor garbage receptacle when filled; and

iv. Lined and maintained in a sanitary manner;

7. The home is free of rodent or insect infestation. If there is evidence of rodent or insect infestation, immediate action shall be taken to remove such infestation. The home shall maintain on file a record documenting the use of extermination services in these incidences;

8. Toilets, wash basins, kitchen sinks, and other plumbing are maintained in good operating and sanitary condition;

9. All corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol can, and any toxic substance are stored in a locked cabinet or in an enclosure located in an area not accessible to children under six years of age;

10. Ventilation outlets are clean and free from obstructions, and filters are replaced when saturated;

11. Walls are painted or otherwise covered whenever there is evidence of:

i. Excessive peeling or chipped paint; or

ii. Heavily soiled conditions; and

12. All shelving is secured and not overloaded.

(b) The home shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. The building, land and outdoor play area are free from any hazards to the health, safety or welfare of the children;

2. The outdoor play area is graded or provided with drains to dispose of surface water;

3. The building structure is maintained to prevent:

i. Water from entering;

ii. Excessive drafts or heat loss; and

iii. Infestation from rodents and insects;

4. The railings of balconies, landings, porches, or steps are maintained in safe condition;

5. Garbage receptacles are:

i. Made of durable, leakproof and nonabsorbent materials; and

ii. Covered in a secure manner, maintained in a sanitary manner and located in an outdoor area; and

6. Homes that provide outdoor space maintain in proper condition all fencing or other natural or man-made barriers or enclosures.

(c) The Bureau shall also require the home to take whatever steps are necessary to correct any conditions in the home that may endanger in any way the health, safety and well-being of the children served.

10:128-4.4 Additional maintenance and sanitation requirements for all homes located in New Jersey

(a) The home shall meet the following lighting requirements:

1. All fluorescent tubes and incandescent light bulbs shall have protective covers or shields.

2. During activities in the home, at least 20 foot-candles of natural or artificial light shall be provided in all rooms used by the children. This illumination shall be measured three feet above the floor at the farthest point from the light source.

3. Parking areas, pedestrian walkways, or other exterior portions of the premises subject to use by home occupants at night shall be illuminated to provide safe entrance to and egress from the home.

(b) The home shall meet the following heating requirements:

1. A minimum temperature of 65 degrees Fahrenheit shall be maintained in all rooms used by the children.

2. Working fireplaces, steam and hot water pipes, radiators and electric space heaters shall be protected by screens, guards, insulation or any other suitable, non-combustible protective device.

3. The home shall not use portable liquid fuel-burning or wood-burning heating appliances.

(c) The home shall ensure that fireplaces meet the following requirements:

1. The use of a fireplace for the children served by the home shall not pose a serious risk of fire safety to occupants of the home, as determined by the local fire official;

2. The fireplace shall be approved by the local government construction official and fire official, in accordance with applicable provisions of the NJUCC and the NJUFC, respectively;

3. The home shall obtain a copy of these certificates or statements of approval and submit them to the Bureau;

4. The home shall develop guidelines, in conjunction with the local fire official, that ensure proper use of the fireplace, safety procedures, and an action plan to be followed in the event of an emergency;

5. The guidelines noted in (c)4 above shall include, but not be limited to, staff member supervision, storage of wood, storage and safeguarding of matches, instruction in the use of fireplace implements, use of the screen, posting of emergency phone numbers for police and fire departments and hospitals, posting of emergency procedures and exits, and methods and safeguards for extinguishing the fire; and

6. The guidelines noted in (c)4 above shall be maintained on file by the home and reviewed by all staff members and children in the home.

(d) The home shall meet the following ventilation requirements:

1. Crawl spaces, attic spaces, and all doors and windows used for natural ventilation shall have insect screening;

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2. All floor or window fans that are accessible to the children shall have a grille, screen, mesh or other protective covering designed to prevent a child from coming into contact with the blades of the fan; and

3. Ventilation outlets shall be cleaned and free from obstructions and filters shall be replaced when saturated.

(e) The home shall ensure that mirrors, dispensers, and other equipment are fastened securely.

(f) Homes that serve children with special needs shall ensure that:

1. For non-ambulatory children, the toilet facilities are located on the same floor where the children's bedrooms and activities are located;

2. The width and height of toilets and sinks accommodate the children served; and

3. Grab bars are provided in toilet and bathroom areas, as specified in N.J.A.C. 5:23-7 of the Barrier-free Subcode of the NJUCC.

(g) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building used as a home, or on any furniture, toys, or other equipment used therein, in accordance with the provisions of the State Lead Paint Law, pursuant to N.J.S.A. 24:14A-1 et seq., and with the provisions of the State Sanitary Code, as specified in N.J.A.C. 8:51-7. When lead paint is found in areas of a home not specified in N.J.A.C. 8:51-7, the Bureau shall determine whether the lead paint is hazardous to the health, safety and well-being of the children served and, if considered to be hazardous, the home shall remove the lead paint hazard.

(h) The home shall not use spray coatings containing asbestos on any interior or exterior surfaces of the home or on any equipment used therein, in accordance with rules of the State Department of Environmental Protection, as specified in N.J.A.C. 7:27-17.2 and with applicable provisions of the Asbestos Hazard Abatement Subcode of the NJUCC, as specified in N.J.A.C. 5:23-8. If the New Jersey Department of Health determines the presence of sprayed-on asbestos-containing materials, and concludes that corrective action must be taken to minimize exposure potential, the home shall follow the recommendation of the State Health Department for enclosure, removal or other appropriate action to remove the threat or risk of asbestos contamination.

(i) The home shall ensure that swimming pools and natural bathing places used by the children:

1. Comply with applicable provisions of the Public Recreational Bathing Rules, as specified in N.J.A.C. 8:26, and with applicable provisions of the Building Subcode and Barrier-free Subcode of the NJUCC, as specified in N.J.A.C. 5:23; and

2. Provide for supervision of the children, in accordance with applicable provisions of the New Jersey Youth Camp Safety Act rules, as specified in N.J.A.C. 8:25.

(j) The home shall ensure that materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to children.

(k) The home shall ensure that toilet facilities meet the following requirements:

1. At least one toilet, wash basin and bath tub or shower is provided for every six children in the home. These facilities shall not be located more than one floor from any bedroom; and

2. A supply of hot tap water not exceeding 110 degrees Fahrenheit and cold running water is provided.

(l) A home utilizing a kitchen facility or food preparation area shall ensure that the cooking equipment and kitchen facility are kept clean and sanitary and are operated in compliance with applicable provisions of Chapter 12 of the State Sanitary Code, as specified in N.J.A.C. 8:24.

(m) The home shall obtain prior approval from the Bureau for all space used by the children.

(n) The home shall not care for more children than the number specified in the certificate of approval.

(o) The home shall meet the following space requirements to ensure the safety, treatment, recreational, dining and sleeping needs of the children, including:

1. Adequate space for the implementation of treatment services, including individual, group and family counselling sessions and treatment team meetings;

2. A recreation room or area that can accommodate indoor individual or group activities;

3. A dining area large enough to accommodate tables and chairs for all the children; and

4. Rooms for sleeping:

i. Any bedroom used by a child shall have a minimum ceiling height of seven feet and six inches.

ii. Any bedroom containing a single bed occupied by one child shall provide a minimum of 70 square feet of floor space, including space that is occupied by furniture.

iii. Any bedroom containing two or more single beds and occupied by more than one child shall provide a minimum of 70 square feet of floor space for the first child and 50 square feet of floor space for each additional child, including space that is occupied by furniture.

iv. Any bedroom containing bunk beds or any combination of single beds and bunk beds shall provide 50 square feet of floor space for each child, including space that is occupied by furniture.

10:128-4.5 Emergency evacuation instructions, medical emergencies, fire prevention, first aid and equipment

(a) The home shall prepare and post on each floor written emergency evacuation instructions that include:

1. A diagram showing how the home is to be evacuated in the event of an emergency; and

2. The location of fire alarms and fire extinguishers.

(b) The home shall maintain the following information near a staff telephone or other accessible area for use in the event of medical emergency;

1. The name, address and telephone number of the physician retained by the home or of the health facility to be used in emergencies;

2. The location of written authorizations from parents for emergency medical care for each child;

3. The procedure for obtaining emergency transportation;

4. The procedure for obtaining substitute or on-call supervision, if needed;

5. The telephone numbers of the local police, fire department, ambulance service and poison control; and

6. The location of the first aid kit and any additional first aid supplies.

(c) The home shall prepare written fire prevention instructions, which delineate that:

1. The home shall conduct fire drills at least once a month, which shall include all staff members and children, and shall inform all staff members and children of the procedures for leaving the building in an emergency situation;

2. The home shall maintain on file a record of each fire drill, which shall include:

i. The date and time of day of the drill;

ii. The weather condition at the time of evacuation;

iii. The number of participating children and staff members;

iv. The total amount of time taken to evacuate the home; and

v. The signature of the staff members conducting the drill;

3. All fire extinguishers shall be serviced and tagged at least once a year and recharged, if necessary; and

4. The home shall ensure that all staff members are trained in the use and operation of fire extinguishers.

(d) The following equipment shall be placed in a location that is convenient and accessible to staff members:

1. A standard first aid kit, which is fully restocked within 24 hours of use; and

2. The American Red Cross First Aid Manual or its equivalent.

10:128-4.6 Special requirements for staff members, children, visitors or family members who use tobacco products

(a) If the home permits the smoking of tobacco products or the use of smokeless tobacco, the home shall designate one area or room within the home or an outside area where staff members, children, as identified in (d) below, visitors or family members may use tobacco products.

(b) The home shall prohibit the smoking of tobacco products or the use of smokeless tobacco in:

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1. The presence of infants and toddlers;
2. Bedrooms used by children and staff members;
3. Dining areas when children are participating in meals;
4. Kitchen areas when meals are being prepared; and
5. Administrative and staff offices when children are present.

(c) The home shall ensure that staff members comply with the provisions of N.J.S.A. 2A:170-51, which prohibits any person from directly or indirectly selling, giving or furnishing to a minor under 18 years of age any cigarettes made of tobacco or any other matter or substance that can be smoked, or any cigarette paper or tobacco in any form, including smokeless tobacco.

(d) The home may permit children who smoke tobacco products or use smokeless tobacco to continue to do so, provided that the following conditions exist:

1. The child shall only be permitted to smoke tobacco products or use smokeless tobacco in the designated area or room identified in (a) above;
2. The treatment team shall develop goals that will direct, guide and counsel the child to stop smoking tobacco products or using smokeless tobacco; and
3. The child shall be provided with written and verbal information that outlines the serious health hazards stemming from smoking tobacco products or using smokeless tobacco.

(e) The home shall not utilize tobacco products as a reward in its behavior management program or in any of its policies or practices.

SUBCHAPTER 5. STAFF REQUIREMENTS

10:128-5.1 General requirements for director and all staff members

(a) The director and every staff member shall:

1. Be of good character and reputation;
2. Be in sufficient physical, mental and emotional health to perform his or her job duties satisfactorily; and
3. Possess skills, attributes and characteristics conducive to and suitable for operating a home or dealing with children, as applicable.

(b) Prior to hiring or utilizing a director or a staff member who will be working at the home, the home or agency shall secure and maintain on file:

1. A signed application for employment from each individual, indicating the applicant's name, address and telephone number; education and work experience; and disclosure of the presence or absence of criminal convictions. The employment application shall be updated to indicate the reasons for discontinuance of employment, if applicable;
2. Two written or two verbal references on each individual. These references shall be secured from former employers or other persons who have knowledge of the individual's work experience or education and who can attest to the individual's suitability to work with children. The verbal references shall be documented in writing by the home or agency.
3. A copy of a home study for each treatment home utilized by the agency for children supervised by the Division. The home study shall include:

i. A description of the rooms in the home;
ii. A description of the child's bedroom;
iii. A description of the neighborhood;
iv. The names of all persons residing in the home, including biological children, other children placed by the Division, boarders and frequent overnight guests;
v. References as specified in (b)2 above, on all persons identified in (b)3iv above;
vi. A written health statement on all persons identified in (b)3iv above; and
vii. A statement from the agency that verifies that the supply of hot tap water has been tested and does not exceed 110 degrees Fahrenheit.

(c) Failure by any agency, director or other staff member to comply with the requirements as specified in (a) and (b) above, and/or any evidence demonstrating unfitness or unsuitability to fulfill the responsibilities and duties of his or her position or to serve or deal with children in an appropriate manner, shall constitute grounds for one or more of the following actions:

1. Removal of the director or staff member from his or her position;
2. Reassignment to other duties that do not involve contact with children;
3. Termination from the home; or
4. Denial, refusal to renew, suspension or revocation of the home's certificate of approval.

(d) Evidence of conviction for crimes of violence, antisocial behavior or child abuse and neglect shall be among those actions that are considered in determining an individual's suitability to serve as director or staff member in a home.

(e) Evidence of conviction of a crime, in itself, shall not automatically preclude an individual from serving as director or staff member or from working in the home and shall not automatically result in the removal or termination of a director or staff member. The home shall submit a written justification to the Bureau, indicating and documenting why it feels the individual at issue should not be precluded from working or holding a leadership position at the home; the Bureau, after assessing the facts on a case by case basis, shall make the final determination, in keeping with the provisions of the State Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq., which provides that a person convicted of a crime may not be disqualified or discriminated against by a licensing authority unless the conviction relates adversely to the occupation, trade, vocation, profession or business for which the license is sought.

(f) The home shall disclose to the Bureau, in writing, information about and circumstances surrounding any previous denial, suspension, revocation or refusal to renew a certificate of approval or a license to operate a home either by the Bureau or by the licensing agency of another state. Evidence of a previous denial, suspension, revocation or refusal to renew a certificate of approval or license, shall not in and of itself result in an automatic disqualification of the prospective agency or home to secure a certificate of approval for another or the same home, but shall constitute grounds for the Bureau to investigate the circumstances that led to the original negative action and make a determination as to whether to reject or process the new application for a certificate of approval.

(g) Requirements to prevent child abuse or neglect are as follows:

1. The director or any staff member shall verbally notify the Division's Office of Child Abuse Control or District Office immediately whenever there is reasonable cause to believe that a child has been subjected to abuse or neglect by a staff member, or any other person, pursuant to the Child Abuse and Neglect Law (see N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14). This provision shall also apply to homes located outside of New Jersey, notwithstanding the child abuse and neglect provisions of the State in which the home is located.
2. The home shall report any suspected abuse or neglect of the child by his or her parents or other family members to the Division case manager assigned to the family.
3. In addition to the reporting requirements specified in 1 above, the home shall notify the Division case manager and parents of any unusual incidents that occurred at the home and that might indicate possible abuse or neglect involving the child. Such notification shall be made on the same day on which the incident occurred. Such incidents may include, but are not limited to: acts of aggression, violent or destructive behavior, suicidal threats or behavior, homicidal threats, inappropriate sexual behavior, running away, withdrawal or passivity, drug or alcohol abuse, or significant changes in the child's behavior or habits. The home shall maintain on file a record of such incidents and documentation that parents and Division case managers have been informed of them.
4. The Division, during the course of investigating an allegation of child abuse and neglect, may determine that immediate, corrective action is necessary to protect the children whenever:

i. The director or staff member has been found by the Division's Institutional Abuse Investigation Unit (IAIU) to pose a risk of harm to children; or
ii. The director or staff member has committed an act of child abuse or neglect, as substantiated by the IAIU; or
iii. The director or staff member has been convicted of such acts.

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5. Whenever the IAIU makes such a determination, the agency or director shall carry out the Division's recommendation for immediate remedial action and long term corrective action. Such remedial action may include, but not be limited to:

i. Removal or suspension of the affected director or staff members from the home or reassignment to other duties that do not involve contact with the children; or

ii. When the director or staff member resides at the home, removal of the affected employee from the premises.

6. Such suspension, removal or reassignment, as specified in (g)5 above, shall remain in effect until the results of the Division's investigation have been determined, and a final decision in the matter has been rendered by the Bureau.

7. Substantiation of the child abuse and neglect allegation by the Division's IAIU shall not, in itself, automatically result in the termination of the accused director or staff member from his or her position in the home, but shall constitute grounds for possible termination if the person's continued employment at the home would place the children at risk. Such determination shall be made by the Bureau after considering information provided by the agency, the director, the affected staff member, the IAIU and law enforcement authorities, as applicable and available.

(h) The home or agency shall utilize medical, dental, and psychological personnel serving children on either a staff or community provider basis who shall:

1. Be responsible for ensuring that the needs of the children for medical, dental, and psychological services are met; and

2. Be licensed to practice in the state where the staff member or community provider is located, if required by the laws of that state.

10:128-5.2 Staff qualifications

(a) Group homes, supervised transitional living homes and treatment homes shall have a full-time agency administrator or home director, social service workers and house parents or child care staff members, who shall meet the requirements in (c) through (e) below.

(b) Teaching family home programs shall have a full-time program administrator, teaching family consultants and teaching family parents, who shall meet the requirements in (g) through (j) below.

(c) The full-time agency administrator or home director shall:

1. Be at least 21 years of age;

2. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and four years of professional experience in the human services field, two of which shall have been in a supervisory or administrative position;

ii. A master's degree from an accredited graduate school in social work, psychology, or a related field and three years of professional experience in the human services field; or

iii. For publicly operated homes, meet the requirements of the State Department of Personnel for the position, if applicable;

3. Be responsible for implementing the overall planning, operation, and management of the home, including the home's recreational and food programs;

4. Designate staff members to be in charge at all times during his or her absence;

5. Be on call to assist the staff in admissions, emergencies, and personnel or other responsibilities;

6. Be responsible for ensuring that all staff members receive an annual performance evaluation;

7. Be responsible for ensuring that all staff member's work schedules and time sheets are maintained;

8. Be responsible for ensuring that a daily log book, separate log book, or the child's case record contains a written notation of all visits to children;

9. Be responsible for ensuring that on-duty staff members complete entries in the daily log book that reflect the activities and events of each day; and

10. Be responsible for maintaining aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge.

(d) The social service workers shall:

1. Be at least 21 years of age;

2. Provide at least two hours of service per week to each child, including, but not limited to, casework services, intake, treatment planning, family contacts, group work services, and maintenance of each child's record; and

3. Have one of the following qualifications:

i. A bachelor's degree in social work, psychology or a related field from an accredited college or university and one year of professional experience in the human services field;

ii. A master's degree from an accredited graduate school in social work, psychology or a related field; or

iii. Meet the requirements of the State Department of Personnel for the position, if applicable.

(e) The house parents or child care staff members shall:

1. Be at least 18 years of age;

2. Provide daily care and supervision of the children;

3. Inform the social service staff members or director of any incidents that may impact on the child's treatment planning, as specified in N.J.A.C. 10:128-6.1, 6.2 and 6.3; and

4. Have one of the following qualifications:

i. A high school or high school equivalency diploma and one year of experience working with children in a group setting;

ii. An associate's or bachelor's degree from an accredited college or university in a field that is unrelated to social work or psychology and six months experience working with children in a group setting;

iii. An associate's or bachelor's degree from an accredited college or university in social work, psychology or a related field; or

iv. Meet the requirements of the State Department of Personnel for the position, if applicable.

(f) Group homes and supervised transitional living homes may hire persons who do not meet the qualifications specified in (e)4 above, but who offer a background or life experience that demonstrate characteristics, skills and attributes that would enable them to work with children in a positive manner. The home or agency shall develop and maintain on file a policy that delineates the criteria for hiring staff members who do not meet the qualifications specified in (e)4 above. Such criteria shall include, but not be limited to, the following:

1. The person shall have life experiences that deal with raising a child, providing foster care, participating in volunteer activities with a child or adopting a child;

2. The person shall exhibit characteritics, skills and attributes that would enable him or her to work effectively and sensitively with emotionally disturbed or handicapped children in a group setting; and

3. The person, after he or she is hired, shall work together with an experienced staff member for an initial probationary period of at least six months unless terminated for cause prior to completing the six-month probationary period. After this initial six month period has ended, the home or agency shall review the person's work performance, document his or her ability to continue work without being supervised by an experienced staff member and may either:

i. Appoint the probationary staff member to fill the position as a child care staff member;

ii. Extend the initial six-month period to further evaluate the performance of the probationary staff member and continue to have the probationary staff member supervised by an experienced staff member; or

iii. Terminate the probationary staff member after the initial six-month period or any extension of the initial six-month period for failing to perform the job duties and responsibilities of the position.

(g) The teaching family home program administrator shall:

1. Meet the qualifications specified in (c)1 and 2 above;

2. Provide the Bureau with current listings of teaching family consultants and the homes to which they are assigned;

3. Ensure that the teaching family homes comply with all applicable provisions of this manual;

4. Designate a staff member to be in charge at all times during his or her absence;

5. Be on call to assist the teaching family consultants in admissions, emergencies and personnel or other problems;

6. Be responsible for ensuring that all teaching family consultants receive an annual performance evaluation; and

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7. Assist in the recruitment and training of teaching family parents.

(h) The teaching family consultants shall:

1. Be at least 21 years of age;

2. Meet the requirements of the State Department of Personnel for the position; and

3. Be responsible for ensuring that the teaching family parents perform the duties specified in (i) below.

(i) The teaching family parents and relief staff shall:

1. Be at least 18 years of age;

2. Implement the overall planning, operation and management of the home;

3. Maintain all staff members' work schedules, time sheets, and/or payment vouchers for relief staff;

4. Maintain a daily log book, separate log book or record in the child's case record of all visits to children;

5. Complete entries in the daily log book that reflect the activities and events of each day;

6. Maintain aggregate statistical information on children served, including the date of each admission, date of each discharge, and reason for each discharge; and

7. Meet all the requirements specified in (e) above.

(j) Teaching family home staff members shall meet staff training and certification requirements of the National Teaching Family Association.

10:128-5.3 Staff to child ratios

(a) Group homes and supervised transitional living homes shall meet the following staff to child ratios:

1. The home shall have at least one staff member present in the home or reachable by telephone when the home is in operation but the children are not in the home on a particular day.

2. The home shall have at least one staff member for every 12 or fewer children when the children are awake and present in the home and when the children are participating in an activity organized by the home.

3. The home shall have at least one staff member on duty when there are 12 or fewer children in the home and the children are asleep.

i. In a single-sex home, the staff member may be asleep.

ii. In a coed home, the staff member shall be awake.

iii. An additional staff member shall be available to provide emergency in-person coverage within 30 minutes.

(b) Teaching family homes, supervised transitional living homes serving six or fewer children and treatment homes shall have:

1. One staff member on duty whenever a child is scheduled to be present in the home;

2. One staff member as identified in (b)1 above who is accessible by telephone or beeper at all times when the home is in operation and the children are not present; and

3. One staff member who can provide emergency in-person coverage within 30 minutes.

10:128-5.4 Staff training and development

(a) The home shall develop a training plan and the director shall ensure that all staff members, upon employment, are trained in:

1. The home's statement of purpose, as specified in N.J.A.C. 10:128-3.1;

2. The home's behavior management policy and search and seizure policy, if any, as specified in N.J.A.C. 10:128-6.14 and 6.15;

3. Emergency procedures, as specified in N.J.A.C. 10:128-4.5(a), (b) and (c);

4. Protocols for medication, as specified in N.J.A.C. 10:128-7.4 and 5;

5. Infection control procedures, as specified in N.J.A.C. 10:128-7.8; and

6. The home's techniques for safe physical restraint, if applicable, as specified in N.J.A.C. 10:128-6.13(e)6.

(b) The home shall ensure that every new staff member is accompanied on his or her duties by an experienced staff member as part of an orientation, until the new staff member is familiar with daily routines and operations of the home.

(c) The home shall document in each staff member's record that all social service and child care staff members, including full and part-time staff members, receive a minimum of 12 hours of training each year in the following areas:

1. The principles of behavior management;

2. Alcohol and substance abuse;

3. Human sexuality and AIDS; and

4. Suicide prevention.

(d) The home's training plan may include in-depth discussions at staff meetings or attendance at workshops or conferences.

10:128-5.5 Volunteers and student interns

(a) The home may use volunteers or student interns to support the activities of regular paid staff members, but shall not use volunteers or student interns to substitute for paid staff members.

(b) The home shall ensure that volunteers and student interns are briefed fully on any special needs or problems they might encounter while working with the children.

(c) The home shall ensure that volunteers and student interns who have contact with children or parents receive an orientation to the home's program and are supervised by paid staff members. Volunteers and student interns shall receive authorization from the home prior to accompanying children off-grounds for trips, medical appointments and visits.

(d) The home shall require references, as specified in 10:128-5.1(b)2, for volunteers and student interns who provide activities or transportation to a child by themselves.

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:128-6.1 Treatment plan for children in group homes, teaching family homes and treatment homes

(a) Group homes, teaching family homes and treatment homes shall develop, implement and maintain on file a written individual treatment plan for each child. The plan shall delineate how to meet that child's needs and to remediate the problems and behavior that led to the child's placement.

(b) Group homes, teaching family homes, and treatment homes shall form a treatment team that is responsible for the development of a treatment plan for each child. The treatment team shall consist of each of the following:

1. For group homes and treatment homes:

i. Staff members representing the clinical component;

ii. Staff members representing the social work component;

iii. Staff members representing the child care component;

iv. Staff members representing the administration of the home, if necessary;

v. Representatives from the child's responsible school district and/or current school district, if necessary;

vi. The Division's case manager; and

vii. The child's parents, if appropriate.

2. For teaching family homes:

i. Staff members representing the clinical component, if applicable;

ii. Teaching parents and any alternate teaching family staff members;

iii. The teaching family consultant who shall attend the initial treatment planning meeting and shall attend at least one subsequent meeting every year;

iv. Representatives from the child's responsible school district and/or current school district, if necessary;

v. The Division's case manager; and

vi. The child's parents, if appropriate.

(c) Group homes, teaching family homes and treatment homes shall document in the child's record that the Division's case manager or other placing agency, the child's therapist, parents or legal guardian and the child's responsible school district, if appropriate, were invited to participate as members of the treatment team and assist in the development of the treatment plan and all subsequent revisions.

(d) Group homes, teaching family homes and treatment homes shall develop the initial treatment plan within 30 calendar days following a child's admission, implement the treatment plan for three months and review or revise the treatment plan at least every three months thereafter.

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(e) The treatment plan shall include the following information:
1. The name of the child;
2. The date of the child's admission;
3. Updated medical and dental examinations, as specified in N.J.A.C. 10:128-7.2;
4. The date when the plan is developed or revised;
5. The names and titles of all persons attending the development or review meeting;
6. The child's social, familial, emotional, behavioral, and academic strengths and weaknesses;
7. Family or friends' visiting schedule or reasons for not scheduling visits;
8. Specific treatment goals in each program area and projected time frame for completing each goal;
9. The name of the staff member responsible for implementation of each treatment goal;
10. Techniques to be used to achieve each treatment goal;
11. Criteria to be used to determine whether each treatment goal is achieved;
12. A notation of progress made from the previous plan;
13. Documentation of efforts to achieve timely discharge, including, but not limited to, services needed by parents or other persons to whom the child will be discharged; and
14. For children who are 14 years of age and over, how the child is being prepared for self-sufficiency. This documentation shall include, but not be limited to, instruction in:
i. Food preparation;
ii. Budgeting and money management; and
iii. Vocational planning and employment search efforts.

(f) Group homes, teaching family homes and treatment homes shall send to the Division's case manager or other placing agency a copy of the treatment plan and any revisions to it within 30 calendar days after the treatment planning meeting and retain a copy of the plan in the child's record for at least three years after the child's discharge.

(g) Group homes, teaching family homes and treatment homes shall ensure that the child's treatment plan and any revisions to it are explained to the child, his or her parents, and all staff members responsible for the plan's implementation. If the home does not explain the child's treatment plan to the child's parents, the home shall document in the child's case record the reasons why the plan was not explained to the parents.

10:128-6.2 Discharge planning

(a) For discharges that can be anticipated, the home shall develop a plan with the Division's case manager or other placing agency staff at least 30 days before the child's discharge. The plan shall be sent to the Division's case manager and shall specify the following information:
1. The date of admission;
2. The anticipated or actual date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the child will be discharged and the rationale for planning a discharge to that individual or agency; and
5. An assessment of the child's continuing needs, including, but not limited to, consideration of health care, behavior management and educational or vocational training.

(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the child's discharge. This plan shall specify the following information:
1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the child's continuing needs including, but not limited to, health care, behavior management and educational and vocational training; and
5. Recommendations for providing follow-up services in the child's new environment.

(c) For emergency discharges that result in the immediate placement of the child in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the child's discharge. This plan shall specify the information outlined in (b)1 through 5 above.

10:128-6.3 Case management plan for children in supervised transitional living homes

(a) The supervised transitional living home shall develop, implement and keep on file a written individualized case management plan for each child. The plan shall delineate how to meet the child's needs and to prepare the child for independent living in the community.

(b) The supervised transitional living home shall develop the initial case management plan within 30 calendar days following a child's admission and shall review or revise the initial case management plan at least every three months thereafter.

(c) The supervised transitional living home shall document in the child's record that the Division's case manager or other placing agency, and the responsible school district of the child, if applicable, were asked to participate in the meeting to develop the case management plan and all subsequent meetings to revise the plan.

(d) The supervised transitional living home shall invite the child's parents to the planning meeting. If the parents do not attend the meeting, the supervised transitional living home shall ensure that the child's case management plan and any revisions to it are explained to the child's parents, or document in the child's case record the reasons why the plan was not explained to the parents.

(e) The case management plan shall include the following information:
1. The name of the child;
2. The date of the child's admission;
3. Updated medical and dental examinations, as specified in N.J.A.C. 10:128-7.2;
4. The date of the meeting at which the plan is developed or revised;
5. The names and titles of all staff members and any other persons attending the development or review meeting;
6. The child's social history, including family background, emotional and behavioral problems and academic strengths and weaknesses;
7. The family visiting schedule or reasons why visits were not scheduled;
8. Specific case management goals and plan for achieving and monitoring progress;
9. A notation of progress made from the previous plan, if relevant;
10. Goals and recommendations for discharge and aftercare; and
11. A plan for helping the child become self-sufficient, including, but not limited to, instruction in:
i. Food preparation;
ii. Budgeting and money management; and
iii. Career planning and employment and skills training.

(f) The supervised transitional living home shall send to the Division's case manager or other placing agency a copy of the case management plan or any revisions to it within 30 calendar days after the meeting and shall retain a copy of the plan in the child's record.

10:128-6.4 Work and employment

(a) The home shall not allow a child to be responsible for duties assigned to staff members.

(b) The home may require children to perform work assignments in the home that have an instructive value, including normal household chores, so long as these assignments are not scheduled to interfere with a child's school program, other aspects of the treatment or case management plan, or any regularly scheduled program activity for the children in the home.

(c) The home's staff members shall encourage children to hold part-time employment outside the home, but shall ensure that the work does not interfere with the child's school program, or other aspects of the treatment or case management plan.

1. The home may require a child to maintain specific academic standards as a condition for seeking or maintaining employment.

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2. The home may prohibit a child's employment, if a child does not maintain appropriate academic or behavioral standards, or if the job is determined to be detrimental to his or her health, safety or well-being.

10:128-6.5 Money and allowance

(a) Group homes, teaching family homes and treatment homes shall provide opportunities for all children to earn an allowance.

(b) The home shall not require a child to assume responsibility for expenses for his or her care and treatment, except for amounts needed to pay for intentional damage done to the home by the child.

1. When a child damages the home's property, the home shall identify the child who damaged the property in an incident report before requiring the child to pay restitution.

2. The restitution payments shall not exceed 50 percent of a child's weekly income from allowance.

3. Children who are working or have savings shall have the option to make a lump sum payment for intentional damages.

4. The home may offer the child the option of performing additional chores in lieu of restitution payments.

10:128-6.6 Visitation and communication

(a) The treatment team shall determine the family members and friends with whom the child may communicate and visit.

i. The treatment team shall identify visitors with whom the child may have contact at intake and may revise the list at subsequent treatment planning or case management meetings.

2. Between treatment planning or case management meetings, the home may curtail a child's contact with individuals after consultation with the Division or other placing agency if the home:

i. Informs the child of the conditions of and reasons for restriction or termination; and

ii. Documents in the child's record the reasons for curtailing contact with the specified individuals.

(b) The home shall develop a visiting policy and explain the visiting policy to the child and parents at intake. The visiting policy shall specify:

1. The hours for visiting family members and how alternative hours may be arranged;

2. That family visits shall not be denied for a child's infraction of rules, but may be denied if such visits would be contrary to the child's treatment plan;

3. That visitors who appear to be under the influence of drugs or alcohol shall not be allowed to visit or to transport the child;

4. That the child may visit his or her Division case manager or other placing agency worker upon request and that these visits shall not be denied for any reason; and

5. The hours when a child may visit with friends and whether a child's visits with friends may be curtailed for a child's infraction of the rules.

(c) The home shall adhere to the following policies for the use of the telephone by children:

1. The home shall permit access to a telephone by the child for telephone conversations with the Division's case managers or other professional persons involved in the child's treatment planning.

i. The child shall not be charged a cost for these telephone calls; and

ii. The home shall provide adequate privacy for these telephone calls and all other calls but may locate the telephone in an area where a staff member can observe the child's reactions.

2. The home shall permit reasonable access to the telephone by the child for telephone conversations with his or her parents. The home may impose restrictions on these conversations if the following conditions exist:

i. The cost of the telephone calls is prohibitive; or

ii. The home is complying with a court order which limits the child's contact with his or her parents.

3. When the home imposes restrictions on a child's access to telephone conversations with his or her parents, as specified in 2 above, the home shall:

i. Explain the nature of any restrictions to the child; and

ii. Document the rationale for imposing restrictions in the child's record.

4. The home shall develop and maintain on file a written policy governing the use of the telephone by children when they communicate with friends. The home may impose one or more of the following conditions:

i. Restricting the time and duration of telephone calls;

ii. Requiring the child to pay for telephone calls with friends;

iii. Denying the child use of the telephone for infraction of house rules; and

iv. Requesting the child to identify telephone callers.

5. The home shall not use tapes or any other mechanical listening devices to monitor a child's telephone calls.

(d) The home shall not restrict the amount of mail a child sends or receives, unless a court order stipulates such restriction.

1. The child shall receive a postage allowance and writing materials for corresponding with family, friends and other persons who have a positive impact on the child's treatment.

2. No staff member shall open the child's parcels or letters or read the child's letters unless the child is physically incapable of doing so, and then only in the presence of both the child and another staff member.

3. A staff member may ask a child to open parcels and letters in the staff member's presence along with at least one other staff member only if he or she suspects the contents to be contraband, as specified in N.J.A.C. 10:128-6.15.

i. If the child refuses to comply with the staff member's request, the home shall store the parcel or letter in a secure place until the child complies or is discharged.

ii. The home shall document the rationale for and the outcome of all incidents when a staff member asks a child to open mail in a staff member's presence.

10:128-6.7 Education

(a) The home shall ensure that each school-age child receives an educational program pursuant to N.J.S.A. 30:4C-26(c) and N.J.S.A. 18A:7B-12(a).

(b) The home shall make efforts to ensure that the child is enrolled in a local community school, if appropriate.

1. The home shall document efforts to locate a school setting for the child and specify how the child's school progress will be monitored.

2. After the child is enrolled in a school program, the home shall document contacts with school personnel to discuss the child's progress at each treatment planning meeting.

(c) If a child is receiving education through home instruction, the home shall:

1. Provide space within the home for such home instruction; and

2. Document when home instruction was provided.

(d) If a school-age child is not receiving an educational program, the home shall:

1. Document in the child's record the reasons why educational programming is not feasible;

2. Maintain contact with the responsible school district and/or the local school district to ensure that the school districts are actively pursuing alternate educational programming; and

3. Document in the child's record what the child is doing during school hours.

(e) The home shall provide appropriate instructional, educational and recreational activities for children not of school age who are in the home during school hours. These activities shall be reflected in the child's treatment plan.

10:128-6.8 Recreation

(a) Group homes, teaching family homes and treatment homes shall plan or provide a balanced on-grounds and off-grounds recreational program. The recreation program shall include planned individual and group activities.

(b) Group homes shall have a written schedule of daily planned recreational and leisure time activities.

1. The home shall ensure that this schedule is developed with input from staff members and children.

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2. The home shall keep these schedules on file for 90 calendar days.

(c) Supervised transitional living homes shall encourage children to use their leisure time productively by documenting their efforts to:

1. Inform children of appropriate activities in the community;

2. Teach children how to manage time and money to be able to participate in recreational activities; and

3. Teach children how to use public transportation.

10:128-6.9 Religion

(a) If a home's program has a particular religious orientation, the home shall maintain on file in the home a written description of its religious orientation and any religious practices or restrictions that are observed. Before the child's admission, the home shall give this description to the child and the parents and discuss its religious orientation, if any.

(b) The home shall ensure that every child is afforded the opportunity to participate freely in religious activities and/or services in accordance with his or her own faith or with that of his or her parents.

(c) The home shall ensure that every child is permitted to attend religious activities and services in the community and the home shall arrange for or directly provide transportation for any child who wishes to attend religious activities or services.

(d) The home shall not coerce or require children to participate in religious activities.

1. The home shall not punish children who choose not to participate in religious activities.

2. The home shall not give special rewards to children for participating in religious activities.

10:128-6.10 Rest, bedroom and sleep

(a) The home shall ensure that:

1. Every child is provided with a standard household bed or crib, as age appropriate, in sanitary condition;

2. Every set of bunk beds is limited to two in height:

i. Have railings on top bunks that are no more than 3½ inches from the top of the bed frame; and

ii. Have mattresses that are least five inches from the top of the railing;

3. Every bed or crib is equipped with a firm, sanitary, fire retardant mattress and waterproof mattress cover;

4. Every child is provided with sanitary bed linens that are changed weekly, a blanket or other suitable covering that is cleaned or replaced, as necessary, and a pillow;

5. Two or more children do not share the same bed;

6. Children who are 18 months of age and older do not share the same bedroom with an adult, unless the adult is their mother and they are in placement in a home that provides services to pregnant and parenting adolescents;

7. A child does not sleep on the same bed or crib that another child has occupied unless the bed linen is changed;

8. Children who are five years of age or older occupy a bedroom only with members of the same sex;

9. Any bedroom occupied by children has natural light and ventilation provided by one or more windows opening directly to the exterior;

10. An unfinished attic or basement is not used for sleeping purposes;

11. All rooms used as bedrooms are not used for any other purpose;

12. Each child is provided with a chest of drawers or some other permanent arrangement for storage of clothing and other personal belongings, including closet space or the equivalent;

13. Each child is permitted reasonable freedom to express his or her personal tastes in the decoration of his or her bedroom or bedroom area;

14. Each child has the opportunity for at least eight hours of uninterrupted sleep each night. Schedules for waking and retiring each day shall be adapted according to the ages, physical condition and characteristics of the children in each group;

15. The facility does not permit more than four children to occupy a designated bedroom space for sleeping. If partitions are used to designate a bedroom space, the facility shall insure that the arrangement and height of partitions shall provide privacy for the occupants of the space;

16. Every bedroom is provided with a reading lamp or other means of artificial light for quiet activities; and

17. Every bedroom window is equipped with curtains, blinds or shades.

10:128-6.11 Food and nutrition for children

(a) The home shall ensure that each child is provided with three nutritious meals daily, either in the home itself or in the community.

1. The home shall make daily snacks available for children who desire them, unless there is a medical reason not to provide them.

2. The home shall select, store, prepare, and serve food in a sanitary and palatable manner.

3. The home shall prepare and date menus and keep the menus on file at the home for a minimum of 90 calendar days.

4. The home shall provide table service for children.

5. The home shall serve meals in a manner that makes mealtime a pleasant social experience.

6. The home shall not force-feed or otherwise coerce a child to eat, except by order of a physician.

(b) The home shall ensure that the daily diet for each child includes a balance of foods from the four basic food groups.

1. The home shall ensure that each meal contains a sufficient amount of food for every child.

2. The home shall make available, as necessary, an alternate choice of food for each meal served for children on special diets or children who, because of religious beliefs, cannot eat particular foods.

3. The home shall follow individualized diets and feeding schedules that are submitted to the home by the child's physician or registered dietician.

10:128-6.12 Pets

(a) The home shall ensure that pets kept by or located in the home, regardless of ownership, shall be:

1. Domesticated and non-aggressive;

2. Free from disease;

3. Vaccinated, if applicable, as prescribed by law or as recommended by a licensed veterinarian. The record of the vaccinations shall be maintained on file at the home, along with the name and address of the licensed veterinarian providing care for the pet;

4. If sick, removed from the area occupied by children, until the pet has been examined by a licensed veterinarian;

5. Effectively controlled by leash, command or cage; and

6. Prohibited from toilet facilities for staff members and children.

(b) The home shall ensure that animal waste is disposed of in a manner that prevents the material from becoming a community health or nuisance problem. Accepted methods include:

1. Burial;

2. Disposal in sealed plastic bags; and

3. Utilization of:

i. A municipally approved trash removal system; or

ii. A sewage system for feces.

(c) The home shall ensure that all pet dishes, food and equipment used for pets are kept out of the home's food preparation and food serving areas when food is being prepared or served.

(d) If a pet poses a health hazard to children, the home shall take corrective action that is approved by the licensing agency.

(e) The home shall ensure that pregnant adolescents are not permitted to clean a cat's litter box.

10:128-6.13 Restrictive behavior management practices

(a) Homes that choose to utilize restrictive behavior management practices shall develop policies and procedures that assist children in gaining control of their behavior, protect the children from self-harm, protect other children or staff members, and prevent the destruction of property.

(b) The home shall:

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1. Obtain written approval from the Bureau for any restrictive behavior management practice that the home plans to utilize prior to its implementation with children; and

2. Not utilize restrictive behavior management practices as a means of punishment, for the convenience of staff members, or as a substitute for a treatment program.

(c) Prior to the child's admission, the home shall:

1. Explain to the parents, the child, the Division's case manager or other placing agency any restrictive behavior management practice that is used, the circumstances under which it will be employed, and the possible risks involved; and

2. Obtain written consent for the use of each restrictive behavior management practice from the child's parents.

(d) The home shall ensure that the consent form is written in plain language and that either a translated version or an interpreter is available to explain it to non-English speaking parents.

(e) Whenever the parents refuse to consent to a restrictive behavior management practice, revoke their consent for the practice, or cannot be located to give consent, the home shall:

1. Refrain from utilizing the practice and apply other, non-restrictive interventions until such consent is obtained; and

2. Request that the Division's case manager and the placing agency obtain the necessary consent, either through administrative action pursuant to an agreement between the parent, the Division and other placing agency or through legal action, if necessary to protect the best interests of the child.

(f) The home shall maintain a copy of all signed consent forms in the child's records.

(g) At least 10 working days before each staffing or treatment planning meeting, the home shall send a certified letter to the child's parents and a regular letter to the Division's case manager and other placing agency, which shall:

1. Inform them of the frequency and duration of any restrictive behavior management practice that was used with the child;

2. Describe how the child responded to the treatment; and

3. Invite them to the treatment planning meeting to discuss the child's program and progress.

(h) The home shall develop and maintain on file in the home or home's administrative office a policy indicating which restrictive behavior management practices the home uses.

(i) Homes that utilize physical restraint with children shall:

1. Ensure that physical restraint is used only to protect a child from self-harm, or to protect other children or staff members, or to prevent the destruction of property when the child fails to respond to non-restrictive behavior management interventions;

2. Ensure that staff members use only therapeutic physical restraint techniques and holds, such as the basket hold or restraining the child in the prone position. These techniques and holds shall not be utilized if the child has:

i. Not received a medical examination that documents that he or she will not be adversely affected; or

ii. A documented respiratory ailment such as asthma;

3. Ensure that a child is released from restraint as soon as he or she has gained control;

4. Document each physical restraint incident in an incident report that reflects the following:

i. The name of the child;

ii. The date and time of day the restraint occurred;

iii. The name(s) of all staff members involved in the restraint;

iv. Precipitating factors that led to the restraint;

v. Other non-restraint interventions attempted;

vi. The time the restraint ended;

vii. The condition of the child upon release; and

viii. A medical review by the nurse or physician if injury to the child is suspected;

5. Ensure that all restraint incidents are:

i. Reviewed by a supervisory staff member within one working day after the incident; and

ii. If needed, discussed with the staff member involved in the restraint incident within one working day after the incident.

6. Ensure that staff members who are involved in the restraint of a child receive training in safe techniques for physical restraint; and

7. Prohibit staff members from utilizing the following practices during a physical restraint:

i. Pulling a child's hair;

ii. Pinching a child's skin;

iii. Twisting a child's arm or leg in such a manner that would cause the child pain;

iv. Kneeling or sitting on the chest or back of a child;

v. Placing a choke hold on a child;

vi. Bending back a child's fingers; and

vii. Allowing other children to assist in the restraint.

(j) Homes that utilize exclusion shall:

1. Inform staff members through written policy of the circumstances when exclusion may be utilized as a behavior management intervention, such as:

i. Disruptive behavior, including fighting, name calling and pushing;

ii. Increased agitation on the part of the child;

iii. Non-compliant behavior or failure to participate in the program; and

iv. Uncontrollable emotional outbursts such as crying, screaming and inappropriate laughter;

2. Ensure that the child being excluded has no record of suicidal behavior;

3. Prohibit more than one child from being excluded in a room or area at a time;

4. Ensure that at least one staff member is responsible to make visual contact with the child every 10 minutes and is within hearing distance of a child when the child is removed from the group;

5. Ensure that the home does not utilize a closet, bathroom, unfinished basement, unfinished attic or locked room when excluding a child from the group;

6. Ensure that the exclusion of a child from the other children does not exceed 30 minutes and a child is not excluded from the group for more than a total of two hours in a 24-hour period;

7. Document each exclusion of a child in an incident report that reflects the following:

i. The name of the child;

ii. The date and time of day the exclusion occurred;

iii. The name(s) of all staff members observing the child;

iv. Precipitating factors that led to the exclusion;

v. Other intervention attempted;

vi. The time the exclusion ended; and

vii. The condition of the child upon release; and

8. Ensure that the child is reintroduced to the group in a sensitive and non-punitive manner as soon as he or she has gained control.

(k) The home shall not utilize mechanical restraint on any child, such as:

1. A straight jacket;
2. Leg irons;
3. A papoose board;
4. A rope;
5. Metal handcuffs;
6. Body wraps;
7. Body tubes;
8. Teflon handcuffs;
9. Blanketing; and
10. Four and five point restraint.

(l) The home shall not have a behavior management room, which is a room specifically designed and constructed for the isolation of children.

10:128-6.14 Discipline and control

(a) The home shall develop house rules to help the children develop self-control and conform to acceptable patterns of social behavior.

1. The home shall put the house rules in writing.

2. The house rules shall include a rationale for such rules and delineate the consequences for infractions.

3. The home shall explain its disciplinary practices individually with each child at the time the child is placed in the home.

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4. The house rules shall be maintained on file in the home and made available to parents, as specified in N.J.A.C. 10:128-3.3.

5. The house rules may be incorporated in the child's bill of rights, as specified in N.J.A.C. 10:128-3.2.

(b) The home shall assign responsibility for the discipline, control, and supervision of children to staff members and shall not delegate that responsibility to other children.

(c) The home shall not threaten discipline or administer discipline to a child for the misbehavior of another child or group of children.

(d) The home shall prohibit the following types of punishment from being used on a child:

1. Any type or threat of physical hitting or the use of corporal punishment;

2. Forced physical exercise or forcing a child to take an uncomfortable position;

3. Subjection to verbal abuse, ridicule, humiliation, or other forms of degradation;

4. Deprivation of meals, sleep, mail, clothing appropriate to the season or time of day, or verbal communication;

5. Mechanical or chemical restraint;

6. Assignment of overly strenuous physical work;

7. Exclusion from any essential program or treatment service, such as education or clinical treatment;

8. Refusal or entry to the residence;

9. Temporary suspension and return of a child from the home to a parent, relative, foster home, or shelter, unless approved by the placing agency; and

10. Seclusion in a locked room.

10:128-6.15 Search and seizure of weapons and contraband

(a) Homes may conduct searches for weapons or contraband, provided that they maintain on file in the home written policies and procedures that are consistent with the requirements of this manual.

1. The home shall define contraband to include illegal drugs, unauthorized property, stolen property or items otherwise obtained illegally.

2. The home shall explain the policy and distribute copies of the written policy to children and their parents upon admission and at least annually thereafter.

3. The home shall specify the actions that it will take when weapons or contraband are found.

(b) The home shall prohibit all staff members, consultants and volunteers from strip searching a child for any reason.

(c) The home shall permit frisk searches (surface searches of outer clothing) of a child only where there is reasonable suspicion that the child is in possession of a weapon.

1. The home shall prohibit staff members from reaching into a child's pockets unless the frisk search confirms the reasonable belief that the child is in possession of a weapon.

2. The home shall not frisk search a child who is suspected of possessing illegal drugs or contraband other than a weapon.

3. The home shall ensure that any frisk search is conducted:

i. In the presence of two staff members, one of whom has supervisory or administrative responsibilities in the home; and

ii. Only by staff members of the same sex as the child. If same sex staff members are not available, staff members shall provide one-to-one supervision of the child, until the search can be properly conducted.

(d) When the home has reasonable suspicion that a child is carrying illegal drugs or other contraband in a garment, pocket, purse, or other possession within the child's immediate control, the home shall ensure that the staff member:

1. Asks the child voluntarily to empty any garment, pocket, purse or other possession;

2. Inspects all such items that are in plain view; and

3. Summons a law enforcement officer to conduct a lawful search of the possessions within the child's immediate control whenever the child refuses a voluntary search by the home staff member.

(e) The home may conduct periodic, unannounced searches of a child's room and other possessions not within a child's immediate possession or control if:

1. The home has explained and documented this practice to the child and his or her parents, as specified in N.J.A.C. 10:128-3.3 and 3.6;

2. The search is conducted in the presence of two staff members, one of whom has supervisory or administrative responsibility; and

3. The home allows the child an opportunity to be present during a search. If the child declines the opportunity, the staff members may conduct the search in the child's absence.

(f) When unannounced room searches occur, as specified in (e) above, the home shall verify which child is responsible for any weapon or contraband brought into the home before imposing a consequence on the child.

(g) Before a home conducts a blood or urine screening on a child to determine substance abuse, the home shall ensure that:

1. Substance abuse screenings are conducted only under the following limited circumstances:

i. When screening is ordered by the court;

ii. When the home is specifically designated as a drug treatment facility; or

iii. When ordered by a physician who has determined that such screening is necessary; and

2. Substance abuse screenings are conducted only if:

i. The home has informed the child and parents, if available, beforehand about the screening;

ii. The home uses a licensed facility to conduct the screening, including drawing the sample and completing the analysis;

iii. The home ensures that the child has privacy when a urine sample is collected, unless the home documents that the child has a history of falsifying samples. If the child has such a history, the home shall request appropriate medical staff of the same sex as the child to witness or verify that the child is not falsifying samples; and

iv. The home verifies the accuracy of all positive tests through a second screening; and

3. Substance abuse screenings are discontinued whenever previous screenings result in three consecutive negative readings after the initial positive reading was documented, unless a court order requires continued screenings.

(h) The home shall maintain on file an incident report for every instance involving a frisk search of a child, a staff member's request for a child to empty a possession within the child's immediate control, a room search resulting in the discovery of weapons, illegal drugs or other contraband, and a blood or urine screening.

10:128-6.16 Firearms and weapons

(a) The home shall not maintain any firearm, chemical or other weapon within or on the grounds of the home.

(b) The home shall prohibit any staff member or child to possess any firearm, chemical or other weapon within or on the grounds of the home.

(c) As an exception to the requirements in (a) and (b) above, treatment homes and teaching family homes that are not State-owned may maintain a weapon, if they meet the following requirements:

1. The treatment home parents and teaching family home parents shall provide documentation that all weapons in the home that are required to be registered according to State law have the proper license;

2. The treatment home parents and teaching family home parents shall sign a statement that they will not share or expose the weapon to the children in the home; and

3. The treatment home parents and teaching family home parents shall store all weapons in a Bureau-approved, locked, steel gun vault.

SUBCHAPTER 7. HEALTH REQUIREMENTS

10:128-7.1 Comprehensive health plan for children

(a) The home shall prepare and implement a comprehensive health plan to ensure that each child's medical, dental, and other health needs are met adequately and promptly.

1. The home shall identify a physician or health care organization who will assume responsibility for routine medical care of each child.

2. The home shall arrange for emergency, routine and follow-up medical care for each child.

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10:128-7.2 Health care and medical treatment for children

(a) Within 72 hours after admission, the home shall ensure that each child receives a medical examination, as defined in (d) below, unless the child had received such a medical examination within 30 calendar days prior to his or her placement.

(b) When the home suspects that a child is ill or carrying a contagious disease, the child shall be examined by a physician prior to admission.

(c) When the home suspects that a child has been abused or neglected the home shall ensure that the child is examined by a physician immediately upon admission.

(d) The home shall ensure that each child receives an annual comprehensive physical examination and maintain a copy of this physical examination in the child's record.

1. The physical shall include, but is not limited to:

i. A measurement of height and weight;

ii. A determination of blood pressure;

iii. An objective vision screening which uses a Titmus or Snellen test, or equivalent;

iv. A hearing screening using an audiometer and, if indicated, tympanometry;

v. A hematocrit or Hemoglobin test, if indicated; and

vi. A urinalysis, if indicated.

2. The home may use vision and screening tests completed at the child's school if these tests meet the requirements specified in (d)1iii and iv above.,

3. The home shall ensure that eye glasses, orthopedic apparatus or other equipment is available to each child who requires them.

4. The home shall ensure that all children 13 years of age and under receive a Mantoux test unless they have had tuberculosis, and ensure follow-up with the physician if test results are positive.

5. The home shall ensure that all children are appropriately immunized.

(e) The home shall ensure that each child receives a dental examination within three months following admission and at least semi-annually thereafter.

(f) The home shall ensure that children between two and six years of age receive developmental evaluations by a physician, nurse or other appropriate health official.

10:128-7.3 General medical practices

(a) The home shall ensure that any medical, dental, psychological and psychiatric treatment or medication administered to a child is explained to the child.

(b) When serious accidents or illnesses occur to a child, the home shall take necesary emergency action and notify the parents and the Division's case manager or other placing agency immediately. The home shall document these incidents in the child's record.

(c) When a child or staff member has a communicable disease, as specified in the table below, the home shall:

1. Obtain a note from a licensed physician treating the child or staff member, confirming the diagnosis and indicating that there is no risk to the child or staff member, or to others before the child or staff member participates in group activities;

2. Isolate the child or staff member posing a risk to others; and

3. Contact the New Jersey State Department of Health, the local health department or other appropriate public health authority when the child or staff member has a reportable disease, as specified in the table below.

TABLE OF COMMUNICABLE DISEASES

Respiratory illnesses	Gastro-intestinal illnesses	Contact illnesses
Chicken pox	Giardia lamblia*	Impetigo
German measles*	Hepatitis A*	Lice
Hemophilus influenzae*	Salmonella*	Scabies
Measles*	Shigella*	
Meningococcus*		
Mumps*		
Strep throat		
Tuberculosis*		
Whooping cough*		

*Reportable diseases, as specified in N.J.A.C. 10:128-7.3(c)3.

10:128-7.4 Medication other than psychotropic medication

(a) The home shall administer prescription medication to a child only when the medication is authorized by a physician.

(b) The home shall limit the dispensing of non-prescription over-the-counter medication to the following types of medicines, which shall be dispensed in accordance with the recommended dosage, age or weight of the child, as indicated on the label:

1. Antihistamines or decongestants;

2. Acetaminophens (or other age-approved aspirin substitutes);

3. Cough suppressants; and

4. Topical ointments.

(c) The home may permit the dispensing of non-prescription medication other than those listed in (b) above if the child's physician authorizes it in writing.

(d) The home shall maintain a medication log book that shall contain the following information:

1. The name of child receiving medication, whether prescription or non-prescription;

2. The type of medication, dosage, and intervals between dosages;

3. What to do if a dosage is missed;

4. The reason for medication;

5. The date and time medication was administered;

6. Possible side effects of the medication, if any; and

7. The signature and title of staff member dispensing medication.

(e) In supervised transitional living homes, self-medicating children may record this information specified in (d) above.

(f) The home shall encourage the self-administration of medication by properly trained and supervised children whenever their intellectual, emotional and physical capabilities make such practice appropriate and feasible. This shall be documented in each child's treatment plan.

(g) The home shall ensure that the following procedures for storage are followed:

1. Group homes, teaching family homes, and treatment homes shall keep all prescription and non-prescription drugs in a locked cabinet or container, or, as needed, in a locked box in a refrigerator. The home shall ensure that the keys to the locked cabinets, containers and locked boxes are adequately safeguarded and maintained by staff members and are kept out of the reach of the children;

2. Supervised transitional living homes shall keep prescription drugs in a cabinet or container, or, as needed, in a refrigerator;

3. All outdated stocks and prescriptions no longer in use shall be disposed of safely;

i. Liquid medication shall be poured down the drain, the bottles rinsed out and then disposed of in the trash; and

ii. Pills, tablets and capsules shall be flushed down the toilet before the bottle or packet is disposed of in the trash;

4. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone; and

5. Staff members shall have access to medical supplies at all times.

(h) In situations where the home determines that an adolescent is capable of self-administration of prescription birth control-related supplies, the home may allow the adolescent to maintain prescription birth control-related supplies amongst her personal possessions provided that the home:

1. Provides a locked cabinet or box for storage; and

2. Documents in the treatment plan the rationale and arrangements for the adolescent to maintain prescription birth control-related supplies.

10:128-7.5 Psychotropic medication

(a) The home shall not administer medication to children as a punishment, for the convenience of staff members or as a substitute for a treatment program.

(b) The home shall ensure that a pre-treatment clinical assessment, based on behaviors exhibited by the child and observed by staff members, is conducted by a licensed physician before psychotropic medication is prescribed. This pre-treatment clinical assessment shall include at least the following information:

1. A comprehensive drug history, including consideration of the use of all prescription and non-prescription drugs by the child as well

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as a history of cardiac, liver, renal, central nervous system or other diseases, a history of drug allergies and dietary information;

2. A laboratory work-up, including, but not limited to:

i. A complete blood count (If the medication prescribed requires routine follow-up blood work, this blood count test shall be administered prior to the child's beginning his or her medication regimen. If the medication prescribed does not require routine follow-up blood work, a new blood count test is not required as long as the child has had a blood count test within one year of admission, unless the physician determines otherwise);

ii. Urinalysis;

iii. Blood screening to include an assessement of liver and renal functions, if indicated; and

iv. Cardiogram (EKG) and electroencephalogram (EEG), as indicated, on children with previous histories of cardiac abnormalities or central nervous system disorders; and

3. A written description of:

i. Non-pharmacological interventions that were considered or attempted to address the child's behavior;

ii. The purpose of the medication, the specific behavior(s) of the child to be modified and ways in which progress towards the treatment objectives will be measured;

iii. The dosage; and

iv. How possible side effects will be monitored and reported to the physician who prescribed the medication.

(c) Within two weeks after admission, the home shall ensure that all children already receiving psychotropic medication receive a clinical assessment by a physician, as specified in (b) above.

(d) The home may waive the regulations for a pre-treatment clinical assessment and informed consent for psychotropic medication other than long-acting drugs if the treating physician certifies in the child's clinical record that an emergency exists.

1. The initial decision to administer emergency medication shall be based on a personal examination of the child by a physician.

2. The initial administration of emergency medication may extend for a maximum period of 72 hours.

3. A physician may authorize the administration of medication for an additional 72 hours upon determination that the continuance of medication on an emergency basis is clinically necessary. This authorization may be given by telephone, provided that it is countersigned by the physician and certified as to the necessity in the child's clinical record within 24 hours. If this medication is then deemed necessary for the child's treatment while in the home, the physician shall complete the pre-treatment clinical assessment as specified in (b) above.

4. The home's staff members shall document on a separate reporting form that the psychotropic medication was administered in an emergency situation. The documentation shall identify possible side effects to be monitored as described in (b)3iv above.

(e) Before administering psychotropic medication, the home shall obtain written informed consent from the child's parent(s) or legal guardian, and from all children 14 years of age and older unless the home documents that the child lacks the capacity for informed consent. In cases where both a parent and legal guardian exist, the home shall seek written informed consent from the legal guardian.

1. A physician, registered nurse or staff member trained in administering psychotropic medication shall obtain written informed consent.

2. The person requesting written informed consent shall ensure that parents, guardians and children are informed about:

i. The behavior or symptoms which the medication is intended to modify;

ii. The dosage; and

iii. How possible side effects of the medication will be treated.

3. When a request for written informed consent is made by a staff member, the staff member shall inform the parent that a physician is available for consultation regarding the proposed medication.

4. The home may obtain verbal informed consent by telephone from the child's parents when the home, physician, registered nurse or staff member is unable to obtain written informed consent, provided that:

i. The home documents the telphone call in the child's record; and

ii. The home obtains the written informed consent from the child's parents or legal guardian within 24 hours of receiving the verbal informed consent.

5. If the home cannot obtain written informed consent or verbal informed consent, the home shall use certified mail, return receipt requested, and shall send the request to the parent's or legal guardian's last known address at least 10 calendar days before the proposed date for the commencement of treatment. The written notice shall specify:

i. The proposed date for beginning of treatment; and

ii. That a failure to respond by the proposed date for the beginning of treatment shall empower the director, after consultation with the Division's case manager or other placing agency to grant consent for the medication.

6. The home shall document all methods for requesting written consent in the child's record.

(f) When a parent, legal guardian or child refuses or revokes consent for medication, the following procedures shall apply:

1. The treating physician or his or her designee shall speak to the child or the parent or both to respond to the concerns about the medication. This person shall explain the child's condition, the reasons for prescribing the medication, the benefits and risks of taking the medication, and the advantages and disadvantages of alternative courses of action;

2. If the child or parent continues to refuse or revokes consent to medication and the physician or his or her designee still believes that medication is a necessary part of the child's treatment plan:

i. The director of the home shall advise the child and the parent that the matter will be discussed at a meeting with the child's treatment team and shall invite the child and parent to attend such meeting;

ii. The director of the home may suggest that the child and parent discuss the matter with a person of their own choosing, such as a relative, attorney, physician, or mental health clinician;

iii. The treatment team shall meet to discuss the treating physician's recommendations and the response of the child or parent; and

iv. The treatment team shall attempt to formulate a viable treatment plan that is acceptable to the child and parent;

3. If, after the treatment team meeting, the child or parent continues to refuse or revoke consent to medication and the treating physician still believes that medication is a necessary part of the child's treatment plan, the home shall obtain an independent psychiatric review. The psychiatrist conducting this independent assessment shall review the child's clinical record, conduct a personal examination of the child, provide a written report for the child's treatment team, and, if the parent or child is refusing or has revoked consent to medication, speak with the parent or child, respectively; and

4. If the child or parent continues to refuse or revoke consent to medication, and the home feels that the child can not be adequately treated without the medication, the home may initiate an emergency discharge, as specified in N.J.A.C. 10:128-6.2(b) and 10.5.

(g) The home shall administer psychotropic drugs in the following manner:

1. Psychotropic medication shall be dispensed only by licensed pharmacists and prescriptions shall always be labeled to reflect the following information:

i. The name and address of the dispensing pharmacy;

ii. The full name of the pharmacist;

iii. The full name of the child;

iv. Instructions for use, including the dosage and frequency;

v. The prescription file number;

vi. The dispensing date;

vii. The prescribing physician's full name;

viii. The name and strength of the medication;

ix. The quantity dispensed; and

x. Any cautionary information appropriate to the particular medication;

2. The home shall encourage the self-administration of medication by properly trained and supervised children whenever their intellec-

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tual, emotional, and physical capabilities make such practice appropriate and feasible. The child's capability for self-administration of psychotropic medication shall be documented in the child's treatment plan; and

3. The home shall ensure that psychotropic medication is stored as specified in N.J.A.C. 10:128-7.4(e).

(h) The home shall ensure that all children receiving psychotropic medication are monitored in the following manner:

1. Staff members directly involved with the child shall record daily progress towards treatment objectives and observed side effects which are identified in the pre-treatment clinical assessment;

2. Staff members shall notify the prescribing physician immediately, when side effects are observed;

3. The home shall ensure that:

i. The physician or his or her designee reviews the child's status, behavior, well-being and progress towards treatment objectives, side effects and reason for continuing the medication every 30 days;

ii. The review is documented in the child's medical record; and

iii. The home informs the child, parents, legal guardian, the Division's case manager or other placing agency about the outcome of the review.

(i) The home shall ensure that any staff member involved in administering psychotropic medication receive the following training:

1. Indications for drug use; and

2. Therapeutic and side effects.

(j) The home shall record all information about a child's psychotropic medication, as specified in N.J.A.C. 10:128-7.4(d), and the home shall ensure that the child's medication record is available to the physician for review when additional medication is prescribed.

10:128-7.6 Health education and physical care for children

(a) The home shall ensure that children receive training in personal care, hygiene, and grooming habits.

1. The home shall discuss the physiological changes experienced during adolescence with children in the home.

2. The home shall instruct children about sexually responsible behavior including how to protect themselves from pregnancy and sexually transmitted diseases including AIDS.

3. The home shall instruct all children about the health consequences of smoking tobacco products, smokeless tobacco, alcohol and drug abuse.

(b) The home shall ensure that children are provided with the following:

1. Individual towels and washcloths;

2. Soap and toilet paper; and

3. Hygiene supplies that are age appropriate for their needs, such as toothpaste, mouthwash, deodorant, razors, shaving cream and feminine hygiene articles.

(c) For children unable to provide for their own personal care and hygiene, the home shall bathe and groom them, and provide other personal hygiene services that are necessary to meet their needs.

(d) The home may permit residents to maintain over-the-counter cosmetics, acne preparations and personal hygiene supplies among their personal possessions.

(e) The home shall take measures to ensure that each child has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.

1. The home shall ensure that each child's clothing is kept clean and in good repair; and the home may require children 13 years of age and older to do their own laundry.

2. The home shall not require children to wear any article of clothing that would explicitly identify them as a resident of the home.

10:128-7.7 Health requirements for staff

(a) Before working for a home, and every three years thereafter, each staff member who comes in contact with the children for the equivalent of eight hours a week or more shall submit a written statement from a licensed physician indicating that he or she is in good health and poses no health risk to persons at the home. Such statement shall be based on a medical examination conducted within the six months immediately preceding such person's association with the home.

(b) Within one year prior to or upon beginning work or having contact with the children for the equivalent of at least eight hours a week at the home, each staff member shall take a Mantoux tuberculin skin test with five TU (tuberculin units) of PPD tuberculin, except that the staff member shall have a chest x-ray taken if he or she has had a previous positive Mantoux tuberculin test. The staff member shall submit to the home written documentation of the results of the test or x-ray.

1. If the Mantoux tuberculin test result is insignificant (zero to nine millimeters (mm) of induration), no further testing shall be required. The Bureau, home or agency may at any time require a staff member to retake the Mantoux tuberculin test, if there is reason to believe or suspect that the staff member may have contracted tuberculosis or if the State Department of Health recommends retesting.

2. If the Mantoux tuberculin skin test result is significant (10 or more mm of induration), the individual shall have a chest x-ray taken. If the chest x-ray shows positive results, the home or agency shall require that the staff member obtain a written statement from a physician certifying that he or she poses no threat of tuberculosis contagion before allowing the staff member to come in contact with the children. The home shall ensure that the staff member adheres to the recommended follow-up testing, if any, by the physician.

3. The home or agency shall prohibit any staff member who fails to submit satisfactory results from having contact with the children at the home.

(c) The home shall maintain on file the results of each staff member's:

1. Mantoux tuberculin test or chest x-ray when indicated; and

2. Physician examination.

(d) The home or agency shall exclude a staff member who appears to be physically, emotionally or mentally impaired or who appears to have a drug-induced or alcohol-induced condition that would endanger the heath, safety and well-being of the children or other staff members. The home or agency shall document the action taken to exclude the staff member and maintain such documentation in the staff member's personnel record. The home or agency shall not permit the staff member to reassume duties until the condition is no longer present.

10:128-7.8 Environmental sanitation and staff hygiene

(a) Staff members shall use disposable rubber gloves, which shall be discarded after each use, when coming into contact with blood, vomit, urine, fecal matter or other body secretions.

(b) The home shall ensure that areas in the home, bedding, furniture, carpeting, and clothing, that come into contact with blood, vomit, urine, fecal matter or other body secretions are disinfected with a commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions.

(c) The following equipment items or surfaces shall be washed and disinfected after an incident, as specified in (b) above:

1. Toilet seats;

2. Sinks and faucets;

3. Mops that were used in the clean-up;

4. Washcloths, towels and sponges that were used in the clean-up; and

5. Thermometers.

SUBCHAPTER 8. TRANSPORTATION REQUIREMENTS

10:128-8.1 General requirements

(a) The provisions of this subchapter shall apply to any home or agency that provides or arranges transportation for children:

1. To or from their homes or other prearranged sites and the home; or

2. In connection with an activity (such as a field trip) conducted by or through the auspices of the home or agency.

(b) Any home, person or agency, as defined in (a) above, also shall comply with applicable provisions of New Jersey Division of Motor

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Vehicles law, pursuant to N.J.S.A. 39:1-1 et seq. and regulations promulgated thereunder, as specified in N.J.A.C. 13.

(c) The home or agency may authorize staff members to utilize their own private passenger vehicles to transport children from the home, to and from scheduled field trips or to transport children from the home to a hospital, clinic or office for medical treatment. However, staff members may be authorized to do so only if:

1. The vehicle has a capacity of eight or fewer persons;
2. The driver possesses a valid automobile driver's license issued by the New Jersey Division of Motor Vehicles, hereinafter referred to as the DMV;
3. The vehicle has a valid motor vehicle inspection sticker issued by DMV;
4. The vehicle owner possesses liability insurance at least at the minimum amounts required by the New Jersey State insurance law, pursuant to N.J.S.A. 17:28-1.1a;
5. The home maintains transportation records on every vehicle utilized for the above, as specified in N.J.A.C. 10:128-8.4; and
6. The home or agency ensures that the staff members apply the safety practices, as specified in N.J.A.C. 10:128-8.1(d) and (e).

(d) The home or agency shall ensure that all vehicles used to transport children:

1. Are maintained in clean and safe condition;
2. Have a maximum seating capacity that does not exceed the number of seat belts;
3. Have seats and back rests securely fastened;
4. Have all seats that are facing sideways or backwards bolted down;
5. Have seats upholstered with springs or foam rubber;
6. Have an operable heater capable of maintaining a temperature of 50 degrees Fahrenheit; and
7. Are equipped with:

i. A triangular portable red reflector device;
ii. All weather radials or snow tires from November 15 through April 1 (for New Jersey-based homes only); and
iii. A removable, moisture-free and dust-proof first-aid kit, which shall be located in the vehicle.

(e) The home or agency shall ensure that the following safety practices are followed:

1. A staff person is always present when an adolescent, child or infant is in the vehicle;
2. All passengers who are over one and one-half years of age are secured in an operable seat belt or car seat while the vehicle is in motion;
3. All passengers, who are one and one-half years of age or less are secured in car seats (child passenger restraint systems) that meet Federal motor vehicle safety standards in accordance with provisions of the New Jersey Motor Vehicles Law, pursuant to N.J.S.A. 39:3-76.2a;
4. All adolescents, children and infants are loaded and unloaded from the curbside of the vehicle; and
5. Children are not permitted to ride in the back or beds of trucks.

(f) When transporting more than six children below six years of age the home or agency shall ensure that one adult in addition to the driver remains in the vehicle.

(g) When transporting more than four infants without their adolescent mothers, the home shall ensure that one adult in addition to the driver remains in the vehicle.

(h) The home or agency shall maintain transportation records, as specified in N.J.A.C. 10:128-8.4.

(i) If the home decides to utilize a Type I School Bus, Type II School Bus or a Type II School Vehicle, the home shall:

1. Meet all appropriate Division of Motor Vehicles (DMV) rules, Department of Education rules and/or Department of Human Services rules; and
2. Ensure that the drivers of such vehicles possess a valid New Jersey Type I School Bus driver's license, or possess a valid New Jersey Type II School Bus driver's license, or an out-of-State equivalent license, as approved by the DMV.

(j) The home shall limit travel in program vehicles including cars, vans and wagon trains by:

1. Scheduling at least one full day of rest after every four days of travel;
2. Ensuring that no staff member drives for more than four hours without a 30-minute break; and
3. Prohibiting driving between 11:00 P.M. and 6:00 A.M., unless it is necessary to complete an emergency evacuation.

10:128-8.2 Vehicle insurance requirements

(a) The home or agency shall maintain vehicle liability insurance for bodily injury or death in minimum amounts of $300,000 per person and $500,000 per accident for every vehicle that is:

1. Owned or leased by the home or agency; and
2. Utilized to transport children residing in the home.

(b) If the home or agency contracts transportation services, the home shall ensure that the company maintains insurance coverage as identified in (a) above.

10:128-8.3 Additional requirements for transporting physically handicapped, non-ambulatory children

(a) Homes or agencies providing or arranging for transportation services for physically handicapped children who are non-ambulatory shall have a vehicle that has a ramp device or hydraulic lift with a lift minimum pay load of 600 pounds. Any ramp device that is installed shall:

1. Have a non-skid surface;
2. Be securely stored and protected from the elements when not in use; and
3. Have at least three feet of length for each foot of incline.

(b) If wheelchairs are used, the home shall ensure that:

1. All wheelchairs are securely fastened and face forward;
2. All wheelchair passengers are secured with a seat belt;
3. Arrangements for wheelchairs do not impede access to emergency and exit doors; and
4. Any aisle leading from a wheelchair position to the emergency or exit door has a minimum width of 30 inches.

10:128-8.4 Record requirements

(a) The home or agency shall maintain on file the following:

1. A photostatic copy of the driver's license of each person whom the home or agency has authorized to transport children;
2. A photostatic copy of the registration of each vehicle used to transport children;
3. A copy of the insurance policy for every vehicle owned, leased, contracted or utilized by the home or agency; and
4. The name and address of the lessor or contractor furnishing a vehicle to the home or agency, if relevant.

(b) The home or agency shall maintain transportation maintenance records for all vehicles used by the home for the transportation of children, including repair and inspection records, and shall retain them for the lifetime of the vehicles.

(c) The home or agency shall develop and maintain on file a log of all trips where the home's vehicles are used that documents:

1. The times each staff member drove;
2. The mileage covered; and
3. Incidents of the day.

SUBCHAPTER 9. ADVENTURE ACTIVITIES

10:128-9.1 General requirements

(a) The requirements of this subchapter shall apply to any home or any agency that provides or contracts for adventure activities that may include, but are not limited to:

1. Biking;
2. Canoeing, kayaking and tubing;
3. Caving;
4. Hiking;
5. Horseback riding;
6. Ropes and rock climbing;
7. Sailing and boating;
8. Snow skiing;
9. Solos;
10. Swimming;
11. Water skiing; and
12. Camping.

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(b) All homes whose program consists primarily of adventure activities shall maintain on file a written statement of purpose that shall identify the following:

1. The home's philosophy, goals, and objectives;
2. Characteristics of the children to be served;
3. Types of adventure activities that a child may participate in and other treatment services provided to the children, including those provided directly by the home and those services that may be provided in cooperation with community agencies or outside individuals;
4. Procedures for implementing those services; and
5. Criteria for successful completion of the program.

(c) For homes whose program consists primarily of adventure activities, the home shall describe to the child and the parents prior to admission to the facility, the types of adventure activities in which the child will be asked to participate. This discussion shall include:

1. An explanation of the anticipated benefits of the activity;
2. A description of the potential risks of the activity, as well as an explanation of how the facility will take precautions to minimize risks; and
3. A clear statement that no child will be forced to do an adventure activity against his or her will.

(d) For homes whose program does not consist primarily of adventure activities, the home shall discuss with the child and his or her parents the information specified above before the child is scheduled to participate in the activity.

(e) The home shall document that a staff member discussed the information specified in (c) and (d) above in the child's record.

(f) The home shall maintain on file at the home or home's administrative office a list of all children and staff members who participate in an adventure activity that occurs away from the grounds of the home.

(g) The home shall have a first aid kit available whenever an activity occurs off-grounds.

(h) The home shall ensure that all children and staff receive instruction about the value of the activity and necessary safety precautions, such as how to prevent dehydration, frostbite, heat exhaustion, hyperthermia, hypothermia, poisoning from plants and animals, sun poisoning, snow blindness, or drowning.

(i) The home shall not force or coerce a child to participate in any adventure activity, but may require a child to observe an adventure activity to assist the child in getting over his or her fears of a particular activity or to foster an interest in participating in a particular activity.

(j) The home shall ensure that staff members discuss the following topics with all the children who have participated in an adventure activity;

i. How they felt during and after the activity; and
ii. What they learned about themselves as individuals and members of a group after completing the activity.

(k) The home shall not engage in any activities requiring or involving firearms nor permit staff to have firearms.

(l) The home shall prohibit airborne activities including, but not limited to, hang gliding and parachuting.

(m) The home shall not permit children to use power tools unless the children are under direct supervision of staff.

(n) The home shall not allow children or staff to participate in manufacturer's tests of new adventure equipment.

(o) For all water and outdoor trips away from the grounds or campsites, the home shall obtain and maintain on file in the shift log or at the administrative office the information from a weather report issued by the National Weather Service no earlier than six hours before the trip and cancel the activity if there is a threat of a storm.

(p) The home shall also obtain and maintain on file in the shift log or at the administrative office the information from a report from the park service or other appropriate state or local agency that indicates that there is no life-threatening environmental hazard, such as fires, polluted water, threat of flash floods or avalanches.

(q) The home shall not engage in water activities where the water is known to have hazardous wastes, such as waters that have been contaminated by toxins, sewage or chemicals.

(r) The home shall ensure that all water in streams, ponds, lakes and rivers that is used for drinking, food preparation and dishwashing is first boiled, filtered or purified with iodine or tablets specifically designed to purify water.

10:128-9.2 Plans for emergency evacuation and search and rescue

(a) The home shall develop and maintain on file at the home or home's administrative office a written plan detailing procedures for emergency evacuation from any site used for adventure activities that is in a remote area or that is away from ordinary means of communication. This plan shall include, but not be limited to, the following:

1. Guidelines on how to determine dangerous weather conditions, such as storms, and life-threatening environmental hazards, such as fires, polluted waters, flash floods or avalanches;
2. Guidelines on how to determine whether a victim can walk out on his or her own power;
3. Guidelines for constructing a litter to carry out a child or staff member who cannot walk;
4. Procedures for evacuating all children and staff members.
5. Name, address and telephone number of local rescue squads, law enforcement agencies and hospitals, and guidelines for contacting them; and
6. Guidelines to determine whether the home needs a helicopter or other aircraft to assist with the emergency evacuation, if available.

(b) The home shall develop and maintain on file at the home or home's administratrive office a written plan detailing procedures for search and rescue for each activity that takes place outside the home's grounds. This plan shall include, but not be limited to, the following:

1. Guidelines on how to conduct a search to determine that a child is missing, including a time limit for ending the search and starting a search beyond the area being used for the adventure activity;
2. Procedures for completing a full description of the missing person;
3. Procedures detailing how to deploy staff and children to scout specific areas;
4. Procedures detailing how to deploy a rescue team that shall include a staff member to seek outside help;
5. Policy that indicates when to call law enforcement agencies and telephone numbers of local law enforcement officials; and
6. Procedures for reviewing the incident with the person(s) who conducted the search.

(c) For adventure activities occurring outside the home, the home shall ensure that each staff member supervising an adventure activity:

1. Reviews the plan detailing the procedures for emergency evacuation;
2. Reviews the plan detailing the procedures for search and rescue; and
3. Brings a copy of these plans on each adventure activity.

(d) The director of the home or his or her designee shall document and maintain on file at the home or home's administrative office that all emergency evacuation and search and rescue missions were reviewed within five days of the incident, and issue a statement to staff members indicating approval or recommendations for improving these practices, if applicable.

(e) For adventure activities occurring outside the home's grounds, the home shall give at least one staff member money or credit cards to handle emergencies.

10:128-9.3 Reporting requirements

(a) The home shall report all fatalities and all accidents requiring hospitalization or medical care by a physician to the Bureau as soon as staff have access to a telephone, as specified in N.J.A.C. 10:128-3.7(b).

(b) The home or agency shall provide written notification and maintain on file reports of all incidents and accidents requiring hospitalization or medical care by a physician, and incidents where an accident or fatality was avoided ("near miss") within five working days of the incident.

1. This documentation shall specify:

i. The factors leading to the incident;
ii. The nature of the fatality, accident or "near miss";
iii. How staff members handled the incident; and

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iv. Recommendations for avoiding such incidents in the future.

2. The director of the home or his or her designee shall document in writing and maintain on file that he or she reviewed every incident and accident within five working days after the incidents or accidents occurred.

3. The home shall send a written report within 10 working days of the incident or accident to the Bureau and to the child's parents about what precautions have been taken to prevent a similar kind of incident or accident from occurring in the future.

(c) The home shall submit a written description to the Bureau and permit an on-site inspection prior to its implementation of the following high risk adventure activities:

1. Caving;
2. Ropes and rock climbing; and
3. Solo camping.

(d) The home shall submit a written description to the Bureau prior to the implementation of the following medium risk adventure activities:

1. Canoeing, kayaking and tubing;
2. Water skiing;
3. Snow skiing; and
4. Boating and sailing.

(e) The written descriptions required in (c) and (d) above shall include, but not be limited to, the following information:

1. The types of equipment that will be utilized;
2. The qualifications of the staff who will be involved in implementing the adventure activity; and
3. The policies and procedures to ensure the safety of the children and staff during the adventure activity.

10:128-9.4 Biking

(a) Prior to implementing a planned biking trip that is off the grounds of the home or away from the neighborhood of the home, the home shall:

1. Obtain the necessary permits to ride on roads or highways from host states and local governments; and
2. Maintain on file at the home or the home's administrative office copies of these permits.

(b) The home shall prohibit all biking from taking place:

1. In inclement weather;
2. On roads with heavy traffic unless there is a wide shoulder;
3. After sunset and before sunrise; and
4. On mountains and off trails.

(c) The home shall ensure that all persons engaged in biking:

1. Wear helmets that are approved by the American National Standards Institute (ANSI) or the Snell Memorial Fund;
2. Ride in single file on the right side of the road;
3. Obey all traffic signs and signals;
4. Yield to traffic;
5. Are led by a staff person, with another staff person riding at the end of the group; and
6. Take a 30-minute break every two hours, or sooner when a child expresses a need for rest or when a child is injured or ill.

(d) The home shall ensure that the following equipment is brought on a biking trip:

1. A road map;
2. A bike repair kit; and
3. A water bottle for each child and staff member, unless the itinerary provides access to potable water.

(e) The home shall ensure that all bikes are locked at night to deter children from running away or having the bikes stolen.

(f) Before starting a trip and every day of the trip thereafter, the home shall ensure that all bikes have:

1. Brakes that are in good working order;
2. Tires with treads and sufficient air;
3. Handlebars that are no more than 16 inches above the seat so that the biker can sit comfortably;
4. Pedals with treads that are a distance of 3½ inches or more from the front wheel or fender; and
5. Reflectors in the front, rear, pedals and spokes.

10:128-9.5 Canoeing, kayaking, and tubing

(a) The home shall ensure that all staff members and children:

1. Wear Personal Flotation Devices (PFD) (life jackets) rated Class I, II, or III by the U.S. Coast Guard; and
2. Never stand up in the canoe, kayak or tube, unless the children are in a confined area for staff supervised activities.

(b) The home shall ensure that life jackets are not used for seating or bedding.

(c) The home shall ensure that:

1. At least two staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or other appropriate authority;
2. Children and staff members wear footwear that is secured to their feet, unless the activity occurs on a lake with a sandy bottom and no rocks; and
3. All children and staff members stay away from debris and any trees that have fallen across the river and carry the canoe, kayak or tube along the riverbank past the debris or fallen tree, if necessary.

(d) The home shall prohibit canoeing, kayaking, and tubing:

1. At night;
2. In the open ocean; and
3. During electrical storms.

(e) The home shall ensure that the following equipment is brought along:

1. One spare life jacket for every 12 persons; and
2. Throw lines.

(f) For canoeing and kayaking, the home shall ensure that:

1. Each canoe and kayak has flotation at either end;
2. Each canoe and kayak has an extra paddle;
3. All equipment is secured;
4. Spray covers, if used, release promptly; and
5. The water temperature is 55 degrees Fahrenheit or higher unless a wet suit is provided to each child and staff member.

(g) For canoe or kayak trips in water with rapids rated Class III and IV on the International Scale of River Difficulty (hereafter referred to as the ISRD) developed by the American Canoe Association, the home shall ensure that:

1. All children and staff have completed at least three trips on water with rapids rated as Class I or II by the ISRD;
2. All children and staff wear helmets that are tied under the chin; and
3. For trips in water with rapids rated Class IV, all staff and children can do an Eskimo roll, as defined by the American Canoe Association.

(h) The home shall not take children on water with rapids rated Class V or VI on the ISRD.

(i) For tubing, the home shall prohibit trips when the water is:

1. Less than 55 degrees Fahrenheit; and/or
2. Rated above Class I on the ISRD.

10:128-9.6 Caving

(a) The home shall ensure that:

1. No child or staff member who is claustrophobic is taken on a caving trip;
2. All children and staff members wear helmets that are tied under the chin at all times;
3. At least three-quarters of the children on the caving trip are 12 years of age or older;
4. Children wear gloves if crawling is required;
5. Children have had at least two caving expeditions in horizontal caves before going into a vertical cave;
6. Children do not climb in vertical caves by hand-over-hand ropes methods;
7. Children and staff members do not run or jump in the cave;
8. All debris and human waste are carried out of the cave;
9. Animals and plants are left unharmed;
10. No marking or vandalism is done within the cave by children or staff members.

(b) The home shall ensure that at least one staff person on the trip:

1. Knows how to contact a local emergency rescue squad, such as the Cave Rescue Communications Network;

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2. Is familiar with the terrain of the cave;
3. Carries a map of the cave, if available; and
4. Knows how to assist a child or staff member who becomes claustrophobic.

(c) For non-commercial caves, the home shall obtain written permission to enter the cave from the owner or public authority and maintain this on file for two years from the date of the expedition at the home or home's administrative office.

(d) The home shall ensure that the following equipment is brought along on all non-commercial caving expeditions:
1. A space blanket;
2. A whistle;
3. Three sources of light, one of which is either carbide, electric or a miner's headlamp;
4. Waterproof matches;
5. Potable water;
6. Climbing rope;
7. Emergency food; and
8. Spare clothes.

10:128-9.7 Hiking

(a) The requirements of this section apply for all walks or hiking expeditions in remote areas that are away from ordinary means of communications.

(b) The home shall ensure that:
1. At least two staff persons carry and know how to use a compass;
2. A first aid kit is brought along that includes treatment for snake, animal and insect bites, and treatment for the ingestion of or contact with poisonous plants;
3. All children and staff wear footwear appropriate for hiking;
4. No child or staff member carries a pack weighing more than 45 percent of his or her body weight; and
5. No child or staff member is allowed to destroy the environment.

(c) The home shall ensure that each child and staff member has access to potable water.

10:128-9.8 Horseback riding

(a) The home shall ensure that all staff members and children who go horseback riding wear shoes or boots that have heels, long trousers, and approved protective head gear that is fastened under the chin.

(b) The home shall ensure that:
1. The horse is tame and can be ridden by a novice rider;
2. Two or more persons do not ride a horse at the same time;
3. The time a horse spends in ring riding is limited to a total of six hours a day, with no more than three hours of riding without at least a 15-minute break; and
4. The time a horse spends in trail riding is limited to a total of eight hours a day, with no more than four hours of riding without at least a 15-minute break.

(c) The home or agency shall provide written documentation for horses that they own that the horses are:
1. Checked daily, including the mouth;
2. Checked daily for cracked feet and reshod as necessary;
3. Fed at least once a day or according to a specified feeding schedule; and
4. Given water at least once a day or according to a specified watering schedule.

(d) The home shall retain on file at the barn housing the horses or at the home or the home's administrative office documentation of compliance with the requirements specified in (c) above.

(e) Homes that rent horses for horseback riding shall verify that the stables meet all the requirements specified in (c) above prior to utilizing their services.

10:128-9.9 Ropes initiatives and rock climbing

(a) The home shall ensure that staff members:
1. State the objectives of the ropes course or climbing trip to the children;
2. Emphasize the importance of safety procedures of each initiative to the children before starting the activity;
3. Allow each child to decide whether or not to participate in a ropes course;
4. Inspect the ropes before each group of children uses them; and
5. Demonstrate effective observation ("spotting") and how one is secured by a rope ("belayed").

(b) The home shall prohibit:
1. Smoking near the ropes;
2. The wearing of jewelry, loose clothing and hair, and eyeglasses that are not fastened;
3. Unsafe practices including, but not limited to, solo climbing, hanging upside down, diving head first, throwing people or overstraining; and
4. The activity known as the "electric fence", in which a rope is attached to trees or poles and suspended four feet from the ground in a circle, and children standing inside the rope are expected to get out without touching the rope or passing under the rope.

(c) The home shall ensure that persons on a high rope or rock climbing activity:
1. Are individually secured with an approved rope, or "belayed"; and
2. Wear helmets that are fastened under the chin.

(d) The facility shall document and maintain on file at the site of the ropes course or at the home or the home's administrative office that all ropes are:
1. Approved by the Union International Alpine Association (UIAA);
2. Visually inspected by the staff before use and discarded if the rope appears frayed or damaged; and
3. Logged for use and retired at four years from the date of purchase or after the rope has sustained the number of falls that the manufacturer's label indicates that the rope can sustain.

(e) The home shall ensure that all carbiners that are used to secure belay ropes are constructed of steel or a metal of equal strength and hardness, and have a locking gate.

10:128-9.10 Sailing and boating

(a) The home shall ensure that all sailing vessels and motor boats used by children and staff comply with all applicable Federal, State and local laws.

(b) The home shall develop and have on file at the home or home's administrative office a plan for each boating activity specifying:
1. A description of boat and engine, if relevant;
2. The names of all persons on board;
3. The survival equipment on board; and
4. The itinerary and phone number of the closest Coast Guard station.

(c) The home shall ensure that at least one staff person has completed a boating course offered by the U.S. Coast Guard Auxiliary, U.S. Power Squad, American Red Cross, or the equivalent.

(d) The home shall ensure that the following non-commercial boats have a current decal indicating a satisfactory rating on a courtesy inspection by the U.S. Coast Guard Auxiliary:
1. For motor boats, 12 feet to 65 feet; and
2. For sailboats, 16 feet to 65 feet.

(e) For sailboats and motor boats less than 16 feet, the home shall ensure that there is a throw line and a Personal Flotation Device (PFD) rated Class I, Class II or III by the U.S. Coast Guard on board for every passenger.

(f) The home shall prohibit sailing and boating outside U.S. coastal waters.

(g) The home shall ensure that all marine heads (toilets) are certified by the U.S. Coast Guard of a type authorized for the area where the boating will occur.

10:128-9.11 Snow skiing

(a) The home shall not permit skiing in areas known to have avalanches or in temperatures below zero degrees Fahrenheit.

(b) The home shall ensure that staff:
1. Are familiar with the terrain; and
2. Carry a ski repair kit when skiing in remote areas.

(c) The home shall ensure that all children and staff members use ski equipment that is appropriate for each person's height, weight and ability and that bindings are secure.

(d) The home shall ensure that all children and staff wear appropriate clothing, gloves and eye protection.

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10:128-9.12 Solo (solitary activities)

(a) The home shall ensure that children freely consent to do a solo, defined as a camping experience where a child is living away from direct supervision of staff, and shall not coerce or force the children to do a solo.

(b) The home shall:

1. Limit solos to a maximum 72 hours;

2. Ensure that children know the boundaries of the solo activity; and

3. Prohibit children from making fires and from rock climbing.

(c) The home shall ensure that children receive the following equipment.

1. A whistle to signal for help;

2. Shelter such as a tent or tarpaulin;

3. Three liters of water a day;

4. Food sufficient for three meals a day; and

5. At least one change of clothes appropriate for the weather.

(d) The home shall ensure that staff:

1. Communicate with the child at least twice a day by whistle, radio or other means to check on his or her safety and document all contacts in the shift log; and

2. Are available to provide face-to-face contact and care immediately if a child requests attention from staff.

(e) The home shall not allow children to do a solo in areas with bodies of water higher than four feet or in areas having rivers or streams with a strong water current.

10:128-9.13 Swimming

(a) A home using off-grounds swimming facilities that are not public recreational bathing facilities shall ensure that at least two of the required staff members have a lifesaving or lifeguarding certificate issued from an organization that is recognized by the New Jersey State Department of Health or out-of-State health department or other appropriate authority.

1. Whenever more than 10 children are swimming, the home shall ensure that at least one lifeguard remains out of the water and is located in a position where he or she can observe all swimmers.

2. No staff member shall assume lifeguarding responsibility for more than three hours without a break.

(b) The home shall prohibit swimming:

1. At night time;

2. Under docks; and

3. When the water temperature is less than 55 degrees Fahrenheit.

(c) The home shall test each child's swimming ability. If a child cannot swim 100 feet, tread water for three minutes and swim under water for 10 feet, the facility shall ensure that the child wears a life jacket whenever he or she is in water over four-and-one-half feet deep, unless under direct supervision for swimming instruction. The home shall ensure that the life jacket:

1. Indicates a Class I, Class II, or Class III Personal Flotation Device (PFD) rating by the U.S. Coast Guard; and

2. Is never used as a cushion for sitting or kneeling at any time.

(d) The home shall provide staff members with the following equipment:

1. A whistle; and

2. A ring buoy with rope.

10:128-9.14 Water skiing

(a) The home shall ensure that:

1. No water skiing occurs after sunset or before sunrise;

2. The water skier wears a Personal Flotation Device (PFD) rated class II or III by the U.S. Coast Guard;

3. A staff member or responsible child other than the boat driver sits in the boat and acts as an observer of the water skier;

4. There is one staff member for every six additional children on the dock or on land; and

5. The motor boat used for water skiing meets all of the regulations as specified in N.J.A.C. 10:128-9.10.

10:128-9.15 Camping.

(a) The home shall obtain and maintain on file at the home or home's administrative office all permits, certificates or licenses that are required by the host State and local governments before using a campsite.

(b) The home shall ensure that all campsites it utilizes are located in areas that are well-drained and free of observable seepage.

(c) The home shall ensure that all tents, teepees and canvas on covered wagons are:

1. Made of fire retardant material; and

2. Made of waterproof material that have seams that are coated to resist water.

(d) The home shall ensure that cabins, tents, teepees and covered wagons when used for sleeping provide:

1. At least 20 square feet per person;

2. At least 30 inches between beds and sleeping bags;

3. At least six feet between heads of sleepers; and

4. Cross ventilation.

(e) The home shall prohibit smoking of tobacco products and cooking in all tents, teepees, and covered wagons whether used for sleeping quarters or for purposes other than sleeping.

(f) The home shall ensure that male and female children do not sleep in the same quarters.

(g) If the home uses sleeping bags instead of beds or bed linens, the home shall ensure that sleeping bags are:

1. Flame resistant;

2. Aired at least every five days and cleaned at least once a month and more often if necessary;

3. Sufficient for the temperatures where the sleeping bags will be used, as indicated by the manufacturer's label; and

4. Placed on a mat or padding when the air temperature at night is below 35 degrees Fahrenheit.

(h) If the home uses bunk beds, the home shall ensure that bunk beds:

1. Have railings on top bunks that are no more than 3½ inches from the top of the bed frame;

2. Have mattresses that are at least five inches from the top of the railing; and

3. Are limited to two in height.

(i) If the home uses latrines instead of toilets, the home shall ensure that all latrines:

1. Provide for privacy;

2. Are dug at least six feet deep; and

3. Are at least 100 feet from the campsite and bodies of water.

(j) The home shall ensure that there is one latrine for every 10 persons.

(k) Homes using cabins, tents or teepees for over seven continuous days shall ensure that:

1. There is one shower or bathtub for every 10 children and staff members;

2. The children have access to bathing facilities every day during normal waking hours; and

3. The children have privacy when bathing.

(l) Homes that camp overnight for seven or fewer continuous days shall ensure that children have access to bathing facilities or are provided with other means of maintaining personal hygiene. These may include, but are not limited to, wet towels and dry shampoo.

(m) Whenever regular plumbing facilities are not available for bathing or washing, the home shall:

1. Ensure that all washing is done with biodegradable non-detergent soap; and

2. Prohibit all washing and bathing in lakes, rivers and streams.

10:128-9.16 Requirements for wagon trains

(a) The home shall ensure that the canvas and wheels are in good repair.

(b) If horses are used, the home shall ensure that the requirements regarding the care of horses, as specified in N.J.A.C. 10:128-9.8 are met.

(c) If animals other than horses are used, the home shall:

1. Limit travel to 10 hours a day;

2. Water the animals at least every four hours;

3. Develop and maintain on file a feed plan; and

4. Check the animals daily for broken hooves and bones.

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10:128-9.17 Health and sanitary practices

(a) The home shall ensure that each child has a health examination performed by a licensed physician that documents:

1. That the child can perform each type of adventure activity that he or she will be asked to do;

2. Receipt of a tetanus shot;

3. Notation of asthma, allergies or dietary needs; and

4. Notation of whether the child is on medication that would require the child to avoid using sunscreen and/or to take other special precautions.

(b) Within 30 days of a child's participation in an adventure activity, the home shall document in writing and maintain on file in the child's record that the child's current health status allows the child to engage in the specified adventure activity.

(c) The home shall develop and give to each staff member a written policy for treating:

1. Snake, animal and insect bites; and

2. Ingestion of, or contact with poisonous plants.

(d) The home shall ensure that all perishable food is refrigerated at a temperature of 45 degrees Fahrenheit or lower.

(e) The home shall ensure that all non-disposable utensils used for eating and preparing food are:

1. Not used by another person before rewashing;

2. Washed and rinsed in water that is at least 180 degrees Fahrenheit or water that has been sanitized chemically; and

3. Free of cracks.

(f) The home shall ensure that all water in streams and lakes that is used for drinking, food preparation and dishwashing is boiled, filtered or purified with iodine or tablets specifically designed to purify water.

(g) The home shall corral or tie the animals other than household pets in an area located at least 50 feet from any area where food is prepared, cooked or served.

(h) The home shall:

1. Use fly repellants as necessary;

2. Remove manure daily to a distance of at least 100 feet from the campsite, cooking and dining areas; and

3. Dispose of animal wastes through burial in a sanitary manner.

10:128-9.18 Qualifications for staff supervising adventure activities

(a) The home shall comply with relevant State regulations specifying criminal disclosure or fingerprinting, academic credentials, and years of experience for the director, social service staff, and direct child care staff as specified in N.J.A.C. 10:128-5.1 and 5.2.

(b) For all water activities, ropes initiatives and rock climbing, the home shall ensure that at least one staff person is certified by an organization with recognized expertise in the applicable activity.

(c) For land activities other than ropes initiatives and rock climbing, the home shall ensure that at least one staff member:

1. Is certified; or

2. Has had at least one year's experience and demonstrated skill in the adventure activity for which he or she will be supervising children.

(d) The home shall ensure that for each adventure activity there are at least two staff members present who are certified in first aid and cardiopulmonary resuscitation (CPR).

10:128-9.19 Staff to child ratio requirements

(a) When children are engaged in an adventure activity, the home shall ensure that:

1. There are at least two staff members present when two or more children are engaged in an adventure activity; and

2. If more than 12 children are involved, there is one staff member for every additional six children.

(b) For purposes of determining whether a required staff ratio is met, only those staff members who are providing direct care and supervision of the children shall be counted. These staff members may be regular staff members or adventure staff members.

10:128-9.20 Special requirements for communication and visiting

(a) The requirements in this section apply only to homes that:

1. Are located in areas that are remote or away from ordinary means of communication; or

2. Use travel, including, but not limited to, backpacking, sailing or a wagon train.

(b) The home shall permit family members, the Division's case manager or other placing agency to visit the child where he or she is currently living and shall provide comfortable inside space when the weather prohibits outside visitation.

