

NEW JERSEY REGISTER



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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 22 NUMBER 6
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(Includes adopted rules filed through February 26, 1990)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: JANUARY 16, 1990

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NEXT UPDATE: SUPPLEMENT FEBRUARY 20, 1990

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

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

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NEW JERSEY REGISTER

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

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order Number 5(1990)

**Governor's Study Commission on Discrimination in
Public Works Procurement and Construction
Contracts**

Report Deadline Extension

Issued: February 9, 1990

Effective: February 9, 1990

Expiration: Indefinite

WHEREAS, Executive Order No. 213 established the Governor's Study Commission on Discrimination in Public Works Procurement and Construction Contracts (hereinafter "Study Commission") to investigate, research and report on the nature and scope of any discrimination in

public works procurement and construction contracts awarded by the State and recommend remedies for any discrimination; and

WHEREAS, Executive Order No. 213 requires the Study Commission to report its findings and recommendation concerning past and present discriminatory practices in public works procurement and construction contracts to the Governor by February 14, 1990; and

WHEREAS, the Study Commission would benefit from additional time to prepare a comprehensive report to the Governor;

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. The Study Commission shall report its findings and recommendations concerning past and present discriminatory practices in public works procurement and construction contracts no later than one year from the effective date of this Order.

2. Except as provided in Section 1 of this Executive Order, all other terms of Executive Order Nos. 213 and 214 shall remain in force and effect.

3. This Order shall take effect immediately.

RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF DAIRY INDUSTRY

Milk Processors, Dealers and Subdealers

Proposed Readoption with Amendments: N.J.A.C. 2:52

Authorized By: Woodson W. Moffett, Jr., Director, Division of Dairy Industry.

Authority: N.J.S.A. 4:12A-1 et seq., specifically 4:12A-7 and 20.
Proposal Number: PRN 1990-129.

Submit comments by April 18, 1990, to:
Woodson W. Moffett, Jr., Director
Division of Dairy Industry
New Jersey Department of Agriculture
CN 332
Trenton, NJ 08625

The agency proposal follows:

Summary

N.J.A.C. 2:52, Processors, Dealers and Subdealers, is scheduled to expire on June 7, 1990, pursuant to Executive Order No. 66(1978). The Department of Agriculture proposes to readopt these rules which have been in effect, in one form or another, since the Milk Control Act was revised and adopted in 1941. The last major revisions to the rules were effective in early 1977; and, with minor revisions, this proposal will continue the rules adopted in 1977.

Proposed amendments to the rules include changes to the reporting requirements in N.J.A.C. 2:52-1.6 by extending the reporting date from the 15th to the 20th of the month, requiring limited additional details concerning gifts and loans to customers, and removing requirements that dealers report placements of refrigeration equipment.

The rules pertaining to notice contained in N.J.A.C. 2:52-2 and 2:52-3 are being amended to, in effect, ratify current practice of the Division in delaying action on notices pending investigation when there is strong reason to believe that the offer violates the law.

N.J.A.C. 2:52-6.1 is amended to remove provisions for bulk and distress sales, which is not appropriate for a perishable product. N.J.A.C. 2:52-6.2 is amended to remove the term "cost" accounting principles. There are no published "cost" accounting principles. Instead the proper description is simply "accounting principles". Provision is also made to allow adjustments to proportional cost allocations to reflect efficiencies in packaging different sized milk containers.

A summary of the existing subchapters follows.

Subchapter 1, Processors, Dealers and Subdealers Records and Reports, requires milk processors, dealers and subdealers to maintain accurate records on milk transactions to assist the Division of Dairy Industry in its evaluation of the licensee's business operations concerning the licensee's adherence to applicable New Jersey statutes and the rules of the Division.

Subchapter 2, Dealer and Subdealer Intent to Serve Unlicensed Store, requires licensees to obtain approval from the Director of Dairy Industry before serving an unlicensed store; the giving of two weeks notice to the present supplier of a store requesting to change milk supplier; approval to serve unlicensed store without notice under certain conditions; and listed conditions under which the Director might deny approval to change supplier.

Subchapter 3, Dealer and Subdealer Intent to Change Source of Milk Supply, deals with the conditions pertaining to the changing of a licensee's source of milk supply. It describes the instances when the notice is required; instances when notice is not required; who should file the notice; who should receive the notice; when and why approval to change suppliers may be denied, commencement of the two week period and who will be notified of approval or denial to change source of supply.

Subchapter 4, Processor, Dealer or Subdealer Notice to Stop Serving, requires that a licensee desiring to stop serving an account must give written notice to the customer and the Director, Division of Dairy Industry, at least two weeks prior to the proposed date of discontinuance. The

two weeks notice is not required if the customer releases the supplier in writing and sends a copy of the release to the Division.

Subchapter 5 is reserved.