1. The home shall provide privacy for all visits between the child, the Division's case manager or other placing agency.

2. The home shall provide privacy for family visits unless the home documents in the child's record that the child would be at risk during a private family visit.

(c) The home shall develop and maintain on file in the home or home's administrative office plans and procedures to ensure that a child:

1. Can receive an emergency message from his or her family and from the Division's case manager or other placing agency within 24 hours of the family member's or the Division's case manager or other placing agency's contacting the home or home's administrative office;

2. Is given necessary postage to send mail to family members, the Division's case manager or other placing agency; and

3. Can receive mail from his or her family and the Division's case manager or other placing agency on a weekly basis.

(d) The home shall permit the child to make private telephone calls to the Division's case manager or other placing agency, upon request.

(e) The home shall permit children to make a free telephone call to a family member at least every other week.

1. The home may impose a time limit of 15 minutes on telephone calls made by children to family members.

2. The home may require children to telephone family members at off-peak times.

3. The home shall not use electronic devices to monitor children's telephone calls to family members, but may observe their reaction during the telephone call.

4. The home shall maintain documentation that children were permitted to make free telephone calls to family members. Such documentation may include but is not limited to copies of telephone bills or notes in logs.

(f) The home shall not prohibit a child from receiving messages or mail or from making bi-weekly monthly telephone calls as a consequence for misbehavior.

(g) The home shall explain its policies and procedures to all families and children upon admission and give parents a written explanation of the policy for visiting and communication. This explanation shall include the procedures for sending emergency messages and mail.

SUBCHAPTER 10. SERVICES FOR PREGNANT AND PARENTING ADOLESCENTS

10:128-10.1 General requirements

(a) Any home or agency that provides services to pregnant adolescents and adolescent parents caring for their children shall meet all requirements of this subchapter and all applicable requirements of subchapters 1 through 9 of this manual (N.J.A.C. 10:128-1 through 9).

(b) The home or agency shall provide services that include, but are not limited to the following:

1. Services regarding paternal involvement;

2. Services to the adolescent's family;

3. Parenting education;

4. Infant stimulation;

5. Health education and physical care of the adolescent mothers and infants;

6. Nutrition; and

7. Life skills development.

(c) The home shall provide the following indoor space:

1. A private place where adolescents can store their belongings and those of their infant and shall provide the adolescents access to this place at all times;

2. Sufficient space to accommodate tables and chairs for all adolescents and on-duty child care staff to eat meals together;

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3. Adequate space for the implementation of treatment services including individual counseling sessions, parent training sessions, family counseling sessions and case management planning meetings; and

4. The following additional floor space:

i. At least 70 square feet for the first occupant of a bedroom and 50 additional square feet for each additional occupant. The home shall not allow more than four occupants, including adolescents and/or infants, to sleep in the same bedroom; and

ii. For each adolescent and infant, at least 35 square feet of common living space, defined as those areas that adolescents and infants can use for socializing or recreation during waking hours. The dining area shall not be included in determining compliance with this requirement, unless the dining area is accessible to adolescents and infants outside of meal time.

(d) The home shall maintain all indoor areas in a safe and sanitary manner by ensuring that:

1. There are no poisonous plants;

2. Any corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can, and any toxic substance are stored in locked cabinets or enclosed in areas not accessible to infants;

3. All electrical outlets accessible to infants have protective covers;

4. All fluorescent tubes and incandescent light bulbs have protective covers or shields;

5. All windows and other glass surfaces that are not made of safety glass and that are located within three feet above the floor shall have protective guards unless the home does not provide services to ambulatory infants or toddlers;

6. Staff has access to any bedrooms that the adolescents are allowed to lock;

7. Non-permanent safety barriers (safety gates) are installed to prevent infants from falling if the home has stairs, ramps, balconies, porches or elevated play areas;

8. Materials and furniture for indoor and outdoor use are of sturdy and safe construction, easy to clean and free of hazards that may be injurious to adolescents and infants;

9. Infants are kept away from hot stoves, irons and ironing boards, knives, glassware and other equipment that may cause injury; and

10. Poisons, insect traps, and rodent traps are kept out of the reach of infants.

(e) The home shall maintain all outdoor areas in a safe and sanitary manner by ensuring that:

1. Non-permanent safety barriers (safety gates) are installed to block steps used by infants, unless the steps are blocked by a door;

2. Snow is removed from sidewalks and from the walkways and paths leading to the entrances and exits of the home:

i. Within 24 hours of cessation of snowfall; or

ii. According to local ordinance; and

3. All drains and wells have protective coverings.

(f) The home shall provide a crib for each infant under 18 months of age but may allow infants to sleep in a playpen or on a mat at least one-inch thick on the floor for naps during the daytime.

(g) The home shall provide a crib or bed for each infant 18 months of age or older.

(h) The home shall ensure that:

1. Crib and playpen slats are no more than 2⅜ inches apart;

2. Crib, bed and playpen mattreses are fire retardant;

3. The top rails of the crib or playpen are at least 19 inches above the mattress;

4. Any locks or latches on the dropside of a crib are safe from accidental release;

5. The mattress used in all cribs and playpens fits snugly;

6. Each infant has sheets, blankets and other coverings for his or her exclusive use, which are:

i. Immediately replaced when wet, soiled or damaged; and

ii. Laundered at least once a week;

7. Cribs and playpens are free of hazards including, but not limited to, use of mobiles (for infants six months of age or older) and excessive toys; and

8. Beds or cribs not used solely for a specific infant shall have linens and blankets replaced with clean linens and blankets before each use.

(i) The home shall provide beds for all adolescents.

(j) The home shall prohibit use of bunk beds for pregnant adolescents, adolescent mothers and infants.

(k) The home shall not use lead paint on and shall remove lead paint from any interior or exterior surfaces of a building, or on any furniture, toys, or other equipment used therein if deemed hazardous by a governmental agency, as specified in N.J.A.C. 10:128-4.

10:128-10.2 Staff and staff ratio requirements

(a) The home shall only employ staff members who are at least 21 years of age.

(b) Homes may use student interns and volunteers to support the activities of regular paid staff members. However, student interns and volunteers below the age of 21 years shall not be permitted to provide activities or transportation by themselves.

(c) Homes that serve three or more pregnant or parenting adolescents shall have at least one staff person who is certified in first aid and cardiopulmonary resuscitation (CPR), as defined by a recognized health organization (such as the American Red Cross) in the home during periods of operation.

(d) Treatment homes serving one or two adolescents shall have a child care staff member or house parent on duty whenever an adolescent or infant is present in the home.

1. When a treatment home serves two adolescents who together have five or more infants, the treatment home shall have at least two child care staff members or house parents to provide direct supervision when all adolescents and all infants are present in the home.

2. If five or more infants are present in the treatment home without their mothers, the treatment home shall provide at least two staff members or house parents to care for the infants.

(e) Homes serving three or more adolescents shall have a minimum of two staff on duty at all times. Once this minimum is met, the following staff ratios shall be used to determine staff ratio requirements for the actual member of adolescents and infants present in the home:

Adolescents and/or Infants Present in the Home	Staff Ratio Requirement
Waking Hours—Infants only	1 staff: 4 infants
Waking Hours—Adolescents only	1 staff: 6 adolescents
Waking Hours—Adolescents and their infants	1 staff: 6 residents
Sleeping Hours—Adolescents with or without infants	1 staff: 6 residents

(f) A home may permit an adolescent to care for another adolescent's infant if the following conditions are met:

1. The adolescent who is assuming the care of another adolescent's infant cares for no more than one other infant in addition to her own at any one time;

2. The adolescents discuss the expectations of the caregiver, including duration of child care, infant's nutritional and toileting needs, and whether the mother will make arrangements for compensation; and

3. The home documents approval of the arrangement, including how these arrangements will protect the health and well-being of both infants.

10:128-10.3 Staff development and training

(a) Upon employment, the home shall document in each staff member's personnel record that each staff member received instruction in:

1. The home's statement of purpose; and

2. Protocols for dispensing medication.

(b) The home shall develop, document, and maintain on file a training plan to ensure that the director, social service worker(s) and child care staff receive a total of at least 24 hours of training each

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year that includes at least one hour of training in each of the following topics:

1. Recognizing and reporting child abuse and neglect;
2. Evacuating the facility;
3. Infant and adolescent growth and development;
4. Discipline of adolescents and infants;
5. Infant care and stimulation;
6. Drug and alcohol abuse;
7. Human sexuality and AIDS prevention; and
8. Depression and suicide prevention.

(c) The home's training plan may include in-depth discussions at staff meetings, or attendance at workshops and/or attendance at conferences.

(d) The home may train staff in evacuating the facility, infant care and development, infant discipline, drug and alcohol abuse, and human sexuality and AIDS prevention by including staff in instructional programs attended by the adolescents.

10:128-10.4 Case management requirements

(a) The home shall develop, implement and maintain on file a written case management plan for each adolescent and her infant.

(b) The home shall form a case management planning team that is responsible for the development of a case management plan for each adolescent and infant. The team shall consist of each of the following:

1. Staff members representing the clinical or social work component;
2. Staff members representing the child care component;
3. Staff members representing the administration of the home, if necessary;
4. Representatives from the adolescent's responsible school district and/or current school district, if necessary;
5. A representative from the Division or other placing agency;
6. The adolescent's family, if applicable; and
7. The infant's father or paternal relatives, if applicable.

(c) The home shall document in the adolescent's and infant's record that the Division's case manager or other placing agency representative, the adolescent's therapist, parents or legal guardian, and the responsible or current school district, if applicable, were invited to participate as members of the case management planning team and in all subsequent revisions of the plan.

(d) The home shall develop the initial case management plan within 30 calendar days following an adolescent's and/or her infant's admission and shall review or revise the plan at least every three months thereafter.

(e) The case management plan shall include the following information:

1. The name of the adolescent, and infant, if relevant;
2. The date of admission of the adolescent, and infant, if relevant;
3. The date when the plan is developed or revised;
4. The names and titles of all persons attending the development and review meeting;
5. The adolescent's plan for and receipt of medical and dental care;
6. The infant's plan for and receipt of medical care, and dental care if the infant is three years of age or older;
7. Documentation that a referral to the Supplemental Feeding Program for Women, Infants, and Children (WIC) was made and that any necessary follow up was done, or documentation that the adolescent or infant was ineligible for WIC;
8. The adolescent's social, familial, emotional and behavioral strengths and weaknesses;
9. An assessment of the infant's father's interest in the child, including a notation of whether the infant's paternity has been legally established;
10. An assessment of the adolescent's parenting capabilities including but not limited to the adolescent's ability to feed and play with her infant, provide for her infant's grooming, provide medical care, and use child care responsibly, if applicable;
11. An assessment of the adolescent's academic progress, including a report of attendance and grades obtained within 30 calendar days of the case planning meeting;
12. An assessment of the health and development of the infant, including available developmental assessments from health examinations;
13. Specific treatment goal(s) in each program area and a projected time frame for completing each goal;
14. The name of the person responsible for the implementation of each treatment goal;
15. Techniques to be used to achieve each treatment goal;
16. Criteria to be used to determine whether each treatment goal is achieved;
17. A notation of progress made from any previous plan;
18. Efforts to achieve timely discharge, including but not limited to services needed by parents or other persons to whom the adolescent will be discharged; and
19. Documentation of how the adolescent is being prepared for self-sufficiency. This documentation shall include but not be limited to instruction in:

i. Food preparation, including participation in preparing at least one meal a week and training in food shopping at least once a month;

ii. Budgeting and money management, including but not limited to discussion of standard deductions from a paycheck, costs for housing and transportation and how to open and use a savings and checking account; and

iii. Career planning and job training, including but not limited to discussion of entry level requirements for job openings in the community and assistance in obtaining the qualifications for these positions.

(f) The home shall send to the Division's case manager or other placing agency a copy of the case management plan and any revisions to it within 30 calendar days after the planning meeting and retain a copy of the correspondence in the adolescent's and infant's record.

(g) The home shall explain to the adolescent, her parents, and all persons responsible the adolescent's and infant's case management plan and any revisions to it. If the home does not explain the adolescent's and infant's case management plan to the adolescent's parents, the home shall document in the adolescent's case record the reasons that the plan was not explained to the parents.

(h) The home shall provide and monitor all services specified in the case management plan and document the rationale for any deviations from the most recent case management plan in the adolescent's and infant's record.

(i) When an adolescent mother expresses interest in surrendering her infant for adoption, the home shall:

1. Explain to the adolescent mother the implications and process of adoption;
2. Notify the Division's case manager or other placing agency;
3. Notify the adolescent's parent or legal guardian, if applicable; and
4. Provide the adolescent with information in order to contact legal counsel if she so chooses.

10:128-10.5 Discharge planning requirements

(a) For discharges that can be anticipated at least 30 calendar days ahead of time, the home shall develop a plan with the Division's case manager or other placing agency at least 30 calendar days before the adolescent's or infant's discharge. The plan shall specify the following information:

1. The date of admission;
2. The anticipated date of discharge;
3. Details of the events and circumstances leading to the decision to discharge;
4. The name and address of the individual or agency to whom the adolescent or infant will be discharged and the rationale for planning a discharge to that individual or agency;
5. An assessment of the adolescent's continuing needs including, but not limited to, consideration of health care, behavior management and educational or vocational training; and
6. An assessment of the infant's continuing needs including, but not limited to, consideration of health and child care and referral to the Supplemental Feeding Program for Women, Infants and Children (WIC).

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(b) For discharges that were not anticipated at least 30 calendar days ahead of time, the home shall send the Division's case manager or other placing agency a written plan at least 10 working days prior to the adolescent's or the infant's discharge. This plan shall specify the following information:

1. The date of admission;
2. Details of the events and circumstances leading to the discharge;
3. Efforts made to locate a runaway, if relevant;
4. An assessment of the adolescent's continuing needs including, but not limited to, health care, behavior management and educational and vocational training;
5. An assessment of the infant's health and child care needs, if relevant; and
6. Recommendations for providing follow-up services in the adolescent's or infant's new environment, including consideration of whether the adolescent or infant would be eligible for WIC.

(c) For emergency discharges that result in the immediate placement of the adolescent or infant in a facility such as a detention center, hospital, psychiatric facility or any other placement outside the home, the home shall notify the Division's case manager or other placing agency by the next working day by telephone. The home shall send a written discharge plan within 10 days after the adolescent's or infant's discharge. This plan shall specify the information outlined in (b)1 through 6 above.

10:128-10.6 Services regarding paternal involvement

(a) The home shall explain to the adolescent mother:

1. The benefits of establishing paternity for her infant and her options for establishing paternity;
2. How to establish paternity of the infant, including:

i. Clarification that naming a father on her infant's birth certificate does not establish paternity unless she is or was married to the infant's father; and

ii. Information about the procedures for establishing paternity;

3. How to deal with future questions her infant may have about his or her father;
4. How to manage visitation arrangements between her infant and the infant's father; and
5. That establishing paternity is not a condition for remaining in the home.

(b) The home shall discuss the topics specified in (a) above in individual or group meetings with adolescent mothers and assist the adolescent in establishing paternity if she so requests. These individual or group meetings shall be held:

1. Weekly for homes that discharge the adolescents soon after they deliver; and
2. At least monthly for homes that continue to provide services to the adolescents and their infants after delivery.

(c) When the infant's father is known and the adolescent mother agrees, the home shall attempt at least two in-person contacts with him within two months of the adolescent's admission to the home to discuss his interest in his child.

1. If the father does not respond to initial contacts made by the home, the home shall send a certified letter to all known addresses where the father may be residing indicating the home's interest in discussing his involvement with his child.
2. The above requirements may be waived only if the home documents that the father's involvement would place the adolescent or infant at physical or emotional risk.

(d) The home shall allow the fathers of infants residing in the home to attend parenting classes provided by the home.

10:128-10.7 Services to the adolescent's family

(a) The home shall attempt two in-person contacts with the adolescent's parents, or other adult relatives that are responsible for the adolescent if the parents are not available, within two months of the adolescent's admission to discuss the case management plan.

1. If the adolescent's parents or other responsible adult relatives do not respond to the initial contacts, the home shall send a certified letter to all known addresses where they may be residing indicating the home's interest in discussing their involvement with their daughter and grandchild.
2. The above requirement may be waived if the home documents that the family's involvement would place the adolescent or infant at physical or emotional risk.

10:128-10.8 Parenting education

(a) The home shall have a written curriculum or guidelines for providing parenting education that shall include, but not be limited to, the following topics:

1. Infant and child development including alternatives to punishment and options for toilet training;
2. Age-appropriate stimulation, games and other recreational activities for children;
3. Providing for child care;
4. Health and nutritional care including an explanation of the Supplemental Feeding Program for Women, Infants and Children (WIC);
5. Relationships with the adolescent mother's family;
6. Dealing with feelings about the adolescent's relationship with the infant's father; and
7. Options for placing the infant in a separate foster care placement or for adoption.

(b) The home shall provide parenting education on a group or individual basis to each adolescent.

(c) The home shall provide each adolescent at least one hour of parenting education each week until the home documents that the adolescent has mastered skills or resolved issues specified in (a) above.

(d) The home shall involve the adolescent in shopping for her infant's clothes and other necessities.

(e) The home shall provide information to the adolescent on preventing child abuse and neglect, including, but not limited to:

1. Discussion of mandatory reporting;
2. How to identify the report abuse and neglect; and
3. Resources to help parents avoid abusing or neglecting their children.

10:128-10.9 Infant stimulation

(a) The home shall ensure that all infants under three months of age are held and spoken to, or placed in a position to observe group activity when they are awake during daytime hours.

(b) The home shall ensure that infants up to six months of age are held by their mother or staff members throughout all feedings and that older infants are held if they are incapable of holding a bottle on their own.

(c) The home shall ensure that all infants have at least one toy that is accessible to them in their bedrooms.

(d) The home shall ensure that when adolescent mothers are in school or working, their infants are cared for, either in the home, in a licensed child care center or in a licensed or registered family day care or group day care home.

(e) Homes that provide services to adolescent mothers and infants between three and 18 months of age shall ensure that the adolescent mothers engage in at least four of the following activities with their infants for at least a total of 45 minutes each day:

1. Sensory activities: crib mobiles, teething toys, busy boxes, baby mirrors, rattles, melody chimes, squeeze toys, or other comparable supplies or equipment;
2. Language activities: picture books, toy telephones, records, hand puppets, stuffed animals, soft washable dolls, photographs, or other comparable supplies or equipment;
3. Manipulative activities: squeeze and grip toys, boxes, sorting and stacking toys, three or four-piece wooden inlay puzzles, puzzle blocks, simple threading toys, mobile pull toys, balls, or other comparable supplies or equipment;
4. Building activities: soft lightweight blocks, toy cars, trains or boats, figures of animals and people, stacking rings or cups, nesting toys, or other comparable supplies or equipment;
5. Large muscle activities: low climbers, slides, riding or rocking toys, foam or soft plastic balls, gym mats, play tunnels, or other comparable supplies or equipment; or
6. Music activities: rhythm instruments, record player and records, toys equipped with musical tones, musical mobiles, busy boxes,

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drums, xylophones, pianos, or other comparable supplies or equipment.

(f) Homes that provide services to adolescent mothers and infants 18 months of age and older shall ensure that adolescent mothers engage in at least three of the following activities with their child for at least a total of 45 minutes each day:

1. Language activities: reading a book, playing with flannel boards, pictures for discussion, materials for recognition, identification or classification, puppets, audio-visual equipment, or other comparable supplies or equipment;

2. Science and math activities: plants and gardening equipment, aquarium with fish or other appropriate live animals, water table and supplies, sand table and supplies, cooking supplies, weather chart, thermometer, counting equipment, or other comparable supplies or equipment;

3. Manipulative activities: puzzles, pegs and pegboards, lacing boards, table top building toys, stencils, dominoes, pounding bench, lotto games, or other comparable supplies or equipment;

4. Large muscle activities: rocking boat, wheel toys, climbers, slides, balance beam, barrels, large cartons, parachute, balls and beanbags, outdoor play equipment, gym mats, or other comparable supplies or equipment;

5. Building activities: unit blocks—minimum of four sizes, transportation toys, farm animals, play people, work bench and tools, table top building toys, building logs, or other comparable supplies or equipment;

6. Art activities: crayons, tempera paint, large brushes and newsprint, finger paint and finger paint paper, construction paper in assorted colors, past or glue, blunt scissors, collage materials, non-toxic felt tip markers, easels, clay or playdough, or other comparable supplies or equipment; or

7. Music activities: record player and records, piano, organ, guitar, rhythm sticks, drums, cymbals, bells, tape recorder, or other comparable supplies or equipment.

(g) The home shall ensure that television watching is not used as a substitute for mother-child interaction.

10:128-10.10 Infant toys and equipment

(a) The home shall only use infant and play equipment that is sturdy and of safe construction, non-toxic and free of hazards.

(b) The home shall have a choker tube to ensure that all parts of all toys used by infants under three years of age are large enough so they can not be swallowed by the infants.

(c) The Bureau may also require the home to take other necessary precautions to promote toy and equipment safety in keeping with recommendations of the United States Consumer Product Safety Commission.

10:128-10.11 Recreation

(a) In addition to the requirements specified in N.J.A.C. 10:128-6.8, the home shall encourage each adolescent to use her leisure time productively by documenting in the adolescent's case management plan the home's efforts to:

1. Inform the adolescent of appropriate activities for herself and her infant in the community;

2. Teach the adolescent how to manage time and money to be able to participate in recreational activities; and

3. Teach the adolescent how to use public transportation so she and her infant can go to activities in the community.

(b) The home shall organize monthly outings or planned group activities within the home for adolescents and their infants.

10:128-10.12 Money and allowance

(a) The home shall provide opportunities for all adolescents to earn an allowance, unless the adolescent is receiving AFDC benefits.

(b) The home shall not require an adolescent to assume responsibility for expenses for her care or that of her infant, except for amounts needed to pay for damages done to the home by the adolescent or her infant.

1. When an adolescent damages the home's property, the home shall verify who damaged the property in an incident report before requiring the adolescent to pay restitution.

2. When an infant damages the home's property, the home shall verify who damaged the property and that the damage resulted from a lack of supervision by the adolescent mother, before requiring the adolescent mother to pay restitution.

3. The restitution payments shall not exceed 50 percent of an adolescent's weekly income from allowance and earnings.

4. Adolescents who are working or have a savings account shall have the option to make a lump sum payment for intentional damages.

5. The home may offer the adolescent the option of performing additional chores in lieu of restitution payments.

10:128-10.13 Visiting and communication

(a) The home shall ensure that the adolescents and infants are allowed to have regular contact with family members, including the infant's father.

1. The home may designate hours for family visits provided that there are at least three opportunities for families to visit each week.

2. The home may limit family members' visits to designated places within the home provided that family members visiting with the infant have access to equipment and toys that can foster communication with the infant.

(b) The home shall develop a visiting policy and explain the visiting policy to the adolescent and her parent(s) at intake. The visiting policy shall specify:

1. How visiting may be arranged;

2. That family visits shall not be denied for an adolescent's infraction of rules, but may be denied as part of a case management plan after consultation with the Division's case manager or other placing agency;

3. That family members who are under the influence of drugs or alcohol shall not be allowed to transport the adolescent or her infant;

4. That the adolescent and infant may visit with representatives from the Division or other placing agency upon request and that these visits shall not be denied for any reason;

5. The hours when an adolescent may visit with friends and whether the adolescent's vists with friends may be curtailed for infraction of the rules;

6. That the home may overrule an adolescent's arrangements for leaving her infant with persons living outside the home; and

7. That family members, including the infant's father, shall not be denied visitation unless the home documents show they pose a risk to the infant or adolescent.

10:128-10.14 Behavior management

(a) Staff members shall follow all the requirements as specified in N.J.A.C. 10:128-6.14.

(b) The home shall assign responsibility for the discipline, control, and supervision of adolescents to staff members and not delegate that responsibility to other adolescents.

(c) The home shall prohibit adolescents from using the punishments specified in N.J.A.C. 10:128-6.14 on their own infants or on another infant for whom they are caring.

(d) The home shall ensure that no staff member or adolescent mother disciplines an infant for refusing to eat or sleep, or for crying or soiling.

10:128-10.15 Comprehensive health plan for pregnant adolescents

(a) The home shall ensure that all pregnant adolescents receive comprehensive prenatal care including, but not limited to:

1. Monthly visits to an obstetrician or certified nurse mid-wife during the first 28 weeks of gestation;

2. Biweekly visits to an obstetrician or certified nurse mid-wife from the 29th to 36th week of gestation;

3. Weekly visits to an obstetrician or certified nurse mid-wife from the 36th week of gestation until delivery;

4. Child birth classes provided by a registered nurse or child birth educator; and

5. A post partum visit within six weeks of delivery.

(b) The home shall ensure that pregnant adolescents make up missed medical appointments.

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(c) The home shall refer all pregnant adolescents to the Supplemental Feeding Program for Women, Infants and Children (WIC) and make necessary follow-up, or document that the pregnant adolescent was ineligible for WIC.

(d) The home shall ensure that arrangements for the birth of the infant are made by the end of the first trimester. If the adolescent enters the home after the first trimester, the home shall ensure that arrangements for delivery are made by the second prenatal visit.

1. The home shall ensure that a system is established to provide background medical information on the pregnant adolescent to the hospital identified for delivery or at the birthing center identified for delivery.

2. The home shall document that delivery arrangements have been made by recording the name and address of the selected hospital or birthing center in:

i. The adolescent's record; or

ii. As part of the administrative record.

(e) The home shall ensure that a staff member or volunteer accompanies the adolescent to the hospital or birthing center when she is ready to deliver and that the staff member or volunteer remains with the adolescent until health care personnel are assigned to her.

(f) The home shall arrange for pregnant adolescents to receive a dental examination within three months of admission and every six months therafter.

10:128-10.16 Comprehensive health plan for infants

(a) The home shall ensure that infants are referred to the Supplemental Feeding Program for Women, Infants and Children (WIC) and take necessary follow-up, or document that the infant was ineligible for WIC.

(b) Unless contraindicated by the physician, the home shall ensure that adolescent mothers adhere to the following schedule in obtaining health care for infants:

1. At age one month, the infant receives:

i. A physical examination including height, weight, temperature check, and measurement of head and chest circumference; and

ii. A check for PKU, if indicated;

2. Between two and two and one-half months of age, the infant receives:

i. A physical examination, as specified in (b)1i above; and

ii. Immunization for diphtheria, tetanus, pertussis (DPT) and Trivalent Oral Polio Vaccine (TOPV);

3. Between three and one-half and four months, the infant receives a physical examination, and immunizations as specified in (b)2 above;

4. Between five and six months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. Immunization for DPT; and

iii. A developmental assessment;

5. Between eight and nine months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A hemoglobin test; and

iii. A sickle cell screening, if indicated;

6. Between 11 and 12 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A developmental assessment; and

iii. A tuberculin test;

7. At 15 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. Immunizations for rubella and measles; and

iii. At 15 or 16 months, immunization for mumps;

8. At 18 months, the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A DPT booster;

iii. A TOPV booster; and

iv. Immunization for hemophilus influenza Type B;

9. At 24 months and annually thereafter (until age five), the infant receives:

i. A physical examination, as specified in (b)1i above;

ii. A developmental assessment;

iii. A hemoglobin test;

iv. Urinalysis, and a tuberculin test if indicated; and

10. At 36 months and semi-annually therafter, a dental examination.

(b) The home shall ensure that the adolescent mother obtains a hemophilus influenza Type B (meningitis) immunization for her child when the child is two years of age, or at the earliest date possible thereafter.

(c) The home shall ensure that the adolescent mother has her child's sight and hearing tested when she takes a child over three and one-half years of age for a medical examination. This testing shall be repeated for children ages four and five years old who remain in the home.

(d) The home shall ensure that a child who is five years old receives a DTP booster and a TOPV booster when he or she remains in the home.

10:128-10.17 Comprehensive health care for adolescent mothers who are not pregnant

(a) The home shall ensure that all adolescent mothers who are not pregnant and who have not had a health examination within one year prior to admission, receive a comprehensive health examination within one month of admission to the home. This comprehensive health examination shall include but not be limited to an assessment of:

1. Height and weight;
2. Blood count;
3. Urinalysis;
4. Vision;
5. Hearing; and
6. Gynecological exam.

(b) The home shall arrange for follow-up medical care recommended as part of the comprehensive health examination.

(c) The home shall ensure that adolescent mothers receive a dental examination within three months of admission and every six months thereafter.

10:128-10.18 Care of sick infants, adolescents and staff

(a) When an infant at the home has any illness or symptom of illness including but not limited to those specified below, the home shall ensure that the adolescent mother or staff contacts a licensed physician:

1. Severe pain or discomfort;
2. Acute diarrhea, characterized as twice the child's usual frequency of bowel movements with a change to a looser consistency within a period of 24 hours;
3. Two or more episodes of acute vomiting within a period of 24 hours;
4. Elevated oral temperature of 101.5 degrees Fahrenheit or over or axillary temperature of 100.5 degrees Fahrenheit or over in conjunction with behavior changes;
5. Sore throat or severe coughing;
6. Yellow eyes or jaundiced skin;
7. Red eyes with discharge;
8. Infected, untreated skin patches;
9. Difficult or rapid breathing;
10. Skin rashes, excluding diaper rash, lasting more than one day;
11. Weeping or bleeding skin lesions that have not been treated by a physician or nurse;
12. Swollen joints;
13. Visibly enlarged lymph nodes;
14. Stiff neck; or
15. Blood in urine.

(b) The home shall follow the physician's advice about whether to permit the infant who is ill to have contact with other infants.

10:128-10.19 General medical practices

(a) The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an adolescent is explained to the adolescent.

1. The home shall ensure that any medical, dental, psychological or psychiatric treatment or medication administered to an infant is explained to the adolescent mother.

2. The home shall document all of these explanations in the adolescent's record.

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(b) When serious accidents or illnesses occur to an infant, the home shall take necessary emergency action and notify the adolescent, the adolescent's parents, if applicable, the Division's case manager or other placing agency and the Bureau immediately.

(c) When serious accidents or illnesses occur to an adolescent, the home shall take necessary action and notify the adolescent's parents if she is under 18 years of age, the Division's case manager or other placing agency and the Bureau immediately.

10:128-10.20 Medication

(a) The home shall ensure that adolescents use only prescription and non-prescription medication that is authorized by a physician.

1. The home shall permit adolescents to administer medication to their infants and themselves, unless the physician, psychiatrist or psychologist advises otherwise; in such cases the home shall document the reasons in the adolescent's record.

2. The home shall ensure that adolescents follow the advice of the infant's physician for administering medication to their infants.

3. The home shall supervise the adolescent's administration of all medication she gives to her infant and may require the adolescent to record the information specified in (b) below.

(b) The home shall maintain a medication log book that contains the following information:

1. Name of adolescent or infant receiving medication, whether prescription or non-prescription;
2. Type of medication, dosage, and intervals between dosages;
3. What to do if a dosage is missed;
4. Reason for medication;
5. Date and time medication was administered;
6. Possible side effects of the medication, if any; and
7. Signature and title of staff member or adolescent dispensing medication.

(c) The home shall ensure that the following procedures for storage are followed:

1. Homes shall keep prescription and non-prescription drugs in a locked cabinet, or, as needed, a locked container in a refrigerator that is inaccessible to infants;

2. External drugs and internal drugs shall be stored in separate locked shelves;

3. All outdated stocks and prescriptions no longer in use shall be disposed of safely, as specified in N.J.A.C. 10:128-7.4;

4. The telephone number of the regional poison control center shall be posted at all medication-dispensing stations and by each telephone; and

5. Medical supplies shall be stored in an area accessible to staff members at all times.

(d) In situations where the home determines that an adolescent is capable of self-administration of prescription birth control-related supplies, the home may allow the adolescent to maintain prescription birth control-related supplies among her personal possessions, provided that the home:

1. Provides a locked cabinet or box for storage; and

2. Documents the rationale and arrangements for the adolescent to maintain prescription birth control-related supplies.

10:128-10.21 Environmental sanitation requirements for disinfecting

(a) The home shall first wash with soap and water and then disinfect those items specified below with a solution that shall either be:

1. A commercially prepared disinfectant that indicates it kills bacteria, viruses and parasites. This solution shall be used in accordance with label instructions; or

2. A self-made solution consisting of one-quarter cup of household bleach to each gallon of water (one tablespoon per quart), which shall be prepared daily and placed in a labeled, sealed container.

(b) The home shall ensure that the following equipment, items or surfaces are washed and disinfected after each use:

1. Toilet training chairs that have first been emptied into a toilet unless each infant has his or her own toilet training chair;

2. Sinks and faucets used for handwashing, if the sink is also used for rinsing a toilet training chair;

3. Diapering surfaces, used by more than one infant;
4. Toys mouthed by infants before being given to another infant;
5. Mops used for cleaning; and
6. Oral and rectal thermometers.

(c) The home shall wash and disinfect the following items at least daily:

1. Toilets and toilet seats used by more than one infant;
2. Diaper pails and lids used by more than one infant;
3. Drinking fountains;
4. Water table and water play equipment;
5. Play tables; and
6. Smooth surfaced non-porous floors in areas used by infants.

(d) The home shall wash and disinfect the following items at least weekly, and before use by another infant:

1. Cribs, cots, mats, playpens or other sleeping equipment approved by the Bureau; and

2. Sheets, blankets or other coverings.

(e) The home shall wash and disinfect tables used by the infant for eating before each meal.

(f) Homes that maintain outside sandboxes or play areas containing sand shall ensure that:

1. Only asbestos-free sand is used; and

2. The sand is maintained in a safe and sanitary manner.

10:128-10.22 Personal hygiene requirements

(a) The home shall ensure that adolescents and staff members wash their hands with soap and running water immediately:

1. Before preparing or serving food;
2. After diapering a child;
3. After toileting;
4. After assisting a child in toileting;
5. After caring for a child who appears to be sick;
6. After handling animals or their equipment or after coming in contact with an animal's body secretions; and
7. After coming into contact with blood; fecal matter, urine, vomit, saliva, nasal secretions or other body fluids or secretions.

(b) The home shall ensure that adolescents or staff members:

1. Change each infant's diaper when wet or soiled; and

2. Wash and dry each infant's bottom during each diaper change with an individual disposable wash cloth, paper towel or disposable diaper wipes.

(c) The home shall ensure that soiled diapers are placed in a closed container that is lined with a leakproof or impervious lining.

1. Disposable diapers shall be removed from the home daily and placed in a closed container that is outside the building and used for refuse collection.

2. Non-disposable diapers shall be stored and laundered separately for each child.

10:128-10.23 Health education and physical care for adolescents and infants

(a) The home shall ensure that adolescents receive training in personal care, hygiene, and grooming habits.

1. The home shall discuss the physiological changes experienced during adolescent pregnancy and childbearing with adolescents in the home.

2. The home shall instruct adolescents about sexually responsible behavior, including how to protect themselves from pregnancy and sexually transmitted diseases, including AIDS.

3. The home shall instruct all adolescents about the health consequences of cigarette smoking and alcohol and drug use.

(b) The home shall ensure that each adolescent bathes and grooms her infant daily, and provides other personal hygiene services that are necessary to meet the infant's needs.

1. The home shall give each adolescent and infant individual towels and washcloths.

2. The home shall ensure that soap and toilet paper are available for the adolescents and infants at all times.

(c) The home shall ensure that each adolescent and infant has a personal supply of adequate, clean, well-fitting, and attractive clothing appropriate to his or her age, gender, individual needs, community standards, and season.

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1. The home shall ensure that each adolescent's and infant's clothing is kept clean and in good repair; and the home may require adolescents to do their own laundry and that of their infant.

2. The home shall not require adolescents or infants to wear any article of clothing that would identify them as a resident of the home.

3. The home shall supply adolescents with necessary personal hygiene items.

10:128-10.24 Food and nutrition for infants

(a) In addition to the requirements specified in N.J.A.C. 10:128-6.11, the home shall ensure that each adolescent mother obtains and follows a written plan developed with the infant's health care provider regarding the feeding schedule, specific formula, nutritional needs and introduction of new food for each infant.

1. The home shall maintain on file the feeding schedule of each infant residing in the home in the infant's record.

2. The home shall ensure that the adolescent makes the feeding schedule available to all of the infant's caregivers.

10:128-10.25 Life skills development

(a) The home or agency shall ensure that the adolescent mothers receive instruction and experience in the following:

1. Meal planning and meal preparation;
2. Food shopping;
3. Locating affordable housing;
4. Securing appropriate medical and dental services;
5. Utilization of public transportation;
6. Home safety practices including, but not limited to:
i. Checking for gas leaks;
ii. Keeping the child away from a hot stove;
iii. The dangers of open windows when infants are present;
iv. The appropriate methods to rid the home of pests;
v. Fire prevention; and
vi. Contacting the appropriate community agency when an emergency occurs;
7. Banking; and
8. Applying for public assistance.

(b) The home or agency shall document in the adolescent mother's record that she has received the training in (a) above.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Energy Emergency

Proposed New Rules: N.J.A.C. 14A:2

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 52:27F-18.

BPU Docket Number: AX90080809.

Proposal Number: PRN 1990-502.

A **public hearing** concerning this proposal will be held on:
Thursday, October 11, 1990, at 10:00 A.M.
Board of Public Utilities' Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit comments by October 17, 1990 to:
Eugene J. Byrne, Esq.
Regulatory Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

On June 15, 1989, Governor Thomas A. Kean issued a Reorganization Plan (No. 002-1989) to provide for the increased coordination and integration of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities (Board) (see 21 N.J.R. 1937).

Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and tranferred to the Board. Among the functions, powers and duties transferred was the responsibility and authority requiring the periodic reporting by energy industries of energy information, set forth in P.L. 1977, c.146, §16 (N.J.S.A. 52:27F-18) and the responsibility and authority for energy emergency planning and preparedness.

These administrative rules provide the Board with the authority to allocate various sources of energy within the State after gubernatorial declaration of an energy emergency. The specific energy sources are electricity, natural gas, regulation and control of the sale of motor gasoline, the State set-aside for major refined petroleum based fuels and supplies of motor gasoline. The rules proposed below are essentially identical to N.J.A.C. 14A:2, which expired on April 17, 1989, pursuant to Executive Order No. 66(1978), except as noted.

The Board is proposing these rules for public comment and by the adoption date of these rules may have amendments for these rules based on its update of the Energy Emergency Preparedness Report as required by N.J.S.A. 52:27F-16 and comments submitted by the public and affected industries.

Many of the aforementioned changes are technical, non-substantive, for example, Department and Division to the Board. However, a major change is the consolidation of all end-use reduction measures, previously contained in energy-specific subchapters, within a single subchapter (N.J.A.C. 14A:2-2). The basis for this change is to ease implementation since, in general, a disruption in the supply of one energy source will greatly impact other energy uses.

A more specific summary by subchapter is provided below:

SUBCHAPTER 1. GENERAL PROVISIONS

This subchapter contains the scope of the rules, definitions, provisions regarding exemptions and a reservation of the Board's right to modify emergency plans.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

This subchapter provides for several steps in resolving an impending supply shortage in the State. First, a public appeal is issued through the news media requesting end-users to voluntarily reduce their use of electricity, natural gas and petroleum products. Should the public appeals not result in sufficient reduction of energy consumption, direct mandatory reductions or limitations of energy uses and reductions of hours of operation are specified.

SUBCHAPTER 3. NATURAL GAS

In the event that a significant shortage of natural gas is forecast over a period in which public appeals, mandatory reductions or limitations of energy uses and reductions of hours of operation do not provide sufficient relief, a Priority Plan involving a sequence of involuntary curtailments is specified. This curtailment plan is based upon that contained in Appendix B of the Board's Order in *In the Matter of the Board's Investigation Into the Natural Gas Supply and the Priority Plan for Involuntary Curtailments In the State of New Jersey*, Docket No. 748-639.

SUBCHAPTER 4. ELECTRICITY

In the event that a significant shortage of electricity is forecast over a period in which public appeals, mandatory reductions or limitations of energy uses and reductions of hours of operation do not provide sufficient relief, steps to maintain reliable service are specified.

SUBCHAPTER 5. STATE SET-ASIDE FOR PETROLEUM PRODUCTS

A State Set-Aside Program would require a prime supplier of motor gasoline, gasohol, aviation gasoline, kerosene, diesel fuel oil, distillate fuel oil, No. 4 fuel oil, residual oil, and propane to set aside mandated percentages of product volume. The Board may designate certain geographic areas of the State as suffering from an intrastate supply imbalance and may issue an order releasing all or part of a prime supplier's set-aside volume through normal distribution channels.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

This subchapter contains the procedures which would be implemented during a period when there is a significant shortage of motor fuel. The key provisions of the procedure are limitations on the quantity of motor fuel to be sold to any one puchaser and days of access to retail dealers, commonly known as the "odd/even" system.

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SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

This subchapter requires each prime supplier submit the New Jersey posted dealer tank wagon price, posted reseller tank car price, or other posted price for each covered product for each class of customer to the Board within 24 hours of a price change.

Social Impact

These proposed rules regarding energy emergencies will have a positive social impact in minimizing the daily disruptions to providers of critical social services such as medical care in the event of a declared state of emergency. The subchapter which restricts access to motor fuels contains self-implementing exemptions for school, hospital and emergency vehicles, amongst others. The emergency plans set forth in these rules, as well as emergency plans of public utilities, seek to insure that facilities which provide critical school services will be kept on firm service to the maximum extent practicable.

Economic Impact

These emergency procedures will have a positive economic impact in the event of an energy emergency. In particular, the State Set-Aside for petroleum products is designed to give the State the maximum degree of flexibility to redirect fuels to geographical parts of the State which would otherwise suffer disproportionate economic disruption. The overall goal of all of these procedures is to provide a system which minimizes economic disruption across the State.

Regulatory Flexibility Analysis

These rules will impose compliance and reporting requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., particularly the retailers of motor fuels (see N.J.A.C. 14A:2-6). These requirements relate to the quantities and manner in which motor fuels are sold. No capital cost or professional services should be incurred or required to comply. The impact on businesses is felt only during a period of declared energy emergency. Such a state of energy emergency has not been implemented since 1979. These rules do provide for exceptions upon presentation to the Board of a documented hardship. However, no business-size hard exemption or differentiation in requirements is provided by the rules due to their emergency nature.

Full text of the proposed new rules follows:

CHAPTER 2
ENERGY EMERGENCY

SUBCHAPTER 1. GENERAL PROVISIONS

14A:2-1.1 Scope

The following rules shall be implemented when the Governor, by Executive Order, has proclaimed a state of energy emergency under N.J.S.A. 52:27F-17. The declaration of an emergency shall be based upon a finding by the Board that there impends or exists a serious shortage of energy which poses a grave threat to the public health, safety or welfare in all or any part of the State. In making such a finding, the Board shall set forth whether the emergency shall be limited to a specific energy form or to any specific area of the State in which such a shortage exists or impends.

14A:2-1.2 Definitions

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

"Ambulatory handicap" means any physical condition which significantly impairs mobility requiring confinement to a wheelchair; or other disability where compliance with the provisions of this chapter would have the likelihood of seriously impairing or harming the health of the person.

"Authorized emergency vehicles" means vehicles of fire departments, utilities, police vehicles, ambulances, and such other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety pursuant to the provisions of Title 39 of the Revised Statutes.

"Board" means the New Jersey Board of Public Utilities.

"Boiler fuel" means natural gas used as a fuel for the generation of steam or electricity, including the utilization of gas turbines for the generation of electricity.

"Commercial" means a classification of service to customers engaged primarily in the sale of goods or services, including institutions and local, State and Federal government agencies for uses other than those involving manufacturing or electrical power generation.

"Commercial vehicle" means motor vehicles not designed for the transportation of passengers and motor vehicles, designed but not used for the transportation of passengers, which either bear commercial plates or bear the name and address of the owner of the vehicle affixed to the exterior of the vehicle in the manner prescribed for commercial vehicles in chapter 4 of Title 39 of the Revised Statutes.

"Covered product" means any petroleum product subject to the State Set-Aside.

"Electric utility" means all public utilities, municipal electric departments and electric cooperatives engaged in the distribution of electricity within the State of New Jersey.

"End-user" means any person which is an ultimate consumer of energy.

"Energy emergency" means a shortage in the supply of a particular source of energy of a dimension which endangers the public health, safety or welfare in all or any part of the State of New Jersey.

"Farm vehicle" means any vehicle registered under the provisions of N.J.S.A. 39:3-24 (self-propelled farm tractors, traction equipment, and farm machinery) and N.J.S.A. 39:3-15 (farm trucks) which bear farmer, farm use, or tractor plates.

"Feedstock" means raw material used for creating an end product.

"Firm" means a classification of energy service from schedules or contracts under which seller is expressly obligated to deliver specific energy units within a given time period and which anticipates no interruption, but which may permit unexpected interruption in case the supply to higher priority customers is threatened.

"Gas utility" means all public utilities engaged in the distribution of gas within the State of New Jersey.

"Heat recovery system" means a system which uses previously wasted heat for useful purposes such as space heating, process heating, and so forth. It may involve the use of heat rejected from motors, processes, or other heat generating equipment which would otherwise be wasted or lost by being vented to the atmosphere or unrecaptured.

"Industrial" means a classification of energy service to customers engaged primarily in a process which creates or changes raw or unfinished materials into another form or product, including the generation of electric power.

"Interruptible" means a classification of energy service from schedules or contracts under which seller is not expressly obligated to deliver specific energy units within a given time period, and which anticipates and permits interruption on short notice, or service under schedules or contracts which expressly or impliedly require installation of alternative fuel capability.

"Motor fuel" means a mixture of volatile hydrocarbons such as gasoline or diesel fuel used in motor vehicles.

"Motor vehicle" means any vehicle propelled other than by muscular power, excepting such vehicle as run only upon rails or tracks.

"Omnibus" means buses, taxicabs and all other motor vehicles used for the transportation of passengers for hire, except school buses if the same are not otherwise used in the transportation of passengers for hire.

"Operating reserve" means electric generating capability and/or equivalent generation in excess of forecast system peak load which must be available within 30 minutes or less to provide for load variations and forecasting errors, frequency regulation, area protection and equipment failure or malfunction.

"Passenger automobile" means any motor vehicle used and designed for the transportation of passengers, except omnibus, school bus, and authorized emergency vehicle.

"Person" means and includes natural persons and partnerships, firms, associations, joint stock companies, syndicates and corporations, and any receiver, trustee, conservator, or other officer appointed pursuant to law or by any court, State or Federal; also counties, municipalities, authorities and other political subdivisions of this State, singular or plural, and the State of New Jersey.

"Plant protection" means the minimum energy units required to prevent physical harm to the plant facilities or danger to plant per-

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sonnel where such protection of such material in process as would otherwise be destroyed, but shall not include energy units required to maintain plant production.

"Prime supplier" means supplier, or producer which makes the first sale of any covered product subject to the State Set-Aside into the State distribution system for consumption within the State.

"Process" means applications requiring precise temperature controls and precise flame characteristics.

"Purchase" means and includes, in addition to its ordinary meaning, any acquisition of ownership or possession.

"Residential" means a classification of energy service to all buildings and structures, or parts thereof, in which families or households live, or in which sleeping accommodations are provided for individuals with or without dining facilities.

"Retail dealer" means any person who engages in the business of selling motor fuel from a fixed location such as a service station, filling station, store, or garage directly to the operator of a motor vehicle by dispensing such motor fuel into the service tank of the motor vehicle.

"Sale" means and includes, in addition to its ordinary meaning, any exchange, gift or other disposition. In every case where motor fuel is exchanged, given, or otherwise disposed of, it shall be deemed to have been sold.

"School bus" means any motor vehicle operated by, or under contract with, a public or governmental agency, or religious or other charitable organization or corporation, or privately operated for compensation for the transportation of children to or from school for secular or religious education which complies with the regulations of the Department of Education affecting school buses.

"Spinning reserve" means that portion of primary reserve synchronized to the system and under unrestricted control of the turbine governor.

"Supplier of motor fuel" means any refiner, importer, marketer, jobber, distributor, terminal operator, firm, corporation, wholesaler, broker, cooperative or other person who supplies, sells, consigns, transfers or otherwise furnishes motor fuel to a retail dealer.

"Truck stop" means any retail dealer who provides service predominantly to trucks and truck tractors, as defined in chapter 1 of Title 39 of the Revised Statutes.

"Wholesale purchaser-consumer" means any person that is an ultimate consumer which, as part of its normal business practices, purchases or obtains a covered product from a supplier and receives delivery of that product into a storage tank substantially under the control of that firm at a fixed location and which purchased or obtained more than 50,000 gallons of that covered product in the completed calendar year prior to the declaration of the emergency.

"Wholesale purchaser-reseller" means any person which purchases, receives through transfer, or otherwise obtains (as by consignment) a covered product and resells or otherwise transfers it to other purchasers without substantially changing its form. They are designated in the trade as distributors, jobbers, resellers, retailers or service station operators.

14A:2-1.3 Exemptions

(a) Any person who is aggrieved by the implementation of any provision of this chapter may apply for and shall be granted a review of whether compliance places an unreasonable burden upon that person in light of the prevailing conditions of emergency.

(b) Such application shall contain, as a minimum, the name, address and telephone number of the aggrieved party and a concise statement of the grievance.

14A:2-1.4 Reservation

The Board reserves the right to modify the various emergency plans if an emergent situation calls for modification.

SUBCHAPTER 2. END-USE ENERGY REDUCTION

14A:2-2.1 Scope

The provisions of this subchapter shall apply to all energy end-users within the State of New Jersey.

14A:2-2.2 Public appeal

In the event of an impending supply shortage, the Board may make public appeals or require electric and gas utilities to make public appeals through appropriate news media requesting end-users to reduce their use of electricity, natural gas, and petroleum products.

14A:2-2.3 Energy reduction measures

(a) Direct mandatory reductions or limitations of energy uses and reductions of hours of operation of various end-users for:

1. All energy users are as follows:

i. Heating energy sources shall not be used to maintain air temperatures within public buildings of State, county, local governments and school boards, including educational institutions, all industrial and commercial establishments, warmer than 65 degrees Fahrenheit during business hours, including start-up and preparation time, and not more than 55 degrees Fahrenheit during non-business hours.

ii. Where separate thermostats for heating and cooling are in use, air conditioning thermostats shall be set at 80 degrees Fahrenheit or at some other level such that cooling energy is not used to achieve prescribed heating levels.

iii. Temperatures within all single and multiple family dwellings shall be set at 65 degrees Fahrenheit from 6:00 AM to 11:00 PM and 60 degrees Fahrenheit from 11:00 PM to 6:00 AM.

iv. Portable space heaters and threshold heaters used as supplementary heating sources shall be prohibited.

v. Where applicable, window draperies and blinds shall be used to cut down heat losses by setting them to the closed position during the nighttime hours and on cold, cloudy days, and setting them to the open position during periods of sunshine.

vi. Thermostat control devices for hot water shall be set to maintain a maximum temperature of no more than 110 degrees Fahrenheit.

vii. Steps shall be taken to eliminate heating in all unused and seldom used areas, such as stairwells, where economically feasible.

viii. Work schedules for building cleaning, maintenance, restocking, and so forth, which would require offices or industrial facilities to be open beyond normal working hours, shall be minimized.

ix. Nighttime sports, entertainment and recreational activities shall be curtailed;

x. All public museums, art galleries and historic buildings shall be closed;

xi. Retail establishments shall be closed on Sunday except for those providing essential services to the public;

xii. Retail establishments shall be closed from 7:00 PM to 9:00 AM, except those essential services to the public.

2. Electric energy users are as follows:

i. All outdoor flood and advertising lighting shall be eliminated, except for the minimum level to protect life and property and, where feasible, a single illuminated sign identifying commercial facilities that are open after dark.

ii. General lighting levels in stores and offices shall be reduced as close to minimum safety levels as possible.

iii. Show window and display lighting shall be eliminated.

iv. The number of elevators operating in office buildings during non-peak hours shall be reduced by at least 50 percent.

v. All aesthetic, ornamental lights shall be extinguished.

14A:2-2.4 Hour limitations

In the event that the provisions of N.J.A.C. 14A:2-2.2 fail to provide adequate relief, the Board may impose further hour restrictions upon industrial and commercial operations.

14A:2-2.5 Exemptions

(a) Notwithstanding the provisions of N.J.A.C. 14A:2-2.2, the Board hereby exempts the following from all or a portion of the above requirements, so long as steps have been taken to reduce all non-essential energy use or unless so directed by order of the Board:

1. Railroads;
2. Local and suburban transit;
3. Interstate transportation by air;
4. Pipeline transportation;

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5. Communications (telephone, radio and television);
6. Electric, gas and sanitary services;
7. Petroleum refining;
8. Hospitals;
9. Electric sales for resale under FERC jurisdiction;
10. Prisons;
11. Police and fire-fighting facilities;
12. Water supply;
13. Federal activities essential to national defense; and
14. Life support systems: Consideration should be given to advance notification of customers with life support systems such as iron lungs, shaker beds, and kidney machines.

SUBCHAPTER 3. NATURAL GAS

14A:2-3.1 Scope
The provisions of this subchapter shall apply to all gas utilities within the State of New Jersey.

14A:2-3.2 Priority plan for involuntary curtailment
(a) In the event that N.J.A.C. 14A:2-2.2, 2.3 and 2.4 do not provide sufficient relief, the following sequence of involuntary curtailment shall be implemented:
1. Reduce all gas utility requirements to a minimum;
2. All firm industrial boiler requirements greater than 1500 Mcfd and interruptible boiler fuel requirements greater than 300 Mcfd;
3. Firm industrial boiler requirements of less than 1500 Mcfd and interruptible boiler fuel of less than 300 Mcfd;
4. Interruptible requirements for process and feedstock;
5. Interruptible requirements for plant protection;
6. All firm commercial boiler usage of 50 Mcfd or more;
7. Firm industrial requirements for process and feedstock and commercial requirements of 50 Mcfd or more;
8. Firm industrial requirements of less than 50 Mcfd for process and feedstock;
9. Firm industrial requirements for plant protection;
10. Small commercial (50 Mcfd).
(b) Each category shall be curtailed on a pro rata basis with each lower priority category being curtailed prior to the curtailment of higher categories.

14A:2-3.3 Inter-gas utility allocations
Pursuant to the provisions of section 15(b)(3), P.L. 1977, c.146, the Board may order the allocation of specific quantities of natural gas from one gas utility to another to prevent the curtailment of residential end-users.

14A:2-3.4 Residential curtailment
(a) Where all other possible means of carrying system load have been taken and load reduction is still required, the gas utility shall curtail residential end-users.
1. The gas utility shall notify the Board as soon as is reasonably feasible and seek authority to implement sectional curtailment of residential end-use pursuant to section 15(b)(3), P.L. 1977, c.146.
2. In the event operating conditions are of such a critical nature that widespread system outage is imminent and the notification procedure would unduly jeopardize the integrity and proper operation of the system, the provisions of (a)1 are deemed waived.

SUBCHAPTER 4. ELECTRIC

14A:2-4.1 Scope
The provisions of this subchapter shall apply to all electric utilities within the State of New Jersey.

14A:2-4.2 Program to reduce energy consumption
(a) In the event that N.J.A.C. 14A:2-2.2, 2.3 and 2.4 do not provide sufficient relief, the following actions shall be instituted:
1. The electric utilities, insofar as is feasible, shall operate on a one-system basis, utilizing available fuel resources to produce electrical energy to supply the load of all electric utilities of the power pool to which they belong.
2. Departures from normal operating procedures, which have an acceptable impact on reliability and economy, shall be made. These include, but are not limited to, the following. These steps may be used in any sequence as judged necessary by an electric utility, the PJM Interconnection Dispatcher or the New York Power Pool Dispatcher.
i. Rescheduling of maintenance, to permit best use of the available fuel supply;
ii. Maximum practicable use of generation having the more abundant fuel supply from other areas, even when this is not in accord with economic dispatch;
iii. After careful analysis, opening of limiting transmission lines to avoid operation of capacity with limited fuel availability that would otherwise be required to control line loading;
iv. Reduction of the spinning reserve component of 50 percent of the area's operating reserve requirement to avoid operation of capacity with limited fuel availability so long as voltages are acceptable and twice the reserve deficiency is available in quick-start units;
v. Reliance on manual tripping of pumped storage hydro units, operating as pumps, to limit use of capacity with limited fuel availability that otherwise would be required to control line loadings following a contingency;
vi. Voluntary customer energy reduction programs, as agreed upon from time to time by an electric utility and its customers, shall be placed in effect; and
vii. A five percent voltage reduction is to be made effective on a continuous basis.
3. Loads are to be interrupted on a rotating basis every two hours, as determined by each electric utility. Where particular manufacturing or processing operations do not permit interruptions of service, or where such interruptions would cause severe hardship or would have an unacceptable impact on continuous operations, the electric utility shall, if reasonably feasible, secure the equivalent reduction in use from the customers that might otherwise be interrupted by some method other than the prescribed rotating interruptions.

14A:2-4.3 Implementation
The electric utilities shall inform the Board as soon as reasonably feasible and, if possible, prior to implementation of N.J.A.C. 14A:2-4.2, consistent with the interconnection agreements to which they are signatories.

SUBCHAPTER 5. STATE SET-ASIDE FOR PETROLEUM PRODUCTS

14A:2-5.1 Scope and purpose
(a) The Board may establish a State Set-Aside for the following petroleum products: gasoline, gasohol, aviation gasoline, kerosene, diesel fuel oil, distillate fuel oil, No. 4 fuel oil, residual fuel oil and propane.
(b) The Board shall utilize the State Set-Aside to meet hardships and emergency requirements of wholesale purchaser-consumers, end-users, and wholesale purchaser-resellers including wholesale purchaser-consumers and end-users which are part of any governmental organization.

14A:2-5.2 State Set-Aside volume
(a) On a form prescribed by the Board, a prime supplier shall report to the Board on or before the 20th of each month;
1. The estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during the next month;
2. The State Set-Aside volume available during the next month, using the formula in (c) below; and
3. The actual volume of each covered product sold into the State's distribution system for consumption within the State during the previous month.
(b) The Board has determined that the State Set-Aside percentage level for each covered product shall be as follows:
1. Gasoline: five percent;
2. Gasohol: five percent;
3. Aviation gasoline: five percent;
4. Kerosene: four percent;
5. Diesel fuel oil: four percent;

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6. Distillate fuel oil: four percent;
7. No. 4 fuel oil: three percent;
8. Residual fuel oil: three percent; and
9. Propane: three percent.

(c) The State Set-Aside volume available to the Board for a particular month shall be the amount calculated by multiplying the State Set-Aside percentage level by each prime supplier's estimated volume of each covered product to be sold into the State's distribution system for consumption within the State during that month.

(d) The State Set-Aside for a particular month may not be accumulated or deferred. It shall be made available from stocks of prime suppliers whether directly or through their wholesale purchaser-resellers.

14A:2-5.3 Applications for State Set-Aside

(a) All hardship and emergency applications for assignment from the State Set-Aside and appeals shall be filed with the Board.

(b) Applications shall be in writing on a form prescribed by the Board. Applications may first be made by telephone, but must be confirmed in writing within five days.

(c) If the applicant does not have a supplier, it shall identify two suppliers which the applicant has contacted and which could provide the covered product.

(d) The information to be supplied shall be sufficient to enable the Board to act properly on the application. Applications shall include, but are not limited to, name of applicant, address, telephone, contact person, type of business, type of fuel requested, amount to be received in month of application, amount requested, justification for application, inventory, storage capacity, amount that was received in each month of the previous year from all prime suppliers or wholesale purchaser-resellers (if applicable) and their names.

14A:2-5.4 Assignments from State Set-Aside

(a) If the Board approves a hardship or emergency application, it shall assign a prime supplier and amount from the State Set-Aside to the applicant. Any prime supplier to the State may be assigned regardless of whether its brand, if any, is different from the brand of the applicant. To determine the appropriate prime supplier, the Board may coordinate with the State representative of the primer supplier.

(b) In order to facilitate relief of any hardship and meet the emergency requirements of wholesale purchaser-consumers and end-users, the Board may direct that a wholesale purchaser-reseller be supplied from the State Set-Aside, so that the wholesaler purchaser-reseller can supply the wholesale purchaser-consumers and end-users experiencing such hardship or emergency.

(c) The Board shall issue an authorizing document to an applicant granted an assignment from State Set-Aside. The Board shall provide a copy of the authorizing document to the prime supplier's designated State representative.

(d) An authorizing document issued by the Board pursuant to this section is effective upon issuance and represents a call on the prime supplier set-aside volumes for the month of issuance, irrespective of the fact that delivery of the product subject to the authorizing document cannot be made until the following month.

(e) An authorizing document not presented to either the prime supplier or designated wholesale purchaser-reseller of the prime supplier within 10 days of issuance shall expire after that time.

14A:2-5.5 Responsibilities of wholesale purchaser-resellers

The assigned products specified in the authorizing document shall be made available to the wholesale purchaser-consumer or end-user at prices prevailing for similar classes of purchasers in the locality of the wholesale purchaser or end-user at the time of the sale of the product.

14A:2-5.6 Prime suppliers

(a) Each prime supplier shall designate a representative to act for and in behalf of the prime supplier with respect to the State Set-Aside. Each prime supplier shall notify the Board in writing of such designation within 15 days of said designation.

(b) All prime suppliers shall supply products from their State Set-Aside volume each month, as directed by the Board, not to exceed the total State Set-Aside volume for each product for that month. That portion of a prime supplier's State Set-Aside volume for a particular month which is not assigned by the Board during that month, or which is not subject to an authorizing document issued no later than the last day of that month, shall become a part of the prime supplier's total supply for the subsequent month.

(c) The assigned products specified in the authorizing document shall be made available to the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at prices prevailing for similar classes of purchasers in the locality of the wholesale purchaser-consumer, end-user, or wholesale purchaser-reseller at the time of the sale of the product.

14A:2-5.7 Release of State Set-Aside

(a) At any time during the month, the Board may issue an authorizing document releasing part or all of a prime supplier's set-aside volume through the prime supplier's normal distribution system in the State.

(b) The Board may designate certain geographical areas within the State as suffering from an intrastate supply imbalance. At any time during the month, the Board may issue an authorizing document to some or all of the prime suppliers with purchasers within such geographical areas releasing part or all of their set-aside volume through their normal distribution systems to increase the supply of all the prime supplier's purchasers located within such areas.

(c) Authorizing documents issued pursuant to this subsection (c) shall be in writing and effective immediately upon presentation to the prime supplier's designated State representative. Such authorizing documents shall represent a call on the prime supplier's set-aside volumes for the month of issuance irrespective of the fact that delivery cannot be made until the following month.

14A:2-5.8 Penalties

(a) Any person who violates the provisions of these rules shall be liable for a penalty of not more than $500.00 for the first offense and not more than $5,000 for the second or any subsequent offense, to be collected in a civil action by a proceeding under the penalty enforcement law (N.J.S.A. 2A:58-1 et seq.), or in any case before a court of competent jurisdiction wherein injunctive relief has been requested. The Superior Court shall also have jurisdiction to enforce the penalty enforcement law. If the violation is of a continuing nature, each day during which it continues shall constitute an additional separate and distinct offense.

(b) The Board may compromise and settle any claim for a penalty under this section in such amount in the discretion of the Board as may appear appropriate and equitable under all of the circumstances.

SUBCHAPTER 6. REGULATION AND CONTROL OF SALE OF MOTOR FUEL

14A:2-6.1 Scope

In the event that the Board determines there is a significant shortage of motor fuel, this subchapter shall apply to the sale of all motor fuel made by retail dealers to operators of motor vehicles.

14A:2-6.2 Days of access to retail dealers—odd/even measure

(a) No retail dealer shall sell any motor fuel for use in a service tank in a passenger automobile except as set forth in the following schedule:

1. Operators of passenger automobiles bearing license plates the last number of which is an even number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on even numbered days of each month.

2. Operators of passenger automobiles bearing license plates the last number of which is an odd number or containing no number shall be permitted to purchase motor fuel for use in the service tank of said passenger automobile on odd-numbered days of each month.

3. Operators of passenger automobiles bearing license plates from any other state or foreign nation shall be permitted to purchase motor fuel on the same basis as any regulation in effect in their state.

4. For the purpose of determining the last number of the license plate, any number preceded by a hyphen or dash shall not be used in determining the right to purchase motor fuel described in this section.

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5. The provisions of this section shall not be applicable on the 31st day of any month.

14A:2-6.3 Quantity of motor fuel

The Board may establish minimum or maximum quantities of motor fuel to be sold to any purchaser including limitations on the number of gallons to be sold and/or limitations on the number of dollars of motor fuel to be sold.

14A:2-6.4 Methods for notifying public

(a) Every retail dealer of motor fuel shall conspicuously display a flag, so that it is easily visible to the public, during such time that his place of business is open, as follows:

1. A red flag shall be displayed when motor fuel is not available for sale to members of the general public;

2. A green flag shall be displayed when all grades of motor fuel are available for sale to members of the general public without limitations in regard to the maximum amount which may be purchased;

3. A yellow flag shall be displayed when motor fuel is available to members of the general public but such sales are limited in regard to the maximum amount which may be purchased, or there is a grade of motor fuel which is unavailable for sale to members of the general public.

(b) Whenever a retail dealer displays a yellow flag, he shall post in a conspicuous place and manner the limitations applicable to sales of motor fuel.

(c) Every retail dealer of motor fuel shall post in a conspicuous place and manner the hours during which he shall be selling motor fuel to members of the general public.

(d) All signs posted by a retail dealer relating to the price of motor fuel being sold shall be properly maintained and accurately reflect the current selling price.

(e) Every retail dealer shall prominently indicate the last motor vehicle eligible to receive motor fuel from the retail dealer prior to closing.

(f) If a minimum purchase or minimum sale requirement is in effect, every retail dealer of motor fuel shall post in a conspicuous place and manner the requirement which is in effect at that time.

14A:2-6.5 Exemptions; self-implementing

(a) The following persons shall be exempt from N.J.A.C. 14A:2-6.2, Days of access to retail dealers—odd/even measure:

1. Operators of motor vehicles bearing license plates with "MD" identification marks in which a physician is riding on medical business;

2. Operators of commercial vehicles, farm vehicles, omnibuses, and school buses;

3. Operators of authorized emergency vehicles;

4. Operators of motor vehicles bearing license plates or handicap parking sticker which identify the operator as a disabled or handicapped driver;

5. Operators of motor vehicles which are being used as van pools recognized by the New Jersey Department of Transportation bearing a sticker issued by the Board. Operators of motor vehicles which are being used as van pools may apply to the Board for such an exemption sticker. The Board may require operators of van pools to furnish such proof as the Board may prescribe in order to establish a right to such an exemption; and

6. Operators of motor vehicles with weekday exemption stickers shall only be exempt from Monday through Friday inclusive.

14A:2-6.6 Exemptions on application

(a) In the absence of identifying license plates, persons who can establish to the satisfaction of the Board that they suffer from an ambulatory handicap or disability, and require the use of a passenger automobile for business, in connection with their employment or to obtain medical care or the necessities of life, shall be issued a sticker in the form prescribed by the Board, which when affixed to said automobile in the manner prescribed, shall exempt such persons from the provisions of N.J.A.C. 14A:2-6.2. Such persons shall be required to furnish such proof as may be required by the Board in the form and manner as the Board may prescribe in order to establish such right to exemption.

(b) Any person who can demonstrate to the satisfaction of the Board that an exemption is necessary for the health and welfare of the general public may receive an exemption sticker.

(c) An operator of a motor vehicle, who can demonstrate to the satisfaction of the Board that an exemption is necessary for employment, may receive a weekday exemption sticker.

1. The Board will consider an exemption necessary for an individual's employment when the individual demonstrates that:

i. A motor vehicle is required in pursuing his or her employment;

ii. The motor vehicle used for pursuit of his or her employment is supplied with motor fuel exclusively from a retail dealer;

iii. Alternative means of transportation to pursue his or her employment are unavailable;

iv. The individual travels a minimum of 125 miles per day at least four days a week, exclusive of commutation to and from work; and

v. The individual travels a minimum of 25,000 miles per year in the conduct of his or her employment.

2. To receive an exemption under this subsection, an individual shall submit a completed and notarized application on a form provided by the Board. This form shall be accompanied by a declaration of employment by the individual's employer on the stationery of the employer. Additionally, an individual may be asked to document all information submitted to the Board. The Board reserves the right to require that all applicants submit documentation in any requested form, including but not limited to Internal Revenue Service forms.

3. An individual in compliance with the requirements of this subsection will receive a weekday exemption.

14A:2-6.7 Arrangements permitted

(a) Any retail dealer that, prior to the declaration of emergency, had a bona fide agreement or written contract with a commercial account for the periodic sale of motor fuel to commercial vehicles, omnibuses, school buses, or authorized emergency vehicles shall be allowed to continue those sale practices, notwithstanding the provisions of N.J.A.C. 14A:2-6.2 and 6.3.

(b) Provisions concerning special arrangements for emergency services are as follows:

1. The governing body of any New Jersey county or municipality or the senior officer of any Federal agency, the jurisdiction of which includes New Jersey or any portion thereof, which utilizes the services of a volunteer or professional fire department, police department, rescue squad, ambulance service, or the hospital administrator of any New Jersey hospital which utilizes the services of emergency medical personnel may enter into a written contract or agreement with designated retail dealer(s) to permit the sale of motor fuel at any time to such persons that provide said emergency services, notwithstanding any of the provisions of these regulations.

2. Said contracts or agreements shall designate by name those persons who provide said emergency services and shall designate by license plate number the motor vehicle used by said persons when responding to a call to provide said emergency services. Said contracts or agreements shall be submitted to the Board for approval consistent with a policy of motor fuel conservation and equitable allocation and the providing of essential emergency services.

3. Designated retail dealers shall obtain from persons purchasing motor fuel under the provisions of this subsection a signed and dated receipt declaring the motor fuel gallonage purchased. Said designated dealers shall, on a monthly basis, submit all such receipts to the appropriate governing body, senior officer or hospital administrator.

4. The governing body, senior officer, hospital administrator or authorized representative thereof shall conspicuously post in the appropriate municipal building, county office building, agency office building or hospital the names of all persons designated in any said contracts or agreements and the motor fuel gallonage purchased on a monthly basis, if any, by each said designated person. Said governing body, senior officer or hospital administrator shall retain a record of all purchases made under the provisions of this subsection and submit same, upon demand, for review by the Board.

(c) A retail dealer, who, prior to the effective date of this rule, qualified as a truck stop, may, at the dealer's option, restrict its sales of motor fuel to the operators of trucks and truck tractors only. Said option does not include the right to sell at the dealer's discretion to

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the operators of preferred customer passenger automobiles to the exclusion of all other passenger automobiles, and any such dealer who elects to sell to any operator of a passenger automobile after the effective date of this rule shall be required to sell to all operators of passenger automobiles subject to this subchapter. A retail dealer electing to sell only to the operators of trucks and truck tractors under the terms of this section shall post in a conspicuous place such restriction.

14A:2-6.8 Police authority to waive regulations in cases of emergency

(a) Notwithstanding any of the provisions of this subchapter, police departments of the Division of State Police in the Department of Law and Public Safety and police departments of any New Jersey municipality may, in cases of bona fide emergency, waive any of these rules and permit a retail dealer to sell motor fuel at any time to the operator of a motor vehicle who would otherwise not be entitled to purchase motor fuel. In every instance where a waiver of these rules is granted, the name of the person requesting such waiver, the waiver granted and the reasons therefor shall be entered onto the police blotter of the police department involved. A bona fide emergency exists where a police officer determines that the use of a motor vehicle is necessary for the life, health or safety of an individual or community.

(b) Any person procuring motor fuel by falsely claiming that he or she requires such motor fuel because of a case of bona fide emergency shall be deemed to be in violation of this section.

(c) A retail dealer who sells motor fuel pursuant to a waiver as described in (a) above shall not be deemed to be in violation of this subchapter.

14A:2-6.9 Privileged vehicles

(a) Notwithstanding any of the provisions of this subchapter, an operator of an authorized emergency vehicle shall be entitled to be sold motor fuel immediately upon demand by a retail dealer at any time including those hours when a retail dealer is not open for the sale of motor fuel to the general public.

(b) A retail dealer who sells motor fuel in accordance with the (a) above shall not be deemed to be in violation of this subchapter.

14A:2-6.10 Preemption

All local and county regulations, statutes ordinances and proclamations dealing with the subject matter of this subchapter are hereby superseded.

14A:2-6.11 Interference with compliance

(a) No person shall threaten, interfere, or attempt to interfere with the retail dealer with respect to compliance with the provisions this subchapter.

(b) No person shall knowingly or willfully misrepresent a motor vehicle as one entitled to an exemption from this subchapter or a priority thereunder. Such misrepresentation includes, but is not limited to, falsely identifying a motor vehicle as a commercial vehicle. If such misrepresentation is of a continuing nature, each day during which it continues shall constitute an additional, separate and distinct offense. Any penalties imposed resulting from a violation of this section shall not preclude the application of any other penalties, civil or criminal, as prescribed by law.

14A:2-6.12 Modification or suspension of regulations

The Board may, from time to time and for such period as it deems appropriate, modify or suspend the operation and/or enforcement of any portion of or all of this subchapter, in whole or in part. Such modification or suspension may be made immediately effective without prior notice.

14A:2-6.13 Preferred customers; sale on first-come, first-served basis

(a) No retail dealer shall give preferential treatment including, but not limited to, separate pumps, separate pump lines, separate hours of sale, or sale by appointment to preferred or regular customers.

(b) All sales of motor fuel shall be on a first-come, first-served basis.

14A:2-6.14 Sale of motor fuel in containers

(a) No person shall, for other than commercial or farm purposes, purchase or attempt to purchase from a retail dealer by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

(b) No retail dealer shall, for other than commercial or farm purposes, sell, or attempt to sell, by distribution directly into a container unrelated to an internal combustion engine more than one gallon of motor fuel.

14A:2-6.15 Quantity of motor fuel

(a) With the exception of those sales of motor fuel on the Garden State Parkway, New Jersey Turnpike, or the Atlantic City Expressway, no gasoline retailer may sell to any passenger vehicle any motor fuel in an amount less than $5.00 for a four-cylinder vehicle or in an amount less than $7.00 for any other vehicle.

(b) With the exception of purchases of motor fuel on the Garden State Parkway, the New Jersey Turnpike, or the Atlantic City Expressway, no operator of a motor vehicle shall purchase motor fuel in the amount less than $5.00 for a four-cylinder vehicle or in an amount less than $7.00 for any other vehicle.

SUBCHAPTER 7. SUPPLIER OF PETROLEUM PRODUCTS

14A:2-7.1 Scope

This subchapter shall govern the periodic reporting of energy information by persons who supply petroleum products to retail dealers.

14A:2-7.2 Reporting

(a) Each supplier of covered products shall submit to the Board the New Jersey posted dealer tank wagon price, post reseller tank car price, or other posted price for each covered product for each class of customer within 24 hours of a price change. Submissions postmarked within 24 hours of a price change shall be deemed to be in compliance with this subsection.

(b) The above information shall be sent to:

State of New Jersey
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102
Attention: Data Center

(a)

BOARD OF PUBLIC UTILITIES

Home Energy Savings Program (HESP)

Proposed Readoption with Amendments: N.J.A.C. 14A:21

Proposed Repeal: N.J.A.C. 14A:21-9 and 14A:21-10.3

Authorized By: Board of Public Utilities, Scott A. Weiner, President.

Authority: N.J.S.A. 52:27F-11(g).

BPU Docket Number: AX90070731.

Proposal Number: PRN 1990-503.

A **public hearing** concerning this proposal will be held on:

Thursday, October 11, 1990 at 2:00 P.M.
Board of Public Utilities Hearing Room
Two Gateway Center, 10th Floor
Newark, New Jersey 07102

Submit written comments by October 17, 1990 to:

Eugene J. Byrne, Esq.
Regulatory Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

On June 15, 1989, Governor Thomas A. Kean issued Reorganization Plan No. 002-1989 to provide for the increased coordination and integra-

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tion of the State's energy regulation, planning and policy formation by the State through the transfer of the Division of Energy Planning and Conservation (Division) from the Department of Commerce, Energy and Economic Development to the Board of Public Utilities (Board) (21 N.J.R. 1937).

Pursuant to the plan, the Division, together with all its existing functions, powers and duties, was continued and transferred to the Board. Among the functions, powers and duties transferred was the responsibility and authority to require the seven in-State investor-owned electric and gas utilities to provide energy surveys under N.J.A.C. 14A:21, the Home Energy Savings Program, to qualifying residential customers.

The Home Energy Savings Program (HESP) rules expand upon the Residential Conservation Service State Plan that the former Department of Energy submitted to the U.S. Department of Energy. These rules were originally adopted by the Department of Energy effective November 21, 1980. If not readopted, they will expire on November 21, 1990 pursuant to Executive Order No. 66 (1978). The purpose of these rules is to encourage the installation of energy conservation measures in new and existing houses by residential customers of investor-owned electric and gas utilities and home heating suppliers. The Board has reviewed the rules and, except for N.J.A.C. 14A:21-9 and 21-10.3, which pertain to home heating testing by home heating suppliers and record keeping by them, respectively, has determined them to be necessary, reasonable and proper for the purpose which they were originally promulgated. Numerous minor changes are proposed to reflect the transfer of energy responsibility to the Board of Public Utilities. The contents of the chapter are summarized as follows:

Subchapter 1 concerns the general provisions and definitions section and is proposed for readoption with only minor changes in text. Additionally, definitions would be inserted for wall insulation, water heater insulation, weather stripping, and window heat gained and loss retardant materials. Certain other definitions are being deleted as they are no longer applicable.

Subchapter 2 concerns the announcement of home energy savings programs by utilities and is being readopted with certain minor text changes and with a restriction added that any announcement of the program not contain any reference or suggestion that customers switch from one type of fuel to another.

Subchapter 3 concerns the services offered in the home energy savings program. It specifies the information which must be given to customers and sets forth the requirements for any programs offered by the utilities. These requirements include those for any program audit conducted in accordance with the rules and limits the timing and any preconditions covered by the audit. At the conclusion of each audit, a report shall be prepared which indicates the results of the audit. The proposed readoption would prohibit a utility from performing an analysis of any oil fired heating unit directly, although the utility would be permitted to use an audit subcontractor to perform all required program services. Further, the proposed readoption would prohibit any program auditor from recommending one fuel type over another.

Subchapter 4 concerns requirements of customer billing and customer payment for any program audit services supplied. This subchapter is being readopted with minor changes in text.

Subchapter 5 sets forth the qualifications for auditors, inspectors and installers performing services pursuant to these regulations. It includes the qualifications of the auditors and inspectors and also includes the procedure and grounds for disqualification of auditors or inspectors. This subchapter is being readopted with minor changes in text.

Subchapter 6 concerns the inspection of any installation work performed pursuant to any program measures undertaken in accordance with this chapter. It sets forth the instances in which mandatory inspections must take place and further provides that covered utilities may make or arrange for random inspection of work performed pursuant to this chapter. This subchapter is being readopted with minor changes in text.

Subchapter 7 concerns the requirements of the master record of installers and suppliers which would be kept pursuant to these regulations by the Board. It sets forth the requirements for participation in the program for installers and suppliers. It further sets forth criteria for withdrawal from the program and for removal from the list of any installers or suppliers. It also contains the criteria for exclusion from the program. This subchapter is also being readopted with minor text changes. It further provides that the Board shall update the master record at least every 180 days rather than the existing 60 days.

Subchapter 8 concerns the list of installers and suppliers. This subchapter is being readopted with minor text changes and includes a requirement that all lists compiled pursuant to this subchapter contain an effective date and expiration date. The expiration date shall be no more than 195 days after the effective date. Additionally, there are also minor changes in text.

The Board proposes to delete existing subchapter 9 which concerns home heating suppliers which are beyond the Board's jurisdiction.

Existing subchapter 10, Reporting and Recordkeeping Requirements, will be recodified as subchapter 9. The Board proposes to readopt this subchapter with minor changes in text and proposes to delete the requirements concerning home heating suppliers.

Existing subchapter 11, Utility Supply and Installation of Program Measures, is proposed to be readopted as subchapter 10 with minor changes in text. These rules prohibit utilities from supplying or installing any program measures provided for in these rules. The proposed readoption also sets forth several exceptions to this restriction.

Finally, existing subchapter 12 will be recodified as subchapter 11 and provides that prior to any person being excluded, disqualified or removed from any master record, the person shall be entitled to a hearing.

Social Impact

Readoption of the rules will have a positive social impact because energy conservation by HESP participants will reduce the need for new power plant construction and operation and their attendant societal costs, as well as the need for new natural gas supplies. Important among HESP's societal benefits is an improvement in the State's environmental quality. In addition, the reduction in the use of imported fossil fuels through conservation will add to the security of the United States.

Economic Impact

Readoption of these rules will improve the job climate in New Jersey because small businesses, in the form of HESP measure installers and suppliers, will maintain and expand their customer bases. Existing jobs will be preserved and new jobs created.

The administration and enforcement of these rules will not have an economic effect on the Board since the Board will not be required to spend funds to administer the rules beyond those already being spent for personnel.

The costs of HESP implementation to the seven covered utilities will be offset by an increased energy awareness by consumers which will lead to a reduction in cost of future power plant construction and reduced energy production costs.

Regulatory Flexibility Analysis

The proposed readoption could continue rules adopted by the former Department of Energy. The rules would insure the continued dissemination of energy conservation information to residential customers by electric and gas utilities which are large businesses. Included in the information provided to these customers is a list of contractors and suppliers who agree to participate in HESP.

The readoption imposes no new reporting, record keeping or other compliance requirements upon such contractors/suppliers, most of which are classified as small businesses, but continues the previous compliance requirements. These requirements include payment of a nominal fee of $25.00 and a minimum amount of paperwork to initially participate in HESP. To continue participation, from year to year, the contractors are required to submit a certificate of insurance annually. These requirements are not such as to warrant a distinction between large and small businesses.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 14A:21.

Full text of the proposed repeal of N.J.A.C. 14:10-9 can be found in the New Jersey Administrative Code at N.J.A.C. 14A:21-9.

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

CHAPTER 21
HOME ENERGY SAVINGS PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

14A:21-1.1 Scope and purpose

(a) The following rules implement the Home Energy Savings Program (HESP) that expands upon the **former** Residential Conservation

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Service (RCS) State Plan which the **former New Jersey** Department **of Energy** submitted to the U.S. Department of Energy.

(b) (No change.)

14A:21-1.2 Definitions

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

. . .

"Department" means the **former** New Jersey Department of Energy[.], **which has since been abolished. The majority of its former functions have been transferred to other State agencies, including the BPU.**

. . .

"EIL" means the Energy Information Line.

"Eligible customer" means a person who:

1. (No change.)

2. Receives a fuel bill from a covered utility or **a** [participating] home heating supplier for fuel used in such residential building.

"Energy conservation measures" means the following measures in a residential building:

1.-19. (No change.)

20. Any other energy conservation measure **designated by the BPU** , that has a payback less than or equal to its expected useful life [designated by the Department].

"Energy conserving practices" or "program practices" means:

1.-11. (No change.)

12. Any other low or no-cost practice designated by the [Department] **BPU** which:

i. Saves energy; and

ii. Does not require the installation of any energy conservation measure.

["Furnace efficiency modifications" means:

1. Replacement furnace or boilers;

2. Furnace replacement burner (oil-fired unit);

3. Flue opening modification.

"EIL" means the Department's Energy Information Line.]

. . .

"Flue opening modification" means an automatically operated damper installed in a gas-fired heating unit (often called a vent damper) which:

1. (No change.)

2. Conserves energy by substantially reducing the flow of heated air through the [chimney] **unit** when the [furnace] **unit** is not in operation.

"Furnace efficiency modifications" means:

1. (No change.)

2. [Furnace replacement] **Replacement** burner (oil-fired unit).

3.-4. (No change.)

["Furnace replacement burner (oil-fired unit)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.]

. . .

"Manufacturer's warranty" [which] means the written warranty by the manufacturer of a program measure offered under the HESP Program. [that the] **The** eligible customer for whom the measure is installed, [the installer who installs the measure, and the supplier of the measure shall, for those measures found within one year from the date of installation to be defective due to materials, manufacture or design,] at a minimum, **shall** be entitled to obtain, within a reasonable period of time and at no charge, appropriate replacement parts or materials **for those measures found within one year from the date of installation to be defective due to materials, manufacture or design.**

"Master Record" means the record of qualified installers and suppliers compiled by the [Department] **BPU** pursuant to N.J.A.C. 14A:21-[9]**7.**

"Night time temperature setback" means manually lowering the thermostat control setting for the heating unit during the heating season to a maximum of [55] **60** degrees F. during sleeping hours.

. . .

["Participating home heating supplier" means any home heating supplier who wishes to participate in the HESP Program and complies with this chapter.]

. . .

"Program announcement" means the information and offer of services required to be sent by each covered utility to every eligible customer in [their] **its** service area pursuant to N.J.A.C. 14A:21-2.

. . .

"Program auditor" means any individual employed by the [Department] **BPU** or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the [Department] **BPU** who meets all of the qualifications contained in N.J.A.C. 14A:21-5.2 and has successfully passed a [Department] **BPU** auditor test.

"Program inspector" means any individual employed by the [Department] **BPU** or by a covered utility or home heating supplier or under contract with a covered utility, home heating supplier or the [Department] **BPU** who meets all of the qualifications contained in N.J.A.C. 14A:21-5.3 and has successfully passed a [Department] **BPU** inspector test.

"Program measures" mean[s] energy conservation measures and energy conserving practices.

["Public utility" means any person which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.]

. . .

"Reducing energy use when a home is unoccupied" means reducing the thermostat setting to **between** 55 **and 60** degrees F. when a home is unoccupied for four hours or longer in the heating season, turning an air conditioner off in the cooling season when the home is unoccupied, and turning a water heater off when a home is vacant for two days or longer.

. . .

"Reducing thermostat settings in winter" means limiting the maximum daytime thermostat control setting for the heating unit to [65] **68** degrees F. during the heating season.

. . .

"Replacement burner (oil-fired unit)" means a device which atomizes the fuel oil, mixes it with air, and ignites the fuel-air mixture, and is an integral part of an oil-fired furnace or boiler including the combustion chamber, and which because of its design, achieves a reduction in the oil used from that used by the device which it replaces.

. . .

"Thermal window or door" means a window or door unit with improved thermal performance **either** through the use of two or more sheets of glazing material affixed to a window or door frame to create one or more insulated air spaces **or the use of insulating material within a door.**

"Wall insulation" means a material primarily designed to resist heat flow which is installed within or on the walls between conditioned areas of a building and unconditioned areas of a building or the outside.

. . .

"Water heater insulation" means a material primarily designed to resist heat flow which is suitable for wrapping around the exterior surface of the water heater casing.

"Weatherstripping" means narrow strips of material placed over or in movable joints of windows and doors to reduce the passage of air and moisture.

"Window heat gain and loss retardant **materials**" means those [mechanisms] materials which significantly reduce summer heat gain through windows and/or which significantly reduce heat loss through windows in winter by use of devices such as awnings, insulated rollup shades (external or internal), metal or plastic solar screens and films, or movable rigid insulation.

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SUBCHAPTER 2. PROGRAM ANNOUNCEMENT

14A:21-2.1. Scope

(a) Beginning January 26, [1986] **1991**, each covered utility shall send a program announcement to its eligible customers in the State. All program announcements shall be sent to all eligible customers at least once a year until January 1, [1991] **1996**. Such program announcements may be cycled by the covered utilities by route service areas. The program announcements shall be in a form provided, or approved in advance, by the [Department] **BPU**. The [Department] **BPU** shall have [a minimum of] 30 calendar days from the date of proposed form submittal by the covered utility to approve, reject or otherwise modify the form of the proposed program announcement. The [Department's] **BPU's** failure to act within the 30-day period shall constitute automatic approval.

(b) A program announcement shall be sent with either the customer's utility bill or mailed independently to each customer. The program announcement shall be reinforced with a promotional campaign approved in advance by the [Department] **BPU**. The [Department] **BPU** shall have [a minimum of] 30 calendar days from the date of the proposed promotional campaign submittal by the covered utility to approve or reject the proposed promotional campaign. The [Department's] **BPU** failure to act within the 30-day period shall constitute automatic approval. If an energy conservation plan, including the promotional efforts related to HESP program services, has been separately approved by the [Department] **BPU**, no separate submittal of a promotional campaign is necessary under this subchapter.

14A:21-2.2 Contents and prohibitions

(a) The program announcement may include all the following for a typical New Jersey residential building, as specified from time to time by the [Department] **BPU**:

1. (No change.)

2. Estimated saving expressed in ranges of dollars that result from taking advantage of individual program measures over one year's time. Such estimated savings shall be calculated by the [Department] **BPU** from time to time and shall be made available for use by the covered utilities.

3. (No change.)

(b) The program announcement shall not include:

1. (No change.)

2. Any information on products which are not program measures[.]**; or**

3. Any solicitation, recommendation, suggestion or advice to switch from one type of fuel to another type of fuel, either in the program announcement itself nor in any printed matter included with the program announcement.

SUBCHAPTER 3. PROGRAM SERVICES AND PROGRAM AUDITS

14A:21-3.1 Program services

(a) All covered utilities shall offer and provide, upon request, the following program services to all eligible customers:

1. A program audit for all applicable program measures in a form to be prescribed or approved by the [Department] **BPU**;

2. Lists of participating installers and suppliers who install or sell program measures, and in a form specified or approved by the [Department] **BPU**;

3. (No change.)

4. [Participation in conciliation] **Conciliation** procedures; and

5. Conservation literature in a form specified or approved by the [Department] **BPU**.

(b) (No change.)

(c) All covered utilities receiving requests for program services from eligible customers shall record the requests and the arrangements made by the covered utility for the audit in a form to be prescribed by the [Department] **BPU**. All such records shall contain the following information, if available, from the customer:

1.-11. (No change.)

(d) The [Department] **BPU** shall also receive requests from eligible customers for program services and shall record the same information required by N.J.A.C. 14A:21-3.1(c).

14A:21-3.2 Arrangement of program audit

(a) If an eligible customer who heats with electricity or gas contacts the [Department] **BPU** and requests a program audit, the [Department] **BPU** shall refer that request to an appropriate covered utility.

(b) If an eligible customer who heats with [oil] **a fuel other than natural gas** contacts the [Department] **BPU** and requests a program audit, the [Department] **BPU** shall refer that request, [except for] **including** that part which requires a hearing unit analysis, to an appropriate covered utility. [The Department shall determine whether the customer's heating supplier is a participating home heating supplier. If so, the Department shall refer the customer's request for a heating unit analysis to that participating home heating supplier. If the customer's home heating supplier is not a participating home heating supplier, the Department shall choose a participating home heating supplier located in the customer's geographic service area to perform the heating unit analysis part of the program audit. The Department shall make the selection in a random and nondiscriminatory manner from the list of participating home heating suppliers who have registered with the Department. The Department shall notify the customer of the referral.]

(c) Upon receiving a referral from the [Department] **BPU**, each covered utility [and participating home heating supplier] shall promptly contact the eligible customer to arrange for an appointment to provide the applicable program audit and services or heating unit analysis.

(d) If a covered utility receives a request for a program audit from a customer who heats with fuel purchased from a home heating supplier the utility shall record the same information required by N.J.A.C. 14A:21-3.1(c) [, and refer the request for a heating system analysis to the Department for review and referral].

14A:21-3.3 Timing and preconditions

(a) All covered utilities shall provide a program audit**, including an analysis of any oil-fired heating unit,** to determine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, that utility must so notify the [Department] **BPU**, in writing, and contact each eligible customer requesting the services within 30 working days of the request or referral to set up an appointment and complete the program audit within 60 working days of the date of the request or referral.

(b) [All participating home heating suppliers shall provide oil-fired heating unit analyses to determine applicable program measures and their estimated costs, savings and paybacks within 30 working days of receipt of a request or referral. If the demand for such services becomes too great, the participating home heating supplier must so notify the Department, in writing, and contact each eligible customer requesting such services within 30 working days of the request or referral to set up an appointment and complete the analysis within 60 working days of the date of the request or referral.] **The covered utility shall not directly perform the analysis of any oil-fired heating unit. The utility may utilize their audit subcontractor to perform all required program services.**

(c) No covered utility or [participating home heating supplier] **company under contract with a covered utility** shall require any eligible customer to purchase or perform any other audit, service, product or measure as a precondition to receiving any program service. **Nor shall such utility or company under contract with a covered utility counsel, advise, suggest or recommend one fuel type over another type of fuel.**

(d) No covered utility or [participating home heating supplier] **company under contract with covered utility** shall discriminate unfairly among eligible customers participating in the program.

14A:21-3.4 Applicability of program measures

(a) (No change.)

(b) A program measure is applicable in a residence if:

1.-3. (No change.)

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4. With respect to [active] solar domestic hot water systems, a site exists on or near the residence which is free of major obstructions to solar radiation;

5.-6. (No change.)

7. With respect to replacement furnaces or boilers, the existing unit is approximately five years old or older **or is inoperable**;

8.-14. (No change.)

14A:21-3.5 Cost, savings and payback estimates

(a) The auditor shall calculate costs, savings and payback estimates for all applicable program measures. These shall:

1. Be based upon calculation procedures, and estimates of cost of installation and materials, prepared and provided by the [Department] **BPU**; and

2. (No change.)

(b) All costs, savings and payback estimates for a gas-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency. This evaluation shall be based upon steady state efficiency corrected for cycling losses, pursuant to a procedure provided to the auditor by the [Department] **BPU**.

(c) All costs, savings and payback estimates for an oil-fired heating unit shall be based upon an evaluation of the unit's seasonal efficiency[,]**. This evaluation shall be based upon** [including the measurement of the unit's] steady state efficiency[. The evaluation shall be] conducted pursuant to N.J.A.C. 14A:3-3 **and corrected for cycling losses, pursuant to a procedure provided or approved by the BPU**.

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

14A:21-3.6 Results of the program audit

(a) As part of every program audit, each auditor shall provide a written list on a form provided or approved by the [Department] **BPU** of energy conserving practices at the time of onsite evaluation. The auditor shall:

1.-3. (No change.)

(b) Upon completion of the program audit, every auditor shall provide the program audit results in writing within ten working days to each eligible customer who receives a program audit. The program audit results shall be in a form prescribed or approved by the [Department] **BPU**. The auditor shall provide a telephone number which the eligible customer may call to review the audit results.

(c) Program audit results shall include the following:

1. Home characteristics to include:

i.-ix. (No change.)

x. Approximate annual heating cost **based on billing history, where feasible**.

2.-5. (No change.)

6. The following disclosure, conspicuously placed and highlighted:

"THE PROCEDURES USED TO MAKE THESE ESTIMATES ARE CONSISTENT WITH NEW JERSEY [DEPARTMENT OF ENERGY] **BOARD OF PUBLIC UTILITIES** CRITERIA FOR RESIDENTIAL PROGRAM AUDITS. HOWEVER, ACTUAL INSTALLATION COSTS AND ENERGY SAVINGS YOU REALIZE FROM INSTALLING THESE MEASURES MAY DIFFER FROM THE ESTIMATES CONTAINED IN THIS AUDIT REPORT. TOTAL SAVINGS FROM THE INSTALLATION OF MORE THAN ONE PROGRAM MEASURE WILL PROBABLY BE LESS THAN THE SUM OF SAVINGS OF EACH MEASURE INSTALLED INDIVIDUALLY."

7. An example of the effect that the installation of one energy conservation measure has on the energy savings of a related energy conservation measure, which example shall be in a form provided or approved by the [Department] **BPU**.

8. **If any tax credits are available,** [The] **the** possible economic benefits to the customer of existing Federal or State tax incentives, with one sample calculation of the effect of the tax benefit on the cost to the customer of installing an applicable energy conservation measure.

14A:21-3.7 Additional information

(a) Every auditor shall present the following to an eligible customer upon the completion of the program audit:

1. Lists of participating installers and suppliers who install or sell program measures, in a form specified or approved by the [Department] **BPU**;

2. (No change.)

3. Information on participation in **utility/customer** conciliation procedures; and

4. Conservation literature in a form specified or approved by the [Department] **BPU**.

14A:21-3.8 Prohibitions

(a) No program auditor shall provide costs, savings or payback estimates resulting from the installation [or] **of** any product or measure which is not a program measure.

(b) (No change.)

(c) No program auditor shall recommend one fuel type over another.

SUBCHAPTER 4. CUSTOMER BILLING, TERMINATION OF SERVICE AND PAYMENTS

14A:21-4.1 Services required

(a) When billing a customer for a program audit, each covered utility [and participating home heating supplier] shall identify the charge and list it separately on the first bill rendered for the charge.

(b) Each covered utility shall allow eligible customers to include payments for those charges along with payments for their utility bill. When receiving a payment from a customer that includes payment for utility service or fuel and payment for any program service, the utility shall credit the portion of the payment that exceeds the charge for utility service or fuel to program charges, unless the customer [specified] **specifies** otherwise.

14A:21-4.2 Prohibitions

No covered utility or [participating] home heating supplier shall terminate or otherwise restrict service or fuel to any eligible customer upon customer default for program services.

14A:21-4.3 Payments

(a) (No change.)

(b) No eligible customer shall be charged more than $15.00 for a program audit **including a heating unit analysis**. Any eligible customer who is either eligible for a "lifeline credit" pursuant to N.J.S.A. 48:2-29.1[5]**6** et seq. or lives in a household where the gross annual income is less than or equal to 150 percent of the poverty level income for that household as defined by the U.S. Department of Health and Human Services guidelines shall receive a program audit at no cost.

[(c) If an eligible customer receives a program audit that includes an analysis of an oil-fired heating unit by a participating home heating supplier, the home heating supplier shall charge no more than $10.00 and the covered utility shall charge no more than $5.00.]

SUBCHAPTER 5. AUDITORS, INSPECTORS, AND INSTALLERS: QUALIFICATIONS AND TESTING

14A:21-5.1 General

(a) All auditors and inspectors of program measures shall be qualified by the [Department] **BPU** as to basic skills necessary to perform such tasks. Each auditor and inspector shall take a written test, prepared and administered by the [Department] **BPU**, prior to being qualified to conduct audits and/or inspections. The [Department] **BPU** may require that evidence of successful completion of energy auditor or inspector training be presented prior to testing. The [Department] **BPU** may retest any or all auditors and/or inspectors upon notice as audit procedures or installation standards change, or for good cause as determined by the [Department] **BPU**.

(b) Any **auditor, inspector or** home heating supplier who has previously passed a [Department] **State of New Jersey** approved test and has been qualified by the [Department] **BPU** may apply for and receive a waiver of testing and qualification standards as set forth herein. Any **auditor, inspector, or** home heating supplier may apply for and receive a waiver of testing and qualification standards if such person submits written proof which, in the opinion of the

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[Department] **BPU,** establishes that the person has sufficient training in conducting testing and analysis of program measures applicable to heating units.

(c) All existing inspectors who are properly designated by the Commissioner of Community Affairs shall be exempt from the [Department's] **BPU's** requirement of testing and qualification of inspectors.

14A:21-5.3 Qualifications for inspectors

(a) (No change.)

(b) Inspectors may be qualified to conduct inspections of one or more types of program measure installations, and shall be tested and qualified accordingly by the [Department] **BPU.**

14A:21-5.4 Disqualification of auditors and inspectors

(a) The [Department] **BPU** may disqualify any auditor or inspector from participating in the program.

(b) (No change.)

14A:21-5.5 Procedures for disqualification

(a) Any auditor or inspector whom the [Department] **BPU** plans to disqualify from participating in the program shall receive written notice from the [Department] **BPU** of the disqualification and the grounds therefor[e] at least 30 days before such disqualification.

(b) The [Department] **BPU** shall allow the auditor or inspector to respond in writing to the allegations contained in the notice. All such responses must be received by the [Department] **BPU** no later than 30 days after receipt of the proposed agency action. Disqualification from participation shall constitute final agency action.

(c) An auditor or inspector who has been disqualified by the [Department] **BPU** may file a request for reconsideration after one year. The request for reconsideration shall be accompanied by a statement, under oath, setting forth substantial and appropriate grounds for reconsideration which shall be supported by documentary evidence. Substantial and appropriate grounds include, but are not limited to:

1. Newly discovered material evidence that the [Department] **BPU** erred in its previous decision;

2. Reversal of a conviction of an offense or civil judgment which formed the basis of the [Department's] **BPU's** previous decision, on material grounds;

3.-4. (No change.)