Subchapter 6, Sales Below Cost; Dealer, prohibits licensed milk dealers from selling milk below cost. The term "cost" is defined in the subchapter and certain costs are required to be averaged. Raw milk cost is also defined in this subchapter.

Social Impact

The readoption of N.J.A.C. 2:52, with the minor amendments, assures that the dairy industry and the consumers will continue to receive the benefit of effective milk control rules. Failure to readopt the rules would leave a void in the milk control program and result in unstable markets and destructive competition.

Economic Impact

The rules proposed for readoption are driven by economics and beneficially affect New Jersey consumers (especially school children, the elderly and the poor), dairy farmers, milk dealers and subdealers, and retail stores.

New Jersey consumers purchase about 1.9 billion pounds of fluid milk and milk products (excluding cheeses, butter and nonfat dry milk) each year at an annual cost exceeding \$407 million. The proposed readoption benefits consumers by creating a market environment wherein adequate supplies of milk are available to meet consumer demands at reasonable prices. Such benefits are direct results of the market stability and competitiveness provided by enforcement of the Division's rules.

Approximately 350 New Jersey dairy farmers with average investments exceeding \$250,000 per farm receive direct benefits from this proposed readoption in the maintenance of the marketing and production infrastructure conducive to the maintenance of efficient farming operations. Revenues of approximately \$50 million, generated by New Jersey dairy farmers each year, are important contributions to the State's economy—particularly for rural communities. The rules proposed for readoption are important tools in insuring that dairy farmers receive payment for their products.

Milk dealers, subdealers and retail stores benefit from the maintenance of a stable, competitive marketplace wherein implementation of Division's rules results in the minimization of predatory, disruptive activities. The notice rules assist dealer and subdealers with the collection of money owed for products delivered, help to insure a continuing source of supply for retail stores and provide for the orderly transfer of business.

The reporting and recordkeeping requirements provide data for economic and accounting analyses. The information derived is beneficial to the dairy industry, government agencies, researchers, and the public. It also provides the source of information for division publications which benefits farmers in their management decisions.

The rules proposed for readoption affect the State of New Jersey (the funding source) by providing data on which accurate license fees are based. The fees of approximately \$476,000, collected during Fiscal Year 1989, represents roughly 75 percent of the Division of Dairy Industry's budget for that year.

Regulatory Flexibility Analysis

Readoption of Chapter 52 will not add reporting and recordkeeping requirements greater than those which have been followed by milk dealer licensees of the Division since 1977. The proposed readoption applies to 334 milk dealers and processors of whom approximately 90 percent are small businesses as defined by the New Jersey Regulatory Flexibility Act, N.J.S.A. 54:14B-16 et seq., and approximately 10,000 retail stores of which approximately 85 percent are small businesses. The small businesses will be affected, but to no greater extent than in the past. The rules exempt most small milk dealers from the filing of any monthly reports.

The reports required are designed to be taken directly from ordinary records already kept by the licensees for managerial decision-making purposes. The licensees have the reporting systems in place and will not require additional efforts to comply. Wherever possible, the Division of Dairy Industry has combined several reports and eliminated reports that are no longer necessary.

The initial capital costs and the annual costs of compliance are minimal for both large and small businesses. In fact, the rules are designed to exempt small businesses from several reporting requirements that are not essential to them.

PROPOSALS

Interested Persons see Inside Front Cover

BANKING

Full text of the proposed re Adoption may be found in the New Jersey Administrative Code at N.J.A.C. 2:52.

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

2:52-1.4 Books and records required

(a) The books and records shall include but not be limited to the following:

1.-7. (No change.)

8. [Agreements:]

[i.] Copies of any and all agreements pertaining to the licensed business, including, but not limited to, sales or leases of property and/or equipment, rentals of property and/or equipment, loans received or granted, routes leased, sold or purchased, and contracts relating to the sale or purchase of milk or milk products.

2:52-1.6 Reports required

(a) All processors, dealers and subdealers shall file reports on forms supplied by the Division of Dairy Industry as follows[:]:

1. On or before the [15th] **20th** day of each month for the preceding month a report of all milk products purchased and sold during the month, which report shall include information as to the source of milk supplies and the destination and quantities of products sold.

i.-iii. (No change.)

2. On or before the [15th] **20th** of the month for the preceding month a report of the following:

i. Gifts of value aggregating more than \$25.00 during any calendar [quarter] **month**, including milk and milk products, to any customer served by the licensee or [solicited by the licensee;] **a dealer of the licensee. The report shall show any promises of gifts, gifts that are given, and the weekly sales in dollars when gifts are given;**

ii. Loans of money, including any guarantee or procurement of another to guarantee or any underwriting of any financial obligation of any customer served by the licensee or solicited by the licensee **or a dealer of the licensee. The report will also show the terms of the loan;**

[iii. Sales, loans or rentals (including lease purchase agreements) of any refrigeration equipment of any customer served by the licensee or solicited to be served by the licensee. A processor or dealer shall report any such equipment supplied on behalf of his subdealer;]

Recodify iv.-vii. as iii.-vi. (No change in text.)