(d) The [Department] **BPU** shall review the request for reconsideration and shall, within 45 days of its receipt, notify the auditor or inspector of its decision whether to allow the auditor or inspector to continue to participate in the HESP Program.

14A:21-5.6 Audit subcontractors

Covered utilities may subcontract HESP program audits. In developing bid specifications, advertising for bids and awarding contracts and subcontracts, covered utilities shall give consideration to participation by small businesses and minority-owned businesses. The covered utilities shall furnish the [Department] **BPU** evidence of compliance with the above requirement upon request.

SUBCHAPTER 6. INSPECTION OF INSTALLATIONS

14A:21-6.1 Mandatory inspections

(a) (No change.)

(b) If a violation of the requirements of the Uniform Construction Code is found, a report shall be issued promptly by the building inspector to both the customer and the installer, detailing the violation and the requirements to bring the installation into compliance. Upon correction of the violation, another inspection shall be made and a report shall be issued stating whether the violation has been corrected. A copy of any such inspection report shall be made available to the [Department] **BPU** upon its request.

14A:21-6.2 Random inspections

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

(c) Each audit recipient may submit to the [Department] **appropriate covered utility** a work order in a form prescribed by the [Department] **BPU** for each installation at the time of the entry of the contract for installation. The [Department] **covered utility** shall review all submitted work orders and choose which installations shall be inspected on a random basis.

(d) [The Department shall promptly notify a covered utility, which services the geographic area of the installation, of the name, address and telephone number of the audit recipient[s], and the type of installation needed to be inspected.] The covered utility shall promptly contact the audit recipient and inform him or her of the proposed inspection, and arrange an appointment within two weeks. The covered utility shall provide an inspector, qualified by the [Department] **BPU** to inspect that type of installation, to make an inspection report of the site to determine compliance with applicable installation standards. In no case may an inspector inspect his [of] **or** her own work or the work performed directly by the inspector's employer.

(e) Upon completion of the inspection, the inspector shall make a written report stating the following (copies of such report shall be provided to the audit recipient[,] **and** the installer [and the Department] no later than one week from the date of the inspection. **A copy shall be supplied to the BPU upon request.**):

1.-5. (No change.)

(f) Upon receipt of an inspection report stating that the installation is not in compliance, the installer shall, within 30 days, return to the site and correct any and all violations found by the inspector. Upon completion of the corrections, the installer shall notify the [Department] **covered utility** in writing of the corrections.

(g) Upon receipt of such notification of corrections, [the Department shall promptly notify] the covered utility which conducted the inspection [that] **must make** a reinspection [must take place] within two weeks.

(h) Upon receipt of a notice of reinspection, the utility shall contact the audit recipient to arrange for a reinspection. The reinspection report shall contain the same information as in (d) above. Copies of the report shall be provided to the customer[,] **and** the installer [and the Department] no later than one week [of] **from** the date of reinspection. **A copy of the report shall be provided to the BPU upon request.**

(i) Failure by an installer to correct in a timely fashion an installation which has been determined not to be in compliance [may be] **is** grounds for removal from the [Department's] **BPU's** Master Record of participating installers. The [Department] **BPU** may refer instances of faulty installation to any other state or federal agency which may have jurisdiction over such matters.

(j) The [Department shall] **BPU may** review complaints made by audit recipients of faulty or improper installations by participating installers, and may, in its discretion, notify a covered utility to provide an inspection of the customer's residence by a qualified inspector. Upon receipt of such a notice, the covered utility shall comply and conduct an inspection and report the results in compliance with the requirements in this subchapter.

SUBCHAPTER 7. MASTER RECORD OF INSTALLERS AND SUPPLIERS

14A:21-7.1 General requirements

(a) The [Department] **BPU** shall compile and maintain a Master Record of Installers and suppliers of program measures who participate in the HESP Program. The [Department] **BPU** shall provide an application to any installer or supplier of program measures who notifies the [Department] **BPU** that they wish to become a participant.

(b) The [Department] **BPU** shall review all applications for completeness and shall, at its discretion, verify the information contained therein. The [Department] **BPU** shall return applications which contain incomplete or incorrect information.

(c) The [Department] **BPU** shall update the Master Record **at least** every [60] **180** days and shall promptly notify **the** covered utilities of any changes in its content.

(d) The [Department] **BPU** shall notify the applicant in writing whether or not the applicant shall be included on the Master Record by the [Department] **BPU** as a participant.

(e) Each application must be accompanied by a nonrefundable application fee of $25.00 payable to the [New Jersey Department of

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Energy] **Treasurer State of New Jersey**—HESP, by check or money order. The [Department] **BPU** at its discretion may waive all or part of the application fee.

14A:21-7.2 Installers: [Requirements] **requirements** for participation

(a) To be eligible for inclusion on the Master Record, an installer must submit a certified application to the [Department] **BPU** which shall include the following:

1.-5. (No change.)

6. Verification that the installer carries comprehensive public liability insurance adequately protecting the installer from liability for bodily injury, including death, and/or property damage arising out of the installer's performance. Such insurance shall be in amount not less than $300,000 for bodily injury for each occurrence plus $250,000 for property damage for each occurrence or in an amount not less than $500,000 per occurrence for bodily injury and property damage liability. The policy shall contain an endorsement for contractual liability. Every year thereafter the installer shall provide the [Department] **BPU** with a certification of insurance;

7.-11. (No change.)

(b) The installer shall agree to provide the following to any audit recipient who selects that installer from a program list:

1.-4. (No change.)

5. Written assurance that all program measures installed by the installer carry a manufacturer's and/or installer's warranty pursuant to N.J.A.C. 14A:21-[9.2]**7.2**(a)10; and

6. Agreement to participate in [program] customer conciliation procedures **if a complaint is made by an eligible customer, the BPU, a covered utility, or any other state or Federal agency**.

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

(e) Installers of vent dampers and solar [sunspaces] **systems** shall provide proof that they have successfully completed the following:

1.-2. (No change.)

3. Any other [Department] **BPU**-approved training program.

14A:21-7.3 Suppliers: [Requirements] **requirements** for participation

(a) To be eligible for inclusion on the Master Record, a supplier shall complete a certified application to the [Department] **BPU** which shall include the following:

1.-4. (No change.)

5. Agree to participate in [program] conciliation procedures if a complaint is made by an eligible customer, the [Department] **BPU, a covered utility**, or any other State or Federal agency;

6. (No change.)

14A:21-7.4 Withdrawal from the HESP Program

Any supplier or installer may voluntarily withdraw from the program and may be removed from the Master Record upon 30 days written notice to the [Department] **BPU**. However, any [person] **supplier or installer** who so notifies the [Department] **BPU** of withdrawal must continue to abide by all requirements for participation and extend all benefits due for all eligible customers who contracted with the [person] **supplier or installer** while the participant was included on the Master Record.

14A:21-7.5 Exclusion

(a) The [Department] **BPU** shall have the power to exclude [persons] from participating and from being included on the Master Record of installers or suppliers.

(b) Grounds for exclusion include, but are not limited to, the following:

1.-5. (No change.)

6. Any other cause affecting the responsibility of an installer, or supplier of such a serious and compelling nature as may be determined by the [Department] **BPU** to warrant exclusion, including, but not limited to unresolved claims, liens or stop notices or such conduct as may be prescribed by law or regulation even though such conduct has or may not be prosecuted as a violation of such law or regulation;

7. (No change.)

8. Falsification or willful omission of any information required by the [Department] **BPU** of any applicant and/or participant.

14A:21-7.6 Removal

(a) Any person may be removed by the [Department] **BPU** from the Master Record of installers or suppliers.

(b) Grounds for removal may include, but are not limited to, the following:

1. (No change.)

2. Refusal to participate in good faith in any conciliation or redress proceeding conducted by the [Department] **BPU, a covered utility**, or at the [Department's] **BPU's** request;

3. Failure to supply eligible customers with any and all program services and benefits by this chapter; [and]

4. Financial insolvency[.]**; and**

5. Unresolved customer complaints.

14A:21-7.7 Procedures for removal or exclusion

(a) The [Department] **BPU** shall notify in writing any person whom the [Department] **BPU** plans to exclude or remove from the Master Record of the exclusion or removal and the grounds at least 30 days before such exclusion or removal. (See N.J.A.C. 14A:21-12).

(b) A person who has been excluded or removed from the Master Record by the [Department] **BPU** may reapply after one year.

14A:21-7.8 Temporary suspension

The [Department] **BPU** may, in its discretion, temporarily suspend any listed installer or supplier pending removal from the Master Record, if the [Department] **BPU** determines that retaining that person on the Master Record would immediately harm present or potential eligible customers. The [Department] **BPU** shall, within five days of such decision to suspend, notify the person in writing of the suspension and the grounds. The person shall have five days within which to respond to the allegations in writing to the [Department] **BPU**.

14A:21-7.9 Disclosure

If, at the time an eligible customer requests services pursuant to this chapter, a [person] **supplier or installer** has withdrawn, has been removed or has been temporarily suspended from the Master Record, the [person] **supplier or installer** shall disclose such fact in writing to the eligible customer.

SUBCHAPTER 8. LISTS OF INSTALLERS AND SUPPLIERS

14A:21-8.1 General contents

(a) All lists of installers and suppliers of program measures shall contain the name, address and telephone number of each supplier and installer on the Master Record [which] **who** is in or contiguous to the covered utility's service territory and an indication of which types of program measures a supplier or installer sells or installs and in which geographical areas. Identification of program measures shall not include brand names.

(b) All lists shall contain an effective date and expiration date on the first page. The expiration date shall be [75] **no more than 195** days after the effective date, and [the list] shall **be plainly stated on the first page.** [include the following statement:

"EFFECTIVE FOR SEVENTY-FIVE DAYS"]

14A:21-8.2 Installer lists

(a) All lists of installers may contain information that any eligible customer who receives an installer list, and has program measures installed by an installer chosen from that list, is entitled to the following program benefits:

1.-5. (No. change.)

6. That in order to ensure program benefits, appropriate forms should be returned to the [New Jersey Department of Energy] **BPU**:

7. (No change.)

8. That inclusion of any installer on this list does not imply that the installer is recommended or selected by the [New Jersey Department of Energy] **BPU or the covered utility** nor does the [Department] **covered utility** in providing this list guarantee or warranty the type of **work or** quality of the work to be performed.

14A:21-8.3 Supplier lists

(a) All lists of suppliers may contain the following information that any eligible customer who purchases any program measure from

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a listed supplier who indicates that the program measure meets applicable material standards or carries program measures warranty is entitled to the following benefits:

1.-3. (No change.)

4. That inclusion of a supplier on this list does not imply that the supplier is recommended or selected by the [New Jersey Department of Energy] **BPU or the covered utility**.

14A:21-8.4 Updating lists

All covered utilities shall keep all lists of installers and suppliers current, and shall promptly place in service revised lists received from the [Department] **BPU**.

AGENCY NOTE: N.J.A.C. 14:21-9 is herein proposed for repeal.

SUBCHAPTER [10.]**9.** REPORTING AND RECORD KEEPING

14A:21-[10.1]**9.1** Reporting: [Covered] **covered** utilities

(a) Each covered utility shall submit the following information in writing to the [Department] **BPU** on May 30, 1986 and annually thereafter through May 30, [1990] **1995** for the 12-month period ending the preceding April 1:

1.-9. (No change.)

10. Utility's annual budget for the HESP Program including:

i.-v. (No change.)

vi. Other budget information the [Department] **BPU** may require.

11. (No change.)

12. Such other information as the [Department] **BPU** may require for program evaluation.

(b) Each covered utility shall submit the following information in writing and in a form provided or approved by the [Department] **BPU** on the 15th of each month for the preceding month:

1. The number of eligible customers who have requested each program service and the number of requests the utility has fulfilled that may include:

i. (No change.)

ii. The number of eligible customers requesting or receiving each one of the following:

[(1) Workbook I;]

[(2)](**1**) Workbook II;

[(3) Insulation Guide;]

[(4)](**2**) Financing Guide;

[(5)](**3**) [Audit] **Home Energy Survey** Reference Guide; and

[(6)](**4**) Program Lists.

iii. (No change.)

2.-9. (No change.)

10. Such other information as the [Department] **BPU** may require.

14A:21-[10.2]**9.2** Record-keeping [Covered] **covered** utilities

(a) Each covered utility shall keep the following records for the periods indicated and shall make them available to the [Department] **BPU** upon request:

1.-4. (No change.)

[14A:21-10.3 Record-keeping: Participating home heating suppliers

(a) Each participating home heating supplier shall keep the following records for the periods indicated and shall make them available to the Department upon request:

1. The name and address of each eligible customer who requests or receives an oil-fired heating unit analysis as part of a program audit, which shall keep for five years from the date of the heating unit analysis;

2. A copy of the data collected during the heating unit analysis and a copy of the estimates of costs and savings presented to the customer, which shall be kept for five years from the date of the heating unit analysis;

3. A copy of all requests furnished by eligible customers for heating unit analyses pursuant to N.J.A.C. 14A:21-3.2(b), which shall be kept for five years from the date of such requests;

4. If the participating home heating supplier supplies fuel, the amount and cost of fuel purchased each month or other billing period for the 12 months prior to and following each heating unit analysis for each of its own eligible customers participating in the HESP Program, which shall be kept for two years from the date of such heating unit analysis; and

5. The names of individuals who have met the qualification criteria for auditors. These records shall be updated within a reasonable period of time following each implementation of the qualification procedures.]

SUBCHAPTER [11.]**10.** UTILITY SUPPLY AND INSTALLATION OF PROGRAM MEASURES

14A:21-[11.1]**10.1** (No change in text.)

14A:21-[11.2]**10.2** General exception

(a) The prohibition contained in N.J.A.C. 14A:21-[11.1]**10.1** shall not apply to any program measure supplied or installed by a covered utility through contracts between such utility and independent suppliers or installers where the customer requests such supply or installation and each such supplier or installer:

1.-3. (No change.)

(b) Activities of a covered utility under (a) above:

1. May not involve unfair methods of competition:

i. (No change.)

ii. Covered utilities cannot by way of advertising or other marketing inducements indicate that work performed by their contractor is superior to comparable work performed by any other contractor listed on the Master Record.

2.-5. (No change.)

14A:21-[11.3]**10.3** Exception for certain measures

(a) The prohibition contained in N.J.A.C. 14A:21-[11.1]**10.1** shall not apply to the supply or installation of:

1.-3. (No change.)

14A:21-[11.4]**10.4** Exception for existing supply and installation

(a) Any supply or installation of any program measure that the covered utility was engaged in on November 9, 1978, shall not be subject to the prohibition contained in N.J.A.C. 14A:21-[11.1]**10.1**:

1.-2. (No change.)

(b) Any supply or installation of any program measure which the covered utility had by November 9, 1978, broadly advertised that it would supply or install, or with respect to which the utility had by November 9, 1978, completed substantial preparations for supplying or installing shall not be subject to the prohibition contained in N.J.A.C. 14A:21-[11.1]**10.1**:

1.-2. (No change.)

SUBCHAPTER [12.]**11.** DISQUALIFICATION FROM [HOME HEATING SUPPLIER PARTICIPATION AND] MASTER RECORD

14A:21-[12.1]**11.1** Hearing

No person shall be excluded, disqualified or removed from [participation in the home heating supplier program or from] the Master Record without the opportunity for a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. and the Uniform Administrative Rules of Procedure, N.J.A.C. 1:1[-1 et seq].

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RULE ADOPTIONS

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Emergency Shelters for the Homeless Hospitality Rooms

Adopted Amendment: N.J.A.C. 5:15-2.1

Proposed: July 2, 1990 at 22 N.J.R. 1969(a).
Adopted: August 10, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: August 16, 1990 as R.1990, d.459, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13C-5.

Effective Date: September 17, 1990.
Expiration Date: May 1, 1994.

Summary of Public Comments and Agency Responses:
Comments were received from the Bergen County CEAS (Comprehensive Emergency Assistance System) Committee and Interfaith Hospitality Networks for the Homeless. The Bergen County CEAS Committee supports the proposed amendment and urges its adoption. Interfaith Hospitality Networks for the Homeless urges that the length of a single period of use of the hospitality room to shelter homeless persons be extended to 14 days and that the total time that the room be allowed to be used for that purpose be extended to 49 days per year. Hospitality rooms in churches and synagogues are currently being used for these periods of time in various places in New Jersey.

In response to the comments of Interfaith Hospitality Networks, the Department is extending duration of a single period of hospitality room use to 14 days and allowing any given religious building to offer hospitality room services for a maximum of 49 days per year. This is consistent with the stated intention of the Department in making this proposal of accommodating existing hospitality room programs.

Full text of the adopted rule follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

5:15-2.1 Definitions

. . .

"Hospitality room" means a room or space that is incidental to a religious use wherein 14 or fewer persons are provided shelter for *[seven]* ***14*** or fewer consecutive days for no more than *[28]* ***49*** days in a year.

. . .

(b)

DIVISION ON AGING

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

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

Proposed: July 2, 1990 at 22 N.J.R. 1970(a).
Adopted: August 16, 1990, by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.
Filed: August 21, 1990, as R.1990 d.467, **without change.**

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

Effective Date: September 17, 1990.
Expiration Date: July 9, 1992.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

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

(a) (No change.)

(b) Adjusted income is annual income minus the allowances determined in accordance with HUD instructions. If the head or spouse is 62 years or older or handicapped or disabled: $400.00 per household; and an allowance for medical expenses equal to the amount by which the medical expenses exceed three percent of Annual Income. Medical expenses include medical insurance premiums that are anticipated during the period for which Annual Income is computed and are not covered by insurance, any co-payment to physicians who take assignment and additional payments to those who charge more than Medicare assignment rates, hospital bills, and drugs with proof. For the purposes of the subsidy formula, adjusted income (AI) is to be computed as one-twelfth of annual income.

(c) (No change.)

(d) Disposable income (DI) is the amount remaining each month after rent is deducted from adjusted income. When utilities, excluding telephone, are contracted for individually by residents, these costs may be included when computing rent.

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

1. STEP I

ADJUSTED INCOME—RENT = DISPOSABLE INCOME
(AI)—(R) = (D.I.)

2. (No change.)

3. The following STEP II shall be operative from January 1, 1991 through December 31, 1991:

D.I. of $0.00 to $181.00: SERVICE SUBSIDY = 95 percent of PROGRAM COST; PARTICIPANT PAYMENT = 5 percent of PROGRAM COST (CATEGORY A.)

D.I. of $182.00 to $304.00: SERVICE SUBSIDY = 80 percent of PROGRAM COST; PARTICIPANT PAYMENT = 20 percent of PROGRAM COST (CATEGORY B.)

D.I. of $305.00 to $428.00: SERVICE SUBSIDY = 60 percent of PROGRAM COST; PARTICIPANT PAYMENT = 40 percent of PROGRAM COST (CATEGORY C.)

D.I. of $429.00 to $551.00: SERVICE SUBSIDY = 40 percent of PROGRAM COST; PARTICIPANT PAYMENT = 60 percent of PROGRAM COST (CATEGORY D.)

D.I. of $552.00 to $675.00: SERVICE SUBSIDY = 20 percent of PROGRAM COST; PARTICIPANT PAYMENT = 80 percent of PROGRAM COST (CATEGORY E.)

(f) The categories of disposable income set forth in (e) above for use in determining percentage levels of program service subsidies shall be adjusted annually on January 1. The adjustment shall be made on the basis of the percentage increase in Social Security benefits given to Social Security recipients pursuant to 42 U.S.C.A. 415 for the immediately preceding calendar year. Each income category set forth above will be multiplied by such percentage increase. The Division on Aging shall ensure that appropriate notification of each such annual adjustment is properly made.

EDUCATION

(c)

STATE BOARD OF EDUCATION

Notice of Administrative Deletion Forewords

N.J.A.C. 6:61, 62, 63 and 65

Take notice that the Department of Education has requested the administrative deletion of the chapter titles and forewords to N.J.A.C. 6:61, 62, 63 and 65 currently in the New Jersey Administrative Code, constituting the entire text of those chapters. The Office of Administrative Law has agreed to the deletion of this material, since the titles and forewords

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are descriptive only, and contain no regulatory material. These chapters shall now appear as reserved in the Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the chapter titles and forewords to N.J.A.C. 6:61, 62, 63 and 65 deleted through this notice can be found at those chapter locations in the New Jersey Administrative Code, pending their deletion therefrom.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Rules of Practice and Procedure

Readoption with Amendments: N.J.A.C. 7:1
Adopted Recodification: N.J.A.C. 7:1-2 to 7:30-11
Adopted Recodification with Amendments: N.J.A.C. 7:1-7 to 7:1E-5

Proposed: May 21, 1990 at 22 N.J.R. 1457(a).
Adopted: August 13, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.
Filed: August 15, 1990 as R.1990 d.457, **with a technical change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).
Authority: N.J.S.A. 13:1B-1 et seq., specifically 13:1B-3; 13:1D-9; 13:1F-1 et seq., specifically 13:1F-4; 13:1K-15 et seq.; 52:14B-1 et seq.; and Executive Order No. 34 (1976).
DEP Docket Number: 018-90-04.
Effective Date: August 15, 1990, Readoption; September 17, 1990, Amendments and Recodification.
Expiration Date: August 6, 1995, N.J.A.C. 7:1E; December 4, 1992, N.J.A.C. 7:30.

Summary of Public Comments and Agency Responses:
On May 21, 1990 at 22 N.J.R. 1457(a), the Department proposed to readopt with minor amendments the rules at N.J.A.C. 7:1, which govern the general organization of the Department (N.J.A.C. 7:1-1.1); the procedure to petition the Department for a rule (N.J.A.C. 7:1-1.2); emergency containment and disposal of pesticides (N.J.A.C. 7:1-2); debarment, suspension and disqualification from Department contracting (N.J.A.C. 7:1-5); and the preparation of hazardous substance discharge reports and notices (N.J.A.C. 7:1-7). The Department also proposed to recodify N.J.A.C. 7:1-2 as 7:30-11 and N.J.A.C. 7:1-7 as 7:1E-5 in order to place these subchapters with other rules of their administering divisions.

On June 8, 1990, the Department held a public hearing concerning the proposed readoption, amendment and recodification of N.J.A.C. 7:1-2. No members of the public presented testimony at the public hearing.

The Department did not receive any written comments on the proposal during the public comment period ending July 20, 1990.

Summary of Agency-Initiated Changes:
The Department has amended the address at N.J.A.C. 7:1-1.2 to which rulemaking petitions must be sent to reflect organizational changes within the Department which occurred after this proposal was filed with the Office of Administrative Law.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:1.

Full text of the adopted amendments to N.J.A.C. 7:1-1.2, the recodification of N.J.A.C. 7:1-2 and the recodification and amendment of N.J.A.C. 7:1-7 follows (deletions from the proposal indicated in brackets with asterisks *[thus]*).

7:1-1.2 Procedure to petition for a rule
(a)-(b) (No change.)
(c) Petitions for the promulgation, amendment or repeal of a rule by the Department of Environmental Protection shall be addressed to:

Department of Environmental Protection
CN 402
Trenton, New Jersey 08625
ATTN: Administrative Practice Officer
[Division of Regulatory Affairs]

(d)-(g) (No change.)
Recodify existing N.J.A.C. 7:1-2 as 7:30-11 (No change in text.)

SUBCHAPTER 5. HAZARDOUS SUBSTANCES DISCHARGE: REPORTS AND NOTICES

Recodify existing N.J.A.C. 7:1-7.1 to 7:1-7.2 as 7:1E-5.1 to 7:1E-5.2 (No change in text.)

7:1E-5.3 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

. . .

"Agent(s) or officer(s) of the municipality" means a duly authorized representative of the municipality or local board of health pursuant to N.J.A.C. 7:1E-5.7(e).

. . .

7:1E-5.4 General program information
Unless otherwise set forth pursuant to the provisions of this subchapter, all correspondence, questions, advice, requests for copies of the Department's Communications Center Notification Report forms, or other requests regarding this subchapter shall be directed to: Department of Environmental Protection, Division of Environmental Quality, Bureau of Communications and Support Services, CN 411, Trenton, New Jersey 08625, (609) 292-7172.

7:1E-5.5 Reporting responsibility of owners or operators of industrial establishments
(a)-(b) (No change.)
(c) Unless submittted directly to the Department by the industrial establishment pursuant to (a)1 above, a copy of the written report required by (b) above shall be sent by the governing body of the municipality pursuant to N.J.A.C. 7:1E-5.8(d) to:

New Jersey Department of Environmental Protection
Division of Environmental Quality
Bureau of Communications and Support Services
CN 411
Trenton, New Jersey 08625

(d) Any remedial actions, which may include sampling, containment, and/or disposal of hazardous substance(s), to be conducted at these sites shall be coordinated with the Department.

7:1E-5.6 Reporting liability
(a) Any person reporting a hazardous discharge pursuant to N.J.A.C. 7:1E-5.5 shall not, solely by submission of the written report required by N.J.A.C. 7:1E-5.5(b), incur liability for the cleanup of the hazardous discharge.
(b) (No change.)

7:1E-5.7 Reporting responsibility of the department
(a) When the Department obtains any information which leads it to suspect that a hazardous discharge has occurred it shall immediately notify, in writing and orally as specified in this section, the local board of health and the governing body of the municipality in which the hazardous discharge has occurred unless these entities have previously been notified of said hazardous discharge by the local board of health or the governing body of the municipality pursuant to N.J.A.C. 7:1E-5.8(a).
(b)-(d) (No change.)
(e) The Department shall take appropriate action to verify that a hazardous discharge has occurred as suspected, including the authorization of agent(s) or officer(s) of the municipality or local board of health by an appropriate Department official to investigate the site of the suspected hazardous discharge:
1.-2. (No change.)
3. The agent(s) or officer(s) of the municipality shall report all findings to, and coordinate any further actions with, the Department as specified in N.J.A.C. 7:1E-5.5(d).

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7:1E-5.8 Reporting responsibility of local officials

(a) Any governing body of a municipality or local board of health shall immediately notify the Department, in writing and orally as specified in this section, upon obtaining any information pursuant to N.J.A.C. 7:1E-5.5(a) or from any other source that a hazardous discharge has occurred within their jurisdiction unless previously notified of a hazardous discharge by the Department pursuant to N.J.A.C. 7:1E-5.7(a).

(b) The governing body of the municipality or local board of health shall provide the Department with information regarding any hazardous discharge pursuant to (a) above on the Communications Center Notification Report forms provided by the Department or their equivalent, except if the information already has been provided for pursuant to N.J.A.C. 7:1E-5.5(c).

(c) In addition to the written report required by (b) above, the governing body of the municipality and local board of health shall also immediately notify the Department by telephone at (609) 292-7172. The Department Hotline dispatcher shall be provided with any information available as required by N.J.A.C. 7:1E-5.5(b).

(d) The written report required by (a) above shall be sent within 10 days of discovery of the hazardous discharge as specified in N.J.A.C. 7:1E-5.5(c).

7:1E-5.9 Procedures for inclusion or exemption of groups with SIC codes from the definition of an industrial establishment

(a)-(g) (No change.)

Recodify existing N.J.A.C. 7:1-7.10 as 7:1E-5.10 (No change in text.)

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Notice of Administrative Correction
Additional Operational and Design Standards for Hazardous Waste Facilities
Hazardous Waste Landfills
N.J.A.C. 7:26-10.8

Take notice that the Department of Environmental Protection has discovered an error in the current text of N.J.A.C. 7:26-10.8(e)20. Between the words "does not contain" and "the absorbent material," the following language, adopted effective May 21, 1984 at 16 N.J.R. 1230(a), is missing: "free liquids shall not be placed in a hazardous waste landfill unless." This text was inadvertently deleted from the rule during the production of the December 21, 1987 update to the New Jersey Administrative Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full Text of the corrected rule follows (additions indicated in boldface **thus**):

7:26-10.8 Hazardous waste landfills

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

(e) Operational standards for hazardous waste landfills include the following:

1.-19. (No change.)

20. Liquid waste or waste containing free liquids that have not been mixed with an absorbent material so that the resultant waste is not a liquid or does not contain **free liquids shall not be placed in a hazardous waste landfill unless** the absorbent material is approved by the Department for this use.

21.-22. (No change.)

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

HUMAN SERVICES

(b)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Notice of Rule Invalidation
Screening and Screening Outreach Program
Waiver of Rules; Functions of a Screening Center; Screening Process and Procedure; Transportation of Clients
N.J.A.C. 10:31-1.4, 2.1, 2.3 and 8.1

Take notice that provisions of N.J.A.C. 10:31-1.4, 2.1, 2.3 and 8.1 have been invalidated by the Superior Court of New Jersey Appellate Division, in *In the Matter of the Appeal from the Adoption of Screening Center Regulations by the Department of Human Services,* ____ N.J. Super. ____, Dkt. No. A-5857-88T1 (App. Div. June 27, 1990).

Please contact the Department of Human Services, Division of Mental Health and Hospitals, regarding any further action involving the case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

(c)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual
Readoption: N.J.A.C. 10:60

Proposed: June 4, 1990 at 22 N.J.R. 1663(a).

Adopted: August 15, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.

Filed: August 15, 1990 as R.1990 d.458, **without change.**

Authority: N.J.S.A. 30:4D-6b(2), 7, 7a, b, and c; 30:4D-12; 30:4E-5 et seq.

Effective Date: August 15, 1990.

Expiration Date: August 15, 1995.

Summary of Public Comments and Agency Responses:

There was one comment submitted by the Community Health Law Project, the contractor under the Legal Assistance for Medicare Patients (LAMP) program. The commenter was concerned about the regulation which requires home health agencies to submit a claim to Medicare (Title XVIII) unless the service is not covered by the Medicare program or when Medicare benefits are exhausted (N.J.A.C. 10:60-3.1). The commenter observed the home health agency's current practice of completing a certification (on Form FD-139) in which the agency either certifies the services are not covered by Medicare or that the patient's benefits have been exhausted.

The commenter believes that the determination of whether Medicare coverage is available should be left to the Medicare intermediary. Also, the commenter observed that Medicaid claims may be paid without benefit of an appealable determination (of coverage) by Medicare.

The commenter recommends that the current regulation be amended to require home health agencies, when submitting Medicaid claims, to attach a copy of the Medicare denial for dually eligible beneficiaries and refer (to the LAMP program) either directly or through the Division of Medical Assistance and Health Services, all dually eligible beneficiaries on whose behalf Medicare claims are denied.

The agency's response that a revision of the N.J.A.C. 10:49, the Administrative Manual, is under review and will consider the claim submission requirement that all denied Medicare home health claims be submitted to the LAMP program. The policy of automatic review is under consideration.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:60.

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services Manual
Home Care Expansion Program

Adopted New Rules: N.J.A.C. 10:60-4

Proposed: February 20, 1990 at 22 N.J.R. 597(a).
Adopted: August 20, 1990 by Alan J. Gibbs, Commissioner, Department of Human Services.
Filed: August 20, 1990 as R.1990 d.466, **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. 30:4D-7, 30:4D-7a, b, c, l; 30:4E-5 et seq., specifically 30:4E-14.
Effective Date: September 17, 1990.
Expiration Date: August 15, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Agency-Initiated Changes:
There is one change in the text upon adoption. Language is being added at N.J.A.C. 10:60-4.2(b)3iii to indicate that if an application is received for a qualifying child, only the child's income and/or resources shall be considered. There is no deeming of parental income or resources.

The enabling legislation indicates the intent of the State-funded Home Care Expansion Program (HCEP) is to offer home care services to elderly and disabled persons in New Jersey who are in need of long-term home care and are at risk of institutionalization and whose income or resources exceed the financial requirements for Medicaid or the Community Waiver Programs. The Division of Medical Assistance and Health Services (the Division) does not want to preclude a disabled child's entry into the HCEP if the child meets other program requirements. The Division is making this change on its own initiative to clarify the issue of eligibility for children. There is no additional burden placed upon this group of potential eligibles because the income and/or resource criteria, and the need to establish disability, etc., remain the same.

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

SUBCHAPTER 4. HOME CARE EXPANSION PROGRAM

10:60-4.1 Scope and *[Authority]* ***authority***

(a) The Home Care Expansion Act (L.1988, c.92) was signed into law August 4, 1988 and its program, the Home Care Expansion Program (HCEP), became effective May 1, 1989. The intent of the program is to offer home care services to elderly and disabled persons in New Jersey who are in need of long-term home care services and whose income or resources exceed the financial requirements for Medicaid or the Division of Medical Assistance and Health Services' Home and Community-Based Waiver Programs. It is anticipated that the provision of home care services will delay or avoid institutionalization.

(b) The Home Care Expansion Program (HCEP) is administered by the Division of Medical Assistance and Health Services and is available Statewide. Program slots are allocated to each county. It is anticipated that present funding will allow HCEP to serve approximately 600 individuals at any one time. Each county has a designated home and community-based program case management site which is utilized for HCEP.

10:60-4.2 Eligibility requirements for HCEP

(a) Financial eligibility will be determined by the Division's Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) initially and on an annual basis using existing PAAD processes and policies where applicable.

(b) To qualify for services, an applicant shall meet the following criteria:

1. Be a resident of New Jersey for at least 30 days;

2. Have an annual income of less than $18,000, if single, or if married, less than $21,000 in combination with that of a spouse;

3. Have resources of less than $15,000, as an individual or in combination with a spouse.

i. Real property is not considered an available resource for purposes of determining eligibility for HCEP. However, if real property is sold, then the proceeds of the sale would be considered as an accountable resource.

ii. The Home Care Expansion Program considers only liquid resources. Examples of liquid resources are cash or any item which can be readily converted to cash. These can include, but are not limited to, stocks, bonds, mutual funds, money market funds, certificates of deposit, savings accounts, checking accounts, trusts, annuities, savings bonds, treasury notes, treasury bills and treasury bonds;

iii. If an application is received for a child who meets other program requirements, only the child's income and/or resources shall be considered. There is no deeming of parental income or resources.

4. Be eligible for, or receiving, Medicare benefits, or have other health care insurance which includes hospital and physician coverage;

5. Be 65 years or older, or, if under 65 years of age be determined permanently and totally disabled by the Social Security Administration (SSA) or by the Division of Medical Assistance and Health Services, Disability Review Section.

i. The beneficiary shall be responsible for costs incurred relevant to the disability determination, that is, physician's examination, etc.; and

6. Be in need of long-term home care services which are medically necessary to avoid or delay institutionalization.

(c) Applicants who are eligible for the Community Care Program for the Elderly and Disabled (CCPED) shall be eligible for HCEP if CCPED services are unavailable in the applicant's county of residence.

(d) The total cost of services for the beneficiary in the community may not exceed 70 percent of the cost of institutional care.

(e) The following relate to identifying the beneficiary eligible for HCEP services:

1. Although HCEP is not a Title XIX (Medicaid) Program, a standard Medicaid Eligibility Identification (MEI), FD-73/178, card is issued to the beneficiary by the fiscal agent.

2. Program services for which the beneficiary is eligible are listed on the MEI card in the upper right hand corner.

(f) There is no retroactive eligibility in HCEP. No service received prior to the date of enrollment can be reimbursed by HCEP. The date of enrollment is the date that financial eligibility and medical need for services are established, and a program slot is available.

10:60-4.3 Services available under HCEP

(a) The seven services provided under HCEP are:

1. Case Management: a system in which a social worker or professional nurse is responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the beneficiary being served. The case manager is responsible for the initial assessment of the beneficiary's need for home care services, the determination of cost-share liability, and is the pivotal person in establishing a service package to meet those needs.

i. Case Management is not provided when a beneficiary is in an inpatient hospital setting and the stay extends beyond a full calendar month;

2. Home Health Care: provided by a licensed home health agency and ordered by a physician, which may include skilled nursing care; homemaker/home health aide services; physical and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies are limited to a maximum of $50.00 a month. Covered home care services are provided according to medical, nursing and other health-related needs, as documented in the beneficiary's plan of care;

3. Homemaker: personal care, household tasks, and activities of daily living, provided to a beneficiary in the home by either a home health agency or a homemaker agency;

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4. Medical Day Care: a program of medically supervised, health and health-related services provided in an ambulatory care setting to a beneficiary who is a non-resident of the medical day care center;

5. Social Adult Day Care: a comprehensive social and health-related outpatient program for the frail, moderately handicapped, slightly confused beneficiary who needs care during the day;

6. Medical Transportation: Non-emergency transporting of a beneficiary by an approved, suitable vehicle to obtain health services. Transportation may be provided by invalid coach or by lower modes of service that are arranged/provided by the county welfare agency/board of social services; and

7. Respite Care: a temporary service offered on an intermittent basis to a beneficiary being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite Care can be rendered, by approved providers, in the beneficiary's home by a home health agency, homemaker agency, or in a long-term care facility for limited periods of time.

(b) The services, listed under (a) above, may be limited in duration or amount depending upon the medical needs of the beneficiary; the availability and cost of the care; and program openings allowed by program funding. Services are rendered by providers approved by the Division of Medical Assistance and Health Services for the Community Care Program for the Elderly and Disabled.

(c) Services other than the seven in (a) above are not available to the beneficiary eligible for HCEP.

(d) Cost-sharing for HCEP is as follows:

1. Beneficiaries may be required to share in the cost of their care. Cost-share is calculated by the case manager on a monthly basis and shall be the amount of the beneficiary's monthly income in excess of a standard monthly maintenance allowance plus allowable medical or remedial care expenses paid that month. Beneficiaries are then billed monthly if this determination indicates that cost-share is owed.

2. The Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) is responsible for the billing and collection of the beneficiary's cost-share liability.

3. Non-payment of cost-share for two consecutive months will result in termination from the program. Partial payment will be allowed for one month; cost-share must be paid in full (current and arrears) within 60 days of the date of the initial bill.

10:60-4.3 Services available under HCEP

(a) The seven services provided under HCEP are:

1. Case Management: a system in which a social worker or professional nurse is responsible for planning, locating, coordinating, and monitoring a group of services designed to meet the individual health needs of the beneficiary being served. The case manager is responsible for the initial assessment of the beneficiary's need for home care services, the determination of cost-share liability, and is the pivotal person in establishing a service package to meet those needs.

i. Case Management is not provided when a beneficiary is in an inpatient hospital setting and the stay extends beyond a full calendar month;

2. Home Health Care: provided by a licensed home health agency and ordered by a physician, which may include skilled nursing care; homemaker/home health aide services; physical and occupational therapy; speech-language pathology services; medical social services and medical supplies. Medical supplies are limited to a maximum of $50.00 a month. Covered home care services are provided according to medical, nursing and other health-related needs, as documented in the beneficiary's plan of care;

3. Homemaker: personal care, household tasks, and activities of daily living, provided to a beneficiary in the home by either a home health agency or a homemaker agency;

4. Medical Day Care: a program of medically supervised, health and health-related services provided in an ambulatory care setting to a beneficiary who is a non-resident of the medical day care center;

5. Social Adult Day Care: a comprehensive social and health-related outpatient program for the frail, moderately handicapped, slightly confused beneficiary who needs care during the day;

6. Medical Transportation: Non-emergency transporting of a beneficiary by an approved, suitable vehicle to obtain health services. Transportation may be provided by invalid coach or by lower modes of service that are arranged/provided by the county welfare agency/board of social services; and

7. Respite Care: a temporary service offered on an intermittent basis to a beneficiary being cared for at home. The purpose of this service is to relieve the informal caregivers, allowing for a leave of absence in order to reduce stress or to meet a family crisis. Respite Care can be rendered, by approved providers, in the beneficiary's home by a home health agency, homemaker agency, or in a long-term care facility for limited periods of time.

(b) The services, listed under (a) above, may be limited in duration or amount depending upon the medical needs of the beneficiary; the availability and cost of the care; and program openings allowed by program funding. Services are rendered by providers approved by the Division of Medical Assistance and Health Services for the Community Care Program for the Elderly and Disabled.

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2. The Bureau of Pharmaceutical Assistance to the Aged and Disabled (PAAD) is responsible for the billing and collection of the beneficiary's cost-share liability.

3. Non-payment of cost-share for two consecutive months will result in termination from the program. Partial payment will be allowed for one month; cost-share must be paid in full (current and arrears) within 60 days of the date of the initial bill.

10:60-4.4 Procedures used as financial controls for HCEP

(a) Total program costs are limited to the amount appropriated by the State legislature.

(b) Program cost is controlled by the number of beneficiaries served and per beneficiary costs.

(c) A case manager is responsible for the development of the service plan with each beneficiary/family, with input from provider agencies. The case manager is responsible for monitoring the cost of the service package as per program guidelines.

(d) HCEP Statewide service cost caps and allocation of program slots will be coordinated by the Division of Medical Assistance and Health Services, Office of Home Care Programs.

10:60-4.5 Basis for reimbursement

(a) A fee-for-service reimbursement methodology will be utilized for HCEP services utilizing a MC-14, Independent Outpatient Health Facility form (See Exhibit IV). Transportation providers will utilize the MC-12 form, Transportation Claim.

10:60-4.6 Termination from HCEP

(a) A beneficiary will be terminated from HCEP if:

1. His or her income is above program requirements;

2. His or her resources are above program requirements;

3. He or she is assessed as no longer in need of long-term home care services; or

4. His or her cost-share payments are not paid in full for two consecutive months.

(b) A beneficiary found ineligible because of an increase in annual income or resources is liable for repayment of all monies paid for HCEP services from the beginning of the calendar year, not only for those payments made after income or resources were increased. Program eligibility is based upon annual income and resources.

(c) A beneficiary terminated from HCEP will be billed by the Bureau of Pharmaceutical Assistance to the Aged and Disabled for services rendered during a period of ineligibility.

(d) The Director may, in his or her discretion, take all necessary action to recover the cost of benefits incorrectly paid on behalf of

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the beneficiary. The Director may waive the Division's right to recover, when appropriate.

(e) A beneficiary who is terminated may exercise his or her right to appeal the decision by submitting a request for a fair hearing in accordance with N.J.A.C. 10:49-5.3. Such requests shall be submitted within 20 days from the date of the letter of termination.

1. If a hearing is granted in a situation where the beneficiary is assessed as no longer in need of home care services or cost-share has not been paid in full for two consecutive months, and the beneficiary is receiving services under HCEP, payment for these services can continue until a final decision is made. However, if the beneficiary chooses to continue to receive services and the termination is upheld at the fair hearing, the beneficiary will be billed for any service received after five days from the date of the Office of Home Care Programs' denial letter.

2. If a hearing is granted in a situation where the beneficiary's income or resources are above program requirements, payment for the services will cease at the point that the ineligibility determination was made.

(f) A previously terminated beneficiary may be eligible for HCEP if:

1. His or her income and resources meet program requirements;
2. Home care services are needed to avoid institutionalization; and
3. His or her cost-share payments and any other monies owed to HCEP are paid.

SUBCHAPTER 5. COMMUNITY CARE PROGRAM FOR THE ELDERLY AND DISABLED

Recodify 10:60-4.1 through 4.3 as 5.1 through 5.3 (No change in text.)

CORRECTIONS

(a)

THE COMMISSIONER

Notice of Administrative Deletion
Classification Process
Criteria for Consideration for Gang Minimum Custody Status and Full Minimum Custody Status
N.J.A.C. 10A:9-4.6

Take notice that the Department of Corrections has discovered an error in the New Jersey Administrative Code at N.J.A.C. 10A:9-4.6(k)3. The reference in that paragraph to, "serious offenses in (j) below," is in error. The correct reference is to "(l) below." This error is obvious on its face, given subsection (j)'s location "above" subsection (k), and its not containing a list of serious offenses. This notice of administrative correction is published pursuant to 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]):

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

(a)-(j) (No change.)

(k) Inmates with detainers from other jurisdictions outside New Jersey shall be eligible as follows:

1.-2. (No change.)

3. Inmates with detainers for open charges more than five years old shall be eligible to be considered for gang minimum custody status and full minimum custody status provided the charges are not included on the list of serious offenses in [(j)] **(l)** below, and the I.C.C. believes the inmate is not an escape risk.

(l)-(m) (No change.)

INSURANCE

(b)

DIVISION OF ADMINISTRATION

Notice of Administrative Correction
Rate Filing Requirements: Voluntary Market Private Passenger Automobile Insurance
General Filing Questionnaire
N.J.A.C. 11:3-16 Appendix Exhibit D

Take notice that the Department of Insurance has discovered an error in the current text of the Appendix to N.J.A.C. 11:3-16. Exhibit D of the Appendix, entitled "General Filing Questionnaire," was adopted effective February 5, 1990 at 22 N.J.R. 399(a), 418-420. However, this Exhibit was erroneously not published in the February 20, 1990 update to the New Jersey Administrative Code. Upon filing of this notice, the Office of Administrative Law will see to the inclusion of the Exhibit in the next available update to the Administrative Code. This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of N.J.A.C. 11:3-16 Appendix Exhibit D can be found in the February 5, 1990 New Jersey Register at 22 N.J.R. 399(a), 418-420, pending its inclusion in the New Jersey Administrative Code.

(c)

DIVISION OF ACTUARIAL SERVICES

Reporting Financial Disclosure and Excess Profits
Adopted Amendment: N.J.A.C. 11:3-20.9

Proposed: April 2, 1990 at 22 N.J.R. 1025(a).
Adopted: August 22, 1990 by Samuel F. Fortunato, Commissioner, Department of Insurance.
Filed: August 22, 1990 as R.1990 d.470, **without change.**
Authority: N.J.S.A. 17:29A-5.6 et seq., specifically 17:29A-5.16.
Effective Date: September 17, 1990.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

11:3-20.9 Excess profits carry forward.

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

(c) In order to take credit in the form of an excess profits carry forward in any filing of an excess profits report, the filer shall file the following which shall be attached to the excess profits report in which the carry forward is to be taken:

1. A copy of the excess profit report which originally showed the existence of an excess profit; and

2. Excess Profits Exhibits One through Six containing the data that shows the adverse development of the pertinent accident year or years.

(d)

DIVISION OF THE REAL ESTATE COMMISSION

Rules Interpreting and Implementing the Real Estate Sales Full Disclosure Act
Adopted Repeal: N.J.A.C. 11:5-1.25
Adopted New Rules: N.J.A.C. 11:5-6

Proposed: May 21, 1990 at 22 N.J.R. 1421(a).
Adopted: August 13, 1990 by the New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.
Filed: August 13, 1990 as R.1990 d.455, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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Authority: N.J.S.A. 45:15-6 and 45:15-16.49 (P.L. 1989, c.239).

Effective Date: September 17, 1990.

Expiration Date: October 28, 1993.

Summary of Public Comments and Agency Responses:

After the decision of the United States Court of Appeals for the Third Circuit in *Old Coach Development Corp., Inc., et al. v. Tanzman, et al.* 881 F. 2d 1227 (3d Cir. 1989), which declared the New Jersey Land Sales Full Disclosure Act unconstitutional, the New Jersey Legislature enacted the Real Estate Sales Full Disclosure Act (hereinafter "the Act"), P.L. 1989, c.239. That bill was signed into law on January 2, 1990 and empowered the Commission to promulgate rules implementing and interpreting its provisions.

On May 21, 1990 the Commission proposed the repeal of N.J.A.C. 11:5-1.25 which had been promulgated pursuant to the invalid Land Sales Full Disclosure Act, and proposed the adoption of new rules implementing the Real Estate Sales Full Disclosure Act, to be codified at N.J.A.C. 11:5-6. In addition to inviting the submission of written comments, the Commission held a public hearing at which it received verbal comments from interested parties on June 5, 1990. After considering the public comments received, the Commission determined to adopt the proposed new rules with minor substantive changes as identified below which, pursuant to N.J.A.C. 1:30-4.3(c), do not require additional public notice and comment. Explanations of those changes and a summary of the comments received and of the agency's responses to them follows.

The Commission added two terms to the list of terms defined in the definitions section of the rule, that is, "deed in trust" and "principal", in an effort to assist readers of the rules in understanding these references where they appear in the body of the text.

N.J.A.C. 11:5-6.3(a)6 was changed to clarify that the Commission would not accept certain documentation filed with the Department of Housing and Urban Development "in lieu of" the statutory requirements in the Act, but as conforming to those requirements. That subparagraph was also revised to clarify that the reference therein to "audited financial statements" concerned the same type of statements described in N.J.A.C. 11:5-6.4(a)15. Wording was also added to clarify that in situations where documents filed with the Federal Office of Interstate Land Sales Registration are submitted with an application for registration, it is still necessary for applicants to submit a proposed New Jersey Public Offering Statement which complies with all of the requirements of the Act and the rules applicable to such statements.

N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18(d) were all revised in a similar manner. References to "deeds in trust" were added to clarify the intent of the Commission regarding the manner in which and for how long payments made by New Jersey purchasers on installment sale contracts were to be secured. In addition, other language was added with regard to the escrow accounts in which such monies were to be maintained, in order that the language of the rule would be consistent with the language and requirements of the Act regarding such accounts. Language was also added to clarify that the reference in the rule to the removal of all contingencies in the contracts was not intended to refer to the completion of secured promised improvements. Furthermore, the grammatical structure of these provisions was revised to have the rule read in a more clear manner. Finally, language was added to identify the types of financial assurances which would be acceptable to the Commission where payments are not to be escrowed, the criteria by which a surety will be evaluated and the manner in which the bond, letter of credit, or other financial assurance must be framed, identifying who the insured party must be and how the amount of the instrument is to be determined.

N.J.A.C. 11:5-6.4(a)9 was revised to clarify that copies of any escrow agreements utilized pursuant to N.J.A.C. 11:5-6.4(a)3 must also be submitted to the Commission as part of any application for registration of a project which will utilize such escrow agreements.

N.J.A.C. 11:5-6.4(a)11 was revised to include all of the classifications on the basis of which it is prohibited to discriminate in the sale or rental of housing, based upon the New Jersey Law Against Discrimination and the Federal Fair Housing Laws as recently amended.

N.J.A.C. 11:5-6.4(a)12 was revised to add to the requirement that the existence of any adverse conditions affecting the development must be disclosed in the application for registration, the requirement contained in the Act regarding disclosure of any unusual conditions relating to noise or safety which affect the development.

N.J.A.C. 11:5-6.4(a)15 was revised to correct an erroneous reference to the consolidated financial statements of the subsidiary, instead of the parent company of an applicant.

N.J.A.C. 11:5-6.4(a)19 was revised to ease the burden imposed upon applicants with regard to tracking the activities of former officers or principals. Specifically, rather than reporting the conviction of any such persons during the last 10 years, applicants would only need to report the fact that such persons had been convicted of certain criminal offenses if they had occurred during the two years prior to application for registration. This paragraph was also changed to clarify that this requirement applies only to convictions for crimes involving any aspect of real estate sales or real estate securities. Also, the requirements regarding reporting the entry of any injunction or administrative order against the applicant or current or former principals was revised to require such reporting only if permanent injunctions or final administrative orders had been entered.

N.J.A.C. 11:5-6.4(a)20 was revised to eliminate the requirement that a budget for the operation and maintenance of the common elements and facilities of a project had to be prepared by a certified public accountant. The revised paragraph permits such a budget to be prepared by an independent public accountant or property manager or other independent expert. The requirement that the budget state the risk if the applicant fails to sell out was eliminated from this paragraph. Finally, the references in this paragraph to a letter of adequacy of the budget and a letter regarding the sufficiency of insurance coverage were revised to indicate that such letters need not be submitted by a certified public accountant, and that an insurance professional may not attest to the adequacy of the budget but such person shall submit a letter regarding the sufficiency of insurance coverage.

N.J.A.C. 11:5-6.5(e)5 was revised to eliminate the reference to "promised" dates of completion in the Public Offering Statement and substitute therefore proposed dates of completion. This was done in order to avoid any possibility that the Public Offering Statement could be construed as a contractual document containing contractual obligations over and above those included in the contract signed by the developer and purchaser. This paragraph was also revised to provide that developers may indicate that the estimated dates of completion of improvements in sections not yet offered for sale are subject to certain conditions beyond the control of the seller.

N.J.A.C. 11:5-6.5(e)6 was revised to provide that where the offering involves common ownership, the amount set aside as reserves for the replacement or repair of the common elements and facilities and the risk to purchasers if the applicant fails to sell out must be stated in the Public Offering Statement. Furthermore, a requirement was added that the Public Offering Statement also contain a statement indicating whether the applicant is subsidizing or plans to subsidize the maintenance fee prior to transferring control of the common elements to any owner's association, and if so the amount of the subsidy and the probable effect of his ceasing to pay the subsidy on the maintenance fee payable by each owner.

N.J.A.C. 11:5-6.5(e)10 was revised to require that applicants only identify the uses on and the zoning classification of lands adjoining the project as of the time of registration or consolidation, or when the most recent annual report was filed.

N.J.A.C. 11:5-6.5(e)15 was revised to require that developers include a statement of all estimated title or closing costs to be paid by the purchaser, rather than just those charged by the applicant. This requirement imposes no additional burdens on the sellers as they are generally required to provide such information to purchasers for other reasons, and in fact was included in the text of the adoption at the suggestion of industry representatives.

As noted above, N.J.A.C. 11:5-6.5(e)17 was revised in the same manner in which N.J.A.C. 11:5-6.4(a)3 was revised and clarified.

N.J.A.C. 11:5-6.5(e)18 was revised to remove the requirement that the notice regarding the seven-day rescission period required to be included in the Public Offering Statements had to be stated in both English and Spanish. Based upon comments received, the Commission intends to propose further amendments regarding non-English contractual and disclosure documents in the future.

N.J.A.C. 11:5-6.5(f) was revised to clarify what is meant by the reference to a "material change" in a Public Offering Statement, by cross-referencing that reference to N.J.A.C. 11:5-6.7(c) and 6.10(b) where language has been added specifying what the Commission considers to be a "material change".

N.J.A.C. 11:5-6.6(a)1 was revised to define the references in this rule to "authorized brokers". Subsection (b) of this rule was revised to clarify that the proscription upon persons other than authorized brokers receiving commissions from registrants only applies to sales within New Jersey.

N.J.A.C. 11:5-6.6(c) was revised to clarify which activities must be performed by New Jersey real estate licensees in the sale and marketing

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of registered properties and which may be performed by unlicensed employees of a registrant. It was further revised to specify that a licensee must be in attendance at any promotional booth or seminar conducted within New Jersey at which the sale of interest in a registered property is promoted.

N.J.A.C. 11:5-6.6(d) was revised to clarify that it is no longer necessary for brokers to provide a copy of the broker's release to New Jersey purchasers. It was also revised to provide that brokers must maintain as business records the receipts for Public Offering Statements they provide to such purchasers and copies of contracts signed by such persons. The rule was further clarified to provide that where sales are made to New Jersey purchasers directly by the registrant without the involvement of a New Jersey broker, the registrant must maintain copies of such receipts and contracts.

N.J.A.C. 11:5-6.7(c) was changed to clarify that in certain situations involving applications for approval of material changes or amendments to Orders of Registrations or Public Offering Statements, only one fee will be payable, and that where the only change involves confirmation that promised improvements have been completed on or before schedule, no fee is required.

N.J.A.C. 11:5-6.10(b) was revised to more clearly state what the Commission considers to be "material changes" which, pursuant to the Act and other sections of the rules, must promptly be reported to the Commission, with applications for amendments and appropriate fees. Subsection (c) of this rule was further amended to indicate that with the exception of those items specifically noted as not constituting material changes, all other changes are presumed to be material changes requiring Commission approval. However, that presumption is not conclusive and, while such changes must be promptly reported, it is possible that upon review, the Commission would determine that they did not rise to the level of a material change.

N.J.A.C. 11:5-6.11(a)2 was revised to indicate that a compilation prepared by an independent public accountant, or an audited financial statement must be included in the annual report filed by a registrant. Paragraph (b)1 of this rule was amended to more clearly state the basis upon which the Commission may conclude that the filing of an annual report is no longer necessary and that the issuance of an Order of Termination is warranted.

N.J.A.C. 11:5-6.13(a) was revised to bring the text of the rule into conformity with the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1, regarding the requirement therein that applicants or registrants be provided with the opportunity for a hearing prior to the Commission entering any final Order denying an application for registration or revoking any Order of Registration.

N.J.A.C. 11:5-6.16(a) was revised to clarify the nature and type of financial assurances required to be posted in order to assure the completion of promised improvements.

N.J.A.C. 11:5-6.18(a) was revised to eliminate the requirement that all contracts be "fair and reasonable". The Commission determined that these terms were so vague as to be unenforceable.

N.J.A.C. 11:5-6.18(c) was changed in the same manner in which N.J.A.C. 11:5-6.5(e)18 was revised, so as to eliminate the reference therein to the rescission clauses in contracts being printed in both English and Spanish. Again, it is the Commission's intention to address non-English contracts and disclosure documents in the future.

N.J.A.C. 11:5-6.18(d) was, as noted above, revised in the same manner in which N.J.A.C. 11:5-6.4(a)3 and 6.5(e)17 were revised with regard to the escrowing of the payments of New Jersey purchasers prior to delivery of a deed or deed in trust, or the posting of adequate financial assurances in lieu of escrowing such payments.

The following is a summary of the comments received on the proposal and the agency's responses to those comments.

COMMENT 1: A comment was submitted suggesting revisions to N.J.A.C. 11:5-6.4(a)3 of the rules as proposed to clarify the requirement therein that monies must be escrowed or otherwise secured until all contingencies had been fulfilled. This commenter also suggested clarifying the reference in this paragraph to "unaffiliated" third party sureties. The commenter also objected to the requirement in proposed N.J.A.C. 11:5-6.5(e)5 that estimated completion dates be specified in Public Offering Statements for sections of projects not yet offered for sale, indicating that so many variables could impact upon the completion of such improvements as to make such estimates unrealistic. The commenter also objected to the requirement in proposed N.J.A.C. 11:5-6.5(e)10 that registrants continuously monitor the use and zoning of lands adjoining a registered project and report any changes therein to the Commission immediately, as a material change in the information contained in the Public Offering Statement. The commenter also suggested a revision to N.J.A.C. 11:5-6.5(e)15 as proposed to require disclosure of all estimated closing costs, rather than only those imposed by the applicant or registrant. The same concerns raised by the application with regard to N.J.A.C. 11:5-6.4(a)3 described above were also noted with regard to N.J.A.C. 11:5-6.5(e)17 as proposed. This commenter also objected to the language of N.J.A.C. 11:5-6.5(e)18 as proposed with regard to disclosure of the statutory rescission rights in both English and Spanish because in many instances, non-English speaking sales prospects do not speak English either. The commenter also raised a question regarding proposed N.J.A.C. 11:5-6.6, inquiring as to the need to designate a currently licensed New Jersey broker in situations where a registrant does not employ a local broker for in-state sales or services, but conducts all solicitations via mail or telemarketing. The commenter also suggested N.J.A.C. 11:5-6.7(c) be revised to distinguish between a "material change" and an "amendment" and to clarify what is meant by those terms. In addition, the commenter requested clarification on when multiple fees would be due for such amendments or material changes, and when only one fee would be required where a registrant applies for approval of several such revisions. The commenter also noted the need for a more definitive explanation of the reference to "material changes" in N.J.A.C. 11:5-6.10 as proposed. The commenter also objected to the reference contained in N.J.A.C. 11:5-6.11(a)2 requiring that financial statements of homeowners associations had to be certified or audited unless otherwise required by the situs state. This commenter also suggested revisions to the language in proposed N.J.A.C. 11:5-6.11(b)1 regarding the standards by which the Commission would determine at what point in time it was no longer necessary for a registrant to file an annual report and the criteria which would apply in determining whether an Order of Termination of a registration would be issued. The commenter also suggested revising the definition of a "subdivision" so as to more clearly indicate that the Commission asserts jurisdiction over home builders selling house and lot packages as referenced in proposed N.J.A.C. 11:5-6.12. The commenter also objected to the reference in N.J.A.C. 11:5-6.18(a) as proposed requiring that all contracts be "fair and reasonable" and to the reference in subsection (c) of that rule to the requirement that the notices of a purchaser's rescission rights contained in contracts and in the Public Offering Statement had to be stated in English and Spanish, and to subsection (d) of that rule as proposed for the same reasons as noted above regarding N.J.A.C. 11:5-6.4(a)3 and N.J.A.C. 11:5-6.5(e)17. The commenter also suggested that the reference to "authorized broker" in N.J.A.C. 11:5-6.6(c) as proposed be clarified so as to afford adequate notice to all interested parties as to what is meant by that reference. The commenter also suggested that this rule be expanded to specify which activities are required to be performed by New Jersey real estate licensees and which activities may be performed by unlicensed employees of a registrant.

RESPONSE 1: The Commission responded to this individual's comments by revising all of the provisions of the proposed rules which were identified by this commenter as problematic with the exception of his comment on N.J.A.C. 11:5-6.6 regarding situations where there apparently is no need to designate a currently licensed New Jersey broker because a developer does not intend to solicit or consummate sales in New Jersey. The revisions made to the proposal in response to this and other commenters' suggestions on these provisions are described above and are explicitly set forth below. The Commission determined not to make any revision to N.J.A.C. 11:5-6.6 to allow registrants who will not engage in any direct solicitation or sales within New Jersey to avoid the need to designate a currently licensed New Jersey broker because this requirement is specifically imposed by the statute, and the Commission has no authority to eliminate that statutory requirement by rule (see N.J.S.A. 45:15-16.38).

COMMENT 2: A second commenter suggested that the Commission adopt rules to indicate that the registration requirements of the Act are not applicable to developers of single-family residential properties intended to be used as primary residences, rather than as second or vacation homes. This commenter suggested that in situations where a developer of such projects advertises in local media of states neighboring New Jersey which ads then also circulate in New Jersey, because it was not the intent of the developer to solicit prospective purchasers in New Jersey, the Act should not apply to such developers. This commenter noted that due to local government requirements in the areas where they build, they frequently must establish homeowners associations or condominium associations to maintain open space, but with very minimal annual financial

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liability. The commenter also noted that they frequently utilize the condominium form of ownership to increase housing density and to thereby create more affordable housing. The commenter took note of the mechanism for exemption from registration under the Act, but noted that it was still necessary to file an application for such an exemption. The commenter also noted the difficulty and cost of securing the services of a New Jersey broker to serve as the designated broker for a registered property located in a neighboring state, and being marketed primarily to residents of that state. The commenter indicated that it would be less burdensome if the Commission would accept reciprocally licensed brokers as authorized brokers for registration purposes.

RESPONSE 2: The Commission is obligated to enforce the provisions of the Act. It cannot, by rule, curtail the jurisdictional reach of the Act, as this commenter has suggested. Furthermore, in addition to the exemption option, developers such as this commenter may, pursuant to N.J.A.C. 11:5-6.14(g)1, include in their advertisements a statement that the properties or interests advertised are not being offered to New Jersey residents. By doing so, they can avoid the requirement that they either register or apply for an exemption from the Act. Finally, many reciprocally licensed New Jersey brokers do maintain offices in New Jersey. So long as they do so, they would fulfill the requirement established at N.J.S.A. 45:5-16.38 that a registrant's authorized New Jersey representative/broker must be licensed to maintain offices in this State.

COMMENT 3: An individual submitted a comment recommending that in-State multiple listing services be required to amend their listing forms to require owners to divulge property defects. The commenter noted that brokers are frequently sued as a result of property owners' failure to divulge pertinent facts regarding their property.

RESPONSE 3: While the commenter raises a concern which is worthy of further consideration by the Commission, the proposed rules currently under consideration apply only to the requirements imposed upon applicants and registrants under the Act, which does not apply to brokers representing private owners of properties located within New Jersey.

COMMENT 4: Another commenter raised concerns regarding the language in N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18(d) as proposed with regard to the escrowing of payments by installment purchasers prior to the delivery of a deed or the posting of adequate financial assurances to ensure such payments. This commenter also objected to the English/Spanish disclosure requirements contained in N.J.A.C. 11:5-6.5(e)17 and 6.18(d) as proposed. The commenter also suggested adding language to N.J.A.C. 11:5-6.4(a)9 so as to indicate that copies of escrow agreements proposed to be used pursuant to N.J.A.C. 11:5-6.4(a)3 would also have to be provided with an application for registration. This commenter also objected to the requirement in N.J.A.C. 11:5-6.4(a)19 as proposed that applicants include information covering a 10-year period on convictions by former officers or principals of the applicant. In addition, the commenter suggested qualifying the requirement to report injunctions and administrative Orders entered against applicants or principals or officers of an applicant, by requiring the reporting only of permanent injunctions or final administrative Orders. Finally, the commenter objected to the requirement in N.J.A.C. 11:5-6.4(a)20 as proposed that a public accountant "certify" to the adequacy of the budget for the homeowners association of a registered project.

RESPONSE 4: As noted above, the Commission responded to the comments of this individual with regard to N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18(d) by revising the language of those provisions as proposed. In addition, this individual's suggestions concerning the bilingual disclosure requirements imposed by N.J.A.C. 11:5-6.5(e)17 and 6.18(d) as proposed were accepted and appropriate revisions to the proposed rules were made. In addition, the Commission accepted this commenter's proposals regarding supplementing the language in N.J.A.C. 11:5-6.4(a)9 and revising N.J.A.C. 11:5-6.4(a)19 as proposed to conform to his suggestions regarding reporting of convictions by former officers and principals and the reporting of permanent injunctions and final administrative Orders. The Commission also revised the text of N.J.A.C. 11:5-6.4(a)20 to eliminate the reference indicating that budgets of homeowners associations had to be "certified" by public accountants.

COMMENT 5: The next commenter raised the same concerns noted in the comments described above with regard to N.J.A.C. 11:5-6.4(a)3, 6.4(a)20, 6.5(e)5, 6.5(e)17, 6.5(e)18, 6.6(e), 6.7, 6.10(c) and 6.18(c). In addition, the commenter objected to the requirement in N.J.A.C. 11:5-6.14(g) as proposed that the registration number of all projects advertised in a particular advertisement must be included in that advertisement.

RESPONSE 5: The responses to the commenter's concerns on the subparagraphs listed above are reflected in the responses to the other commenters who raised the same concerns. With regard to the objection to N.J.A.C. 11:5-6.14(g) as proposed, the Commission determined that it was essential to the effective enforcement of the Act and of the other advertising requirements established in the other subsection of N.J.A.C. 11:5-6.14 that all registered projects referred to in a particular advertisement be identified by the inclusion of their registration number in the advertisement.

COMMENT 6: Another commenter raised objections to the escrowing requirements imposed by N.J.A.C. 11:5-6.4(a)3 as proposed with regard to all payments made by New Jersey installment contract purchasers prior to delivery of a deed to either the purchaser or a trustee. The commenter proposed an alternative procedure which would, in their opinion, be less burdensome upon registrants, thereby reducing the need to pass on additional costs to purchasers.

RESPONSE 6: The Commission rejected the alternative procedure for protecting the interests of New Jersey installment purchasers during the term of their installment contract suggested by this commenter. That alternative procedure involved issuing a warranty deed to such a purchaser upon payment in full by the purchaser of the purchase price, with a reservation of easements for ingress and egress to complete any improvements which were not completed as of the date of conveyance. The Commission rejected this alternative proposal because it would provide no protection to installment purchasers who were current on their installment payment obligations during the term of the installment contract, but who had not yet paid the purchase price in full. The requirement to convey a deed or deed in trust included in the rule proposal is intended to afford some protection to the interests of such installment purchasers during the term of the installment contract.

COMMENT 7: This commenter raised a general objection to the rules, alleging that they impose requirements for which there is no underlying statutory basis contained in the Act. The commenter continued by raising concerns regarding specific provisions including those previously raised regarding N.J.A.C. 11:5-6.4(a)3, 6.5(e)17, 6.18, 6.4(a)20, 6.11, 6.4(a)19, 6.5(e)18 and 6.6 (definition of "authorized broker") and 6.5(f). In addition, the commenter objected to the requirement in N.J.A.C. 11:5-6.4(a)15 that audited financial statements be submitted unless the Commission, in its discretion, determines to accept alternative information evidencing an applicant's ability to complete promised improvements in lieu thereof. The commenter asserted that this requirement extends beyond the requirement in the Act that certified and uncertified financial statements must be submitted as part of an application for registration. The commenter also noted that the reference in N.J.A.C. 11:5-6.5(e)17 to how and by whom deposits and payments made by New Jersey purchasers were to be escrowed was not consistent with the language on this point contained in section 23(a) of the Act (N.J.S.A. 45:15-16.49). This commenter also suggested the bonding requirement contained in N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18 be clarified to specify who the beneficiary of the bond must be, what it must ensure and how the amount of the bond is to be determined. The commenter also objected to the requirement in N.J.A.C. 11:5-6.4(a)20 that the budget be based on full occupancy as opposed to a good faith estimate of projected revenues and expenses based upon a realistic projection of the anticipated percentage of occupancy. The commenter also pointed out that it was inappropriate to require that a statement regarding the risk if an applicant fails to sell out be included in such a budget, as was required by this subparagraph as proposed. The commenter also noted the incongruity of permitting an insurance agent or broker to certify to the adequacy of the budget, as this paragraph had provided. The commenter also suggested that the rules be amended to permit prospective registrants to market unregistered properties through non-binding reservation agreements. The commenter also noted that the text of N.J.A.C. 11:5-6.4(a)19 as proposed was over-inclusive in its requirement that disclosure be made of convictions regarding "real estate sales and securities". The same objection was raised with regard to the requirement that the entry of any administrative Orders or court Judgments concluding that the applicant, or principals or officers of the applicant, had engaged in unfair acts or fraudulent or deceptive practices involving other products or services, in addition to the disposition of real property. The commenter also objected to the language in N.J.A.C. 11:5-6.13 as proposed indicating that an application for registration may be denied or an Order of Registration revoked based upon evidence that an applicant or registrant has been previously determined to have engaged in unfair acts or fraudulent or deceptive trade practices by the Federal Trade Commission or under the Federal Interstate Land Sales Full Disclosure Act. It was noted that this language appears to expand upon that found in section 16 of the Act, N.J.S.A. 45:15-16.42, with regard to grounds for revocation. The com-

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menter also noted that N.J.A.C. 11:5-6.6(b) as proposed should be clarified to indicate that its restriction upon only New Jersey brokers being authorized to receive commissions from a registrant applied only to sales within New Jersey. The commenter also noted that there was confusion regarding the requirement in N.J.A.C. 11:5-6.6(d) as proposed that the Brokers Release was to be "prominently displayed". The commenter also noted that there was uncertainty on the question of to which officers and owners the requirements in N.J.A.C. 11:5-6.4(a)6 applied. The commenter also objected to the requirement in N.J.A.C. 11:5-6.4(a)16 that information regarding a prior bankruptcy by an applicant or a principal or officer had to be disclosed in an application for registration. The commenter also noted that the text of N.J.A.C. 11:5-6.4(a)12 as proposed, requiring the disclosure of the existence of any adverse conditions on adjoining properties, was too subjective a criterion and that the reference in the Act regarding "unusual conditions relating to noise or safety which affect the subdivision" should be substituted therefore. The commenter also objected to the requirement in N.J.A.C. 11:5-6.4(a)5 as proposed that a statement regarding other applications filed by an applicant be included and suggested that the requirement to provide notice of the entry of Orders, Judgments or Decrees be clarified to indicate whether only those which are "adverse" to the applicant need be disclosed. The commenter also noted that for some very large subdivisions it may be unwieldy and difficult to submit a copy of a map of the actual subdivision showing the dimensions of lots as required by N.J.A.C. 11:5-6.4(a)8 as proposed. As an alternative, the commenter suggested that the Commission accept a general or preliminary map showing the outline of the platted sections, accompanied by preliminary or recording plat maps showing the dimensions of the lots in the plats.

This individual also commented upon the unrealistic and onerous burdens which would be imposed upon registrants marketing non-fee interests in their projects by the provisions of N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18 pertaining to the escrowing of deposits or installment payments, or the securing of such payments by adequate financial assurances. The commenter suggested that the Commission accept appropriate non-disturbance clauses and agreements in the documents utilized by such developers as an alternative.

RESPONSE 7: In reply to the commenter's general objection regarding the alleged overbreadth of the rules, the Commission relies on the language of sections 10(p) and 12 of the Act (N.J.S.A. 45:15-16.36(p) and 16.38) which permit the Commission to require that applicants for registration include in their statements of record "any other information and any other documents and certification as the Commission may require as being reasonably necessary for the protection of purchasers" and to require within the Public Offering Statement "additional information required by the Commission to assure full and fair disclosure to prospective purchasers", respectively. The Commission feels that these provisions provide a sufficient statutory basis for its including in these rules provisions specifying which submissions and information it feels are essential for the protection of prospective purchasers.

As noted above, the Commission has responded to many of this commenter's specific concerns. The Commission considers the reference in N.J.A.C. 11:5-6.4(a)15 to "audited" financial statements to be synonymous with the reference to "certified" financial statements contained in section 10(1), N.J.S.A. 45:15-16.36(1), of the Act. Furthermore, that section of the Act specifically provides that a statement of record shall include "certified and uncertified" financial statements of the developer as required by the Commission. The Commission has also revised the proposed rule as suggested by this commenter at N.J.A.C. 11:5-6.5(e)17 regarding the escrowing of funds; at N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18 regarding the clarification of the bonding requirement and the identification of the beneficiary of the bond, what it must ensure and how the amount will be determined; at N.J.A.C. 11:5-6.4(a)20 by removing the reference therein to a statement regarding the risk if an applicant fails to sell out being included in the budget and inserting that requirement within N.J.A.C. 11:5-6.5(e) as information which must be included in all proposed Public Offering Statements; at N.J.A.C. 11:5-6.4(a)20 with regard to the language that would have permitted an insurance broker or agent to submit a letter of adequacy on the budget of a homeowners association; at N.J.A.C. 11:5-6.4(a)19 by clarifying that the reference therein to convictions refers only to those involving real estate sales and real estate securities; at N.J.A.C. 11:5-6.6(b) by confirming that the prohibition upon the payment of commissions to persons other than New Jersey brokers applies only to sales within New Jersey; and at 6.4(a)6 by including a definition of "principal" so as to clarify to which individuals the requirements in this paragraph apply.

The Commission rejected this commenter's objections to the requirement that the budget of the homeowners associations be based on full occupancy. The Commission felt that the only way to assure any certainty to the numbers contained in the budget and to objectively evaluate its adequacy was to base it on full occupancy. The Commission also rejected the commenter's suggestion to permit the use on non-binding reservation agreements on unregistered properties. So long as all other requirements are complied with, there is no prohibition upon registrants using non-binding reservations on registered properties. The Commission considers the use of such non-binding reservations agreements as tantamount to soliciting New Jersey purchasers to purchase unregistered property. The Commission also rejected the commenter's assertion that N.J.A.C. 11:5-6.4(a)19 as proposed, requiring the disclosure of the entry of any final administrative Orders or court Judgments finding that the applicant or any of its principals have engaged in unfair acts and/or fraudulent or deceptive practices involving non-real estate products or services, was beyond the Commission's authority and was outside the scope of the Act. As noted above, the Commission feels that this information is essential to the protection of prospective purchasers and that therefore there is a sufficient statutory basis for the Commission's imposition of this requirement. For the same reasons, the Commission rejected the commenter's assertion that N.J.A.C. 11:5-6.13 established grounds for the denial of registration applications or for the revocation of registrations that were not established in the Act. The Commission noted that the section of the Act referred to by the commenter does not specify the grounds upon which the Commission may revoke a registration, but rather the grounds upon which it may issue temporary cease and desist Orders. The Commission also rejected the commenter's assertion that the requirement in N.J.A.C. 11:5-6.4(a)16 that information regarding previous bankruptcies by the applicant or a principal need be disclosed was without basis in the Act was overly broad. Again, the Commission feels such information is essential to the protection of purchasers, and noted that if an unrelated "predecessor" of the applicant had filed for bankruptcy, the applicant is free to submit all appropriate information in support of a contention that the fact has no relevance to the applicant's qualifications for registration.

The Commission responded to the commenter's concerns regarding N.J.A.C. 11:5-6.4(a)12 by determining to retain the reference therein to "adverse conditions that affect the development 'and to add thereto the reference from the Act referring to' unusual conditions relating to noise or safety which affect a subdivision which are known or should be reasonably known to the developer." Again, the commenter's objections that the requirement in N.J.A.C. 11:5-6.4(a)5 that information regarding other similar applications be included in the statement of record was without basis in the Act was rejected because the Commission deems such information essential to the protection of prospective purchasers. Finally, the Commission rejected the commenter's suggestions regarding the requirement that a map of the actual subdivision showing lot dimensions be included in the application for registration. The Commission deems it essential to have on file a map depicting the specific dimensions of all lots contained in a registered subdivision. The acceptance of preliminary plat maps or general maps which did not contain such specific dimensions would impede the effective enforcement of the Act by the Commission.

In response to the commenter's general objection regarding how the requirements imposed by N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18 to escrow deposits and installment payments or to post adequate financial assurances to secure such payments until deeds are issued impact upon projects which do not convey a fee interest to purchasers, the Commission has determined to address the issues raised by the registration of such projects in a future rule proposal. In the interim, the Commission will not construe the adopted text of these subparagraphs as requiring that a deed or deed in trust be conveyed in non-fee interest transactions. In lieu thereof, the Commission will accept appropriate non-disturbance clauses, or clauses subordinating the lenders' rights to those of the purchasers in the instruments utilized by registrants of such projects and in the instruments affecting their title to such interests. In addition, the Commission will require that adequate disclosure of the risk factors which exist in such transactions be made.

COMMENT 8: One person who commented verbally but did not submit a written comment suggested that the Commission define the term "deed in trust" very carefully, so as to limit prospective future litigation on this new concept in New Jersey law, and otherwise supported the adoption of the rules.

RESPONSE 8: The Commission accepted this suggestion and added the term "deed in trust" to the terms defined in N.J.A.C. 11:5-6.2 of the rules.

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COMMENT 9: Another individual who only commented verbally at the public hearing on these proposed rules and did not submit a written comment raised the same concerns with regard to the applicability of N.J.A.C. 11:5-6.4(a)3, 6.5(e)17 and 6.18 to developers marketing non-fee interests in their subdivisions as were described above.

RESPONSE 9: The Commission's response to the concerns raised by this commenter is reflected above.

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

SUBCHAPTER 6. RULES INTERPRETING AND IMPLEMENTING THE REAL ESTATE SALES FULL DISCLOSURE ACT, N.J.S.A. 45:15-16.27 ET SEQ.

11:5-6.1 Applicability and scope

(a) The rules in this subchapter are promulgated by the New Jersey Real Estate Commission (hereinafter, the Commission) to implement the provisions of the Real Estate Sales Full Disclosure Act (hereinafter, the Act), N.J.S.A. 45:15-16.27 et seq. These rules are applicable to all applications and matters pertaining to and/or effected by the provisions of this Act.

(b) All registration and exemption applications and all correspondence and inquiries should be directed to: New Jersey Real Estate Commission, Bureau of Subdivided Land Sales Control, 20 West State Street, CN-328, Trenton, New Jersey 08625.

11:5-6.2 Definitions

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

"Advertising" means the publication, or causing to be published, of any information offering for sale, or for the purpose of causing or inducing any other person to purchase or acquire, an interest in the title to subdivided lands, including the land sales contract to be used and any photographs or drawings or artist's representation of physical conditions or facilities on the property existing or to exist by means of any:

1. Newspaper or periodical;
2. Radio or television broadcast;
3. Written or printed or photographic matter produced by any duplicating process producing 10 copies or more;
4. Billboards or signs;
5. Display of model homes or units;
6. Material used in connection with the disposition or offer of subdivided lands by radio, television, telephone or any other electronic means; or
7. Material used by subdividers or their agents to induce prospective purchasers to visit the subdivision; particularly vacation certificates which require the holders of those certificates to attend or submit to a sales presentation by a subdivider or its agents.

"Advertising" does not mean: stockholder communications such as annual reports and interim financial reports, proxy materials, registration statements, securities prospectuses, applications for listing securities on stock exchanges, or similar documents, prospectuses, property reports, offering statements or other documents required to be delivered to a prospective purchaser by an agency of any other state or the Federal Government; all communications addressed to and relating to the account of any person who has previously executed a contract for the purchase of the subdivider's lands except when directed to the sale of additional lands.

"Applicant" means a person who or entity which has applied for the registration of real property of interests therein with the Commission pursuant to the Act or for a total or limited exemption from those registration requirements.

"Blanket encumbrance" means a trust deed, mortgage, judgment, or any other lien or encumbrance, including an option or contract to sell, or a trust agreement affecting a subdivision or affecting more than one lot offered within a subdivision, except that term shall not include any lien or other encumbrance arising as the result of the imposition of any tax assessment by any public authority.

"Broker" or "salesperson" means any person who performs within this State as an agent or employee of a subdivider any one or more of the services or acts as set forth in this Act, and includes any real estate broker or salesperson licensed pursuant to N.J.S.A. 45:15-1 et seq. or any person who purports to act in any such capacity.

"Broker's Release" means the document issued by the Commission affirming that the broker to whom it is issued has been approved by the Commission as the designated New Jersey broker of record or as a supplemental broker of a registrant, and has been authorized by the Commission to commence solicitation and sales efforts on behalf of that registrant in New Jersey.

"Commission" means the New Jersey Real Estate Commission.

"Common promotional plan" means any offer for the disposition of lots, parcels, units or interests of real property by a single person or group of persons acting in concert, where those lots, parcels, units or interests are contiguous, or are known, designated or advertised as a common entity or by a common name regardless of the number of lots, parcels, units or interests covered by each individual offering.

"Deed in trust" means a written instrument, in recordable form and conforming to all applicable laws of the situs state, under the terms of which title to a property passes to a trustee who is independent of and unaffiliated with the applicant/registrant, and which title is to be held by that trustee on behalf of the purchaser pursuant to a trust agreement or equivalent instrument between the registrant and the trustee obligating the trustee to convey title to the purchaser promptly upon the purchaser's fulfillment of their obligations under an installment contract for the purchase of such property by the purchaser from the registrant.

"Disposition" means the sale, lease, assignment, award by lottery, or any other transaction concerning a subdivision if undertaken for gain or profit.

"Notice" means a communication by mail from the Commission executed by its secretary or other duly authorized officer. Notice to subdividers shall be deemed complete when mailed to the subdivider's address currently on file with the Commission.

"Offer" means every inducement, solicitation or attempt to encourage a person to acquire an interest in a subdivision if undertaken for gain or profit.

"Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

"Principal" means all individual applicants or subdividers; all general partners of applicants or subdividers that are partnerships; all officers, directors and shareholders of corporate applicants or subdividers who are actively involved in the planning, management or promotion of the offering; and all other individuals who either own or control an interest of 10 percent or more in an applicant or subdivider, or who will actively participate in the planning, management or promotion of the offering, regardless of the form of organization of the applicant or subdivider.

"Purchaser" means a person who acquires or attempts to acquire or succeeds to an interest in a subdivision.

"Situs state" means the state, province, territory, protectorate, country or other jurisdiction situated outside of the State of New Jersey within which a subdivision is located.

"Time-share estates" includes both "fee simple" and "right to use" time-share interests and means:

1. An "interval estate" meaning a combination of an estate for years in a lot, parcel or unit, during the term of which title rotates among the time-share owners, coupled with a vested undivided fee simple interest in the remainder in that unit as established by the declaration or deed creating the interval estate; or
2. A "time-span estate" meaning a combination of an undivided interest in a present estate in fee simple in a lot, parcel or unit established by the declaration or deed creating the time-span estate, coupled with the exclusive right to possession and occupancy of the parcel or unit during a regularly recurring period; or
3. A "vacation license" meaning the exclusive right to possession and occupancy of a lot, unit or parcel during a regularly recurring period established by club membership, lease or license.

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"Subdivider" or "developer" means any owner of subdivided lands or the agent of that owner who offers the subdivided lands for disposition.

"Subdivision" and "subdivided lands" mean any land situated outside the State of New Jersey whether contiguous or not, if one or more lots, parcels, units or interests are offered as part of a common promotional plan of advertising and sale and expressly means and includes such units or interests commonly referred to as a "condominium" defined in the "Condominium Act" P.L. 1969, c.257 (N.J.S.A. 46:8B-1 et seq.). In addition to condominiums, this definition shall also specifically include, but shall not be limited to, any form of homeowners association, any housing cooperative, any community trust or other trust device and any form of time-sharing.

11:5-6.3 Forms of documents

(a) Rules concerning documents with respect to the registration of subdivisions with the Commission and to the sale of interests in out-of-State subdivisions pursuant to the Act are as follows:

1. All statements of record submitted to the Commission shall be bound, referenced and properly indexed with the exception of those received from the Office of Interstate Land Sales Registration, U.S. Department of Housing and Urban Development.

2. All documents submitted to the Commission for filing shall, wherever possible, be typewritten on one side of the paper only. One copy of each exhibit or document shall be submitted, unless the Commission requests more than one copy. All documents submitted to the Commission shall not exceed 8½ x 14 inches. The Commission will make exceptions for documents which an applicant for registration cannot reasonably reduce, such as topographical maps, plat maps and surveys, if such documents can be folded to 8½ x 14 inches. Where the Commission requires certified documents and the applicant cannot obtain reduced certified documents, the applicant may reduce such documents and submit therewith an affidavit verifying such document. All documents submitted pursuant to these rules shall become part of the Commission's public records.

3. An applicant may submit photographs as part of the application for registration. Photographs shall not be used in lieu of the legal description of the registered property or any other required written documents.

4. An applicant may submit verified copies of original documents.

5. An affidavit or affirmation as prescribed in the Commission's forms shall be executed for each of the following documents:

i. Statement of record, partial statement of record;

ii. Application for consolidated registration;

iii. Application for amendment to Order of Registration;

iv. Annual report of registered properties;

v. Partner, officer, director or principal disclosure;

vi. Consent(s) to service of process; and

vii. Broker's Affidavit and application for release.

6. A certified ***property*** report and statement of record of the Office of Interstate Land Sales Registration, Department of Housing and Urban Development, may be filed *[in lieu of]* ***as*** a statement of record conforming to the requirements of the Act, provided the following documentation shall also be submitted:

i. Consent(s) to service of process;

ii. Audited financial statement(s) ***as provided in N.J.A.C. 11:5-6.4(a)15***;

iii. A statement detailing any bonding or security agreements entered into;

iv. Copies of all plats pertinent to the subdivision;

v. A copy of each contract to be used in the sale of property in the development to New Jersey purchasers;

vi. A list of the officers of the corporation;

vii. A copy of the articles or certificate of incorporation;

viii. Application/Affidavit of developer; *[and]*

ix. *A proposed New Jersey Public Offering Statement which conforms to the requirements of N.J.S.A. 45:15-16.38 and N.J.A.C. 11:5-6.5; and

[ix.] ***x.*** Such other additional documents or proofs that may be requested.

7. The acceptance of the certified report and statement of record of the Office of Interstate Land Sales Registration may be conditioned upon an acceptable on-site inspection by the Commission or its designee. No marketing or sales activity will be permitted in New Jersey until all the proper authorizations have been received by the applicant and broker from the Commission.

8. Any applicant who wishes to register a subdivision which has been similarly registered in this State or any other state where the requirements of that registration are substantially similar to those imposed by this subchapter, may submit a certified copy of the approved application for registration filed in such other jurisdictions. In the event the Commission finds upon review that such an application substantially conforms to the standards and requirements imposed by the Act and this subchapter, the Commission may register such property; provided, however, that prior to such registration, the Commission may require submission of such supplemental documents and information as it may deem necessary.

9. Nothing herein, or in the Act, shall be construed to require an applicant to whom an Order of Registration has previously been issued to file any additional documents or affidavits with the Commission other than notices of amendments or requests for approval of material change(s) and annual reports prior to the expiration of that Order of Registration.

11:5-6.4 Contents of applications for registration

(a) All applications for registration shall contain the following documents and information:

1. A form application provided by the Commission in which the applicant identifies the specific lots, parcels, units or interests to be registered. The application shall be accompanied by an affidavit, on a form provided by the Commission, signed by the applicant which affirms and attests that the applicant is familiar with the project being registered, the nature and content of the application for registration, the Act and the rules promulgated thereunder, and that the contents of the application are true and correct and conform with those requirements. A second affidavit to be completed by the designated New Jersey broker of record shall accompany the application. The broker's affidavit shall state that he is familiar with the registration and its contents or has physically inspected the property, or both, that he is familiar with the Act and the rules promulgated thereunder, and with the Real Estate Brokers and Salesmen Act, and that he is not aware of any information that would lead him to believe that the information in the registration application does not provide full and fair disclosure of the offering;

2. One copy of the proposed New Jersey Public Offering Statement;

3. A statement by the applicant confirming that all monies paid by New Jersey residents prior to their closing on a purchase or lease of an interest in the registered subdivision***, including the purchase of a fee simple interest in a timeshare project,*** will be held in *[a separate trust]* ***an escrow*** account ***or in trust by an attorney licensed to practice law in this State or the state or country where the property is located,*** or will be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the *[trust]* ***escrow*** account is maintained, as well as the name and address of any trustee or escrow agent. The statement shall also confirm that the applicant and broker will hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision***, including fee simple interests in timeshare projects,*** are offered through installment sale contracts where closing and delivery of ***a*** deed ***or deed in trust*** are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall *[also]* confirm that *[either: i. All]* ***all*** monies paid by New Jersey purchasers will be escrowed until *[the]***:

i. The statutory seven-day rescission period has expired***;*** and *[a Deed in Trust]*

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ii. A deed or deed in trust memorializing the transaction has been ***offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed or deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be*** recorded ***within the said 180 day period*** with the appropriate recording authority in the situs state***;*** and *[all]*

iii. All statutory and other rescission periods have passed***;*** and *[all]*

iv. All contingencies ***other than the completion of secured promised improvements*** have been fulfilled*[; or

ii. That]****. In the alternative, the statement shall confirm that*** evidence acceptable to the Commission that a bond***, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company,*** in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to *[closing]* ***the delivery of a deed or deed in trust*** has been posted by an *[unaffiliated]* ***acceptable*** third party surety ***or entity*** on behalf of the applicant***. In order for a surety or entity to be deemed acceptable, it must be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. The identity of the insured and amount of the instrument shall be as required by N.J.A.C. 11:5-6.5(e)17****;

4. An irrevocable appointment of the Commission to accept, on behalf of the applicant, service of any lawful process in any proceeding arising under the Act against the applicant or his agents;

5. A statement as to the states or other jurisdictions, including the Federal government, in which an application for registration, or similar documents, have been filed, and copies of any adverse orders, judgments or decrees by any regulatory agency, court, or administrative body, with the exception of orders approving advertising, entered against the applicant, any parent or subsidiary of the applicant, or any company related to or affiliated with the applicant with respect to the property for which the application for registration is being filed;

6. The name, address and principal occupation for the past five years of every principal officer and director of the applicant, and of every partner who owns a 10 percent or greater interest in the applicant, and of every shareholder who owns 10 percent or more of the stock of the applicant as of 30 days prior to the filing of the application for registration, with an indication of the nature and extent of their interest in the applicant;

7. Copies of the certificate or articles of incorporation, with all amendments thereto, if the applicant is a corporation; copies of all instruments by which the trust is created or declared, if the developer is a trust; copies of the articles of partnership or association and all other organization papers if the applicant is organized under another form. In the event the applicant is not the legal title holder to the property being registered, the above documents shall be submitted for both the applicant and the legal title holder;

8. A legal description by metes and bounds or by lot and block numbers, section, township and range designation, or other acceptable means of the lands to be registered, together with a map showing the proposed or actual subdivision and showing the dimensions of the lots, parcels, units or interests, as available, and the relation of such lands to existing streets, roads and other improvements. The aforesaid map or plat shall be drawn to scale, signed and sealed by a licensed professional engineer or land surveyor;

9. Copies of the deed or other instruments establishing title in the developer or other record owner ***and any escrow agreement required pursuant to (a)3 above,*** and a current title search, title report, title insurance policy, title opinion from an independent attorney, or certificate or binder issued by a licensed title insurance company. The Commission may also require a copy of any agreement which grants the applicant the rights to dispose of the property interest on behalf of the title holder;

10. A statement or listing of any pending litigation, court orders, judgments or decrees which materially affect the sale or development of the offering or the financial stability of the applicant;

11. A statement that the lots, parcels, units or interests in the development will be offered to the public and sold or alienated without regard to marital status, sex, race, ***handicap, religion, familial status, color, ancestry,*** creed or national origin;

12. A statement of the present condition of access to the development and ***of*** the existence of any adverse conditions that affect the development***, or unusual conditions relating to noise or safety which affect the development*** that are known to the applicant, ***or*** should ***reasonably*** be known***,*** or are readily ascertainable;

13. Copies of all contracts, agreements and acknowledgements which a purchaser or lessee may be required to execute in connection with this offering;

14. In the event there is, or will be, a blanket encumbrance affecting the development or a portion thereof, a copy of the document creating it and a statement of the consequences to a purchaser of a failure of the person bound to fulfill the obligations under the instrument, and of the manner in which the interest of the purchaser is to be protected in the event of such eventuality;

15. The audited financial statements of the applicant for the fiscal year. The term "financial statements" includes, but is not limited to, the following statements: auditor's report, balance sheet, statement of income, statement of changes in retained earnings, statement of changes in financial position, statement of changes in owner's equity, notes to financial statements and current profit and loss statement. The filing of the audited consolidated financial statements of a parent company of an applicant may be permitted if the *[subsidiary]* ***parent*** company is the registrant, applicant, co-registrant or guarantor. In the discretion of the Commission, it may accept or require alternative information evidencing the applicant's ability to complete the promised improvements to the development in lieu of the audited financial statements;

16. A statement concerning any filing for or adjudication of bankruptcy during the last five years by or with regard to the applicant, its predecessor, parent or subsidiary company and any principal owning more than a 10 percent interest in the subdivision at the time of the filing of the application for registration. These requirements shall not extend to limited partners or those whose interests are solely those of passive investors;

17. Copies of all easements and restrictions of record and any easements or restrictions not of record which are within the applicant's knowledge;

18. A statement as to the status of all applications for permits and/or compliance with any permits required or issued by any Federal, state, or local agencies or similar organizations which have the authority to regulate development or issue permits, approvals or licenses which may be material to the development, sale or other disposition of the lots, units, parcels or interests to be registered and the existing or proposed facilities, common areas or improvements thereof;

19. A statement indicating whether the applicant, or a parent or subsidiary of the applicant, or any of *[its]* ***their*** current *[or former]* officers or principals have, during the past 10 years, ***or any of their former officers or principals have during the last two years*** been convicted of a crime involving any aspect of the real estate sales or ***real estate*** securities business in this State, the United States or any other state or foreign jurisdiction and whether the applicant has been subject to any ***permanent*** injunction or ***final*** administrative order restraining a false or misleading promotional plan involving real property disposition, or any ***final*** administrative order or judgement by *[a]* ***any*** court finding that the applicant or any such persons have engaged in any unfair acts and/or fraudulent or deceptive practices involving the disposition of real property or of other products or services;

20. A copy of the proposed budget for the operation and maintenance of the common elements and facilities based upon full occupancy together with the estimated annual assessment and monthly charges to be assessed to each type of unit. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, the budget shall specifically state the amount set aside as reserves for the replacement of the common elements and facilities, as certified by an independent *[certified]*

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public accountant, ***or property manager or other independent expert*** *[and shall state the risk if the applicant fails to sell out]*. The budget should also indicate whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the applicant's discontinuing the making of such payments upon the maintenance fee payable by each owner. The budget shall be accompanied by a letter of adequacy *[certified]* ***issued*** by an independent *[insurance agent or broker]* ***public accountant***, or certified property manager, attesting that the budget was prepared in good faith and ***a letter from an independent insurance agent or broker confirming*** that the insurance coverage meets any standards required in the project documents and as required by situs state law;

21. A covering letter specifying the following information with regard to the project:

i. The nature of the project (that is, number of lots in each subdivision or number of condominium units in mid-rise, etc.);

ii. Certifying that the filing fee and other fees are correct as required by N.J.S.A. 45:15-16.27 et seq.;

iii. Identifying to whom all correspondence should be directed, with an address; and

iv. Identifying to whom Annual Report Notices and forms should be sent, with an address and telephone number; and

22. Such other additional information as the Commission may require, after review of an application for registration, to assure full and fair disclosure.

11:5-6.5 Public Offering Statements

(a) No registrant may dispose of any lot, parcel, unit or interest in a registered subdivision unless said registrant delivers to the purchaser a current New Jersey Public Offering Statement or approved equivalent, and affords the purchaser a reasonable opportunity to read the same before the purchaser signs the contract or purchase agreement.

(b) The Public Offering Statement shall disclose fully and accurately the characteristics of the subdivision and the lots, parcels, units or interests offered and shall make known to prospective purchasers all unusual and material circumstances and features affecting the subdivision. The Public Offering Statement shall be in clear and concise language and combine simplicity and accuracy in order to fully advise purchasers of their rights, privileges, obligations and restrictions.

1. The Public Offering Statement shall be in a form designated by the Commission. No change in form may be made without the consent of the Commission.

(c) The Commission may require an applicant to alter or amend the proposed Public Offering Statement in order to assure full and fair disclosure to prospective purchasers and may require the revision of a Public Offering Statement which it finds to be unnecessarily complex, confusing, illegible or incomplete.

(d) A Public Offering Statement shall not be deemed current unless it contains all amendments approved by the Commission.

(e) The Public Offering Statement shall contain the following information:

1. The name and address of the subdivision being offered, the name and principal address of the applicant and the name and address of the New Jersey broker of record;

2. A narrative description of the interest to be offered including; but not limited to; the rights and obligations of purchasers in their lots, parcels, units or interests and in the common elements;

3. A narrative description of the subdivision including, but not limited to, specific designation of the total number of lots, parcels, units or interests contained in the offering, the total number of lots, parcels, units or interests which will or may be constructed in the entire project, the present and proposed access to the development and the promised completion date of the present offering for sale and the estimated completion date of the entire development;

4. Relevant community information including, but not limited to, the existence and location of hospitals, health and recreational facilities, schools, fire and police protection, places of worship, streets, water supplies, levees, drainage control systems, irrigation systems, customary utilities, etc.;

5. A statement of the nature, type and capacity of improvements to be installed by the developer and the *[promised]* ***proposed*** dates of completion for sections offered for sale and estimated dates of completion for sections not yet offered for sale***. The developer may indicate that the estimated dates of completion of improvements in sections not yet offered for sale are subject to market conditions and other variables, or similar qualifying language.*** (Note: The Public Offering Statement shall be amended to reflect *[promised]* ***proposed*** dates of completion when sections which were not previously offered for sale are offered for sale)*[, and]****. **Also,*** a statement of any approvals not yet obtained, the acquisition of which is a precondition to the completion of such improvements, and whether the identified improvements will be dedicated to public use;

6. A statement of the proposed method of operation and management of the common elements and facilities, and of all fixed, estimated or proposed fees, assessments, and reserves for future replacement and repair of common elements. If there are no provisions for reserves, a statement indicating same shall be included***. If the proposed offering is a condominium, time-share or homeowners association, or involves any common ownership interest, in addition to the amount set aside as reserves for the replacement or repair of the common elements and facilities, the risk to purchasers if the applicant fails to sell out shall also be stated. A statement indicating whether the applicant is subsidizing the maintenance fee or plans to subsidize the maintenance fee during sales prior to transfer of control to any association, and if so, the amount of the subsidy and the probable effect of the cessation of the payment of the subsidy upon the maintenance fee payable by each owner shall also be included***;

7. A description of any management or service contract, lease or other contract or agreement affecting the use, maintenance or access from and to any and all of the common elements or community facilities, together with a statement as to the effect of each upon the purchaser;

8. A statement of the relationship, if any, between the applicant and any management or servicing agent or firm;

9. A statement explaining any restrictions on occupancy, on the right of alienation and on the right of alteration of the lot, parcel, unit or interest, and on the use of any common facilities or amenities;

10. The significant terms of any encumbrances, easements, liens and restrictions including, but not limited to, zoning regulations affecting such lands and each lot, parcel, unit or interest, as well as the *[use]* ***uses on*** and ***the*** zoning ***classification*** of adjoining lands ***at the time of registration, consolidation or the last filed annual report***;

11. A statement as to whether the property or any portion thereof is regularly or periodically subject to natural forces that would tend to adversely affect the use or enjoyment of the property and whether the property or any portion thereof is located in a Federally designated flood hazard area;

12. A statement as to whether the property or any portion thereof is subject to man-made forces that would tend to adversely affect the use or enjoyment of the property such as, but not limited to, the property's proximity to airports or flight paths, railroads, noisy or polluting industrial use, landfills, dumps, nuclear or toxic waste facilities or other similar forces;

13. A statement of all current or estimated taxes;

14. A statement of all existing or proposed special taxes and proposed assessments or assessments of record and identifying who shall be responsible for payment thereof;

15. A statement of ***all of*** the estimated title closing or settlement costs to be paid by the purchaser***, including, but not limited to, all costs*** that are charged by the applicant and its agents and any person or entity controlled by the applicant;

16. A statement explaining the warranty or guarantee given by the applicant, if any, and the rights and remedies of the purchaser;

17. A statement by the applicant confirming that all monies paid by New Jersey residents to the applicant or his agents prior to closing will be held in *[a trust]* ***an escrow*** account***, or in trust by an attorney licensed to practice law in this State or the state or country***

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where the property is located,* or be guaranteed by some means acceptable to the Commission. The statement shall specify the name and location of the institution where the *[trust]* ***escrow*** account is maintained as well as the name and address of any trustee or escrow agent. The statement shall include the applicant's acknowledgement that he shall hold all funds in escrow or in trust until the closing and delivery of the deed or until the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the subdivision***, including fee simple interests in timeshare projects,*** are offered through installment sale contracts where closing and delivery of deed ***or deed in trust*** are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, the statement shall *[also]* confirm that *[either: i. All]* ***all*** monies paid by New Jersey purchasers will be escrowed until *[the]**:

i. The* statutory seven-day rescission period has expired***;*** and *[a Deed in Trust]*

ii. A deed in trust memorializing the transaction has been ***offered to the purchaser, which offer shall be made within 180 days of the date on which the first installment payment was made, presuming that all payments are current as of that time, and which deed in trust will, presuming that the purchaser has performed all acts required to enable the subdivider to do so, be*** recorded ***within the said 180 day period*** with the appropriate recording authority in the situs state***;*** and *[all]*

iii. All statutory and other rescission periods have passed***;*** and *[all]*

iv. All contingencies ***other than the completion of secured promised improvements*** have been fulfilled*[; or

ii. That]**. **In the alternative, the statement shall confirm that*** evidence acceptable to the Commission that a bond***, irrevocable bank letter of credit, or other financial assurances acceptable to the Commission, but in no event bonds issued by the applicant or any affiliated company,*** in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to *[closing]* ***the delivery of a deed or deed in trust*** has been posted by an *[unaffiliated]* ***acceptable*** third party surety ***or entity*** on behalf of the applicant. ***In order for a surety or entity to be deemed acceptable, it must be authorized to do business in the situs state and engaged in the general business of providing financial assurances on the open market. Such a bond or other financial assurance must provide that the New Jersey Real Estate Commission on behalf of all New Jersey purchasers, or the appropriate regulatory agency of the situs state on behalf of all purchasers, is the insured and shall ensure all purchasers' deposits paid and/or all installment payments made prior to the delivery of a deed in recordable form to the purchaser or trustee. Whether the amount of such instruments is acceptable shall be determined based upon past and projected sales, purchase price and other contract terms and shall be reviewed annually by the Commission if it is a named insured;***

18. A statement printed in 10-point boldface type or larger, *[in English and Spanish,]* conspicuously located, which states that the purchaser has the right to cancel any contract or agreement for the purchase of any lot, parcel, unit or interest in the development, without cause, by sending or delivering written notice of cancellation to the developer or his agent by midnight of the seventh calendar day following the day on which such contract or agreement was executed and that all monies paid will be promptly refunded, and further stating that the purchaser should read the Public Offering Statement in its entirety before signing any contracts or paying any monies;

19. A statement indicating that, regardless of whether the registrant offers or recommends financing the purchase of an interest in the subdivision through a particular lender or lenders, alternate sources of financing are available;

20. Where applicable, a statement explaining the nature, type and amount of hazard and liability insurance supplied or to be supplied by the applicant or association and what the insurance covers and an explanation of the nature and type of hazard and liability insurance available to the owner, and the necessity of flood or hazard insurance; and

21. Any additional information required by the Commission to assure full and fair disclosure to prospective purchasers.

(f) Applicants and registrants shall immediately report to the Commission any material change***, as defined in N.J.A.C. 11:5-6.7(c) and 6.10(b),*** in the information contained in any proposed or approved Public Offering Statement and shall simultaneously submit a request for approval of the appropriate amendment.

1. Subsequent to the Commission having approved a Public Offering Statement, no revised Public Offering Statement shall be given to prospective purchasers without having first been filed with and approved by the Commission.

2. Applications for approval of an amended or corrected Public Offering Statement shall be made by filing a red-lined copy of the proposed Revised Public Offering Statement with the Commission and an application update.

(g) The Commission shall process and review requests for amendments to Public Offering Statements in accordance with the standards and procedures established in this section.

(h) The Public Offering Statement shall not be used for any promotional purposes before registration of the project, and thereafter only if used in its entirety.

1. No Public Offering Statement shall indicate, and no person shall represent or imply, that the Commission approves the merits of, or recommends the purchase of, an interest in the properties described in the offering.

11:5-6.6 Representation of applicants and registrants by New Jersey real estate brokers

(a) The applicant shall designate a currently licensed New Jersey real estate broker as its original broker of record with the initial application for registration, and such broker and any substituted or supplemental brokers must comply with the New Jersey Real Estate Brokers and Salesmen Act, N.J.S.A. 45:15-1 et seq., and the rules promulgated thereunder. An applicant/registrant may substitute another broker for the one initially designated. The initially designated broker and all substituted brokers shall execute an affidavit in accordance with N.J.A.C. 11:5-6.4(a)1.

1. The applicant may designate, in addition to the broker of record, other additional brokers who may join in the disposition of the registered property subject to filing the proper application with the Commission. The additional brokers, known as supplemental brokers, shall also execute an affidavit as required by N.J.A.C. 11:5-6.4(a). Nothing herein shall prevent any New Jersey broker from cooperating with any other New Jersey broker in any transaction, in accordance with N.J.A.C. 11:5-1.23(c). ***For the purposes of this section, persons who are licensed as New Jersey real estate brokers, and who have been designated by the applicant/registrant and approved by the Commission as the broker of record or as a supplemental broker for a particular subdivision, and who have been issued a current brokers release for that subdivision, are considered authorized brokers.***

(b) Only authorized brokers may receive commissions from the registrant ***for the sale of interests in registered properties within New Jersey***.

(c) Only authorized brokers and persons licensed *[through]* ***under*** them may distribute literature ***on, or personally or via telephone solicit for prospective purchasers or offer or attempt to negotiate the sale or rental of an interest in a registered property,*** *[and]* ***or*** provide *[and]* ***or*** prepare contracts in New Jersey pertaining to registered property.

1. Where permitted by local law, unlicensed employees of a registrant working in the situs state and/or from the offices of the registrant may mail to New Jersey purchasers promotional literature on registered properties and may make appointments for New Jersey purchasers to inspect registered properties, provided that such persons make no material representations about such properties.

2. An authorized broker or a person licensed under them shall be present at any promotional booth maintained by a registrant or an agent of a registrant at any trade show or similar exhibition in New Jersey,

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and at any seminar promoting the sale or rental of registered property conducted by a registrant or any agent of a registrant in this State.*

(d) All authorized brokers shall:

1. Prominently display the current broker's release;

2. Provide a copy of *[that release with a copy of]* the current New Jersey Public Offering Statement to all New Jersey purchasers ***with whom they have had contact*** prior to the signing of any contract; *[and]*

3. Obtain a signed and dated receipt for the same from the purchaser ***in all cases where the broker provides the Public Offering Statement to the purchaser, which receipt shall be maintained as a business record by the broker in accordance with N.J.A.C. 11:5-1.12; and***

4. In all cases where the broker provides or prepares a contract which is signed by a New Jersey purchaser, the broker shall maintain a copy of that contract as a business record in accordance with N.J.A.C. 11:5-1.12*.

(e) *[Registrants]* ***In all cases where a New Jersey purchaser has not had contact with an authorized New Jersey Broker, registrants*** shall maintain the signed and dated receipt for the New Jersey Public Offering Statement and a copy of the contract which the New Jersey purchaser signed for a period of seven years.

(f) New Jersey brokers may not represent unregistered subdivisions or sections of unregistered subdivisions unless such projects are exempted from registration pursuant to N.J.S.A. 45:15-16.32 and N.J.A.C. 11:5-6.19.

11:5-6.7 Fees with respect to the sale of interstate properties

(a) All applicants for registration shall pay application fees as prescribed in N.J.S.A. 45:15-16.34.

(b) All applicants for an exemption or a limited exemption shall pay application fees as prescribed in N.J.A.C. 11:5-6.19.

(c) Any request for approval of a material change in, or an amendment to, an application for registration and/or an Order of Registration and/or a Public Offering Statement shall be accompanied by a fee of $250. No fee shall be charged for amendments to applications or proposed Public Offering Statements made prior to the issuance of an Order of Registration.

1. If applications for approval of a material change in and/or for an amendment to an Order of Registration and/or an amendment to a Public Offering Statement are made simultaneously, only one fee will be payable;

2. If applications are made for approval of multiple material changes, and/or multiple amendments to an Order of Registration, and/or multiple amendments to a Public Offering Statement simultaneously, only one fee will be payable;

3. Notice(s) to the Commission that promised improvements have been completed on schedule or that changes as referenced in N.J.A.C. 11:5-6.10(b) have occurred do not constitute notice(s) of a material change requiring the payment of a fee.*

(d) The Commission shall maintain a copy of every application for registration, together with all amendments thereto, that has been approved and shall make them reasonably available for public inspection during ordinary business hours at the Commission's office.

1. The Commission will furnish to the public, upon request, a copy of the statement of record of any registered subdivision at a cost of $0.50 per page.

(e) All fees paid are non-refundable.

11:5-6.8 Issuance by the Commission of a Notice of Filing

(a) Upon receipt of an application for registration in proper form and accompanied by payment of the required filing fee in the correct amount as prescribed by N.J.S.A. 45:15-16.34, the Commission shall, within 10 business days of its receipt of the same, issue a Notice of Filing to the applicant. The notice of filing shall not be construed as an approval of the registration or any portion thereof.

1. The date of filing shall be considered as the date when all required documents have been submitted in proper form and all fees, including the inspection fee, if requested, have been paid.

11:5-6.9 Inspection of properties by the Commission

(a) As provided in N.J.S.A. 45:15-16.41, the Commission, at its discretion, may make on-site inspections of any subdivision which is the subject of an application for registration, either before an Order of Registration has been issued or thereafter. In any instance where an Order of Registration has been issued prior to the subdivision being inspected by the Commission, such Order shall be considered conditional and subject to the results of the Commission's inspection of the premises. The Commission may at its discretion conduct subsequent on-site inspections.

(b) The costs of inspections shall be paid by the applicant who shall provide a deposit when requested by the Commission. After the inspection the Commission shall provide the applicant/registrant with a statement of costs incurred and a refund of any portion of the deposit not expended or a request for additional funds if required.

11:5-6.10 Amendments to registration applications and Public Offering Statements

(a) The registrant shall immediately file with the Commission amendments to its registration application and/or Public Offering Statement reflecting any material change(s) in previously supplied information or documents, in order that the information provided purchasers is current.

(b) The definition of "material change" includes, but is not limited to, situations in which any significant change ***which has a material adverse impact upon the offering or registrant*** has occurred with respect to any man made or natural forces affecting the subdivision and/or in the size or character of the subdivision and/or in the promotional plan of disposition of the interests being offered, and specifically includes any situation having a significant adverse affect on the rights, duties or obligations of the applicant/registrant or of New Jersey purchasers. Changes in selling prices and advertising ***and in the identity of the officers and directors of a registrant*** are not considered material changes. The Commission shall determine what is a material change ***pursuant to the above standard. All changes in the information required by N.J.A.C. 11:5-6.5(e)1 through 21 to be contained in the New Jersey Public Offering Statement are presumed to be material changes, with the exception of notices of the completion of improvements on a timely basis as represented in a previously approved Public Offering Statement***.

1. The transfer of control of any association responsible for the maintenance of common areas and/or the operation of common facilities or amenities by the registrant to the owners of interests in the subdivision is a material change.

(c) Any change meeting the definition of "material change" shall not be made unless such change has been approved by the Commission by way of amendment to the New Jersey Public Offering Statement and Order of Registration. Amended Public Offering Statements shall be designated as "First Amended Public Offering Statement", "Second Amended Public Offering Statement", etc. ***With the exception of those items specified in (b) above and in N.J.A.C. 11:5-6.7(c)3, all changes are presumed to be material changes requiring Commission approval as provided herein.***

(d) The Commission shall process and review requests for amendments to Orders of Registration and Public Offering Statements in accordance with the standards and procedures established in the Act and this subchapter for the review of applications for registration. Requests for amendments shall be accompanied by a fee of $250.00, as provided in N.J.A.C. 11:5-6.7.

11:5-6.11 Annual reporting upon and the termination of registrations

(a) No later than 30 days after the anniversary date of the latest Order of Registration, and while the registrant retains any interest in the subdivision, the registrant shall file, on a form designated by the Commission, an annual report reflecting any material changes in the information contained in the original application for registration or in the most recent Annual Report previously filed.

1. This requirement shall not diminish the obligation of the registrant to notify the Commission of material changes as they occur.

2. The annual report shall contain an audited financial statement ***or compilation prepared by an independent public accountant*** showing the receipts and expenditures of any association serving the project and under the control of the registrant, which financial statements shall be compiled on a yearly basis, and certified if required by the situs state.

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3. The yearly audit submitted with the annual report shall be the most current audit available. In no event may the date of the yearly audit be earlier than 18 months prior to the date of the annual report. The registrant will not have to file a separate audit with the Commission for any association controlled by the owners of interests in the subdivision.

(b) The registrant may file an application for termination of its obligations with the Commission in which the registrant shall certify the grounds for termination.

1. Upon a determination by the Commission that an annual report is no longer necessary for the protection of the public interest *[or that]* ***because*** the registrant no longer retains any interest and no longer has any contractual, bond or other obligations ***to New Jersey purchasers*** in the subdivision, ***including having fulfilled all undertakings referred to in the Public Offering Statement, and the registrant has ceased all marketing activity in New Jersey,*** the Commission shall issue an order terminating the responsibilities of the registrant under the Act ***upon the registrant making application for the issuance of an Order of Termination, accompanied by acceptable proofs that the above requirements have been met***.

11:5-6.12 Home builders

Unless exempt pursuant to N.J.S.A. 45:15-16.32, a home builder selling house and lot packages offered as part of a common promotional plan, regardless of whether the lots are contiguous, is a "subdivider" as defined in N.J.S.A. 45:15-16.28, and therefore such offerings are subject to the Act and to this subchapter.

11:5-6.13 Grounds for denial of registration applications and for the revocation of Orders of Registration

A finding that an applicant or registrant has previously been determined to have engaged in unfair acts and/or fraudulent or deceptive practices by the Federal Trade Commission, or as set forth in the Federal Interstate Land Sales Full Disclosure Act (82 Stat. 590; 15 U.S.C. §1701 et seq.), or to have violated the Act and/or similar acts in other States, may constitute grounds for the Commission *[to refuse to issue or to revoke an order of registration. The Commission shall not refuse to issue or to revoke an order without first providing]**, **after providing the applicant or registrant with*** the opportunity for a hearing 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*, ***to refuse to issue or to revoke an Order of Registration***.

11:5-6.14 Advertising and sales promotions with respect to the sale or marketing of registered properties

(a) Advertisements that refer to the purchase price of any lot, unit, parcel or interest in real estate shall state the full purchase price and shall disclose any known or estimated additional assessments or costs to the purchaser.

1. In order to eliminate fictitious pricing or illusionary discounts, no certificates shall be distributed indicating that a discount from the advertised price shall be given. This shall not preclude the giving of a discount on the basis of any reasonable criteria.

2. Advertising shall not refer to a price increase unless the amount and date of the increase are indicated.

(b) Advertising that contains statements regarding taxes shall not use terms such as "low" and "stable", but shall state what the current taxes are, or an accurate estimate of such taxes based on current tax rates or value ratios.

1. Any reference to proposed improvements for which the purchaser will be assessed shall clearly set forth the facts of the assessment and the estimated amount of the assessment.

2. Advertising shall not state that items or services are free when the cost thereof is included in the assessment.

(c) Advertising shall not refer to any common element or facility that does not presently exist unless that fact is prominently stated in the advertising, accompanied by the proposed date of completion, which shall also appear prominently in the advertising.

(d) Advertising shall not contain photographs, sketches or artist's conceptions unless the fact that these are conceptions are stated immediately adjacent to them in the advertisement.

(e) Advertising shall not refer in wording, photograph, sketch or conception to any recreation, medical, social, shopping or other facility that is not located within the subdivision unless it clearly states that the facilities are not located in the subdivision and states the approximate distance therefrom in miles via paved roads.

(f) Any model unit that is used as part of a promotional plan shall be in substantial conformity with the units that are subsequently constructed unless otherwise noted in the contract of sale. If changes are to be made in the units other than landscaping, appliances, furnishings, heating, air conditioning, electrical or plumbing, a legible notice shall be conspicuously placed in the model, or picture photo or rendering of the model, advertising prospective purchasers of the change. In the event that there are items in the model that are available only at additional cost, legible notice informing purchasers that the items are available only at additional cost should be posted in a prominent place in the model.

(g) Any advertising of a registered subdivision in newspapers, periodicals or other means, whether to appear in New Jersey media or in interstate media which have a distribution in New Jersey, shall include the registration number assigned to that project by the Commission followed by the letters "NJREC" and the following statement: "This project is registered with the New Jersey Real Estate Commission. Registration does not constitute an endorsement of the merits or value of the project. Obtain and read the N.J. Public Offering Statement before signing anything." The Commission may also consider allowing a registrant to use a brief legend where there is no apparent harm to purchasers. The registrant shall first obtain the New Jersey Real Estate Commission's written permission to use the brief legend.

1. When properties or any interests therein are not registered with the Commission, nor wholly or partially exempt from the Act, and advertisements regarding such properties or interests are placed in any media which is distributed in or broadcast into the State of New Jersey, a disclaimer shall be included, indicating that the properties or interests are not registered with the New Jersey Real Estate Commission, and that the advertisement is not an offer to New Jersey residents.

2. As a result of their failure to register such properties or interests pursuant to N.J.S.A. 45:15-16.27 et seq., the owners of such properties or interests may not make, or cause to be made, an offer or disposition of the properties or interests in this State, nor direct any offer of such properties or interests originating outside of this State to a person or resident within this State.

(h) Reimbursement of travel expenses in cash or merchandise shall be subject to the following:

1. The promotional material shall clearly and conspicuously state the necessity of attendance at or submission to a sales promotion, the minimum length of time required to be spent at such sales promotion in order to qualify for reimbursement or other premium or inducement, the terms and conditions of the offer, and the retail value of any premiums offered.

2. "Travel expenses" may be reimbursed in cash or by merchandise.

3. Any advertisements, including reimbursement of travel expenses, offers of premiums, or other inducements shall also comply with the provisions of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.

11:5-6.15 Compliance with situs state requirements

Any instrument evidencing the sale or disposition of an interest in a registered property shall be executed in accordance with the laws of the situs state. An applicant/registrant may be required to submit proof of compliance.

11:5-6.16 Improvements to be made at registered properties

(a) A property in a subdivision, or any part thereof, on which construction of a promised improvement for public use, convenience or necessity has not been completed, shall not be registered for disposition unless completion of the improvement is assured by a court order, or government approved improvement district with sufficient taxing or other authority to raise adequate capital to assure completion, or a substantial completion bond or similar undertaking

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[posted with a public authority and] ***as provided in (c) below,*** acceptable to the Commission, or by adequate reserves established and maintained in a trust or escrow account meeting the following criteria:

1. Such funds shall be kept and maintained in an escrow account separate and apart from the registrant's funds and from any other escrowed funds;

2. The account shall be established in a bank or trust company doing business in this State or the situs state, and approved by the Commission; and

3. The trust or escrow agreement shall have as its purpose the protection of the purchaser or prospective purchaser in the event of a failure to complete construction of promised improvements or a failure to satisfy any obligations or liens encumbering the purchaser's title by reason of the construction.

(b) A property in a subdivision, or a part thereof, on which construction of a promised improvement not for public use, convenience or necessity is represented or implied, shall not be registered for disposition to the public where such improvement has not been completed, unless completion is assured by:

1. An adequate plan of development, including financial resources committed to carry out the plan as provided in (c) below, which plan is subject to the Commission's continuing review and approval; or

2. Adequate funds maintained in a trust or escrow account, or an irrevocable bank letter of credit.

(c) The Commission may accept surety bonds, escrow accounts, irrevocable bank letters of credit, or any other financial security adequate to assure a plan of development. In determining the security required, the Commission shall examine the status of improvements, the overall cost of improvements, the terms of purchaser contracts, the financial condition of the subdivider and such other data as it considers necessary. The Commission may consider whatever financial security has been posted with other governmental authorities in making its determination.

11:5-6.17 Street identification requirements

All registered properties comprised in whole or in part of lots or lot and house packages should be traversable by roads sufficiently improved to handle automobile traffic. In the alternative, the applicant may qualify for the registration of such property by including a statement in the Public Offering Statement indicating the conditions of access to the property and identifying the location of the filed map on which the property can be identified by purchaser.

11:5-6.18 Contracts for the purchase of an interest in a registered property

(a) All contracts or agreements for the disposition of a lot, parcel, unit or interest in a registered subdivision shall *[be fair and reasonable and shall]* not impose undue restrictions or hardships upon the purchaser. All contracts shall be in accordance with the laws of the situs state, except that they shall conform to the Real Estate Sales Full Disclosure Act and to this subchapter, and all conflicts shall be resolved to the satisfaction of the Commission.

(b) Any contract or agreement for the purchase of any lot, parcel, unit or interest in a registered subdivision may be cancelled without cause, by the purchaser sending or delivering written notice of cancellation by midnight of the seventh calendar day following the date on which such contract or agreement was executed. Upon receipt of such a notice of cancellation, the developer or his agent shall promptly refund all monies to the purchaser.

(c) Every contract or agreement shall contain the following notice in 10-point boldfaced type or larger, *[in English and Spanish,]* directly above the space provided for the signature of the purchaser:

> **NOTICE to PURCHASER or LESSEE: You have the right to cancel this contract by midnight of the seventh calendar day following the day on which you have executed this contract or agreement. You should read this entire contract and the Public Offering Statement on this project before signing any documents or paying any monies.**

(d) All deposits, downpayments, or other funds paid to a registrant or its agents by a purchaser shall be held in a separate trust or escrow account in a banking or similar institution situated within this State or in the situs state, or deposited with an attorney licensed to practice law in this State, or in the situs state ***or country***, until ***the closing and delivery of the deed or until*** the applicant posts a bond or some other guarantee acceptable to the Commission to ensure New Jersey purchaser deposits, which bond shall be separate from and in addition to any bond or assurance for the completion of infrastructure and promised improvements. In the event that interests in the registered subdivision***, including fee simple interests in timeshare projects,*** are offered through installment sale contracts where closing and delivery of deed ***or deed in trust*** are postponed until three or more installment payments, including, but not limited to, monthly payments for licenses, memberships or other non-fee interests in the subdivision, have been paid, *[and in the event that]* the applicant/registrant *[has not produced]* ***shall either produce*** evidence acceptable to the Commission that a bond in an amount sufficient to ensure all monies paid by New Jersey purchasers prior to closing has been posted by an *[unaffiliated]* ***acceptable*** third party surety ***or entity*** on behalf of the applicant ***as provided in N.J.A.C. 11:5-6.5(e)17, or*** all monies paid by New Jersey purchasers shall be escrowed *[until the statutory seven-day rescission period has expired and a deed in trust memorializing the transaction has been recorded with the appropriate recording authority in the situs state, and until all statutory and other rescission periods have passed and all contingencies have been fulfilled]* ***as required by that rule***.

11:5-6.19 Exemptions from the provisions of N.J.S.A. 45:15-16.27 et seq.

(a) Any person who believes that property may be exempt from the provisions of the Act, or who is contemplating marketing property in New Jersey which he believes may be exempt, may apply to the Commission for a Letter of Exemption. Such application shall be in written affidavit form and shall list the reasons why such property or proposed project may be exempt from the Act. Such an application for exemption shall be accompanied by a non-refundable fee of $80.00*[, as provided for in N.J.A.C. 11:5-6.7]*.

1. In the event the Commission shall determine that such property is exempt from the Act, it shall issue a Letter of Exemption setting forth the facts upon which the determination is based.

2. In the event the Commission shall determine that such property is not exempt from the provisions of the Act, it shall deny the request for exemption in writing, setting forth therein the facts upon which the determination is based, and shall send such writing to the applicant via certified mail, return receipt requested.

3. Any person who is aggrieved by such a determination is entitled to a hearing on such determination, provided said hearing is requested in writing no later than 30 days from the date of the applicant's receiving notice of such determination.

4. The Commission shall issue a determination as to whether a property is, or is not, exempt within 30 days of its receipt of a complete request for exemption, with the appropriate fee.

(b) If the nature of the property and/or of the proposed offering indicate that the applicant would be subject to the registration requirements of the Act, the applicant may apply to the Commission for a limited exemption. If the Commission determines that enforcement of the entire Act and of all these rules is not necessary in the public interest or for the protection of purchasers, due to the small amounts involved or the limited character of the offering, it may issue a limited exemption from registration to the applicant.

1. A limited exemption may be granted by reason of the small number of lots, parcels, units or interests to be offered only if all improvements necessary for the use of the property have been completed, or adequate surety and/or financial assurances for completion of promised improvements and amenities has been established. No limited exemption may be granted with regard to property contiguous or reasonably contiguous to property for which a limited exemption has previously been granted and which is being offered by the same applicant, or by a predecessor or successor in title to or an affiliate of that applicant.

2. A limited exemption may be granted by reason of the limited character of the offering where the nature of the property, or of the prospective purchasers to whom the property will be offered, is such that it is likely prospective purchasers will have expert advice con-

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cerning the purchase independent of that supplied by the applicant or his agents. An application for a limited exemption for this reason shall include a copy of any prospectus, offering statement or other such solicitation. A limited exemption granted for this reason shall be confined to the group of offerees specified in the application.

3. An application for a limited exemption shall specify the particular lots, parcels, units or interests for which exemption is sought. Any limited exemption granted shall be confined to those lots, parcels, units or interests so specified.

4. An application for a limited exemption shall include a narrative description that clearly describes the nature of the subdivision and the factual basis and reasons why the limited exemption should be granted.

5. The Commission shall assign a New Jersey exemption number beginning with the prefix "N.J.E." to each project to which a limited exemption is issued. This number shall thereafter appear on all publications or broadcasts of advertisements of the properties in the exempted project directed to citizens of this State, and in all national or regional advertising circulated within this State.

6. Any limited exemption granted shall remain in effect for a period of two years from the date of issuance indicated in the Letter of Exemption, unless revoked as described below.

7. Any limited exemption granted shall permit the recipient to offer the property to New Jersey residents without obtaining an Order of Registration. A limited exemption shall not deprive the Commission of jurisdiction to enforce any other provision of the Act or this subchapter, or to revoke the limited exemption after notice and an opportunity to be heard.

8. A $250.00 non-refundable fee shall be tendered with any application for a limited exemption.

9. All applications for a limited exemption shall comply with the following minimum requirements:

i. The filing of an exemption application affidavit-questionnaire;

ii. The filing of proof of title and a plat map specifying the lots or units to be exempted, with colored shading;

iii. The requirements for the securing of all deposits, down payments, or funds of others as prescribed in this subchapter;

iv. The filing of satisfactory proof of surety and/or financial assurances for any promised improvements or amenities;

v. The advertisement standards and procedures established at 11:5-6.14; and

vi. The filing of any other documents that the Commission may deem necessary.

10. Any applicant granted a limited exemption by the Commission, pursuant to this subchapter, shall comply with the annual reporting requirements of N.J.S.A. 45:15-16.40 and N.J.A.C. 11:5-6.11.

11. No limited exemption granted hereunder shall be effective until a Letter of Limited Exemption is issued by the Commission to the applicant for the exemption.

12. A copy of the New Jersey Letter of Limited Exemption, or of a Public Offering Statement approved by the Commission, shall be provided to each New Jersey purchaser prior to their signing any contract for the purchase of an interest in property included within the limited exemption issued by the Commission, and a receipt obtained for the same shall be kept on file for seven years by the recipient of the limited exemption.

13. Any material change in the information reflected on the application for a limited exemption or on any documentation submitted in support of such application shall immediately void any exemption issued based upon such application. The Commission shall determine what constitutes a material change.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL OFFICE OF AMUSEMENT GAMES CONTROL

Maximum Fee for Participation in Games

Adopted Amendment: N.J.A.C. 13:3-3.4

Proposed: May 21, 1990 at 22 N.J.R. 1435(b).

Adopted: August 13, 1990 by Alexander P. Waugh, Jr., Assistant Attorney General in Charge, Division of Alcoholic Beverage Control.

Filed: August 20, 1990 as R.1990 d.465, **without change.**

Authority: N.J.S.A. 5:8-78, 5:8-77, 5:8-80, and 5:8-107.

Effective Date: September 17, 1990.

Expiration Date: April 25, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

13:3-3.4 Maximum fee for participation in game

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

(d) The maximum charge for participation in any arcade game certified in N.J.A.C. 13:3-7.9(a)2 under Certification No. 2 shall not exceed the maximum charge specified in the original or amended certification, but in no event shall the amount exceed $1.00, except that where a machine or device permits an enhanced mode of play the total shall not exceed $1.25. Dollar bill acceptors may be used only where the certification allows a charge of $1.00 for a single play. Dollar bill acceptors, if used, shall not accept more than one bill for a single play and in no event shall the machine accept multiple bills for credit or multiple play build up. Bill acceptors shall not accept bills larger than a $1.00 denomination. The maximum denomination currency for games permitting an enhanced mode of play shall not exceed $0.25, with a cumulative total of $1.25 when the maximum number of coins are inserted. The number of tickets or tokens awarded shall be at least proportionately increased when additional coins are inserted. In establishing the maximum charge for an arcade machine or device, the Commissioner shall consider, but is not limited to, the following:

1. The type and nature of the machine or device;

2. The type of prize it is designed to award;

3. The number and denomination of currency required or permitted for play; and

4. The time required to complete a game or play.

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

(b)

DIVISION OF CONSUMER AFFAIRS OFFICE OF WEIGHTS AND MEASURES

Commodities in Package Form; Weights and Measures

Adopted New Rules: N.J.A.C. 13:47K
Adopted Repeal: N.J.A.C. 13:47D

Proposed: May 21, 1990 at 22 N.J.R. 1440(a).

Adopted: July 3, 1990 by Thomas W. Kelly, State Superintendent, Office of Weights and Measures.

Filed: August 21, 1990 as R.1990 d.468, **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. 51:1-61.

Effective Date: September 17, 1990.

Expiration Date: September 17, 1995.

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Summary of Public Comments and Agency Responses:

The Office of Weights and Measures received four comments during the comment period. The Office of Weights and Measures has made several changes upon adoption; none of these changes are so substantive as to require reproposal. All changes made were as a result of public comment. In one case, due to an error in transmission of material to the Office of Administrative Law two Maximum Allowable Variation (MAV) tables were not included in the published version of proposed rule N.J.A.C. 13:47K-5.2. In another, proposed rule N.J.A.C. 13:47K-4.12, dealing with promotional sales, was not adopted when it was pointed out to the State Superintendent that this requirement could conflict with an existing rule promulgated by another agency.

COMMENT: Two comments were received asserting that the proposed rule concerning promotional sales, N.J.A.C. 13:47K-5.12, was in conflict with N.J.A.C. 13:45A-9, The Merchandise Advertising Rules.

RESPONSE: The State Superintendent has determined that this is possible and has not adopted the proposed rule, reserving the right to bring this matter to the attention of the Director of Consumer Affairs with the recommendation that N.J.A.C. 13:45A-9 be amended to clearly regulate the promotional sales of commodities in package form as distinct items of merchandise due to the unique manner in which such sales are conducted.

COMMENT: The promotional sales rule, N.J.A.C. 13:47K-4.12, is objectionable.

RESPONSE: Since this rule was not adopted, the objection is moot.

COMMENT: The Maximum Allowable Variation (MAV) tables for liquids, volume and aerosols were missing from the published text of proposed rule N.J.A.C. 13:47K-5.2.

RESPONSE: It was found that this was true, probably due to an error in transmission or photocopying. The missing tables are included in the adopted rule.

Full text of the adopted new rules follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*).

CHAPTER 47K
COMMODITIES IN PACKAGE FORM
WEIGHTS AND MEASURES

SUBCHAPTER 1. FOOD PRODUCTS

13:47K-1.1 Bread

(a) Each loaf and each unit of a twin or multiple loaf made or procured for sale, kept, offered, exposed for sale, or sold, whether or not wrapped or sliced, and each portion of a loaf that is prepackaged, shall have a weight per (a)1 or 2 below; provided, that the provisions of this section shall not apply to biscuits, buns or rolls of inch-pound sizes four ounces or less or of metric inch-pound sizes four ounces or less or of metric sizes 100 grams or less or to "stale bread" sold or expressly represented at the time of sale as such, and when so sold, the wrappers shall be deemed not to be packages for labeling purposes:

1. Inch-pound weights of 1/2 pound, 3/4 pound, one pound, 1-1/2 pounds, or a multiple of one pound.

2. Metric weights of 250 grams, 375 grams, 500 grams, 750 grams, or a multiple of 500 grams.

(b) Packages subject to the Federal Fair Packaging and Labeling Act, 15 U.S.C. §1451 et seq. must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-1.2 Butter, oleomargarine, margarine, butter-like and/or margarine-like spreads

(a) For the purposes of this section "butter-like and/or margarine-like spreads" are those products that meet the Federal Standard of Identity for butter or margarine and oleomargarine (see 7 CFR Part 58P, 58.2621) except that they contain less than 80 percent fat and may contain other safe and suitable ingredients.

(b) Butter, oleomargarine, margarine, butter-like and/or margarine-like spreads shall be offered and exposed for sale and sold by weight per (b)1 or 2 below:

1. Inch-pound weights of 1/4 pound, 1/2 pound, one pound, 1-1/2 pounds, or a multiple of one pound.

2. Metric weights of 125 grams, 250 grams, 500 grams, 750 grams, or a multiple of 500 grams.

(c) Oleomargarine and margarine are not permitted in multiples of one pound, 500 grams, or multiples of 500 grams because Section 407(b)(2) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §301 et seq., prohibits margarine and oleomargarine packaged in sizes greater than one pound.

(d) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-1.3 Flour, corn meal, and hominy grits

(a) Wheat flour, whole wheat flour, graham flour, self-rising wheat flour, phosphated wheat flour, bromated flour, corn flower, corn meal, and hominy grits, whether enriched or not, shall be packaged, kept, offered, or exposed for sale, or sold only in weights per (a)1 or 2 below; provided, that inch-pound sizes less than two pounds or more than 100 pounds and that metric sizes less than one kilogram or more than 50 kilograms shall be permitted:

1. Inch-pound weights of two, five, 10, 25, 50, or 100 pounds.

2. Metric weights of one, 2.5, five, 10, 25, or 50 kilograms.

13:47K-1.4 Fluid milk products

(a) All fluid milk products, including, but not limited to, milk, lowfat milk, skim milk, cultured milks, and cream, shall be packaged for retail sale only in volumes per subsection (a)1 and 2 below; provided, that inch-pound sizes less than one gill and metric sizes less than 100 milliliters shall be permitted:

1. Inch-pound volumes of one gill, 1/2 liquid pint, 10 fluid ounces, one liquid pint, one liquid quart, 1/2 gallon, one gallon, 1-1/2 gallons, two gallons, 2-1/2 gallons, or multiples of one gallon.

2. Metric volumes of 125 milliliters, 250 milliliters, 500 milliliters, one liter, or multiples of one liter.

13:47K-1.5 Other milk products

(a) Cottage cheese, cottage cheese products, and other milk products that are solid, semi-solid, viscous, or a mixture of solid and liquid, as defined in the Pasteurized Milk Ordinance of the U.S. Public Health Service, as amended in 1965 (see Public Health Service, Food and Drug Administration, Publication 229, Title PMO grade A, 1985 Revision supplements through 1989), shall be sold in terms of weight; provided, that cottage cheese, cottage cheese products, sour cream, and yogurt shall be packaged for retail sale only in weights per (a)1 or 2 below and, provided further, that the total net weight of multiunit packages need not comply with (a)1 or 2 below if their individual units comply:

1. Inch-pound weights of one, two, three, four, five, six, eight, 12, 16, 24, 32, 64, 80 and 128 ounces avoirdupois.

2. Metric weights of 25, 50, 75, 100, 125, 150, 175, 200, 250, 375, 500, 750 grams: one, two, and four kilograms.

13:47K-1.6 Pickles

The declaration of net quantity of contents on pickles and pickle products, including relishes but excluding one or two whole pickles in a transparent wrapping, which may be declared by count, shall be expressed in terms of liquid measure. Sales of pickles from bulk may be by count.

SUBCHAPTER 2. NONFOOD PRODUCTS

13:47K-2.1 Inch-pound units requirement

Packages subject to the Federal Fair Packaging and Labeling Act shall be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

13:47K-2.2 Definitions

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

"Page" means one side of a sheet of paper used for writing purposes.

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"Sheet" means the separate, individual piece of tissue or paper. In case of writing materials, "sheet" shall not be construed to mean "page."

"Usable unit" means an individual sheet or unit or any combination of sheets or units which can be removed or dispensed from any type of roll, container or other package form in a single operation.

13:47K-2.3 Paper napkins and paper towels

The declaration of quantity on a package of paper napkins or paper towels shall indicate the numerical count and the dimensions of the individual napkins or towels contained in the package.

13:47K-2.4 Writing paper; notebook paper; envelopes

(a) The declaration of quantity on a package of writing paper, notebook paper or envelopes shall indicate the number of sheets or envelopes, as the case may be, in the package.

(b) When the envelopes are included in a package of writing paper, the declaration shall indicate both the number of sheets of paper and the number of envelopes.

13:47K-2.5 Tablets and books of writing paper

The declaration of quantity on a package of tablets or books of writing paper shall indicate the number of tablets or books in a package.

13:47K-2.6 Wrapping paper

(a) The declaration of quantity on a package of wrapping paper in sheet form shall be in terms of either numerical count or of net weight.

(b) If the declaration is in terms of numerical count, it shall indicate both the dimensions of an individual sheet and the number of sheets in the package.

13:47K-2.7 Gift-wrapping paper

The declaration of quantity on a package of gift-wrapping paper, whether packaged as individual sheets or in roll form, shall indicate the numerical count and the dimensions of the individual sheets. Any linear dimensions in excess of 48 inches shall be expressed in terms of feet.

13:47K-2.8 Facial tissues

The declaration of quantity on a package of facial tissues shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

13:47K-2.9 Toilet tissue

The declaration of quantity on a package of toilet tissues in roll or sheet form shall indicate the numerical count of usable units (a sheet of two or three ply shall be considered a single usable unit) and the dimensions of the individual unit.

13:47K-2.10 Supplementary quantity declaration

Any declaration or statement relating to the quantity of contents of a package of paper product that is in addition to or supplementary to the declaration required by law, regulation or rule shall be in juxtaposition with and be subordinated to the required declaration.

13:47K-2.11 Multiple packs

Multiple packs of paper products shall bear on the outside wrapper, clearly and conspicuously, a quantity declaration indicating the number of individual rolls or packages and the usable unit count and sheet size for each individual roll or package, unless such individual roles or packages are so labeled that the content of each is clearly visible through the outer wrapper.

13:47K-2.12 Paper products for industrial use only

Rolls or packages of paper products for industrial use only and not for resale need not be marked individually so long as the container in which such rolls or packages are packed is properly marked to show the quantity of the contents of such container.

13:47K-2.13 Folded facial tissues to be compactly packaged

Folded facial tissues shall be compactly folded and gaps between the edges of sheets shall be held to a minimum.

13:47K-2.14 Size of cartons

Cartons or any other package form in which paper products are packed shall not be larger than needed to hold their intended or represented contents.

13:47K-2.15 Size of tubes for rolled paper products

Tubes or any other device similarly used for rolled paper products shall not be larger than required to contain the minimum diameter of rolled paper product without damage.

13:47K-2.16 Fence wire products

(a) Rolls of fence wire products, when prepackaged in any manner prior to sale, or exposure for sale, at retail, shall be sold by:

1. Gauge of wire;
2. Height in terms of inches or centimeters, if applicable; and
3. Length in terms of rods, meters or feet.

13:47K-2.17 Coatings

Asphalt paints, coatings, and plastics shall be sold in terms of liquid measure.

13:47K-2.18 Peat and peat moss

(a) This section applies only with respect to organic matter of geological origin, excluding coal and lignite, originating principally from dead vegetative remains through the agency of water in the absence of air and occurring in a bog, swampland, or marsh, and containing an ash content not exceeding 25 percent on a dry-weight basis (dried in an oven at 105 degrees Centigrade (221 degrees Fahrenheit) until no further weight loss can be determined).

(b) The declaration of quantity of peat and peat moss shall be expressed in weight units or in cubic-measure units.

(c) Peat and peat moss sold in terms of weight shall be offered and exposed for sale only in pounds and/or kilograms.

(d) Peat and peat moss sold in terms of cubic measure shall be offered and exposed for sale only in cubic feet and/or liters. If the commodity is labeled in terms of compressed cubic measurement, the quantity declaration shall represent the quantity in the compressed state and the quantity from which the final product was compressed (the latter declaration not exceeding the actual amount of material that can be recovered).

13:47K-2.19 Roofing and roofing materials

(a) Roofing and roofing materials shall be sold either by the square, or by the square foot only if sold in inch-pound units, or by the square meter only if sold in metric units.

(b) As used in this section, the following words and terms shall have the following meanings:

1. The term "square meter" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover one square meter exclusive of side laps or side joints.

2. The term "square" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover an area of 100 square feet exclusive of side laps or side joints; provided, that, in the case of roofing or roofing material of corrugated design, the side lap or side joint shall be one full corrugation.

3. The term "square foot" shall mean the quantity of roofing or roofing material that, when applied according to the directions or instructions of the manufacturer, will cover one square foot (144 square inches) exclusive of side laps or side joints.

(c) When the declaration of quantity on a package of roofing or roofing material contains the term "square", it shall include, plainly and conspicuously, a numerical definition of the term "square"; for example, "One square covers 100 square feet of roof area."

1. The use of the common fraction one-third (1/3) is specifically authorized in the quantity statement of a package of roofing material when, and only when, used as the common fraction of the "square."

2. The primary declaration if in inch-pound units shall only be in terms of squares or square feet, and, if in metric units, shall only be in terms of square meters. There is no prohibition against the use of supplementary quantity declarations, such as shingle dimensions, but in no case shall the weight of the material be stated or implied.

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However, the use of numerical descriptions for rolls of felt roofing material may continue to be used.

13:47K-2.20 Sealants

Caulking compounds, glazing compounds, and putty shall be sold in terms of liquid measure, except that rope caulk shall be sold by weight.

13:47K-2.21 Polyethylene products

(a) Consumer and nonconsumer polyethylene products offered and exposed for sale shall be sold by:

1. Length and width;
2. Area in square feet or square meters;
3. Thickness in mils (one mil = 0.001 inch); and
4. Weight.

(b) The following consumer polyethylene products at retail shall be sold as follows:

1. Food wrap by:
i. Length and width; and
ii. Area in square feet or square meters.
2. Lawn and trash bags by:
i. Count;
ii. Dimensions;
iii. Thickness in mils (one mil = 0.001 inch); and
iv. Capacity.
3. Food and sandwich bags by:
i. Count;
ii. Dimensions; and
iii. Capacity which is calculated as twice the labeled width.

(1) The capacity statement does not apply to fold-over sandwich bags.

(c) The labeled statement of weight for polyethylene sheeting and film products under (a) above shall be not less than the weight calculated by using the following formula:

$W = T \times A \times 0.03613 \times D$, where

W = net weight in pounds

T = nominal thickness in inches

A = nominal length in inches times nominal width in inches

D = density in grams per cubic centimeter as determined by ASTM Standard D1505-68 "Standard Method of Test for Density of Plastics by the Density Gradient Technique" (or latest issue) 0.03613 is a factor for converting g/cm^3 to $lb/in.^3$.

13:47K-2.22 Insulation

(a) Packaged loose-fill insulation, except cellulose, shall declare the net weight with no qualifying statement; each package must contain at least the stated weight. In addition, the following information shall be supplied on the package: minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 11, 19, and 22. This information shall also be supplied for any additional R-values listed.

(b) The principal display panel of packaged loose-fill cellulose insulation shall declare the net weight with no qualifying statement; each package must contain at least the stated weight. In addition, the following information shall be supplied on the package: minimum thickness, maximum net coverage area, number of bags per 100 square feet, and minimum weight per square foot at R-values of 13, 19, 24, 32, and 40. This information shall also be supplied for any additional R-values listed.

(c) The principal display panel of packaged batt or blanket insulation shall declare the square feet of insulation in the package, and the length and width of the batt or blanket. In addition, R-value and thickness shall be declared on the package.

(d) Installed insulation shall be accompanied by a contract or receipt. For all insulation except loose fill and aluminum foil, the receipt shall show the coverage area, thickness, and R-value of the insulation installed. For loose-fill, the receipt shall show those three items plus the number of bags used. For aluminum foil, the receipt shall show the number and thickness of the air spaces, the direction of heat flow, and R-value. The receipt shall be dated and signed by the installer.

1. Example: This is to certify that the insulation has been installed in conformance with the requirements indicated by the manufacturer to provide a value of R-19 using 31.5 bags of insulation to cover 1500 square feet area.
Signed and dated.

13:47K-2.23 Solid fuel products

Anthracite, semi-anthracite, bituminous, semi-bituminous, or lignite coal, and any other natural, manufactured, or patented fuel, not in liquid or gaseous form, except fireplace and stove wood, shall be offered, exposed for sale, or sold by net weight when in package form.

13:47K-2.24 Liquified petroleum gas cylinder tare weights

(a) Whenever stamped tare weights on cylinders are employed in the sale of liquified petroleum gas, the following shall apply.

1. The allowable difference between the actual tare weight and the stamped tare weight for a new or used cylinder shall be one percent of the actual tare weight. The tare weight shall include the weight of cylinder (including paint), valve, and other permanent attachments. The weight of a protective cap shall not be included in tare or gross weights.

2. The tare weights of cylinders at a single place of business found to be in error predominantly in a direction favorable to the seller and near the allowable difference limit shall be considered to be not in conformance with these requirements.

13:47K-2.25 Mulch

(a) Mulches are defined as any product or material except peat or peat moss (see N.J.A.C. 13:47K-2.18) that is advertised, offered for sale, or sold for primary use as a horticultural, above-ground dressing for decoration, moisture control, weed control, erosion control, temperature control, or other simple purposes.

(b) All mulch shall be sold, offered, or exposed for sale in terms of volume measure: in inch-pound units in terms of the cubic yard or cubic foot; in metric units in terms of the cubic meter or liter.

13:47K-2.26 Kindling wood

(a) All kindling wood offered for sale, sold or distributed by avoirdupois net weight, except when sold in quantities of a bushel or half bushel.

(b) The quantity of contents either in terms of avoirdupois net weight or of the bushel or half bushel shall be declared on all containers used for this purpose.

SUBCHAPTER 3. GENERAL

13:47K-3.1 Presentation of price

Whenever an advertised, posted, or labeled price per unit of weight, measure, or count for any commodity includes a fraction of a cent, all elements of the fraction shall be prominently displayed, and the numerals expressing the fraction shall be immediately adjacent to, of the same general design and style as, and at least one-half the height and width of the numerals representing the whole cent.

13:47K-3.2 Allowable differences: combination quantity declarations

(a) Whenever the method of sale for a bulk or packaged commodity requires the use of a statement that includes count in addition to weight, measure, or size, the following shall apply to the particular commodity:

1. For beverageware (pressed and blown tumblers and stemware), the allowable difference between actual and declared capacity shall be:
i. For inch-pound:
(1) Plus or minus 1/4 fluid ounce for items of five fluid ounce capacity or less;
(2) Plus or minus five percent of the stated capacity for items over five fluid ounce capacity.
ii. For metric:
(1) Plus or minus 10 milliliters for items of 200 milliliter capacity or less;
(2) Plus or minus five percent of the stated capacity for items over 200 milliliter capacity.

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13:47K-3.3 Machine vended commodities

(a) All vending machines dispensing packaged commodities shall indicate:

1. Product identity;
2. Net quantity; and
3. Name, address, and telephone number of responsible party.

(b) The requirements for product identity and net quantity can be met either by display of the package or by information posted on the outside of the machine.

SUBCHAPTER 4. MARKING REQUIREMENTS

13:47K-4.1 Applications

(a) This subchapter shall apply to packages and to commodities in package form, but shall not apply to:

1. Inner wrappings not intended to be individually sold to the customer;
2. Shipping containers or wrapping used solely for the transportation of any commodities in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors, but in no event shall this exclusion apply to packages of consumer or nonconsumer commodities, as defined herein;
3. Auxiliary containers or outer wrappings used to deliver packages of such commodities to retail customers if such containers or wrappings bear no printed matter pertaining to any particular commodity;
4. Containers used for retail tray pack displays when the container itself is not intended to be sold (for example, the tray that is used to display individual envelopes of seasonings, gravies, etc., and the tray itself is not intended to be sold); or
5. Open carriers and transport wrappers or carriers for containers when the wrappers or carriers do not bear any written, printed, or graphic matter obscuring the label information required by this subchapter.

13:47K-4.2 Definitions

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

"Commodity in package form" means a commodity put up or packaged in any manner in advance of sale in units suitable for either wholesale or retail sale. An individual item or lot of any commodity not in package form as defined in this section, but on which there is marked a selling price based on an established price per unit of weight or of measure, shall be considered a commodity in package form. Where the term "package" is used in N.J.S.A. 51:1, it shall be construed to mean "commodity in package form" as herein defined. For the purpose of this definition, single unit produce items wrapped in clear film shall not be construed as commodities in package form.

"Consumer package: package of consumer commodity" means a commodity in package form that is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption or use by individuals for the purposes of personal care or in the performance of services ordinarily rendered in or about the household or in connection with personal possessions.

"Label" means any written, printed, or graphic matter affixed to, applied to, attached to, blown into, formed, molded into, embossed on, or appearing upon or adjacent to a consumer commodity or a package containing any consumer commodity, for purposes of branding, identifying, or giving any information with respect to the commodity or to the contents of the package, except that an inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be considered a label requiring the repetition of label information required by this subchapter.

"Multi-unit package" means a package containing two or more individual packages of the same commodity, in the same quantity, intended to be sold as a multi-unit package, but where the component packages are labeled individually in full compliance with all requirements of this subchapter.

"Nonconsumer package: package of nonconsumer commodity" means any commodity in package form other than a consumer package, and particularly a package intended solely for industrial or institutional use for wholesale distribution.

"Person" means either singular or plural, and shall include any individual, partnership, company, corporation, association, and society.

"Petroleum products" means gasoline, diesel fuel, kerosene, or any product (whether or not such a product is actually derived from naturally occurring hydrocarbon mixtures known as "petroleum") commonly used in powering, lubricating, or idling engines or other devices, or is labeled as fuel to power camping stoves or lights. Therefore, sewing machine lubricant, camping fuels, and synthetic motor oil are "petroleum products" for the purposes of this regulation. Brake fluid, copier machine dispersant, antifreeze, cleaning solvents, and alcohol are not "petroleum products."

"Principal display panel or panels" means that part, or those parts, of a label that is, or are, so designed as to most likely be displayed, presented, shown, or examined under normal and customary conditions of display and purchase. Wherever a principal display panel appears more than once on a package, all requirements pertaining to the "principal display panel" shall pertain to all such "principal display panels."

"Random package" means a package that is one of a lot, shipment, or delivery of packages of the same consumer commodity with various weights; that is, packages of the same consumer commodity with no fixed pattern of weight.

13:47K-4.3 Declaration of identity: consumer package

(a) A declaration of identity on a consumer package shall appear on the principal display panel, and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

(b) A declaration of the identity on a consumer package shall appear generally parallel to the base on which the package rests as it is designed to be displayed.

13:47K-4.4 Declaration of identity: nonconsumer package

A declaration of identity on a nonconsumer package shall appear on the outside of a package and shall positively identify the commodity in the package by its common or usual name, description, generic term, or the like.

13:47K-4.5 Declaration of responsibility: consumer and nonconsumer packages

(a) Any package kept, offered, or exposed for sale, or sold, at any place other than on the premises where packed shall specify conspicuously on the label of the package the name and address of the manufacturer, packer, or distributor. The name shall be the actual corporate name, or, when not incorporated, the name under which the business is conducted. The address shall include street address, city, State, and ZIP Code; however, the street address may be omitted if this is shown in a current city directory or telephone directory.

(b) If a person manufactures, packs, or distributes a commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where the commodity was manufactured or packed or is to be distributed, unless such statement would be misleading. Where the commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such a commodity, such as "Manufactured for and packed by _____," "Distributed by _____," or any other wording of similar import that expresses the facts.

13:47K-4.6 Declaration of quantity: consumer packages

(a) The metric and inch-pound systems of weights and measures are recognized as proper systems to be used in the declaration of quantity. Units of both systems may be presented in a dual declaration of quantity.

1. Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

(b) Where this subchapter requires that the quantity declaration be in terms of the largest whole unit, the declaration shall, with

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respect to a particular package, be in terms of the largest whole unit of weight or measure, with any remainder expressed as follows:

1. For inch-pound units:

i. In common or decimal fractions of such largest whole unit; or

ii. In the next smaller whole unit, or units, with any further remainder in terms of common or decimal fractions of the smallest unit present in the quantity declaration.

2. For metric units, in decimal fractions of such largest whole unit.

(c) A declaration of net quantity of the commodity in the package, exclusive of wrappers and any other material packed with such commodity, shall appear on the principal display panel of a consumer package and, unless otherwise specified in this subchapter, shall be in terms of the largest whole unit.

1. The term "net weight" shall be used in conjunction with the declaration of quantity in units of weight. The term may either precede or follow the declaration of weight.

2. A declaration of quantity may appear on one or more lines of print or type.

(d) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or dry measure if the commodity is dry, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particualr commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

1. A declaration of quantity in terms of weight shall be combined with appropriate declarations of the measure, count, and size of the individual units unless a declaration of weight alone is fully informative.

2. A declaration of quantity in terms of measure shall be combined with appropriate declarations of the weight, count, and size of the individual units unless a declaration of measure alone is fully informative.

3. A declaration of quantity in terms of count shall be combined with appropriate declarations of the weight, measure, and size of the individual units unless a declaration of count alone is fully informative.

(e) When inch-pound units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the avoirdupois pound or ounce;

ii. In units of liquid measure, shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (68°F), except:

(1) In the case of petroleum products and distilled spirits, for which the declaration shall express the volume at 60 degrees Fahrenheit (60°F);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature;

(3) In the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (40°F); and

(4) In the case of malt beverages, for which the declaration shall express the volume at 39.1 degrees Fahrenheit (39.1°F);

iii. In units of linear measure, shall be in terms of the yard, foot, or inch;

iv. In units of area measure, shall be in terms of the square yard, square foot, or square inch;

v. In units of volume measure, shall be in terms of the cubic yard, cubic foot, or cubic inch; and

vi. In units of dry measure, shall be in terms of the United States bushel of 2150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel.

2. Any of the following symbols and abbreviations, and none other, shall be employed in the quantity statement under (e) above on a package of commodity:

avoirdupois	avdp	ounce	oz
cubic	cu	pint	pt
feet or foot	ft	pound	lb
fluid	fl	quart	qt
gallon	gal	square	sq
inch	in	weight	wt
liquid	liq	yard	yd

i. There normally are no periods following, nor plural forms of symbol. For example, "oz" is the symbol for both "ounce" and "ounces." Both upper and lower case letters are acceptable.

ii. When the term "ounce" is employed in a declaration of liquid quantity, the declaration shall identify the particular meaning of the term by the use of the term "fluid"; however, such distinction may be omitted when, by association of terms (for example, as in "20 fluid ounces, 1 pint 4 ounces"), the proper meaning is obvious. Whenever the declaration of quantity is in terms of the dry pint or dry quart, the declaration shall include the word "dry."

(f) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2 (h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods and 16 CFR 500.9(b) for certain nonfood consumer commodities.

1. When metric units are used, a declaration of quantity:

i. In units of weight, shall be in terms of the kilogram, gram, or milligram;

ii. In units of liquid measure, shall be in terms of the liter or milliliter, and shall express the volume of 20 degrees Centigrade (20°C), except:

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 15 degrees Centigrade (15°C);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature; and

3. In the case of malt beverages or a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at four degrees Centigrade (4°C);

iii. In units of linear measure, shall be in terms of the meter, centimeter, or millimeter;

iv. In units of area measure, shall be in terms of the square meter or square centimeter; and

v. In units of volume other than liquid measure, shall be in terms of the liter and milliliter, except that the terms cubic meter and cubic centimeter will be used only when specifically designated as a method of sale.

2. Any of the following symbols of metric units, and none other, may be employed in the quantity statement on a package of commodity:

kilogram	kg	meter	m
gram	g	centimeter	cm
milligram	mg	millimeter	mm
liter	L or l	square meter	m^2
milliliter	mL or ml	square centimeter	cm^2
		cubic meter	m^3
		cubic centimeter	cm^3

i. Symbols, except for liter, are not capitalized unless the unit is derived from a proper name. Periods should not be used after the symbol. Symbols are always written in the singular form—do not add "s" to express the plural when the symbol is used.

ii. The "l" symbol for liter and "ml" symbol for milliliter are permitted; however, the "L" symbol and the "mL" symbol are preferred.

(g) For prescribed units, using the inch-pound system, the following shall apply:

1. The declaration of quantity shall be expressed in terms of:

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i. In the case of length measure of less than one foot, inches and fractions of inches;

ii. In the case of area measure of less than one square foot, square inches and fractions of square inches;

iii. In the case of weight of less than one pound, ounces and fractions of ounces; and

iv. In the case of liquid measure of less than one pint, fluid ounces and fractions of fluid ounces; provided that

v. The quantity declaration appearing on a random package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than three decimal places.

(1) Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b) for certain non-food consumer commodities.

2. On packages containing one pound or more but less than four pounds, the declaration shall be expressed in ounces and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit; provided, that the quantity declaration appearing on a random package may be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places.

i. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b)for certain non-food consumer commodities.

3. On packages containing one pint or more, but less than one gallon, the declaration shall be expressed in fluid ounces and, in addition, shall be followed by declaration in parentheses, expressed in terms of the largest whole unit.

4. On packages containing one foot or more, but less than four feet, the declaration shall be expressed in inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

5. On packages containing one square foot or more but less than four square feet, the declaration shall be expressed in square inches and, in addition, shall be followed by a declaration in parentheses, expressed in terms of the largest whole unit.

6. In the case of a length measure of four feet or more, the declaration of quantity shall be expressed in terms of feet, followed in parentheses by a declaration of yards and common or decimal fractions of the yard, or in terms of feet followed in parentheses by a declaration of yards with any remainder in terms of feet and inches. In case of an area measure of four square feet or more; a weight of four pounds or more; or a liquid measure of one gallon or more, the declaration of quantity shall be expressed in terms of the largest whole unit.

7. For bidimensional commodities (including roll-type commodities) the quantity declaration shall be expressed as follows:

i. If less than one square foot, in terms of linear inches and fractions of linear inches;

ii. If at least one square foot but less than four square feet, in terms of square inches followed in parentheses by a declaration of both the length and width, each being in terms of the largest whole unit; provided, that:

(1) No square inch declaration is required for a dimensional commodity of four inches width or less;

(2) A dimension of less than two feet may be stated in inches within the parenthetical declaration; and

(3) Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see (i) below) require a declaration of unit area but not a declaration of total area of all such units;

iii. If four square feet or more, in terms of square feet followed in parentheses by a declaration of the length and width in terms of largest whole unit provided that:

(1) No declaration in square feet is required for a bidimensional commodity with a width of four inches or less;

(2) Bidimensional commodities, with a width of four inches or less, shall have length expressed in inches followed by a statement in parentheses of the length in largest whole unit (Example: 2 inches by 360 inches (10 yards)); and

(3) A dimension of less than two feet may be stated in inches within the parenthetical declaration; and

iv. No declaration in square units is required for commodities for which the length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

(h) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first. Packages entering interstate commerce are restricted by Federal regulations to two decimal place quantity declarations. For example, see 9 CFR 317.2(h)(5) for meat and meat products, 21 CFR 101.105(j)(2) for non-meat and non-poultry foods, and 16 CFR 500.9(b) for certain non-food consumer commodities.

1. For prescribed units as follows, using the metric system, the declaration of quantity shall be expressed in terms of:

i. In case of length measure of less than one meter, centimeters or millimeters;

ii. In case of area measure of less than one square meter, square centimeters and decimal fractions of square centimeters;

iii. In the case of weight of less than one kilogram, grams and decimal fractions of a gram, but if less than one gram, then in milligrams; and

iv. In the case of liquid or dry measure of less than one liter, milliliters; provided that

v. The quantity declaration appearing on a random weight package may be expressed in terms of decimal fractions of the largest appropriate unit, the fraction being carried out to not more than two decimal places.

(1) Packages subject to the Federal Fair Packaging and Labeling Act must be labeled in inch-pound units of measure. Metric units may also be declared on the principal display panel and may even appear first.

2. For prescribed units as follows, using the metric system, the declaration of quantity shall be expressed in terms of:

i. In case of length measure of one meter or more, in meters and decimal fractions to not more than two places;

ii. In case of area measure of one square meter or more, in square meters and decimal fractions to not more than two places;

iii. In case of weight of one kilogram or more, in kilograms and decimal fractions to not more than two places; and

iv. In case of liquid or dry measure of one liter or more, in liters and decimal fractions to not more than two places; provided that

v. The quantity declaration appearing on a random weight package may be expressed in terms of kilograms and decimal fractions carried out to not more than two decimal places.

3. For bidimensional commodities (including roll-type commodities), the quantity declaration shall be expressed:

i. If less than one square meter, in terms of length and width.

ii. If one square meter or more, in terms of square measure followed in parentheses by a declaration of length and width; provided that:

(1) Quantity declarations in bidimensional commodities with a width of 100 millimeter or less may be expressed in terms of width and length, only;

(2) Commodities consisting of usable individual units (except roll-type commodities with individual usable units created by perforations, for which see (i) below) require a declaration of unit area but not a declaration of total area of all such units; and

(3) No declaration in square units is required for commodities for which length and width measurements are critical in terms of end use (such as tablecloths or bedsheets) if such commodities clearly present the length and width measurements on the label.

(i) If the commodity is in individually usable units of one or more components or plies, the quantity declaration shall, in addition to complying with other applicable quantity declaration requirements

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of this subchapter include the number of plies and total number of usable units.

1. Roll-type commodities, when perforated so as to identify individual usable units, shall not be deemed to be made up of usable units; however, such roll-type commodities shall be labeled in terms of:

i. Total area measurement;

ii. Number of plies;

iii. Count of usable units; and

iv. Dimensions of a single usable unit.

(j) The following apply to the use of fractions in statements in declarations of net quantity:

1. A metric statement in a declaration of net quantity of contents of any consumer commodity may contain only decimal fractions.

2. An inch-pound statement in a declaration of net quantity of contents of any consumer commodity may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds, except that:

i. If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed; and

ii. If linear measurements are required in terms of yards or feet common fractions may be in terms of thirds.

3. A common fraction shall be reduced to its lowest term (Example: 2/4 becomes 1/2).

4. A decimal fraction shall not be carried out to more than two places, except that the quantity declaration appearing on a random package may be carried out to not more than three decimal places.

(k) The required quantity declaration may be supplemented by one or more declarations of weight, measure, or count, such declaration appearing other than on a principal display panel. Such supplemental statement of quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of commodity contained in the package (for example, "giant" quart, "larger" liter, "full" gallon, "when packed ," "minimum," or words of similar import).

1. An equivalent statement of the net quantity of contents in terms of either the inch-pound or metric system is not regarded as a supplemental statement and such statement may also appear on the principal display panel; provided, that it conforms to both (e) and (f) above.

2. In all conversions for the purpose of showing an equivalent metric or inch-pound quantity to a rounded inch-pound or metric quantity, the number of significant digits retained should be such that accuracy is neither sacrificed nor exaggerated. As a general rule, converted values should be rounded down by dropping any digit beyond the first three. (Example: 196.4 grams becomes 196 grams or 1.759 feet becomes 1.75 feet.)

(l) In no case shall any declaration of quantity be qualified by the addition of the words "when packed", "minimum" or "not less than," or any words of similar import, nor shall any unit of weight, measure, or count be qualified by any term (such as "jumbo," "giant," "full," or the like) that tends to exaggerate the amount of commodity.

(m) The average quantity of contents in the packages of a particular lot, shipment, or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage.

13:47K-4.7 Declaration of quantity: nonconsumer packages

(a) The metric and inch-pound systems of weights and measures are recognized as proper systems to be used in the declaration of quantity. Units of both systems might be combined in a dual declaration of quantity.

1. Although nonconsumer packages under this subchapter might bear metric declarations only, this subchapter should not be construed to supersede any labeling requirement specified in Federal law.

(b) A nonconsumer package shall bear on the outside a declaration of the net quantity of contents. Such declaration shall be in terms of the largest whole unit (see N.J.A.C. 13:47K-4.6(b)).

(c) The declaration of the quantity of a particular commodity shall be expressed in terms of liquid measure if the commodity is liquid, or in terms of dry measure if the commodity is dry, or in terms of weight if the commodity is solid, semisolid, viscous, or a mixture of solid and liquid, or in terms of numerical count. However, if there exists a firmly established general consumer usage and trade custom with respect to the terms used in expressing a declaration of quantity of a particular commodity, such declaration of quantity may be expressed in its traditional terms, if such traditional declaration gives accurate and adequate information as to the quantity of the commodity.

(d) When inch-pound units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the avoirdupois pound or ounce;

ii. In units of liquid measure, shall be in terms of the United States gallon of 231 cubic inches or liquid-quart, liquid-pint, or fluid-ounce subdivisions of the gallon, and shall express the volume at 68 degrees Fahrenheit (68°F) except:

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 60 degrees Fahrenheit (60°F);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at frozen temperature;

(3) In the case of a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at 40 degrees Fahrenheit (40°F); and

(4) In the case of malt beverages, for which the declaration shall express the volume at 39.1 degrees Fahrenheit (39.1°F);

iii. In units of linear measure, shall be in terms of the yard, foot, or inch;

iv. In units of area measure, shall be in terms of the square yard, square foot, or square inch;

v. In units of volume measure, shall be in terms of the cubic yard, cubic foot, or cubic inch; and

vi. In units of dry measure, shall be in terms of the United States bushel of 2150.42 cubic inches, or peck, dry-quart, and dry-pint subdivisions of the bushel.

2. Any generally accepted symbol and abbreviation of a unit name may be employed in the quantity statement on a package of commodity. (For commonly accepted symbols and abbreviations, see N.J.A.C. 13:47K-4.6(e)2).

(e) When metric units are used, the following shall apply:

1. A declaration of quantity:

i. In units of weight, shall be in terms of the kilogram, gram, or milligram;

ii. In units of liquid measure, shall be in terms of the liter or milliliter, and shall express the volume at 20 degrees Centigrade (20°C); except

(1) In the case of petroleum products or distilled spirits, for which the declaration shall express the volume at 15 degrees Centigrade (15°C);

(2) In the case of a commodity that is normally sold and consumed while frozen, for which the declaration shall express the volume at the frozen temperature; and

(3) In the case of malt beverages or a commodity that is normally sold in the refrigerated state, for which the declaration shall express the volume at four degrees Centigrade (4°C);

iii. In units of linear measure, shall be in terms of the meter, centimeter, or millimeter;

iv. In units of area measure, shall be in terms of the square meter or square centimeter; and

v. In units of volume other than liquid measure, shall be in terms of the liter and milliliter, except that the terms cubic meter and cubic centimeter will be used only when specifically designated as a method of sale.

2. Only those symbols as detailed in N.J.A.C. 13:47K-4.6(f)2, and none other, may be employed in the quantity statement on a package of commodity.

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(f) The average quantity of contents in the packages of a particular lot, shipment, or delivery shall at least equal the declared quantity, and no unreasonable shortage in any package shall be permitted, even though overages in other packages in the same shipment, delivery, or lot compensate for such shortage.

13:47K-4.8 Prominence and placement: consumer packages

(a) All information required to appear on a consumer package shall appear thereon in the English language and shall be prominent, definite, and plain, and shall be conspicuous as to size and style of letters and numbers and as to color of letters and numbers in contrast to color of background. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

1. The declaration or declarations of quantity of the contents of a package shall appear in the bottom 30 percent of the principal display panel or panels. For cylindrical containers, see also N.J.A.C. 13:47K-4.10(g) for additional requirements.

2. The declaration or declarations of quantity shall be in such a style of type or lettering as to be boldly, clearly, and conspicuously presented with respect to other type, lettering, or graphic material on the package, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface is permissible when all label information is blown, formed, or molded on the surface.

3. The declaration or declarations of quantity shall be in a color that contrasts conspicuously with its background, except that a declaration of net quantity blown, formed, or molded on a glass or plastic surface shall not be required to be presented in a contrasting color if no required label information is on the surface in a contrasting color.

4. The area surrounding the quantity declaration shall be free of printed information above and below, by a space equal to at least the height of the lettering in the declaration, and to the left and right, by a space equal to twice the width of the letter "N" of the style and size of type used in the declaration.

5. The quantity declaration shall be presented in such a manner as to be generally parallel to the declaration of identity and to the base on which the packages rest as it is designed to be displayed.

(b) The following governs the calculation of area of the principal display panel for purposes of type size.

1. The area of the principal display panel shall be as follows:

i. In the case of a rectangular container, one entire side that properly can be considered to be the principal display panel, the product of the height times the width of that side;

ii. In the case of a cylindrical or nearly cylindrical container, 40 percent of the product of the height of the container times the circumference; or

iii. In the case of any other shaped container, 40 percent of the total surface of the container, unless such container presents an obvious principal display panel (for example, the top of a triangular or circular package of cheese, or the top of a can of shoe polish), in which event the area shall consist of the entire such surface.

2. Determination of the principal display panel shall exclude tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles or jars.

3. The height of any letter or number in the required quantity declaration shall be not less than that shown in Table 1 below with the respect to the area of the panel, and the height of each number of a common fraction shall meet one-half the minimum height standards. In the case of the symbol for milliliter, the "m" shall meet the minimum height standard.

i. No number or letter shall be more than three times as high as it is wide.

Table 1
Minimum Height of Numbers and Letters

Area of principal display panel	Minimum height of numbers and letters	Minimum height: label information blown, formed, or molded on surface of container
5 square inches (in^2) and less	1/16 inch	1/8 inch
Greater than 5 in^2 and not greater than 25 in^2	1/8 inch	3/16 inch
Greater than 25 in^2 and not greater than 100 in^2	3/16 inch	1/4 inch
Greater than 100 in^2 and not greater than 400 in^2	1/4 inch	5/16 inch
Greater than 400 in^2	1/2 inch	9/16 inch

13:47K-4.9 Prominence and placement: nonconsumer packages

All information required to appear on a nonconsumer package shall be definitely and clearly stated thereon in the English language. Any required information that is either in hand lettering or hand script shall be entirely clear and equal to printing in legibility.

13:47K-4.10 Requirements: specific consumer commodities, nonconsumer commodities, packages, containers

(a) For an individual package affixed to display card, or for a commodity and display card together comprising a package, the type size of the quantity declaration is governed by the dimensions of the display card.

(b) When cartons containing 12 eggs have been designed so as to permit division in half by the retail purchaser, the required quantity declaration shall be so positioned as to have its context destroyed when the carton is divided.

(c) The declaration of quantity on an aerosol package, and on a similar pressurized package, shall disclose the net quantity of the commodity (including propellant), in terms of weight, that will be expelled when the instructions for use as shown on the container are followed.

(d) Requirements for the declaration of quantity on multi-unit packages are as follows:

1. Any package containing more than one individual "commodity in package form" (see N.J.A.C. 13:47K-4.2) of the same commodity shall bear on the outside of the package a declaration of the following:

i. The number of individual units;

ii. The quantity of each individual unit; and

2. The total quantity of the contents of the multi-unit package; provided, that any such declaration of total quantity shall not be required to include the parenthetical quantity statement of a dual quantity representation. (Example: soap bars, "6 Bars, Net Weight 75 grams each; Total Net Weight 450 grams").

3. Open multi-unit retail food packages under the authority of the Food and Drug Administration or the U.S. Department of Agriculture that do not obscure the number of units or prevent examination of the labeling on each of the individual units are not required to declare the number of individual units or the total quantity of contents of the multi-unit package, if the labeling of each individual unit complies with requirements so that it is capable of being sold individually.

(e) Any package containing individual units of dissimilar commodities (such as an antiquing or a housecleaning kit, for example) shall bear on the label of the package a quantity declaration for each

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unit. (Example: sponges and cleaner: "2 sponges, each 10 centimeters × 15 centimeters × 2 centimeters; 1 box cleaner, net weight 150 grams.")

(f) Any package containing individual units of reasonably similar commodities (such as, for example, seasonal gift packages, variety packages of cereal) shall bear on the label of the package a declaration of the total quantity of commodity in the package. (Example: plastic tableware: 4 spoons, 4 forks, 4 knives, 12 pieces total.)

(g) In the case of a cylindrical or nearly cylindrical containers, information required to appear on the principal display panel shall appear within that 40 percent of the circumference which is most likely to be displayed, presented, shown, or examined under customary conditions of display for retail sale.

(h) The measurement of container-type commodities shall be expressed as follows:

1. Commodities designated and sold at retail to be used as containers for other material or objects, such as bags, cups, boxes, and pans, shall be labeled with the declaration of net quantity as follows:

i. For bag-type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise).

(1) When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed:

(A) For inch-pound units, in inches, except that a dimension of two feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot. (Examples: "25 BAGS, 17 inches × 20 inches" or "100 BAGS, 20 inches × 2 feet 6 inches" or "50 BAGS, 20 inches × 2-1/2 feet")

(B) For metric units, in millimeters, except a dimension of one meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter (Examples: "25 BAGS, 500 millimeters × 600 millimeters" or "50 BAGS, 750 millimeters × 1.2 meters")

(2) When the unit bag is gusseted, the dimensions will be expressed as width, depth, and length, as follows:

(A) For inch-pound units, in feet, with any remainder in terms of inches or the common or decimal fractions of the foot. (Examples: "25 BAGS, 17 inches × 4 inches × 20 inches" or "100 BAGS, 20 inches × 12 inches × 2-1/2 feet")

(B) For metric units, in millimeters, except a dimension of one meter or more will be expressed in meters with the remainder in terms of decimal fractions of the meter. (Examples: "25 BAGS, 430 millimeters × 100 millimeters × 500 millimeters" or "50 BAGS, 500 millimeters × 300 millimeters × 1.2 meters")

ii. For other square, oblong, rectangular, or similarly shaped containers, in terms of count followed by length, width, and depth, except depth need not be listed when less than 50 millimeters or two inches. (Examples: "2 PANS, 8 inches × 8 inches" or "2 PANS, 203 millimeters × 203 millimeters")

iii. For circular or other generally round-shaped containers, except cups, and the like, in terms of count followed by the diameter and depth, except depth need not be listed when less than 50 millimeters or two inches. (Examples: "4 PANS, 8 inches diameter × 4 inches" or "4 PANS, 200 millimeters diameter × 100 millimeters")

iv. Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit. (Examples: "24 CUPS, 6 fluid ounces capacity" or "24 CUPS, 250 milliliter capacity")

2. When the functional use of the container is related by label references in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

i. For inch-pound units:

(1) Liquid measure for containers that are intended to be used for liquids, semisolids, viscous materials, or mixtures of solids and liquids. The expressed capacity will be stated in terms of the largest whole unit (gallon, quart, pint, ounce, with any remainder in terms of the common or decimal fraction of that unit). (Examples: Freezer Box—"4 BOXES, 1 quart capacity, 5 inches × 4 inches × 3 inches")

(2) Dry measure for containers that are intended to be used for solids. The expressed capacity will be stated in terms of the largest whole unit (bushel, peck), with a remainder in terms of the common or decimal fraction of that unit. (Examples: Leaf Bags—"8 BAGS, 6 bushel capacity, 3 feet × 5 feet")

(3) Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent containers. (Examples: Garbage Can Liners—"10 LINERS, 2 feet 6 inches × 3 feet 9 inches. FITS UP TO 30-GALLON CANS")

ii. For metric units, volume measure for all containers and liners. (Examples: "4 BOXES, 1 liter capacity. 150 millimeters × 120 millimeters × 90 millimeters"; "8 BAGS, 200 liter capacity, 85 millimeters × 1.5 meters" or "10 LINERS, 750 millimeters × 1 meter, FITS UP TO 120 LITER CANS")

3. For purposes of this section, the use of the terms "capacity," "diameter," and "fluid" is optional.

(i) The following are requirements for textile products, threads and yarns:

1. Wearing apparel (including nontextile apparel and accessories such as leather goods and footwear) sold as single-unit items, or if normally sold in pairs (such as hosiery, gloves, and shoes) sold as single-unit pairs, shall be exempt from the requirements for a net quantity statement by count, as required by N.J.A.C. 13:47K-4.6(d).

2. Bedsheets, blankets, pillowcases, comforters, quilts, bedspreads, mattress covers and pads, afghans, throws, dresser and other furniture scarfs, tablecloths and napkins, flags, curtains, drapes, dishtowels, dish cloths, towels, face cloths, utility cloths, bath mats, carpets and rugs, pot holders, fixture and appliance covers, nonrectangular diapers, slip covers, etc., shall be exempt from the requirements of N.J.A.C. 13:47K-4.6(g)7 and (h)3, provided that:

i. The quantity statement for fitted sheets and mattress covers shall state, in inches or centimeters, the length and width of the mattress for which the item is designed, and the size designation of the mattress, if the item is intended to fit a mattress identified as "twin", "double", "queen", "king", "California king", etc. (Example: "Double Sheet for 54 inch × 75 inch mattress.")

ii. The quantity statement for flat sheets shall state, in inches or centimeters, the length and width of the mattress for which the sheet is designed, followed in parentheses by a statement, in inches or centimeters, of the length and width of the finished sheet. The quantity statement shall also state the size designation of the mattress for which the sheet is designed, such as "twin", "double", "queen", "king", "California king", if the item is intended to fit such a mattress. (Example: "Twin Flat Sheet for 39 inch mattress (66 inch × 96 inch finished size).")

iii. The quantity statement for pillowcases shall state, in inches or centimeters, the length and width of the pillow for which the pillowcase is designed, followed in parentheses by a statement, in inches or centimeters, of length and width of the finished pillowcase. The quantity statement for pillowcases shall also state the size designation of the pillow for which the pillowcase is designed, for example, "youth," "standard," "queen", etc. if the item is intended to fit such pillows. (Example: "Standard Pillowcase for 20 inch × 26 inch pillow (20 inch × 30 inch finished size.)")

iv. The quantity statement for blankets, comforters, quilts, bedspreads, mattress pads, afghans, and throws shall state, in inches or centimeters, the length and width of the finished item. The quantity statement shall also state the length of any ornamentation and the size designation of the mattress for which the item is designed, if it is intended to fit, for example, a "twin", "double", "queen", "king", or "California king", etc. mattress.

v. The quantity statement for tablecloths and napkins shall state, in inches or centimeters, the length and width of the finished item. The quantity statement may also state parenthetically, in centimeters or inches, the length and width of the item before hemming and properly identified as such.

vi. The quantity statement for curtains, drapes, flags, furniture scarfs, etc., shall state, in inches or centimeters, the length and width of the finished item. The quantity statement also may state parenthetically, in inches or centimeters, the length of any ornamentation.

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vii. The quantity statement for carpets and rugs shall state, in feet or meters, with any remainder in decimal fractions of the meter for metric sizes or common or decimal fractions of the foot or in inches for inch-pound sizes, the length and width of the item. The quantity statement also may state parenthetically, in inches or centimeters, the length of any ornamentation.

viii. The quantity statement for woven dish towels, dish cloths, towels, face cloths, utility cloths, bath mats, etc., shall state, in inches or centimeters, the length and width of the item. The quantity statement for such items, when knitted, need not state the dimensions.

ix. The quantity statement for textile products such as potholders, fixture and appliance covers, non-rectangular diapers, slip covers, etc., shall be stated in terms of count and may include size designations and dimensions.

x. The quantity statement for other than rectangular textile products identified in (b)1 through 8 above shall state the geometric shape of the product and the dimensions that are customarily used in describing such geometric shape. (Example: "Oval Tablecloth 70 inches × 100 inches" representing the maximum length and width in this case).

xi. The quantity statement for packages of remnants of textile products of assorted sizes, when sold by count, shall be accompanied by the term "irregular dimensions" and the minimum size of such remnants.

3. Variety packages of textiles that are required by reason of N.J.A.C. 13:47K-4.6(d) to provide a combination declaration stating the quantity of each individual unit, shall be exempt from the requirements in this subchapter for:

i. Location (see N.J.A.C. 13:47K-4.8(a)1);

ii. Free area (see N.J.A.C. 13:47K-4.8(a)4); and

iii. Minimum height of numbers and letters (see N.J.A.C. 13:47K-4.8(b)3).

4. Sewing and handicraft threads shall be exempt from the requirements of N.J.A.C. 13:47K-4.6(g)6 and (h)2, provided that:

i. The net quantity statement for inch-pound sizes of sewing and handicraft threads shall be expressed in terms of yards.

ii. The net quantity statement for yarns shall be expressed in terms of weight.

iii. Thread products may, in lieu of name and address, bear a trademark, symbol, brand, or other mark that positively identifies the manufacturer, packer, or distributor, provided that such marks, employed to identify the vendor, shall be filed with the Superintendent.

iv. Each unit of industrial thread shall be marked to show its net length in terms of meters or yards or its net weight in terms of kilograms or grams or avoirdupois pounds or ounces, except that ready-wound bobbins that are not sold separately shall not be required to be individually marked to show the number of bobbins contained therein and the net meters or yards of thread on each bobbin.

(j) Packages of seeds intended for planting shall be in full accord with this subchapter except as follows:

1. The quantity statement shall appear in the upper 30 percent of the principal display panel.

2. The quantity statement shall be in terms of the largest whole unit of the metric system for all weights up to seven grams, and in grams or in ounces for all other weights less than 225 grams or eight ounces. Packaged seeds weighing 225 grams or eight ounces or more shall not be subject to this subsection.

3. The quantity statement for coated seed, encapsulated seed, pelletized seed, preplanters, seed tapes, etc., shall be in terms of count.

13:47K-4.11 Exemptions

(a) Whenever any consumer commodity or package of consumer commodity is exempt from the requirements for dual quantity declaration, the net quantity required to appear on the package shall be in terms of the largest whole unit (except see N.J.A.C. 13:47K-4.10(d)1iii).

(b) A random package bearing a label conspicuously declaring the net weight, the price per kilogram or pound, and the total price shall be exempt from the type size, dual declaration, placement, and free area requirements of this subchapter. In the case of a random package packed at one place for subsequent sale at another, neither the price per unit of weight nor the total selling price need appear on the package, provided the package label includes both such prices at the time it is offered or exposed for sale at retail.

1. This exemption shall also apply to uniform weight packages of cheese and cheese products labeled in the same manner and by the same type of equipment as random packages exempt by this section.

(c) Individually wrapped pieces of "penny candy" and other confectionary of less than 15 grams or 1/2 ounce net weight per individual piece shall be exempt from the labeling requirements of this subchapter when the container in which such confectionary is shipped is in conformance with the labeling requirements of this subchapter. Similarly, when such confectionary items are sold in bags or boxes, such items shall be exempt from the labeling requirements of this subchapter including the required declaration of net quantity of contents, when the declaration of the bag or box meets requirements of this subchapter.

(d) Individually wrapped and labeled packages of meat or meat products of less than 1/2 ounce net weight, which are in a shipping container, need not bear a statement of the net quantity of contents when the statement of the net quantity of contents on the shipping container is in conformance with the labeling requirements of this subchapter.

(e) Individual serving size packages of foods containing less than 15 grams or 1/2 ounce or less than 15 milliliters or 1/2 fluid ounce for use in restaurants, institutions, and passenger carriers, and not intended for sale at retail, shall be exempt from the required declaration of net quantity of contents specified in this subchapter.

(f) When individual cuts, plugs, and twists of tobacco and individual cigars are shipped or delivered in containers that conform to the labeling requirements of this subchapter, such individual cuts, plugs and twists of tobacco and cigars shall be exempt from such labeling requirements.

(g) Nothing in this subchapter shall be deemed to preclude the continued use of reusable (returnable) glass containers, provided that such glass containers ordered after *[the effective date of this subchapter]* ***September 17, 1990*** shall conform to all requirements of this subchapter.

(h) Cartons of cigarettes and small cigars, containing 10 individual packages of 20, labeled in accordance with the requirements of this subchapter, shall be exempt from the requirements set forth in N.J.A.C. 13:47K-4.8(a)1 and (b)3 and N.J.A.C. 13:47K-4.10(d), provided that such cartons bear a declaration of the net quantity of commodity in the package.

(i) Packages of meat and meat products, poultry products, tobacco and tobacco products, insecticides, fungicides, rodenticides, and alcoholic beverages shall be exempt from those portions of this subchapter requiring dual declarations in customary units and specifying location and minimum type size of the net quantity declaration, provided that quantity labeling requirements for such products are specified in Federal Law, so as to follow reasonably sound principles of providing consumer information.

(j) Exemptions relating to fluid dairy products, ice cream and similar frozen desserts are as follows:

1. When packaged in 1/2 liquid pint and 1/2 gallon containers, fluid dairy products, ice cream and similar frozen desserts are exempt from the requirements for stating net contents of 8 fluid ounces and 64 fluid ounces, which may be expressed as 1/2 pint and 1/2 gallon, respectively.

2. When packaged in one liquid pint, one liquid quart, and 1/2 gallon containers, fluid dairy products, ice cream and similar frozen desserts are exempt from the dual net contents declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

3. When measured by and packaged in measure containers as defined in "Measure Container Code of National Bureau of Standards Handbook 44," fluid dairy products, ice cream and similar frozen desserts are exempt from the requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel.

4. Milk and milk products when measured by and packaged in glass or plastic containers of 1/2 pint, one pint, one quart, 1/2 gallon,

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and one gallon capacities are exempt from the placement requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other required label information is conspicuously displayed on the cap or outside closure, and the required net quantity of contents declaration is conspicuously blown, formed, or molded on, or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(k) Exemptions for single strength and less than single strength fruit juice beverages, imitations thereof, and drinking water (for purposes of this subsection, hereinafter referred to as "these products") are as follows:

1. When packaged in glass, plastic, or fluid milk type paper containers of eight and 64 fluid ounce capacity, these products are exempt from the requirements of N.J.A.C. 13:47K-4.6(e)1ii, to the extent that net contents of eight fluid ounces and 64 fluid ounces (or two quarts) may be expressed as 1/2 pint (or half pint) and 1/2 gallon (or half gallon), respectively.

2. When packaged in glass, plastic, or fluid milk type paper containers of one pint, one quart and 1/2 gallon capacities, these products are exempt from the dual net contents declaration requirements of N.J.A.C. 13:47K-4.6(g)4.

3. When packaged in glass or plastic containers of 1/2 pint, one pint, one quart, 1/2 gallon and one gallon capacities, these products are exempt from the placement requirement of N.J.A.C. 13:47K-4.8(a)1 that the declaration of net contents be located within the bottom 30 percent of the principal display panel, provided that other label information is conspicuously displayed on the cap or outside closure and the required net quantity of contents declaration is conspicuously blown, formed, or molded into or permanently applied to that part of the glass or plastic container that is at or above the shoulder of the container.

(l) Bottles of soft drinks shall be exempt from the placement requirements for the declaration of the following:

1. Identity, when such declaration appears on the bottle closure; and

2. Quantity, when such declaration is blown, formed, or molded on or above the shoulder of the container and when all other information required by this subchapter appears only on the bottle closure.

(m) Multi-unit packages of soft drinks are exempt from the requirement for a declaration of the following:

1. Responsibility, when such declaration appears on the individual units and is not obscured by the multi-unit packaging, or when the outside container bears a statement to the effect that such declaration will be found on the individual units inside; and

2. Identity, when such declaration appears on the individual units and is not obscured by the multi-unit packaging.

(n) When packaged in four ounce, eight ounce, and one pound packages with continuous label copy wrapping, butter is exempt from the requirements that the statement of identity (N.J.A.C. 13:47K-4.3(b)) and the net quantity declaration (N.J.A.C. 13:47K-4.8(a)5) be generally parallel to the base of the package. When packaged in eight ounce and one pound units, butter is exempt from the requirement for location (N.J.A.C. 13:47K-4.8(a)1) of net quantity declaration and, when packaged in one pound units, is exempt from the requirement for dual quantity declaration (N.J.A.C. 13:47K-4.6(g)2).

(o) Cartons containing 12 eggs shall be exempt from the requirement for location (N.J.A.C. 13:47K-4.8(a)1) of net quantity declaration. When such cartons are designed to permit division in half, each half shall be exempt from the labeling requirements of this subchapter if the undivided carton conforms to all such requirements.

(p) Packages of wheat flour in conventional two, five, 10, 25, 50 and 100 pound packages shall be exempt from the requirement in this subchapter for location (N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration and, when packaged in units of two pounds, shall be exempt also from the requirement for dual quantity declaration (N.J.A.C. 13:47K-4.6(g)2).

(q) On a principal display panel of five square inches or less, the declaration of quantity need not appear in the bottom 30 percent of the principal display panel if that declaration satisfies the other requirements of this subchapter.

(r) The principal display panel of a cosmetic marketed in a "boudoir-type" container including decorative cosmetic containers of the "cartridge," "pill box," "compact," or "pencil" variety, and those with a capacity of 1/4 ounce or less, may be a tear-away tag or tape affixed to the decorative container bearing the mandatory label information as required by this subchapter.

(s) Combination packages are exempt from the requirements in this subchapter for the following:

1. Location (see N.J.A.C. 13:47K-4.8(a)1);

2. Free area (see N.J.A.C. 13:47K-4.8(a)4); and

3. Minimum height of numbers and letters (see N.J.A.C. 13:47K-4.8(b)3).

(t) Margarine in one pound rectangular packages, except for packages containing whipped or soft margarine or packages containing more than four sticks, shall be exempt from the requirement in this subchapter for location (see N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration, and shall be exempt from the requirement for a dual quantity declaration (see N.J.A.C. 13:47K-4.6(g)2).

(u) Corn flour and corn meal packaged in conventional five, 10, 25, 50 and 100 pound bags shall be exempt from the requirement in this subchapter for location (see N.J.A.C. 13:47K-4.8(a)1) of the net quantity declaration.

(v) Prescription and insulin containing drugs subject to the provisions of Section 503(b)(1) or 506 of the Federal Food, Drug and Cosmetic Act shall be exempt from the provisions of this subchapter.

(w) Camera film packaged and labeled for retail sale is exempt from the net quantity statement requirements of this subchapter that specify how measurement of commodities should be expressed, provided that:

1. The net quantity of contents on packages of movie film and bulk still film is expressed in terms of the number of linear meters or feet of usable film contained therein;

2. The net quantity of contents on packages of movie film is expressed in terms of the running time of the exposed film for that portion of film that is of entertainment value. "Entertainment value" is defined as that portion of a film that commences with the first frame of sound or picture, whichever comes first after the countdown sequence and ends with either the last frame of credits, the last frame of the phrase "The End", or the end of sound, whichever is last; and

3. The net quantity of contents on packages of still film is expressed in terms of the number of exposures the contents will provide. The length and width measurements of the individual exposures, expressed in millimeters or inches, are authorized as an optional statement. (Example: "36 exposures, 36 millimeters × 24 millimeters" or "12 exposures, 2-1/4 inches × 2-1/4 inches")

(x) Exemptions for paints and kindred products are as follows:

1. Paints, varnishes, lacquers, thinners, removers, oils, resins, and solvents, when packed in one liquid pint and one liquid quart units, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

2. Tint base paint may be labeled on the principal display panel, in terms of a quart or a gallon including the colorant selected by the purchaser, provided that the system employed ensures that the purchaser always obtains a quart or a gallon, and further provided that in conjunction with the required quantity statement on the principal display panel, a statement indicating that the tint base paint is not to be sold without the addition of colorant is presented, and further provided that the contents of the container, before the addition of colorant, is stated in fluid ounces elsewhere on the label.

i. Wherever the above conditions cannot be met, containers of tint base paint must be labeled with a statement of the actual net contents prior to the addition of colorant in full accord with all the requirements of this subchapter.

(y) Antifreeze, when packed in one liquid quart units, in metal or plastic containers, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3.

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(z) Motor oils, when packed in one liquid quart units, shall be exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)3. Additionally, motor oil in one liquid quart, one gallon, 1-1/4 gallon, two gallon, and 2-1/2 gallon units, bearing the principal display panel on the body of the container, is exempt from the requirements of N.J.A.C. 13:47K-4.3, Declaration of identity: consumer package, to the extent that the Society of Automotive Engineers (SAE) viscosity number is required to appear on the principal display panel, provided the SAE viscosity number appears on the can lid and is expressed in letters and numerals in type size of at least six millimeters or 1/4 inch.

(aa) Those products, including pillows, cushions, comforters, mattress pads and sleeping bags, that bear a permanent label as designated by the Association of Bedding and Furniture Law Officials or by the California Bureau of Home Furnishings shall be exempt from the requirements for location (N.J.A.C. 13:47K-4.8(a)1), size of letters or numbers (N.J.A.C. 13:47K-4.8(b)3 and (b)3i), free area (N.J.A.C. 13:47K-4.8(a)4) and the declarations of identity and responsibility (N.J.A.C. 13:47K-4.3(a) and 4.5), provided that declarations of identity, quantity, and responsibility are presented on a permanently attached label and satisfy the other requirements of this subchapter, and further provided that the information on such permanently attached label be fully observable to the purchaser.

(bb) Individual packaged commodities put up in variable weights and sizes for sale intact, and intended to be weighed and marked with the correct quantity statement prior to or at the point of retail sale, are exempt from the requirements of N.J.A.C. 13:47K-4.6, Declaration of quantity: consumer packages, while moving in commerce and while held for sale prior to weighing and marking, provided that the outside container bears a label declaration of the total net weight.

(cc) When a packaged consumer commodity is properly measured in terms of count only, or in terms of count and some other appropriate unit, and the individual units are fully visible to the purchaser, such packages shall be labeled in full accord with this subchapter except that those containing six or less items need not include a statement of count.

(dd) Packaged fishing lines and reels are exempt from the dual quantity declaration requirements of N.J.A.C. 13:47K-4.6(g)6, provided that length of line or capacity of reel as appropriate is presented in terms of meters or yards in full accord with all other requirements of this subchapter.

*[13:47K-4.12 Retail sale price representations

(a) The term "cents-off representation" means any printed manner consisting of the words "cents-off" or words of similar import (bonus offer, 2 for 1 sale, 1 c/ sale, etc.), placed upon any consumer package or placed upon any label affixed or adjacent to such package, stating or representing by implication that it is being offered for sale at a price lower than the ordinary and customary retail sale price.

1. Except as set forth in (b) below, the packager or labeler of a consumer commodity shall not have imprinted thereon a "cents-off" representation unless:

i. The commodity has been sold at an ordinary and customary price in the most recent and regular course of business where the "cents-off" promotion is made;

ii. The commodity so labeled is sold at a reduction from the ordinary and customary price, which reduction is at least equal to the amount of the "cents-off" representation imprinted on the commodity package or label.

iii. Each "cents-off" representation imprinted on the package or label is limited to a phrase that reflects that the price marked by the retailer represents the savings in the amount of the "cents-off" the retailer's regular price; for example, "Price Marked is ____ Cents Off the Regular Price," "Price Marked is ____ c/ off the Regular Price of This Package", provided the package or label may in addition bear in the usual pricing spot a form reflecting a space for the regular price, the represented "cents-off", and a space for the price to be paid by the consumer;

iv. The commodity at retail presents the regular price, designated as the "regular price," clearly and conspicuously on the package or label of the commodity or on a sign, placard, or shelf-marker placed in a position contiguous to the retail display of the "cents-off" marked commodity;

v. The following time limitations are met:

(1) Not more than three "cents-off" promotions of any single size commodity may be initiated in the same trade area within a 12-month period;

(2) At least 30 days must lapse between "cents-off" promotions of any particular size packaged or labeled commodity in a specific trade area; and

(3) Any single size commodity so labeled may not be sold in a trade area for a duration in excess of six months within any 12-month period; and

vi. Sales of any single size commodity so labeled in a trade area do not exceed in volume 50 percent of the total volume of sales of such size commodity in the same trade area during any 12-month period. The 12-month period may be the calendar, fiscal or market year provided the identical period is applied in this subparagraph and (a)1v above. Volume limits may be calculated on the basis of projections for the current year but shall not exceed 50 percent of the sales for the proceeding year in the event actual sales are less than the projection for the current year.

2. No "cents-off" promotion shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; for example, where the retailer charges a price that does not fully pass on to the consumers the represented price reduction or where the retailer fails to display the regular price in the display area of the "cents-off" marked product.

3. The sponsor of a "cents-off" promotion shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the end of the year (calendar, fiscal or market) in which the "cents-off" promotion occurs.

(b) The term "introductory offer" means any printed matter consisting of the words "introductory offer" or words of similar import, placed upon a package containing any new commodity or upon any label affixed or adjacent to such new commodity, stating or representing by implication that such new commodity is offered for retail sale at a price lower than anticipated ordinary and customary retail price.

1. The packager or labeler of a consumer commodity may not have imprinted thereon an "introductory offer" unless:

i. The product contained in the package is new, has been changed in a functionally significant and substantial respect, or is being introduced into a trade area for the first time;

ii. Each offer on a package or label is clearly and conspicuously qualified;

iii. No commodity so labeled is sold in a trade area for duration in excess of six months; and

iv. At the time of making the "introductory offer" promotion, the offerer intends in good faith to offer the commodity, alone, at the anticipated ordinary and customary price for a reasonably substantial period of time following the duration of the "introductory offer" promotion.

2. The packager or labeler of a consumer commodity shall not have imprinted thereon an "introductory offer" in the form of "cents-off" representation unless, in addition to the requirements in (b)1 above:

i. The package or label clearly and conspicuously and in immediate conjunction with the phrase "Introductory Offer" bears the phrase " cents-off the after-introductory offer price."; and

ii. The commodity so labeled is sold at a reduction from the anticipated ordinary customary price, which reduction is at least equal to the amount of the reduction from the after-introductory offer price representation on the commodity package or label.

3. No introductory offer with a "cents-off" representation shall be made available in any circumstances where it is known or there is reason to know that it will be used as an instrumentality for deception or for frustration of value comparison; for example, where the retailer charges a price that does not fully pass on to consumers the represented price reduction.

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4. The sponsor of an introductory offer shall prepare and maintain invoices or other records showing compliance with this section. The invoices or other records required by this section shall be open to inspection and shall be retained for a period of one year subsequent to the period of the introductory offer.

(c) The term "economy size" means any printed matter consisting of the words "economy size," "economy pack," "budget pack," "bargain size," "value size" or words of similar import placed upon any package containing any consumer commodity or placed upon any label affixed or adjacent to such commodity, stating or representing directly or by implication that a retail sale price advantage is accorded the purchaser thereof by reason of the size of that package or the quantity of its contents.

1. The packager or labeler of a consumer commodity may not have imprinted thereon an "economy" size representation unless:

i. At the same time the same brand of the commodity is offered in at least one other packaged size or labeled form;

ii. Only one packaged or labeled form of that brand of commodity labeled with an "economy size" representation is offered; and

iii. The commodity labeled with an "economy size" representation is sold at a price per unit of weight, volume, measure, or count that is substantially reduced (that is, at least five percent) from the actual price of all other packaged or labeled units of the same brand of that commodity offered simultaneously.

2. No "economy size" package shall be made available in any circumstances where it is known that it will be used as an instrumentality for deception; for example, where the retailer charges a price that does not pass on to the consumer the substantial reduction in cost per unit initially granted.

3. The sponsor of an "economy size" package shall prepare and maintain invoices or other records showing compliance with (b)1 above. The invoices or other records required by this paragraph shall be open to inspection and shall be retained for one year.]*

SUBCHAPTER 5. VARIATIONS

13:47K-5.1 Packaging variations

(a) Variations from the declared net weight, measure or count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages that occur in good packaging practice, but such variations shall not be permitted to such extent that the average of the quantities in the packages of a particular commodity, or a lot of the commodity that is kept, offered, or exposed for sale, or sold, is below the quantity stated, and no unreasonable shortage in any package shall be permitted, even though overages in other practices in the same shipment, delivery, or lot compensate for such shortages. Variations above the declared quantity shall not be unreasonably large.

(b) Variations from the declared weight or measure shall be permitted when caused by ordinary and customary exposure to conditions that normally occur in good distribution practice and that unavoidably result in change of weight or measure, but only after the commodity is introduced into intrastate commerce; provided that the phrase "introduced into intrastate commerce" as used in this subsection shall be construed to define the time and the place at which the first sale and delivery of a package is made within the State, the delivery being either:

1. Directly to the purchaser or to his agent; or

2. To a common carrier for shipments to the purchaser, and this paragraph shall be construed as requiring that, so long as a shipment, delivery, or lot of packages of a particular commodity remains in the possession or under the control of the packager or the person who introduces the package into intrastate commerce, exposure variations shall not be permitted.

13:47K-5.2 Magnitude of *[permitted*] ***allowable*** variations

(a) The magnitude of *[permitted]* ***allowable*** variations (MAV's) are those expressly set forth in this subchapter, as contained in the following tables:

(*>> means to and including in the following tables.)

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Table 1
MAV's for an Individual Package Labeled by Weight

AVOIRDUPOIS UNITS			METRIC UNITS	
LABELED WEIGHT	MAV		LABELED WEIGHT	MAV
POUNDS OR OUNCES	DECIMAL POUNDS	FRACTIONAL OUNCES	GRAMS	GRAMS
up to and including 0.08 lb up to and including 1.28 oz.	10% of labeled weight		up to and including 36	10% of labeled weight
>0.08 *>> 0.12 lb >1.28 *>> 1.92 oz	0.008	1/8	>36 *>> 54	4
>0.12 *>> 0.18 lb >1.92 *>> 2.88 oz	0.012	3/16	>54 *>> 82	5
>0.18 *>> 0.26 lb >2.88 *>> 4.16 oz	0.016	1/4	>82 *>> 118	7
>0.26 *>> 0.34 lb >4.16 *>> 5.44 oz	0.020	5/16	>118 *>> 154	9
>0.34 *>> 0.46 lb >5.44 *>> 7.36 oz	0.024	3/8	>154 *>> 209	11
>0.46 *>> 0.58 lb >7.36 *>> 9.28 oz	0.028	7/16	>209 *>> 263	13
>0.58 *>> 0.70 lb >9.28 *>> 11.20 oz	0.032	1/2	>263 *>> 318	15
>0.70 *>> 0.84 lb >11.20 *>> 13.44 oz	0.036	9/16	>318 *>> 381	16
>0.84 *>> 0.94 lb >13.44 *>> 15.04 oz	0.040	5/8	>381 *>> 426	18
>0.94 *>> 1.08 lb >15.04 *>> 17.28 oz	0.044	11/16	>426 *>> 490	20
>1.08 *>> 1.26 lb	0.048	3/4	>490 *>> 572	22
>1.26 *>> 1.40 lb	0.052	13/16	>572 *>> 635	24
>1.40 *>> 1.54 lb	0.056	7/8	>635 *>> 698	25
>1.54 *>> 1.70 lb	0.060	15/16	>698 *>> 771	27
>1.70 *>> 1.88 lb	0.064	1	>771 *>> 852	29
>1.88 *>> 2.14 lb	0.070	1 1/8	>852 *>> 971	32
>2.14 *>> 2.48 lb	0.078	1 1/4	>971 *>> 1.125	35
>2.48 *>> 2.76 lb	0.086	1 3/8	>1.125 *>> 1.350	40
>2.76 *>> 3.20 lb	0.094	1 1/2	>1.350 *>> 1.600	45
>3.20 *>> 3.90 lb	0.11	1 1/3	>1.600 *>> 1.800	50
>3.90 *>> 4.70 lb	0.12	2	>1.800 *>> 2.100	55
>4.70 *>> 5.80 lb	0.14	2 1/4	>2.100 *>> 2.640	65
>5.80 *>> 6.80 lb	0.15	2 1/2	>2.640 *>> 3.080	70
>6.80 *>> 7.90 lb	0.17	2 3/4	>3.080 *>> 3.800	80
>7.90 *>> 9.40 lb	0.19	3	>3.800 *>> 4.400	85
>9.40 *>> 11.70 lb	0.22	3 1/2	>4.400 *>> 5.200	100
>11.70 *>> 14.30 lb	0.25	4	>5.200 *>> 6.800	115
>14.30 *>> 17.70 lb	0.28	4 1/2	>6.800 *>> 8.20	130
>17.70 *>> 23.20 lb	0.31	5	>8.20 *>> 10.60	145
>23.20 *>> 31.60 lb	0.37	6	>10.60 *>> 14.30	170
>31.60 *>> 42.40 lb	0.44	7	>14.30 *>> 19.25	200
>42.40 *>> 54.40 lb	0.50	8	>19.25 *>> 24.70	230
Over 54.40	2% of labeled weight		Over 24.70	2% of labeled weight

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*Table 2
MAV's for Individual Packages Labeled by Volume, Liquid or Dry

Inch-Pound				Metric	
Labeled Quantity (fl oz)	Liquid MAV	Labeled Quantity	Dry MAV (cu in)	Labeled Quantity (mL)	Liquid and Dry MAV
up to & including 0.50 fl oz	0.5 mL	up to & including 0.18 cu in (cu in)	0.03	up to & including 3 mL	(mL) 0.5
		>0.18 *>> 0.49	0.06	>3 *>> 8	1.0
	(fl oz)	>0.49 *>> 0.92	0.09	>8 *>> 15	1.5
>0.50 *>> 0.75	0.06	>0.92 *>> 1.35	0.11	>15 *>> 22	2.0
>0.75 *>> 2.25	0.13	>1.35 *>> 4.06	0.23	>22 *>> 67	3.5
>2.25 *>> 4.25	0.19	>4.06 *>> 7.67	0.34	>67 *>> 126	5.5
>4.25 *>> 5.75	0.25	>7.67 *>> 10.38	0.45	>126 *>> 170	7.5
>5.75 *>> 7.50	0.31	>10.38 *>> 13.54	0.56	>170 *>> 222	9
>7.50 *>> 11.75	0.38	>13.54 *>> 21.21	0.68	>222 *>> 347	11
>11.75 *>> 17.00	0.50	>21.21 *>> 30.68	0.90	>347 *>> 503	15
>17.00 *>> 21.00	0.63	>30.68 *>> 37.90	1.13	>503 *>> 621	18
>21.00 *>> 27.00	0.75	>37.90 *>> 48.73	1.35	>621 *>> 798	22
>27.00 *>> 31.00	0.88	>48.73 *>> 55.95	1.58	>798 *>> 917	26
>31.00 *>>39.00	1.00	>55.95 *>> 70.38	1.80	>917 *>> 1.153 L	30
				(L)	
>39.00 *>> 55.00	1.25	>70.38 *>> 99.26	2.26	>1.153 *>> 1.627	37
>55.00 *>> 69.00	1.50	>99.26 *>> 124.5	2.71	>1.627 *>> 2.041	44
>69.00 *>> 85.00	1.75	>124.5 *>> 153.4	3.2	>2.041 *>> 2.514	52
>85.00 *>> 103	2.0	>153.4 *>> 185.9	3.6	>2.514 *>> 3.046	59
>103.00 *>> 160	2.5	>185.9 *>> 288.8	4.5	>3.046 *>> 4.732	74
>160 *>> 185.6	3.0	>288.8 *>> 335.0	5.4	>4.732 *>> 5.489	89
>185.6 *>> 240	3.5	>335.0 *>> 433.1	6.3	>5.489 *>> 7.098	104
>240 *>> 272	4.0	>433.1 *>> 490.9	7.2	>7.098 *>> 8.044	118
>272 *>> 344	4.5	>490.9 *>> 620.8	8.1	>8.044 *>> 10.173	133
>344 *>> 392	5.0	>620.8 *>> 707.4	9.0	>10.173 *>> 11.593	148
>392 *>> 560	6.0	>707.4 *>> 1011	10.8	>11.593 *>>16.561	177
>560 *>> 640	7.0	>1011 *>> 1155	12.6	>16.561 *>> 18.927	207
>640 *>> 800	8.0	>1155 *>> 1444	14.4	>18.927 *>> 23.659	237
>800 *>> 904	9.0	>1444 *>> 1631	16.2	>23.659 *>> 26.734	266
Over 904 fl oz	1% of labeled volume	Over 1631 cu in	1% of labeled volume	Over 26.734 L	1% of labeled volume

Liquid Measure Equivalents
1 pint = 16 fl oz
1 quart = 32 fl oz
1 gallon = 128 fl oz* *

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Table *[2]* *3*
MAV's for an individual package labeled by count

Labeled Count	MAV
up to and including 17	0
18–50	1
51–83	2
84–116	3
117–150	4
151–200	5
201–240	6
241–290	7
291–345	8
346–400	9
401–465	10
466–540	11
541–625	12
626–725	13
726–815	14
816–900	15
901–990	16
991–1075	17
1076–1165	18
1166–1250	19
1251–1333	20
1334 and over	1.5% of labeled count rounded off to the nearest whole number

Table *[3]* *4*
MAV's for Individual Package Labeled by Length (Width) or by Area

Length

Inch-Pound Labeled Length (yards)	MAV (expressed as a percentage of the labeled length)	Metric Labeled Length (meters)
Up to and including 1	3%	Up to and including 1
>1 *>> 48	1.5%	>1 *>> 40
>48 *>> 96	2%	>40 *>> 85
>96 *>> 154	2.5%	>85 *>> 140
>154 *>> 330	3%	>140 *>> 300
>330 *>> 1100	4%	>300 *>> 1000
Over 1100	5%	Over 1000

Area

The MAV for packages labeled by area is 3% of the labeled area.

***Table 5**
MAV's for Foam Aerosol Products

Avoirdupois:

Labeled weight of package		MAV Ounce	MAV Pound
0 to less than	**1 1/2 oz**	**0**	**0**
1 1/2 oz to less than	**5 oz**	**1/16**	**0.004**
5 oz to less than	**8 oz**	**1/8**	**0.008**
8 oz to less than	**11 oz**	**3/16**	**0.012**
11 oz to less than	**14 oz**	**1/4**	**0.016**
14 oz to less than	**1 lb 1 oz**	**5/16**	**0.020**
1 lb 1 oz or more		**3/8**	**0.023**

Metric:	**MAV Grams**
0 to less than 50 g	**0**
50 g to less than 100 g	**1**
100 g to less than 200 g	**3**
200 g to less than 300 g	**5**
300 g to less than 400 g	**7**
400 g to less than 500 g	**9**
Over 500 g	**10***

(b) Allowed variations from declared dimensions for textiles are as follows:

1. For an item with no declared dimension less than 24 inches or 60 centimeters, a minus variation greater than three percent of a declared dimension and a plus variation greater than six percent of a declared dimension should be considered unreasonable.

2. For an item with a declared dimension less than 24 inches of 60 centimeters, a minus variation greater than six percent of that declared dimension and a plus variation greater than 12 percent of that declared dimension should be considered unreasonable.

(c) For mulch, an individual package minus variation greater than five percent of the declared volume shall be considered unreasonable.

(d) Allowed variations from declared thickness for polyethylene products are as follows for any single measurement of thickness:

1. When the labeled thickness is less than one mil (0.001 inch), any individual thickness measurement of a polyethylene product may be as much as 35 percent below the labeled thickness (that is, at least 65 percent of the labeled thickness), as set forth in ASTM Standard D2103-86, "Standard Specification of Polyethylene Film and Sheeting," 1986.

2. When the labeled thickness is one mil or larger, any individual thickness measurement of a polyethylene product may be as much as 20 percent below the labeled thickness (that is at least 80 percent of the labeled thickness), as set forth in ASTM Standard D-4397-84, "Specification for Polyethylene Sheeting for Construction, Industrial and Agricultural Applications", 1984.

(e) The following table sets forth permitted variations for the boundaries of the gray area for different sizes of flour packages:

Column 1	Column 2	Column 3	Column 4
The labeled weight is	The average package error is minus and between zero and 3% of label weight	And any individual package error is minus and is between the MAV	MAV +3%
2 lb	–0.06 lb	–0.07 lb	–0.13 lb
5 lb	–0.15 lb	–0.14 lb	–0.29 lb
10 lb	–0.30 lb	–0.22 lb	–0.52 lb
20 lb	–0.60 lb	–0.31 lb	–0.91 lb
25 lb	–0.75 lb	–0.37 lb	–1.12 lb
50 lb	–1.50 lb	–0.50 lb	–2.00 lb
100 lb	–3.00 lb	–2.00 lb	–5.00 lb

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(a)

ATTORNEY GENERAL

Solid Waste, Medical Waste, Hazardous Waste, Low-Level Radioactive Waste and Ocean Dumping Information Awards

Adopted New Rules: N.J.A.C. 13:80-1.

Proposed: September 18, 1989 at 21 N.J.R. 2911(a).

Adopted: August 20, 1990 by Robert J. Del Tufo, Attorney General.

Filed: August 23, 1990 as R.1990 d.471, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:1E-9.2; 13:1E-48.24; 13:1E-67b: 13:1E-191b and N.J.S.A. 58:10A-49c.

Effective Date: September 17, 1990.

Expiration Date: September 17, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Summary of Agency-Initiated Changes:

1. N.J.A.C. 13:80-1.8(c) has been amended to correct the proposal's reference of N.J.S.A. 13:1E-67a to N.J.S.A. 13:1E-9.2.

2. N.J.A.C. 13:80-1.10(c) has been amended to clarify that fines collected pursuant to N.J.S.A. 13:1E-48.24 provide a $250.00 minimum award for both civil and criminal cases.

3. The terms of N.J.S.A. 13:1E-191, which provide an award for information concerning violations which involve low-level radioactive waste, were inadvertently omitted from the proposed text. They have been added throughout the text of the adoption.

4. Pursuant to Executive Order No. 2, signed by Governor Florio on January 20, 1990, the Office of the Environmental Prosecutor was created. This new office is now responsible for the administration of the bounty hunter program and therefore the term "Division of Criminal Justice" has been replaced by "Office of the Environmental Prosecutor" throughout the subchapter.

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

13:80-1.1 Purpose and authority

(a) The purpose of this subchapter is to prescribe rules authorized by and pursuant to N.J.S.A. 13:1E-9.2, 48.24, 67b***, 191b*** and N.J.S.A. 58:10A-49c, in order to implement the provisions of N.J.S.A. 13:1E-9.2, 48.24, 67a***, 191a*** and N.J.S.A. 58:10A-49c, which respectively provide as follows:

1. N.J.S.A. 13:1E-9.2—A member of the public who supplies information to an enforcing authority which proximately results in the imposition and collection of a civil penalty as the result of a civil action brought pursuant to subsection f of section 9 of P.L. 1970, c.39 (N.J.S.A. 13:1E-9), or any code, rule, or regulation promulgated, administrative order issued, or assessment imposed pursuant thereto, shall be entitled to a reward of 10 percent of the civil penalty collected, or $250.00, whichever amount is greater.

2. N.J.S.A. 13:1E-48.24—A member of the public who supplies information to an enforcing authority that proximately results in the imposition and collection of a civil penalty as a result of a civil action brought pursuant to subsection b of Section 20 of this act, or any rule or regulation adopted, administrative order issued, or assessment imposed pursuant thereto, or the imposition and collection of a criminal penalty as a result of a criminal action brought pursuant to subsections g, h, i or j of Section 20 of this act, shall be entitled to a reward of 10 percent of the penalty collected or $250.00, whichever amount is greater.

3. N.J.S.A. 13:1E-67a—Any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of hazardous waste shall be awarded one-half of any penalty collected as a result thereof.

4. N.J.S.A. 58:10A-49c—Any person who provides information to an enforcing authority concerning a violation of this act that proximately results in the imposition and collection of a criminal penalty as a result of a criminal action brought pursuant to this act shall be entitled to a reward of 10 percent of the penalty collected.

5. N.J.S.A. 13:1E-191a—Any person who supplies any information which proximately results in the arrest and conviction of any other person for the illegal treatment, storage or disposal of low-level radioactive waste shall be awarded one-half of any penalty collected as a result thereof.

13:80-1.2 Definitions

For the purpose of this subchapter, the terms set forth in N.J.S.A. 13:1E-67a, ***N.J.S.A. 13:1E-191a,*** N.J.S.A. 58:10A-49, N.J.S.A. 13:1E-48.24 and N.J.S.A. 13:1E-9.2, are defined as follows:

"Information which proximately results" means information which in an ordinary natural sequence results in either an arrest, conviction and imposition and collection of a criminal fine or the imposition and collection of a civil penalty. For the purposes of award eligibility, in no case shall this term include information obtained exclusively from any public record or received as a result of either a plea bargain or compulsory legal process.

"Penalty" means any fine imposed for any criminal conviction for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; illegal treatment, storage, transportation or disposal of medical waste; or illegal discharge of certain material into the ocean waters; any penalty imposed pursuant to any civil action brought for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or any penalties assessed for violating an administrative order or court order, or failure to pay in full an administrative assessment filed pursuant to N.J.S.A. 13:1E-9.2 and 48.24.

"Person" means any natural person or any corporation, partnership or other form of business association, but, for purposes of award eligibility, in no case shall this term include any public employee, his immediate family or any persons residing within the public employee's household, or any State, county or municipal entity whose duty it is to insure compliance with, investigate or enforce these laws and regulations.

13:80-1.3 Responsibility

The *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** has been designated by the Attorney General the responsibility of receiving and considering information pursuant to the provisions of N.J.S.A. 13:1E-9.2, 48.24***, 191a*** and 67a and N.J.S.A. 58:10A-49. The *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** shall be responsible for reviewing applications for awards and determining whether or not any application should be approved and award granted. In the performance of these functions, the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** is authorized to propose and adopt guidelines and procedures, such as those set forth herein, for the processing of applications under this section. The *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** is further authorized to establish committees which will assist in the administration of this award program.

13:80-1.4 Application procedure—criminal

(a) An application in a criminal proceeding requires the completion of Information Form *[DCJ]* ***OEP*** 13-58 prescribed by the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor***. This form must be completed and signed by personal appearance of the applicant (or in the case of an entity, its authorized representative), at the *[Information and Records Section of the Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** at the Richard J. Hughes Justice Complex, Trenton, New Jersey, or at the county prosecutor's office in the county where the alleged offense occurred. The county prosecutor's office shall forward a copy of each completed application to the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** within 15 days of receipt.

(b) The person submitting the information may, at the discretion of *[Environmental Task Force of the Division of Criminal Justice]*

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Office of the Environmental Prosecutor, be interviewed by the Division of Criminal Justice or Department of Environmental Protection with regard to the information the applicant is submitting for consideration. An applicant may also be required to give his or her verbal statement under oath and sign a written memorialization of his ***or her*** statement.

(c) The *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** shall acknowledge to the applicant, in writing, receipt of his ***or her*** application.

(d) In any legal proceeding conducted exclusively by a county prosecutor's office, wherein an application has been submitted pursuant to this section, and which results in an arrest, conviction and imposition and collection of a criminal penalty for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste, the prosecutor's office, upon sentencing of the convicted person, shall, within 15 days thereof, forward written notification to the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** of any fines imposed for the purpose of processing any pending award application under this subchapter.

13:80-1.5 Application procedure—civil

(a) An application in a civil proceeding requires the completion of Information Form *[DCJ]* ***OEP*** 13-58A prescribed by the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor***. This form must be completed and signed by personal appearance of the applicant (or in the case of an entity, its authorized representative), at the *[Information and Records Section of the Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** at the Richard J. Hughes Justice Complex, Trenton, New Jersey or at the county health department in the county where the offense occurred. The county health department shall forward a copy of each completed application to the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** and the Department of Environmental Protection within 15 days of receipt.

(b) The *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** shall acknowledge to the applicant, in writing, receipt of his ***or her*** application.

(c) In any civil action conducted by the Department of Environmental Protection, local board of health or county health department, wherein an application was submitted pursuant to this section, which results in the imposition and collection of civil penalties for the illegal treatment, storage, transportation and disposal of solid, hazardous or medical waste, or a violation of an administrative order or court order, or the failure to pay an administrative assessment in full, the DEP, local board of health or county health department, as the case may be, shall, within 15 days thereof, forward to the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** written notification of the penalties imposed for the purpose of processing any pending award application.

13:80-1.6 Timely filing of applications for award

In all cases, civil and criminal, where relevant information is provided by a person without the simultaneous filing of an application pursuant to this *[section]* ***subchapter***, that person may subsequently file an application for award consideration no later than 10 days from the date on which the person provided the information.

13:80-1.7 Confidentiality

Upon request of the applicant at the time the application is made, the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** and any other governmental agency involved in the criminal or civil proceeding shall not disclose the identity of the applicant or any information supplied by the applicant. This is subject, however, to any statute, Rule of Court or judicial decision which may require divulgence of such identity or information to certain parties including, in certain circumstances, a criminal defendant.

13:80-1.8 Collection of fines and penalties

(a) The collection and payment of ***criminal*** fines and penalties relevant to the implementation of this subchapter shall be conducted pursuant to the provisions of N.J.S.A. 2C:46-4.

(b) In any criminal prosecution for the illegal treatment, storage or disposal of hazardous waste; ***the illegal treatment, storage or disposal of low-level radioactive waste;*** the illegal discharge of certain material into ocean waters; or the illegal treatment, storage, transportation or disposal of medical waste, it shall be the responsibility of the prosecuting agency to inform the Court that any penalties imposed are subject to the award program created by N.J.S.A. 13:1E-67a***, 191a*** and 48.24 and N.J.S.A. 58:10A-49c, and to request that the Court order any penalties to be held in escrow pending resolution of award eligibility pursuant to N.J.S.A. 2A:58-8.

(c) In any civil or administrative proceeding wherein an application has been submitted pursuant to this subchapter, it shall be the responsibility of the governmental entity seeking the penalty to inform the judicial or administrative forum hearing the matter that any penalties imposed are subject to the award program created by N.J.S.A. 13:1E-*[67a]****9.2*** and 48.24 and N.J.S.A. 58:10A-49.

13:80-1.9 Determination and notification of eligibility for awards

(a) Upon the arrest, conviction and imposition and collection of a criminal fine for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; for illegal discharge of certain material into the ocean waters; or for the illegal treatment, storage, transportation and disposal of medical waste; or the imposition and collection of a civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; violation of administrative or court orders; or failure to pay an administrative assessment in full, filed pursuant to N.J.S.A. 13:1E-9 and 48, the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor***, if it has reviewed information pursuant to this subchapter, shall notify the applicant within 60 days of the date of collection of such criminal fine or civil penalty as to its determination of the eligibility of the applicant for an award pursuant to N.J.S.A. 13:1E-9.2, 48.24***, 191a*** or 67a, or N.J.S.A. 58:10A-49c, as the case may be.

(b) Written notification shall contain the specific reasons for a determination and inform the applicant that:

1. There is insufficient causal relationship between the information provided and either the arrest, conviction, imposition and collection of the criminal fine or the imposition and collection of the civil penalty; or

2. The information provided proximately resulted in either an arrest, conviction and the imposition and collection of a criminal fine or imposition and collection of a civil penalty, and the applicant is therefore eligible for an award; or

3. There is a need for further examination of the application necessitating a written response and/or personal appearance of the applicant for further information before a determination as to eligibility can be made.

13:80-1.10 Post-determination claiming and payment of awards

(a) Within 20 days of receipt of a notification of award eligibility pursuant to N.J.A.C. 13:80-1.9, the applicant shall make a formal claim for such award by forwarding to the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** a written acknowledgment of the notification and request for the award.

(b) Where the applicant's information proximately resulted in either the arrest and conviction or the institution of the civil action and imposition of the civil penalty, the award shall thereafter be paid to the successful applicant upon collection of, as the case may be, the fine from the person arrested and convicted of the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; the illegal discharge of certain material into ocean waters; or the illegal treatment, storage, transportation or disposal of medical waste; or the civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or fines assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment.

(c) Payment of an award pursuant to this section is contingent upon the actual collection of fines or penalties. *[In criminal cases, no]* ***No*** award can be paid in an amount in excess of what is actually collected as a fine ***except when collected pursuant to*** *[(]*N.J.S.A. 13:1E-9.2 and N.J.S.A. 13:1E-48.24*[, both of which

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concern civil cases,]* ***, which*** provide a minimum award of $250.00 *[regardless of the amount of civil penalty collected)]*. In no case can the applicant receive any award until the entire fine or penalty has been collected.

13:80-1.11 Plea bargains

Except when a contrary result is required to prevent manifest injustice, if a person supplies information which proximately results in the arrest of and institution of criminal charges against any other person for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste, and in the discretion of the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** or county prosecutor's office, those charges are subsequently dismissed as part of a plea bargain, there shall be no eligibility pursuant to this subchapter *[to]* ***for*** any award from any fine imposed upon any other charges and/or violations alleged in the same proceeding.

13:80-1.12 Multiple applications

(a) Except when a contrary result is required to prevent manifest injustice, in cases where two or more applicants submit substantially identical information which proximately results in the arrest, conviction and imposition and collection of a fine for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste; or the institution of the civil action and imposition of a civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or fines assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment, only the person who has filed his application first in time shall be considered for the receipt of an award pursuant to this subchapter.

(b) In cases where two or more applicants submit different information which proximately results in either the arrest, conviction and imposition and collection of a fine for the illegal treatment, storage or disposal of hazardous ***or low-level radioactive*** waste; for the illegal discharge of certain material into ocean waters; or for the illegal treatment, storage, transportation or disposal of medical waste; or the institution of the civil action and imposition of the civil penalty for the illegal treatment, storage, transportation or disposal of solid, hazardous or medical waste; or penalties assessed for violating an administrative order or court order; or for failing to pay in full an administrative assessment, thereby rendering both applicants eligible for an award pursuant *[to the section, the Division of Criminal Justice]* ***this subchapter, the Office of the Environmental Prosecutor*** may apportion the amount of award available among the applicants based upon its consideration of relevant factors including, but not limited to:

1. The timing (chronological order) of each application filed;
2. The relative overall accuracy of information in each application filed; and
3. The relative extent of cooperation with the prosecution by each applicant in the particular case for which the information has been provided.

(c) Upon such apportionment set forth in (b) above, the *[Division of Criminal Justice]* ***Office of the Environmental Prosecutor*** shall provide each eligible applicant with a written statement of its reasons for its determination.

13:80-1.13 Appeals

All decisions regarding award eligibility shall be reviewed and approved by the *[Director of the Division of Criminal Justice]* ***Office of the Environmental Prosecutor***, upon whose approval the decision shall constitute a final agency determination for purposes of this section. Any final agency determination as to award eligibility pursuant to this section shall be reviewable as a contested case by the Office of Administrative Law according to the procedures set forth in the Administrative Procedure Act, N.J.S.A. 52:14B-1 and 52:14F-1 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Notice of Administrative Correction

Public Employees' Retirement System

Retirement Applications

N.J.A.C. 17:2-6.1

Take notice that the Division of Pensions has discovered an error in the New Jersey Administrative Code at N.J.A.C. 17:2-6.1(a). The phrase "at least one month" was deleted from the rule effective October 20, 1986 (see 18 N.J.R. 1451(a) and 2135(b)). However, the deletion was not reflected in the October 20, 1986 update to the Code. This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected rule follows (deletion indicated in brackets [thus]):

17:2-6.1 Applications

(a) Applications for retirement must be made on forms prescribed by the system. Such forms must be completed in all respects and filed with the system [at least one month] before the requested date of retirement.

(b)-(d) (No change.)

(b)

OFFICE OF THE STATE TREASURER

Public Employee Charitable Fund-Raising Campaign

Readoption with Amendments: N.J.A.C. 17:28

Proposed: July 2, 1990 at 22 N.J.R. 1994(a).

Adopted: August 14, 1990 by Nathan Scovronick, Executive Director, Department of the Treasury.

Filed: August 17, 1990 as R.1990 d.464, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:14-15.9c1 et seq. and N.J.S.A. 52:18A-30.

Effective Date: August 17, 1990, Readoption; September 17, 1990, Amendments.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

No comments received.

Changes upon adoption were made to correct an erroneous statutory citation at N.J.A.C. 17:28-2.5(a), and to change the agency to which application requests should be directed from the Office of the State Treasurer to the Division of Consumer Affairs.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 17:28.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*.

17:28-2.5 Eligibility of fund-raising organizations

(a) The requirements for eligibility of a charitable fund-raising organization are set forth in N.J.S.A. *[52:15-14.9c7]* ***52:14-15.9c7***.

(b) (No change.)

17:28-2.8 Application form/organization

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

(d) Those wishing to receive an application can do so by making a request either orally or in writing to *[the State Treasurer, Office of the State Treasurer, State House, CN 002, Trenton, New Jersey, 08625, (609) 292-1038]* ***Charities Registration, Division of Consumer Affairs, 1100 Raymond Blvd., Room 518, Newark, New Jersey 07102, (201) 648-4704***.

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

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17:28-3.4 Application form/unaffiliated charitable agency

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

(d) Those wishing to receive an application can do so by making a request either orally or in writing to *[the State Treasurer, Office of the State Treasurer, State House, CN 002, Trenton, New Jersey 08625, (609) 292-1038)]* ***Charities Registration, Division of Consumer Affairs, 1100 Raymond Blvd., Room 518, Newark, New Jersey 07102, (201) 648-4704***.

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

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Organization Rules
Conference Branch; Hearings
Adopted New Rule: N.J.A.C. 18:1-1.8
Adopted Amendments: N.J.A.C. 18:5-8.10; 18:7-13.2; 18:8-5.1 and 5.2; 18:9-6.7, 6.8 and 6.9
Adopted Repeal: N.J.A.C. 18:9-6.10

Proposed: July 2, 1990 at 22 N.J.R. 1995(a).

Adopted: August 22, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: August 22, 1990 as R.1990 d.469, **without change.**

Authority: N.J.S.A. 54:50-1 and 52:14B-3.

Effective Date: September 17, 1990.

Expiration Dates: July 21, 1994, N.J.A.C. 18:1; March 14, 1994, N.J.A.C. 18:5 and 18:7; February 24, 1994, N.J.A.C. 18:8; June 7, 1993 N.J.A.C. 18:9.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

18:1-1.8 Conference Branch

(a) A Conference Branch within the Division of Taxation exists in accordance with N.J.S.A. 54:49-18 to conduct administrative hearings and reviews of findings or assessments of the director. A protest, and a request for hearing, if any, by a taxpayer to the Conference Branch must be made within the time mandated by the appropriate taxing statute. A protest, and a request for hearing, if any, must generally be made within 30 days of the giving of the notice sought to be reviewed. In the case of a petition for a redetermination under the Gross Income Tax Act, however, the taxpayer may file a petition within 90 days after the mailing of the notice (or 150 days if the notice is addressed to a person outside of the United States) pursuant to N.J.S.A. 54A:9-9(b). The administrative hearing or protest review results in a Final Determination which confirms, modifies or vacates the finding or assessment under review. The Final Determination is then subject to judicial review in the New Jersey Tax Court pursuant to N.J.S.A. 54:51A-14 and 54A:9-10.

(b) When under any applicable law or rule a taxpayer is entitled to a hearing with the Conference Branch, such hearing process shall be commenced with the submission of a written protest statement as defined by this rule and a request for a hearing, if a hearing is desired. A written protest shall be signed by the taxpayer, by the taxpayer's duly authorized officer or duly authorized representative, under oath, and shall contain the following documents, information and payments:

1. The taxpayer's name, address, telephone number and social security or tax identification number;

2. The name, address and telephone number of taxpayer's representative, if any, for the purpose of the protest. In such case, a written power of attorney (Form M-5008) shall be filed with the notice of protest;

3. The type of tax and period(s) under protest;

4. A copy of the notice at issue;

5. The specific amount of tax, penalty, and/or interest under protest and specific amount of tax, penalty, and/or interest uncontested;

6. A statement of grounds upon which the protest is based;

7. The specific facts supporting each ground asserted, and a summary of evidence or documentation to be presented in support of taxpayer's position. (If this requirement cannot be met within the 30 day period, the Division will, upon written request, extend the time for complying with this submission until 30 days prior to the conference date.); and

8. The taxpayer shall remit the entire uncontested amount of the tax, penalty, and interest, if any, that is due.

(c) A submission which, in particular, does not set forth the information in (b)5 and (b)6 above will not be considered a valid protest and will not result in a hearing or review.

(d) The filing of any protest shall not abate penalties and interest for nonpayment, nor shall it stay the right of the Director to collect the tax in any manner provided by law, unless the taxpayer shall furnish security of the kind and in the amount satisfactory to the Director.

(e) If a protest or any filing or act taken by the taxpayer with respect to it is determined by the Director to be frivolous or for the purpose to delay or impede the administration of State tax law, the waiver of penalty and/or interest above the statutory minimum will not be considered.

(f) Hearings are scheduled whenever possible by telephone on a mutually acceptable date for both the taxpayer representative and the conferee, who represents the Division. Cancellations are discouraged except in cases that make attendance unavoidable. In the event that a cancellation must be granted, the hearing will be rescheduled on the Conference Branch's soonest available date.

(g) Transfer inheritance tax hearings are held pursuant to N.J.A.C. 18:26-12.5 to 12.10.

(h) Protests, petitions for redetermination, and requests for administrative hearings should be submitted to the Conference Branch, Division of Taxation, University Office Plaza, 3635 Quakerbridge Road, CN 269, Trenton, NJ 08646-0269.

18:5-8.10 Protest against assessments

(a) If any taxpayer is aggrieved by any finding or assessment of the Director, within 30 days of the giving of the notice of assessment or finding, the taxpayer may file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8 and, if desired, request an informal or formal hearing.

(b) (No change.)

18:7-13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 30 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8, and may request a hearing;

2. (No change.)

(b) (No change in text.)

18:8-5.1 Protests, hearings; procedures

(a) Any taxpayer aggrieved by any finding or assessment of the Director may, within 30 days of the giving of notice thereof, file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8.

(b) (No change in text.)

18:8-5.2 Appeal

(a) Any aggrieved taxpayer may within 90 days after any final decision, order, finding, assessment or action of the Director made pursuant to the provisions of the Act, appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

18:9-6.7 Protests

(a) Any taxpayer aggrieved by any finding or assessment of the Director may within 30 days of receipt of notice thereof file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8.

(b) (No change in text.)

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18:9-6.8 Hearing; format

Hearings before the Conference Branch are to be conducted on an informal basis, with or without representation on behalf of the taxpayer or other party in interest.

18:9-6.9 Right to appeal finding of Director

(a) Any aggrieved taxpayer may within 90 days after any decision, order, finding, assessment or action of the Director appeal therefrom to the Tax Court in accordance with pertinent provisions of the State Tax Uniform Procedure Law (see N.J.S.A. 54:51A-13 et seq.).

18:9-6.10 (Reserved)

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Transmission of Contested Cases to the Office of Administrative Law

Adopted Amendment: N.J.A.C. 1:1-8.2

Proposed: July 16, 1990 at 22 N.J.R. 2066(a).

Adopted: August 29, 1990 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: August 30, 1990 as R.1990 d.484, **without change.**

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

Effective Date: September 17, 1990.

Expiration Date: May 4, 1992.

Summary of Public Comments and Agency Responses:

Three comments were received. The Communications Workers of America expressed concern that the limit on informational copies of notices would affect its ability to represent parties in hearings. The Department of Personnel commented that requiring it to provide telephone numbers for parties to hearings would be problematic because when parties request hearings they do not always give their telephone numbers. The Division of Medical Assistance and Health Services, Department of Human Services noted that some parties to their hearings do not have telephones; therefore, they would indicate "unavailable" on the transmittal form for this information. DMAHS also suggested that county welfare agencies should continue to receive informational copies of hearing notices in order to insure that welfare agency workers would be available as witnesses at hearings.

After considering these comments, the OAL decided to adopt the proposal without change. Regarding informational copies of notices, the OAL believes that limiting copies to one per transmitting agency is sufficient. This rule should not affect the CWA's ability to participate in hearings. In all Department of Personnel early settlement cases, whether State or local, the union is a party and will continue to receive notices. Additionally, all non-lawyer representatives appearing before the OAL as authorized by N.J.A.C. 1:1-5.4 receive all notices for hearings in which they participate. In Medicaid Eligibility (provider non-rate and recipient) cases, the agency almost always proceeds without a qualified representative under N.J.A.C. 1:1-5.4. The Division lists its witnesses who will appear on its behalf under N.J.A.C. 1:1-5.6. The OAL recognizes that these witnesses are appearing in lieu of a deputy attorney general or agency representative and, therefore, will continue to receive notices as parties to the proceeding. In addition, the Division of Medical Assistance, as the transmitting agency, will receive an informational copy of all notices.

Finally, as to telephone numbers, the OAL believes it is appropriate for the transmitting agency to be responsible for obtaining telephone numbers for parties. The transmitting agency is more likely to have access to information about the party. If a telephone number is not provided, the OAL must attempt to obtain the number, and this can cause delays in processing cases. The OAL is aware that parties to some types of hearings may not have telephones in most cases and agrees that if a party does not have a telephone, this should be indicated on the transmittal form.

Full text of the adoption follows.

1:1-8.2 Transmission of contested cases to the Office of Administrative Law

(a) In every proceeding to be filed in the Office of Administrative Law, the agency shall complete a transmittal form, furnished by the Clerk of the Office of Administrative Law, containing the following information:

1.-9. (No change.)

10. The names, addresses and telephone numbers of all parties and their attorneys or other representatives, with each person clearly designated as either party or representative. For any party that is a corporation, the transmitting agency shall provide the name, address and telephone number of the corporation's attorney or non-lawyer representative qualified under N.J.A.C. 1:1-5.4(b)2v.

11.-12. (No change.)

13. The transmitting agency may provide the name and address of one additional person other than a party or representative to receive a copy of all Clerk's notices in the case. If no person is designated, the OAL shall send an informational copy of notices to the agency's transmitting officer.

(b)-(e) (No change.)

(f) The completed transmittal form and two copies of any attachments shall be filed with the Clerk of the Office of Administrative Law at 185 Washington Street, Newark, New Jersey 07102.

(b)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules

Special Hearing Rules

Exceptions

Adopted Amendments: N.J.A.C. 1:1-9.4 and 18.4; 1:10-18.2 and 1:10B-18.2

Proposed: July 16, 1990 at 22 N.J.R. 2067(a).

Adopted: August 29, 1990 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: August 30, 1990 as R.1990 d.483, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: September 17, 1990.

Expiration Date: May 4, 1992, N.J.A.C. 1:1 and 1:10; October 6, 1991, N.J.A.C. 1:10B.

Summary of Public Comments and Agency Responses:

Comments on the proposed amendments were submitted by the following: Department of Personnel; Division of Gaming Enforcement; Division of Rate Counsel, Department of the Public Advocate; Division of Medical Assistance and Health Services, Department of Human Services; Walter G. Reinhard, Esq. (Norris, McLaughlin & Marcus), and Louis P. Bucceri, Esq. (Bucceri and Pincus).

After considering all the comments, the OAL has decided to adopt the proposed amendment with one change. In N.J.A.C. 1:1-18.4, the number of days allowed from the date of mailing of the initial decision for filing exceptions has been increased to 13 from 12. In addition, an amendment of N.J.A.C. 1:1-9.4 which was inadvertently omitted from the proposal has been added to the adoption. The amendment of N.J.A.C. 1:1-9.4 makes the rule consistent with the change in N.J.A.C. 1:1-18.4.

While the commenters did not object to the change from certified to regular mail for sending initial decisions to parties, several suggested that allowing two days for delivery of regular mail was not sufficient. They were concerned that there would not be enough time to adequately prepare exceptions. Based on this concern, the OAL has decided that the rule should allow three days for mail delivery. This would make the OAL rule consistent with the New Jersey Court Rules, which also allow for three days (see R. 1:3-3). Therefore, N.J.A.C. 1:1-18.4 now provides that exceptions must be filed within 13 days from the date the initial decision was mailed. This should preserve the 10-day period during which parties may prepare and submit exceptions.

The proposed amendments of N.J.A.C. 1:10-18.2 (economic assistance hearings) and 1:10B-18.2 (medical assistance cases) are being adopted without change. None of the commenters, including the Division of

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Medical Assistance, objected to the time frame permitted for filing exceptions. Exceptions are rarely filed in these types of cases.

The amendment of N.J.A.C. 1:1-9.4 would require exceptions in accelerated proceedings to be filed within six days after the initial decision is mailed to the parties. As noted above, the purpose of this change is merely to make the rule consistent with amended N.J.A.C. 1:1-18.2.

One of the commenters suggested that the date of receipt rather than the date of mailing could continue to be used to calculate the time for exceptions in public utility cases because law firms routinely date stamp mail when it arrives. Another commenter suggested that parties be required to complete a certification of receipt upon delivery of initial decisions; the time for exceptions could be calculated from the date of the certification. While both of these suggestions might be feasible in cases like public utility matters where parties are usually represented by attorneys and everyone involved is familiar with hearing procedures, the OAL believes these approaches are not practical in other types of cases, especially when parties are not represented. The OAL prefers to use only one method for calculating the time for filing exceptions. Calculating the time from the date of mailing is appropriate for all types of cases.

One commenter noted that enlargement of the time for exceptions might be needed in some cases. There is already a provision in the OAL rules for extensions of time to file exceptions by application to the transmitting agency head, N.J.A.C. 1:1-18.8. If receipt of an initial decision is delayed because of mail problems, the affected party should bring this to the attention of the transmitting agency head when requesting an extension of time to file exceptions.

Another commenter suggested that the rule allow for parties to pick up initial decisions at the OAL offices in order to allow more time for preparation of exceptions. If a party wishes to pick up a decision, these arrangements can be made informally with the OAL Clerk's office.

Finally, the Division of Medical Assistance requested that the transmittal letter which accompanies the initial decision reflect the date of mailing. The OAL agrees and will revise the transmittal letter. No alteration of the proposed rule amendments is required.

The OAL will begin using regular mail rather than certified mail to transmit initial decisions to parties as soon as possible after this rule adoption bcomes effective. It is anticipated that substantial cost savings will be accomplished.

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

1:1-9.4 Accelerated proceedings

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

(c) If the transmitting agency agrees to the 15-day decision deadline, all parties consent and the judge assigned to the case then finds that there is good cause for accelerating the proceedings, the judge shall schedule an accelerated hearing date and the case shall proceed in the following manner:

1.-6. (No change.)

7. Exceptions to the initial decision must be filed with the agency no later than *[three]* ***six*** days after *[receipt of]* the initial decision ***was mailed to the parties***. No replies or cross-exceptions are permitted.

8. (No change.)

1:10-18.2 Exceptions

If the parties wish to take exception to the initial decision, such exception must be submitted in written form to the Clerk of the Office of Administrative Law, the Director of the DEA and to all parties. The exceptions must be received by the DEA no later than seven days after the date the initial decision was mailed to the parties. No replies or cross-exceptions shall be permitted.

1:10B-18.2 Exceptions

(a) (No change.)

(b) Exceptions must be received by the Division of Medical Assistance and Health Services no later than seven days after the date the initial decision was mailed to the parties.

(c) (No change.)

1:1-18.4 Exceptions; replies

(a) Within *[12]* ***13*** days from the date the judge's initial decision was mailed to the parties, any party may file written exceptions with the agency head and with the clerk. A copy of the exceptions shall be served on all other parties. Exceptions to orders issued under N.J.A.C. 1:1-3.2(c)4 shall be filed with the Director of the Office of Administrative Law.

(b)-(e) (No change.)

HEALTH

(a)

HOSPITAL REIMBURSEMENT

Hospital Rate Setting

Readoption with Amendments: N.J.A.C. 8:31B

Proposed: May 21, 1990 at 22 N.J.R. 1480(a).

Adopted: August 15, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Filed: August 17, 1990 as R.1990 d.462, **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. 26:2H-1 et seq., specifically 26:2H-5b and 26:2H-18d.

Effective Date: August 17, 1990, Readoption; September 17, 1990, Amendments.

Expiration Date: August 17, 1995.

Summary of Public Comments and Agency Responses:

The Department has noted the presence of typographical errors involving the length of stay trim points as published for DRGs 20, 473 and 714. This error is being corrected in the readoption of this chapter at N.J.A.C. 8:31B-5.3. The correct trim points were utilized in the 1990 reimbursement methodology; therefore, the Schedule of Rates is not affected.

COMMENTER: St. Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.11(a)1. St. Joseph's Hospital requests that the Department develop and identify clear criteria for the classification of Same Day Surgery cases.

RESPONSE: The rules distinguish Same Day Surgery patients from both inpatients and surgical procedures done in the outpatient department. The criteria are: (1) surgery takes place in a fully equipped operating room, (2) admission and discharge dates are the same, and (3) discharge status is routine. On May 11, 1990, a special memorandum was sent to all Chief Finanical Officers in Chapter 83 hospitals which further detailed the billing data edits performed the verification of Same Day Surgery patients. The issue of outpatient reimbursement is currently under review by the Governor's Commission on Health Care Costs.

COMMENTER: St. Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.19(a)1viii. The Medical Center requests that the Department develop specific Severity of Illness indicators. The methodology to be implemented should be addressed in the rules.

RESPONSE: The Department is not currently utilizing a Severity of Illness system. If they are used in the future, the methodology for utilization will be addressed in the rules.

COMMENTER: North Jersey Physician Review

COMMENT: N.J.A.C. 8:31B-3.38(c)2v(1). Should the transferring hospital still be limited to the lower of the inlier rate or the low per diem times the number of acute days if the patient is transferred out of State?

RESPONSE: Yes. The factors affecting reimbursement of the transferring hospital do not change because the receiving hospital is out of State.

COMMENTER: North Jersey Physician Review

COMMENT: N.J.A.C. 8:31B-3.38(c)2v(1). North Jersey Peer Review suggests that some provision should be made for ensuring that hospitals are adequately reimbursed for patients with long lengths of stays who are ultimately transferred.

RESPONSE: The Department supports the current reimbursement methodology for transfers as stated in the rules; therefore, no regulatory changes are being considered as part of this readoption. The Department believes that the current rules provide for appropriate reimbursement.

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COMMENTER: Blue Cross and Blue Shield of New Jersey, Inc.

COMMENT: N.J.A.C. 8:31B-3.43. Blue Cross and Blue Shield requests the Department take a strong stand on enforcing current regulations which require a hospital to adjust its current charges to reflect the Schedule of Rates and maintain a uniform ratio of charges to costs across all revenue centers. Their analysis reveals that charges, Statewide, represent only 70 percent of payment.

RESPONSE: The Department is also concerned with this issue. The comment, however, does not suggest regulatory change as part of readoption and the Department is proposing none at this time.

COMMENTER: Saint Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.51(b)1. Acceptance of rates—This regulatory section requires that a hospital with an overall direct patient care disincentive will present a proposal to reduce its rates to the HRSC. The Medical Center feels that this section is inappropriate and should be eliminated until a complete methodology has been promulgated to implement such a program.

RESPONSE: This regulatory section requires that a hospital with an overall direct patient care disincentive present a proposal to reduce its rates prior to obtaining a Certified Revenue Base (CRB). Since no Chapter 83 hospital is presently receiving reimbursement under the CRB, the requirement has not been implemented and the language remains as a prospective requirement.

COMMENTER: Saint Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.51(b)2, Acceptance of rates. This regulatory section requires that a hospital issue formal acceptance prior to the inclusion of the 1% Accept option bonus and the current year portion of the technology factor in the rates. The Medical Center recommends that these elements be included in the original Schedule of Rates issued by the Department and be eliminated from those hospitals who might not accept. Such a change would help reduce undercollections created by the timing of this adjustment as it is usually several months after the implementation of the new rates.

RESPONSE: The Department is also concerned with the issue of undercollections. This suggestion can be considered as a cash flow matter and need not be part of the readoption.

COMMENTER: Department of the Public Advocate, Division of Rate Counsel

COMMENT: N.J.A.C. 8:31B-3.52(a), Submission of exceptions. The Department of the Public Advocate, Division of Rate Counsel, has submitted proposed additions to this rule which would (a) require that two copies of the hospital's appeal document be sent to the Department of the Public Advocate, Division of Rate Counsel and that (b) all exception documentation be served promptly on all parties simultaneously.

RESPONSE: The Department acknowledges the role played by the Public Advocate in Chapter 83 rate appeals. The Department is, however, concerned about the current statutory basis for its enforcement of submission of appeal documents to parties outside of the Department of Health. The Department, therefore, is not proposing a change to the rules at this time.

COMMENTER: Blue Cross and Blue Shield of New Jersey, Inc.

COMMENT: N.J.A.C. 8:31B-3.57. Blue Cross and Blue Shield request the section on Same Day Surgery be expanded to include reference to Same Day Medical cases, and requests that such cases be considered outpatients, as is done by Medicare.

RESPONSE: The issue of what services should be reimbursed as outpatients and the issue of appropriate outpatient reimbursement is under review by the Department and the Governor's Commission on Health Care Costs. The suggested change will be considered as part of that review.

COMMENTER: Saint Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.71(a), Reconciliation and adjustments. Hospitals have the ultimate responsibility for ensuring that the year-end over/undercollection be minimized to the extent reasonably determinable. The Hospital Rate Setting Commissioner (H.R.S.C.) has already implemented regulatory safeguards against significant variances. The Medical Center, therefore, recommends that hospitals be given more latitude in adjusting their mark-up factors to allow for collection of the revenues approved under the Chapter 83 program on a more timely basis. In order to preserve the integrity of the mark-up factor, however, additional safeguards may be necessary to ensure that those hospitals revising the mark-up factor on their own authority maintain the intent of the rules.

RESPONSE: The guidelines for cash flow adjustments are not in rule form but rather are set forth as determinations through the Hospital Rate Setting Commission, upon the evaluation of individual cases, pursuant to N.J.S.A. 26:2H-18.1.

COMMENTER: Blue Cross and Blue Shield of New Jersey

COMMENT: N.J.A.C. 8:31B-3.75, Schedule of Rates Reconciliations. Final reconciliation of undercollections should be paid back over an established 12 month period to ensure stability of mark-ups and predictability of payment. Shorter payback periods negatively affect the plan with regard to establishment of premiums.

RESPONSE: Stability of the mark-up factor is a high priority to the Department. There are times when, for the purposes of stability, the payback period would best be extended beyond 12 months, as well as times when a shorter payback period is desirable. Establishing specific regulatory payback periods for specific classes of adjustments runs counter to the overall flexibility needed to smooth the mark-up factor.

COMMENTER: North Jersey Physician Review (N.J.P.R.)

COMMENT: N.J.A.C. 8:31B-3.78. Is the use of "typical" and "atypical" consistent with the use of "inlier" and "outlier" elsewhere in the rules?

RESPONSE: The Department acknowledges this comment and the words "typical" and "atypical" have been deleted throughout the text as proposed.

COMMENTER: North Jersey Physician Review

COMMENT: N.J.A.C. 8:31B-3.78(a)1viii. NJPR agrees with the changes in the text regarding the DRG appeal process.

RESPONSE: The Department acknowledges and agrees with the comment that the appeal process is more accurately described in the proposal than in the previous text.

COMMENTERS: AXIOM, North Jersey Physician Review

COMMENT: N.J.A.C. 8:31-3.78(a)1ix. Will all medical necessity appeals have access to second level?

RESPONSE: Yes. The Department has reconsidered the proposed regulatory language and believes that the text may cause confusion and misunderstanding; therefore, this section has been revised.

COMMENTER: St. Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.78(a)1xi. The proposed rule allows 90 days for a decision to be rendered by the URO. This could result in significant cash losses to the hospital and some type of safeguard should be imposed to ensure that only appropriate appeals are filed.

RESPONSE: In light of this comment, the Department will continue with the original 30 working day period. There will, however, continue to be Departmental review of this time frame.

COMMENTER: North Jersey Physician Review

COMMENT: N.J.A.C. 8:31B-3.78(a)1xiv. The text should read "shall, using a reasonable sampling technique, audit the principal diagnosis and principal procedure, in order to assure that [typical] cases have been assigned to the appropriate diagnosis related groups", as this now applies to all cases.

RESPONSE: The Department concurs; the word "typical" has been deleted.

COMMENTER: North Jersey Physician Review

COMMENT: N.J.A.C. 8:31B-3.79. NJPR agrees with the resequencing of the text and states that it provides a more orderly and understandable format.

RESPONSE: The Department acknowledges and appreciates this comment.

COMMENTER: Saint Joseph's Hospital and Medical Center

COMMENT: N.J.A.C. 8:31B-3.79(b)2ii, Use of Findings: Inappropriate level of care. The current final reconciliation methodology requires that total charges related to medically denied cases/days be deducted from revenues otherwise approved under Chapter 83 Regulations. Under the proviso that the approved revenues do not include any of these cases/days, the reduction of approved revenues is contradictory to reasonable reimbursement policies. For example, a medical denial patient can be presumed to cost a hospital as much as $50.00 a day for routine care. The approved revenues do not reflect the days/cases relating to medical denials. The current rules, therefore, create a triple loss to the hospital.

RESPONSE: The current final reconciliation methodology does require that cases denied on medical necessity be deducted from revenue; however, cases found to have reached a less than acute level on an inlier status are not affected.

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COMMENTER: AXIOM

COMMENT: N.J.A.C. 8:31B-3.79(b)2ii. AXIOM requests a definition of a good faith effort by hospital to obtain placement.

RESPONSE: A "good faith effort" by the hospital to obtain placement of patients in an appropriate level of care facility should include continuing documentation, by social service personnel, of all efforts made with respect to bed availability in the area, payment source and other elements on a case to case basis.

COMMENTER: North Jersey Physician Review

COMMENT: There is a need to include Quality Assurance language in the rules.

RESPONSE: The Department appreciates this comment and agrees that Quality Assurance (QA) is an important element. The Department is studying this issue and may propose amendments in this area in the future.

COMMENTER: Blue Cross and Blue Shield of New Jersey, Inc.

COMMENT: N.J.A.C. 8:31B-4.37. Blue Cross and Blue Shield of New Jersey, Inc., supports these amendments which define family income and family assets to be considered for collection. It believes these amendments strengthen the integrity of the Uncompensated Care Trust Fund.

RESPONSE: The Department acknowledges the comment.

COMMENTER: Community Medical Center

COMMENT: N.J.A.C. 8:31B-4.37. Hospitals do not have the ability to verify if patients are transferring assets into their children's names. They can only verify the information that is supplied by the patient.

RESPONSE: The Department agrees that hospitals are not staffed to investigate the veracity of financial information provided by patients during the charity care application process; however, every reasonable effort to obtain this information should be employed during the interview period.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:31B.

Full text of the amendments to the readoption follows (additions to proposal shown in boldface with asterisks ***thus***; deletions from proposal shown in brackets with asterisks *[thus]*).

SUBCHAPTER 1. GENERAL PROVISIONS

8:31B-1.1 Purpose and scope

The purpose of this chapter is to satisfy the requirements of P.L. 1978, c.83, and support the public policy of the State that hospital and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost be available to inhabitants of the State. The rules in this chapter provide the procedures and methods by which the Department of Health and the Hospital Rate Setting Commission establish and maintain a fair and equitable system for determining hospital payments

8:31B-1.2 Definitions

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

"Adjusted admissions" means inpatient admissions increased to reflect outpatient activity and is calculated by admissions multiplied by total gross revenue divided by inpatient gross revenue.

"Base year" means the year from which historical cost data are utilized to establish prospective reimbursement in the rate year.

"Certified Revenue Base (CRB)" means the preliminary cost base, as approved by the Hospital Rate Setting Commission, which is sufficient to meet a hospital's needs in providing adequate and appropriate health care (see N.J.A.C. 8:31B-3.15).

"Chapter 83" refers to Public Law 1978, chapter 83, an Act concerning the provision of and payment for medical services and establishing a Hospital Rate Setting Commission.

"Current Cost Base" means the actual costs and revenue of the hospital as identified in the Financial Elements in the base reporting period for the purposes of rate setting (see N.J.A.C. 8:31B-3.16).

"Diagnosis Related Groups (DRGs)" means a patient classification system in which cases are grouped by shared characteristics of principal diagnosis, secondary diagnosis, age, surgical procedure, and other complications and consuming a similar amount of resources (see N.J.A.C. 8:31B-5.1).

"Equalization Factor" means the factor that is calculated based on defined Labor Market Areas and multiplied by hospital costs to permit comparability between differing regional salary costs in setting statewide standard costs per case (see N.J.A.C. 8:31B-3.22(d)).

"Financial Elements" means the reasonable cost of items approved as reimbursable under Chapter 83.

"GROUPER" means the logic that assigns cases into the appropriate Diagnosis Related Groups in accordance with the clinical and statistical information supplied.

"Hospital Rate Setting Commission (HRSC)" means the appointed body of five members having the responsibility for approving an appropriate Schedule of Rates for all hospitals each year (see N.J.A.C. 8:31B-1.1).

"Inliers" means inpatient cases who display common or typical patterns of resource use, are assigned to DRGs and have a length of stay within the high and low trim points (see N.J.A.C. 8:31B-5.3).

"Labor Market Area" means counties and municipalities in the State that are grouped in accordance with similar labor costs.

"Neonate" means a newborn less than 29 days of age.

"Outliers" means patients who display atypical characteristics relative to other patients in a DRG and have lengths of stay either above or below the trim points (see N.J.A.C. 8:31B-3.38(c)2 and N.J.A.C. 8:31B-5.3).

"Preliminary Cost Base" means the reasonable cost of the Financial Elements of the Current Cost Base, as adjusted for projected economic factors and Capital Facilities Allowance (see N.J.A.C. 8:31B-3.20).

"Rate Year" means the year in which current reimbursement takes place.

"Schedule of Rates" means the average amount of gross revenue per case that a hospital shall charge and payers shall pay for services related to patient care, in order to produce net revenue equal to the Preliminary Cost Base (see N.J.A.C. 8:31B-3.37).

"Trim points" means the high and low length of stay cutoff points assigned to each DRG.

"Uncompensated Care Trust Fund" means a fund established to administer the appropriate collection and distribution of payment for uncompensated hospital care (see N.J.A.C. 8:31B-7.1).

"Uniform Bill-Patient Summary" (also referred to as the UB-82) means a common billing and reporting form used by the hospital for each inpatient (see N.J.A.C. 8:31B-2).

"Utilization Review Committee" means a group of physicians in a designated hospital who review the health care provided to patients.

"Utilization Review Organization (URO)" means a group of physicians within a designated geographical area who review the health care provided to patients in area hospitals.

8:31B-3.2 Derivation of Preliminary Cost Base

(a) For a group of hospitals the Commissioner, on or before January 31, of the rate year shall propose to the Commission a Preliminary Cost Base for the initial rate period. For hospitals on a fiscal year beginning other than January 1, but before July 1, the rate year will be the year the fiscal year begins, for hospitals on a Fiscal Year beginning between July 1 and December 31, the rate year will be the year the fiscal year ends. A PCB for fiscal year hospitals will be proposed to the Commission at least 30 days prior to the hospital's "Fiscal" rate year. The proposed Preliminary Cost Base for each hospital shall include:

1. The reasonable direct patient care costs as defined in N.J.A.C. 8:31B-3.23;
2. The reasonable indirect patient care costs calculated according to N.J.A.C. 8:31B-3.24;
3. The reasonable physician costs calculated according to N.J.A.C. 8:31-3.23;
4. The net income from other sources as defined in N.J.A.C. 8:31B-3.25;
5. An economic factor adjustment calculated according to N.J.A.C. 8:31B-3.26, which may be periodically adjusted in accordance with N.J.A.C. 8:31B-3.42 through 3.45 and N.J.A.C. 8:31B-3.71 through 3.86;
6. A capital component, as defined in N.J.A.C. 8:31B-3.27; and
7. A technology factor as defined in N.J.A.C. 8:31B-3.26(b).

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8:31B-3.5 Development of standards

(a) Based on the cost per case developed, in accordance with N.J.A.C. 8:31B-3.4, the Commissioner shall develop standards for each Diagnosis Related Group. The standards shall be adjusted to account for significant differences in teaching responsibilities and in labor market areas. These standards are developed according to N.J.A.C. 8:31B-3.20 through 3.36.

(b) The median cost per case, the Efficiency Standard, shall be used to identify presumptively excess cost; however, supplementary standards including, but not limited to, the lowest cost per case at any institution which has treated more than 10 patients in a given Diagnosis Related Group during the current cost base year, shall be used to identify potential areas for management review and action, and may be used by all parties in appeals. The Commissioner shall also calculate the mean cost per case, the Incentive Standard, which shall be used in developing the Proposed Schedule of Rates. Standards so developed shall remain unaffected during the rate period by any appeals and no adjustments, modifications or any other changes to the standards shall be made during a rate period, unless so ordered by the Commission. All standards developed herein may be used in evaluating effectiveness and efficiency of the health care system taken as a whole.

8:31B-3.7 Incentive standard, Preliminary Cost Base: Proposed Schedule of Rates

(a) Consistent with the purposes and intent of Chapter 83, P.L. 1978, the Commissioner shall propose for each institution a Preliminary Cost Base using the reasonable direct cost per case for each DRG as described in N.J.A.C. 8:31B-3.23. The Preliminary Cost Base shall be adjusted for reasonable indirect patient care costs, net income from other sources, and update factors. These adjustments are described in N.J.A.C. 8:31B-3.24 through 3.26.

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

(d) For each institution, the Commissioner shall propose a Schedule of Rates for each Diagnosis Related Group adjusted to provide for the revenue requirements of the Preliminary Cost Base developed in (a) through (c) above. The Schedule of Rates developed for each institution shall be adjusted for working capital, and for the equitable apportionment of uncompensated care. This methodology is described in N.J.A.C. 8:31B-3.37 through 3.50. An adjustment will be made for any payer differentials approved by the Commission pursuant to N.J.A.C. 8:31B-3.63 through 3.70.

(e) (No change.)

8:31B-3.11 Same Day Surgery

(a) Same Day Surgery is considered an alternative mode of health care delivery which the Department of Health considers to be efficient and worthy of encouragement. Same Day Surgery is intended to lower the cost of health care and provide the appropriate level of care to patients who are otherwise classified as inpatients. The patient, by definition:

1. Is identified on the Uniform Bill-Patient Summary (UB-PS) as a 131 or 136 bill type in accordance with N.J.A.C. 8:31B-2.1 and discharged before midnight of the day of admission, so admission date and discharge date are the same;

2.-3. (No change.)

(b) (No change.)

8:31B-3.16 Current Cost Base

(a) (No change.)

(b) The Current Cost Base is used to develop the Preliminary Cost Base and Schedule of Rates through:

1.-3. (No change.)

Recodify existing 5.-7. as 4.-6. (No change in text.)

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

8:31B-3.19 Patient care cost findings: Direct costs per case, physician and non-physician

(a) Hospital case-mix shall be determined as follows:

1. Uniform Bill-Patient Summary (UB-PS) data pursuant to N.J.A.C. 8:31B-2.1 are used for determination of hospital case-mix. The appropriate patient records for the reporting period corresponding with the Financial Elements Report are classified into Diagnosis Related Groups (DRGs) (see the DRG List in N.J.A.C. 8:31B-5) using the following items as defined in the UB-PS rule (see N.J.A.C. 8:31B-2.2):

i. Principal diagnosis;

ii. Secondary diagnosis;

iii. Principal and other procedures;

iv. Age;

v. Sex;

vi. Discharge status;

vii. Birthweight (newborn);

viii. Severity of Illness (S.O.I.) indicators (effective upon implementation of methodology.

2.-4. (No change.)

(b) Measures of resource use are as follows:

1. For each patient with a UB-PS, measures of resource use are calculated. These measures of resource use per patient with a reliable record are multiplied by the estimated number of cases determined in (a) above, and the total inpatient estimate of each measure of resource use is then adjusted to the actual amount of each measure. Hospitals shall make reasonable efforts to correct unacceptable data. Outpatient case-mix measures of resource use are then obtained in the aggregate from data reported to the New Jersey State Department of Health (until outpatient information is available under a Rule on Hospital Reporting of the Uniform Bill-Patient Summary (outpatient)).

	Center	Measure of Resource Use	Calculation of Inpatients
	ROUTINE SERVICES		
MSA &	Medical-Surgical Acute Care Units	Patient Days	Total LOS less ICU, CCU, NBN and OBS LOS ACU
PED &	Pediatrics		
PSA &	Psychiatric Acute Care Units		
PSY &	Psychiatric/Psychological Services		
OBS	Obstetrics		
BCU	Burn Care Unit		BCU LOS
ICU &	Intensive Care Unit	Patient Days	ICU + CCU LOS
CCU	Coronary Care Unit		
NNI	Neo-Natal Intensive Care Unit	NNI Patient Days	Total ICU LOS for Newborn DRGs
NBN	Newborn Nursery	NBN Patient Days	Total LOS less ICU LOS
	AMBULATORY SERVICES		
EMR	Emergency Service	EMR Charges	EMR Admissions (Inpatient EMR Revenue EMR Admissions)
CLN	Clinics	CLN Charges	None[1]
HHA	Home Health Agency	OHS Charges	None
	ANCILLARY SERVICES		
ANS	Anesthesiology	ANS Charges	Direct
CCA	Cardiac Catheterization	CCA Charges	Direct
DEL	Delivery and Labor Room	DEL Charges	Direct
DIA	Dialysis	DIA Charges	Direct
DRU	Drugs Sold to Patients	PHM Charges (DRU)	Direct
EKG &	Electrocardiology and Diagnostic	EDG Charges	Direct
NEU	Neurology		

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LAB	Laboratory	BBK Charges & Lab Charges	Direct
MSS	Medical Surgical Supplies Sold to Patients	CSS Charges (MSS)	Direct
NMD	Nuclear Medicine	NMD Charges	Direct
OCC & SPA	Occupational and Recreational Therapy & Speech Pathology and Audiology	OPM Charges	Direct
ORG & ORR	Organ Acquisition & Operating and Recovery Rooms	ORR Charges	Direct
PHT	Physical Therapy	PHT Charges	Direct
RAD	Diagnostic Radiology	RAD Charges	Direct
RSP	Respiratory Therapy	RSP Charges	Direct
THR	Therapeutic Radiology	THR Charges	Direct

2. (No change.)

(c) (No change.)

Inpatient clinic visits shall be treated as separate outpatient clinic visits.

8:31B-3.22 Standard costs per case

(a) (No change.)

(b) Classification of Teaching (Major and Minor) and Non-Teaching Hospitals for purposes of determining indirect costs shall be as follows:

1. Major teaching hospitals are defined as those hospitals which, during the current cost base reporting period, meet all the following requirements:

i.-iii. (No change.)

2.-6. (No change.)

7. For all Graduate Medical Education programs which are subject to accreditation by the LCGME, or AOA, or, in the case of dental residents, the American Dental Association, accreditation must be maintained for residents in these programs to be used in determining the teaching categories described in (b)1 and 2 above. Residents in unaccredited programs will not be recognized in the teaching methodology for determining direct patient care costs (see Appendix XI).

8. (No change.)

(c) (No change.)

(d) Determination of labor equalization factor to calculate Statewide standard costs per case shall be as follows:

1. (No change.)

2. The Labor Market areas recognized in 1990 rate setting at N.J.A.C. 8:31B-3.22(d)3 will be used for rate setting in subsequent years.

3.-7. (No change.)

(e) Calculation of standards will be as follows:

1. (No change.)

2. Determination of Labor Unequalization Factor to Calculate Standard Cost Per Case of Each Labor Market Area.

i. An unequalization factor shall be calculated for the non-physician direct patient care costs of each hospital to account for differing prevailing compensation patterns across New Jersey's Labor Market Areas in the comparison of hospital and standard costs per case. The Statewide standard times and unequalization factor is the unequalized standard in terms of the hospital's Labor Market Area.

ii.-iii. (No change.)

8:31B-3.24 Reasonable indirect patient care costs

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

(c) The reasonable amount of indirect costs (exclusive of skilled nursing apportionment) will be determined for those hospitals that will receive an initial PCB. Disincentive amounts will be calculated in the Physician and Teaching Related Centers. The screening methodology will compare base year actual cost data. Screens will not be applied to sales and real estate taxes, outside collection costs, employee health insurance, malpractice insurance, PCC (Phy), EDR (Non-Phy) and OGS. The above indirect costs are not considered volume variable and are therefore included in the Preliminary Cost Base spread to all rates through the use of the overhead mark-up factor.

1.-3. (No change.)

4. The adjusted admissions to calculate these peer group standards will be the base year adjusted admissions.

5. The equalized peer group standard unit cost is unequalized using a hospital's equalization factor, and added to the peer group unequalized standard unit cost to form a hospital's unequalized indirect standard unit cost.

6.-7. (No change.)

(d) Non-Physician salaries will be equalized based upon the labor market areas as defined in N.J.A.C. 8:31B-3.22 for the purpose of grouping the following indirect cost centers in the peer group standard calculations:

1.-3. (No change.)

(e) Cost centers subject to screening shall be as follows:

Cost Centers	Peer Group	Unit of Service	Reasonable Cost Limit
(RSD) Residents Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
(PHY) Physicians Non-Phy	teaching/minor teaching non-teaching	Full time Equivalent PHY	1.1
(RSD) Residents Physician	teaching/minor teaching non-teaching	Full time Equivalent RSD	1.1
Phys. & Physician	teaching/minor teaching non-teaching	Full time Equivalents in PHY and EDR	1.1
Education & Research (PHY)	teaching non-teaching	PHY	

8:31B-3.26 Update Factors

(a) Economic Factor: An economic factor shall be calculated for each hospital. It shall take into account the level of hospital expenses and replacement cost of major moveable equipment, using the cost components reported to the New Jersey State Department of Health. The economic factor is the measure of the change in the prices of goods and services used by New Jersey hospitals. It is to be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.

1. The cost components and proxies of the economic factor are shown in Appendix II.

i. The Statewide proportion of contracted services labor costs in the Labor 1 component will be increased by the percentage change in the cost of contracted services as measured by actual data and projected forward. The proportion of contracted services to total Labor 1 costs will be capped at six percent. Should the actual rate year Statewide proportion of contracted services to total labor costs be lower than six percent, future labor proxies will be adjusted downward to reflect this lower proportion in accordance with N.J.A.C. 8:31B-3.72(a)1.

ii. The remaining proportion of the Labor 1 component will be multiplied by the percent of change in the Average Hourly Earnings for Nonsupervisory Hospital Workers (Northeast) as reported by the Bureau of Labor Statistics.

2. The hospital-specific economic factor is the weighted average of the recorded and projected change in the value of its components. The weight given to each component is its share of that hospital's total expenditure as described in Appendix II. The projection of individual components shall be based, where appropriate, on legal or regulatory changes which fix the future value of a proxy (that is, FICA). Components which are of particular importance may be projected through the use of the time series analysis on other relevant indicators.

(b) (No change.)

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8:31B-3.28 Calculation of initial infusion of working capital

(a) The initial infusion of working capital is provided for when a hospital first enters the reimbursement system and is mandatory for any institution which, in its base year, has uncompensated care equal to or greater than the median percentage across all hospitals. Institutions with less uncompensated care may still receive working cash infusion upon recommendation by the Commissioner and approval by the Commission.

(b) To determine if a hospital shall receive an initial infusion of working capital, as part of Reasonable Working Capital in N.J.A.C. 8:31B-4.46, the hospital's opening balances of unrestricted cash and investments, accounts receivable and trade accounts payable are examined. Initially, using Current Cost Base information supplied to the Department by the hospital under the Financial Elements and Reporting amendment entitled Uniform Cost Reporting Regulation (N.J.A.C. 8:31A-5.5), reasonable operating cash plus excess accounts payable and principal on outstanding working capital loans is compared with unrestricted cash and investments on hand plus excess accounts receivable (not to be less than zero) to determine any shortage or excess working cash.

1. Reasonable Operating Cash is defined as unrestricted cash and investments equal to seven days of New Revenues Related to Patient Care (that is, 2 percent of annual net revenues) as adjusted for abnormally high accounts receivable and accounts payable balances and for outstanding working capital loans.

2. Abnormally high accounts payable are defined as non-construction accounts payable in excess of 30 days of expenses for supplies, purchase services, non-capitalized leases, and other non-payroll related expenditures included in Costs Related to Patient Care.

3. Abnormally high accounts receivable are defined as accounts receivable, net of allowances and provisions for doubtful accounts, in excess of 60 days of net revenue Related to Patient Care.

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

(e) The initial calculation will be recalculated one more time to reflect cost data reconciled with the hospital's audited financial statement for the fiscal year immediately preceding the year of the hospital's Preliminary Cost Base. The hospital submits this data under the provisions of the Uniform Cost Reporting Regulation amendment. However many years the hospital receives this adjustment, it is a one-time adjustment to reflect cash deficiencies upon entry into the Chapter 83 system, and there shall be no reimbursement for subsequent additional cash deficiencies.

(f) Any adjustment to account for the difference between this final calculation and the initial calculation shall be made at the time of automatic and periodic adjustments for economic factors described in N.J.A.C. 8:31B-3.71 through 3.86, subject to the two percent of net revenue yearly limitation described above.

8:31B-3.38 Derivation from Preliminary Cost Base

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

(c) Basic Rate Order shall be as follows:

1. Each hospital shall receive from the Commission a rate order detailing the Schedule of Rates as follows:

SCHEDULE OF RATES

ITEM	RATE PER CASE
DIRECT COSTS RELATED TO PATIENT CARE	
DRG 1	$_____
DRG 2	$_____
DRG 3	$_____
CLINIC PATIENTS	$_____ †
HOME HEALTH PATIENTS	$_____ †
EMERGENCY SERVICE OUTPATIENTS	$_____ †
AMBULATORY SURGERY	$_____ †
SAME-DAY PSYCHIATRY	$_____ †
INDIRECT FINANCIAL ELEMENTS	AMOUNT
INDIRECT COSTS RELATED TO PATIENT CARE	$_____
NET INCOME FROM OTHER SOURCES	$(_____)
CAPITAL FACILITIES ALLOWANCE	$_____
COMMISSION APPROVED WORKING CASH INFUSION	$_____
GRANTS ON BEHALF OF THE MEDICALLY INDIGENT	$(_____)
ESTIMATED UNCOMPENSATED CARE	_____%
ESTIMATED PERSONNEL HEALTH PROGRAM	_____%

NOTE: The Schedule of Rates shall be adjusted to reflect five percent working capital increases and _____ percent for payor differentials as specified by the Commission. Payor Class A shall pay _____ percent of this Schedule of Rates. Payor Class B shall pay _____ percent of this Schedule of Rates and all other Payor Classes shall pay 100 percent of this Schedule of Rates.

_____

†Patients receiving these services will be billed at controlled charges; however, this rate per visit will be used for purposes of reconciliation.

2. The four outlier categories are defined below and will have rates and/or per diems included on the Schedule of Rates as follows:

i.-iii. (No change.)

iv. (No change in text.)

3. (No change.)

(d) (No change.)

8:31B-3.51 Notification appeal and review

(a) (No change.)

(b) Within 45 working days of receipt of the Proposed Schedule of Rates issued pursuant to N.J.A.C. 8:31B-3.2 through 3.15, hospitals shall notify both the Commissioner and the Commission, in writing of their decision to:

1. Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: Acceptance is contingent upon approval by the Commission of the Schedule of Rates. Following Commission approval, rates accepted shall be implemented as set forth in N.J.A.C. 8:31B-3.42 through 3.45. Rates accepted shall include an additional one percent of all direct patient care costs. The amount will be fixed and included as an indirect cost in the mark-up factor. Rates accepted will also include an increase to direct patient care and indirect costs equal to the technology factor as described in N.J.A.C. 8:31B-3.26 and the operating margin as described in 8:31B-3.38. Prior to obtaining a Certified Revenue Base, a hospital with an overall direct patient care disincentive will be required to present to the Hospital Rate Setting Commission a proposal to reduce its rates and have the Commission approve this proposal prior to the hospital being allowed to accept the Certified Revenue Base. The reduction in its rates will reflect the hospital's plans to eliminate inefficiencies. A hospital accepting the Schedule of Rates may appeal only the costs associated with the following:

i. Changes in the number of residents:

(1) An increase in the number of residents that does not exceed the Statewide number approved by the Commissioner for the 12 month period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission, and is offset corresponding decreases in resident costs in other New Jersey hospitals;

(2) (No change.)

ii.-x. (No change.)

2. Not Accept the Certified Revenue Base or Preliminary Cost Base whichever is appropriate: A hospital not accepting the Proposed Schedule of Rates or adjusted Rate Order retains the right to appeal all issues subject to the guidelines described in (b)2iii below.

i. (No change.)

ii. A hospital not accepting its Proposed Schedule of Rates will retain the operating margin and economic factor components of the rates. The one percent Accept option bonus and the rate year technology factor will not be included in the rates. If a hospital chooses the Accept option in years subsequent to not accepting its rates, the technology factor for the year not accepted shall be included in future compounding.

iii. (No change.)

3. Notwithstanding the above, effective for the 1986 Proposed Schedule of Rates, hospitals may only appeal under the not accept option for Statewide increases in costs associated with numbers of graduate medical residents in excess of the total number of FTE residents approved by the Commission for reimbursement for the period beginning July 1, 1985, plus or minus subsequent adjustments as approved by the Commission.

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8:31B-3.60-3.62 (Reserved)

8:31B-3.71 Reconciliations and adjustments

(a) Certain automatic reconciliations and adjustments are necessary to insure that hospitals' net revenue collections align with the Commission approved Schedule of Rates especially with regard to the inclusion of both direct (variable) financial elements and indirect (variable and fixed) financial elements as indicated in N.J.A.C. 8:31B-3.24, and other financial elements, and that charges are in a consistent ratio with costs by revenue center. Further, the Schedule of Rates must be periodically adjusted to reflect changes in inflation and the recalculation of certain indirect and other financial elements.

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

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but will affect the calculation of Commission Approved Revenue. Periodic adjustments are made for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments will be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, Implementation:

1. Economic factor: The final economic factor shall be calculated for each year as soon as the necessary data are available. However, the labor component of the economic factor is to be prospective and final. If calculation of the final economic factor for the rate year shows a misprojection of the labor component including the proportion of contracted services the rate year labor component shall not be changed. Instead an equal and offsetting adjustment is to be made to the projected economic factor when the projected economic factor for the upcoming rate year is calculated. The projected economic factor shall be developed for the following year using as much actual data as is compatible with the timely issuance of hospital payment rates for that year. The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26, shall be based on each hospital's reported expenses of the current cost base by classification for the applicable rate period.

2.-3. (No change.)

8:31B-3.73 Reconciliation: Hospitals

(a) Following receipt of actual patient specific information pursuant to Rules on Hospital Reporting for Uniform Bill—Patient Summaries (inpatient) or N.J.A.C. 8:31A-10.7, whichever is appropriate: determination of actual case-mix as determined by the same GROUPER used to establish rates; and calculation of the actual economic factor, the Commissioner shall determine consistent with the Commission's Order, for each hospital, for the calendar year or rate period, whichever is appropriate, reconciliation for:

1. Variable financial elements:

i. Except as specified above, reconciliation for direct patient care costs shall be made on the basis of the approved Schedule of Rates for Diagnosis Related Groups and outpatient visits. The Schedule of Rates so developed and approved, adjusted to actual measured economic inflation, shall be multiplied by the hospital's actual case-mix and volume which was necessary and appropriate. Outliers, subject to appropriateness review by an approved utilization review, shall be included in the calculation of reconciliation.

ii. Reconciliation for volume variable indirect costs, adjusted for actual measured economic inflation, will be based on the payment rates described in N.J.A.C. 8:31B-3.24(c)1 and 2 and the hospital's actual inpatient and same day surgery volume for the rate year.

iii.-iv. (No change.)

v. The technology adjustment as defined in N.J.A.C. 8:31B-3.26(b) and 3.51 will be reconciled to actual rate year case-mix and volume for direct patient care rates and actual volume for indirect volume variable rates.

2.-5. (No change.)

8:31B-3.75 Schedule of rates reconciliation

(a) Except for adjustments among payers and required bad debt reconciliation which may be made approximately on a lump sum or prospective basis, all other adjustments which may be required as a result of appeals implemented on an interim basis, under or over collection, audit, or other reconciliation procedures here required shall be made prospectively through an appropriate adjustment. The reconciliation adjustment shall be calculated so as to compensate for the required amount over a specified period approved by the Hospital Rate Setting Commission.

(b) To the extent that an institution's actual Net Revenues Related to Patient Care differ from the Commission approved Preliminary Cost Base, an adjustment to the current year PCB will be calculated. A compliance adjustment to the Rate Order will then be issued to include this adjustment and adjustments for actual uncompensated care, payer differentials, and net income from other sources, in order to align gross revenue and payers payments with net revenue requirements for the new prospective year.

1. Commission approved revenue: On an annual basis, within 90 days of receipt of all reports set forth in N.J.A.C. 8:31B-3.42 through 3.45, the Schedule of Rates, as adjusted for economic factors and other adjustments issued by the Commission during the year, will be calculated for the hospital's actual discharges and patient visits for a reported period. Reasonable direct patient care costs per case will be multiplied by the number of cases in each DRG, to determine reasonable direct patient care costs for patients assigned to a DRG. Actual outpatient volumes for Emergency Services (EMR), Clinics (CLN), Home Health Agency (HHA), Ambulatory Surgery, and Same Day Psychiatry will be determined from the Uniform Cost Reporting Regulations. Outlier cases will be reconciled to the appropriate rate and/or per diem as described in N.J.A.C. 8:31B-3.38.

2.-3. (No change.)

4. Application of reconciliation to Schedule of Rates shall be as follows:

i.-iii. (No change.)

iv. The payer discount calculation for each differential in N.J.A.C. 8:31B-3.39 and 3.40 shall be repeated for the actual gross Revenues Related to Patient Care of payers or payer classes receiving and not receiving differentials. The percentage point discount and mark up to the Schedule of Rates so determined shall be increased or decreased for the percentage difference from the prospective discount and mark up determined in N.J.A.C. 8:31B-3.39. Any adjustments to payer differentials approved by the Commission subsequent to those included in the initial Schedule of Rates shall also be included in the payer discount reconciliation.

v. A compliance adjustment to the Rate Order as shown in Appendix VIII is determined by the Commissioner and implemented by hospitals and payers.

8:31B-3.76 Necessity and appropriateness of health care services

(a) P.L.1978, c.83 provides that reasonable payment may be made only for "appropriate and necessary health care services of high quality required by (each) hospital's mix of patients." In order to discharge this statutory obligation, two systems are required: The reimbursement system, payment by the case, establishes reasonable rates for patients who are correctly assigned to a Diagnosis Related Group (DRG). A utilization review organization system is required to ensure that the hospital services which are provided are appropriate, necessary, and of high quality.

(b)-(e) (No change.)

8:31B-3.77 Definitions

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

. . .

"Inliers" *[("typical cases")]* means inpatient cases assigned to DRGs, as identified in N.J.A.C. 8:31B-5.3(c) having lengths of stay within the high and low trim points.

. . .

"Outliers" *[("atypical cases")]* means patients who display atypical characteristics relative to other patients in a DRG (see N.J.A.C. 8:31B-3.38(c)2).

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. . .

"Trim points" means high and low length of stay cutoff points assigned to each DRG (see N.J.A.C. 8:31B-5.3). Cases falling outside trim points are classified as outliers *[(atypical cases)]*.

8:31B-3.78 Criteria for qualification

(a) Applicability: Each inpatient in each hospital selected by the Commissioner pursuant to P.L.1978, c.83, Section 5b, must be subject to review by a qualified utilization review organization concerning the necessity and appropriateness of inpatient admission and continuing stay. The minimum set of activities required to so qualify are set forth below:

1. All cases: With respect to all cases, *[both typical and atypical,]* a qualifying utilization organization:

i.-vi. (No change.)

vii. Shall provide for an appropriate mechanism by which to hear and adjudicate appeals by patients, payers, physicians, or the hospital concerning the determinations made pursuant to this subchapter. With respect to such review, the standards to be applied shall be consistent with the prevailing patterns of medical practice in the area or state, as appropriate;

viii. Shall further provide, through the same mechanism, for appeals by individual patients in exceptional cases of DRG assignments which, although technically correct, may produce grossly inequitable or excessive payments. To initiate an appeal, a letter of request from the patient shall be considered as authorization for the Department to review and assess any necessary information pertinent to the hospitalization or charges in question. Upon demonstration, by substantial evidence, that application of the DRG system would result in inequitable consequences for the patient, the qualified utilization review organization may direct that payment be based on an alternative to the DRG rate (for example, charges);

ix. Shall provide a second level of appeal. *[The patient, physician, hospital, or payer,]* ***party*** not satisfied with the decision on the first level *[of the DRG Assignment or Medical Necessity]* appeal, may request an appeal to the second level *[by directly notifying]* ***through*** the appropriate Utilization Review Organization;

x. (No change in text.)

xi. Shall render a decision in any appeal within *[90]* ***30*** working days from the date of receipt of the appeal by the qualified Utilization Review Organization (URO). The appellant, or his or her insuror, shall not be liable for payment to the hospital until a decision on the appeal has been made and communicated to the parties affected. A qualified URO shall not be deemed in receipt of an appeal if the hospital involved is more than one month delinquent in payment of the Commission approved rate to be paid to the URO by the hospital. Any amount not paid to the hospital because of its delinquency in payment to the URO, and the failure to hear an appeal shall not be recoverable by the hospital through bad debt *[of]* ***or*** charity write-offs, but shall become a loss of revenue to the hospital.

(1) DRG Patient Appeal requests shall be submitted to the Department of Health for review within one year after issuance of the bill by the hospital. Any requests submitted thereafter will not be processed for appeal.

xii. (No change in text.)

xiii. (No change in text.)

xiv. No change in text.)

8:31B-3.79 Use of findings

(a) Findings shall be used in all cases as follows:

1. (No change.)

2. Adjustment of Payment shall be made as follows:

i. (No change.)

ii. The following shall apply to a finding of an inappropriate level of care: Should the qualifying utilization review organization determine that, for a portion of the patient's length of stay, the level of care is appropriate to a skilled nursing facility and/or intermediate care facility level-of-care, and that a hospital has documented a good faith continuing effort to obtain placement of the patient to the appropriate level-of-care, a Skilled Nursing Facility (SNF) and/or Intermediate Care Facility (ICF) rate, calculated as follows, will become the basis for determination of reasonable Direct Patient Care Costs for that portion of the stay in an atypical case.

(1) Reimbursement for each eligible patient will be based upon a Statewide weighted average SNF or ICF per diem rate of Medicaid participating long-term care facilities, in effect as of January 1 of the rate year. Separate Statewide weighted average per diem rates will be calculated for both the Skilled (SNF) and Intermediate (ICF) levels of care patients as follows:

(2) (No change in text.)

iii. The following shall apply to a finding of misassigned DRGs: The qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to make an appropriate adjustment to the price per case where the DRG to which the patient is correctly assigned differs from the DRG on which payment was based. Similarly, the qualifying utilization review organization shall direct the hospital and the Uniform Bill Intermediary to classify cases as outpatients, to be billed as outpatients when there is a finding of medical necessity for items and services rendered, but no medical necessity for inpatient admission.

3. The following shall apply to apportionment of liability: Upon a prospective finding that certain days, services, or items will not be necessary, the qualifying review organization shall so advise the respective patient, attending physician, hospital, and payer. Once all involved parties have had due notice and have exhausted all appeals, under N.J.A.C. 8:31B-3.78(a)1vii, the utilization review organization may direct the hospital to assign financial liability for such unnecessary days, services, or items to the patient. Accordingly, except for any grace days which a payer may agree to reimburse pursuant to this section (N.J.A.C. 8:31B-3.79), liability for the appropriate price per case shall be fixed at the point in time at which the patient was eligible for discharge; and any further days or services shall, subject to prevailing contracts and statutes, be the sole liability of the patient to be reimbursed to the hospital at a rate, determined by the hospital, no greater than its charges for such days or services established in accordance with N.J.A.C. 8:31B-3.53 through 3.57. Revenues received by the hospital in accordance with this provision shall be treated as Expense Recoveries in accordance with N.J.A.C. 8:31B-4.62 through 4.67.

4. Reporting shall be accomplished as follows: The qualifying utilization review organization shall report all denials and adjustments to the hospital, the appropriate physician, and the payer in a timely manner. All denials and adjustments shall be compiled by diagnosis related group and by hospital, and reported to both the Commission and the Department on, at least, an annual basis. However, except for adjustments made in accordance with N.J.A.C. 8:31B-3.71 through 3.86, any adjustment in a hospital's budget, or in a standard for a Diagnosis Related Group or set of Diagnosis Related Groups shall be made only by the Commission, upon recommendation by the Commissioner through a change in the rate period or schedule of Rates, approved by the Health Care Administration Board (see N.J.A.C. 8:31B-3.87).

AGENCY NOTE: N.J.A.C. 8:31B Appendices I through XI currently appear in the code after subchapter 3. The appendices should appear at the end of the chapter, and are repositioned there as part of this proposed readoption. The appendices proposed for amendment appear in this proposal after the amendments to subchapter 7.

8:31B-4.34 Paid taxes

Taxes are monies paid to a governmental unit for conducting business related to direct patient care within its jurisdiction. Taxes are a financial element of the Preliminary Cost Base or Certified Revenue Base except for Federal, State, or local income, excess profit, or franchise taxes, taxes on property not used for direct patient care, and interest and/or penalties paid thereon. Taxes related to financing of operations through the issuance of bonds, property transfers, issuance or transfer of stocks, and the like, are not classified as taxes; rather, they are to be amortized or depreciated with the cost of the security or asset. Sales and real estate taxes paid by a hospital in the provision of Services Related to Patient Care are to be included

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as Paid Taxes. All sales and real estate taxes for Services Related to Patient Care are to be reported in the General Administrative Services cost center and also reported separately from other classifications of expense. Employment related taxes, such as FICA, Unemployment Compensation, and Worker's Compensation, are to be classified as employee fringe benefits for all employees, including hospital based physicians. Monies received by a hospital which chooses to self-insure in lieu of payment of Unemployment Compensation taxes and the associated administrative costs of such a self insurance program are included as financial elements and classified as employee fringe benefits, if such monies are reasonably related to the hospital's unemployment compensation experience.

8:31B-4.37 Charity care and reduced charge charity care for indigent patients

(a) (No change.)

(b) Income eligibility criteria for identifying charity care patients are as follows:

1. The provisions of 42 U.S.C. 9902(2), the poverty income guidelines revised annually by the United States Department of Health and Human Services, are hereby incorporated by reference. (For further information on the poverty income guidelines, contact Joan Turek-Brezina, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, Washington, D.C. 20201, telephone (202) 245-6141.) A person is eligible for charity care or reduced charge charity care if he or she falls into one of the following categories:

i. A person whose individual or, if applicable, family income, as determined by reference to (b)2 below, is less than or equal to 150 percent of the HHS Income Poverty Guidelines as adopted by the Department shall be eligible for charity care for necessary health services without cost.

ii. (No change.)

2. (No change.)

3. A person who is eligible for reduced charge health services shall be charged a percentage of the normal charge for health services after any applicable third party has paid; that percentage shall be calculated by the following:

i. Income as a Percentage of HHS Income Poverty Guideline as adopted by the Department		Percentage of Charges Paid by Patient
Over	To	
150	175	20
175	200	40
200	225	60
225	250	80

ii. (No change.)

4. Family income that must be considered for **an** eligibility determination includes the income of all legally responsible individuals including, but not limited to, a spouse and any minor children for an adult and a parent and any minor siblings for a minor child. Only unearned income shall be considered for minor children and siblings. A patient may document that a parent or spouse's income is not available and that parent or spouses' income will not be considered.

(c) Assets eligibility criteria for identifying charity care and reduced charge charity care patients are as follows:

1.-2. (No change.)

3. Family assets that shall be considered for eligibility determination include the assets of all legally responsible individuals including, but not limited to, a spouse and any minor children for an adult and a parent and any minor siblings for a minor child.

4. (No change.)

(d) Eligibility determination for charity care and reduced charge charity care shall be as follows:

1. Based on the criteria in (b) and (c) above, hospitals shall determine the eligibility for charity care or reduced charge charity care for all New Jersey residents who present characteristics indicating an inability to pay for services including, but not limited to: absence of third party insurance coverage; receipt of unemployment or welfare benefits; limited income; and expressions of difficulty with paying for care. A patient with third party insurance coverage may still be eligible for charity care and reduced charge charity care and shall be screened for eligibility if he or she presents other characteristics indicating an inability to pay for services. A patient who is eligible for, but not enrolled in, Medicaid (Title XIX), for the services in question may not be determined to be eligible for charity care.

i. Hospitals shall make arrangements for reimbursement for services from private and Federal, state and local governmental third party payers when a person is found to be eligible for such payment. Hospitals shall collect from any party liable to pay all or part of a person's bill, prior to attributing it to charity care. The Hospital shall, as part of this obligation, pursue reimbursement for the uncollectible copayments and deductibles of indigent participants in Title XVIII of the Social Security Act (Medicare).

ii. A patient who is categorically and income eligible for Medicaid but who is determined to be ineligible for failure to provide information or documentation or for other administrative reasons may not be determined to be eligible for charity care.

2.-7. (No change.)

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

8:31B-4.40 Appropriate collection procedures

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

(d) Post-Discharge Follow-up/In-House Efforts: The hospital shall follow up periodically with the proper carrier until the amount owing has been paid in full. Except for denials due to lack of medical necessity, the patient shall be contacted and payment requested concerning any portion of the bill declined by third party carriers. With respect to these patients, self-pay patients and legally responsible individuals, collection procedures shall include but are not limited to:

1.-4. (No change.)

5. If a patient defaults on a payment plan based on ability to pay, the hospital may continue collection efforts from the point where they stopped as a result of a payment plan, except that if the urgent notification letter had already been sent another letter must be sent to inform the patient that the account will be sent for outside collection efforts.

(e)-(h) (No change.)

8:31B-5.3 List of Diagnosis Related Groups

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

(c) A table of Diagnosis Related Group**s*** follows:

MAJOR DIAGNOSTIC CATEGORY 01: DISEASES AND DISORDERS OF THE NERVOUS SYSTEM

	OUTLIER TRIM POINT LOW	HIGH
(001)-(019) (No change.)		
(020) NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	*[3]***2**	27
(021)-(035) (No change.)		
(468) (No change.)		
(476)-(477) (No change.)		
(530)-(533) (No change.)		
(736)-(739) (No change.)		
(742) (No change.)		

MAJOR DIAGNOSTIC CATEGORY 02-16 (No change.)

MAJOR DIAGNOSTIC CATEGORY 17: MYELOPROLIFERATIVE DISORDERS AND POORLY DIFFERENTIATED MALIGNANCY, AND OTHER NEOPLASMS NEC

	OUTLIER TRIM POINT LOW	HIGH
(400)-(414) (No change.)		
(473) ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	*[3]***2**	*[48]***37**
(576)-(579) (No change.)		
(735)-(736) (No change.)		
(742) (No change.)		

MAJOR DIAGNOSTIC CATEGORY 18-23 (No change.)

MAJOR DIAGNOSTIC CATEGORY 24: HUMAN IM-

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MUNODEFICIENCY VIRUS (HIV) INFECTIONS

	OUTLIER TRIM POINT LOW	HIGH
(700)-(713) (No change.)		
(714) HIV W/O SPECIFIED RELATED CONDITION, W/O OPIOID USE, AGE > 12	*[3]**2*	34
MAJOR DIAGNOSTIC CATEGORY 25 (No change.)		

SUBCHAPTER 6. (RESERVED)

8:31B-7.3 Determination of uniform statewide uncompensated care add-on

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

(c) Any payments from the Trust Fund reserve made during the calendar year shall be restored through the Trust Fund during the following six month period.

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

8:31B-7.6 Documentation requirements

(a) Each hospital shall submit annually, or at longer intervals at the discretion of the Department, two copies of certain materials relating to hospital uncompensated care and collection practices. The materials shall include, but not be limited to, the following:

1.-6. (No change.)

(b) The information required in (a) above shall be submitted to the Department annually by December 1 or by a later date, as determined by the Department.

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

8:31-7.7 Audit

Uncompensated care audits shall be conducted to determine hospital compliance with N.J.A.C. 8:31B-4.37 through 4.40.

APPENDIX II
COST COMPONENTS AND PROXIES
FOR THE ECONOMIC FACTOR

LABOR 1.

COST COMPONENT: Non-physician Salaries. Physician's Salaries and Fees

SHARE COST CENTER: All Cost Centers for which employee salaries are reported; contracted services in MSA, OBS, PED, PSA, ICU, CCU, NNI, EMR, CLN, DEL, ORR and OHS Cost centers; physicians' salaries and fees for all Cost Centers except RSD; and physicians' fees for RSD Cost Center.

PROXIES: BLS, Average Hourly Earnings for Nonsupervisory Hospital Workers, Northest (97 percent in 1987, and no less than 94 percent beginning in 1988).

Percentage change in New Jersey contracted services hourly wage three percent in 1987, six percent beginning in 1988. Labor proxies of future years will be adjusted downward to reflect the actual rate year Statewide proportion of contracted services if the actual proportion of contracted services is less than six percent.

SOURCE: Bureau of Labor Statistics (BLS), Employment Cost Index New Jersey Department of Health survey of contracted services labor costs.

. . .

OTHER 6.

COST COMPONENT: Other Services

SHARE COST CENTER: Other expenses reported in all cost centers except INT, PLT, OGS, MAL, UTC, LFB, PFB, and PEN; other expenses in A & G Cost Center not classified above; contracted service costs in Ancillaries (exclusive of DEL, ORR) DTY, HKP, MRD, PCC, EDR, A & G and FIS Cost Centers.

PROXIES: Service less rent and medical care

SOURCE: BLS, Consumer Price Index

APPENDIX VIII
SCHEDULE OF RATES AS ADJUSTED FOR COMPLIANCE

ITEM	RATE PER CASE	AMOUNT
. . .		
CLINIC PATIENTS	$ ____	
HOME HEALTH PATIENTS	$ ____	
EMERGENCY SERVICE OUTPATIENTS	$ ____	
AMBULATORY SURGERY	$ ____	
SAME-DAY PSYCHIATRY	$ ____	
. . .		

APPENDIX IX (RESERVED)

APPENDIX X (RESERVED)

(a)

DIVISION OF COMMUNITY HEALTH SERVICES

Mobile Intensive Care Programs
Administration of Medications
Adopted Amendments: N.J.A.C. 8:41-8.1 and 8.3

Proposed: July 2, 1990 at 22 N.J.R. 1980(a).

Adopted: August 22, 1990 by Frances J. Dunston M.D., M.P.H., Commissioner, Department of Health.

Filed: August 24, 1990 as R.1990 d.473, **without change.**

Authority: N.J.S.A. 26:1A-15 and 26:2K-7 et seq.

Effective Date: September 17, 1990.

Expiration Date: February 17, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

8:41-8.1 Approved drug list for mobile intensive care units

(a) The following is an alphabetical list of generic therapeutic agents authorized for administration by mobile intensive care paramedics:

Acetylsalicylic acid
Aminophylline
Albuterol

. . .

Magnesium sulfate—with Commissioner's approval only

. . .

Naloxone HCL
Nifedipine

. . .

8:41-8.3 Medication controls, inventory, and recordkeeping required

(a) Each designated mobile intensive care program shall devise a plan for maintaining inventory control over medications, including all substances in Schedule II of the Controlled Dangerous Substances Act and amendments thereto, and syringes used in the program. The following information shall be recorded:

1.-3. (No change.)

4. Date the mobile intensive care unit received the drug;

5.-9. (No change.)

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

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(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Hospital Policy Manual

Adopted Amendments: N.J.A.C. 8:43I-1.3 and 1.11

Proposed: June 18, 1990 at 22 N.J.R. 1891(a).

Adopted: August 15, 1990 by Frances J. Dunston, M.D., M.P.H., Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: August 17, 1990 as R.1990 d.463, **without change.**

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Effective Date: September 17, 1990.

Expiration Date: March 21, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

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		
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)

PUBLIC HEALTH COUNCIL

Accident Prevention and Poison Control Program
Childhood Lead Poisoning
State Sanitary Code Chapter XIII

Adopted New Rules: N.J.A.C. 8:51

Proposed: May 21, 1990 at 22 N.J.R. 1502(a).

Adopted: August 24, 1990, by the Public Health Council, Louise C. Chut, Ph.D., M.P.H., Chairperson.

Filed: August 24, 1990 as R.1990 d.472, **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. 26:1A-7, 24:14A-1 et seq., specifically 24:14A-11 and 26:2-130 et seq., specifically 26:2-137.

Effective Date: September 17, 1990.

Operative Date: January 1, 1991.

Expiration Date: September 17, 1995.

Summary of Public Comments and Agency Responses:

The proposed repeal of N.J.A.C. 8:51-7 was not adopted, because the rules expired on September 16, 1990, pursuant to Executive Order No. 66(1978).

A public hearing concerning this proposal was held on June 11, 1990 with four persons present and commenting. The Accident Prevention and Poison Control Program received comments on this proposal from the following:

Atlantic County Health Department
Department of Community Affairs
Department of Environmental Protection
Department of Health
Department of Human Services
Legal Services of New Jersey
Northeastern Analytic Corp.
Ocean County Health Department

COMMENT: The New Jersey Health Officers' Association thanked the Department for granting them the opportunity to review these rules in the various stages of development. The president asked whether subchapter 8 needs to be included in the rules or would better remain as an appendix to the rules.

RESPONSE: The Attorney General's Office advises that subchapter 8 be part of the rules rather than an appendix to the rules.

COMMENT: Several comments requested changes in the age groups which define a child.

RESPONSE: The Department agrees with the commenter, but these rules are based on N.J.S.A. 26:2-131a, which defines a "child" as one through five years of age. Statutory change would be required in order to amend the rules as requested. However, based on recommendations from the Attorney General's Office, a Departmental recommendation that all children nine months to six years be screened has been added.

COMMENT: Two comments requested changes in the definition of lead based paint.

RESPONSE: Under N.J.S.A. 24:14A-1 et seq., lead content in paint is defined as being in excess of one percent by dry weight. Statutory change would be required in order to amend the rules as requested.

COMMENT: The Department of Community Affairs suggested that, since some abatement methods require a permit under the Uniform Construction Code, and because local fire codes have been replaced by the State Uniform Fire Safety Act, the rules should reference these statutes and codes.

RESPONSE: The Department agrees. These references will be stipulated in the rules.

COMMENT: Two commenters requested that the removal requirement for lead based paint be changed from up to four feet to complete remediation.

RESPONSE: The rules require total abatement of all flaking and peeling leaded paint wherever found and removal of intact leaded surfaces up to four feet. This approach was taken in an effort to achieve the elimination of the greatest hazard. Intact non-accessible surfaces present a less significant exposure potential for children. Their removal would cause a significant increase in costs to the property owner and might result in total failure to abate the property or actual abandonment of the

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housing unit. The abatement of the additional intact surfaces would also increase the risk of home contamination by the removal process; since they are intact, no removal is required.

COMMENT: The Ocean County Health Department and Northeastern Analytical Corporation were concerned with the ambiguity of the Disposal of Waste rule, and suggested clarifying language.

RESPONSE: The Department agrees that this rule may be ambiguous and will utilize the language suggested by the Ocean County Health Department.

COMMENT: Some commenters expressed concern that the rules permit unlimited use of Methylene Chloride, which is a common chemical paint remover. This chemical is toxic and presents a fire hazard.

RESPONSE: The Department agrees that the use of this substance should be limited to touch up work only, as it is in some other states, for the reasons offered by the commenter. The rules have been revised accordingly.

COMMENT: Several commenters recommended that lead abatement contractors be trained and certified.

RESPONSE: The Department concurs with the comments and has recently participated in the development and implementation of the first lead based paint abatement course, in conjunction with the Environmental and Occupational Health Education and Training Center, UMDNJ, Robert Wood Johnson Medical School. A second course is scheduled for October. The Department does not fee that certification of contractors is warranted at this time. There are very few lead abatement contractors in the State and most abatements that are done are carried out by persons other than contractors, such as landlords, home owners, and in some cases, tenants.

COMMENT: The Northeastern Analytical Corporation recommended inclusion of paint sampling collection methods, as well as guidelines for XRF use in the field.

RESPONSE: The Department has available detailed procedures on paint sampling but does not feel the need to include these procedures in the rules. The procedures reflect requirements of the laboratory used for the analysis and could not be defined uniformly Statewide. Guidelines for collection of paint samples are routinely followed by local health departments when submitting samples to the State lab. Users of XRF units must be trained. A five hour course is offered for potential users twice per year.

COMMENT: The Northeastern Analytical Corporation noted that N.J.A.C. 8:51-4.1(b), referring to NJDOH certification, was unclear.

RESPONSE: The Department has determined that no certification is currently required for labs performing chemical determinations of the lead content in paint. The certification requirement for labs has been deleted.

COMMENT: The Ocean County Health Department recommended that safety standards for the removal of lead paint, N.J.A.C. 8:51-7.2(b), be amended to exclude mention of non-approved methods of removal.

RESPONSE: The Department feels that prohibited methods should be specifically identified to avoid confusion and assure compliance, and, therefore, has made no changes.

COMMENT: The Ocean County Health Department recommended the word "shall" in place of "should" in N.J.A.C. 8:51-7.4(a).

RESPONSE: The Department agrees and has made the change to require all workers and occupants to be notified of the health hazard, by the local health officer.

COMMENT: The Department of Human Services was concerned that an apparent discrepancy exists between the definition of Priority II as Moderate Risk and a designation in N.J.A.C. 8:51-8.2(b) of High Risk for lead poisoning.

RESPONSE: The Department of Health sees no discrepancy. N.J.A.C. 8:51-1.3 defines Priority II as a moderate risk municipality and N.J.A.C. 8:51-8.2 does not designate Priority II as high risk, but addresses children at risk living in these municipalities who need to be tested.

COMMENT: The Department of Human Services was concerned that the criteria for reclassification for Priority I to Priority II is too restrictive.

RESPONSE: The Department of Health intended that N.J.A.C. 8:51-8.1(d) be restrictive and has, since 1987, under Minimum Standards (N.J.A.C. 8:52), required 100 percent of the high risk children to be tested prior to being reclassed to a lower priority. The primary objective of the Department of Health is to prevent lead encephalopathy and other adverse consequences resulting from the ingestion of lead paint. Children classified as high risk have been determined to be more likely to suffer such consequences. Testing of all high risk children prior to a change in classification is essential to assure that, to the extent possible, children do not suffer from the adverse effects of lead ingestion.

COMMENT: Some commenters recommended inclusion of new sections on comprehensive worker protection for the construction industry, which is presently exempt from coverage by the OSHA law and standards.

RESPONSE: It was not the intent of the Department, when revising these rules, to promulgate complete worker protection rules for industries presently exempt. Originally, subchapter 7 was developed as a guideline for landlords, home owners, tenants or a contractor to follow. It is not clear that the development of such extensive occupational rules is authorized by current legislation.

COMMENT: The Northeastern Analytical Corporation recommended that the use of HEPA equipped vacuums be stipulated.

RESPONSE: The use of HEPA equipped vacuums was stipulated in the proposal at N.J.A.C. 8:51-7.6(a).

COMMENT: The Ocean County Health Department recommended that the rule on confidentiality of records, N.J.A.C. 8:51-6.4, be rewritten to include local boards or their representatives.

RESPONSE: The purpose of these rules is not to regulate the internal operation of local boards of health. They should promulgate their own policies and procedures regarding confidentiality of their patient records.

COMMENT: Two commenters recommended that specific time frames for compliance regarding repairs on premises containing lead paint be addressed.

RESPONSE: The time frame for repair is ten days, as stipulated by statute N.J.S.A. 24:14A-8. No rule is needed, as the time frame is adequately specified in the law.

COMMENT: The Department of Human Services recommended making these rules mandatory, provided funding be made available at county or local level.

RESPONSE: The legislative history of N.J.S.A. 26:2-130 et seq. is quite clear. Proposed legislation initially mandated all children ages one to five be tested annually. That language was specifically vetoed twice by the Governor. The enacted statute, at N.J.S.A. 26:2-133 states that all children at high risk shall be tested, within the limits of funds appropriated. Based upon a review of the proposed rules by the Attorney General's Office, the text at N.J.A.C. 8:51-2.1, 8.1 and 8.2 requires that all children shall be tested, within the limits of funding.

COMMENT: Legal Services of New Jersey recommended that property owners be required to submit abatement plans to the local board prior to abatement.

RESPONSE: Though there might be value in having such prior plans in complicated abatement situations, most would not require it and would just add to the delay in accomplishing abatement. Furthermore, there is no statutory authority for developing such regulation under N.J.S.A. 26:2-130.

COMMENT: Legal Services of New Jersey also recommended the establishment of rules governing procedures for local boards to follow in accomplishing abatement.

RESPONSE: The purpose of these rules is not to regulate the internal operation of local boards of health. They should promulgate their own policies and procedures in these matters.

COMMENT: Legal Services of New Jersey recommended the rules clarify that removal is required in cases of blood lead levels of 25 ug.

RESPONSE: It was not the intent of the Department to mandate removal in all cases at the 25 ug level. Under N.J.A.C. 8:51-3.1, which deals with elevated blood lead levels (presently defined at 25 ug), removal is only required when lead paint is found to be loose, cracking or peeling. If intact, no removal is required. Removal is required of specific intact surfaces when a child has a confirmed level of 40 ug under N.J.A.C. 8:51-3.2.

COMMENT: Legal Services of New Jersey recommended that N.J.A.C. 8:51-3.1 and 3.2 be combined and include time frame limits.

RESPONSE: These two sections involve entirely different environmental intervention requirements at different blood lead levels and need to be addressed separately. The time frames are contained in the Centers for Disease Control Statement, which is incorporated by reference. Copies of this statement are available free from the Department.

COMMENT: Legal Services of New Jersey recommended amending definitions and define "tight lead paint", "chewable surface", "children at high risk for lead poisoning" and "lead paint" (in accordance with Federal law).

RESPONSE: The terms "tight lead paint" and "chewable surfaces" have been in the rules since 1971. Local boards have not had any problem in determining what constitutes either; therefore, the Department sees no

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need to include specifics at this time. The terms poisoning and toxicity are used interchangeably by The Centers for Disease Control. The terms "children at high risk of lead poisoning" and "lead paint" are defined in N.J.A.C. 8:51-1.3. The Federal law defines and regulates paint in the can for interstate shipment and does not regulate paint on the wall.

COMMENT: Legal Services of New Jersey recommended that owners be required to relocate occupants while abatement is being done.

RESPONSE: Relocation of persons for any reason is an extremely difficult and sometimes impossible undertaking. Therefore, the Department does not feel this requirement should be placed on an owner, nor does it feel authorized to do so by current statute.

COMMENT: Legal Services of New Jersey recommended that personal belongings of occupants be protected during abatement.

RESPONSE: The Department feels that the requirements stipulated under N.J.A.C. 8:51-7.4 are adequate at this time.

COMMENT: Legal Services of New Jersey recommended that the provision for a waiver of the restriction on sandblasting be removed.

RESPONSE: Since not all forms of sandblasting are hazardous, the Department has decided to leave the determination to grant or not to grant to the local board of health. The Department will provide guidelines to the local boards of health to assist them in determinations to grant waivers of the restriction on sand blasting.

COMMENT: Legal Services of New Jersey also recommended that the rules specify waterproof tape and six mil thick plastic for sealing off rooms to be abated.

RESPONSE: The Department concurs and has made the additions at N.J.A.C. 8:51-7.4(f).

COMMENT: Legal Services of New Jersey recommended that plastic curtains and their hazardous materials be removed at the end of each work day.

RESPONSE: Since the plastic curtains seal off the areas being abated from the rest of the dwelling, the Department feels they should remain in place until the area is completely abated. N.J.A.C. 8:51-7.6(c) requires removal of all hazardous materials at the end of each work day.

Several commenters asked for clarification of the requirements of the proposed rules. Individual responses have been sent to these individuals. Their comments and the Department's responses follow.

COMMENT: What are the guidelines for abatement procedures?

RESPONSE: The guidelines for abatement procedures can be found at N.J.A.C. 8:51-5 and 7. For the most part, local boards of health will order and monitor abatement, which will be carried out by the owner or the landlord of a cited dwelling unit. If the owner refuses to comply with the order, then the provisions of N.J.S.A. 24:14A-9 apply and the local board of health shall proceed to abate and bill the owner of the property.

COMMENT: Who is responsible to develop the screening schedule required by N.J.A.C. 8:51-2.1 for each community designated Priority I or Priority II?

RESPONSE: The party responsible to develop the screening schedules will be designated by the local board of health, and will follow the CDC recommendations.

COMMENT: Who will provide lodging during abatement for indigent families of patients who are not permitted back into their homes, due to their receiving treatment, or being at risk?

RESPONSE: Provision of alternate housing is not required by the rules; however, if lodging is needed, the local board should explore existing local resources, such as public assistance or friends or relatives of the affected family. Under the provisions of N.J.A.C. 8:51-7, abatement will be done one room at a time, with clean-up required at the end of each work day so that residents may return to their homes on a daily basis. Therefore, it is not anticipated that alternate lodging would be needed during abatement procedures.

COMMENT: Who will monitor the abatement procedures as far as proper worker attire, proper preparation of the rooms to be deleaded, proper clean-up with required equipment (industrial vacuum with HEPA filter), and disposal of waste products after removal of lead paint?

RESPONSE: The Department has sought a legal opinion regarding the responsibility for enforcement of these rules.

COMMENT: Please require in N.J.A.C. 8:51-7.4, rather than suggest, that all workers and occupants be notified of the health hazard of lead paint.

RESPONSE: The Department agrees that such a change would be beneficial to workers and occupants and has amended the rules on adoption to change the word "should" to "shall."

COMMENT: The Appendices should not be adopted as part of the rules, since it is anticipated that, when new census data is available, these Appendices will be changed. In addition, a community petitioning the Department of Health to be moved to a lower priority would find it impossible to be moved to that lower priority unless a proposal is first published in the New Jersey Register. Publication in the New Jersey Register is a complicated and difficult process and is not routinely done. The Appendices should be guidelines, rather than part of the rules.

RESPONSE: The Department has determined that screening should be done by communities according to certain priorities. The Department, in requiring municipalities to perform screening according to these priorities, must itself conform to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B et seq., and the Rulemaking rules, N.J.A.C. 1:30, both of which require rulemaking in such situations. The priorities are an integral part of the requirements and cannot be omitted from the rulemaking process. Amendments to the New Jersey Administrative Code need not be a cumbersome process. Furthermore, the opportunity for public comment permitted during the rulemaking process is beneficial to residents of affected communities.

COMMENT: The Public Health Council should adopt a preventive approach to lead poisoning. These rules are reactive, rather than preventive, since children are used as the indicators of the problem. It is recommended that the Public Health Council, in cooperation with the Department of Community Affairs, develop a program which would require that all dwellings in Priority I designations be checked for lead contamination prior to the issuance of a certificate of occupancy.

RESPONSE: Everyone in public health who deals with the problem of lead poisoning would like to see a preventive approach to this important problem. Your suggestion regarding the issuance of a certificate of occupancy will be considered further by the Department, as such a change could not be made at this time without violating the provisions of N.J.A.C. 1:30-4.3. Local departments of health can immediately implement several approaches which are preventive, such as: providing inspection of dwellings, when requested by pregnant women and/or parents of young children, with or without pica, and providing educational materials/training sessions to the public regarding the availability of screening and of safe removal methods.

COMMENT: N.J.A.C. 8:51-4.2, Paint samples. How much paint (by volume or weight) should be collected? How many samples (paint samples or X-RF) should be collected? If using an X-RF, should replicate readings be made to account for the variability of testing method? When would one use back-up samplings (paint scrapings) after X-RF analysis?

RESPONSE: The guidelines for the collection of paint samples are available from the Department. The Department makes specific recommendations for the use of X-RF analyzers in a training course which is offered by the Department twice a year. Please contact the Department for further information about this course.

COMMENT: Guidelines for field work should be defined, to include X-RF analysis, collection of paint scrapings, and surfaces to be tested. (Specific examples were provided.)

RESPONSE: The guidelines are available and are included in the training course. The Department may be contacted for training in this area.

COMMENT: N.J.A.C. 8:51-5.5, regarding coverings, mentions materials and methods approved by the New Jersey Department of Health, Accident Prevention and Poison Control Program. What types of materials are approved? Will an approved materials list be generated, or will approvals be addressed on a case-by-case basis?

RESPONSE: Approvals of materials which are not of the categories specified in the rule would be made on an individual basis.

COMMENT: What are the guidelines to be followed by the local health departments to determine the satisfactory elimination of the hazard? Are the post-abatement residual dust standards planned? Where should dust samples (wipe) be collected and how many should be collected to provide statisically confident results? The City of Baltimore and the Federal Environmental Protection Agency have data on post-abatement residual dust standards. Such data shows that post-remediation dust standards are advisable.

RESPONSE: The Department agrees that the abatement method and clean-up are very important; however, in the absence of Federal standards for dust and soil, it is not the intention of the Department to establish independent standards. The City of Baltimore has established standards as part of their $4,000,000 demonstration project. In New Jersey, local boards of health have neither the access to laboratories that perform such analysis routinely, nor the funds to pay for such analysis.

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COMMENT: Is the current EP toxicity test used to establish the parameter of lead concentration of 5.0 mg/liter or higher used in N.J.A.C. 8:51-7.7? What material should be tested? Material could be broken during the abatement process in such a way as to minimize the lead content submitted for the test.

RESPONSE: The EP toxicity test is used to evaluate the level of lead in the blood. The material to be tested, as required by N.J.A.C. 8:51-7.7 is paint and the testing method should be appropriate to the material. N.J.A.C. 8:51-7.7 has been revised to specify that combined waste containing lead concentrations averaging 5.0 milligrams/liter shall be diposed of as required by N.J.A.C. 7:26. This amendment should assure that the lead measurement would be more accurate.

COMMENT: What type of training and medical surveillance would be required of lead-abatement workers, supervisors, project managers and consultants?

RESPONSE: The Department has no requirements at this time for training or medical surveillance; however, such requirements could be the subject of future rulemaking. The Department can be contacted for consultation in this area.

COMMENT: The requirement at N.J.A.C. 8:51-4.1(b) is unclear. Laboratory certification for lead analysis in water and wastewater is required by N.J.A.C. 7:18.

RESPONSE: N.J.A.C. 8:51-4.1 refers to the evaluation of lead in paint, which is a separate issue from the evaluation of lead in water required by N.J.A.C. 7:18. The Department has amended N.J.A.C. 8:51-4.1(b) on adoption to clarify that laboratory analysis shall be used, using quantitative measurements of samples of surface coverings. The Department does not specifically certify laboratories for analysis of paint samples, although it does certify clinical laboratories for operation, at N.J.A.C. 8:45.

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

CHAPTER 51
CHILDHOOD LEAD POISONING
STATE SANITARY CODE CHAPTER XIII

SUBCHAPTER 1. GENERAL PROVISIONS

8:51-1.1 Scope

The rules in this chapter shall apply to children age one through five years, who are considered at high risk of lead poisoning, screening agencies, laboratories and individuals responsible for property in which high risk children reside. ***Although not yet required by law, the Department of Health recommends that children between nine months and six years of age be screened in accordance with CDC recommendations.***

8:51-1.2 Purpose

The purpose of this chapter is to protect at risk children from the toxic effect of lead exposure.

8:51-1.3 Definitions

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

"Child" means a person one through five years of age.

"Commissioner" means the Commissioner of the New Jersey Department of Health.

"Department" means the New Jersey Department of Health.

"Diagnosis" means the categorization of a child who has an elevated blood lead level or has another medically accepted indicator of lead toxicity.

"Elevated blood lead level" means an abnormal level of lead in the bloodstream at the level as defined in the latest revision of the Centers *[of]* ***for*** Disease Control Statement—"Preventing Lead Poisoning in Young Children", available from the Centers for Disease Control, Atlanta, Georgia 30333.

"Elevated erythrocyte protoporphyrin (EP)" means an abnormal level of hemoglobin precursors at a level defined in the latest revision of the Centers *[of]* ***for*** Disease Control Statement, "Preventing Lead Poisoning in Young Children".

"EPA" means the U.S. Environmental Protection Agency.

"HEPA" means a high efficient filter which is able to filter out fine particles.

"High risk of lead intoxication" means in a child a blood lead level equal to or greater than 40 micrograms per 100 milliliters whole blood and an erythrocyte protoporphyrin determination equal to or greater than 110 micrograms per 100 milliliters whole blood, or a confirmed concentration of lead in whole blood equal to or greater than 40 micrograms per 100 milliliters if no erythrocyte protoporphyrin determination is available.

"High risk neighborhood" means those areas whose high degree of risk has been identified by the local board of health, using methodology pursuant to N.J.A.C. 8:51-8.

"Lead toxicity" means a significantly elevated blood lead level, as defined in the latest revision of the Centers for Disease Control Statement, "Preventing Lead Poisoning in Young Children".

"NHANES II" means the second National Health and Nutrition Examination Survey, CDC National Center for Health Statistics.

"NIOSH" means the National Institute for Occupational Safety and Health.

"OSHA" means the Occupational Safety and Health Administration.

"Priority I" means any municipality designated pursuant to N.J.A.C. 8:51-8 at the highest risk for lead poisoning among its children.

"Priority II" means any municipality designated pursuant to N.J.A.C. 8:51-8 at a moderate risk for lead poisoning among its children.

"Priority III" means any municipality designated pursuant to N.J.A.C. 8:51-8.3 at a low risk for lead poisoning among its children.

"Screening" means applying detection technique to large numbers of presumably asymptomatic children to determine if they have been exposed to lead and, if so, what the risks of continued exposure are.

"Suspect room or area" means those locations which are accessible to a child which may be a source of lead exposure.

"Tight lead paint" means leaded paint which is firmly affixed to the surface upon which it is applied.

"WIC" means the Special Supplemental Food Program for Women, Infants and Children.

SUBCHAPTER 2. SCREENING

8:51-2.1 Target population and screening schedule

(a) Children *[one through five years of age]* who live in communities designated "Priority I" as determined by the Department of Health and set out in Appendix I of this chapter, incorporated herein by reference, are at high risk for lead poisoning.

(b) Children *[one through five years of age]* who live in communities designated "Priority II" as determined by the Department of Health and set out in Appendix II of this chapter, incorporated herein by reference, and who are in the following categories, are at high risk for lead poisoning:

1. The child is a Medicaid recipient;
2. The child's family income qualifies them for the WIC Program; and
3. The child is living in an identified high risk neighborhood.

(c) Each community designated Priority I or Priority II in accordance with this chapter, shall develop a screening schedule. It is recommended that any program screening high risk or other children for lead poisoning comply with the latest revision of "Preventing Lead Poisoning in Young Children", (Centers for Disease Control, Atlanta, Georgia, 30333) which is incorporated herein by reference, in establishing screening schedules and intervals.

8:51-2.2 Screening methods

Venous or capillary blood shall be used for screening tests. Sampling methods used in the field shall be compatible with laboratory capabilities. It is recommended that agencies comply with the recommendations found in the latest revision of "Preventing Lead Poisoning in Young Children" (Centers for Disease Control, Atlanta, Georgia 30333), which is incorporated herein by reference, in selecting a screening method.

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8:51-2.3 Medical intervention

Local boards of health shall insure that any institution, agency or program providing lead screening services shall arrange for a diagnostic evaluation of any child who is found at screening to have lead toxicity. If the screening test was done on capillary blood, a venous blood lead level should be determined. Medical intervention, including follow up testing, shall be tailored individually for each child. Other children living in the same dwelling shall be referred for testing, diagnosis and treatment, if necessary.

8:51-2.4 Notification and counseling

The institution, agency or program which conducts a screening program shall notify, in writing, parents or guardians of children who have been tested of the results of testing, accompanied by an explanation in plain language of the significance of lead toxicity, the importance of treating the toxicity at an early age and the public services available for treatment. The family of the child shall also be notified that a hazard may exist in the dwelling and counseled on preventive measures.

SUBCHAPTER 3. ENVIRONMENTAL INTERVENTION

8:51-3.1 Investigation of elevated lead or lead toxicity cases

Whenever a child is determined to have an elevated blood lead level or lead toxicity, the local board of health shall conduct an epidemiologic investigation to identify lead sources in the child's environment. If the results of the epidemiologic investigation reveal any loose paint, including cracked, chipped, blistered, peeling or flaking paint, a determination of lead content of the painted surface in the suspect areas shall be made. If the paint is found to be leaded, the procedures found in N.J.A.C. 8:51-5, Standards for Repair on Premises Containing Lead Paint, shall be implemented. Other children in the suspect dwelling should be referred for screening and follow up in accordance with N.J.A.C. 8:51-2.

8:51-3.2 Investigation of high risk of lead intoxication cases

When a child is determined to have a high risk of lead intoxication as defined in N.J.A.C. 8:51-1.3, the local board of health shall conduct an epidemiologic investigation. Dwelling units shall be inspected and tested to determine whether the presence of lead paint is in excess of 1.0 percent by dry weight or one milligram or higher per square centimeter. If levels of lead paint in excess of one milligram or higher per square centimeter are found, N.J.A.C. 8:51-5, Standards for Repair on Premises Containing Lead Paint, shall be implemented. Other children in the suspect dwelling should be referred for screening and follow up in accordance with N.J.A.C. 8:51-2.

SUBCHAPTER 4. DETERMINATION OF LEAD IN DWELLING UNITS

8:51-4.1 Methods of determination of lead in surface coverings

(a) The methods of determination of lead in surface coverings shall be as specified in (b) or (c) below.

(b) The chemical determination of the lead content in paint *[made in laboratories certified by the New Jersey State Department of Health pursuant to N.J.A.C. 8:45-1]* ***shall be made by laboratory analysis, using quantitative measurements of samples of surface coverings***. Lead content in paint in excess of 1.0 percent by dry weight shall be prohibited.

(c) The physical determination of the lead content in paint may be made by non-destructive measurements using X-ray fluorescence analyzers (X-R-F) or other instruments approved by the New Jersey State Department of Health, Accident Prevention and Poison Control Program. A lead content in paint of one milligram or higher per square centimeter of paint surface, when tested by this method, shall be prohibited.

8:51-4.2 Sampling and/or X-ray fluorescence analyzer

(a) Paint samples shall be collected and/or X-ray fluorescence analyzer readings shall be obtained from each suspect room and shall include both interior and exterior surfaces of a windowsill, door and door frame. In addition, paint samples and/or analyzer readings should be obtained from such other highly suspect areas as crib railings, play pen railings, toys, stairs or banisters and surfaces with loose paint. The preferred sampling locations shall include surfaces which have been or are accessible to being chewed or areas which are peeling or flaking.

(b) All paint samples should generally be limited to that part of the surface which may eventually be required to be removed.

SUBCHAPTER 5. STANDARDS FOR REPAIR ON PREMISES CONTAINING LEAD PAINT

8:51-5.1 Exterior surfaces

Lead paint on any exterior surface that is readily accessible to children and is determined by the local board of health to be causing a hazard to the occupants or anyone coming in contact with such surfaces shall be removed to the base surface or covered with a durable material approved by the Department pursuant to N.J.A.C. 8:51-5.5.

8:51-5.2 Interior surfaces

Loose lead paint on any interior surface, including cracked, chipped, blistered, peeling or flaking paint, shall be removed to the base surface wherever found.

8:51-5.3 Removal of tight lead paint

(a) Tight lead paint shall be removed to the base surface in the following areas, as indicated:

1. Windowsills: complete removal;
2. Windows and frames below the four-foot level: complete removal on exposed surfaces;
3. Doors below four-foot level: removal four inches back on hinge and latch edges and other sharp edges;
4. Door frames below four-foot level: complete removal;
5. Handrails: complete removal;
6. Spindles ("balusters"): removal on surfaces adjacent to walking areas;
7. Stair treads: removal four inches back from lip on top of tread and from lip to riser on bottom side; and
8. Any other chewable surface below the four foot level: removal four inches back from edge.

8:51-5.4 Removal not required

(a) Removal may be performed, but is not required, on the following surfaces:

1. Walls in good condition without broken areas;
2. Baseboards;
3. Skirtboards on staircases;
4. Step risers; or
5. Any surface below the four-foot level which does not present a chewable surface.

8:51-5.5 Covering

If paint is not removed as required in this subchapter, surfaces shall be covered with plasterboard, wallboard, wood paneling or similar durable material approved by the New Jersey State Department of Health, Accident Prevention and Poison Control Program, to a height of at least four feet above the floor. ***Any construction permit required pursuant to the Uniform Construction Code Act (N.J.S.A. 52:23-119 et seq.) and the Uniform Construction Code, N.J.A.C. 5:23 shall be obtained from the agency having jurisdiction.***

8:51-5.6 Other repairs

Any condition, such as moisture or water damage, which causes peeling of paint, loosening of plaster or other structural deterioration shall be repaired prior to any repairs required by this subchapter.

8:51-5.7 Access to areas being corrected

(a) No pregnant women or children under 12 years of age shall be allowed in the dwelling unit while paint removal is in progress.

(b) Areas being corrected shall be completely cleaned, vacuumed and damp mopped at the end of each work day so that children and/or pregnant women may return to the dwelling unit in safety.

8:51-5.8 Reinspection

(a) Upon completion of repair and prior to repainting, an inspection shall be made by the local board of health to determine if the hazard has been satisfactorily eliminated.

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(b) All repairs may be finished with a suitable non-lead paint or other hard non-lead surface.

8:51-5.9 Safety standard for owner

When an owner has been notified to comply with this subchapter, the local board of health shall provide the owner of such dwelling units with a copy of N.J.A.C. 8:51-7 to be used when removing the lead paint.

SUBCHAPTER 6. REPORTING

8:51-6.1 Laboratories

(a) All laboratories shall immediately and completely report, on forms provided by the State Department of Health, results of laboratory examinations which indicate blood lead levels in children equal to or greater than an elevated level as defined in the latest revision of the Centers for Disease Control Statement "Preventing Lead Poisoning in Young Children" to:

1. The State Department of Health;
2. The local board of health; and
3. The physician submitting the specimen.

8:51-6.2 Monthly status report

Local boards of health shall report monthly to the Department all violations of this chapter and the status of enforcement procedures against owners of properties designated as a public nuisance pursuant to N.J.S.A. 24:14A-8.

8:51-6.3 Monthly statistical report

Local boards of health not using the laboratory services provided by the State Department of Health for blood lead, erythrocyte protoporphyrin or paint analysis shall provide the State Department of Health with a monthly statistical tabulation of analytic results.

8:51-6.4 Confidentiality of records

All records collected by the State Department of Health which identify individual patients, address information and laboratory tests results shall be confidential, and shall not be released without parental consent.

SUBCHAPTER 7. REMOVAL OF LEAD PAINT

8:51-7.1 Methods permitted in the reduction of lead paint hazards

(a) The following methods shall be permitted in the reduction of lead paint hazards:

1. Replacement;
2. Covering (least costly) including, but not limited to:
i. Plastic or metal "L"-shaped moldings;
ii. Plasterboard;
iii. Wallboard;
iv. Wood paneling; or
v. Similar durable material;
3. Scraping;
4. Use of heat (infrared lamps or electric heat guns); and
5. Chemical paint removers ***except chemical paint removers containing methylene chloride, which may be used only for localized touch-up work.***.

(b) *[Local fire codes]* ***The Uniform Construction Code (N.J.S.A. 52:23-119 et seq.) and the State Uniform Fire Safety Act (N.J.S.A. 52:27D-192 et seq.)*** should be reviewed for restrictions on the use of materials.

8:51-7.2 Methods prohibited in the reduction of lead paint hazards

(a) The following methods are prohibited in the reduction of lead paint hazards:

1. Sanding;
2. Gas fired torch; and
3. Abrasive or sand blasting.

(b) A waiver for the use of abrasive or sand blasting may be obtained on a determination of the local board of health for individual work sites.

8:51-7.3 Safety standards for the removal of lead paint

(a) The methods used in the removal of lead paint shall not present a hazard to health from fumes, dust, vapors or liquids by inhalation or absorption through the skin or the mucous membranes, either from removal materials or from the lead paint being removed.

(b) Scraping presents a danger of lead dust and/or particles in the eyes. To protect the eyes from dust, chips and flakes of paint, safety goggles should be worn. Scraping also presents a danger of inhalation or swallowing of lead dust and/or particles. To protect against such inhalation or swallowing, a NIOSH approved respirator for toxic dusts, equipped with a HEPA filter cartridge (color coded purple) should be used.

(c) The use of chemical paint removers presents a health hazard from the inhalation of vapors. To protect against such inhalation when working with solvents which evaporate readily, a NIOSH approved respirator for organic solvents in combination with a HEPA filter cartridge should be used. Adequate ventilation should be provided by open windows or fans when using chemical paint removers. The use of chemical paint removers also presents a health hazard from the absorption of solvents and paint removers through the skin. To protect against such absorption impervious gloves should be worn.

(d) The use of heat presents a health hazard from the inhalation of toxic lead fumes in concentrated amounts or in small concentrations over a period of time. To protect against such inhalation a NIOSH approved respirator for toxic dusts equipped with a HEPA filter cartridge (color coded purple) should be used.

(e) WARNING: Respirators are a poor substitution for controlling or preventing exposures with abatement methods which have lower lead exposure. Using an inappropriate respirator or one not properly fitted can be extremely hazardous. The paper dust mask available at hardware stores may not be adequate. Not only is protection inadequate, but the user may have a false sense of security.

8:51-7.4 Preparation for the removal of lead paint

(a) Workers and occupants of buildings where removal of lead paint is being undertaken *[should]* ***shall*** be notified of the health hazards, using the following, or similar, statement:

"Lead is a heavy metal which is toxic to humans. Lead poisoning affects every cell of the body, but especially the blood, kidneys and nervous system. The effects on the nervous system are serious, with the severity depending on the amount and the length of time of exposure. Adults and children are at high-risk of lead poisoning when lead dust or fumes are present and are most often poisoned by inhaling the lead dust or fumes.

The effects on adults include: persistent headaches, nausea, vomiting, visual disturbances, dizziness, poor appetite, loss of weight, cramps or constipation. If you have any or all of these symptoms, consult your physician at once.

Children are more susceptible to lead poisoning than adults. Children do not usually have easily identifiable symptoms, even when they have high blood lead levels. If symptoms do develop, brain damage has already occurred. Symptoms include: pallor or paleness, fatigue or tiredness, irritability, malaise, behavior changes and regression to a younger ability level. More serious symptoms include: weakness, clumsiness, abdominal pain, constipation, persistent vomiting and changes in consciousness. If your child has been exposed to lead, take the child to your physician or local health department for a blood sample which will be tested to show whether or not there is reason to be concerned."

(b) The worker shall select a deleading method that will produce the least amount of lead dust and/or fumes.

(c) The worker shall delead interior surfaces one room at a time, to minimize dispersion of lead.

(d) When deleading exterior surfaces, drop cloths shall be used to catch all wastes. Shrubs and trees shall be covered and dust and chips shall be removed from the ground promptly.

(e) Plastic sheets or impervious drop cloths shall be used to cover all floors, carpets, furniture, heat and/or air conditioning ducts, vents, grates and equipment in the work area.

(f) The work area shall be sealed off from the remainder of the dwelling by taping doors and/or using plastic sheets until both work and clean up activities are complete. ***All plastic used shall be at least six mil thick and all tape shall be waterproof.***

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8:51-7.5 General safety precautions for the removal of lead paint

(a) In accordance with N.J.A.C. 8:51-5.7, children and pregnant women shall not be permitted to remain in the dwelling unit while deleading is in process.

(b) All electrical connections shall be checked for proper grounding.

(c) All workers shall wear coveralls, gloves, shoe covers or separate work shoes, hat and goggles. All street clothes shall be kept in a clean area, separate from work clothes. All work clothes shall be removed before eating and after cleaning up the work area.

(d) Eating, drinking, smoking and chewing tobacco or gum shall be prohibited in areas where deleading is taking place. Storage of food and drink shall be prohibited in areas where deleading is taking place. Prior to eating, all persons shall wash their hands, arms and face with soap and warm water and shall rinse their mouths thoroughly.

(e) All persons entering the work area shall wear a properly functioning NIOSH approved respirator which is appropriate for the lead removal method to be used. The respirator face piece shall be washed at the end of each day and stored in a clean area.

(f) Any construction permit required pursuant to the Uniform Construction Code Act (N.J.S.A. 52:23-119 et seq.) and the Uniform Construction Code, N.J.A.C. 5:23 shall be obtained from the agency having jurisdiction.

8:51-7.6 Clean up after the removal of lead paint

(a) The clean up process is a critical element of the deleading process. Workers shall begin the daily clean up process by vacuuming all paint chips and dust, using an industrial vacuum cleaner equipped with HEPA filters which meet or exceed OSHA and EPA safety standards for the control of lead and other toxic dusts.

(b) Workers shall damp mop or sponge all surfaces within the work area daily, after the removal of lead paint.

(c) All waste products shall be placed in plastic bags and sealed at the end of each work day.

(d) After the completion of the deleading process, non-pregnant adult occupants shall wash down all surfaces within the deleaded area daily until no further dust is visible.

8:51-7.7 Disposal of waste products after the removal of lead paint

All ***combined*** waste containing lead concentrations *[of]* ***averaging*** 5.0 milligrams/liter or higher shall be disposed of in an Environmental Protection Agency hazardous waste landfill or lead smelter pursuant to N.J.A.C. 7:26-8.12.

SUBCHAPTER 8. METHODOLOGY FOR DETERMINATION OF COMMUNITY PRIORITIZATION FOR LEAD POISONING

8:51-8.1 Screening criteria; Priority I

(a) Any municipality which has children at risk, as classified by NHANES II data, and whose sum of the standard scores is greater than one Standard Deviation (5.3841) above the State mean (0.000), shall be considered Priority I (see Appendix I, incorporated herein by reference).

(b) Every child *[one through five years of age]* who lives in the communities listed in Appendix I *[should]* ***shall*** be tested for lead poisoning at least once per year ***within the limits of funds appropriated***. Screening should be conducted in accordance with census tract ranking. Communities shall prioritize their census tracts from the highest to the lowest, based on the potential hazard score derived from the factors enumerated in Appendix IV, which is incorporated herein by reference.

(c) Case finding efforts by annual blood test should be conducted in settings which include, but are not limited to, the following:

1. Child health conferences;
2. WIC clinics;
3. Day care centers;
4. Nursery schools; and
5. Door to door in high risk neighborhoods.

(d) A community shall be reclassified as Priority II if all children *[one through five years of age]* have been tested during the year and no child has an elevated blood lead level as defined in the latest revision of the Centers for Disease Control Statement "Preventing Lead Poisoning in Young Children", available from the Centers for Disease Control, Atlanta, Georgia 30333 ***and the New Jersey State Department of Health, Accident Prevention and Poison Control Program, 363 West State Street, Trenton, New Jersey 08625-0364***.

8:51-8.2 Screening criteria; Priority II

(a) Any municipality which has children at risk, as classified by NHANES II data and census data, and whose sum of the standard scores is less than one Standard Deviation above the State mean shall be considered Priority II (see Appendix II, incorporated herein by reference).

(b) Every child *[one through five years of age]* who lives in the communities listed in Appendix II *[should]* ***shall*** be tested for lead poisoning at least once per year ***within the limits of the funds appropriated***, if any of the following conditions are met:

1. The child is a Medicaid recipient;
2. The child's family income qualifies them for the WIC Program; and
3. The child is living in an identified high risk neighborhood.

(c) Screening should be conducted in accordance with census tract ranking. Communities shall prioritize their census tracts from the highest to the lowest based on the potential hazard derived from the factors enumerated in Appendix IV, which is incorporated herein by reference.

(d) Case finding efforts by annual blood test should be conducted in settings which include, but are not limited to, the following:

1. Child health conference;
2. WIC clinics;
3. Day care centers;
4. Nursery schools; and
5. Door to door in high risk neighborhoods.

8:51-8.3 Screening criteria; priority III

(a) Any municipality which has no children at risk, as classified by NHANES II data and census data, or which has no children under the age of five per the most recent census data, shall be considered Priority III (see Appendix III, incorporated herein by reference).

(b) Screening upon request should be made available through the local health department, although it is not required.

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APPENDIX I

Childhood Lead Poisoning Prevention

Priority I Municipalities

County	Municipality	Total # Children at High Risk	Score	Rank
Atlantic		3483	1.5109	8
	Atlantic City	2166	15.35	16
	Pleasantville	959	13.934	21
	Egg Harbor City	358	6.175	55
Bergen		3321	-5.0894	17
	Englewood	1357	8.642	38
	Hackensack	1964	6.205	53
Burlington		8118	-2.5889	12
	Wrightstown Boro	585	21.603	5
	Pemberton Boro	89	11.956	28
	New Hanover Twp.	677	10.591	32
	Mt. Holly Twp.	809	8.396	39
	North Hanover Twp.	1200	7.65	40
	Burlington City	621	7.115	45
	Pemberton Twp.	2841	6.686	48
	Burlington Twp.	793	6.653	49
	Bordentown City	278	6.437	51
	Beverly	225	5.613	66
Camden		8868	3.4126	5
	Camden City	7038	26.332	2
	Lawnside Boro	159	15.335	17
	Chesilhurst Boro	128	12.9	24
	Hi-Nella Boro	117	11.694	30
	Lindenwold	1426	5.889	61
Cape May		493	-4.0909	15
	Woodbine Boro	200	20.229	7
	Wildwood City	293	8.84	37
Cumberland		2665	4.8296	4
	Bridgeton City	1682	15.319	18
	Fairfield Twp.	409	11.595	31
	Commercial	398	7.384	42
	Deerfield	176	7.258	43
Essex		40594	16.7716	1
	Newark	28592	29.348	1
	East Orange	5770	25.688	3
	Orange	2192	19.961	8
	Irvington	4040	13.4	23
Gloucester		3816	-1.1002	10
	Paulsboro Boro	545	12.884	25
	Clayton	620	5.950	58
	Glassboro	859	5.897	60
	Swedesboro	778	5.713	64
	Woodbury	696	5.54	67
	National Park	318	5.522	68
Hudson		27647	11.9130	2
	Jersey City	17314	17.964	11
	Hoboken	3215	16.967	13
	Union City	3993	13.59	22
	East Newark Boro	125	9.655	34
	West New York Town	2250	9.432	35
	Weehawken Twp.	750	6.4487	50
Hunterdon			-6.6341	21
Mercer		7056	3.2454	6
	Trenton City	7056	19.45	9

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Middlesex		5611	-3.1897	13
	New Brunswick	2366	14.951	20
	Perth Amboy	2883	10.446	33
	Jamesburg	362	5.676	65
Monmouth		7659	-2.1328	11
	Asbury Park	1308	23.631	4
	Long Branch	2128	12.137	27
	Shrewsbury Twp.	83	9.375	36
	Bradley Beach	326	7.599	41
	Red Bank	587	6.926	46
	Keansburg	858	6.746	47
	Neptune Twp.	1639	5.987	57
	Freehold Boro	730	5.94	59
Morris		856	-6.5684	20
	Victory Gardens Boro	93	16.971	12
	Morristown	763	6.194	54
Ocean		3835	-6.3586	18
	Seaside Heights Boro	138	12.22	26
	Lakewood Twp.	3384	7.152	44
	Lakehurst Boro	313	5.761	63
Passaic		16419	7.5152	3
	Paterson	12058	20.934	6
	Passaic	4361	19.406	10
Salem		1057	2.3090	7
	Salem City	564	16.908	14
	Penns Grove	493	16.775	15
Somerset			-6.4549	19
Sussex		199	-4.6907	16
	Sussex Boro	199	6.3263	52
Union		13367	1.2475	9
	Plainfield	3374	15.293	19
	Elizabeth	7386	11.926	29
	Roselle	1213	6.048	56
	Hillside	1297	5.785	62
	Winfield	97	5.458	69
Warren			-3.8561	14

Total number of children under 5 years of age at high risk in Priority I Municipalities: 155,064

APPENDIX II

Priority II

Criteria: Any municipality which has children at risk per NHANES II data and census data whose sum of standardized score fell below ISD from State mean.

Atlantic County
Absecon City
Brigantine City
Buena Boro
Buena Vista Twp.
Egg Harbor Twp.
Folsom Boro
Galloway Twp.
Hamilton Twp.
Hammonton Town
Linwood City
Margate City
Mullica Twp.
Northfield City
Somers Point City
Ventnor City
Weymouth Twp.

Bergen County
Allendale Boro
Alpine Boro
Bergenfield Boro
Bogota Boro
Carlstadt Boro
Cliffside Park Boro
Closter Boro
Cresskill Boro
Demarest Boro
Dumont Boro
Elmwood Pk. Boro
E. Rutherford Boro
Edgewater Boro
Emerson Boro
Englewood Cliffs
Fairlawn Boro
Fairview Boro
Fort Lee Boro
Franklin Lakes Boro

Garfield City
Glen Rock Boro
Harrington Park Boro
Hasbrouck Heights Boro
Haworth Boro
Hillsdale Boro
Ho-Ho-Kus Boro
Leonia Boro
Little Ferry Boro
Lodi Boro
Lyndhurst Twp.
Mahwah Twp.
Maywood Boro
Midland Park Boro
Montvale Boro
Moonachie Boro
New Milford Boro
No. Arlington Boro
Northvale Boro
Norwood Boro

Oakland Boro
Old Tappan Boro
Oradell Boro
Palisades Pk. Boro
Paramus Boro
Park Ridge Boro
Ramsey Boro
Ridgefield Boro
Ridgefield Pk. Twp.
Ridgewood Village
River Edge Boro
River Vale Twp.
Rochelle Park Twp.
Rutherford Boro
Saddle Brook Twp.
Saddle River Boro
So. Hackensack Twp.
Teaneck Twp.
Tenafly Boro
Upper Saddle River Boro

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Waldwick Boro
Wallington Boro
Washington Twp.
Westwood Boro
Woodcliff Lake Boro
Wood Ridge Boro
Wyckoff Twp.

Burlington County

Bass River Twp.
Bordentown Twp.
Chesterfield Twp.
Cinnaminson Twp.
Delanco Twp.
Delran Twp.
Easthampton Twp.
Edgewater Pk. Twp.
Evesham Twp.
Florence Twp.
Hainesport Twp.
Lumberton Twp.
Mansfield Twp.
Maple Shade Twp.
Medford Twp.
Medford Lakes Boro
Moorestown Twp.
Mt. Laurel Twp.
Palmyra Boro
Riverside Twp.
Riverton Boro
Shamong Twp.
Southampton Twp.
Springfield Twp.
Tabernacle Twp.
Westampton Twp.
Willingboro Twp.
Woodland Twp.

Camden County

Audubon Boro
Barrington Boro
Bellmawr Boro
Berlin Boro
Berlin Twp.
Brooklawn Boro
Cherry Hill Twp.
Clementon Boro
Collingswood Boro
Gibbsboro Boro
Gloucester City
Gloucester Twp.
Haddon Twp.
Haddonfield Boro
Haddon Heights Boro
Laurel Springs Boro
Magnolia Boro
Merchantville Boro
Mt. Ephraim Boro
Oaklyn Boro
Pennsauken Twp.
Pine Hill Boro
Runnemede Boro
Somerdale Boro
Stratford Boro
Voorhees Twp.
Waterford Twp.
Winslow Twp.
Wood Lynne Boro

Cape May County

Cape May City
Dennis Twp.
Lower Twp.
Middle Twp.
No. Wildwood City
Ocean City
Sea Isle City
Upper Twp.
W. Cape May Boro
Wildwood Crest Boro

Cumberland County

Downe Twp.
Greenwich Twp.
Hopewell Twp.
Lawrence Twp.
Maurice River Twp.
Millville City
Stow Creek Twp.
Upper Deerfield Twp.
Vineland City

Essex County

Belleville Town
Bloomfield Town
Caldwell Boro
Cedar Grove Twp.
Essex Fells Boro
Fairfield Boro
Glen Ridge Boro
Livingston Twp.
Maplewood Twp.
Millburn Twp.
Montclair Town
No. Caldwell Boro
Nutley Town
Roseland Boro
So. Orange Village
Verona Boro
W. Caldwell Boro
W. Orange Town

Gloucester County

Deptford Twp.
E. Greenwich Twp.
Elk Twp.
Franklin Twp.
Greenwich Twp.
Harrison Twp.
Logan Twp.
Mantua Twp.
Monroe Twp.
Newfield Boro
Pitman Boro
S. Harrison Twp.
Washington Twp.
Wenonah Boro
W. Deptford Twp.
Westville Boro
Woodbury Heights Boro
Woolwich Twp.

Hudson County

Bayonne City
Guttenberg Town
Harrison Town
Kearny Town
No. Bergen Twp.
Secaucus Town

Hunterdon County

Alexandria Twp.
Bethlehem Twp.
Bloomsbury Boro
Califon Boro
Clinton Town
Clinton Twp.
Delaware Twp.
E. Amwell Twp.
Flemington Boro
Franklin Twp.
Frenchtown Boro
Glen Gardner Boro
Hampton Boro
High Bridge Boro
Holland Twp.
Kingwood Twp.
Lambertville City
Lebanon Boro
Lebanon Twp.
Milford Boro
Raritan Twp.
Readington Twp.
Tewksbury Twp.
Union Twp.
W. Amwell Twp.

Mercer County

E. Windsor Twp.
Ewing Twp.
Hamilton Twp.
Hightstown Boro
Hopewell Boro
Hopewell Twp.
Lawrence Twp.
Pennington Boro
Princeton Boro
Princeton Twp.
Washington Twp.
W. Windsor Twp.

Middlesex County

Carteret Boro
Cranbury Twp.
Dunellen Boro
E. Brunswick Twp.
Edison Twp.
Helmetta Boro
Highland Park Boro
Metuchen Boro
Middlesex Boro
Milltown Boro
Monroe Twp.
No. Brunswick Twp.
Old Bridge Twp.
Piscataway Twp.
Plainsboro Twp.
Sayreville Boro
So. Amboy City
So. Brunswick Twp.
So. Plainfield Boro
So. River Boro
Spotswood Boro
Woodbridge Twp.

Monmouth County

Aberdeen Twp.
Allentown Boro
Atlantic Highlands Boro
Avon By The Sea Boro
Belmar Boro
Brielle Boro
Colts Neck Twp.
Deal Boro
Eatontown Boro
Englishtown Boro
Fair Haven Boro
Farmingdale Boro
Freehold Twp.
Hazlet Twp.
Highlands Boro
Holmdel Twp.
Howell Twp.
Keyport Boro
Little Silver Boro
Manalapan Twp.
Manasquan Boro.
Marlboro Twp.
Matawan Boro
Middletown Twp.
Millstone Twp.
Monmouth Beach Boro
Neptune City Boro
Ocean Twp.
Oceanport Boro
Rumson Boro
Sea Girt Boro
Shrewsbury Boro
So. Belmar Boro
Spring Lake Boro
Spring Lake Heights Boro
Tinton Falls Boro
Union Beach Boro
Upper Freehold Twp.
Wall Twp.
W. Long Branch Boro

Morris County

Boonton Town
Boonton Twp.
Butler Boro
Chatham Boro
Chatham Twp.
Chester Boro
Chester Twp.
Denville Twp.
Dover Town
E. Hanover Twp.
Florham Park Boro
Hanover Twp.
Harding Twp.
Jefferson Twp.
Kinnelon Boro
Lincoln Park Boro
Madison Boro
Mendham Boro
Mendham Twp.
Mine Hill Twp.
Montville Twp.
Morris Twp.
Morris Plains Boro
Mountain Lakes Boro
Mt. Arlington Boro
Mt. Olive Twp.
Netcong Boro
Parsippany Troy Hills Twp.
Passaic Twp.
Pequannock Twp.
Randolph Twp.
Riverdale Boro
Rockaway Boro
Rockaway Twp.
Roxbury Twp.
Washington Twp.
Wharton Boro

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Ocean County
Barnegat Twp.
Bay Head Boro
Beachwood Boro
Berkeley Twp.
Brick Twp.
Dover Twp.
Island Heights Boro
Jackson Twp.
Lacey Twp.
Lavallette Boro
Little Egg Harbor Twp.
Long Beach Twp.
Manchester Twp.
Ocean Twp.
Ocean Gate Boro
Pine Beach Boro
Plumsted Twp.
Point Pleasant Boro
Point Pleasant Beach Boro
Seaside Park Boro
So. Toms River Boro
Stafford Twp.
Tuckerton Boro

Passaic County
Bloomingdale Boro
Clifton City
Haledon Boro
Hawthorne Boro
Little Falls Twp.
No. Haledon Boro
Pompton Lakes Boro
Prospect Park Boro
Ringwood Boro
Totowa Boro
Wanaque Boro
Wayne Twp.
W. Milford Twp.
W. Paterson Boro

Salem County
Alloway Twp.
Carneys Point Twp.
Elmer Boro
Elsinboro Twp.
Lower Alloway Creek Twp.
Mannington Twp.
Oldsmans Twp.
Pennsville Twp.
Pilesgrove Twp.
Pittsgrove Twp.
Quinton Twp.
Upper Pittsgrove Twp.
Woodstown Boro

Somerset County
Bedminster Twp.
Bernards Twp.
Bernardsville Boro
Bound Brook Boro
Branchburg Twp.
Bridgewater Twp.
Franklin Twp.
Green Brook Twp.
Hillsborough Twp.
Manville Boro
Montgomery Twp.
No. Plainfield Boro
Peapack Gladstone Boro
Raritan Boro
Somerville Boro
So. Bound Brook Boro
Warren Twp.
Watchung Boro

Sussex County
Andover Twp.
Byram Twp.
Frankford Twp.
Franklin Boro
Fredon Twp.
Green Twp.
Hamburg Boro
Hampton Twp.
Hardyston Twp.
Hopatcong Boro
Lafayette Twp.
Montague Twp.
Newton Town
Ogdensburg Boro
Sandyston Twp.
Sparta Twp.
Stanhope Boro
Stillwater Twp.
Vernon Twp.
Wantage Twp.

Union County
Berkeley Heights Twp.
Clark Twp.
Cranford Twp.
Fanwood Boro
Garwood Boro
Kenilworth Boro
Linden City
Mountainside Boro
New Providence Boro
Rahway City
Roselle Park Boro
Scotch Plains Twp.
Springfield Twp.
Summit City
Union Twp.
Westfield Town

Warren County
Allamuchy Twp.
Alpha Boro
Belvidere Town
Blairstown Twp.
Franklin Twp.
Frelinghuysen Twp.
Greenwich Twp.
Hackettstown Town
Harmony Twp.
Hope Twp.
Independence Twp.
Knowlton Twp.
Liberty Twp.
Lopatcong Twp.
Mansfield Twp.
Oxford Twp.
Phillipsburg Town
Pohatcong Twp.
Washington Boro
Washington Twp.
White Twp.

APPENDIX III

Priority III

Criteria: Municipalities with no children under 5 years of age per 1980 census data and/or with less than 1 child at risk per NHANES II data.

Atlantic County
Corbin City
Estelle Manor
Longport
Port Republic City

Bergen County
Rockleigh Boro
Teterboro Boro

Burlington County
Fieldsboro Boro
Washington Twp.

Camden County
Audubon Park Boro
Pine Valley Boro
Travistock Boro

Cumberland County
Shiloh Boro

Cape May County
Avalon Boro
Cape May Point Boro
Stone Harbor Boro
West Wildwood Boro

Essex County
None

Gloucester County
None

Hudson County
None

Hunterdon County
Stockton Boro

Mercer County
None

Middlesex County
None

Monmouth County
Allenhurst Boro
Interlaken Boro
Loch Arbour Village
Roosevelt Boro
Sea Bright Boro

Morris County
None

Ocean County
Barnegat Light Boro
Beach Haven Boro
Eagleswood Twp.
Harvey Cedars Boro
Mantoloking Boro
Ship Bottom Boro
Surf City Boro

Passaic County
None

Salem County
None

Somerset County
Far Hills Boro
Millstone Boro
Rocky Hill Boro

Sussex County
Andover Boro
Branchville Boro
Walpack Twp.

Union County
None

Warren County
Hardwick Twp.
Pahaquarry Twp.

APPENDIX IV

Community Potential Hazard Score—Lead Poisoning

Name of Community _____

Population _____

Year Structure Built		
1950-1959	_____	
1940-1949	_____	
1939 or Earlier	_____	
% Built prior to 1960		_____

Occupancy Status	Total	
Owner occupied	_____	
Renter occupied	_____	
Renter occupied White	_____	
Renter occupied Black	_____	
All year round occupied units	_____	
% Renter occupied		_____
% Renter occupied by Blacks		_____

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Population at Risk	Total	
Population	____	
All children under 5 years of age	____	
% children under 5 years of age		____
Total Black children under 5 years of age	____	
% children under 5 years of age who are black		____

Overcrowding	Total	
Persons per room 1.01-1.50	____	
Persons per room 1.50 or more	____	
Total more than 1 person per room	____	
Occupied Housing Units	____	
% with more than 1 person per room		____

Poverty Status	Total	
Number of families	____	
Total with income below poverty level with related children under 6 only	____	
% with children below the poverty level		____
Total with female household only, no husband present—income below poverty level with related children under 6 only	____	
% families with female household only, no husband present—income below poverty level with related children under 6 only		____
Community Potential Hazard Score	____	

(a)

REPORTABLE DISEASES

Notice of Administrative Deletion

Reportable Occupational and Environmental Diseases and Poisons

Reporting of Occupational and Environmental Diseases and Poisons by Physicians

N.J.A.C. 8:57-3.2

Take notice that the Department of Health has discovered an error in the New Jersey Administrative Code at N.J.A.C. 8:57-3.2(b)6. As proposed and adopted in the New Jersey Register at 21 N.J.R. 3907(a) and 22 N.J.R. 1595(a), respectively, the adult lead poisoning standard is set in "milligrams per deciliter." However, in the notice of proposal document filed with the Office of Administrative Law (PRN 1989-673), the measurement was set forth as "ug/dl," which stands for "micrograms per deciliter." In the course of preparing the notice of proposal for publication, this abbreviation was erroneously translated as "milligrams per deciliter." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7 in order for the current rule to accurately reflect the documented intent of the Department.

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

8:57-3.2 Reporting of occupational and environmental diseases and poisons by physicians

(a) (No change.)

(b) The following diseases and poisonings are declared to be reportable to the State Department of Health for purposes of this section. All diseases listed herein are to be reported in the manner prescribed by (c) below:

1.-5. (No change.)

6. Lead poisoning, adult (blood lead ≥ 25 [milligrams] **micrograms** per deciliter; urine lead ≥ 80 [milligrams] **micrograms** per deciliter).

(c) (No change.)

TRANSPORTATION

(b)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Route N.J. 10 in Morris and Essex Counties

Adopted Amendment: N.J.A.C. 16:28-1.94

Proposed: June 4, 1990 at 22 N.J.R. 1697(a).

Adopted: July 5, 1990, by John F. Dunn Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: August 16, 1990 as R.1990 d.440, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: September 17, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from five individuals. While no changes have been made to the rule on adoption, the Department wishes to thank the commenters for their input. A summary of the comments and the agency responses follows:

COMMENT: The speed limit of 50 miles per hour between Randolph and into Parsippany should not be raised.

RESPONSE: The Department would like to point out that the speed limit is now 50 miles per hour in that area and is proposed to be 50 miles per hour. The Department appreciates the support for the 50 mile per hour speed limit.

COMMENT: The speed limit between Ridgedale Avenue and the Livingston Circle should be lowered to 40 miles per hour, due to the large number of entrance and exit driveways at shopping malls and businesses.

RESPONSE: The Department has evaluated the traffic conditions in this area and has proposed lowering the speed limit to 45 miles per hour. The Department has adopted the 45 mile per hour limit, and will continue to evaluate traffic conditions in this area.

COMMENT: There is no need to decrease the speed limit between the Livingston Circle into West Orange.

RESPONSE: The proposed amendments would create a reduction in speed only between Tudor Terrace and Shrewsbury Drive, from 45 miles per hour to 40 miles per hour. The speed limit elsewhere between the Livingston Circle and West Orange will not change.

COMMENT: Is all or part of the Department's traffic study available to the public?

RESPONSE: Documentation may be reviewed, by appointment, at the Bureau of Traffic Engineering and Safety Programs, 1035 Parkway Ave., Trenton, N.J. 08625.

COMMENT: "It makes no sense to build a four to six lane highway and then reduce the speed on it to the same as a two lane road."

RESPONSE: The construction of the highway and appropriate speed limits on that highway have been developed after the Department's study of traffic conditions and in consultation with local governments. The Department believes that the proposed speed limits are appropriate for traffic conditions and have been designated in a manner which will allow both the public and the enforcement authorities to clearly understand the requirements.

COMMENT: This proposal will increase the number of accidents occurring on Route 10, due to the drivers constantly changing speed.

RESPONSE: The Department has proposed to reduce the difference in speed between speed zones. For example, in the past, the speed changed from 40 miles per hour to 50 miles per hour at Black Brook, which continued to the Northfield Circle. The amended rules change the speed from 40 miles per hour to 45 miles per hour at Algonquin Parkway and continue at 45 miles per hour, through the Northfield Circle to Mitchell Avenue, where the speed limit was, and is, 40 miles per hour.

COMMENT: "Reducing the speed limit has been tried, and failed, on Route 46, in Parsippany."

RESPONSE: Circumstances on individual highways differ, even though those highways may share some common characteristics. The Department conducts individual traffic studies and consults with local

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governments in order to determine the appropriate means of managing traffic on the highways for which it has responsibility.

COMMENT: "I believe you should forbid the stopping of school buses on Route 10. Having school buses stop on Route 10 greatly slows down the traffic flow and results in a lot of panic stops by cars as the school bus suddenly decides to stop."

RESPONSE: While the stopping of school buses does have an impact on the speed of traffic on Route 10, it is not the subject of this particular rulemaking. The comment has been referred to appropriate staff for further study.

COMMENT: One commenter felt that the speed limits should not be changed as proposed, as the flow of traffic controls the speed at peak hours and the traffic needs to flow as close to 50 miles per hour at other times in order to reduce congestion.

RESPONSE: The Department has based the proposed and adopted changes on the evaluations conducted by staff and consultation with local government, all of which consider many other important relevant factors, in addition to flow.

COMMENT: A resident of Powder Mill Village wrote to agree with plans to reduce the speed limits on Route 10.

RESPONSE: The Department appreciates the support.

COMMENT: The speed of rush hour traffic moving west on Route 10, toward Powder Mill, and east, from Powder Mill, is rarely less than 55 miles per hour. Additionally, the Slow Moving Vehicles lane designation is ineffective and should either be enforced or scrapped. Curb lane markings should be changed as one approaches the Powder Mill Roundabout and the Route 52 exit so that curved turn arrows are used 200 feet from the turnoff lane.

RESPONSE: The subjects of the comment, while impacting upon traffic speed, are not the subject of this particular rulemaking. The comment has been referred to appropriate staff for further study.

COMMENT: "Because turnoffs at Route 53 going toward Dover are immediately followed within 20-25 feet by turnoffs to Route 53 going toward Morris Plains, they create a serious safety problem. Signage should be changed from 'YIELD' to 'STOP.' In the past year, I have seen three accidents here due to [drivers] misinterpreting whether or not cars coming off Route 10 were going off for Dover or Morris Plains, causing collisions as the entering vehicle was getting up speed."

RESPONSE: The subjects of the comment, while impacting upon traffic speed, are not the subject of this particular rulemaking. The comment has been referred to appropriate staff for further study.

COMMENT: One commenter expressed concern about the Department's proposal to reduce speed limits on parts of Route 10 in Parsippany, East Hanover, Livingston and West Orange.

RESPONSE: The speed limit is being reduced from 50 miles per hour to 45 miles per hour from Black Brook to the Northfield Avenue traffic circle and from 45 miles per hour to 40 miles per hour between Tudor Terrace and Shrewsbury Drive, in accordance with evaluations conducted by staff and consultation with local government. The speed limits in West Orange have not been changed.

COMMENT: "Has it been firmly established that sections of Route 10 have significantly higher accident rates **per vehicle miles,** compared with roadways of similar design, identical speed limits and similar traffic patterns that are located in areas of similar population density and thus need special measures to improve safety?"

RESPONSE: The speed limit reduction was not based on an accident analysis, but rather upon field studies and monitoring of traffic using the subject highway. This evaluation technique is fully supported in standard traffic engineering practice.

COMMENT: If it **has** been firmly established that sections of Route 10 have significantly higher accident rate **per vehicle miles**, compared with roadways of similar design, identical speed limits and similar traffic patterns that are located in areas of similar population density, "has it also been firmly established that the higher accident rate **per vehicle miles** is directly related to speed limit" and not any other factors?

RESPONSE: The speed limit reduction was not based on an accident analysis, but rather upon field studies and monitoring of traffic using the subject highway. This evaluation technique is fully supported in standard traffic engineering practice.

COMMENT: If a direct relationship between speed and higher accident rate **per vehicle miles** has not been established, "wouldn't other road safety measures be in order, rather than a 5 or 10 mile per hour reduction in the speed limits?"

RESPONSE: The speed limit reduction was not based on an accident analysis, but rather upon field studies and monitoring of traffic using the subject highway. This evaluation technique is fully supported in standard traffic engineering practice.

COMMENT: "Have speed limit reductions on other roadways of similar design, identical speed limits, and similar traffic patterns that are located in areas of similar population density reduced the accident rate **per vehicle miles** on these roads?"

RESPONSE: The speed limit reduction was not based on an accident analysis, but rather upon field studies and monitoring of traffic using the subject highway. This evaluation technique is fully supported in standard traffic engineering practice.

Full text of the adoption follows.

16:28-1.94 Route 10

(a) The rate of speed designated for the certain part of State highway Route 10 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Morris County:

(1) Roxbury Township:

(A) 50 miles per hour between Ledgewood Circle and the westerly line of Randolph Township (Black River) (approximate mileposts 0.00 to 1.74); thence

(2) Randolph Township:

(A) 50 miles per hour between the easterly line of Roxbury Township (Black River) and the westerly line of Denville Township (approximate mileposts 1.74 to 7.54).

(3) Denville Township:

(A) 50 miles per hour between the easterly line of Randolph Township and the westerly line of Parsippany-Troy Hills Township (approximate mileposts 7.54 to 9.29).

(4) Parsippany-Troy Hills Township:

(A) 50 miles per hour between the easterly line of Denville Township and the southwesterly line of Morris Plains Borough (approximate mileposts 9.29 to 10.46); thence

(B) 50 miles per hour between the southeasterly line of Morris Plains Borough and the westerly line of Hanover Township (approximate mileposts 11.62 to 12.13).

(5) Hanover Township:

(A) Zone 1: 50 miles per hour between the easterly line of Parsippany-Troy Hills Township and the Morristown-Erie Railroad track (approximate mileposts 12.13 to 14.327); thence

(B) Zone 2: 40 miles per hour between the Morristown-Erie Railroad track and Algonquin Parkway (approximate mileposts 14.327 to 15.205); thence

(C) Zone 3: 45 miles per hour between Algonquin Parkway and the westerly line of East Hanover Township (Black Brook) (approximate mileposts 15.205 to 15.70).

(6) East Hanover Township:

(A) 45 miles per hour between the easterly line of Hanover Township and the westerly line of Livingston Township (Passaic River) (approximate mileposts 15.70 to 17.708).

ii. In Essex County:

(1) Livingston Township:

(A) Zone 1: 45 miles per hour between the easterly line of East Hanover Township (Passaic River) and Mitchell Avenue (approximate mileposts 17.708 to 19.942); thence

(B) Zone 2: 40 miles per hour between Mitchell Avenue and Shrewsbury Drive (Co. Rd. 635), except for 25 miles per hour when passing through the Mount Prospect Middle School zone (mileposts 20.617 to 20.839) during recess, when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours, (approximate mileposts 19.942 to 21.05); thence

(C) Zone 3: 45 miles per hour between Shrewsbury Drive and the westerly line of the Town of West Orange (approximate mileposts 21.05 to 21.61).

(2) In the Town of West Orange:

(A) Zone 1: 45 miles per hour between the easterly line of Livingston Township and Pleasant Valley Way (Co. Rd. 636) (approximate mileposts 21.61 to 22.65); thence

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(B) Zone 2: 40 miles per hour between Pleasant Valley Way and Prospect Avenue (Co. Rd. 577 Spur) (approximate mileposts 22.65 to 23.47).

2. For westbound direction of traffic:

i. In Morris County:

(1) Parsippany-Troy Hills Township:

(A) 50 miles per hour between the southwesterly line of Morris Plains Borough and the southeasterly line of Morris Plains Borough (approximate mileposts 10.46 to 11.62).

3. For eastbound direction of traffic:

i. In Morris County:

(1) Morris Plains Borough:

(A) 50 miles per hour between the southeasterly line of Parsippany-Troy Hills Township and the southwesterly line of Parsippany-Troy Hills Township (approximate mileposts 11.04 to 11.62).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes U.S. 22 in Warren, Hunterdon, Union, and Somerset Counties and N.J. 12 in Hunterdon County

Adopted Amendments: N.J.A.C. 16:28A-1.13 and 1.62

Proposed: July 16, 1990 at 22 N.J.R. 2118(a).

Adopted: August 20, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: August 24, 1990 as R.1990 d.475, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-138.1.

Effective Date: September 17, 1990.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.13 Route U.S. 22

(a) The certain parts of State highway Route U.S. 22 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. No stopping or standing along both sides:

i. In Warren County:

(1) Town of Phillipsburg:

(A) For the entire length within the corporate limits of the Town of Phillipsburg including all ramps and connections thereto which are under the jurisdiction of the Commissioner of Transportation.

(2) Township of Pohatcong:

(A) For the entire length within the corporate limits of the Township of Pohatcong, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(3) Greenwich Township:

(A) For the entire length within the corporate limits of Greenwich Township, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(4) Lopatcong Township:

(A) For the entire length within the corporate limits including all ramps and connections under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

ii. In Hunterdon County:

(1) Clinton Township:

(A) From the easterly curb line of Petticoat Lane to the Clinton Township-Lebanon borough corporate line.

(2) Lebanon Borough:

(A) For the entire limits of Lebanon Borough, including all ramps and connections thereto, which are under the jurisdiction of the Commissioner of Transportation.

iii. In Somerset County:

(1) North Plainfield Borough:

(A) For the entire corporate limits of North Plainfield Borough, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(2) Bound Brook Borough:

(A) For the entire corporate limits of Bound Brook Borough, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(3) Bridgewater Township:

(A) For the entire corporate limits of Bridgewater Township, including all ramps and connections which are under the jurisdiction of the Commissioner of Transportation.

(4) Green Brook Township:

(A) Between the Bridgewater Township corporate line and Rock Avenue.

2. No stopping or standing along the westbound side:

i. In Warren County:

(1) Greenwich Township:

(A) Beginning at a point 2,080 feet from the westerly curb line of County Road 519 and extending 205 feet west thereof.

(B) Westbound lanes—Median side only: From a point 1,525 feet west of the center line of Straw Church Road to a point 1,665 feet west of the center line of Straw Church Road.

ii. In Union County:

(1) Scotch Plains Township:

(A) From a point 425 feet west of the center line of Union Avenue to the center line of Terrill Road.

3. No stopping or standing along the eastbound side:

i. In Somerset County:

(1) Watchung Borough:

(A) From the center line of Terrill Road to a point 425 feet east of the center line of Union Avenue.

ii. In Union County:

(1) Scotch Plains Township:

(A) From the center line of Victor Street to a point 825 feet east of the center line of Victor Street.

(b) (No change.)

16:28A-1.62 Route 12

(a) The certain parts of State highway Route 12 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. No stopping or standing along both sides:

i. In Hunterdon County:

(1) Flemington Borough:

(A) For the entire length within the corporate limits of Flemington Borough, including all ramps and connections under the jurisdiction of the Commissioner of Transportation, except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

(2) Kingwood Township:

(A) For the entire length within the corporate limits of Kingwood Township including all ramps and connections under the jurisdiction of the Commissioner of Transportation; except in approved designated bus stops and time limit parking areas. Signs to be posted only in areas where an official township resolution has been submitted.

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Restricted Parking and Stopping

Routes N.J. 47 in Cumberland County; N.J. 77 in Cumberland County; and U.S. 202 in Morris County

Adopted Amendments: N.J.A.C. 16:28A-1.33, 1.41, and 1.55

Proposed: July 2, 1990 at 22 N.J.R. 1990(a).
Adopted: August 2, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: August 17, 1990 as R.1990 d.460, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-138.1.
Effective Date: September 17, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28A-1.33 Route 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. (No change.)

2. No stopping or standing in Cumberland County.

i. In the City of Millville:

(1) Along the northbound side:

Recodify existing (1)-(3) as (A)-(C) (No change in text.)

Recodify existing i.-ii. as (1)-(2) (No change in text.)

ii. In the City of Vineland:

(1) Along both sides:

(A) From the south curb line of Wheat Road to 150 feet south thereof.

3.-10. (No change.)

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

16:28A-1.41 Route 77

(a) The certain parts of State Highway Route 77 described in this subsection are designated and established as "no stopping or standing" zones.

1. No stopping or standing in Cumberland County:

i. In the City of Bridgeton:

(1) Southbound on the westerly side:

(A) From the Upper Deerfield Township Line to Mulford Drive.

(B) Beginning at the northerly curbline of Highland Avenue and extending 110 feet north therefrom.

(C) Beginning at the southerly curbline of Highland Avenue to a point 149 feet south of Bridgeton Avenue.

(D) Beginning at the northerly curbline of American Avenue to a point 50 feet north therefrom.

(E) Beginning at the northerly curbline of Monroe Street to a point 93 feet north therefrom.

(F) Beginning at the northerly curbline of Penn Street to a point 71 feet north therefrom.

(G) Beginning at the northerly curbline of Morton Street to a point 81 feet north therefrom.

(H) Beginning at the northerly curbline of North Street to a point 50 feet north therefrom.

(I) Beginning at the northerly curbline of Myrtle Street to a point 60 feet north therefrom.

(J) Beginning at the southerly curbline of Myrtle to a point 50 feet north therefrom.

(K) Beginning at a point 120 feet north of the northerly curbline to a point 130 feet south of the southerly curbline of Irving Avenue.

(L) Beginning at the northerly curbline of Washington Avenue to a point 90 feet north therefrom.

(M) Beginning at the southerly curbline of Washington Avenue to a point 105 feet south therefrom.

(N) Beginning at the northerly curbline of Cumberland Avenue to a point 50 feet north therefrom.

(O) Beginning at the southerly curbline of East Commerce Street to Route N.J. 49.

(P) Monday through Friday—beginning at the southerly curbline of Morton Street to a point 100 feet south therefrom.

(2) Northbound on the easterly side:

(A) From Route N.J. 49 to a point 100 feet north of the northerly curbline of E. Commerce Street.

(B) From a point 140 feet south of the southerly curbline of Washington Street to a point 100 feet north of the northerly curbline of Washington Street.

(C) From a point 50 feet south of the southerly curbline of Marion Street to a point 60 feet north of the northerly curbline of Marion Street.

(D) From a point 125 feet south of the southerly curbline of Irvington Avenue to a point 70 feet north of the northerly curbline of Irvington Avenue.

(E) From a point 50 feet south of the southerly curbline of Myrtle Street to a point 50 feet north of the northerly curbline of Myrtle Street.

(F) Beginning at the southerly curbline of Orchard Street to a point 100 feet south therefrom.

(G) From a point 50 feet south of the southerly curbline of Penn Street to a point 120 feet north of the northerly curbline of Penn Street.

(H) Beginning at the southerly curbline of Horton Street and extending 50 feet south therefrom.

(I) Beginning at the southerly curbline of Bank Street to a point 50 feet south therefrom.

(J) Beginning at the southerly curbline of Cumberland Avenue to a point 50 feet south therefrom.

(K) From the northerly curbline of Cumberland Avenue to a point 150 feet north of the northerly curbline of Rosenhayn Avenue.

(L) From a point 90 feet south of the southerly prolongation of Mulford Drive to the Upper Deerfield Township line.

2.-5. (No change.)

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

16:28A-1.55 Route U.S. 202

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

(d) The certain parts of State Highway Route U.S. 202 described in this subsection shall be designated and established as "Time Limit Parking" zones. 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 Morris Plains Borough, Morris County:

i. Thirty-minute time limit parking between 9:00 A.M. to 4:00 P.M.

(1) Along the west side (Speedwell Avenue):

(A) From a point 105 feet south of the southerly curbline of Franklin Place to a point 35 feet north of the prolongated northerly curbline of Allen Place.

(B) From a point 359 feet south of the southerly curbline of Franklin Place to a point 428 feet southerly therefrom.

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(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS
Mid-Block Crosswalks
Route N.J. 47 in Gloucester County
Adopted New Rule: N.J.A.C. 16:30-10.12

Proposed: July 2, 1990 at 22 N.J.R. 1992(a).
Adopted: August 2, 1990 by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.
Filed: August 17, 1990 as R.1990 d.461, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-34.
Effective Date: September 17, 1990.
Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:30-10.12 Route 47
(a) The certain parts of State highway Route 47 described in this subsection shall be designated as a mid-block crosswalk.
1. In Gloucester County:
i. Mid-block crosswalks:
(1) Glassboro Borough (Glassboro Intermediate School):
(A) From a point 35 feet south of the southerly curb line of Focer Avenue to a point six feet southerly therefrom (approximate milepost 62.762).
(B) From a point 375 feet south of the southerly curb line of Focer Avenue to a point six feet southerly therefrom (approximate milepost 62.698).
(2) Deptford Township:
(A) New Sharon School—From a point 1,530 feet south of the southerly curb line of Spruce Avenue to a point 10 feet southerly therefrom (approximate milepost 70.36).
(B) (Plaza 47 Parking Lot)—From a point 200 feet south of the southerly curb line of Taras Avenue to a point six feet southerly therefrom (approximate milepost 72.803).
(C) St. John of God (Handicapped)—From a point 407 feet south of the southerly curb line of Central Avenue to a point 10 feet southerly therefrom (approximate milepost 73.26).

(b)

DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF REGULATORY AFFAIRS
Zone of Rate Freedom
Adopted Amendments: N.J.A.C. 16:53D

Proposed: July 2, 1990 at 22 N.J.R. 1993(a).
Adopted: August 24, 1990 by Robert A. Innocenzi, Deputy Commissioner (State Transportation Engineer), Department of Transportation.
Filed: August 24, 1990 as R.1990 d.474, **with amendments to N.J.A.C. 16:53D-1.1 and 1.2 adopted without change and amendments to N.J.A.C. 16:53D-1.3 not adopted.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-21 and 48:4-2.20 through 2.25.
Effective Date: September 17, 1990.
Operative Date: January 1, 1991.
Expiration Date: May 3, 1994.

Summary of Public Comments and Agency Responses:
A public hearing was held on July 25, 1990, before Administrative Law Judge Steven L. Lefelt, in the Hearing Room, Office of Administrative Law, 185 Washington Street, Newark, New Jersey. Comments were received from Mr. Frank P. Gallagher, President of the New Jersey Motor Bus Association, who objected to the proposed amendment to N.J.A.C. 16:53D-1.3, referencing N.J.A.C. 16:51-3.10 and 3.11, requiring a rate hearing for modifications to fares made by autobus operators that were exempt from fare regulation, but did not object to the other provisions of the Zone of Rate Freedom (ZORF) rulemaking. Representatives from the Office of Regulatory Affairs testified as to the purpose of the proposed Zone of Rate Freedom and the manner in which the ZORF percentage had been calculated. There was no other comment or participation from the public. The Administrative Law Judge in his decision of August 1, 1990, recommended that the proposed provisions relative to N.J.A.C. 16:53D-1.1 and N.J.A.C. 16:53D-1.2, as set forth in the New Jersey Register at 22 N.J.R. 1993(a), be adopted in their entirety; however, he also recommended that the provision to amend N.J.A.C. 16:53D-1.3 not be adopted as proposed, in that the agency's policy objectives could be achieved with a more limited amendment. The comment and agency response follows:

COMMENT: Mr. Gallagher, President of the New Jersey Motor Bus Association, expressed concern that the proposed amendment to N.J.A.C. 16:53D-1.3, most notably the reference therein to N.J.A.C. 16:51-3.10 and 3.11, would require rate hearings for modifications to fares made by autobus operators that were exempt from fare regulation. Although operators of casino, charter and special autobus operations would be exempt from rate regulation provisions of Title 48 and the ZORF regulations, he was concerned that certain procedures beyond notice to the public and to the Department, such as rate hearings, would be required as a result of the aforementioned reference.

RESPONSE: The Department has reviewed the proposed amendment to N.J.A.C. 16:53D-1.3 in view of the comment and the recommendation of the Administrative Law Judge, and is not adopting the proposed amendment to N.J.A.C. 16:53D-1.3. The Department will adopt the amendments to N.J.A.C. 16:53D-1.1 and 16:53D-1.2, as proposed July 2, 1990 at 22 N.J.R. 1993(a).

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

SUBCHAPTER 1. GENERAL PROVISIONS

16:53D-1.1 General provisions
(a) Any regular route autobus carrier operating within the State which seeks to revise its rates, fares or charges in effect as of the time of the promulgation of this regulation shall not be required to conform with N.J.A.C. 16:51-3.10 (Tariff filings or petitions which do not propose increases in charges to consumers) or N.J.A.C. 16:51-3.11 (Tariff filings or petitions which propose increases in charges to customers) provided the increase or decrease in the rate, fare or charge, or the aggregate of increases and decreases in any single rate, fare or charge is not more than the maximum percentage increase or decrease as promulgated below upgraded to the nearest $.05.
1. The following chart sets forth the 1991 percentage maximum for increases to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Increase	Increase Upgraded To Nearest $.05
$.60 or less	7.83%	$.05
$.65-$1.25	7.83%	$.10
$1.30-$1.90	7.83%	$.15
$1.95 upward	7.83%	$.20+

2. The following chart sets forth the 1991 percentage maximum for decrease to particular rates, fares or charges and the resultant amount as upgraded to the nearest $.05:

Present Fare	% Of Decrease	Decrease Upgraded To Nearest $.05
$.50 or less	10%	$.05
$.55-$1.00	10%	$.10
$1.05 upward	10%	$.15+

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16:53D-1.2 Requirements

(a) Any regular route autobus carrier which seeks a fare adjustment which is subject to this subchapter shall be required to:

1. Notify the Department by filing a complete schedule of all current fares and all fares to be adjusted at least 30 days prior to the effective date of the new fare adjustment.

2. Post a public notice in all autobuses providing service on the regular routes to be affected by the adjusted fares and in all bus terminals served by those autobuses on the regular routes at least 30 days prior to effective date of the new fare adjustment. The autobus carrier must verify to the Department by filing a copy of said public notice and an affidavit that it has in fact posted such public notice at least 30 days prior to the effective date of the new fare adjustment.

16:53D-1.3 Exemptions

The Commissioner hereby exempts casino or regular route in the nature of special, charter and special autobus operations from the rate regulation *[provisions]* set forth in N.J.A.C. 16:53D-1.1 and in any other chapter of Title 48. Notwithstanding the *[rate regulation]* exemption, casino or regular route in the nature of special, charter and special autobus *[operators]* ***operations*** shall *[annually]* ***continue to*** file with the Department *[by January 2]* current schedules of their rates, fares or charges*.* *[for such operations and shall comply with the provisions set forth in N.J.A.C. 16:51-3.10 and 3.11 regarding modifications thereto.]*

HUMAN SERVICES

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Determination of Eligibility

Adopted New Rules: N.J.A.C. 10:46

Proposed: December 4, 1989 at 21 N.J.R. 3712(a).

Filed: July 23, 1990 as R.1990 d.409, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) and with portions not adopted.

Authority: N.J.S.A. 30:4-23, 30:4-25.2, 30:6D-23 et seq.

Effective Date: September 17, 1990.

Expiration Date: September 17, 1995.

Summary of Public Comments and Agency Responses:

The Department deleted text at N.J.A.C. 10:46-3.1(a)3 to clarify that other agencies within the Department may apply for services from the Division of Developmental Disabilities. The Department also deleted N.J.A.C. 10:46-2.1(f), (g) and (h). The Department received numerous comments which challenged the exclusion of certain applicants who are mentally ill. The deletion allows persons with mental illness who otherwise meet the eligibility requirements stipulated in these rules to receive services.

Comments were received from the New Jersey Center for Outreach and Services for the Autism Community Inc. (COSAC); Department of the Public Advocate; Association for Retarded Citizens of New Jersey (ARC); Community Health Law Project of East Orange; United Cerebral Palsy of Monmouth and Ocean Counties, Inc.; the Developmental Disabilities Council; Association for Retarded Citizens of Essex County Inc.; Bergen Pines County Hospital; Association for Retarded Citizens, Morris Chapter; United Cerebral Palsy Association of New Jersey, Inc.; Association for Retarded Citizens, Monmouth County Unit, Inc.; Association for Retarded Citizens of Hunterdon County; Association for Retarded Citizens, Salem Unit; New Jersey Head Injury Association, Inc.; County of Middlesex, Office on the Handicapped; Eden Family of Programs, Inc.; Spectrum for Living, Inc.; The Multiple Sclerosis Society; and two private citizens. The Division's Extended Responsibilities Committee also commented on the proposal. This committee consists of representatives of consumer groups whose constituents were made eligible under the 1985 legislation which created the Division of Developmental Disabilities. The comments and responses follow, grouped by commenter. The first group addressed are written comments received prior to the end of the comment period on January 3, 1990.

NEW JERSEY CENTER FOR OUTREACH AND SERVICES FOR THE AUTISM COMMUNITY, INC. (COSAC)

1. COMMENT: The words "severe and chronic" contained in the (proposal) summary are vague and subjective and therefore they should be deleted.

RESPONSE: The words "severe and chronic" are contained in the definition of a developmental disability which is included in N.J.S.A. 30:6D-25b. The cited paragraph provides the definition of a developmental disability and the definition used by the Division cannot differ materially from the statutory definition.

2. COMMENT: The language in paragraph 5 of the (proposal) summary should be: "Persons who are found to be eligible [but] **and who also** have a mental illness [may] **shall** receive services **from the Division** while being treated for that mental illness."

RESPONSE: The Department agrees that the wording change is reasonable but the (proposal) summary cannot be amended upon adoption. The proposal summary and the comments and the responses are part of the rulemaking record, and can be utilized in interpreting the rules.

3. COMMENT: COSAC is deeply concerned with language in the (proposal) summary which requires an individual to be in need of services at the time of application. Therefore, we recommend the deletion of line 2, paragraph 6, entirely. [The person must need services at the time of application.]

RESPONSE: While the Department cannot amend the proposal summary at this time, the Department agrees with this concern and has deleted the requirement that a person be in need of services at the time of application. The Department recognizes the need to identify individuals who may need services in the foreseeable future.

4. COMMENT: COSAC is deeply concerned that the economic impact statement contained in the rules proposal may grossly minimize the potential need for increased State spending on a regular and ongoing basis. The words "wider population eligible for services" do not adequately reflect the potential increase in meaningful, concrete terms. While we recognize that population estimates are difficult and may be arbitrary, we believe that such estimates should be included in the economic impact statement. For the disability of autism, that estimate is between 4,000 and 12,000 children and adults in New Jersey.

RESPONSE: The Department agrees that such population estimates are difficult. The numbers contained in the economic impact statement reflect the actual figures known to the Division of Developmental Disabilities as of March 31, 1989. Planning for services will be based upon the most recent available data, not necessarily those represented in the Economic Impact statement.

5. COMMENT: COSAC strongly recommends the deletion of a reference in the economic impact statement to "service delivery subject to legislative appropriation".

RESPONSE: The Department agrees that while legislative appropriations are a necessary part of service delivery planning, it is not necessary to include such conditions in the rules. This reference has been deleted from N.J.A.C. 10:46-1.1. Planning for services will be based upon the most recent available data, not necessarily those represented in the Economic Impact statement.

6. COMMENT: COSAC urges the deletion of language in N.J.A.C. 10:46-1.1 which would allow eligibility to be subject to legislative appropriation of funds. We believe that this language will prohibit accurate long and short range planning on the part of the Division by making ineligible many developmentally disabled individuals for whom no dollars currently exist for services. It is only through the accurate identification of eligible persons that the Division can provide the legislature with an accurate reflection of the need for increased appropriations.

RESPONSE: The Department agrees that accurate identification of eligible persons is necessary and that eligibility should be based upon the criteria specified in N.J.A.C. 10:46-2. This language has been deleted.

7. COMMENT: We appreciate the effort on the part of the Division to define appropriate program of training in code; however, we remain deeply concerned with the current level of training provided to DDD intake staff. Neither the Department of Personnel nor the Division have available for review a curriculum of training for new or existing Division staff who may be responsible for intake activities. COSAC urges strongly that the Division, with the assistance of providers, consumers and professionals, develop, formalize and use a consistent, comprehensive program of training.

RESPONSE: The Department agrees and a consistent, comprehensive program of training for intake staff will be developed. The content of

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that training is not appropriate for inclusion in the rules, although the requirements of the rules will be included in the training.

8. COMMENT: COSAC recommends the definition of developmental disability be amended as follows: "Developmental Disability means a [severe, chronic disability of a person] **condition** which: . . ."

RESPONSE: The words "severe and chronic" are contained in the definition of a developmental disability which is included in N.J.S.A. 30:6D-25b. The rules are required to parallel the statute.

9. COMMENT: COSAC recommends the following revision of the definition of education and related services. "Educational and related services means those programs and services which are provided to a [child] **handicapped pupil by a school district** in association with a free appropriate education." The deletion of the word "child" in this definition will permit the provision of educational and related services to Division eligible individuals through their 21st birthday as required by N.J.A.C. 6:28 (NJ's Special Education regulations).

RESPONSE: The Department agrees. The term "child" has been deleted and "pupil" has been added at N.J.A.C. 10:46-1.3, Definitions "educational and related services". This term is consistent with N.J.A.C. 6:28.

10. COMMENT: COSAC recommends the following ["Intake worker"] **"Community Program Specialist"**. We recommend this change because the Department of Personnel does **not** have a job description for "intake worker", rather, the responsibilities described in code of an "intake worker" are carried out by persons titled "Community Program Specialists". While we are concerned with many aspects of this incongruity and would recommend study and clarification of specific responsibilities, and educational requirements for this position, we believe strongly that a position title which does not exist should **not** be included in administrative code.

RESPONSE: The term "Community Program Specialist" should not be used. Other titles may apply to an intake worker. The wording of the definition of "Intake Worker" has been amended to indicate that the employee is a professional at N.J.A.C. 10:46-1.3, Definitions "intake worker". Reference to the Department of Personnel requirements has been deleted.

11. COMMENT: COSAC recommends the following modification of the definition of support services. "Support services" mean services provided to developmentally disabled persons and their families that are [generally of short term duration, that is less than 12 months, or] a specific type of care . . . **or which may be of short term in duration**. We recommend this clarification because many of those services defined in N.J.A.C. 10:46-2.3(a) may be required indefinitely and are not generally short term in duration. The addition of such a clause clarifies the intent.

RESPONSE: The Department agrees that services may be required for periods longer than 12 months. The reference to "less than 12 months" has been deleted at N.J.A.C 10:46-1.3.

12. COMMENT: COSAC recommends the following additions and modifications to the definition of "Team": "Team means [two or more] **at least three** division employees and/or professionals holding appropriate certification and/or licensure [in their respective fields] **for the functions they are serving on the team** who review recommendations regarding eligibility. [The professionals] **Those** represented on the team [will] **may** vary according to [the presenting need for services] **the suspected area of disability**. At least one member of the team shall be a Qualified Mental Retardation Professional (QMRP) as defined in 45 CFR 249.12(c)(3).

RESPONSE: The present wording at N.J.A.C. 10:46-1.3 of "two or more team members" is sufficient. This specification allows for more than two individuals whenever it is appropriate. The remainder of the changes are changes of form rather than substance, with one exception. The term "will vary" has been changed to "may vary" at N.J.A.C. 10:46-1.3.

13. COMMENT: Define the terms "adult training, counselling, day training and functional services."

RESPONSE: This comment refers to N.J.A.C. 10:46-2.3(a)1. In reviewing this definition it was observed that it appears at N.J.S.A. 30:4-165.2, which was enacted in 1965. It was decided to use the more recent definition of services which appears at N.J.S.A. 30:6D-25, which was adopted in 1985. The only term in the comment which appears in the new definition is "counselling". A definition of counselling has been added to N.J.A.C. 10:46-1.3. The revised wording for services now appears at N.J.A.C. 10:46-2.3(a).

14. COMMENT: Define "emergent need," as used at N.J.A.C. 10:46-2.2.

RESPONSE: The term "emergent need" is not easily defined. This section is intended to allow the Director or his or her designee to evaluate the emergent need on a case-by-case basis and to provide services where appropriate on an expedited basis. To provide a definition would limit the Director's ability to respond to these situations. In order to help better define the process, a time limit of 5 days has been added to indicate when such decisions are required.

15. COMMENT: Define "guardianship services".

RESPONSE: The definition which appears in N.J.A.C. 10:45 has been added at N.J.A.C. 10:46-1.3 as follows: ". . . Those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with Developmental Disabilities for whom it is performing the services of guardianship of that person."

16. COMMENT: Define "long term care".

RESPONSE: This comment appears to relate to N.J.A.C. 10:46-2.1(g), which has been deleted. Applicants who are mentally ill who otherwise meet the requirements of this rule shall be eligible for services.

17. COMMENT: Define "sheltered life".

RESPONSE: This term appears at N.J.A.C. 10:46-2.3(a)ii. This section of the rule has been revised for the reasons given in the response to comment 13.

18. COMMENT: Define "student".

RESPONSE: This term appears at N.J.A.C. 10:46-2.1(c) and (d). The term "student" has been deleted and the term "individual" inserted. The term "individual", as used here, applies to any person who has an educational entitlement whether or not they are enrolled in an educational program at the time of application.

19. COMMENT: COSAC recommends the following clarification of N.J.A.C. 10:46-2.1(c): ". . . with regard to a **handicapped** student who has . . ."

RESPONSE: N.J.A.C. 10:46-2.1(c) applies to all persons with education entitlement. The term "student" has been deleted and "individual added for the reason given in the response to comment 18.

20. COMMENT: COSAC believes that N.J.A.C. 10:46-2.1(d) is redundant. In (c), the code has specified clearly that "expenses of educational and related services shall not be borne by the Division." To further list residential placement as one of those types of educational and related services is unnecessary.

RESPONSE: While N.J.A.C. 10:46-2.1(d) relates closely to N.J.A.C. 10:46-2.1(c), N.J.A.C. 10:46-2.1(c) speaks to the responsibility to provide educational and related services. N.J.A.C. 10:46-2.1(d) cites the responsibility of the local district board of education to fund residential placement when the individual's educational needs can only be met in a living situation other than the individual's home. No change is required.

21. COMMENT: COSDAC recommends that the term "emergent need" in N.J.A.C. 10:46-2.2 be clearly and operationally defined. Also, COSAC recommends the following clarification: "If the person is found ineligible **but has been receiving services under presumptive eligibility**, immediate referral shall be made to the appropriate agency or agencies. **That individual shall continue to receive services through the Division until such time as the appropriate agency or agencies can begin to provide services.**

RESPONSE: The term "emergent need" has been more clearly defined in that a time frame has been added at N.J.A.C. 10:46-2.2(a) (refer to response #14). The section has been changed to indicate that the Division will continue services for a period of 30 days following a notice of ineligibility. The Division cannot further expend funds on individuals who are not eligible for its services.

22. COMMENT: COSAC recommends the following revision of N.J.A.C. 10:46-2.3(a): "The Division provides **and/or contracts for** [comprehensive] **evaluation,** [functional] **residential, non residential, support** and guardianship services.

We recommend the deletion of "comprehensive" because evaluation services provided by the Division are currently not "comprehensive" in nature and scope. Also, we recommend the replacement of the term "functional" with more accurate and descriptive terms which are defined in the code.

RESPONSE: The definition of "services" has been revised in accordance with the definition which appears at N.J.S.A. 30:6D-25. The new definition includes more specific descriptive terms and does not include the term "comprehensive."

23. COMMENT: The word "retarded" in N.J.A.C. 10:46-2.3(a)1ii should be replaced by "the developmentally disabled person."

RESPONSE: The Department agrees that the more inclusive term "developmentally disabled" is appropriate. The definition has been revised, to reflect the requirements of the law, N.J.S.A. 30:6D-25.

24. COMMENT: N.J.A.C. 10:46-2.3(a)1ii should be revised to read: in other residential facilties operated **or under contract** by the Department.

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RESPONSE: The definition has been revised to reflect the requirements of the law, N.J.S.A. 30:6D-25.

25. COMMENT: The discussion of a different eligibility process for support services is unclear. It would seem that if an individual is "eligibile", he or she is eligible for the range of services offered by the Division, and that the specific service required would be determined **after** eligibility has been deemed. Also, the sentence "Support services may be offered without supplying all information required in N.J.A.C. 10:46-3.3 . . ." is vague. There is no indication of that which is required. COSAC recommends a single expedient process of determination of eligibility for all services.

RESPONSE: The rule does not describe a different eligibility process for support services but represents an abbreviation of the routine process. The intent of support services is to provide these services on an expedited basis without all the usual requirements of the routine process. The services may be provided on an expedited basis so that the applicant's needs may be addressed and the need for more comprhensive services is averted. If the applicant does not agree to accept support services or if subsequently more intensive services are required, all information is required as stipulated in N.J.A.C. 10:46-2.2(b).

26. COMMENT: N.J.A.C. 10:46-2.3(d)1 should be amended to read: "Respite care to give [families] **primary care givers** relief from continuous care of the person **with a disability**. N.J.A.C. 10:46-2.2(d)2 should also be amended.

RESPONSE: The term "family" has been charged to "primary care giver," as this term is more inclusive. The Department does not believe it is necessary to add the phrase "with a disability," since this meaning is clear from the context.

27. COMMENT: N.J.A.C. 10:46-2.3(d)4iii should be amended to read: persons with disabilities, including **but not limited to** training, [and] transportation, **job coaching and personal care**.

RESPONSE: Job coaching is included under the term "training" at N.J.A.C. 10:46-1.3, Definitions. The need for a personal care attendant is already addressed at N.J.A.C. 10:46-2.3(d)2.

28. COMMENT: Define "case management".

RESPONSE: A definition of case management has been added to N.J.A.C. 10:46-1.3, as follows ". . . the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives in the Individual Habilitation Plan."

29. COMMENT: COSAC recommends the following changes to N.J.A.C. 10:46-3.2:

Delete (a). Replace with (d), with the following clarification: "Forms, instructions and addresses of the local offices may be obtained by writing, **calling or appearing in person to**:"

Delete (b). Replace with "limited contact may be made to a community residential specialist by calling, writing or appearing in person."

Delete (c). Replace with: **"Any individual who writes or calls the division regarding services or eligibility for services shall be sent a letter describing the DDD eligibility process and their right to appeal a determination of ineligibility. Upon request for application, that individual will be given a copy of this code. In addition, if deemed appropriate by the community program specialist, that individual will be sent an application."**

RESPONSE: The first sentence of N.J.A.C. 10:46-3.2(d) has been added to N.J.A.C. 10:46-3.2(a). The following wording has been added to N.J.A.C. 10:46-3.2(a). "The initial contact may be made to an intake worker by telephone, **in writing or by appearing in person**".

N.J.A.C. 10:46-3.2(b) is left as is. It simply indicates that if the persons requesting Division services, he or she shall receive an application. In some cases, persons contacting the Division may actually want the services of another component of the Department of Human Services, such as protective services for children.

N.J.A.C. 10:46-3.2(c) has not been changed. Requests for services other than those offered by the Division of Developmental Disabilities should be referred to the appropriate government agency. If the person is interested in pursuing the services of the Division, an application is sent. A copy of the Division's appeal procedure is not appropriate at this time, since no decision concerning eligibility has been reached. N.JA.C. 10:46-4.2(d) does not require that an applicant be informed of their right of appeal, if he or she is determined ineligible. A copy of N.J.A.C. 10:46 is not necessary, since these rules are readily available at more than 75 libraries throughout New Jersey and sending individual copies to all persons making inquiries would be cost prohibitive.

30. COMMENT: COSAC recommends the following change to N.J.A.C. 10:46-3.3(b): **"Applications shall be considered complete when the following** [minimum] information **has been** submitted: [shall include but not be limited to]"

RESPONSE: This subsection of the rule is intended to indicate the information which shall be provided in all applications. Additional information may be required, which would depend upon the needs of the individual. The need for such additional information would be communicated to the applicant by the Division staff.

31. COMMENT: Add "Medical information **as defined in N.J.A.C. 10:46-1.3**".

RESPONSE: There is a definition of medical information provided in N.J.A.C. 10:46-1.3. The purpose of the definitions section is to provide the definition of terms used throughout the chapter, so that it is not necessary to reiterate defintions elsewhere.

32. COMMENT: Amend N.J.A.C. 10:46-3.3(c) as follows: "Accommodations shall be made available by the Division for applicants who are non-English speaking, illiterate [or] blind/visually impaired **and/or auditorially impaired**."

RESPONSE: N.J.A.C. 10:46-3.3(c) has been amended to read "Accommodations shall be made by the Division for applicants who cannot complete the application by him or herself . . . "The terms "are non-English speaking, illiterate or blind/visually impaired" have been deleted. Deleting specific requirements has made the rule more inclusive.

33. COMMENT: "N.J.A.C. 10:46-3.3(e) should read: An application shall be [deemed] **considered** complete when [all] **minimum required documentation** [is] **has been** received by the Division."

RESPONSE: It would not be fair to the applicant to make a decision based upon minimum documentation. It is likely that applicants would be declared ineligible based upon minimum documentation when more complete information would substantiate their eligibility. For this reason, no changes as requested were made at N.J.A.C. 10:46-3.3(e).

34. COMMENT: COSAC strongly urges the establishment, in code, of required time lines for the determination of eligibility. Many other State divisions have such requirements in code.

RESPONSE: N.J.A.C. 10:46-4.2(a) requires that staff notify the applicant in writing of the status of the eligibility determination no more than 60 days after initial contact with the intake worker. N.J.A.C. 10:46-4.2(b) has been amended to indicate that if a determination cannot be made within 60 days, the reasons why the determination cannot be made shall be provided in writing to the applicant and the applicant shall be notified at 30-day intervals thereafter. The Division considers these time lines to be appropriate.

35. COMMENT: Amend N.J.A.C. 10:46-4.1(c) to read: **"Within 10 days of the** receipt of **a complete** application and the completion of an in-person interview with the applicant . . ."

RESPONSE: A determination is required, generally within 60 days of initial contact. Documentation is necessary since decisions should not be made on minimum available information. Therefore, the Department has made no change in the rule.

36. COMMENT: Amend N.J.A.C. 10:46-4.1(d) as follows:

(d) A [professional] team **which includes the community program specialist, and at least one other individual who is knowledgeable in the suspected area of disability**, shall review the recommendations of the [intake worker] **community program specialist** and:

1. "render a [final] determination [of eligibility] **regarding eligibility**; or"

[2.] Delete the text.

[3.]**2.** "Refer the matter to [a second professional] **an independent** team for determination. [when there is disagreement among the first team concerning eligibility. No member of the second team shall have participated in the initial team review.]"

RESPONSE: The composition of the team is defined in N.J.A.C. 10:46-1.3. The Department does not consider it appropriate for the intake worker to be a member of the review team. N.J.A.C. 10:46-4.1(d)1 and 2 were amended as requested. N.J.A.C. 10:46-4.1(d)3 was not changed as requested. The wording "independent" suggests that the team cannot be comprised of employees of the Division. The definition of team indicates that it may be comprised of staff of the Division, as well as professionals outside the Division. The definition of the term "team" requires that at least one person have specific credentials as outlined in the definition.

37. COMMENT: Amend N.J.A.C. 10:46-4.1(e) as follows: The [recommendation] **determination** of the team shall be made in writing **within 10 days and shall be** based on specific findings."

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RESPONSE: The Department agrees that the determination should be made as stated by the commenter. The recommended changes were made to N.J.A.C. 10:46-4.1(e).

38. COMMENT: Delete N.J.A.C. 10:46-4.1(f).

RESPONSE: N.J.A.C. 10:46-4.1(f) indicates who is responsible to present information to the second team, and cannot be deleted, as this function is a necessary part of the process.

39. COMMENT: Add to N.J.A.C. 10:46-4.2(b). ". . . the applicant shall be [apprised] **notified in writing at least every 15 days** of the status of the application [at least every 30 days thereafter] **and shall be informed as to specifically that which is delaying the determination of eligibility**."

RESPONSE: Thirty days is felt to be a reasonable period for notification. The notificaton of specific reasons why a determination cannot be made have been added, as indicated in response #34. The term "apprised" has been deleted and "advised in writing as to the specific reasons why a determination cannot be made and shall be informed . . ." has been added.

40. COMMENT: Amend N.J.A.C. 10:46-4.2(c) to read: "If the [client] **developmentally disabled individual** is [determined] **deemed** eligible . . ."

RESPONSE: The term "client" has been deleted and the term "applicant" has been inserted at N.J.A.C. 10:46-4.2(c).

41. COMMENT: In N.J.A.C. 10:46-4.2(c) change to read ". . . [professional] team."

RESPONSE: The term "professional" has been deleted, as requested, as the definition of "team" allows for the participation of Division employees who may not necessarily be designated as "professional."

42. COMMENT: COSAC recommends the following clarification to N.J.A.C. 10:46-4.2(c)1: "If the most suitable service, as determined by the [professional] team is not immediately available, the Division shall provide an alternate **suitable** service **which is comparable in nature and scope to the most suitable service for a prespecified period of time not to exceed 1 year**.

RESPONSE: Given the present demand for services and the resources available to the Division, it is not possible to guarantee that the alternate service will be the same as the most appropriate service nor is it possible to limit the provision of an alternate service to one year. The term "suitable" has been deleted and replaced by the word "appropriate" and the term "professional" deleted at N.J.A.C. 10:46-4.2(e)1.

43. COMMENT: Change N.J.A.C. 10:46-4.2(c)2. [At the request of the applicant] The Division shall also place the eligible person on a **waiting** list for the service(s) deemed most suitable by the team.

RESPONSE: N.J.A.C. 10:46-4.2(c)2 has been amended as requested and the word "waiting" inserted.

PUBLIC ADVOCATE

44. COMMENT: In the "Summary" section, the proposed rule is said to "clarif[y] that a mental or physical impairment cannot be based on a mental illness. Mental illness is defined according to N.J.S.A. 30:4-27.1 et seq. Persons who are found to be eligible but have a mental illness may receive services while being treated for that mental illness."

The summary does not reflect the actual import of the pertinent section of the regulation to which it refers, proposed N.J.A.C. 10:46-2.1(f). The summary should either be deleted in its entirety or simply restate the rule referenced above as the rule itself is quite brief.

RESPONSE: The Summary is intended only to indicate, in brief, some of the major issues that the rules address. N.J.A.C. 10:46-2.1(f), (g) and (h) have been deleted on adoption, in order to more liberally evaluate those who have a mental illness. The Summary cannot be deleted; however, the comments and responses published with the adoption may be used to further interpret the proposal and the adoption.

45. COMMENT: The Public Advocate strongly urges that the language "subject to legislative approval" be deleted. There is no explicit nor implicit legislative funding cap in the Division of Developmental Disabilities (DDD) Act, N.J.S.A. 30:6D-23 et seq. Thus, such language in any regulation is inappropriate and impermissible. The only reference to funding in the DDD Act is found in N.J.S.A. 30:6D-31, where the Director is granted discretion to find eligible persons whose disability begins after age 22, but before age 55, "within the limits of available funding and services."

This section is clearly an exception to the general scope of the DDD Act which is "to ensure services to **all** developmentally disabled persons." N.J.S.A. 30:6D-13. Any limiting language in the regulations contrary to the plain language of the statute is inappropriate.

RESPONSE: The Department agrees and this wording has been deleted at N.J.A.C. 10:46-1.1, Purpose; authority.

46. COMMENT: N.J.A.C. 10:46-1.2, Scope, indicates that the proposed rules apply to "all persons making application for services under N.J.S.A. 30:4-165.1 et seq." Language should be added to this section to reflect the continuing eligibility of persons with mental retardation which is guaranteed by N.J.S.A. 30:6D-30.

RESPONSE: Persons with mental retardation will be eligible for services under the criteria listed for the developmentally disabled. Language separately identifying the mentally retarded as eligible does not appear warranted. Mental retardation is listed together with autism, cerebral palsy, epilepsy and spina bifida in the definition of developmental disability in N.J.A.C. 10:46-1.3.

47. COMMENT: "Developmental disability" is defined as "a **severe, chronic** disability of a person which [i]s attributable to a mental or physical impairment . . ., [i]s manifest before age 22 . . ., [i]s likely to continute **indefinitely** . . . and results in **substantial functional limitations** in three of six areas of major life activity . . . and reflects the need for a combination and sequence of services, treatment and generic care which are of a lifelong or extended duration . . ." The terms "severe" and "chronic" are not themselves defined.

There has been a great deal of confusion on the part of Administrative Law Judges ("ALJs") and consumers as to the precise meaning and purpose of the "severe, chronic" language. Those terms should be defined in order to make it clear that such terms are separate and distinct requirements for establishing eligibility.

If "severe" and "chronic" are requirements for eligibility, they can be no more than a **de minimis** hurdle analogous to the "severe impairment" language in regulations implementing the Social Security Act's eligibility criteria. The "severe impairment" regulation, 20 C.F.R. 404.1620(c), was held to be no more than a threshold requirement of eligibility for Disability Insurance Benefits (Title II) and Supplemental Security Income (SSI) (Title XVI). **See** *Bowen v. Yuckert,* ____ S. Ct. ____ (1987). The Supreme Court's reasoning was that other eligibility criteria in the regulations essentially subsumed any "severity" requirement, thus rendering the regulation at issue mere surplusage.

The "severe, chronic" language in proposed N.J.A.C. 10:46-1.3 is of a similar nature. Both "severe" and "chronic" are subsumed by the functional definition for eligibility which immediately follows in the proposed rule. That is, the term "severe" is subsumed by "results in substantial functional limitations" and "reflect the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services . . ." The term "chronic" is subsumed by "likely to continue indefinitely" and "reflects the need for . . . services which are of lifelong or extended duration." It is recommended that both terms be defined or deleted.

RESPONSE: The terms "severe and chronic" appear in the definition of the term "developmental disability" at N.J.A.C. 10:46-1.3. This definition is taken verbatim from N.J.S.A. 30:6D-25(b). Since the legislature used the terms "severe and chronic" in the statute, these terms should be included in the rule.

48. COMMENT: "Intake worker" is defined as an employee who meets the Department of Personnel requirements **for that position** . . ." However, the Department of Personnel has no title designated "Intake worker." In fact, DDD's title for a person who performs intake functions is "Senior Community Program Specialist." Thus, the proposed rule is at odds with practice and misleading as to the Department of Personnel classification for this position.

The Department of Personnel's specification for a Senior Community Program Specialist is a Bachelor's degree from an accredited college or university. It is recommended that a further requirement to the degree necessary for this title be added. The degree should be in human resources, social work, or another human service related field.

RESPONSE: The phrase "who meets the Department of Personnel requirements for that position and" has been deleted and words "a professional" employee added at N.J.A.C. 10:46-1.3 under "intake worker". The term "professional" was added to distinguish the employee from paraprofessional and care giving staff who are also employed by the Division. Specifications of a degree requirement may unduly limit the ability of the Division to recruit staff who could otherwise perform the duties of the job.

49. COMMENT: "Resident" is so defined as to preclude from eligibility a person who "was placed in a private institution or facility in New Jersey at a time when that person was not a resident of New Jersey as defined herein . . ." The proposed regulations use residency as a means to weed out applicants. A person who is found to be a non-resident is automatically ineligible for the Division's services. The definition of "resi-

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dent" in proposed N.J.A.C. 10:46-1.3 is the generally accepted legal definition, that is, "a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the state." However, the regulations governing general eligibility seriously and unjustly alter who will be considered a resident for the purpose of applying for the Division's services.

Proposed N.J.A.C. 10:46-1.3 further states that if a person was placed in a New Jersey private institution or facility prior to being a resident of New Jersey, then, regardless of the person's intention to remain in New Jersey, he or she will not be considered a resident and will be found ineligible for the Division's services. This regulation fails to recognize the capacity of a developmentally disabled adult to establish his or her own domicile by forming the intent to remain in the State. Many developmentally disabled individuals have the capacity to choose to remain in New Jersey permanently. A developmentally disabled person's choice of domicile may be demonstrated in a number of ways such as registering to vote, receiving mail (e.g., bills, benefits checks, magazines, and the like), and joining a church or community organization. Furthermore, it is irrational to base the reason for ignoring a developmentally disabled adult person's choice of residence upon whether he or she "was placed in a private institution or facility." When determining the state of residence in *O'Hara v. Glaser,* 66 N.J. 239 (1972), the New Jersey Supreme Court dismissed as irrelevant the fact that the individual had lived in an "institutional" setting, a nursing home. The court held that "if a person's residence is actual and accompanied by an intention to remain in the state permanently, the character of the living quarters is immaterial." Id. at 248. The fact that a person may have been "placed" in a New Jersey facility does not, on its face, justify an irrebuttable presumption that the individual lacks the capacity to establish residence in New Jersey.

Finally, the unqualified requirement that only residents of New Jersey are eligible for services from the Division of Developmental Disabilities is in conflict with the Interstate Compact on Mental Health (Interstate Compact) as embodied in State law at N.J.S.A. 30:7B-3(a). The law states that whenever a person is "physically present in any party state" and "in need of institutionalization" because he is "incapable of managing himself or his affairs," then "he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications. "Institution is broadly defined to include" any hospital or other facility maintained by a party state . . . for the care and treatment" of persons incapable of managing themselves and their affairs. N.J.S.A. 30:7B-2(g).

The term "institution," therefore, includes all facilities which a state provides for the care and treatment of persons unable to care for themselves, that is, developmental centers, group homes, supervised apartments, skill development homes, and other similar facilities. Thus, under the Interstate Compact developmentally disabled persons who are incapable of managing themselves and their affairs and in need of "care and treatment" must be eligible for services from the Division regardless of whether they are technically residents of New Jersey. The proposed regulations must be amended consistent with that law.

RESPONSE: The Department agrees that it is not reasonable to never allow a person relocating to New Jersey to become a resident. Consequently, the sentence which begins "If the applicant was placed" . . . has been deleted at N.J.A.C. 10:46-1.3 under the definition of "resident." However, the Department will consider this matter further and may engage in additional rule making on this matter in the future.

50. COMMENT: "Support services" are defined as services that are "less than 12 months" in duration, "or are of a specific type of care, treatment, training, assistance or device . . ." However, many support services, in fact, are provided, and should be provided, far beyond the 12-month time period. The proposed rule could be interpreted as setting an outside limit on the duration of support services. Therefore, it is recommended that the language which is bracketed in the proposed rule, "that is less than 12 months", be deleted.

RESPONSE: The Department agrees and the phrase "that is less than 12 months" has been deleted at 10:46-1.3 under "support services".

51. COMMENT: Subparagraphs (c) and (d) under general eligibility [N.J.A.C. 10:46-2.1] are an unnecessary repetition of special education rules already embodied in federal and State law. See P.L. 94-142, 20 U.S.C. 1401, and N.J.S.A. 18A:1-1 et seq. It is clearly a matter of law that local school districts are required to provide services as appropriate and educationally necessary. It is of concern to the Public Advocate that these subparagraphs are located within the section of the proposed regulations entitled "Eligibility criteria." Rather than indicating what makes an applicant eligible, these provisions seem to require a finding of ineligibility for a school age child who may be in need of services (e.g., support services) provided by the Division beyond those services he or she receives from the school district. An applicant should not be determined ineligible simply on the basis of age.

In addition, although the bulk of the cost of providing educational and related services is not borne by the Division, there are costs associated with operating and maintaining educational facilities which are the responsibility of the Division, pursuant to the State Facilities Education Act, N.J.S.A. 18A:7B-1 et seq. This act provides for the thorough and efficient education of children in State facilities, including developmental and day training centers operated by the Division.

RESPONSE: The Division has found that, in the Office of Administrative Law (OAL), the issue of eligibility for services from the Division of Developmental Disabilities has been confused with educational entitlements. The Public Advocate indicates that these sections merely paraphrase rules already existing in Title 6 of the New Jersey Administrative Code. For the purposes of fully and clearly informing the applicant and any other concerned persons, these requirements have been included in the rule. No changes were made on adoption.

52. COMMENT: Subsection (e) of N.J.A.C. 10:46-2.1 unnecessarily precludes eligibility simply because the services of DDD are not anticipated to be required within two years of application for services. Since it is already DDD's practice to place individuals who are found eligible, but in need of services that are not currently available, on waiting lists for such services, it would not be unreasonable for DDD to maintain a list or registry for persons who are eligible but do not request a service at the time of application. A less extensive reevaluation could be done at the time the individual actually requests or needs service. Aside from providing reassurance to applicants and their families that when services were needed they would be eligible to receive them, such a list would also provide valuable information to DDD in planning future services. A person with a developmental disability who is eligible remains eligible in the vast majority of cases and his/her condition is not likely to change. Requiring an applicant to "activate" their application is an unnecessary and burdensome request. The proposed provision, rather than promoting rational planning instead could cause crisis management to become the common course of action rather than the exception. The Public Advocate urges the deletion of subparagraph (e).

RESPONSE: The Department agrees with the rationale submitted by the Public Advocate and has deleted N.J.A.C. 10:46-2.1(e) on adoption.

53. COMMENT: It is recommended that N.J.A.C. 10:46-2.1(f) have an additional requirement that any interdisciplinary team (IDT) recommending an eligibility determination regarding a dually-diagnosed applicant have a professional with expertise in dual diagnosis as part of the team. This requirement is crucial to the appropriate determination of an applicant's need for mental health services.

The previous proposed new rule would have excluded from eligibility for DDD services all persons with a psychiatric primary diagnosis and a need for psychiatric services. (Proposed N.J.A.C. 10:46-2.1(f), 21 N.J.R. 2009, August 15, 1988.) The reproposed new rule commented upon herein abandons this criterion of ineligibility, but it would still exclude from DDD services all persons who "require long-term care in a psychiatric facility . . ." This continued discriminatory exclusion of psychiatric patients flies in the face of both State and federal developmental disabilities legislation, and, if adopted, would result in a denial of services which are essential to the health, safety and welfare of those who are excluded. Therefore, the Public Advocate urges DDD to revise its proposed regulation by recognizing that individuals in need of long-term care in a psychiatric facility are fully eligible for DDD services.

State and federal law entitle developmentally disabled citizens to a broad range of services for the purpose of maximizing their "development potential . . ." N.J.S.A. 30:6D-9; N.J.S.A. 30:6D-3 (defining "developmental disability" and services be provided); N.J.S.A. 30:6D-25(b) (definitions of "developmental disability" and services to be provided; (42 U.S.C. sec. 6001(7) (identical definition of "developmental disability"). *New Jersey Association for Retarded Citizens, Inc. v. New Jersey Department of Human Services,* 89 N.J. 234 (1982) (State law vests each developmentally disabled person with an entitlement, obligating State to provide full range of needed services). As the above statutory provisions make clear, the citizen is legally eligible for these services if he or she is developmentally disabled and in need thereof; nowhere do these definitions exclude individuals simply because they are also in need of long-term psychiatric care.

DDD is obligated to provide a full range of services in addition to admission to a State institution. N.J.S.A. 30:6D-25(f). These services

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include "specialized adaptions of generic services," and services directed "toward the social, personal, physical or economic habilitation or rehabilitation of a person with a developmental disability . . ." *Ibid.* See also N.J.S.A. 30:6D-27(b) (eligible individuals entitled to a statement of what services are appropriate for them); N.J.S.A. 30:6D-27(c) (entitled to continuity of services and liaison with other services providers). The reproposed regulation recognizes the variety of services which may be needed. N.J.A.C. 10:46-2.3. The reproposed regulation, therefore, would deprive psychiatric patients of these ancillary services, simply because they are receiving services from another division of the Department of Human Services.

The reproposed new rule would violate additional statutory entitlements of eligible individuals whose special rights under Title 30 of the New Jersey Statutes are preserved by the very law which the reproposed new rule is meant to implement. N.J.S.A. 30:6D-30. See, e.g., N.J.S.A. 30:4-25.6 (right to admission to State facility or alternative services); N.J.S.A. 30:4-165.2(1) (DDD must provide consultations to other agencies); N.J.S.A. 30:4-165.2(2) (services provided to persons in "other residential facilities operated by the Department . . ."); N.J.S.A. 30:4-165.1 (services include evaluation and guardianship services). The reproposed regulation would deny DDD services to such persons who also require long-term care in a psychiatric facility, thus contradicting the clear statutory mandate to preserve their rights as set forth in Chapter 4, Title 30, of the revised statutes.

The denial of these services also violates the plain meaning of N.J.S.A. 30:4-24.2(a), which provides that no individual shall be denied his or her civil or statutory rights solely on account of admission to a State institution for psychiatric care. The reproposed regulation would do just that, as noted above.

There are many dually diagnosed individuals who are considered to be in need of ongoing psychiatric hospitalization simply because there is no available space in an appropriate DDD facility. The reproposed rule for such persons would simply perpetuate this dilemma. Moreover, many developmentally disabled individuals are in great need of rehabilitative services and accommodation to their handicaps in order to permit their psychiatric recovery. These individuals may not be able to benefit from the psychiatric setting without consultation and services from the Division; yet, the reproposed new rule would exclude them from consideration by the Division. Individuals nearing the end of a "long-term" episode of psychiatric care, in addition, would be required to apply for the services of DDD anew, thus being placed on waiting lists for available residential placement opportunities. This would inordinately delay their return to the community in many cases. This destruction of the continuity of care and this failure to provide liaison to long-term care psychiatric patients who are also developmentally disabled flies in the face of statutory recognition of the need for this and other intradisciplinary care. N.J.S.A. 30:4-27(c).

In addition to being discriminatory, the reproposed new rule would also lead to arbitrary and unreasonable eligibility determinations, because the "need" for "long term" psychiatric care is undefined in the regulation. The regulation is silent on what clinical evidence must be reviewed by the "teams" who would make these decisions, and it is unclear whether these "teams" possess the competence to determine the precise level of psychiatric care needed. Finally, there is no indication of the criteria for making such a decision, nor of the weight, if any, which must be accorded to the recommendation of a treating physician. Thus, the regulation provides a virtual carte blanche for DDD staff to label undesirable individuals as ineligible for Division services, even when they are not actually placed in psychiatric facilities.

As with the discriminatory criterion in the originally proposed eligibility regulation, the new criterion continues to permit DDD staff to make self-serving decisions on eligibility, which lack an objective and precise clinical basis. As noted in our previous comments, this Division is aware of many cases in which individuals labeled by Division staff as requiring psychiatrists of the Division of Mental Health and Hospitals (DMH&H), who see them as primarily developmentally disabled. The new criterion continues to facilitate this ongoing jurisdictional struggle between two divisions of the Department of Human Services, to the clinic detriment of its clients.

Indeed, the most likely reason for excluding long-term psychiatric patients from eligibility is that a rough compromise has been arrived at between the two divisions, concerning this ongoing struggle to avoid responsibility for dually diagnosed patients. While some administrative give and take may be necessary in allocating responsibilities among divisions, it is unacceptable to reach such an accommodation through a blatantly discriminatory eligibility rule. No internal administrative compromise can alter the statutory eligibility of a citizen for State services. The Department of Human Services must not allow its intramural disagreements to distort the proper interpretation of the Department's statutory obligations to the citizens. Therefore, the reproposed N.J.A.C. 10:46-2.1(g) must be deleted before this regulation can be adopted in conformance with the law.

RESPONSE: The Department agrees and has deleted N.J.A.C. 10:46-2.1(f), (g) and (h) on adoption, in order to remove provisions which discriminate against the mentally ill. Henceforth, the mentally ill will be evaluated for eligibility for the services of DDD in the same manner as any other applicant. Additionally, the Department has deleted definitions for "psychiatric facility" and "short term care facility," since these are no longer appropriate.

54. COMMENT: Presumptive eligibility lacks guidelines as to when presumptive eligibility should be considered and how determinations of presumptive eligibility are to be made. The Public Advocate urges that the time frames and the types of data required for such determinations be less extensive than required by proposed N.J.A.C. 10:46-3.3.

RESPONSE: The Department agrees that time frames are appropriate; the time frames have been added at N.J.A.C. 10:46-2.2 under "Presumptive Eligibility". Refer to response #14.

55. COMMENT: N.J.A.C. 10:46-2.3(a)1i utilitizes the term "retarded." The use of such a term is highly inappropriate in regulations addressing the provision of services to persons with developmental disabilities. It suggests a lack of sensitivity and a lack of understanding of the mission of DDD. The term should be deleted and the language "person with a developmental disability" be inserted.

N.J.A.C. 10:46-2.3(a)1ii utilizes the term "state schools." Again, this is language from another era and is inappropriate. The term should be deleted and "developmental centers" should be inserted.

RESPONSE: The Department agrees. An amended definition of "Services" is found at N.J.A.C. 10:46-2.3(a). Refer to Response #13.

56. COMMENT: N.J.A.C. 1046-2.3(d)5 includes home adaptation as a support service. However, the proposed regulation permits this service only where the client "owns his/her own home, lives with a relative who owns the home or lives in a home licensed in accordance with N.J.A.C. 10:44B." The Public Advocate urges the inclusion of tenants in this subsection as well.

The Fair Housing Act of 1988, 42 U.S.C. 3604(f)(3)(C), requires that all buildings with four or more units be accessible and that "handicapped" persons be permitted to make "reasonable modifications of existing premises." The statute permits a landlord, in rental units, to condition permission for alterations upon an agreement by the tenant to restore the premises to its original condition. The federal regulation apparently permits the landlord to require an escrow account established by the tenant to ensure availability of funds for restoration. 59 Fed. Reg. 3289 (1989).

Proposed N.J.A.C. 10:46-2.3(d)5, in effect, precludes tenants from obtaining home adaptation services from DDD contrary to the express purposes of the federal legislation which speaks to both homeowners and tenants. Thus, the Public Advocate recommends that this subsection be amended to include tenants so as to conform with federal law, especially in light of the fact that many physically disabled clients of DDD reside in rented premises.

RESPONSE: The Department agrees and the wording "owns his or her own home, lives with a relative who owns the home or lives in a home licensed in accordance with N.J.A.C. 10:44B" has been deleted at N.J.A.C. 10:46-2.3(d)5.

57. COMMENT: Subsection N.J.A.C. 10:46-3.2(d) indicates that there is a special application process for requesting the transfer to New Jersey of a developmentally disabled person who resides in an out-of-state facility. However, the following section N.J.A.C. 10:46-3.3, "How to apply," does not specify the information to be provided by the applicant when the special application process is used. Later sections delineating the determination process and the notice requirements make no reference to what process applies to the applications of persons residing in out-of-state facilities and what notices will be provided to such applicants. If the application and determination processes and notices are the same, it should also be stated. Otherwise, the difference should be detailed here.

RESPONSE: N.J.A.C. 10:46-3.2(d) has been changed to indicate that such requests shall be made to the Assistant Director for Residential Services. The Assistant Director shall refer the request to the appropriate Regional Office for a determination of eligibility. A statement that all notice requirements contained in N.J.A.C. 10:46-4.2 shall be followed has been added.

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58. COMMENT: N.J.A.C. 10:46-3.3(c) indicates that accommodations will be made available for applicants "who are non-English speaking, illiterate or blind/visually impaired." The deaf and hearing impaired are not mentioned. It is recommended that language be added to provide that applicants who are deaf or hearing impaired will also have accommodations made available to them.

RESPONSE: The Department agrees, and N.J.A.C. 10:46-3.3(c) has been amended as indicated in Response #32.

59. COMMENT: N.J.A.C. 10:46-4.1(f) indicates that "where the matter is reopened for further review . . . the second team shall review the record and shall make a final determination." However, no IDT has the authority to make final determinations. The Director is the only person authorized to make final determinations. See N.J.S.A. 30:6D-23 **et seq.**

RESPONSE: The Department does not agree. The requirement that the Director must make final determinations of eligibility is not found in N.J.S.A. 30:6D-23 et seq. The purpose of the rule is to state who may make determinations of eligibility; therefore, no changes are necessary.

60. COMMENT: In N.J.A.C. 10:46-4.1(f), the second team's recommendation must be in writing and based on specific findings. Language should be inserted to reflect this recommendation and the language "final determination" deleted.

RESPONSE: N.J.A.C. 10:46-4.1(e) requires that the team(s) recommendations shall be made in writing and specified in writing. The second team can make the final determination (refer to Response #59).

61. COMMENT: It is recommended that a subsection (g) be added [to N.J.A.C. 10:46-4.1] to provide that the Director or his designee shall review the record and recommendation of the second team and make a final determination in writing based on specific findings.

RESPONSE: Please refer to Response #59. No additions or changes are necessary.

62. COMMENT: N.J.A.C. 10:46-4.2(b) allows DDD to provide status reports to an applicant every 30 days subsequent to the initial 60 day period of processing if an eligibility determination cannot be made within the initial 60 day period. This provision would permit DDD to indefinitely delay the processing of an application. The Public Advocate urges the amendment of subsection 4.2(b) to require that DDD be permitted no more than one 30 day extension of the initial determination period unless DDD can demonstrate the delay is due to causes beyond its control (e.g. lack of data, but not due to staff shortages or funding difficulties).

RESPONSE: N.J.A.C. 10:46-4.2(b) has been changed to require that the applicant be advised in writing as to the specific reasons why a determination of eligibility cannot be made. The Department feels that citing specific reasons for delays in determination which are not acceptable is not appropriate rulemaking.

63. COMMENT: Finally, it is recommended that N.J.A.C. 10:46-4.2(c)1 and 2 be deleted in their entirety as the provision of the most "suitable" service is not relevant to eligibility. If subsection 4.2(c) remains in the rule, the term "suitable" should be deleted and the term "appropriate" inserted to conform to the statutory language. N.J.S.A. 30:6D-27. N.J.A.C. 10:46-4.2(c)2 should, in any case, be deleted. The DDD Act has no provision for a waiting list for any services. Thus, any reference to a waiting list is impermissible.

RESPONSE: The term "appropriate" has been substituted for "suitable" at N.J.A.C. 10:46-4.2(c)1 as requested. N.J.S.A. 30:4-25.6 does allow an eligible person to be placed on a waiting list for the appropriate service pending its availability. Therefore, the appropriate word "waiting" was inserted before "list" at N.J.A.C. 10:46-4.2(c)2.

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64. COMMENT: In N.J.A.C. 10:46-1.1 "Purpose; authority" of the rule reads: "Pursuant to N.J.S.A. 30:4-25.2, Application for determination of eligibility, and N.J.S.A. 30:6D-1 et seq. (P.L. 1985, c.145), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determinations of eligibility for services, **subject to legislative appropriation of funds therefore,** to persons with developmental disabilities."

In the annotated State code 30:6D-23 which deals with the change of DMR to DDD, the only reference to funding being a criteria for providing service is in section 30:6D-31. This refers to persons whose disability occurs after the age of 22 and before age 55. 30D-31 reads: "within the limits of available funding and services, the director may declare as eligible for services . . ."

In referring to the original law, section 13 of L.1985, c.145 approved April 24, 1985 provides:

"This act shall take effect 30 days following enactment except the division shall have three years from the date of enactment to develop necessary plans and expand programs to **ensure services to all eligible developmentally disabled persons pursuant to this act."**

We strongly believe that eligibility has nothing to do with legislative appropriations. The law clearly states that services are to be provided to all those eligible. Therefore we recommend striking the four words "subject to legislative appropriation," in the purpose and authority section.

RESPONSE: The Department agrees. This reference has been deleted at N.J.A.C. 10:46-1.1. Please refer to response #5.

65. COMMENT: The definition of "Intake Worker" refers to the employee meeting the classification under the Department of Personnel requirements. In contacting the Department of Personnel, they do not have "Intake Worker" as a classification. In contacting DDD, we discovered that an "Intake Worker" is referred to as a "Senior Community Program Specialist". This leads us to assume that either there are no requirements for "Intake Worker" or that the definition should not be "Intake Worker" but a "Senior Community Program Specialist".

This may appear to be a semantics change, but we believe these regulations should be as accurate as possible from the inception. "Senior Community Program Specialist" should be included in its place.

Currently, the Department of Personnel specifications for a "Senior Community Program Specialist" is a Bachelor's degree from an accredited college or university. We are requesting the Department of Personnel change the requirements so that the "Senior Community Program Specialist" degree be in human resources, social work or other human service related field, due to the magnitude of responsibility that this person has in deciding the eligibility of prospective clients.

RESPONSE: The definition of "intake worker" has been changed at N.J.A.C. 10:46-1.3 and references to the Department of Personnel requirements deleted. The Department feels that the inclusion of specific degree requirements may limit its ability to recruit staff who could otherwise perform the job duties.

66. COMMENT: The definition of "resident" in this code is defined as a "person who is in a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the state." The intent to move from the state is very confusing. In codes involving seasonal workers perhaps one could understand theoretically, but certainly not in reference to an individual in need of DDD services. We would ask that the language involving intention to move from the state be deleted.

RESPONSE: The Department agrees with the comment of the Public Advocate (comment #49), which indicates that this definition is the generally accepted legal definition of residency. Therefore, no change in this part of the definition is necessary.

67. COMMENT: In the definition of "support services", concern is created when identification of those services occurs. The definition reads:

> "Support Services" means services provided to developmentally disabled persons and their families that are generally of short term duration, that is less than twelve months or are a specific type of care treatment, training assistance or device that will help the individual avoid the need for more intensive services."

Although we agree that a support service should be in place to assist the individual in avoiding intensive services, we believe that the language using "generally short term duration" could be interpreted as the service only being allowed to exist for 12 months. Using supported employment as an example it could be identified as a support service but would not be generally short term. We recommend that the definition read:

> "Support Services" means services provided to developmentally disabled persons and their families that are in need of a specific type of care treatment, training, assistance or device that will help the individual avoid the need for more intensive services."

RESPONSE: The Department agrees and the definition of support services has been changed at N.J.A.C. 10:46-1.3. Please refer to Response #11.

68. COMMENT: Under general eligibility, N.J.A.C. 10:46-2.1(c) causes concern in reference to a question of eligibility. Subsection (c) reads:

> "With regard to a student who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq. The expenses of educational and related services shall not be borne by the Division."

A related service could be a variety of types of service. We are concerned that this not be interpreted as excluding people under age 21 from DDD services such as respite. We would recommend the sentence to read:

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". . . the expense of educational and services related to the child's educational development should not be borne by the Division."

RESPONSE: This provision is not intended to exclude children from Division services. N.J.A.C. 10:46-2.1(c) and (d) do not indicate that the applicant may be declared ineligible, but only indicate that while an individual has an educational entitlement, the Division shall not bear certain costs.

This is an important distinction. As indicated in Response #51, the Division has experienced appeals where the issues of placement, educational entitlement and eligibility for Division services were intermixed. It appears in the rule in order to clearly address such situations, should they arise in the future.

69. COMMENT: N.J.A.C. 10:46-2.1(e) causes crisis management to be common course in the Division with this regulation. Subsection (e) reads:

"If the applicant anticipates that services of the Division will not be required within two years of the application for services, he or she shall not be declared eligible. The name of the person and background information shall be maintained on file. The application may be activated at any time services are required."

If a person applies and is eligible they should go on record as a DDD client at that time. We are aware that the interpretation of law is that if an individual is eligible, then a service must be provided for that new client. We believe that the availability of appropriate services should not prevent individuals from being eligible for these services. We urge that the two-year requirement be deleted from subsection (e).

An applicant may not be in need of service presently but may be in the future if their parents or caretaker is incapacitated. A crisis will be avoided because the eligibility will already be determined. The next step after the death of a caretaker should be dealing with the client's needs rather than re-determining that person's eligibility. In our experience, the issue of lag time during crises has been a serious problem.

RESPONSE: The Department agrees, and has deleted the requirement of present need from N.J.A.C. 10:46-2.1.

70. COMMENT: N.J.A.C. 10:46-2.1(f) is so very critical to the lives of individuals with disabilities that we feel the team should specifically include an expert in mental retardation and mental illness. We strongly recommend that a section 4 be added that requires monitoring of the client's progress once in the mental health division by someone in the Division of DDD to determine if current treatment has led to improvements, enabling the person to have a primary diagnosis of developmental disability.

RESPONSE: N.J.A.C. 10:46-2.1(f) has been deleted, in order to permit mentally ill individuals equal access to determinations of eligibility for DDD services. There is not a need for an expert in both mental retardation and mental illness, since the rule does not discriminate against the applicant who is mentally ill.

71. COMMENT: N.J.A.C. 10:46-2.2, Presumptive eligibility. We appreciate and support the need for this section to assist people in emergency situations. The only addition we would suggest is striking the word "subsequent" and in its place put "immediately following the admission to service".

RESPONSE: The Department does not agree and feels that the word "subsequent" is appropriate. In cases of presumptive eligibility, admission to services is necessary due to emergent need. If it were possible to "immediately" gather all information necessary to do an eligibility, there would not be a need for a determination of presumptive eligibility.

72. COMMENT: N.J.A.C. 10:46-2.3, "Services," defines the types of services offered by DDD. It directly refers to the Division providing a comprehensive evaluation, functional services and guardianship services. It further goes on to define functional services but does not provide a definition for what a comprehensive evaluation is or what guardianship services include. We believe that it is necessary for both of these areas to be defined for the sake of consistency.

In the area of "Functional Services" there are changes that need to be made utilizing currently accepted terminology.

Under nonresidential functional services, it refers to "counseling of family or guardian of employer or of retarded person; . . .". We are requesting that this be changed to ". . . of a person with a developmental disability . . .".

In the section ii "Residential functional services: refers to State schools, this should be changed to developmental centers. Also in this section it refers to the "sheltered life program". We don't believe that this program exists any longer.

RESPONSE: The definition of services has been revised at N.J.A.C. 10:46-2.3(a). Please refer to Response #13.

73. COMMENT: Another addition should be noted in N.J.A.C. 10:46-2.2(d) in the definition of an assistive device. This refers to devices that would assist in positioning people, but it doesn't refer to communication devices. We would ask that communication devices also be described as a support service.

RESPONSE: The Department agrees. The phrase "or devices to aid in communication" has been added to N.J.A.C. 10:46-2.3(d)3.

74. COMMENT: We are very concerned with N.J.A.C. 10:46-3.3(b)5, which requests that the individual or guardian request specific services. We believe that consumers, parents, and guardians do not have an obligation to ask for a specific service (and often are unaware of what services to request) but should be instructed by the intake worker what services they are entitled to. We would ask section 5 be deleted.

RESPONSE: It is important that the Division know, at the time of application what services are requested. It is in the best interests of the applicant and the Division if it is known at the beginning of the application process what will address the applicant's needs. Such information could indicate the need for presumptive eligibility or support services, which may be offered on an expedited basis. In order to clarify what is requested, the words "if known by the applicant" have been added at N.J.A.C. 10:46-3.3(b)5.

75. COMMENT: N.J.A.C. 10:46-3.3(c) reads:

"Accommodations shall be made available by the Division for applicants who are non-English speaking, illiterate or blind/visually impaired."

We believe that there are other individuals who need to be assured that accommodations will be made, including individuals with physical disabilities, individuals with hearing impairments and individuals using communication devices, such individuals should also be accommodated. We are certain that this was an oversight and can be easily remedied.

RESPONSE: N.J.A.C. 10:46-3.3(c) has been changed to indicate that accommodations shall be made for those who cannot complete an application for any reason. Refer to Response #32. We have also added that applications need not be taken in the office and can be taken at any place that the application process is facilitated.

76. COMMENT: In addition, there is concern over N.J.A.C. 10:46-3.3(e) which reads:

"An application shall be deemed complete when all documentation is received by the Division."

All the records ever written are not necessary to determine eligibility but the determination can be made from a minimal amount of information. We would ask that the language be changed to say that the "minimum documentation is received by the Division".

RESPONSE: The Department agrees that all records ever written are not necessary; however, it is necessary to have enough information available to fairly assess the client. It is likely that when only minimum documentation is available, the applicant may incorrectly be found ineligible for services.

N.J.A.C. 10:46-3.3(e) has been changed to deem an application complete when "there is sufficient information to make a determination of eligibility."

77. COMMENT: Under N.J.A.C. 10:46-4.2 Notice Requirements, we are very concerned with subsection (a), which reads:

"If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be apprised of the status of the application at least every 30 days thereafter."

We support the idea of a sixty-day notification process and do not support an expansion of this time period. The Division has a responsibility to meet this deadline. We strongly recommend striking the applicant being apprised every 30 days. This is totally unacceptable. We are recommending that a section be added immediately following section a. The new section would read:

The applicant should not have to request to be put on a waiting list, it should be an automatic occurrence. The individual is being told that they are eligible for services and then they must request to be put on a waiting list. We request that "at the request of the applicant" be deleted.

"If the applicant has not been notified within sixty days, the applicant has the right to petition the Director for presumptive eligibility."

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We are aware of cases where timely processing is not occurring. During the sixty-day period of determination, the applicant remains stagnant and without services.

RESPONSE: N.J.A.C. 10:46-4.2(b) has been changed to indicate that, if a determination cannot be made within 60 days, the applicant is apprised of specific reasons why the determination cannot be made. Presumptive eligibility is reserved for those situations where the applicant manifests an emergent need. The wording "at the request of the applicant" has been deleted from N.J.A.C. 10:46-4.2(c)2 and the word "waiting" inserted before "list".

78. COMMENT: We also are requesting, in N.J.A.C. 10:46-4.2(d) if the client is determined ineligible, it discusses that information regarding the right to appeal will be sent. We are requesting that the right to appeal document be an adaptation of N.J.A.C. 10:48, so that it can be easily understood by the person deemed ineligible, or their respective guardian.

RESPONSE: N.J.A.C. 10:46-4.2(d) indicates that the notice shall advise of the applicant's right to appeal. Although the Division does send an explanation of the appeals process which is written so that it can be readily understood, N.J.A.C. 10:48 is the Division's appeal procedure and is, therefore, cited in the rule.

79. COMMENT: We request the deletion of N.J.A.C. 10:46-4.2(e)2 which reads:

> "At the request of the applicant, the Division shall also place the eligible person on a list for the service(s) deemed most suitable by the professional team pending its availability."

RESPONSE: The phrase "at the request of the applicant" has been deleted. It is necessary to place an individual on a waiting list when the most appropriate services are not available. Present resources do not allow the Division to immediately provide the most appropriate services in all cases.

80. COMMENT: In referring to the annotated code, we noticed that section 30:6D-31 was omitted from your regulation entirely. This section reads:

> "Within the limits of available funding and services, the director may declare as eligible for services under this act individuals who meet the criteria for developmental disability pursuant to subsection b. of section 3 of this act except that their disability was manifested after the age of 22 but before the age of 55."

We understand the fiscal constraints that presently exist but we also believe that the law is clear in ensuring that the Director of DDD would have the opportunity to use this option of the law if the funds exist.

RESPONSE: The Department recognizes the importance of this provision in the law. It will consider future rulemaking on this issue.

COMMUNITY HEALTH LAW PROJECT

81. COMMENT: Under N.J.A.C. 10:46-1.3, Definitions, "Developmental disability"—the term "severe" should not be used in this definition unless it is separately defined. It may be best to eliminate the term "severe" altogether, in that it adds nothing to the 6 point definition of "developmental disability." Our comment is the same for use of the term "severe" in the 6th point of the definition of "developmental disability."

RESPONSE: The definition given in N.J.A.C. 10:46-1.3 for "Developmental Disability" is taken directly from N.J.S.A. 30:6D-25(b). Please refer to Response #1 for additional information.

82. COMMENT: N.J.A.C. 10:46-2.1(g) should be deleted in that even persons who require long term care in a psychiatric facility may be "developmentally disabled" as that term is defined at proposed N.J.A.C. 10:46-1.3, and they may benefit from Division services.

RESPONSE: The Department agrees with the comment. N.J.A.C. 10:46-2.1(g) has been deleted. Please refer to response #53.

83. COMMENT: N.J.A.C. 10:46-2.3(a)1i—Nonresidential functional services should not be limited to "retarded" persons, but should be available to all developmentally disabled persons.

RESPONSE: The Department agrees and has redefined services at N.J.A.C. 10:46-2.3(a). Please refer to response #13 for additional information.

84. COMMENT: Under N.J.A.C. 10:46-2.3(d)5, home adaptation should not be limited to those who "own" homes or live with relatives who "own" homes. Adaptations may be just as necessary and appropriate in non-owned residences. Moreover, the recently enacted amendments to the federal Fair Housing Act specifically ensure that rented facilities can be adapted for persons with disabilities.

RESPONSE: The Department agrees and the reference to an "individual who owns his/her home . . ." has been deleted at N.J.A.C. 10:46-2.3(d)5. Please refer to response #56 for additional information.

85. COMMENT: Under N.J.A.C. 10:46-3.3, How to apply, (c)—Accommodations should also be made for persons with any disability which hinders them from filling out the application, such as inability to write.

RESPONSE: The Department agrees. N.J.A.C. 10:46-3.3(c) has been changed as indicated in Response #32.

86. COMMENT: N.J.A.C. 10:46-4.2(b)—This section should be eliminated, as it allows for the Division to delay ad infinitum. Section (a), with its mandate that the Division notify individuals of their eligibility within 60 days, should stand on its own.

RESPONSE: It is not always possible to make a determination in 60 days that will not adversely affect the applicant. The section has been changed as indicated in Response #34.

UNITED CEREBRAL PALSY OF MONMOUTH AND OCEAN COUNTIES INC.

87. COMMENT: Under Summary—Page 2 "Substantial limitation" as mentioned in the Federal definition, is not defined. Concerns exist regarding the current evaluation instruments used to assess "substantial limitation". It is most important that instruments that are statistically valid and reliable in relation to the presenting disability are selected and that these instruments are used by trained professionals.

People who have a developmental disability may also have mental illness, and may concurrently require treatment for the mental illness and also require services as a developmentally disabled person.

What is the rationale for the statement "the person must need services at the time of application"?

RESPONSE: The rule does not prescribe any specific instrument. This allows the Division to utilize the best clinical practice. There is no one instrument that is used to assess the extent of a disability. The determination of a substantial functional limitation is assessed on an individual basis, using a variety of methods. The Department agrees that people who have a developmental disability may also have mental illness and has deleted provisions excluding such persons. The requirement that a person must need services at the time of application has been deleted at N.J.A.C. 10:46-2.1(e). For the rationale, please refer to Response #3.

88. COMMENT: N.J.A.C. 10:46-1.3, Definitions: "Short term care facility". While the term "short term care facility" is generally accepted to mean a mental health treatment facility, it must be recognized that people with developmental disabilities also require "short term care facilities". People with physical disabilities who are displaced from their homes due to the loss of a parent, or due to illness or injury, particularly with the exercise of the Federal "PASSAR" regulations limiting the use of nursing homes, may become a new class of homeless people. People with physical disabilities who are no longer able to live within the community for a number of reasons including a need for skilled nursing care, may be excluded from services.

RESPONSE: The Department agrees that such persons may be inappropriately excluded from services; therefore, definition of "short term care facility" has been deleted.

89. COMMENT: Certain of the support services required for people who are developmentally disabled are of lifelong duration. Therefore, we recommend that the phrase "generally of short term duration" be deleted from this definition. Support services that may be lifelong specifically include personal care attendant services and respite services for the family.

RESPONSE: The term "that is less than 12 months duration" has been deleted at N.J.A.C. 10:46-1.3 under "support services". The definition states that support services are generally short term duration **or** a specific type of service that will avoid the need for more intensive service. Support services may be offered if either condition is met.

90. COMMENT: We recommend that the phrase "Qualified Mental Retardation Professional, (QMRP), as defined in 45 CFR 249.12(c)(3)" be deleted from the definition of "team"; the sentence to be substituted should read:

> "At least one member of the team shall be a professional with experience and training in the requirements of the presenting disability".

We particularly object to the use of the term "Qualified Mental Retardation Professional", when the person with developmental disabilities may not be mentally retarded.

RESPONSE: The phrase "QMRP" has been deleted at N.J.A.C. 10:46-1.3 under "Team". The specific disciplines which may qualify as QMRP's and the education and experience requirements have been in-

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cluded. While it may be desirable whenever possible, to have a professional trained in the requirements of the specific disability available, to require, in all instances, that such a person be a team member may make it impossible for a timely determination to be made.

91. COMMENT: N.J.A.C. 10:46-2.1(b): The phrase "expectations based upon a child's chronological age" is too vague; we suggest that criteria developed for identification of disability by Early Intervention Programs and by district Board of Education Child Study Teams be substituted. These criteria have met the test of Federal and State standards, and are sufficiently broad enough to recognize the array of disabilities likely to require identification and service.

RESPONSE: This phrase indicates that when evaluating a child for a substantial functional limitation, the child should be evaluated according to his chronological age. There had been some confusion that children would be evaluated based upon adult expectations. This would make most children, regardless of whether or not they had a handicap, eligible for services. For further clarification, the section has been changed to indicate that "with regard to a child, the **substantial functional limitation(s)** shall . . ."

92. COMMENT: N.J.A.C. 10:46-2.1(e): Developmental disabilities is a lifetime disability. The issue is twofold:

The applicant must be:

a) identified as developmentally disabled;

b) the services required need to be clearly identified.

RESPONSE: The Department agrees it is not necessary that services be needed at the time of application, as required by N.J.A.C. 10:46-2.1(e). The subsection has been deleted.

93. COMMENT: N.J.A.C. 10:46-2.1(f): We recommend that final clause, "while being treated for a mental illness" be deleted; phrase should read . . . "and receive services as necessary and appropriate".

RESPONSE: N.J.A.C. 10:46-2.1(f) has been deleted. For the rationale, please refer to Response #53.

94. COMMENT: N.J.A.C. 10:46-2.1(g): Persons who are determined to be developmentally disabled shall **continue to** be eligible for the services of the Division.

RESPONSE: N.J.A.C. 10:46-2.1(g) has been deleted. For the rationale, please refer to Response #53.

95. COMMENT: N.J.A.C. 10:46-2.1(h): We do not understand the reason for the inclusion of this clause.

RESPONSE: N.J.A.C. 10:46-2.1(h) has been deleted. Please refer to Response #53 for the rationale.

96. COMMENT: N.J.A.C. 10:46-2.2, Presumptive eligibility: This section should be used to permit the provision of services on an emergency basis while eligibility is being determined. Therefore, we suggest that this section be strengthened in order to permit the receipt of information, and the accurate evaluation of the individual, to determine not only eligibility, but necessary services.

We request that the phrase "emergent need" be more carefully defined.

RESPONSE: A decision concerning eligibility must be made based upon information available at the time an emergent need is identified. If the applicant can wait for further evaluation, the need is probably not emergent.

Emergent need may vary greatly, dependent upon individual circumstances. This section has been changed to reflect a time limit for determining presumptive eligibility. Please refer to Response #14 for additional information.

97. COMMENT: N.J.A.C. 10:46-2.3, Services: This section should be restructured as follows:

a) The Division provides comprehensive evaluation, functional and guardianship services. (see N.J.A.C. 10:40)

Services include both residential and non-residential services.

1. Nonresidential services shall include but need not be limited to: case management, support services, counseling of family or guardian, of employer, or of **consumer**: consultant services to social, educational, or welfare and health agencies and to the courts; adult training, day training programs, **physical, occupational and speech/language therapy, personal care attendant services, augmentative communication evaluations and training, and adaptive equipment.**

2. Residential services shall include but need not be limited to: evaluation, study, treatment, education, training, rehabilitation, care and protection provided in State schools and in other residential facilities operated by the department, or **by other agencies under contract with the Division**; family care and sheltered life programs; interim placement in approved residential facilities other than State schools. Such programs may be of short or long term duration as required. (N.J.S.A. 304-165.2).

RESPONSE: The definition of services at N.J.A.C. 10:46-2.3(a) has been revised, based upon N.J.S.A. 30:6D-25 et seq. Please refer to Response #13 for additional information.

98. COMMENT: Amend N.J.A.C. 10:46-2.3(d)2 to read:

Personal care to an individual where the family is unable to do this **unassisted**.

RESPONSE: The Department agrees with the commenter. This section has been changed to reflect the Division's intent more clearly.

99. COMMENT: Amend N.J.A.C. 10:46-2.3(d)4iii to read:

iii. supported by any activity needed to sustain paid work by persons with disabilities, including training, transportation, **personal care attendant services, and job coaches.**

RESPONSE: This section now states "Any activity needed to sustain paid work by persons with disability". The examples previously given are only a few of several possibilities. There are numerous examples which could be listed here; any list may not be all inclusive. The examples have been deleted.

100. COMMENT: Please note that references to "retarded person" should be changed to recognize the array of disability and the input of the consumer.

RESPONSE: References to "retarded persons" have been deleted at N.J.A.C. 10:46-2.3(a)1i and an amended definition of "services" appears at N.J.A.C. 10:46-2.3(a). Please refer to response #13.

101. COMMENT: In N.J.A.C. 10:46-3.2 the initial contact should be made to an intake worker by telephone, in writing, or by any method that permits the establishment of a documented point of contact. The intake worker may refer the consumer for presumptive eligibility; it is not within the competence of the intake worker to judge eligibility or lack thereof by telephone. Therefore, any person who requests an application, should receive an application.

RESPONSE: The Department agrees that any person who requests an application should receive one; therefore, N.J.A.C. 10:46-3.2(a) has been changed as indicated in Response #29.

102. COMMENT: The issue of the training of the intake worker is very significant.

RESPONSE: The Department agrees. A training curriculum will be developed. Please refer to Response #7 for additional information.

103. COMMENT: Once again, the two-part question must be raised:

a) is the person eligible.

b) what services are required.

A person should not be declared eligible or ineligible based upon services available, but rather by the definition of disability. Therefore, we recommend that N.J.A.C. 10:46-3.2(b) and (c) be deleted.

RESPONSE: This section does not refer to the availability of Division services. It applies only when the applicant requests a service that is not offered by the Division but is available from another public or private agency. When this is the case, such applicants should be referred to the appropriate agency or resource. Therefore, (b) and (c) will not be deleted.

104. COMMENT: Opportunity must be provided for assistance for the individual who has difficulty in ready or writing, in part perhaps because of the physical disability.

RESPONSE: The Department agrees and changes were made at N.J.A.C. 10:46-3.3(c) to reflect that accommodations shall be made for individuals who cannot complete the application themselves. Please refer to Responses #32 and 75 for additional information.

105. COMMENT: It must also be recognized that the Interstate Compact on Mental Health does not incorporate the individual who is physically disabled.

RESPONSE: The Department agrees. It is recognized that the Interstate Compact will not apply to persons with physical disabilities. Application in these cases would be made through the local offices (see N.J.A.C. 10:46-3.3(c)).

106. COMMENT: N.J.A.C. 10:46-3.3(b): Asking the applicant to present a request for the specific services presumes that the applicant is able to identify the services that may be available and/or required. This clause should be deleted.

RESPONSE: The Department agrees with this concern. This subsection has been changed as indicated in Response #74.

107. COMMENT: N.J.A.C. 10:46-3.3(c): Accommodations shall be made available by the Division for applicants who are non-English speaking, illiterate, blind/visually impaired, **hearing impaired and orthopedically disabled.**

RESPONSE: The Department agrees. Changes were made at N.J.A.C. 10:46-3.3(c) to accommodate all applicants who cannot complete the forms themselves. Please refer to Responses #32 and 75.

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108. COMMENT: N.J.A.C. 10:46-4.1(d) Determination: This section needs to be drafted to:

1. delete the word "final" from sections 1 and 2.

2. define the professional team and include an interview with the consumer, particularly if a determination of eligibility is being made.

3. establish an appeal process which moves from field office to central office. A hierarchical structure should be developed so that the appeal process can move to a presumably more experienced or more knowledgeable team if the findings of the initial team are questioned.

4. establish a time line for completing the recommendation of the teams, preferably within thirty days.

RESPONSE: The word "final" has been deleted in N.J.A.C. 10:46-4.1(d)1. N.J.A.C. 10:46-4.1(d)2 has been deleted entirely. N.J.A.C. 10:46-4.2(d) refers to the Division's appeal process, which is specified in N.J.A.C. 10:48. N.J.A.C. 10:46-4.1(e) has been changed to provide the findings of the team within 10 working days.

109. COMMENT: N.J.A.C. 10:46-4.1(f): Delete this subsection and establish a grievance process that recognizes the due process to which the consumer is entitled.

RESPONSE: N.J.A.C. 10:46-4.1(f) provides for the review by the second team as a safeguard, where the matter is referred for further review by the first team. N.J.A.C. 10:46-4.2(e) refers to the Division's appeal procedure, which provides due process.

110. COMMENT: N.J.A.C. 10:46-4.2(c)1: This professional team must include the consumer in making a determination of "suitable" services. If the alternate service is necessary, it must be consistent with the recommendations originally made by the professional team and the consumer.

RESPONSE: This team reviews the application for a determination of eligibility. This team is not an interdisciplinary team for the purpose of developing an Individual Habilitation Plan as required by N.J.S.A. 30:6D-10. For that reason, it is not required that the professional team include the consumer. It may not be possible, depending upon what resources are available, for the alternate service to be the same as the most appropriate service; however, consistency will be sought whenever possible.

111. COMMENT: N.J.A.C. 10:46-4.1(c)2 should read: The Division shall also place the eligible person on a list for the service(s) deemed most suitable by the professional team pending availability. A time limit for the provision of these services shall be provided.

RESPONSE: It is not possible to place a time limit on the provision of alternate services. Available resources do not allow the Division to guarantee the most appropriate service at a specific point in time. Therefore, the requested change has not been made.

112. COMMENT: The Division should maintain a list of those applicants deemed eligible, but unable to receive appropriate services because of the unavailability of services. The Division should also keep a list of those clients who are denied eligibility and the reasons for denial. These statistics should be included in an annual report provided by the Division, and should be reflected in the rationale for the annual budget of the Division.

RESPONSE: The Division does maintain a waiting list of those for whom the most appropriate service is not available. This information is used in preparing budget requests. It would not be appropriate to use numbers of individuals who were found to be ineligible for services to request additional resources, since their ineligibility would not be based upon availability of service, but on factors specific to those individuals.

DEVELOPMENTAL DISABILITIES COUNCIL

113. COMMENT: The rule makes reference to the delivery of service and determination of eligibility being "subject to legislative appropriation". the council has grave concerns with connecting the determination of eligibility to legislative appropriation. The law does not refer to legislative appropriation as a basis for which eligibility should be determined. The division has the obligation to make that determination for anyone who applies. We are recommended that in both the Economic Impact and in 10:46-1.1 Purpose; authority, the reference to legislative appropriation be removed.

RESPONSE: The Department agrees that eligibility should not be based upon services funded, but on other factors delineated in these rules. This provision has been deleted at N.J.A.C. 10:46-1.1. Please refer to Response #5 for additional information.

114. COMMENT: The definition of Intake Worker is misleading because there is not a Department of Personnel classification for the job title "Intake Worker". These individuals meet the requirements for Senior Community Program Specialist. It is recommended that the language be changed to: "Intake Worker" means an employee of the Division who meets the Department of Personnel requirement for Senior Community Program Specialist. Although that change in language will make the definition technically correct, there remain concerns about the qualifications of that title, and the program of training referred to in that definition, adequately meeting the level of expertise that an Intake Worker for the Division must have in making determination of eligibility. It is unclear, upon discussion with Division staff if there has been any formal training of intake workers beyond the original program given by the University Affiliated Program (UAP) through Project Redirection. It is certain, however that there have been new intake workers employed since that time, and one must question whether they have been adequately trained.

It is also of concern that the job requirements for Senior Community Program Specialist do not require even a Bachelor's degree (years of experience can be substituted) and if the individual has a degree it does not have to be in a human services field. It is strongly recommended that the Division review the current requirements for individuals who will have the responsibility of making determinations of eligibility and consider creating a specific job classification for that role. It is also recommended that the training be formalized and ongoing.

RESPONSE: The Department agrees with the comment concerning the Department of Personnel. The definition has been amended at N.J.A.C. 10:46-1.3 under "Intake Worker" as indicated in Response #48. The Department also agrees that there should be a program of training. Please refer to Response #7. Creating a job title for "intake worker" is not necessary. It is the team that makes the decision concerning eligibility, not the intake worker.

115. COMMENT: N.J.A.C. 10:46-2.1(e) indicates that the individual shall not be determined eligible if it is anticipated that services of the Division will not be required within two years. The rationale for this is understood, given the law states an individual must be provided with a service once declared eligible. However, it became apparent in the Public Forums held by the Council in November, 1989 that individuals and families are in dire need of direction and advice when it comes to planning for the future. Although they may not necessarily be looking for a specific service, they are seeking information and assurance that their needs will be addressed when the time arises. At the present time, they are only being told to call back when they require services. Although this is not an issue that can be addressed in the rule, it is essential that the Division be aware of the needs of prospective clients not only for planning purposes, but also to provide the social service such an agency should perform. It is recommended that in each region, an individual be assigned to carry out this function of providing information, referral, and direction in planning, for all persons requiring that service.

RESPONSE: The Department agrees with the commenter's concerns. N.J.A.C. 10:46-2.1(e) has been deleted. Please refer to Response #3 for additional remarks.

116. COMMENT: In N.J.A.C. 10:46-2.3(a)1i, the wording should be changed to . . . or of developmentally disabled person . . .

RESPONSE: N.J.A.C. 10:46-2.3 has been changed according to the definition of N.J.S.A. 30:6D-25 et seq. Please refer to Response #13.

117. COMMENT: Subchapter 3. Application N.J.A.C. 10:46-3.2,—subsection (c), states "If the intake worker determines that the request is for services not offered by the Division, the intake worker shall offer to refer the person to an appropriate agency. If the person wishes to pursue the services of the Division, the intake worker shall send an application." The Council feels that this puts a great deal of responsibility on the applicant to understand the system and their right to request an eligibility determination, regardless of what they're told by the intake worker. As the Division responds to requests for services that are not the traditional ones sought by persons who are mentally retarded, it is especially important that all efforts be made not to "screen out" a request that may be appropriate.

It is therefore recommended that all requests be followed up with information about the services of the Division and the appeal process, as was recommended by the Project Re-direction Intake/Eligibility workgroup and was included as part of the procedures intake workers were trained in during the UAP training.

RESPONSE: N.J.A.C. 10:46-3.2(c) has been amended to include information concerning services. It has been our experience that, in some cases, persons request services not routinely available through the Division, but available from other public or private agencies. In such cases, a referral to that agency may satisfy the person making contact. The appeal procedure is referenced at N.J.A.C. 10:46-4.2(d). Information regarding

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the procedure should not be provided as part of the initial contact with an applicant, but at the point where the applicant may have need of it. This has been done at N.J.A.C. 10:46-4.2(d).

118. COMMENT: N.J.A.C. 10:46-3.3 Paragraph (c) should include individuals who are deaf or hearing impaired.

RESPONSE: This section has been changed to accommodate all individuals who cannot complete the application themselves, as indicated in Responses #32 and 75.

119. COMMENT: N.J.A.C. 10:46-3.3(e) states "An application shall be deemed complete when all documentation is received by the Division". This implies that every record available regarding the applicant must be received before an eligibility determination can be made. We are recommending that the language be changed to:

"An application shall be deemed complete when there is sufficient information to make a determination of eligibility."

It is also recommended that the division stress, through training, that there is no reason to "hold up" a determination of eligibility for the collection of records that have no bearing on that decision. As was also stressed in the UAP training, that task should be passed on to case management.

RESPONSE: The Department agrees, and N.J.A.C. 10:46-3.3(e) has been changed as suggested. Training will address the concerns voiced by the commenter.

120. COMMENT: Notice Requirements N.J.A.C. 10:46-4.2. The way in which parts (a) and (b) of this section are worded, there is no time limit upon which a determination of eligibility must be made. A major concern of the Project Re-direction Advisory Committee, was the length of time eligibility determinations take to be made. The entire process of application/eligibility determination developed by the Project Re-direction Intake/Eligibility Workgroup, endorsed by the steering Committee, and presented to all divisional intake workers and other staff in the U.A.P. training, was based on a 60 day determination process. It is strongly felt by the Council that the division must adhere to this 60 day time limit. In instances when this cannot occur, the applicant should be apprised of the reasons for the delay and the status of the application regularly. It is recommended that the language be changed in this section to the following:

(a) Division staff shall make a determination of eligibility within 60 days after the initial contact with the intake worker.

(b) If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be apprised of the reasons for the delay and the status of the application at least every week thereafter.

(c) In no event will a determination take longer than 90 days from the date of the initial contact with the intake worker.

RESPONSE: Is the intention of the Department that most determinations of eligibility shall be completed within 60 days. When this is not possible, the individual will be notified in writing of the reasons (Please refer to Response #34). It is not reasonable to establish an absolute time limit, for it may result in individuals being declared ineligible incorrectly.

121. COMMENT: N.J.A.C. 10:46-4.2(c)1: In (c) number 1, it is recommended that the language be changed to: "If the most suitable service as determined by the professional team is not immediately available, the Division shall provide **the most appropriate** alternate service.

RESPONSE: The proposed text is taken directly from N.J.S.A. 30:4-25.6. While the Department seeks to provide the most appropriate service, this may not be possible in every case.

122. COMMENT: In N.J.A.C. 10:46-4.2(c)2, it is recommended that "At the request of the applicant . . ." be deleted. If the professional team has recommended the service deemed most suitable, and the applicant is in agreement, but the service is not available, there is no reason that the applicant must request to be placed on a waiting list for that service—it should be automatic.

RESPONSE: The Department agrees and N.J.A.C. 10:46-4.2(c)2 has been changed to delete this requirement.

ASSOCIATION FOR RETARDED CITIZENS OF ESSEX COUNTY, INC.

123. COMMENT: In the sixth paragraph of the Summary, it reads that a "person must need services at the time of application." I think that it should read that a person may or may not need services at the time of application. The application process involves evaluation and a determination of eligibility for services.

I have personally known many parents who have experienced significant emotional turmoil in bringing themselves to make application for their disabled sons and daughters regarding future planning of appropriate services. They should not be penalized or rejected by being directed that their sons and daughters are ineligible for services.

RESPONSE: The Department agrees. The Summary cannot be revised; however, this requirement has been deleted at N.J.A.C. 10:46-2.1(e).

BERGEN PINES COUNTY HOSPITAL

124. COMMENT: N.J.A.C. 10:46-2.1(g): The language in this proposed new rule should be clarified so that DDD eligible clients who require temporary or periodic treatment in a long term care psychiatric facility do not lose their DDD eligibility status nor their place on DDD waiting lists.

RESPONSE: The Department seeks to enable mentally ill persons who are developmentally disabled to be evaluated on the same basis as other DDD applicants. To that end, the subsections placing special requirements on this population have been deleted at N.J.A.C. 10:46-2.1(f), (g) and (h).

125. COMMENT: N.J.S.A. 30:4-25.6 requires that, if the most suitable service is not available for the DDD eligible client, the Division shall provide an alternate service. Based upon Bergen Pines County Hospital's experience with accessing DDD residential services for eligible clients, we are compelled to inform you that this current statute is not enforced. DDD eligible clients remain housed in Bergen Pines County Hospital acute psychiatric units, as well as in other State and county psychiatric facilities, years after their need for psychiatric hospitalization has ended.

A continuance of the above requirement in light of the proposed expanded eligibility criteria only perpetuates the illogic in mandating service provision without adequate resources to provide such service.

We would recommend that either DDD be afforded the ability to comply with N.J.S.A. 30:4-15.6 by providing alternative (residential) services, or that the statute be deleted from the proposed new rules. Although compliance with the statute as it is currently set forth would require an additional appropriation to DDD, the decreased expenditure for the State's portion of psychiatric cost sharing to house these clients in costly psychiatric facilities is expected to offset the expense. Furthermore, it is incumbent upon the State of New Jersey to provide adequate and appropriate public services to the disabled population.

RESPONSE: The Division does comply with the statutory requirement to provide alternate services. Alternate services are not always a residential service. If the most appropriate (residential) service is not available, an alternate (non-residential) service may be provided.

ASSOCIATION FOR RETARDED CITIZENS, MORRIS CHAPTER

126. COMMENT: Overall, we feel the proposed eligibility criteria and procedures governing application and determination for services are appropriate. However, our concern surrounds SUBCHAPTER 2, ELIGIBILITY CRITERIA.

In practical terms, we feel our membership is frequently unaware of the availability of services by the Division of Developmental Disabilities. As a result, the membership does not know what services are available, and hence, cannot request a specific service.

Given the workload of the intake unit within the regions, I would have concerns that individual workers might not make the public aware of available services. If a family or consumer does not have an advocate assisting them with the eligibility process, ignorance could be extremely detrimental in determining whether or not eligibility is determined.

In addition, the emphasis placed on intake workers under SUBCHAPTER 3, APPLICATION, is very significant. The initial contact by a consumer or a consumer's advocate to the intake worker is critical. Once again, if the individual making the call is unaware of available services, the intake worker could eliminate even the potential for application on the part of the consumer.

RESPONSE: N.J.A.C. 10:46-3.3(b)5 has been changed to indicate that we ask for the presenting request, if the services are known to the applicant. N.J.A.C. 10:46-3.2(c) has been changed to indicate that the applicant shall receive information concerning services.

127. COMMENT: As an advocacy agency, we make every effort to assist in the application for services to DDD. However, there are many individuals within the community who do not have the backing of an agency or individual. This is particularly relevant to the "expanded population." Our experience at the Morris Chapter is that although DDD is now four years old, it has not done an adequate job in shifting its focus to the non-MR/DD population.

We believe that the essential means of eliminating these problems is to either alter N.J.A.C. 10:46-2.1(e) or provide extensive training to each

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region intake office. From a planning standpoint, we feel it is critical that the Division be well aware of what individuals will be requiring service in the future. Although a two-year time frame is helpful for students with developmental disabilities in the school systems, transitional planning should take place much earlier than two years prior to graduation. Such transitional planning should incorporate options available through DDD as well as other public agencies, such as DVR.

We recognize the potential burden that a huge influx in applications would present. However, we believe the present crisis in the waiting list for Residential Services and the poor implementation of Project Redirection would have been minimized if greater anticipation of new individuals in the system could be made.

RESPONSE: The Department agrees it may be appropriate to begin planning more than two years in advance of the perceived need for service, and has deleted the requirements of N.J.A.C. 10:46-2.1(e).

UNITED CEREBRAL PALSY ASSOCIATION OF NEW JERSEY, INC.

128. COMMENT: Eligibility vs. Delivery of Services: The question of eligibility is one of definition, not of availability of services. Simply stated, if the applicant fits the definition, they are eligible, regardless of whether a service to meet the particular need exists at the time of the determination.

Eligibility and Needs Assessment: Data collection for future use in development of new services is necessary and can best be accomplished through eligibility determinations. This will also be useful for future funding requirements.

RESPONSE: The Department agrees that eligibility should be based upon individual factors, and that data collection for future use is advisable. N.J.A.C. 10:46-2.1(e) has been deleted and N.J.A.C. 10:46-1.1 amended, as a result.

129. COMMENT: Support and Functional Services: The use of these terms is ambiguous and unnecessary. It creates an artificial separation to services that should be on a continuum. A developmental disability is a lifelong condition and service delivery should be a dynamic part of the disabled person's life, encompassing the time frame that is necessary to assist them in becoming independent.

RESPONSE: It is important to identify the need for support services since these may be provided on an expedited basis. Support Services are part of the continuum of services. N.J.A.C. 10:46-2.3(a) has been revised, based upon the definition contained in N.J.S.A. 30:6D-25 et seq. The term "functional services" is no longer utilized.

130. COMMENT: Training: The issues relating to disabilities require a more intense and sensitive training module than is currently being utilized. This will create a more confident atmosphere for both the consumer and the worker, and help the eligibility worker to become more aware of the difficulties associated with a developmental disability.

RESPONSE: The Division will develop a curriculum for the training of intake workers and welcomes your thoughtful contribution. Please refer to Response #7.

131. COMMENT: Presumptive Eligibility: This term is confusing and needs to be more clearly defined. It might be best to eliminate this category. This would be feasible, if eligibility were accomplished in a more timely manner and ineligibility were not determined by availability of services.

RESPONSE: Presumptive Eligibility (see N.J.A.C. 10:46-2.2) is needed for the purpose of allowing services to be provided on an expedited basis when there is an emergent need. The term "emergent need" is not easily defined. Emergent need is evaluated on a case-by-case basis. A time period for a determination of emergent need has been added. Please refer to Response #14.

132. COMMENT: Team Composition: A team should comprise the eligibility worker, the consumer, the consumer's family, or designee, and a person with expertise in the area of disability. Unless the person's disability precludes this level of decision making, the consumer should be present. All too frequently, decisions are made that are unintentionally not in the best interest of the person who must live with the decision.

RESPONSE: The team is not an interdisciplinary team, which is responsible to develop the Individual Habilitation Plan (IHP) as required in N.J.S.A. 30:6D-10, and which should include the consumer. (see N.J.A.C. 10:46-1.3—Definitions "Team.") The team referenced in the rule renders a decision concerning eligibility. Therefore the consumer is not required to be present. The input of the consumer and his or her family is included in the intake worker's report, which is presented to the team.

133. COMMENT: Expedience: Eligibility should be accomplished in a timely manner for the benefit of the consumer.

RESPONSE: Both presumptive eligibility and support services are included in the rules in order to provide services on an expedited basis. N.J.A.C. 10:46-4.2(b) has been changed to require that if a determination cannot be reached in 60 days the applicant must be informed in writing of the reason(s).

134. COMMENT: Advisory Board: The Division should establish an advisory board comprising Division staff, consumers, their families, and professionals from provider agencies to review and make recommendations for future services using the list of eligibles generated by the Division. This group should meet quarterly or more frequently, if needed.

RESPONSE: The Division has established several advisory boards which advise the Director on such issues as New Populations, Case Management Services and Long Range Plans. Inclusion in this chapter of requirements for these boards is not appropriate.

135. COMMENT: Delete the words "severe and chronic" from the definition of developmental disabilities.

RESPONSE: The Department has not deleted these terms, since terms "severe and chronic" appear in the definition of developmental disabilities contained in N.J.S.A. 30:6D-25 et seq. Please refer to Response #1 for additional information.

136. COMMENT: Summary, Page 2 para. 2, line 4; After the following major life activities add: **PRIOR TO ANY INTERVENTIONS.**

RESPONSE: It is not possible to amend the Summary on adoption, however; the comments and responses may be used to clarify areas in question. The description of substantial limitations is taken from N.J.S.A. 30:6D-25 et seq. To evaluate prior to any interventions may not allow the true abilities of the individual to be determined.

137. COMMENT: Summary, Page 2 para. 4, line 2; Omit present line and add; **[ANY PERSON THAT MEETS THE ELIGIBILITY CRITERIA CAN APPLY.]**

RESPONSE: The Summary cannot be amended on adoption, although points may be clarified. The rule requires that the applicant be a resident of New Jersey (see N.J.A.C. 10:46-2.1(a)).

138. COMMENT: Last paragraph, under SOCIAL IMPACT; delete. If a Social Impact statement is necessary it should read: **THE PROPOSED NEW RULES WILL BENEFIT THAT GROUP OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.**

RESPONSE: A Social Impact statement is necessary, as required by the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the O.A.L. Rulemaking Rules, N.J.A.C. 1:30. The components of the Social Impact statement are also required. The suggested statement would not comply with the requirements. Finally, the impact statements cannot be changed once they are published.

139. COMMENT: Page 3, under Economic Impact, paragraph 1; Remove whole paragraph.

Paragraph 2; line 1; Identify the time period referred to such as: From May 1, 1985 to March 31, 1989.

RESPONSE: The Economic Impact statement, like the Social Impact statement does not become part of the New Jersey Administrative Code, although it can be used, as can the Summary of Comments and Agency Responses, to interpret the rules.

140. COMMENT: N.J.A.C. 10:46-1.3; The definition of support services should not include "generally" of short term duration that is less than 12 months: We would prefer to eliminate the need for a separate and distinct category of "Support Services." The definition of eligibility should entitle the eligible person for services of the Division, not a particular category of services for a particular period of time.

RESPONSE: Once a person has been determined eligible, then he or she is eligible for all appropriate services offered by the Division, including support services, if applicable. (Please see Response #25.) The phrase "that is less than 12 months" has been deleted at 10:46-2.3. Please see Response #11 for the rationale. The revised definition states that support services are of short term duration **or** will avoid the need for more intensive services.

141. COMMENT: N.J.A.C. 10:46-2.1(b); Delete subsection (b) and add: **WITH REGARD TO A CHILD, ELIGIBILITY SHALL BE DETERMINED BY EXISTING EVALUATIONS OR IF THE CHILD IS NOT EVALUATED, THEY WILL BE REFERRED TO THE LOCAL SCHOOL DISTRICT.**

RESPONSE: N.J.A.C. 10:46-2.1(b), as proposed, indicates that when evaluating a child for a substantial functional limitation, the child should be evaluated according to his or her chronological age. The Department believes that evaluating the child in this manner is appropriate, for the reasons given in Response #91.

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142. COMMENT: N.J.A.C. 10:46-2.1(e); Delete paragraph and add: **THOSE PERSONS DEEMED ELIGIBLE FOR WHOM SERVICES ARE NOT IMMEDIATELY REQUIRED, OR SERVICES ARE NOT IMMEDIATELY AVAILABLE, WILL BE PLACED ON A LIST OF ELIGIBLES. THEY WILL BE INFORMED WHEN SERVICES ARE AVAILABLE OR WHEN NEW SERVICES ARE DEVELOPED TO MEET THEIR NEEDS.**

RESPONSE: N.J.A.C. 10:46-2.1(e) has been deleted. N.J.A.C. 10;46-4.2(c)2 addresses assignment to a waiting list which the Department feels will be of benefit to applicants, as well as an assist in planning for services.

143. COMMENT: N.J.A.C. 10:46-2.1(g); add **DEEMED** before eligible and **AS NEEDED** at end of line.

RESPONSE: N.J.A.C. 10:46-2.1(g) has been deleted, in order to permit mentally ill applicants to be evaluated on the same basis as other applicants.

144. COMMENT: N.J.A.C. 10:46-2.1(g): Delete entire paragraph.

RESPONSE: N.J.A.C. 10:46-2.1(g) has been deleted, in order to permit mentally ill applicants to be evaluated on the same basis as other applicants.

145. COMMENT: The term EMERGENT NEED in this line needs to be more clearly defined.

RESPONSE: Emergent need is evaluated on a case-by-case basis. To clarify further, a time limit has been added at N.J.A.C 10:46-2.2. Please refer to response #14 for additional information.

146. COMMENT: N.J.A.C. 10:46-2.2 add: **IF THE PERSON IS ATTENDING A PROGRAM AND FOUND INELIGIBLE, THE DIVISION WILL SUPPORT THEM IN THE PROGRAM UNTIL AN ALTERNATIVE CAN BE FOUND. THE DIVISION WILL MAINTAIN STATISTICS ON INELIGIBLES, TYPE AND PLACE OF REFERRAL, AND REASON FOUND INELIGIBLE.**

RESPONSE: The Division cannot expend funds indefinitely on behalf of persons who are found ineligible for services. This section has been amended to indicate that the individual will be notified that services will cease in 30 days.

147. COMMENT: N.J.A.C. 10:46-2.3(d), paragraph iii; add: **PERSONAL CARE AND JOB COACHING.**

Paragraph 6, line 4; delete rehabilitation. Add: paragraph 7; **OTHER SERVICES AS NEEDED.**

RESPONSE: N.J.A.C. 10:46-2.3(d)(4)iii has been changed to delete all examples, and now includes "any activity needed to sustain paid work." The addition of a category "other services as needed" would be contradictory to the intent of this section, which is to provide support services to avoid the need for more intensive services.

148. COMMENT: Under N.J.A.C. 10:46-3.2 "Where to Apply"

Paragraph (a); add: **IN WRITING, OR IN PERSON.**

Paragraph (b); delete and add: **THE INTAKE WORKER WILL SEND AN APPLICATION ON REQUEST.**

Paragraph (c); delete.

RESPONSE: N.J.A.C. 10:46-3.2(a) has been changed to indicate that application may be made in writing or in person to the regional office. N.J.A.C. 10:46-3.2(b) has not been deleted, since applicants may request services not available from the Division, but available through other private or public agencies. N.J.A.C. 10:46-3.2(c) has been changed to include information on "services." The Department feels that it is necessary to refer applicants who need services from other agencies to those agencies.

149. COMMENT: N.J.A.C. 10:46-3.2(d): In general, accessibility to applications should be improved. A person should be able to call a central number and receive the application in the mail which will include instructions and a phone number for questions on the application process.

RESPONSE: N.J.A.C. 10:46-3.2(d) has been changed. The Regional Offices are identified in terms of the counties served and central telephone numbers for each region. A person may call the appropriate regional office to request that an application be sent in the mail.

150. COMMENT: Delete N.J.A.C. 10:46-3.3(b)5.

RESPONSE: This paragraph has been changed to indicate that this information is requested if **known to the applicant**.

151. COMMENT: N.J.A.C. 10:46-3.3(c); add: **HEARING, MOTOR, ORTHOPEDICALLY IMPAIRED, AND PHYSICALLY DISABLED.**

RESPONSE: This subsection has been changed to indicate that the Division will accommodate applicants who cannot complete the application themselves at any site which will facilitate the determination of eligibility. Please refer to Responses #323 and 75, for further information.

152. COMMENT: N.J.A.C. 10:46-4.1(d) paragraphs 1 and 2; delete. Add: 1. Render a determination.

Paragraph 3, line 2; The word "disagreement" is ambiguous. What constitutes "disagreement" among the professional team? If the person fits into the definition of eligibility there can be no "disagreement."

RESPONSE: N.J.A.C. 10:46-4.1(d)2 has been deleted since a determination of ineligibility should not be final. If new information becomes available, the person could be determined eligible at some future date. N.J.A.C. 10:46-4.1(d)1 has been changed as requested, to indicate that a decision is rendered.

The term "disagreement" connotes that there is not unanimity concerning whether the person fits into the definition of eligibility. Therefore, a second team reviews the information.

153. COMMENT: N.J.A.C. 10:46-4.2(b); delete and add **IF THE ELIGIBILITY DECISION CANNOT BE MADE WITHIN 60 DAYS AFTER THE INITIAL CONTACT, THE DIVISION WILL BE REQUIRED TO MAKE A DETERMINATION WITHIN 30 DAYS. IN NO EVENT WILL A DETERMINATION BE LONGER THAN 90 DAYS FROM DATE OF COMPLETED APPLICATION.**

RESPONSE: It is not reasonable to establish an absolute time limit for determinations, since applicants may be incorrectly found ineligible. This section has been changed for the reasons given in Response #34.

154. COMMENT: N.J.A.C. 10:46-4.2(c)1; Delete professional. 2; after alternate add: **APPROPRIATE.**

RESPONSE: The team is a group of professionals and/or Division employees; therefore, it would be incorrect to delete the word. The term "appropriate" should not be added at N.J.A.C. 10:46-4.2(c), since the most appropriate service is not always immediately available.

ASSOCIATION FOR RETARDED CITIZENS, MONMOUTH UNIT

155. COMMENT: We are concerned with the provision of Subchapter 1, Purpose and Authority, that determination of eligibility for services is contingent upon the legislative appropriation of funds. The need for services, and the determination of eligiblity for them, should remain separate from any economic or financial considerations. The inability of the Division to fund programs in no way negates an indivdiual's need for those programs nor does it nullify his or her right to be eligible for programs and services, if all eligibility criteria are met.

RESPONSE: The Department agrees and the reference to "subject to legislative approval" has been deleted at N.J.A.C. 10:46-1.1. Please refer to Response #5 for further information.

156. COMMENT: Subchapter 3, Application, also contains a clause that we find limited in scope. In placing the burden of applying for specific services on the individual or others acting on his or her behalf, the Divison intake worker may be indiscriminately narrowing access to the full range of programs and services that are available. The burden belongs squarely on Division staff to ascertain each applicant's needs and make him or her aware of all services that may be appropriate. The application process should not be an incomplete shopping list.

RESPONSE: The Department agrees, and N.J.A.C. 10:46-3.3(b)5 has been amended to indicate that the specific services requested should be indicated **if known by the applicant.**

157. COMMENT: Finally, Subchapter 4, Determination Process, contains no mention of the Critical Adaptive Behavior Inventory, which has become an increasingly important part of the in-person interview. In the past this ARC has asked for access to the CABI, to no avail; nor has any documentation been forthcomming which would guarantee its validity or usefulness.

RESPONSE: The Critical Adaptive Behavior Inventory is not specifically referenced in the rule. It is only one among a number of means used to assess a substantial functional limitation on the part of an applicant for Division services.

ASSOCIATION FOR RETARDED CITIZENS OF HUNTERDON COUNTY

158. COMMENT: Under N.J.A.C. 10:46-1.1 eligibility should be determined based on a person's need. The legislative appropriations should determine the availability of services, not the eligibility.

RESPONSE: The requirement for legislative appropriations has been deleted at N.J.A.C. 10:46-1.1. Please refer to Response #5 for the rationale.

159. COMMENT: Under N.J.A.C. 10:46-2.1(e), an applicant will not be eligible if services will not be required within 2 years. Person should be made eligible as a way of planning for the future. In our present DDD

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system, we see consequences of lack of clear statistics, also lack of long range planning.

RESPONSE: N.J.A.C. 10:46-2.1(e) has been deleted, as the Department agrees that planning for the individual and for the Division are important.

ASSOCIATION FOR RETARDED CITIZENS, SALEM UNIT

160. COMMENT: In N.J.A.C. 10:46-2.3, Services, (a) refers to "... comprehensive evaluation, functional and guardianship services" (N.J.A.C. 10:40). These terms are not defined in N.J.A.C. 10:46-1.2, Definitions, while "Support Services" are. Functional services are defined by example in N.J.A.C. 10:46-2.3, Services, (a)1i and ii, but "comprehensive" evaluation and "guardianship" appear to be omitted.

N.J.A.C. 10:46-2.3 Services, describes and lists many services available to Division clients. Since this section specifically mentions adult training, day training, State schools, family care, respite care, and supported employment, it should also specifically mention the other widely know Division services, habilitation and group homes. The omission of these programs is not consistent with the body of N.J.A.C. N.J.A.C. 10:46-2.3. Inclusion of the phrase "... shall include but need not be limited to: ..." in this section is appropriate but does not warrant the exclusion of group homes and habilitation from the listed services.

N.J.A.C. 10:46-2.3(a), 1i refers to "... counseling of ... retarded person ..." The use of the word "retarded" as an adjective has fallen into disfavor. The more acceptable usage has become a person with mental retardation. Although some might argue otherwise, the Division was formerly the Division of Mental Retardation, not the Mentally Retarded Division. In view of the Division's name and mission changes, it might prove best to substitute the questionable phrase with "... person with a developmental disability."

RESPONSE: N.J.A.C. 10:46-2.3(a) has been changed to use the definition of services contained in N.J.S.A. 30:6D-23 et seq. Refer to Response #13.

There were also several comments received within the Department which required changes in the rule.

161. COMMENT: As worded, N.J.A.C. 10:46-3.1(a)3 would prevent other agencies within the Department of Human Services, such as the Division of Youth and Family Services, from applying on behalf of an individual.

RESPONSE: The phrase "other than those agencies within the Department of Human Services" has been deleted at N.J.A.C. 10:46-3.1(a)3, since the Division does not intend to prevent other agencies from applying to the Division on behalf of an individual.

162. COMMENT: The definition of "Team" includes a reference to the Code of Federal Regulations for the definition of a Qualified Mental Retardation Professional. New regulations issued in October 1989 changed the cite to 42 CFR 442.40a.

RESPONSE: The text has been changed at N.J.A.C. 10:46-1.3, Definitions "Team".

163. COMMENT: N.J.A.C. 10:46-2.1(f), (g) and (h) cites definitions in N.J.A.C. 10:46-1.2. Definitions appear at N.J.A.C. 10:46-1.3.

RESPONSE: N.J.A.C. 10:46-2.1(f) through (h) have been deleted. See Comment and Response #53.

PUBLIC HEARINGS

Public Hearings were held on March 27, 1990, at the North Jersey Developmental Center, on April 3, 1990, at the Vineland Developmental Center and April 5, 1990, at the North Princeton Developmental Center. Some persons submitting comments had also submitted comments during the written comment period, which ended on January 3, 1990.

Some of the comments submitted at the public hearings were identical to those made earlier. In this section only, those comments which are different from the earlier comment submitted are addressed. If an agency submitted only one comment, that comment will appear, regardless of whether it appeared earlier.

NEW JERSEY HEAD INJURY ASSOCIATION, INC.

164. COMMENT: The first comment addresses N.J.A.C. 10:46-1.2, Definitions. Within the "Developmental disability" definition, number 6 specifies various conditions to which developmental disabilties may be attributed. Traumatic brain injury is not specifically listed. While traumatic brain injury may be covered by "other neurological impairments," NJHIA requests that this recognized disabling condition be included as a separate entity. Certainly, the incidence and prevalence of traumatic brain injury are greater than several of the conditions specifically listed.

RESPONSE: The definition of "developmental disability" is taken directly from N.J.S.A. 30:6D-23 et seq. Traumatic brain injury is included under other neurological impairments.

165. COMMENT: The "Team" definition does not specify what types of outside professionals will be reviewing eligibility. For instance, with individuals who have experienced traumatic brain injury, the inclusion of a trained neuropsychologist in a case review might not be very important. Neuropsychology is a discipline not utilized by other types of disability groups. The vagueness of the definition needs to be addressed. Additionally, that one team member must be a qualified mental retardation professional is of questionable benefit to the determination of eligibility for persons who do not have mental retardation.

RESPONSE: The definition indicates that the professions represented on the team may vary according to the presenting need for services. The term "Qualified Mental Retardation Professional" has been deleted at N.J.A.C. 10:46-1.3. Please refer to Response #90 for additional information.

166. COMMENT: The final concern NJHIA has is eligibility for services for persons with disabilities manifested after age 22 and before age 55. According to N.J.S.A. 30:6D-31, persons with disabilities manifested after age 22 but before age 55 may be eligible for services.

"Within the limits of available funding and services, the director may declare as eligible for services under this act, individuals who meet the criteria for developmental disability pursuant to subsection B of section 3 of the act except that their disability was manifested after the age of 22 but before the age of 55."

There is a gross omission in the proposed rules in not including this extension of eligibility. Many people between the ages of 22 and 55 receive traumatic brain injuries. According to the 1985 New Jersey hospital discharge data for traumatic brain injuries (not all of which lead to developmental disabilities) 7,351 (43.3%) of the 16,962 persons discharged in one year were between the ages of 20 and 54.

Persons who acquire their injuries within the ages of 22 through 55 years are no less in need of services than persons injured earlier in life. To exclude this group, as the proposed rules currently do, is unacceptable and contrary to 30:6D-31.

RESPONSE: The Division will consider additional rulemaking in this area. Please refer to Response #80 for the rationale upon which our decision is based.

UNITED CEREBRAL PALSY ASSOCIATION

167. COMMENT: A clear distinction should be made between **eligibility for services**, and **availability of services**. UCP feels that all persons with a developmental disability should register with DDD regardless of whether they need a service at the time, and/or regardless of the availability of the needed service. In this way DDD will be able to plan for the future needs of persons with disabilities. DDD should place the person on a waiting list for the service if it is currently not available and should maintain a reliable data base to plan for the future. This currenlty does not exist. With such a system DDD would be able to project future needs such as housing, respite care, etc.

RESPONSE: The Division has removed the requirement that persons be in need of a service at the time of application. Please refer to response #3, for further information. Therefore, the Division will identify all persons who apply who are found to be eligible. This information will be used to plan for the future.

168. COMMENT: Rather than have classes of services such as "support" or "functional" services, UCP believes that DDD should view its services as a continuum. That is, some persons require very few services and would be viewed as using, perhaps, services on the extreme left on the continuum—a ramp for their home might be such a service. Other folks require many services that are of lasting duration and they might be viewed as utilizing services all over the continuum—such as housing, employment, and rehabilitation technology. The applicant should be deemed eligible for all services with DDD, regardless of where on the continuum the services lie. They should not be deemed eligible for only one class of services such as "support" services. Another reason for this is that a person's needs change. They should not have to go through the eligibility determination process just because their needs change.

RESPONSE: Support Services are viewed as part of the continuum of Division services. Please refer to Response #25 for further information. The intent of support services is to assist an eligible individual quickly, to avoid the need for more intensive services.

169. COMMENT: The term "presumptive eligibility" is unclear. It should either be more clearly defined or deleted.

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RESPONSE: In N.J.A.C. 10:46-2.2, "Presumptive eligibility," emergent need is evaluated on a case by case basis to provide appropriate expedited services. Please refer to response #14 for further information.

170. COMMENT: The eligibility criteria refer to a "professional team". UCP recommends that the team include a person knowledgeable in the disability that the applicant has. We feel this is a very important issue and yet we realize that DDD does not currently employ persons who are "experts" in all the various disabilities. We strongly suggest that hiring said persons be deemed a priority or that DDD make use of the many people with experience that currently work for the provider agencies.

RESPONSE: The Department would greatly appreciate private provider agencies volunteering individuals with specific expertise to consult with the team so long as no conflict of interest exists. The Department believes that no change in the rules is necessary at this time.

171. COMMENT: In general, UCP sees a very great need for training DDD staff in issues relating to persons with disabilities such as cerebral palsy, head injury, autism, etc. This will help them do a more effective job and will give them more confidence when interacting with severely disabled persons. UCP is willing to assist in this training.

RESPONSE: The Department again appreciates the offer of assistance. Your agency will be contacted when the training program indicated in Response #7 is developed.

172. COMMENT: We recommend that DDD track persons with a developmental disability who are in a long term mental health hospital. This will aid in planning for their transition into a non-mental health program. Again, planning is the key.

RESPONSE: The Department agrees that careful planning is a key to service delivery. The Division will plan services for those persons who have a mental illness who are found to be eligible for services.

173. COMMENT: UCP applauds the changes already made to the eligibility criteria, such as: deleting the requirement that the applicant needs services within two years of application; the emphasis on training DDD staff; helping an applicant complete the application, etc. These are very positive steps towards improving the process. As DDD moves towards serving persons with developmental disabilities where the person frequently has normal intelligence, e.g., persons with spina bifida, cerebral palsy, etc., I urge you to be very aware of the need to assure that the application process is not demeaning and that the applicant is treated with the dignity and respect that all human beings deserve.

RESPONSE: The Department hopes that the changes indicated in the rule will make the process more responsive to the applicant.

COUNTY OF MIDDLESEX, OFFICE ON THE HANDICAPPED

174. COMMENT: "The disability must result in a condition that is expected to be of life long or extended duration." The term "extended duration" needs to be defined.

RESPONSE: The term "of extended duration" is taken directly from N.J.S.A. 30:6D-25 et seq. It is not possible to put a specific time limit which would be appropriate in all situations.

175. COMMENT: "With regard to a student who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., who is otherwise eligible, the expenses of education and related services shall not be borne by the Division." Here it is necessary to precisely convey that "related services" are specifically of an educational nature only.

RESPONSE: The definition at N.J.A.C. 10:46-1.3, "Educational and related services," indicates that the term "related services" means those programs or therapies that are provided in association with a free appropriate education.

176. COMMENT: "Presumptive Eligibility"—"If the person is found ineligible, immediate referral shall be made to the appropriate agency or agencies for services." Several concerns arise here; first, it is necessary to define "immediate" (i.e. is 5 working days immediately?). Secondly, should a client be found ineligible, what other agency exists that could possibly duplicate the services available through the Division? Finally, it is crucial that intake staff be adequately trained and knowledgeable to provide information and referral of alternative programs.

RESPONSE: The term "immediate" means as soon as possible. This may vary according to the applicant. Other agencies do provide services to persons which are developmentally disabled which are not available through the Division such as protective services for children, mental health services and vocational rehabilitation. The Division has agreed to develop a training curriculum for intake staff. Please refer to response #7 for additional information.

177. COMMENT: "Services"—"Nonresidential functional services shall include but need not be limited to: case management support services, counseling of family or guardian, of employer, or of retarded person; . . ." Shouldn't it read "the developmentally disabled person"?

RESPONSE: The Department agrees, and the definition of services has been amended at N.J.A.C. 10:46-2.3(a)1. Please refer to response #13 for further information.

178. COMMENT: N.J.A.C. 10:46-2.3(d)5—"Home adaption to accommodate persons with a physical or sensory disability if the individual owns his/her own home . . ." Why are persons who rent excluded from this category? Also, "home adaption" needs to be defined in terms of what exactly is covered under "home adaptions," who is responsible to assess and recommend appropriate home modification and who is responsible for coordinating all possible 3rd party payment options? Finally, is there a financial cap to this service?

RESPONSE: Please refer to response #56. At N.J.A.C. 10:46-2.3(d)5, the paragraph referring to "owns his/her home . . ." has been deleted.

179. COMMENT: N.J.A.C. 10:46-3.1(a)3 states that "an application for services may be made by an agency, public or private, other than those agencies within the Department of Human Services . . ." Clarification should be made so that it is understood that agencies operating under the Department of Human Services are able to make a referral on behalf of a client they are currently serving.

RESPONSE: N.J.A.C. 10:46-3.1(a)3 has been changed and "other than those agencies within the Department of Human Services" deleted. Please refer to response #161 for further information.

180. COMMENT: "Where to Apply" N.J.A.C. 10:46-3.2(c) "the intake worker shall offer . . ." should be replaced by "automatically offer to make a referral to an appropriate agency." It is also my contention that all alternative referrals should be documented, whether in the case of ineligibility or request for services not offered by the Division, so as to aggregate important information about the unmet needs of our disabled constituents.

RESPONSE: The Division will refer an applicant to another agency, if the applicant wishes. The Division cannot force an applicant to seek the services of another agency. The Division does document all referrals to other agencies.

181. COMMENT: N.J.A.C. 10:46-3.3(c), "Accommodations shall be made by the Division for applicants who are non-English speaking, illiterate or blind/visually impaired". Measures should also be taken to accommodate the needs of the deaf/hearing impaired by providing interpreter services as well as ensuring the ability to communicate by those who are communications handicapped.

RESPONSE: Accommodations will be made for any applicant who needs assistance in completing the application. Please refer to responses #32 and #75.

182. COMMENT: N.J.A.C. 10:46-4.2(c) uses the term "professional team." A team is defined earlier in the document but never a "professional team."

RESPONSE: The definition of "team means two or more Division employees and/or professionals . . ." The term "professional" has been deleted from N.J.A.C. 10:46-4.2(c) to avoid confusion.

183. COMMENT: N.J.A.C. 10:46-4.2(c)1 states, "If the most suitable services as determined by the professional team is not immediately available, the Division shall provide an alternate service." Again we have the term "immediate" which requires some time frame descriptors. Also, examples of "alternate service" would be helpful as currently there exists huge waiting lists for which no service could be considered an acceptable alternative.

RESPONSE: An alternate service is provided when the most appropriate service is not available. It is not indicated that the alternate service should be the same as the most appropriate service. Please refer to response #42, #111 & #125. "Suitable" has been changed to "appropriate" at N.J.A.C. 10:46-4.2(c)1.

184. COMMENT: The introductory section entitled "Economic Impact" states that "The proposed rules will affect the Division by providing guidelines for a wider population eligible for services with associated increases in costs of administration and service delivery subject to legislative appropriation." It is strongly recommended that the Division make every effort to document the expressed needs for services, regardless of its ability to provide them or the consumer's meeting the eligibility standards. These statistics and related demographics will legitimize and substantiate the Division's requests for additional appropriations.

RESPONSE: Statistics are maintained concerning the persons on the waiting list. This data is used as the basis of budget requests and for planning. It is not reasonable to submit budget requests or to plan for services, based upon applicants who do not meet the eligibility criteria.

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185. COMMENT: The word "team" is defined as two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields. At least one member of the team shall be a Qualified Mental Retardation Professional. Since the Division is no longer limiting its clients to those who are mentally retarded, I propose that this stipulation is no longer appropriate or warranted. I suggest that one of the team members hold a Master's Degree in Social Work. More important is the need to include a "client advocate" as a member of the team.

RESPONSE: To suggest that one member of the team hold a Master's Degree in Social Work would not satisfy many of the consumer advocacy groups who have commented on this rule. The term "Qualified Mental Retardation Professional" has been deleted at N.J.A.C. 10:46-1.3 Definitions, "Team", for the reasons given in Response #90.

186. COMMENT: Access to programs and services offered through every Division of the Department of Human Services, with the exception of the Division of Developmental Disabilities, has financial eligibility requirements, a cost share, or a sliding scale fee. If the ultimate goal of the Division is to foster independence and the self reliance of persons with disabilities, instituting a system whereby disabled consumers assume a portion of the costs incurred for the services they receive is paramount in accomplishing this objective. Establishing such a system will also facilitate added revenues, which will offset operating costs for the Division. I highly recommend the feasibility of instituting such a concept be further explored.

RESPONSE: The Department appreciates the comment; however, there is no provision in Title 30 to permit the establishment of a financial criteria for eligibility for Division services.

187. COMMENT: Let us not forget that there exists a significant number of individuals with various disabilities who are not eligible for the services described in this document, because they are not developmentally disabled, as defined by the Division. They are just "disabled." Persons with Multiple Sclerosis, Spinal Cord Injury, Amputation, Head Injury, and many, many others who desperately need similar, if not the same services as are available to the developmentally disabled continue to fall through the cracks. Is it not the time to re-focus the goals of the Division once again to include all people with any disability?

RESPONSE: The Division will consider rulemaking in this area. Please refer to Response #80 for further information.

NEW JERSEY CENTER FOR OUTREACH AND SERVICES FOR THE AUTISM COMMUNICATION, INC.

188. COMMENT: Why is the process of developing eligibility regulations which reflects the divisions expanded responsibilities still not complete 5 years after the DDD legislation has been passed?

RESPONSE: N.J.S.A. 30:6D-23 et seq. required regulations be developed by 1988. Regulations were originally proposed in August, 1988. Based upon the comments received, the proposal was withdrawn in May, 1989. Regulations were reproposed in December, 1989.

189. COMMENT: How many new clients, that is people with a primary disability other than mental retardation, does the Division anticipate annually once the expanded eligibility regulations have been finalized? What is the estimated increase in appropriations needed to serve these individuals?

RESPONSE: It is not possible to accurately forecast how many persons may apply to the Division for services. However, the Division's Five Year Plan, issued in 1989, estimated that there are approximately 46,000 persons in New Jersey who may be eligible for services.

190. COMMENT: In order to promote careful long-range planning, developmentally disabled people and their families should be encouraged to apply for eligibility long in advance of the anticipated date of actual need. COSAC recommends the establishment of a status of "eligible but not currently requesting services" for these individuals. This special status could serve as a registry and would facilitate long range planning on the part of the Division and our legislature.

RESPONSE: The Department agrees and has eliminated the criteria that the applicant be in need of services at the time of application at N.J.A.C. 10:46-2.1(e).

191. COMMENT: Currently, what happens when a family applies on behalf of their developmentally disabled son or daughter for services they anticipate needing in 1995?

RESPONSE: The Division would determine eligibility and would plan with the individual and his family as the need for services approached.

192. COMMENT: Currently, how does the Division anticipate the number of new clients it will be serving annually?

RESPONSE: The Division has projected in its Five Year Plan the number of persons who may be eligible for services. This information was developed from the Social Security Administration and a consultant's study of educationally classified children in New Jersey.

193. COMMENT: Currently, what is the specific "program of training" provided to DDD intake staff? What are the minimum requirements for such a position? What type of supervision is provided to these workers and what are the credentials of their supervisors? Are division intake workers credentialed to administer testing?

RESPONSE: The Division will develop a curriculum of training; please refer to Response #7. The requirements for the job titles used as intake workers require at least a bachelor's degree and at least one year of providing services to the developmentally disabled. It is however, possible to substitute additional experience for the degree requirement. There is one supervisor for every 6 to 8 intake workers. All supervisors have a bachelor's degree and at least two years of experience. Intake workers have received inservice training in the administration of several assessment tools.

194. COMMENT: Presently, what happens to those DDD eligible individuals who request a community-based living arrangement for whom no such service is available? Without a maximum time-cap, is it conceivable that an individual could be provided an "alternative service" indefinitely?

RESPONSE: The individual is provided an alternate service until the appropriate service is available. There is no time limit on the provision of an alternate service.

DIVISION OF MENTAL HEALTH ADVOCACY

195. COMMENT: Please state the total number of individuals in state psychiatric facilities who have a developmental disability (otherwise referred to as "dually diagnosed").

RESPONSE: The Division is currently aware of approximately 150 persons in State and county psychiatric hospitals who may be eligible for services.

196. COMMENT: Of these, please state the total number who are presently receiving services from the Division of Developmental Disabilities.

RESPONSE: As of August 1, 1990, the Division served approximately 17,500 individuals. Of these, 118 persons were in State or county psychiatric hospitals.

197. COMMENT: Please identify any clinical literature or textbook recognized as an authority in the field of habilitation and treatment of the developmentally disabled, which recognizes a valid methodology for determining that dangerous behaviors of dually diagnosed psychiatric patients are due to psychosis and not due to developmental disability.

RESPONSE: N.J.A.C. 10:46-2.1(f), (g) and (h) have been deleted in order to evaluate the mentally ill on the same basis as other applicants for service. The definitions of "psychiatric facility" and "short term care facility" have also been deleted at N.J.A.C. 10:46-1.3. Please refer to Response #53 for further information.

198. COMMENT: Please indicate any clinical literature or textbook recognized as an authority in the field of habilitation and treatment of the developmentally disabled, which recommends the denial of habilitation services to dually diagnosed persons who also require long-term psychiatric care.

RESPONSE: The Department does not seek to deny habilitation services to otherwise eligible mentally ill persons. Please refer to Response #53 for additional information.

199. COMMENT: Please state whether or not the clinical staff of the Division of Developmental Disabilities as a class are better suited by training and experience than those of the state psychiatric hospitals to plan and execute habilitation plans for developmentally disabled persons.

RESPONSE: Staff of State psychiatric hospitals would have the expertise to serve individuals whose primary needs are for mental health services. Staff of the Division of Developmental Disabilities have the expertise to serve persons with developmental disabilities.

DIVISION OF ADVOCACY FOR THE DEVELOPMENTALLY DISABLED

200. COMMENT: Please state the definition of the terms "severe" and "chronic" in proposed N.J.A.C. 10:46-1.2.

RESPONSE: The terms "severe and chronic" appear in the definition of a developmental disability. This definition is repeated from N.J.S.A. 30:6D-25(b). Please refer to Response #1 for additional information and rationale.

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201. COMMENT: Please state the legal theory, citing cases, which supports the exclusion from eligibility of all persons who were "placed in a private institution or facility in New Jersey at a time when (such) person(s) (were) not . . . resident(s) of New Jersey" in proposed N.J.A.C. 10:46-1.2.

RESPONSE: This wording has been deleted. Please refer to Response #49 for the rationale.

202. COMMENT: Please state the number of persons who have applied for Division services since the effective date of N.J.S.A. 30:6D-25 et seq. who were denied eligibility, in whole or part, based on the application of the definition of resident in proposed N.J.A.C. 10:46-1.2 or any similar proposed regulation?

RESPONSE: The Division is aware of four persons who have initially been declared ineligible because they were not a resident. Three of those individuals were subsequently found to be eligible.

203. COMMENT: Please state the legal theory which supports the authorization of waiting lists for functional services in proposed N.J.A.C. 10:46-4.2(c).

RESPONSE: N.J.S.A. 30:4-25.6 requires that when the appropriate functional service is not available, the Commissioner shall provide alternate service and at the request of the applicant, shall also place the person on a waiting list for the preferred service, pending its availability.

204. COMMENT: Please state the basis for the exclusion of tenants from the provision of home adaptation in proposed N.J.A.C. 10:46-2.3(d)5.

RESPONSE: Please refer to Response #56. "Owns his/her own home . . ." has been deleted at N.J.A.C. 10:46-2.3(d)5, as the Department does not wish to exclude tenants.

205. COMMENT: Please state the number of otherwise eligible clients of the Division who require home adaptation services but who are tenants.

RESPONSE: The wording which required the individual to own his/her own home, live with a relative who owns his/her own home or live in a home licensed in accordance with N.J.A.C. 10:44B has been deleted. Refer to Response #56.

ASSOCIATION FOR RETARDED CITIZENS OF NEW JERSEY

206. COMMENT: In N.J.A.C. 10:46-1.2, the ARC has two separate recommendations regarding the clarifications of definitions. They are:

Comment (A): The definition of "Intake Worker."

Recommendation (A): Although the Division has decided to develop a uniform curriculum for the training of an "Intake Worker," the ARC strongly urges the Division to require certain employment qualifications, including an undergraduate degree in human resources, social work, or another human services related field.

RESPONSE: The Division currently utilizes three Department of Personnel job titles "Community Program Specialist", "Senior Community Program Specialist" and "Habilitation Plan Coordinator." The educational requirements for these positions require at least a bachelor's degree and at least one year of experience in providing education habilitation or social services for the developmentally disabled. Including specific degree requirements may unduly limit the Division's ability to recruit persons who could otherwise perform the duties of the job.

207. COMMENT: The definition of "Resident," is clearly defined by the proposed regulations. However, there is no definition for "Student" provided.

Recommendation (B): The ARC recommends that a definition for "student" be added to the regulations. N.J.A.C. 10:46-21(c), refers to "a student who has entitlements to a free education." Who is considered a student?

RESPONSE: The definition of "resident" in the rule proposal of August, 1988 contained a definition of "student." The overwhelming comment at that time was to delete a definition of "student." The term "student" has been changed to "individual." Please refer to N.J.A.C. 10:46-2.1(c) and (d) and Response #18.

208. COMMENT: Under Subchapter Two—N.J.A.C. 10:46-2.1, General Eligibility, the ARC has the following concerns and/or recommendations:

Comment (A): Within category a, it refers to a person being "developmentally disabled" and a "resident of New Jersey." The definition of resident in this code is defined as a "person who is in a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the state." Clearly, the eligibility is referring to the permanent residence of the person in the State of New Jersey.

RESPONSE: The Department agrees. The definition of "resident" addresses the intent to establish a residence for other than temporary purposes. Please refer to Response #49. (See N.J.A.C. 10:46-1.3, Definitions).

209. COMMENT: Within N.J.A.C. 10:46-2.1(c), a concern arises over the reference to eligibility. Subsection (c) reads:

"With regard to a child who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., the expenses of educational and related services shall not be borned by the Division."

Recommendation B): If the definition of child is a person under the age of 21, the child would not be eligible for services of DDD such as respite care. This statement implies this to be the case. The ARC recommends the sentence read:

". . . the expense of educational and services related to the child's educational development should not be borned by the Division. . . ."

RESPONSE: The term "related services" does apply only to those which are of an educational nature. Please refer to Response #175.

210. COMMENT: Under N.J.A.C. 10:46-2.2, Presumptive Eligibility, the ARC appreciates and supports the need for this section to assist a person in the case of an emergency situation. The only addition we would suggest is striking the word "subsequent" and in its place put "immediately following the admission to service."

RESPONSE: The Department has not made the requested change, since the term "immediate" may be misleading. If it were possible to immediately make this determination, there may be no need for a determination of presumptive eligibility.

211. COMMENT: Under N.J.A.C. 10:46-3.3, all reference to "information" is unclear.

The ARC recommends that the information requested be specified in the requirements. All of the records ever written on a client are not necessary to determine eligibility. We feel that the Division should specify the information expected from the applicant. For example, if an applicant asks for respite services, an outline of the procedure to be followed, as well as a list of documentation requested (current psychological exams, any school history or medical papers) should be sent to the client upon the request for eligibility. This outline will help alleviate misunderstandings and the delays that often occur between the Division and the applicant as a result of the lack of clarity as to specifics.

RESPONSE: A list of minimum information required appears at N.J.A.C. 10:46-3.3(b)1-5. Additional information needed will depend upon what the applicant requests, and upon the Division's evaluation.

212. COMMENT: Under N.J.A.C. 10:46-4.2(b), notice requirements, it reads:

"If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be apprised of the status of the application at least every 30 days thereafter."

The ARC supports the idea of a 60-day notification process, but does not support an expansion of this time period. The DDD has a responsibility to the client to meet this deadline. It is with this in mind, that we recommend that the Regional Office for DDD contacts the Director or his/her designee at the State office as to the delay. The State office would, therefore, perform an oversight function over the request. Further, if a client is deemed eligible and a service is not available, an alternative service should be provided in the interim, not a waiting list. Our reasoning for adding this additional clause is based upon cases where timely processing is not occurring. During the sixty day period of determination, the applicant remains stagnant and without services. Whether the notice is given in writing or by telephone is not the answer. What the ARC feels is important, is the timely delivery of services to the applicant.

RESPONSE: The State central office does provide an oversight function. All applications for eligibility are entered into a computerized data base. Each application contains the date that the request for eligibility was made. This information is available to the State central office. An alternate service is provided; however, the individual may be placed on a waiting list for the most appropriate service. The Division agrees that timely delivery of the most appropriate service is very important; however, this cannot always be accomplished. Similarly, while a prompt decision regarding eligibility is desirable, a decision cannot always be made within 60 days. To include such a requirement may cause some individuals to be declared ineligible who may be declared eligible if sufficient time is allowed to thoroughly evaluate the individual's needs and abilities.

213. COMMENT: In referring to the annotated code, the ARC noticed that N.J.S.A. 30:6D-31, was omitted from your regulations entirely. This section reads:

"Within the limits of available funding and services, the Director may declare as eligible for services under this Act individuals who meet the criteria for developmental disability pursuant to subsection b. of section

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3, of this Act, except for those whose disability was manifested after the age of 22, but before the age of 55."

The ARC understands the fiscal constraints that exist, but we also believe it is important to have this section in place.

RESPONSE: The Division will consider additional rulemaking in this area. Please refer to Response #80 for additional information.

EDEN FAMILY OF PROGRAMS, INC.

214. COMMENT: While we continue to have some concerns with reference to some language which remains in the changed rules, we believe there remains one issue which we believe is important enough to warrant our singular attention at this time. We are referring to the continued ineligibility of the developmentally disabled person who requires long term care in a psychiatric facility.

Recent investigations have estimated that as many as 25% of individuals with mental retardation or autism, may display symptoms of a co-existing mental illness (Menolascino et al., 1986). Given such a potentially large number of developmentally disabled individuals who may, at some point in their lifetime, seek or require treatment in a long term psychiatric facility, we are distressed by the Division's continued reluctance to establish criteria which would, in fact, simply ensure the eligibility of the individuals for Division services following their discharge from the psychiatric facility (See N.J.A.C. 10:46-2.1(g) of the proposed eligibility rules). Without an ensured and easy entrance into the service system, we foresee a significant number of such individuals who may "fall through the cracks" of the system, and end up without any appropriate or deserved services. As such, we strongly recommend that this section of the proposed eligibility rules be changed to allow individuals who are dually diagnosed and require long term care in a psychiatric facility, to be eligible for Division services.

RESPONSE: The Department agrees that the status of dually-diagnosed individuals is an important concern, and has deleted N.J.A.C. 10:46-2.1(f), (g) and (h). Please refer to Response #53 for additional information and rationale.

SPECTRUM FOR LIVING, INC.

215. COMMENT: N.J.A.C. 10:46-2.1 should be amended. The language should be changed to include:

(A) people with head injuries after age 22, and

(B) persons whose developmental disability presents symptoms prior to age 22 but is not properly diagnosed until after age 22.

RESPONSE: The Division will consider additional rulemaking in this area. Please refer to Response #80 for additional information and rationale.

216. COMMENT: "Resident" The language used in the definition and related areas needs clarification. Presently this presents a variety of eligibility/service provision issues.

RESPONSE: Please refer to Response #49 for Department action and rationale.

217. COMMENT: Economic Impact. A commitment was made with Project Redirection to review the eligibility findings to address issues such as consistent implementation/determinations state-wide. While 3,207 persons were found eligible, what of the 592 found ineligible? Were there any trends which exclude a group or groups of individuals? Were persons found ineligible referred to another appropriate authority; if so, were they served? Will these persons be able to reapply with the adoption of new guidelines?

RESPONSE: The Division refers persons to other agencies as appropriate. However, no contact is maintained after referral is made. The Division believes there are no significant trends in the group of persons declared ineligible. All persons who have been declared ineligible may reapply to the Division on or after October 1, 1990.

218. COMMENT: Need for Services. The sentence, "The person must need services at the time of application" should be deleted. Likewise, item(e), page 8, "If the applicant anticipates that services of the Division will not be required within two years . . ." should be deleted.

RESPONSE: The Department agrees and N.J.A.C. 10:46-2.1(e) has been deleted. Please refer to Response #3 for further information.

219. COMMENT: N.J.A.C. 10:46-1.1, Purpose. Delete "subject to legislative appropriation of funds therefore."

RESPONSE: The Department agrees that eligibility should not be subject to appropriations. This provision has been deleted at N.J.A.C. 10:46-1.1. Please refer to Response #5 for additional information.

220. COMMENT: "Definitions" In the definition for "Medical information", change the word "completed" to read "provide" (. . . reports that have been provided by licensed . . .).

RESPONSE: The Department agrees and the wording has been changed as suggested at N.J.A.C. 10:46-1.3.

221. COMMENT: In "Support Services"; second line; delete the phrase "(that is less than 12 months)". Also this description should be expanded to include the provision of support such as home adaptation, life safety support, adaptive equipment, etc.; likewise N.J.A.C. 10:46-2.3(d) support services included should also provide this clarification.

RESPONSE: The Department found the proposed definition unnecessarily limiting and the phrase "that is less than 12 months" has been deleted at N.J.A.C. 10:46-1.3. Please refer to Response #11 for further information. The terms "home adaptation" and "adaptive equipment" are included at N.J.A.C. 10:46-2.3(d).

222. COMMENT: N.J.A.C. 10:46-2.1 General eligibility, subsection (g) should be revised to reflect that the person remains eligible for Division services and that the Division will be kept informed of the individual's progress and potential need for Division funded services as outlined in this rule. This is critical to ensure proper planning in anticipation of the individuals return to the community and program continuity.

RESPONSE: Please refer to Response #53 for changes made and rationale.

223. COMMENT: In N.J.A.C. 10:46-2.2, Presumptive eligibility, the word "May" should be changed to "shall" to read ". . . such person shall be declared presumptively . . ."

RESPONSE: A declaration of presumptive eligibility is a discretion of the director. The term "may" is appropriate and no change has been made.

224. COMMENT: In N.J.A.C. 10:46-2.3 Services, while (a) indicates the Division provides guardianship services, no mention of guardianship is made under the nonresidental functional services section, N.J.A.C. 10:46-2.3(a)1.i. Either add guardianship under this section or add a guardianship section as #7 on page 11.

RESPONSE: Guardianship Services are defined under a separate rule, N.J.A.C. 10:45. It would be unduly burdensome to repeat that rule here. A revised definition of "services" is found at N.J.A.C. 10:46-2.3(a).

DEVELOPMENTAL DISABILITIES COUNCIL

225. COMMENT: Add a requirement that counseling services or advice be available when a determination of eligibility is made. It should also be noted that case management is available as an independent service even if no other service is required.

RESPONSE: N.J.A.C. 10:46-3.2(c) indicates that if the request is for services not offered by the Division, referral may be made to other agencies. Information concerning services is provided as part of the intake process. Case management services are available if that is the only service needed. No change to the proposal is required.

226. COMMENT: The Division should indicate an internalized training system for new workers. That training program should build on the curriculum developed by the University Affiliated Program (UAP) under the University of Medicine and Dentistry of New Jersey. Training should be offered to current intake workers as well as those who may be added later.

RESPONSE: As indicated in Response #7, the Division will develop a new curriculum of training. The training developed by the UAP will be reviewed and considered. The training will be offered to current employees, as well as newly recruited employees.

227. COMMENT: The Division should review the titles used for intake workers since we now expect more in the way of responsibility and decision making.

RESPONSE: The qualifications of persons using Department of Personnel titles who may serve as intake workers are identified in Response #206. These titles are felt to be appropriate. It is not the responsibility of the intake worker to decide the issue of eligibility. That decision is made by the team.

228. COMMENT: Any person who contacts the Division for services, even if it was not a service that the Division usually would provide, should receive written follow-up which would include a brochure or form letter describing the Division services and indicating the Division's appeal procedure.

RESPONSE: Letters are sent to all applicants which include procedures and fact sheets. No change in the rule is required.

229. COMMENT: If a determination of eligibility cannot be made within 60 days, there should be followup weekly or biweekly to let the applicant know where he or she stands.

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RESPONSE: N.J.A.C. 10:46-4.2(b) has been revised to indicate that if a determination cannot be made within 60 days the applicant shall be advised in writing as to the specific reasons why a determination cannot be made and be informed of the status of the application at least every 30 days thereafter. More frequent notification would not be cost-effective.

230. COMMENT: Where the most appropriate service is not available, the next most appropriate substitute service should be provided to that person.

RESPONSE: N.J.A.C. 10:46-4.2(c) requires that when the most appropriate service, as determined by the team, is unavailable, the Division shall provide an alternate service. The alternate service provided may vary according to individual needs and the availability of the alternate service.

UNITED CEREBRAL PALSY OF MONMOUTH AND OCEAN COUNTIES

231. COMMENT: The eligibility criteria have been described as the funnel through which all of the so called new clients must pass in order to receive any of the services that are required for them to achieve functional independence. Therefore, not only the eligibility criteria itself but the mission of the Division and the array of services that are either available through the Division or brokered through other community resources is enormously important to people with physical disabilities. We are concerned that the supporting legislation and references that are made to people with mental retardation be amended in mind with the new missions of the Division.

RESPONSE: The definition of services has been changed at N.J.A.C. 10:46-2.3(a) to reflect the services defined at N.J.S.A. 30:6D-25. Please refer to Response #13 for additional information and rationale.

232. COMMENT: We are concerned with the information criteria, particularly as it applies to those professionals who are working in the field with individuals who may include district child study teams but may also include other professionals who have the ability to do evaluations and diagnosis. There should be the ability to produce diagnosis and evidence of functional limitations and have those evaluations reviewed and accepted so that the duplication of work that is taking place on the part of intake workers is eliminated.

RESPONSE: The Division uses reports available from any source. However the Division staff must consider these reports as they apply to the eligibility criteria.

233. COMMENT: We are concerned with the use of the term "short term care facility" as it is normally referred to in the area of mental health, since it is very possible that people with physical disabilities also require the use of a short term care facility and seem in fact to be included by the eligibility requirements.

RESPONSE: The term "short term care facility" has been deleted from N.J.A.C. 10:46-1.3, Definitions. Please refer to Response #53 for the rationale upon which this change was based.

234. COMMENT: We are concerned that support services are indicated as being usually of short term duration. It's very possible that people with physical disabilities may require support services for their entire lives.

RESPONSE: Support services are those which are of short duration or which will avoid the need for more intensive services. Support services can be provided for extended periods of time. The Department made no change (see N.J.A.C. 10:46-1.3, Definitions).

235. COMMENT: Who takes responsibility for the integration and coordination of services within the Department of Human Services, other departments of State government, municipal government, with the non-profit sector and community resources? Who ensures the needs and desires of persons with developmental disabilities are respected? We have the responsibility to provide them with as much information as possible so they could make informed decisions and then we must provide necessary assistance to help them utilize this network. Please ensure the eligibility requirements do not exclude people [applying] for home services that are not presently available or whose goals or needs have not yet been fully defined.

RESPONSE: The current rules address the Departmental eligibility process. The Division of Developmental Disabilities has a primary role in providing services to persons with developmental disabilities. There are, however, other areas of State or local governments who also provide services to persons with developmental disabilities. The Division attempts to coordinate these services whenever possible.

VIRGINIA PETERS

236. COMMENT: Thank you for the opportunity to speak. I have some topics that I will talk about. I would just like to say that I have had the opportunity to see, on the committee, people from the Division and I just want to know why they don't seem to feel comfortable with me and people in the Division are used to some people and one with some cerebral palsy, they don't know how to relate to us and I think that the Division needs some training in working with all the developmental disabilities. I thank you.

RESPONSE: The Department will develop a training curriculum as indicated in Response #7. This curriculum will familiarize staff with the needs of a variety of applicants.

DARLENE LA RUE

237. COMMENT: I am DDD client. I took the test to get on the DDD. I thought the test—I thought the test was not clear on what is expected. The questions are too easy sometimes and others are confusing. I need a case worker to come when we make our appointments, that's what they should do. I appreciate what DDD did in helping me get my appointment but I feel assistance in DDD, that has not helped me find it and in closing, they did help me get the job but it was my skills and myself that has kept my job for the past three years.

RESPONSE: The questions are used by the intake worker to assess the strengths and weaknesses, or abilities and needs, of the individual. For that reason, some questions may be confusing and some questions may be very easy to answer. The answers help the intake worker to decide what services a person may need.

Case managers make many appointments and they try to keep them all. Sometimes, because of emergencies, the case manager can not keep the appointment as scheduled, or let the person know that they will not be there.

We are happy that you are able to find a job with the help of DDD and we congratulate you on your continued successful efforts in keeping your job.

MULTIPLE SCLEROSIS SOCIETY

238. COMMENT: The Chapter has 2,000 clients between the two counties, of which at least 15 percent could utilize the services of the DDD's Home Assistance Program. Currently, all of my clients receiving services through a grant from DDD have been considered ineligible and are going through the appeal process, either because of medical documentation that does not prove onset before age 22 or because substantial limitation is not evident in the report.

It is our position that multiple sclerosis is a developmental disability in that the initial insult to the nervous system has been shown to occur prior to age of puberty and many patients' symptoms and functional change occurs prior to age 22; it results in physical and often mental impairment. It is likely to continue indefinitely. It results in substantial functional limitations in self-care, mobility, and economic self-sufficiency, learning, self-direction and the capacity for independent living.

In 1986/1987, the State of Maryland declared M.S. as a developmental disability. The Maryland M.S. Chapter and state legislators formulated a category called "individual support services." These services are for persons who did not fit the DDD definition in totality but had service—had severe chronic disabilities.

To be eligible for individual support services an individual has to have a severe chronic disability attributable to a physical and mental impairment which is expected to continue indefinitely. This is the Maryland State Senate Bill 394 which was passed in 1987 and it documented the rights of individuals with M.S. to DDD services.

In summary I would like the State to consider multiple sclerosis as a developmental disability without any stipulation on age or functional limitation.

RESPONSE: The Division has agreed to consider additional rule making in this area. Please refer to Response #166 for additional remarks.

ASSOCIATION FOR RETARDED CITIZENS, MORRIS CHAPTER

239. COMMENT: N.J.A.C. 10:46-2.1(e) requires the applicant to anticipate whether or not the services will be required within two years. It goes on to say that background information will be maintained on file.

RESPONSE: This subsection has been deleted. Please refer to Response #3 for the rationale.

240. COMMENT: There is concern that consumers are apparently required to legally know which services are available through the Division. As a result, they are unable to request specific services. Individuals must be told of available services in order to recognize whether they are necessary. The existence of a registry further confuses parents and consumers.

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RESPONSE: N.J.A.C. 10:46-3.3(a)5 has been changed to indicate that the applicant shall indicate the presenting request, such as specific services that may be desired, if known by the applicant. The deletion of N.J.A.C. 10:46-2.1(e) upon adoption will eliminate the need for the registry.

241. COMMENT: There is concern that the intake worker makes determinations on whether or not the telephone inquiry by a consumer warrants sending an application. If the intake worker does not find the services available, the individual will not even receive an application.

RESPONSE: N.J.A.C. 10:46-3.2(c) indicates that the intake worker may offer to refer the individual to another appropriate agency. It indicates that if the applicant wishes to pursue the services of the Division, an application will be sent.

242. COMMENT: It is imperative to separate eligibility from the actual availability of services.

RESPONSE: The issue of eligibility, at N.J.A.C. 10:46-2.1, is separate from the availability of services at N.J.A.C. 10:46-2.3. Please refer to Response #5 for additional remarks and rationale.

243. COMMENT: It is the recommendation of the A.R.C. Morris Chapter that the Division take a serious look at the importance of having intake workers and other individuals who will be making assessments as to the need for eligibility. One can request the Division to undertake outreach services. However without providing an explanation of available services to prospective clients, intelligent decisions cannot be made.

RESPONSE: The Division has indicated that it will develop a training curriculum for its workers. Please refer to Response #7 for additional remarks and rationale. This curriculum should increase the knowledge and expertise of Division staff.

ESSEX ASSOCIATION FOR RETARDED CITIZENS

244. COMMENT: N.J.A.C. 10:46-2.1(e) states, "If the applicant anticipates that services of the Division will not be required within two years of the application for services, he/she shall not be declared eligible." And I think you mentioned that. The problem is parents feel that their child is not eligible ever for services. And we think that there should be a semantic change that you say yes, he is eligible for services, but either the services—he doesn't need the services at this time or the services are not available. But when you say a person is not eligible, it tends to turn them away and they won't come back. It's a semantic change with the word eligibility.

RESPONSE: The Department agrees this provision may create a false impression. N.J.A.C. 10:46-2.1(e) has been deleted.

245. COMMENT: The second point is in the next paragraph, (f), and paragraph (g) and (h), and talks about long-term care in psychiatric facility. And the issue of persons who are disabled and have psychiatric impairment and whether they shall or shall not be eligible for services. But the point that I'm making here is that it seems rather subjective the way that it's laid out.

It says for example in paragraph (g), "Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 but require long term care in a psychiatric facility shall not be eligible for the services of the Division."

But who determines what is required long-term care? Is it a licensed psychiatrist in the State of New Jersey? Is it a case manager? Who is it, a parent, a friend, a psychologist? I think what you mean by this is a licensed psychiatrist or two. I think it should be spelled out a little bit. I don't think it is as clear as it could be.

The same with paragraph (h) when you say, "Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 and who exhibit symptoms of mental illness and reside in psychiatric facilities but no longer require long term psychiatric care shall be eligible for services.

Again, that could be more specific as to who is determined that they no longer require long-term psychiatric care.

RESPONSE: The Department has determined that mentally ill persons should be evaluated using the same criteria as other applicants. As a result, N.J.A.C. 10:46-2.1(f), (g) and (h) have been deleted. Please refer to Response #53 for rationale.

EXTENDED DIVISION RESPONSIBILITIES COMMITTEE

246. COMMENT: Amend N.J.A.C. 10:46-2.2 to indicate that if a finding of ineligibility follows a declaration of presumptive eligibility, and it is appealed in accordance with N.J.A.C. 10:48, the indivdual shall continue to receive services until a Final Decision is reached by the Division Director.

RESPONSE: The Department agrees and this wording has been added at N.J.A.C. 10:46-2.2(b).

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

CHAPTER 46
DETERMINATION OF ELIGIBILITY

SUBCHAPTER 1. GENERAL PROVISIONS

10:46-1.1 Purpose; authority

Pursuant to N.J.S.A. 30:4-25.2, Application for determination of eligibility, and N.J.S.A. 30:6D-1 et seq. (P.L. 1985, c.145), the Division of Developmental Disabilities, Department of Human Services (Division), intends this chapter to establish guidelines and criteria for determinations of eligibility for services, *[subject to legislative appropriation of funds therefore,]* to persons with developmental disabilities.

10:46-1.2 Scope

The provisions of this chapter shall apply to all persons making application to the Division for services under N.J.S.A. 30:4-165.1 et seq.

10:46-1.3 Definitions

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

"Application" means the form available at Division offices (see N.J.A.C. 10:46-3.2(a)). The term includes any supporting documentation necessary to the making of an informed determination with regard to applicant eligibility, including medical information. Supporting documentation may include, but is not limited to, educational, psychiatric, psychological, vocational, rehabilitation or social service records.

"Appropriate program of training" means that program of training which at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Case management" means the linking and coordination of services across family, agency and professional lines to develop and attain goals and objectives embodied in the Individual Habilitation Plan. It involves monitoring of and advocating for the individual's needs with individual and family participation.

"Child" means a person under 18 years of age.

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

"Counselling" means advice or guidance provided by a person knowledgeable about services to persons with developmental disabilities.

"Developmental disability" means a severe, chronic disability of a person which:

1. Is attributable to a mental or physical impairment or combination of mental or physical impairments;
2. Is manifest before age 22;
3. Is likely to continue indefinitely;
4. Results in substantial functional limitations in three or more of the following areas of major life activity, that is, self-care, receptive and expressive language, learning, mobility, self-direction and capacity for independent living or economic self-sufficiency; and
5. Reflects the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.
6. Developmental disability includes, but is not limited to, severe disabilities attributable to mental retardation, autism, cerebral palsy, epilepsy, spina bifida and other neurological impairments where the above criteria are met. (N.J.S.A. 30:6D-25.)

"Director" means the Director of the Division of Developmental Disabilities.

"Division" means the Division of Developmental Disabilities.

"Educational and related services" means those programs and/or therapies that are provided to a *[child]* ***pupil*** in association with a free appropriate education.

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"Guardianship services" means those services and programs provided by the Division for the purpose of implementing its responsibility toward the individual with developmental disabilities for whom it is performing the services of guardianship of the person.

"Intake worker" means *[an]* ***a professional*** employee of the Division *[who meets the Department of Personnel requirements for that position and]* who completes an appropriate program of training as provided by the Division. The program of training at a minimum includes orientation and instruction in identification of developmental disabilities, use of evaluation tools and interaction techniques.

"Medical information" means reports that have been *[compiled]* ***provided*** by licensed practitioners which demonstrate the existence of a developmental disability as well as the individual's current physical condition and significant medical history.

"Mental illness" means a current substantial disturbance of thought, mood, perception or orientation which significantly impairs judgement, behavior or capacity to recognize reality but does not include simple alcohol intoxication, transitory reaction to drug ingestion, organic brain syndrome or developmental disability. (P.L. 1987, c.116).

"Mental or physical impairment" means impairment in cognitive, neurological, sensory, cerebral or motor functioning resulting from other than mental illness.

["Psychiatric facility" means a State psychiatric hospital listed in N.J.S.A. 30:1-7, a county psychiatric hospital, a psychiatric unit in a county hospital or a private psychiatric hospital which is not a short term care facility.]

"Resident" means a person who is a domiciliary of New Jersey for other than a temporary purpose and who has no present intention of moving from the State.

[If the applicant was placed in a private institution or facility in New Jersey at a time when that person was not a resident of New Jersey as defined herein, he or she is not a resident for purposes of this chapter.]

["Short term care facility" means an inpatient, community based mental health treatment facility which provides acute care and assessment services to a mentally ill person whose mental illness causes the person to be dangerous to self or dangerous to others and property. A short term care facility is so designated by the Commissioner and is authorized by the Commissioner to serve persons from a specified geographic area. A short-term care facility may be part of a general hospital or other appropriate health care facility and shall meet certificate of need requirements and shall be licensed and inspected by the Department of Health pursuant to P.L. 1971, c.136 (N.J.S.A. 26:211-1 et seq).]

"Support services" mean services provided to developmentally disabled persons and their families that are generally of short term duration *[(that is, less than 12 months)]* or are a specific type of care, treatment, training, assistance or device that will help the individual avoid the need for more intensive care which would require coordination of a sequence of generic or specialized services.

"Team" means two or more Division employees and/or professionals holding appropriate certification and/or licensure in their respective fields who review recommendations regarding eligibility. The professions represented on the team *[will]* ***may*** vary according to the presenting need for services. At least one member of the team shall *[be a Qualified Mental Retardation Professional (QMRP) as defined in 45 CFR 249.12(c)(3).]* ***have the following qualifications:**

1. A doctor of medicine or osteopathy;

2. A registered nurse; or

3. A professional program staff person who is licensed, certified or registered, as applicable. If the professional program staff do not fall under the jurisdiction of State licensure, certification or registration requirements, he or she shall meet the following qualifications.

i. To be designated as an occupational therapist, an individual shall be eligible for certification as an occupational therapist by the American Occupational Therapy Association or another comparable body;

ii. To be eligible as an occupational therapy assistant, an individual shall be eligible for certification as a certified occupational therapy assistant by the American Occupational Therapy Association or other comparable body;

iii. To be eligible as a physical therapist, the individual shall be eligible for certification as a physical therapist by the American Physical Therapy Association or other comparable body;

iv. To be eligible as a physical therapy assistant, an individual shall be eligible for registration by the American Physical Therapy Association or be a graduate of a two-year college level program approved by the American Physical Therapy Association or other comparable body;

v. To be designated as a psychologist, an individual shall have at least a master's degree in psychology from an accredited school;

vi. To be designated as a social worker, an individual must:

A. Hold a graduate degree from a school of social work accredited or approved by the Council on Social Work Education or another comparable body; or

B. Hold a Bachelor of Social Work degree from a college or university accredited or approved by the Council on Social Work Education or another comparable body;

vii. To be designated as a speech language pathologist or audiologist, an individual shall:

A. Be eligible for a certificate of clinical competence in Speech Language Pathology or Audiology granted by the American Speech Language Hearing Association or other comparable body; or

B. Meet the educational requirements for certification and be in the process of accumulating the supervised experience required for certification;

viii. To be designated as a professional recreation staff, an individual shall have a bachelor's degree in recreation or in a specialty area such as art, dance, music or physical education;

ix. To be designated as a professional dietician, an individual shall be eligible for registration by the American Dietetics Association;

x. To be designated as a human services professional, an individual must have at least a bachelor's degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counselling and psychology).*

SUBCHAPTER 2. ELIGIBILITY CRITERIA

10:46-2.1 General eligibility

(a) A person determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2, and who is a resident of the State of New Jersey, is eligible for services of the Division.

(b) With regard to a child, the *[presenting developmental disability]* ***substantial functional limitation(s)*** shall be evaluated according to expectations based upon the child's chronological age.

(c) With regard to *[a student]* ***an individual*** who has entitlements to a free public education pursuant to N.J.S.A. 18A:1-1 et seq., who is otherwise eligible, the expenses of educational and related services shall not be borne by the Division.

(d) If a determination has been made by a *[student's]* local district board of education that *[a student's]* ***an individual's*** educational needs can only be appropriately served in a living situation other than the *[student's]* ***individual's*** home, then the expenses of that residential placement shall not be borne by the Division.

*[(e) If the applicant anticipates that services of the Division will not be required within two years of the application for services, he or she shall not be declared eligible. The name of the person and background information shall be maintained on file. The application may be activated at any time services are requested.

(f) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 and who exhibit symptoms of mental illness and are in need of outpatient services or treatment in a short term care facility only, shall be determined eligible and receive services while being treated for a mental illness.

(g) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 but require long term care in a psychiatric facility shall not be eligible for the services of the Division.

(h) Persons who are determined to be developmentally disabled as defined in N.J.A.C. 10:46-1.2 and who exhibit symptoms of mental illness and reside in psychiatric facilities but no longer require long term psychiatric care shall be eligible for services.]*

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10:46-2.2 Presumptive eligibility

(a) If the applicant appears to be eligible for services and manifests an emergent need for services from the Division, then such person may be declared presumptively eligible by the Division Director or his or her designee. ***The determination of presumptive eligibility shall be made within five days of the initial contact for services.*** The eligibility determination process shall be completed subsequent to the admission to service. If the person is found ineligible ***and has been receiving services under presumptive eligibility***, immediate referral shall be made to the appropriate agency or agencies for services. ***That individual or his or her guardian shall be notified in writing that services will cease in 30 days.***

(b) If the individual appeals the decision of ineligibility in accordance with N.J.A.C. 10:48-1, the individual may continue to receive services until a Final Decision is rendered by the Division Director.

10:46-2.3 Services

*[(a) The Division provides comprehensive evaluation, functional and guardianship services (see N.J.A.C. 10:40).

1. Functional services include both residential and nonresidential services.

i. Nonresidential functional services shall include, but need not be limited to: case management; support services; counseling of family or guardian, of employer, or of retarded person; consultative services to social, educational, or welfare and health agencies and to the courts; adult training; and day training programs.

ii. Residential functional services shall include, but need not be limited to: evaluation study, treatment, education, training, rehabilitation, care and protection provided in State schools and in other residential facilities operated by the department; family care and sheltered life programs; interim placement in approved residential facilities other than State schools. Such programs may be of short- or long-term duration as required. (N.J.S.A. 30:4-165.2.)]*

(a) Services are those specialized programs or adaptations of generic services provided by any public or private agency, organization or institution and directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a disability, and includes case management, diagnosis, evaluation treatment, personal care, day care, domiciliary care, special living arrangements, training, education, vocational training, recreation, counselling of the person with the disability and his family information and referral services and transportation services.

(b) Support services may be offered without supplying all information required under N.J.A.C. 10:46-3.3 when:

i. The applicant requests limited services to meet the person's needs and those services may avoid the need for more intensive services;

ii. The intake worker determines through a preliminary review of available information that the person is developmentally disabled; and

iii. The applicant agrees to accept support services.

(c) All information required under N.J.A.C. 10:46-3.3 shall be required if the applicant disagrees with the initial recommendation for support services or, subsequent to the provision of support services, more intensive services are desired.

(d) Support services include:

1. Respite care to give *[families]* ***primary care givers*** relief from continuous care of the person;

2. Personal care to an individual where the *[family]* ***primary care giver*** is unable to do this *[alone]* ***unassisted***;

3. Assistive devices to aid in moving and positioning an individual while giving personal care ***or devices to aid in communication***. Assistive devices shall be available if the individual lives independently, in the home of a relative or in a home licensed in accordance with N.J.A.C. 10:44B. The assistive device cannot be available through an alternate funding source. Assistive devices remain the property of the Division;

4. Supported employment which is:

i. Paid employment for persons with developmental disabilities for whom competitive employment at or above minimum wage without the benefit of supported employment services is unlikely and who, because of their disabilities, need intensive ongoing support to perform in a work setting;

ii. Conducted in a variety of settings, particularly work sites in which persons without disabilities are employed; and

iii. Supported by any activity needed to sustain paid work by persons with disabilities*[, including training, and transportation]*;

5. Home adaptation to accommodate persons with a physical or sensory disability *[if the individual owns his or her own home, lives with a relative who owns the home or lives in a home licensed in accordance with N.J.A.C. 10:44B]*. Home adaptations may not be offered under presumptive eligibility; and

6. Rehabilitation technology services which provide a systematic application of *[technology]* engineering methodology or scientific principles to meet the needs of and address the barriers confronted by individuals in areas that include education, rehabilitation employment, transportation, independent living and recreation.

SUBCHAPTER 3. APPLICATION

10:46-3.1 Who may apply

(a) Application for services under this chapter may be made by the following persons:

1. An adult on his or her own behalf;

2. The parents or guardian of a minor;

3. An agency, public or private, *[other than those agencies within the Department of Human Services,]* on behalf of a minor of whom it has care and custody;

4. A court having jurisdiction over a minor;

5. The guardian of an adjudicated incompetent adult; or

6. A court of competent jurisdiction on behalf of an adult person who appears to be developmentally disabled.

10:46-3.2 Where to apply

(a) ***Application shall be made to the regional offices of the Division.*** The initial contact may be made to an intake worker by telephone***, in writing or by appearing in person***.

(b) If the intake worker determines that the request is for the services of the Division, he or she shall send the person an application.

(c) If the intake worker determines that the request is for services not offered by the Division, the intake worker shall offer to refer the person to an appropriate agency. If the person wishes to pursue the services of the Division, the intake worker shall send an application ***and information concerning services***.

(d) Application shall be made to *[local]* ***regional*** offices of the Division*.* *[or to the Division central office. Forms, instructions and addresses of the local offices]* ***Forms and instructions*** may be obtained by writing ***or calling*** to:

*[Division of Developmental Disabilities
Office of Community Services
CN 700
Trenton, New Jersey 08625]*

*Regional Office:	Counties of Jurisdiction:
Northern Regional Office 201-927-2600 1 B Laurel Drive Flanders, N.J. 07836	Sussex, Morris, Warren Passaic, Bergen, Hudson
Upper Central Regional Office 201-379-1700 65 Springfield Avenue Springfield, N.J. 07081	Essex, Somerset, Union
Lower Central Regional Office 609-298-5981 Third Street, Bldg. #5 Bordentown, N.J. 08505	Middlesex, Monmouth, Mercer Ocean, Hunterdon
Southern Regional Office 609-751-0240 Heritage Plaza, Suite 120 1873 Route #70 Cherry Hill, N.J. 08003	Camden, Atlantic, Gloucester Cumberland, Salem, Cape May Burlington*

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(e) To *[request the transfer of a person to*] ***apply for services from*** the State of New Jersey under the Interstate Compact on Mental Health (N.J.S.A. 30:7B-1 et seq.), the *[application]* ***request*** shall be sent to the Assistant Director for Residential Services, Division of Developmental Disabilities, *[at the address specified in (a) above.]* ***CN 726, Trenton, N.J. 08625. The request shall be forwarded to the appropriate regional office for a determination of eligibility.*** All information required in N.J.A.C. 10:46-3.3 shall be provided. ***All notice requirements contained in N.J.A.C. 10:46-4.2 shall be followed.***

10:46-3.3 How to apply

(a) Application shall be made on forms supplied by the Division.

(b) Minimum information submitted shall include, but not be limited to:

1. Social data, such as name, address, telephone number, social security number, and present living arrangement;

2. Medical information;

3. Present program or employment type;

4. Name, address and telephone number of the applicant, if someone other than the person on whose behalf application is being made; and

5. Presenting request, such as the specific service(s) that may be desired ***if known by the applicant***.

(c) Accommodations shall be made available by the Division for applicants who *[are non-English speaking, illiterate or blind/visually impaired]* ***cannot complete the application by him or herself. Applications may be taken in sites other than the regional office. Applications may be taken at any site which will facilitate the determination of eligibility***.

(d) It is the responsibility of the applicant to cooperate with the Division in obtaining required records by signing consent to release of information forms and identifying persons or agencies known by the applicant to be in possession of the needed records.

(e) An application shall be deemed complete when *[all documentation is received by the Division]* ***there is sufficient information to make a determination of eligibility***.

SUBCHAPTER 4. DETERMINATION PROCESS

10:46-4.1 Determination

(a) A Division intake worker shall begin a case file upon receipt of an application for determination of eligibility for services.

(b) The intake worker shall assist in completion of the application upon request of the applicant.

(c) Upon receipt of an application including all necessary documentation and completion of an in person interview with the applicant, the intake worker shall make an initial recommendation in writing based upon specific findings regarding eligibility pursuant to N.J.A.C. 10:46-2.

(d) A *[professional]* team shall review the recommendation of the intake worker and:

1. Render a *[final]* determination *[of eligibility;]* ***regarding eligibility; or***

[2. Render a final determination of ineligibility; or]

[3.] ***2.*** Refer the matter to a second *[professional]* team, when there is disagreement among the first team concerning eligibility. No member of the second team shall have participated in the initial team review.

(e) The *[recommendation]* ***determination*** of the team(s) shall be made in writing ***within 10 working days and shall be*** based upon specific findings.

(f) In cases where the matter is referred for further review, the intake worker shall present the case record to the second team. The second team shall review the record and shall make a final determination.

10:46-4.2 Notice requirements

(a) Division staff shall notify the applicant in writing of the status of the eligibility determination no more than 60 days after initial contact with the intake worker.

(b) If the eligibility decision cannot be made within 60 days after the initial contact, the applicant shall be *[apprised]* ***advised in writing as to the specific reasons why a determination cannot be made and shall be informed*** of the status of the application at least every 30 days thereafter.

(c) If the *[client]* ***applicant*** is determined eligible, Division staff shall notify the applicant in writing within 10 working days of the determination and such notice shall include information regarding the service(s) deemed most suitable by the *[professional]* team.

1. If the most *[suitable] ***appropriate*** service as determined by the *[professional] team is not immediately available, the Division shall provide an alternate service. (N.J.S.A. 30:4-25.6.)

2. *[At the request of the applicant, the]* ***The*** Division shall also place the eligible person on a ***waiting*** list for the service(s) deemed most suitable by the *[professional]* team pending its availability.

(d) If the *[client]* ***individual*** is determined ineligible, the Division shall notify the applicant in writing within 10 working days of the determination. Such notification shall include specific criteria that were not met by the applicant, and shall also include information regarding the applicant's right to appeal the determination pursuant to N.J.A.C. 10:48.

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PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. The amendment has been proposed to the existing Holmdel Township Wastewater Management Plan (WMP). The proposed project is a 380,000 square foot office complex located in a groundwater discharge area of the Holmdel Township WMP. The project is proposing to discharge to groundwater an average of 57,000 gallons per day.

This notice is being given to inform the public that a plan amendment has been proposed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Office of NJDEP, Division of Water Resources, Bureau of Water 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. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

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.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Monmouth County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Monmouth County Water Quality Management (WQM) Plan has been submitted for approval. This amendment will identify an on-site treatment facility discharging 5,900 gallons per day to ground water. The project is located at lot 26 and block 911 in Wall Township.

This notice is being given to inform the public that a plan amendment has been developed for the Monmouth County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

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 the 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.

(c)

DIVISION OF WATER RESOURCES

Amendment to the Northeast Water Quality Management Plan
Public Notice

Take notice that an amendment to the Northeast Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for the Northwest Bergen County Utilities Authority (NBCUA). The WMP allows for the expansion of the NBCUA Sewage Treatment Plant (STP) to treat a projected wastewater flow of 13.1 million gallons per day and identifies a sewer service area for this expanded STP. The WMP also identifies portions of Franklin Lakes Borough to be served by STPs having a design capacity of less than 20,000 gallons per day with no direct discharge to surface water or onto the land surface.

This notice is being given to inform the public that a plan amendment has been developed for the Northeast WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

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 for the amendment is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Sussex County Water Quality Management Plan
Public Notice

Take notice that on August 2, 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. The Sussex County Board of Chosen Freeholders approved this amendment on April 24, 1990. This amendment adopts a Wastewater Management Plan (WMP) for Byram Township dated March, 1989, revised January 22, 1990. That document allows for a new on-site groundwater disposal system to serve the proposed Byram Plaza shopping center and includes this facility in an on-site groundwater disposal system service area. The proposed wastewater flow for this facility is 20,000 gallons per day. The WMP also delineates other on-site groundwater disposal system service areas and individual subsurface sewage disposal system service areas.

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This amendment was noticed in the New Jersey Register on March 19, 1990 (see 22 N.J.R. 994(b)). Comments on this amendment were received during the public comment period and are summarized below with the Department's responses.

COMMENT: The master plan which was adopted by Byram Township, at a public hearing held on April 6, 1989, contains a "land use element" that has created three new high density residential zoning districts which replace large land areas that had previously been designated for industrial, recreational and one-acre residential lots. The Byram Township WMP should not be approved by the Department until it incorporates a new zoning ordinance which is based on the master plan. If this cannot be accomplished, then a clear stipulation should be included that will require the WMP to be invalidated in the event that the Township's new zoning ordinance deviates from the development densities upon which this WMP has been formulated.

RESPONSE: According to the requirements of WMPs as specified in the August 25, 1988 Technical Resource Document which was used to prepare this WMP, wastewater planning should reflect existing land use and zoning in determining future wastewater needs. The Byram Township WMP satisfies this requirement by delineating proposed wastewater service areas based on the zoning which currently exists within the Township. When a new zoning ordinance is adopted, the Township or any interested person may request an amendment to the Sussex County Water Quality Management Plan (WQMP) to amend the WMP.

COMMENT: The owner of a portion of land along Route 206 which is bisected by the municipal boundary lines of Byram Township and Stanhope Borough, indicates that this property is to be connected to the Stanhope sewer system for wastewater treatment at the Musconetcong Sewerage Authority (MSA) Sewage Treatment Plant (STP) as per a previous agreement with Stanhope and approved site plans. However, the WMP contains a statement that no portion of Byram Township may be served by the MSA. The WMP should include a provision to reflect the fact that this property is not included within the WMP or Byram's portion of the Sussex County WQMP area but is a part of Stanhope's portion of the Sussex County WQMP area and therefore capable of being sewered. Or, the WMP should include an appropriate notation that the restriction contained in the WMP does not apply to this property.

RESPONSE: Although the WMP does not currently provide for any portion of Byram Township to be served by the MSA STP, the WMP does not include a statement indicating that no portion of Byram Township may be served by the MSA. The WMP does include this property in an on-site groundwater disposal facility service area based on zoning. The WMP must include this area as it is a part of the wastewater management planning area consisting of Byram Township.

As there is pending litigation concerning the property, and the MSA has specifically declined to service any portion of Byram Township, it would be inappropriate to include this property in the MSA sewer service area at this time.

The Department has determined that based on the above information, approval of the WMP should not be withheld at this time in order to change the type of wastewater service proposed for this area. Instead, an amendment to the Sussex County WQMP to amend the WMP may be requested at any time by Byram Township or any interested person.

COMMENT: One of the interested parties requested to endorse the WMP denied endorsement of the WMP based on the following two concerns:

1. The WMP does not include an acceptable method of wastewater treatment and disposal for the Byram Island portion of Byram Township.

2. The WMP does not clearly state that there shall be no sewage flow generated within Byram Township expecting treatment at the MSA STP now or at any date in the future.

RESPONSE: The Byram Island portion of Byram Township, which is zoned Shopping Center Commercial, is delineated in the Byram Township WMP as an on-site groundwater disposal facility service area. Based on zoning, this is an acceptable method of wastewater treatment and disposal.

By not delineating any portion of Byram Township as within the sewer service area of the MSA STP, the WMP does not currently allow for any portion of Byram to be served by this facility. It is not appropriate for the WMP, however, to specify that the Township will never be served by the MSA STP. At any time, a request to amend the Sussex County WQMP to provide for service by the MSA could be submitted.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Tri-County Water Quality Management Plan

Public Notice

Take notice that on July 6, 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 expands the sewer service area of the Evesham Municipal Utilities Authority to include Block 3201, Lot 1 in Medford Township, Burlington County. This lot was located in an area identified as suitable for individual subsurface sewage disposal systems, according to the Medford Township Wastewater Management Plan, but site conditions (that is, the presence of freshwater wetlands) precluded the use of such systems.

(b)

DIVISION OF WATER RESOURCES

Amendment to the Upper Delaware Water Quality Management Plan

Public Notice

Take notice that an amendment to the Upper Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Greenwich Township (Township), Warren County. The WMP identifies: the area of the Township to be serviced by the Town of Phillipsburg Sewage Treatment Plant (STP); construction of a Southerly Region STP servicing the industrially zoned areas of the Township in the southern half of the Township; establishment of three on-site groundwater disposal service areas; and the remainder of the Township served by individual subsurface sewage disposal systems.

This notice is being given to inform the public that a plan amendment has been developed for the Upper Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

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.

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HEALTH

(a)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Notice of a One-Time Only Deletion of the Certificate of Need Batching Cycle for Rehabilitation Hospitals and Comprehensive Rehabilitation Services by the New Jersey State Department of Health

Take notice that the Department of Health is proposing to delete the November 15, 1990 certificate of need batching cycle for rehabilitation hospitals and comprehensive rehabilitation services. This action is being taken so that the Policy Manual for the Review of Rehabilitation Hospitals and Comprehensive Rehabilitation Services (N.J.A.C. 8:33M) can be amended with regard to the adult bed need formula contained in N.J.A.C. 8:33M-1.6(c)5.

As it is currently written, the Policy Manual indicates that region-specific rates of admission to rehabilitation hospitals and average lengths of stay will be included in the adult bed need formula. However, at the time that the rules for comprehensive rehabilitation were originally developed and adopted in June 1989, it was the Department's intention to utilize Statewide rates of admission and average lengths of stay in the formula. The imprecise language in N.J.A.C. 8:33M-1.6(c)5 has resulted in some confusion, since the use of region-specific versus statewide variables results in substantially different need projections for the northern, central, and southern parts of the State.

The batch deletion will be effective for the October 1, 1990 certificate of need filing date; applications for rehabilitation hospitals and comprehensive rehabilitation services will not be accepted for processing at that time. In the intervening period, the Department will convene its Rehabilitation Hospital Advisory Committee so that the group may re-evaluate the adult bed need methodology and offer a recommendation regarding changes that are needed in N.J.A.C. 8:33M-1.6(c). It is anticipated that any needed amendments to the Policy Manual will be effected by the Spring of 1991. Therefore, the Department of Health's acceptance of rehabilitation hospital applications will resume on April 1, 1991, which is the filing date for the subsequent rehabilitation batching cycle.

Any inquiries about the Department's moratorium and certificate of need rules for rehabilitation hospitals should be referred to:

John Gontarski, Chief
Health Systems Review
New Jersey State Department of Health
CN 360, Room 604
Trenton, N.J. 08625

HUMAN SERVICES

(b)

DIVISION OF ECONOMIC ASSISTANCE

Food Stamp Program

Notice of Income Eligibility, Deduction, and Coupon Allotment Standards

Take notice that, in accordance with N.J.A.C. 10:87-12, the Department of Human Services announces that the following food stamp income eligibility, deduction, and coupon allotment standards shall be utilized in the New Jersey Food Stamp Program for the period October 1, 1990 through September 30, 1991. This change is effective October 1, 1990.

Income deductions
(N.J.A.C. 10:87-12.1)

Standard Deduction (Food Stamp Manual (FSM) 10:87-12.1(a))	$116
Shelter Deduction (FSM 10:87-12.1(b))	$186
Uniform Telephone Allowance (FSM 10:87-12.1(c))	$ 17
Standard Utility Allowance (FSM 10:87-12.1(d))	$119
Heating Utility Allowance (FSM 10:87-12.1(e))	$194

Maximum coupon allotment
(N.J.A.C. 10:87-12.2)

Household Size	MCA
1	$105
2	193
3	277
4	352
5	418
6	502
7	555
8	634
9	713
10	792
Each Additional Member	+79

Maximum allowable net income standards
(N.J.A.C. 10:87-12.3)

Household Size	Maximum Allowable Income
1	$ 524
2	702
3	880
4	1059
5	1237
6	1415
7	1594
8	1772
9	1951
10	2130
Each Additional Member	+179

Maximum allowable gross income standards
(N.J.A.C. 10:87-12.4)

Household Size	Maximum Allowable Income
1	$ 681
2	913
3	1144
4	1376
5	1608
6	1840
7	2072
8	2304
9	2536
10	2768
Each Additional Member	+232

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165 percent of poverty level
(N.J.A.C. 10:87-12.7)

Household Size	Maximum Allowable Income
1	$ 864
2	1158
3	1452
4	1747
5	2041
6	2335
7	2629
8	2924
9	3219
10	3514
Each Additional Member	+295

(a)

OFFICE OF EDUCATION

Notice of Availability of State Funds Contingency Intervention Program Title of Funding Source: SFEA

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 Education hereby announces the availability of the following funds.

A. **Name of program:** Contingency Intervention Program.

B. **Purpose:** The purpose of the program is to develop and implement technological innovations which will assist young children with severe and multiple handicaps in understanding the connection between action and outcome. This includes the application of appropriate structured curriculum, adapted toys and switches, computers, and computer-based data collection and analysis systems. Services will be delivered to children approximately three to six years old, in State-operated special education facilities located throughout New Jersey. For some children, services will also involve a home-based component.

C. **Amount of money in the program:** $8,500.

D. **Organizations which may apply for funding under the program:** Individuals, agencies, institutions of higher learning, clinics and any other interested providers.

E. **Qualifications needed by an applicant to be considered for funding:** Applicants must provide the following to each of seven sites: two complete Contingency Intervention systems, including computer hardware, software and adapted toys.

Applicants must demonstrate the ability to assure appropriate application of the equipment in order to obtain student improvement.

F. **Procedure for eligible organizations to apply:** All interested applicants should write to the address listed below or call (609) 588-3164 for a Request for Proposal (RFP) package.

G. **Address to which application must be submitted:**

Dr. Patricia Holliday, Director
Department of Human Services
Office of Education
10 Quakerbridge Plaza, CN 700
Trenton, New Jersey 08625

H. **Deadline by which applications must be submitted:** October 8, 1990.

I. **Date by which applicant shall be notified of approval or disapproval:** October 15, 1990.

INSURANCE

(b)

THE COMMISSIONER

Notice of Cancellation and Nonrenewal of Fire and Casualty Coverage

Take notice that Samuel F. Fortunato, Commissioner of Insurance, pursuant to the provisions of N.J.S.A. 17:29C-3, has recertified to the Legislature the need for continuation of the notice of cancellation and nonrenewal requirement applicable to fire and casualty insurance policies, excluding accident and health policies for the fiscal year commencing July 1, 1990. The notice of cancellation and nonrenewal requirement is set forth at N.J.A.C. 11:1-5.2, which rule continues in full force and effect.

This notice is published as a matter of public information.

LABOR

(c)

OFFICE OF THE CONTROLLER

Notice of Rates for Board and Room, Meals and Lodging Furnished by Employers in Addition to, or in Lieu of, Money Wages During Calendar Year 1991

Take notice that, in accordance with N.J.A.C. 12:16-4.8, the Department of Labor hereby publishes notice of the following rates for board and room, meals and lodging furnished by employers in addition to, or in lieu of, money wages during calendar year 1991:

Full board and room, weekly	$96.90
Lodging per week	$41.50
Meals per day	$11.10

If less than three meals per day, the individual meals shall be valued as follows:

Breakfast	$3.30
Lunch	$3.30
Dinner	$4.40

LAW AND PUBLIC SAFETY

(d)

OFFICE OF THE ATTORNEY GENERAL

Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1990 Ending June 30, 1990

Take notice that Robert J. Del Tufo, Attorney General of the State of New Jersey, in compliance with N.J.S.A. 52:13C-23(h), hereby publishes Notice of the Availability of the Quarterly Report of Legislative Agents for the Second Quarter of 1990, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Second Quarter of 1990, the Notices of Representation filed with this office reflect that 631 individuals are registered as Legislative Agents. Legislative Agents are required by law to submit in writing a Quarterly Report of their activity in attempting to influence Legislation during each calendar quarter. The aforesaid report shall be filed between the first and tenth days of each calendar quarter for such activity that occurred during the preceding calendar quarter. (N.J.S.A. 52:13C-22(b)).

A complete Quarterly Report of Legislative Agents, consisting of the Summary and copies of all Quarterly Reports filed by Legislative Agents for the Second Calendar Quarter of 1990, has been filed separately for reference with the following offices: the Office of the Governor, the Office of the Attorney General, the Office of Legislative Services (Bill Room), the Office of Administrative Law, and the State Library. Each is available for inspection in accordance with the practices of those offices.

The Summary Report includes the following information:

—The names of registered Agents, their registration numbers, their business addresses and whom they represent.

—A list of Agents who have filed Quarterly Reports by Statutory and Compilation Deadlines for this quarter.

—A list of Agents whose Quarterly Reports were not received by the Compilation Deadline for this quarter.

Following is a listing of all new Legislative Agents who have filed Notices of Representation during the Second Calendar Quarter of 1990:

No. 7 Carol R. Katz, representing Martin & Co.

No. 45 Frank A. Willis, representing NJ Savings League

No. 85 Marjorie Krampf, representing Fuel Merchants Ass'n of New Jersey

No. 85 Curtis S. Macysyn, representing Fuel Merchants Ass'n of New Jersey

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No. 155 Debra Cosgrove, representing NJ Principals & Supervisors Ass'n
No. 155 Cynthia A. Crooke, representing NJ Principals & Supervisors Ass'n
No. 229 Frank Storrs Hirst III, representing Holt, Ross & Yulish Inc.
No. 564 Alfred Ferguson, representing McCarter & English, Ass'n of Executive Search Consultants and WRT & Associates
No. 592 Robert D. Gilbert, representing Hellring, Lindeman, Goldstein, Siegal, Stern & Greenberg and IBM
No. 593 James F. Lemperes, representing Philip Morris USA
No. 594 Marianne Kunz, representing GPU Nuclear
No. 595 Bernard P. Horn, representing Handgun Control Inc.
No. 596 Kyra N. Lindermann, representing Merck & Co.
No. 598 William N. Hall, representing Breed, Abbott & Morgan and Resilient Floor Covering Institute (RFCI)
No. 599 Joseph S. Roth, representing CIBA-GEIGY
No. 600 Henry F. Gavan, representing Independent
No. 601 Roger B. Cohen, representing Air Transport Ass'n
No. 602 Patricia Dorsey, representing NJ Public Interest Research Group/Citizen Lobby
No. 602 Marion Wise, representing NJ Public Interest Research Group/Citizens Lobby
No. 603 Jerome J. Coyne, representing IBM
No. 604 John J. Feketie, representing NJ State Laborers P.A.C.
No. 605 Kelly T. Wilson, representing Independent
No. 606 William Applegate, representing NJ Principals & Supervisors Ass'n
No. 607 Ronald H. Gordon, representing Karcher, McDonnell, Rainone & Gordon and International Energy Corp.
No. 607 Alan J. Karcher, representing Karcher, McDonnell, Rainone & Gordon and International Energy Corp.
No. 607 William J. McDonnell, representing Karcher, McDonnell, Rainone & Gordon and International Energy Corp.
No. 607 Louis N. Rainone, representing Karcher, McDonnell, Rainone & Gordon and International Energy Corp.
No. 608 Daniel Fedeli, representing Independent
No. 609 Arthur F. Brown, representing NJ State Sheriff's Ass'n
No. 610 Richard P. Visotcky, representing Independent
No. 611 Maureen E. Lopes, representing NJ Business & Industry Ass'n
No. 612 Barbara C. Hauke, representing Orange & Rockland Utilities Inc.
No. 613 Valerie L. Brown, representing NJ State Bar Ass'n
No. 614 Ralph B. Pears, representing Distilled Spirits Council of the United States Inc.

Following is a listing of all Legislative Agents who have filed Notices of Termination during the Second Calendar Quarter of 1990:

LEGISLATIVE AGENT	REGISTRATION NUMBER
Clark W. Martin	7
Peter Cardo	23
Peter Celentano	23
Vincent DiLemma	23
Randall Flager	23
Elizabeth Fluellen	23
Louis J. Klein	23
Raymond Loftus	23
Irene Maksymix	23
Harold Ritchings	23
Edgar Samman	23
Joan Smith	23
Raymond D. Buttacavoli	32
William S. Singer	88
Louis E. Sneyers	118
Edythe A. Miller	155
Martin R. Olech	155
Diane R. Lynch	175
Jeffrey Kaszerman	291
J. Richard Petersen, Jr.	357
Gerald T. Walsh	371
Donald C. Vaillancourt	376
Richard Fritzky	383
Russell K. Corby	482
Paul D. Chrystie	483
Kathy A. Stanwick	483
Jared O. Blum	505
Kevin F. Crowe	523
George J. Tyler	527
Edward Samson	553

For further information contact the Legislative Agents Unit at (609) 984-9371.

PUBLIC UTILITIES

(a)

BOARD OF PUBLIC UTILITIES

Request for Proposal
Telecommunications Dual Party Relay System

Take notice that the Board of Public Utilities (Board) has issued a Request for Proposal (RFP) for the provision of a Dual Party Relay System (DPRS) for the State of New Jersey. This RFP seeks interested parties to submit comments on a proposal for providing a system where operators or their equivalent would serve as translators between speech and/or hearing impaired persons communicating with a Telecommunications Device for the Deaf (TDD) or equivalent device, and non-impaired persons.

The Board is now seeking proposals to assist in identifying effective methods and potential providers of telecommunications relay services in New Jersey. Upon consideration of the proposals offered, the Board may also make a determination of the feasibility and desirability of pursuing either of the options made available by the recently enacted Americans With Disabilities Act, 47 U.S.C. §§ 201 et seq. The Board hereby invites all interested parties to respond. The Board encourages new suggestions and ways of providing this service through effective alternative means. The Board also seeks comments on whether it would be more appropriate for a DPRS to be implemented on a national level or on an individual state level.

Interested persons may obtain a copy of the text of the request for proposal by contacting Michael P. Gallagher, at (201) 648-7695, of the staff of the Board of Public Utilities during the hours of 9:00 A.M. to 5:00 P.M., Monday through Friday. **Written inquiries** may be addressed to the Board of Public Utilities, c/o Michael P. Gallagher, Two Gateway Center, Newark, N.J. 07102.

Interested parties may submit proposals or comments until October 17, 1990. Proposals should be addressed to the DPRS System Evaluation Committee c/o of Board at the above address no later than October 17, 1990.

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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 August 6, 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 JULY 16, 1990

NEXT UPDATE: SUPPLEMENT AUGUST 20, 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. 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	22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 1 and 88	January 2, 1990	22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 89 and 272	January 16, 1990	22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 273 and 584	February 5, 1990	22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 585 and 686	February 20, 1990	22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 687 and 884	March 5, 1990	22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 885 and 1010	March 19, 1990		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-8.2	Transmission of contested cases to the OAL	22 N.J.R. 2066(a)	R.1990 d.484	22 N.J.R. 3003(a)
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)	R.1990 d.368	22 N.J.R. 2262(a)
1:1-18.4	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
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)	R.1990 d.405	22 N.J.R. 2262(b)
1:10-8.1	Transmission of Economic Assistance cases	22 N.J.R. 2389(a)		
1:10-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:10B-18.2	Filing of exceptions to initial decisions	22 N.J.R. 2067(a)	R.1990 d.483	22 N.J.R. 3003(b)
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
	Most recent update to Title 1: TRANSMITTAL 1990-3 (supplement May 21, 1990)			
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:19-2	Rose mosaic disease control	22 N.J.R. 2069(a)		
2:20-2	White pine blister rust control	22 N.J.R. 2070(a)		
2:48	Dairy industry rules	22 N.J.R. 2625(a)		
2:70-1	Classification of liming materials	22 N.J.R. 1411(a)	R.1990 d.414	22 N.J.R. 2503(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)		
	Most recent update to Title 2: TRANSMITTAL 1990-6 (supplement July 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)		
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(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)		
3:7	Safe and sound methods of banking	22 N.J.R. 2205(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:27	Mortgage loans by savings and loan associations	22 N.J.R. 2206(a)		
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	22 N.J.R. 1968(a)		
3:41	Cemetery Board rules	22 N.J.R. 2627(a)		
	Most recent update to Title 3: TRANSMITTAL 1990-5 (supplement July 16, 1990)			
CIVIL SERVICE—TITLE 4				
	Most recent update to Title 4: TRANSMITTAL 1990-3 (supplement July 16, 1990)			
PERSONNEL—TITLE 4A				
4A:3-5.2, 5.5	Overtime compensation	22 N.J.R. 2627(b)		
4A:4-2.4	Promotional examinations	22 N.J.R. 2628(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:4-5.5	Working test period	22 N.J.R. 2629(a)		
4A:6-1.1, 1.3, 1.8, 1.10, 1.21	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)
4A:6-1-.8, 1.21	Family leave: administrative correction	_____	_____	22 N.J.R. 2682(a)
4A:7-1.1	Equal employment opportunity: administrative correction	_____	_____	22 N.J.R. 2266(a)
4A:8-2.2	Employee layoff rights	22 N.J.R. 2629(b)		
4A:8-2.4	Family leave	22 N.J.R. 1300(b)	R.1990 d.387	22 N.J.R. 2263(a)

Most recent update to Title 4A: TRANSMITTAL 1990-3 (supplement July 16, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-22.5	Hotels and multiple dwellings: ceiling height	22 N.J.R. 2207(a)		
5:14	Neighborhood Preservation Balanced Housing Program	22 N.J.R. 1700(b)		
5:15-2.1	Emergency shelters for homeless: hospitality rooms	22 N.J.R. 1969(a)	R.1990 d.459	22 N.J.R. 2964(a)
5:23-1.1, 3.1, 3.11B	Uniform Construction Code: underground storage tank systems	22 N.J.R. 2629(c)		
5:23-2.2, 2.10, 2.14, 2.15, 2.37, 3.9, 3.11, 3.11A, 4.3, 4.9, 4.10, 5.2, 5.4, 5.5, 5.6, 5.7, 5.20, 5.21, 5.22, 5.23, 5.24	Uniform Construction Code: administrative corrections	_____	_____	22 N.J.R. 2503(b)
5:23-2.14, 3.14	Uniform Construction Code: temporary greenhouses	22 N.J.R. 1969(b)		
5:23-3.4, 3.5, 3.8A, 3.10, 3.11, 3.11A, 3.14–3.18, 3.20, 4A.8	Uniform Construction Code: subcodes	22 N.J.R. 2208(a)		
5:23-3.16	Electrical subcode: administrative correction	_____	_____	22 N.J.R. 2366(b)
5:23-4.17	Uniform Construction Code: appropriation of municipal fees	22 N.J.R. 1871(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)	R.1990 d.345	22 N.J.R. 2267(a)
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)	R.1990 d.364	22 N.J.R. 2275(a)
5:24	Condominium and cooperative conversion	22 N.J.R. 1455(b)	R.1990 d.379	22 N.J.R. 2276(a)
5:24-1.1, 1.2, 1.3, 1.6, 1.7, 1.8, 1.10, 1.11	Mobile home park conversion or retirement from rental market	22 N.J.R. 2214(a)		
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)	R.1990 d.452	22 N.J.R. 2682(b)
5:26-2.2	Planned real estate development full disclosure: registration exemptions	22 N.J.R. 1872(a)	R.1990 d.408	22 N.J.R. 2505(a)
5:28	State Housing Code	22 N.J.R. 1456(a)		
5:29	Landlord-tenant relations	22 N.J.R. 2070(b)		
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)	R.1990 d.383	22 N.J.R. 2276(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)	R.1990 d.383	22 N.J.R. 2276(b)
5:34	Local public contracts	22 N.J.R. 724(a)		
5:70-6.3	Congregate Housing Services Program: income and service subsidies	22 N.J.R. 1970(a)	R.1990 d.467	22 N.J.R. 2964(b)
5:80-5.1, 5.2, 5.3, 5.8, 5.9, 5.10	Housing and Mortgage Finance Agency: transfer of ownership interests	22 N.J.R. 1971(a)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 1974(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: central air conditioning in income-qualified units	22 N.J.R. 1703(a)		
5:92-12.13, 12.15, 12.16, App.	Council on Affordable Housing: extension of comment period regarding central air conditioning in income-qualified units	22 N.J.R. 1975(a)		

Most recent update to Title 5: TRANSMITTAL 1990-7 (supplement July 16, 1990)

MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A

Most recent update to Title 5A: TRANSMITTAL 1990-2 (supplement June 18, 1990)

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6:3-1.11, 1.12, 1.24	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:3-2.1, 2.2, 2.5–2.8	Pupil records	22 N.J.R. 1302(a)	R.1990 d.380	22 N.J.R. 2344(a)
6:3-7	Education of homeless children and youth	22 N.J.R. 2630(a)		
6:11	Teacher preparation and certification	22 N.J.R. 1873(a)		
6:20	School business services	22 N.J.R. 1246(a)	R.1990 d.393	22 N.J.R. 2345(a)
6:20-1.1, 1.2, 4.1–4.4, 4.7–4.10, 4.11	Attendance and pupil accounting	22 N.J.R. 2633(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)	R.1990 d.394	22 N.J.R. 2350(a)
6:22-1.1, 1.7	School facility planning: administrative corrections	———	———	22 N.J.R. 2359(a)
6:22-5.4	School facility planning service: administrative correction	———	———	22 N.J.R. 2683(a)
6:24	Controversies and disputes	22 N.J.R. 2841(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)	R.1990 d.450	22 N.J.R. 2683(b)
6:29-2.4, 5.2	Health services: administrative corrections	———	———	22 N.J.R. 2359(a)
6:42	Repeal (see 6:43)	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:43	Vocational and technical programs and standards	22 N.J.R. 1705(a)	R.1990 d.451	22 N.J.R. 2694(a)
6:61, 62, 63, 65	State Library rule forewords: administrative deletion	———	———	22 N.J.R. 2964(c)
6:68-2.4, 5.1, 5.8, 10.2	Library assistance: administrative corrections	———	———	22 N.J.R. 2359(a)

Most recent update to Title 6: TRANSMITTAL 1990-4 (supplement May 21, 1990)

ENVIRONMENTAL PROTECTION—TITLE 7

7:1	Practice and procedure; hazardous substances discharge reporting; pesticides disposal	22 N.J.R. 1457(a)	R.1990 d.457	22 N.J.R. 2965(a)
7:1E	Discharges of petroleum and other hazardous substances	22 N.J.R. 1651(a)	R.1990 d.398	22 N.J.R. 2284(a)
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)	R.1990 d.385	22 N.J.R. 2284(b)
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5	Matching Grants Program for Local Environmental Agencies	22 N.J.R. 2392(a)		
7:7-2.3	Waterfront development	Emergency (expires 9-15-90)	R.1990 d.403	22 N.J.R. 2361(a)
7:7-2.3	Waterfront development: extension of comment period	22 N.J.R. 2669(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)	R.1990 d.446	22 N.J.R. 2753(a)
7:7E	Coastal zone management	22 N.J.R. 1188(a)	R.1990 d.413	22 N.J.R. 2542(b)
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(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)	R.1990 d.399	22 N.J.R. 2285(a)
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:14A-1.8	NJPDES permit program: preproposal regarding minimum discharge fees	22 N.J.R. 1652(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)	R.1990 d.444	22 N.J.R. 2754(a)
7:14B-1.3, 1.4, 1.6, 2.1–2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4–12, 15	Underground storage tank systems	21 N.J.R. 2242(a)	R.1990 d.443	22 N.J.R. 2758(a)
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)	R.1990 d.442	22 N.J.R. 2816(a)
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:18-1.1, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.13, 2.15, 5.3, 5.4, 5.5, 5.7, 5.8	Radon laboratory certification program	21 N.J.R. 3354(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)		
7:25-5	1990-91 Game Code	22 N.J.R. 1459(a)	R.1990 d.404	22 N.J.R. 2288(a)
7:25-6	1991-92 Fish Code	22 N.J.R. 2071(a)		
7:25-18.5	Gill netting: administrative correction	———	———	22 N.J.R. 2301(a)
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)		
7:26-1.4, 7.4, 7.5, 7.6, 8.2, 8.3	Hazardous waste exports, imports; small quantity generators; farm pesticide waste	22 N.J.R. 1472(a)	R.1990 d.445	22 N.J.R. 2826(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
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)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-10.8	Hazardous waste landfills: administrative correction	———	———	22 N.J.R. 2966(a)
7:27-8	Air pollution control permit and certificate process	22 N.J.R. 292(a)		
7:27-8.2	Air pollution control permit and certificate process: correction to proposed amendment	22 N.J.R. 593(a)		
7:28	Radiation protection	22 N.J.R. 890(a)	R.1990 d.427	22 N.J.R. 2570(a)
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-3.12	Ionizing radiation-producing machines: registration fees	22 N.J.R. 1653(a)	R.1990 d.400	22 N.J.R. 2302(a)
7:28-3.12	Ionizing radiation-producing machines: registration fees: administrative correction	———	———	22 N.J.R. 2830(a)
7:28-16	Dental radiographic installations	22 N.J.R. 894(a)		
7:28-19.12	Radiologic technologists: licensure and renewal fees	22 N.J.R. 1975(b)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, 9.3	Pesticide Control Program: certification, registration and permit fees	22 N.J.R. 1314(a)	R.1990 d.426	22 N.J.R. 2571(a)
7:36-8	Green Acres Program: public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 593(b)		
7:36-8	Green Acres Program: public hearing and extension of comment period regarding public hearing requirement on proposed transfers or use of Department-held land and water	22 N.J.R. 1352(a)		
7:38	Wild and Scenic Rivers System	22 N.J.R. 1317(a)		

Most recent update to Title 7: TRANSMITTAL 1990-7 (supplement July 16, 1990)

HEALTH—TITLE 8

8:7	Licensure of persons for public health positions	22 N.J.R. 1977(a)		
8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:18-1.2, 1.5, 1.6, 1.8, 1.18, App. I	Catastrophic Illness in Children Relief Fund program	22 N.J.R. 2669(b)		
8:21	Food and drugs	22 N.J.R. 2465(a)		
8:31B	Hospital rate setting	22 N.J.R. 1480(a)	R.1990 d.462	22 N.J.R. 3004(a)
8:31B-3.3, 4.6, 4.41	Hospital reimbursement: uncompensated care audit	21 N.J.R. 3638(a)		
8:31B-3.17	Hospital reimbursement: on-site audits	21 N.J.R. 3639(a)		
8:31B-3.24	Hospital reimbursement: employee health insurance	21 N.J.R. 3277(a)		
8:31B-4.38, 4.61	Hospital reimbursement: Maternity, Outreach, and Management Services (MOMS)	22 N.J.R. 594(a)		
8:31B-4.40	Hospital reimbursement: appropriate collection procedures	21 N.J.R. 3873(a)		
8:31B-4.125	Hospital reimbursement: outside collection costs	21 N.J.R. 3639(b)		
8:33	Certificate of need application and review process	22 N.J.R. 1494(a)	R.1990 d.417	22 N.J.R. 2506(a)
8:33B-1	Extracorporeal shock wave lithotripsy services	22 N.J.R. 1495(a)	R.1990 d.418	22 N.J.R. 2506(b)
8:33F-1.1, 1.2, 1.6, 1.7	Renal disease services	22 N.J.R. 2494(a)		
8:33Q-1	Organ transplantation services: certificate of need requirements	22 N.J.R. 2496(a)		
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, 41.3	Licensure of long-term care facilities	22 N.J.R. 1889(a)		
8:41-8.1, 8.3	Mobile intensive care units: administration of medications	22 N.J.R. 1980(a)	R.1990 d.473	22 N.J.R. 3013(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
8:43	Licensure of residential health care facilities	22 N.J.R. 2499(a)		
8:43A	Ambulatory care facilities: licensure standards	22 N.J.R. 1496(a)	R.1990 d.416	22 N.J.R. 2507(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)	R.1990 d.421	22 N.J.R. 2703(b)
8:43G-5.4, 5.6, 5.8, 5.10, 5.17	Administrative and hospital-wide (advisory)	21 N.J.R. 2926(a)		
8:43G-19.4, 19.6, 19.9, 19.11, 19.28	Obstetrics (advisory)	21 N.J.R. 2926(a)		
8:43G-19.35–19.53	Hospital licensure: newborn care physical plant standards	21 N.J.R. 3642(a)	R.1990 d.422	22 N.J.R. 2705(a)
8:43G-21.3, 21.6, 21.8, 21.10, 21.12, 21.14, 21.16	Oncology (advisory)	21 N.J.R. 2926(a)		
8:43G-22.4, 22.7, 22.11, 22.18, 22.21	Pediatrics (advisory)	21 N.J.R. 2926(a)		
8:43G-24.5, 24.7, 24.14	Plant maintenance and fire and emergency preparedness (advisory)	21 N.J.R. 2926(a)		
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-29.2, 29.4, 29.7, 29.11, 29.14, 29.16, 29.18, 29.22	Physical and occupational therapy (advisory)	21 N.J.R. 2926(a)		
8:43G-30.4, 30.7, 30.10, 30.12	Renal dialysis (advisory)	21 N.J.R. 2926(a)		
8:43G-30.13–30.17	Acute renal dialysis services: physical plant requirements	21 N.J.R. 3406(a)	R.1990 d.423	22 N.J.R. 2708(a)
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:43I-1.3, 1.11	Hospital Policy Manual: inpatient obstetric units	22 N.J.R. 1891(a)	R.1990 d.463	22 N.J.R. 3014(a)
8:44-3	Local health services: limited purpose laboratories	22 N.J.R. 1323(a)		
8:51	Childhood lead poisoning	22 N.J.R. 1502(a)	R.1990 d.472	22 N.J.R. 3014(b)
8:57-1.6	Reportable communicable diseases and immunization requirements: administrative correction	———	———	22 N.J.R. 2709(a)
8:57-3.2	Reporting of occupational and environmental diseases and poisons: administrative correction	———	———	22 N.J.R. 3025(a)
8:59-1.3, 12	Worker and Community Right to Know: certification of consultants and consulting agencies	22 N.J.R. 1892(a)		
8:66-1.1	Intoxicated Driving Program	22 N.J.R. 1024(a)	R.1990 d.453	22 N.J.R. 2710(a)
8:66-1.1	Intoxicated Driving Program: reopening of comment period	22 N.J.R. 1655(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 214(c), 1136(b), 1597(a))	21 N.J.R. 3292(a)	R.1990 d.349	22 N.J.R. 2164(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)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b))	22 N.J.R. 596(a)	R.1990 d.348	22 N.J.R. 2163(a)
8:71	Interchangeable drug products	22 N.J.R. 1214(b)	R.1990 d.347	22 N.J.R. 2162(b)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)		
8:71	Interchangeable drug products	22 N.J.R. 2501(a)		

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9:1-1.2, 3.1	Characteristics of a university	22 N.J.R. 1655(b)		
9:2-13.9, 13.11	Auxiliary organizations: personnel; purchasing	22 N.J.R. 1656(a)		
9:2-14.2	Immunization requirements for students: exemptions	22 N.J.R. 1215(a)		
9:3-4	Minority and women-owned businesses: participation in State construction contracts	22 N.J.R. 1656(b)		
9:4-3.12	Noncredit courses at county community colleges	22 N.J.R. 2254(b)		
9:4-4	County community colleges: alumni trustee representatives	22 N.J.R. 1657(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)	Expired	
9:6-1.2, 3.2, 3.11, 3.12, 4.5	State Colleges: policies and standards	22 N.J.R. 1658(a)		
9:6-3.7, 3.9, 7	State college promotional and tenure policies; institutional plan	22 N.J.R. 1216(a)	R.1990 d.375	22 N.J.R. 2303(a)
9:6-7.4	State Colleges: elements of institutional plan	22 N.J.R. 2255(a)		
9:7-3.2	Tuition Aid Grant Program: 1990-91 award table	22 N.J.R. 1318(a)	R.1990 d.386	22 N.J.R. 2305(a)
9:8	Disbursement of funds for technical and engineering facilities and equipment	22 N.J.R. 2256(a)		
9:11-1.5	Educational Opportunity Fund: financial eligibility for undergraduate grants	22 N.J.R. 1659(a)		
9:11-1.23	Educational Opportunity Fund: part-time students	22 N.J.R. 1660(a)		

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10:13-2.2	Legal Assistance for Medicare Patients: eligible services	22 N.J.R. 2216(a)		
10:31-1.4, 2.1, 2.3, 8.1	Screening and Screening Outreach Program: notice of rule invalidation	———	———	22 N.J.R. 2966(b)
10:36-3	State psychiatric facilities: transfers of involuntarily committed patients	21 N.J.R. 2751(a)	R.1990 d.430	22 N.J.R. 2710(b)
10:37-6.79	Community mental health programs: disclosure of client records	22 N.J.R. 2216(b)		
10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)	R.1990 d.431	22 N.J.R. 2712(a)
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)	R.1990 d.370	22 N.J.R. 2306(a)
10:43-7.1	Determination of need for a guardian	22 N.J.R. 2671(a)		
10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)	R.1990 d.409	22 N.J.R. 3030(a)
10:46	Developmental disability services: public hearings regarding determination of eligibility	22 N.J.R. 764(a)		
10:49	Medicaid program administration manual	22 N.J.R. 1512(a)	R.1990 d.390	22 N.J.R. 2313(a)
10:49-6.6	Recoveries involving county welfare agencies/boards of social services	22 N.J.R. 2672(a)		
10:50-1.1, 1.3, 1.4, 1.5, 1.6, 2.6, 3.2, App. I, II	Medicaid transportation services: provider reimbursement	22 N.J.R. 1513(a)		
10:51	Pharmacy Manual	22 N.J.R. 2217(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(a)	R.1990 d.391	22 N.J.R. 2314(a)
10:56-3.1, 3.3, 3.4, 3.10, 3.12	Dental services HCPCS codes	22 N.J.R. 1660(b)	R.1990 d.456	22 N.J.R. 2713(a)
10:60	Home Care Services Manual	22 N.J.R. 1663(a)	R.1990 d.458	22 N.J.R. 2966(c)
10:60-4	Home Care Expansion Program	22 N.J.R. 597(a)	R.1990 d.466	22 N.J.R. 2967(a)
10:63-1.2–1.8, 1.14, 1.16, 3.3, 3.8, 3.9	Long-term care (nursing) facilities: patient care and reimbursement	22 N.J.R. 118(a)	R.1990 d.428	22 N.J.R. 2588(a)
10:63-1.16	Long-term care facilities: preproposal concerning pre-admission screening of Medicaid patients	21 N.J.R. 2773(a)	Expired	
10:69A-5.3, 6.1, 6.2, 6.10	Pharmaceutical Assistance to Aged and Disabled: eligibility and renewal	22 N.J.R. 2218(a)		
10:71-4.5–4.9, 5.4, 5.6, 5.7	Medicaid Only Program: eligibility determinations for long-term care	22 N.J.R. 7(a)		
10:71-4.7	Medicaid eligibility: transfer of resources	Emergency (expires 9-28-90)	R.1990 d.424	22 N.J.R. 2604(a)
10:81-1.12, 2.2, 2.8, 2.9, 2.17, 2.18, 3.16, 3.18, 3.19, 3.31, 4.7, 4.10, 4.16, 4.23, 5.4, 5.6, 5.9, 6.11, 6.14, 7.1, 7.4, 7.20, 8.22, 8.24, 9.1, 10.7, 12.1, 12.3, 12.4, 12.6, 12.7, 12.8, 12.11, 14.1–14.8, 14.10–14.15, 14.17, 14.19–14.22, 14.24	Public Assistance Manual: JOBS program	22 N.J.R. 2405(b)		
10:81-10.7	Refugee Resettlement Program: eligibility for assistance	22 N.J.R. 1225(a)	R.1990 d.365	22 N.J.R. 2317(a)
10:81-11.2, 11.4, 11.5, 11.7, 11.9, 11.11–11.15, 11.21	Public Assistance Manual: child support and paternity	22 N.J.R. 1664(a)		
10:81-11.9	Paternity determination services for non-AFDC clients	22 N.J.R. 1053(a)	R.1990 d.401	22 N.J.R. 2318(a)
10:82-1.6, 1.7, 1.8, 2.1, 2.3, 2.8, 2.9, 2.10, 2.19, 3.2, 3.14, 4.1, 4.4, 4.8, 4.14, 5.1, 5.2, 5.3, 5.6, 5.7, 5.8, 5.9	Assistance Standards Handbook: JOBS program	22 N.J.R. 2445(a)		
10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)		
10:85-4.6	Emergency assistance: public hearing and extension of comment period	22 N.J.R. 2674(a)		
10:87-1.14, 4.3, 5.9, 5.10, 5.11, 6.3, 7.14, 10.2, 10.10, App. A	Food Stamp Program	22 N.J.R. 2219(a)		
10:87-5.10, 6.15, 12.1–12.7	Food Stamp Program: annual adjustments	22 N.J.R. 1670(a)	R.1990 d.437	22 N.J.R. 2715(a)
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)

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10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)	R.1990 d.432	22 N.J.R. 2716(a)
10:109-1	Economic Assistance staff development program: Ruling Number 11	22 N.J.R. 2222(a)		
10:121A-1.3, 1.5, 2.2, 5.8	Manual of standards for adoption agencies	22 N.J.R. 2674(b)		
10:123	Social services program for individuals and families	22 N.J.R. 1520(a)	R.1990 d.388	22 N.J.R. 2318(b)
10:123A	Personal Attendant Services Program	22 N.J.R. 1527(a)		
10:123A	Personal Attendance Services Program: extension of comment period	22 N.J.R. 2082(a)		
10:129	Child abuse and neglect cases	22 N.J.R. 1535(a)	R.1990 d.389	22 N.J.R. 2320(a)

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10A:2-6	Inmate reimbursement for lost, damaged or destroyed personal property	22 N.J.R. 1320(a)	R.1990 d.363	22 N.J.R. 2321(a)
10A:3-9.3	Transport of maximum custody inmates	22 N.J.R. 2223(a)		
10A:9-4.6	Consideration for minimum custody status: administrative correction	———	———	22 N.J.R. 2969(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)	R.1990 d.369	22 N.J.R. 2322(a)
10A:17-3	Volunteers in Parole Program	22 N.J.R. 1981(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:32-4.2	Transfer of juvenile under State sentence	22 N.J.R. 1895(a)		
10A:32-4.2	Transfer of juvenile under State sentence: public hearing	22 N.J.R. 2224(a)		

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INSURANCE—TITLE 11

11:0	Compensation to real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 314(a)		
11:0	Automobile insurance: preproposal regarding model anti-fraud plan	22 N.J.R. 1983(a)		
11:1-14.1	Insurance Producer Property and Casualty Advisory Committee	22 N.J.R. 15(b)		
11:1-24	Use of credit cards to pay premiums	21 N.J.R. 3418(b)		
11:1-29	Insurer's temporary certificate of authority	22 N.J.R. 2453(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)		
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)		
11:2-32	Custodial deposits	22 N.J.R. 2640(a)		
11:3	Automobile insurance	22 N.J.R. 1678(a)		
11:3-3.37, 14.8	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(a)		
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11:3-8.2–8.7, App. A and B	Nonrenewal of automobile policies	22 N.J.R. 2224(b)		
11:3-16–App.	Private passenger automobile rate filings: administrative correction	———	———	22 N.J.R. 2969(b)
11:3-19	Private passenger automobile insurance: standard/non-standard rating plans	22 N.J.R. 2231(a)		
11:3-20.3, 20.6, 20.8, 20.11, 20.12, App.	Automobile insurers: filing Excess Profits Report	22 N.J.R. 2082(b)		
11:3-20.9	Automobile insurers: excess profits carry forward	22 N.J.R. 1025(a)	R.1990 d.470	22 N.J.R. 2969(c)
11:3-29	Automobile insurance: medical fee schedules for PIP coverage	22 N.J.R. 2086(a)		
11:3-32	Out-of-state vehicles: certification of mandatory liability coverage	22 N.J.R. 1040(a)		
11:3-33	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:3-33	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

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11:3-35	Private passenger automobile insurance: underwriting rules	22 N.J.R. 2233(a)		
11:3-36	Automobile physical damage coverage: inspection procedures prior to issuance	22 N.J.R. 2111(a)		
11:3-38	Automobile towing and storage fee schedule	22 N.J.R. 2455(a)		
11:4	Actuarial services	22 N.J.R. 1689(a)		
11:4-16.4, 16.5, 28.2, 28.5	Benefit determination between automobile personal injury protection and health insurance	22 N.J.R. 2642(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)	R.1990 d.455	22 N.J.R. 2969(d)
11:5-1.28	Approved real estate schools	22 N.J.R. 777(a)	R.1990 d.378	22 N.J.R. 2323(a)
11:5-6	Real estate sales full disclosure	22 N.J.R. 1421(a)	R.1990 d.455	22 N.J.R. 2969(d)
11:10	Hospital/medical-dental services	22 N.J.R. 1691(a)	R.1990 d.384	22 N.J.R. 2326(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)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance	22 N.J.R. 2457(a)		
11:17A-1.2, 1.7	Appeals from denial of automobile insurance: comment period correction	22 N.J.R. 2647(a)		

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LABOR—TITLE 12

12:15-1	Unemployment compensation and temporary disability insurance	22 N.J.R. 1895(b)	R.1990 d.419	22 N.J.R. 2508(a)
12:17-2.1	Unemployment insurance benefits: mail claims system	22 N.J.R. 901(a)	R.1990 d.420	22 N.J.R. 2508(b)
12:18-2.25	Temporary disability benefits: private plan employer security exemption	22 N.J.R. 1229(a)		
12:35	Workfare: General Assistance Employability Program	22 N.J.R. 1430(a)	R.1990 d.396	22 N.J.R. 2326(b)
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)		
12:56	Wage and hour	22 N.J.R. 2235(a)		
12:57	Wage orders for minors	22 N.J.R. 2240(a)		
12:58	Child labor	22 N.J.R. 2241(a)		
12:196	Safe dispensing of retail gasoline	22 N.J.R. 1433(a)	R.1990 d.397	22 N.J.R. 2329(a)
12:200	Liquefied petroleum gas installations: standards of design and operations	22 N.J.R. 1984(a)	R.1990 d.436	22 N.J.R. 2744(a)

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12A:31-2.3, 3.3	Loan guarantee and direct loan programs: administrative corrections	———	———	22 N.J.R. 2330(a)

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13:1-4.6	Physical conditioning instruction at police academies	22 N.J.R. 1435(a)		
13:1-7.2	Police Training Commission: drug screening of police trainees	22 N.J.R. 2256(b)		
13:1A-2.11	Legislative agents: annual fee	22 N.J.R. 1810(a)		
13:2	Alcoholic beverage control	22 N.J.R. 1811(a)	R.1990 d.412	22 N.J.R. 2508(c)
13:3-3.4	Maximum fee for participation in amusement games	22 N.J.R. 1435(b)	R.1990 d.465	22 N.J.R. 2982(a)
13:14	Family Leave Act rules: public hearing	22 N.J.R. 2395(a)		
13:14-1	Family Leave Act rules	22 N.J.R. 2129(a)		
13:20-10	Automatic vehicle identification system for toll collection	22 N.J.R. 2133(a)		
13:21-1.3, 1.4, 1.5	Commercial driver licenses: disclosure and use of social security numbers	22 N.J.R. 2134(a)		
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)	R.1990 d.435	22 N.J.R. 2747(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)		

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13:29-1.4	Board of Accountancy: licensee change of address	22 N.J.R. 1438(a)	R.1990 d.373	22 N.J.R. 2331(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 2257(a)		
13:30-8.17	Physical modalities to unlicensed dental assistants	22 N.J.R. 2647(b)		
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)		
13:35-6.13	Board of Medical Examiners: FLEX fees	22 N.J.R. 1988(a)		
13:35-6.13	Board of medical Examiners: change of address for receipt of comments regarding FLEX fees	22 N.J.R. 2135(a)		
13:35-6.15	Delegation of tasks to physician assistants	22 N.J.R. 2135(b)		
13:36-1.6	Mortuary science license revival fees	22 N.J.R. 1328(a)	R.1990 d.372	22 N.J.R. 2331(b)
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:38	Board of Optometrists rules	22 N.J.R. 1866(a)		
13:39-2.2, 2.8	Board of Pharmacy: application for NABPLEX examination	22 N.J.R. 2395(b)		
13:39-5.6	Pharmacy recordkeeping: prescriptions for controlled substances	22 N.J.R. 1866(b)		
13:39-6.9	Sale of Schedule V over-the-counter controlled substances	22 N.J.R. 1329(a)		
13:39A-5.1	Licensure as physical therapist: foreign trained applicants	22 N.J.R. 2259(a)		
13:40	Professional engineers and land surveyors	22 N.J.R. 1867(a)	R.1990 d.434	22 N.J.R. 2747(b)
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)	R.1990 d.402	22 N.J.R. 2530(a)
13:44-2.12	Close of veterinary practice: maintenance of medical records	22 N.J.R. 1868(a)		
13:44-2.16	Duplicate registration of veterinary practice	22 N.J.R. 905(b)		
13:45A	Division of Consumer Affairs administrative rules	22 N.J.R. 2396(a)		
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)	R.1990 d.371	22 N.J.R. 2331(c)
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