3.-6. (No change.)

2:52-2.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a)1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period **except that if the Director determines that there is probable cause that the offer to serve a new customer is below cost and in violation of the Milk Control Act, action on the notice may be delayed pending investigation and/or cost analysis.**

2:52-3.2 Commencement of the two-week period and approval

The two-week period referred to in N.J.A.C. 2:52-2.1(a)1 shall commence upon receipt of the form in the office of the Division of Dairy Industry. All parties to the change shall be notified of any approval or denial within the two-week period **except that if the Director determines that there is probable cause that the offer to serve a new customer is below cost and in violation of the Milk Control Act, action on the notice may be delayed pending investigation and/or cost analysis.**

2:52-6.1 Sales below cost prohibited

It shall be unlawful and a violation of these regulations for any dealer licensee to directly or indirectly be a party to, or assist in, any transaction to sell or offer to sell milk and milk products within the State of New Jersey, or for sale in the State of New Jersey at less than the cost thereof as hereinafter defined; but nothing in this regulation shall prevent a dealer from meeting the price or offer of a competitor for a product or products of like quality and nature in similar quantities; [but nothing in this section shall prohibit bulk, distress or business-closing sale if prior notice of such sale has been

filed with the Director of the Division of Dairy Industry;] provided, however, that the burden of proving and properly documenting the meeting of a competitive price shall rest with the licensee asserting the claim.

2:52-6.2 Cost defined

The term "cost" as used herein shall include, but not be limited to, the basic cost of raw or reconstituted milk or derivatives thereof as determined in accordance with the joint State-Federal orders administered by the Division of Dairy Industry and the United States Department of Agriculture in the State of New Jersey; the cost of any added ingredients; and all other costs associated with the business of the dealer for example, but not limited to, the cost of material, labor, salaries of executives and officers, the cost of receiving, cooling, processing, manufacturing, storing and distributing the products sold; rent, depreciation, selling expense, maintenance charges, delivery expense, license fees, taxes, insurance, advertising, advertising allowances, gifts, free service and all other costs as may be incurred, allocated proportionately to each unit of product sold in accordance with generally accepted [cost] accounting principles. **The proportioned allocation may be adjusted to reflect efficiencies in packaging different sized containers.**

BANKING

(a)

THE COMMISSIONER

**Notice of Pre-Proposed Rulemaking
Compensation to Mortgage Bankers, Mortgage
Brokers and Real Estate Licensees for Placing
Mortgage Loans**

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

Authority: N.J.S.A. 17:11B-1, 2, 4, 13, and 14; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL DOCKET NUMBER: BRE 228-87.

Pre-Proposal Number: PPR 1990-4.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law conducted joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge received and will consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq. and the Mortgage Bankers and Brokers Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest. Public hearings on this pre-proposed rulemaking were conducted by the Office of Administrative Law on February 21, 1990, at its Newark offices, and on March 14, 1990, at its Trenton offices.

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ
Office of Administrative Law
185 Washington Street
Newark, New Jersey 07102

All written materials submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders

BANKING

PROPOSALS

whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other real estate licensees are participating with mortgage lenders in programs for computerized mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 76 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real estate Licensing Law, N.J.S.A. 45:15-17i., was completed in November 1989.)

Issues

The hearings will address the following specific questions related to Banking:

1. Under what circumstances should a real estate broker or salesperson be deemed to be "engaged in the business of a mortgage banker or broker" within the meaning of the Mortgage Bankers and Brokers Act? N.J.S.A. 17:11B-1 et seq.?
2. Under what circumstances, if any, may a real estate salesperson employed by a real estate broker also be deemed to be a mortgage solicitor within the meaning of the Mortgage Bankers and Brokers Act?
3. (a) What dangers, if any, are posed to borrowers by the "steering" of mortgage loans by mortgage bankers, brokers or solicitors to lenders with whom they are in some way affiliated?
 (b) What form do such "affiliations" typically assume in the industry?
 (c) Is there some form of disclosure that would adequately protect the public from such dangers?
 (d) Would a rule permitting mortgage bankers, brokers or solicitors to charge permitted fees only to borrowers, and only upon condition that disclosure be made, adequately protect the public against such dangers?
 (e) Would the public be better served by such a rule than by a mere requirement for disclosure?
 (f) What other or additional rules would be advisable to protect the public interest in these circumstances?

ENVIRONMENTAL PROTECTION

(a)

**COMMISSION ON RADIATION PROTECTION
 Proposed Readoption with Amendments: N.J.A.C. 7:28**

Authorized By: Judith Yaskin, Commissioner, Department of Environmental Protection, and Commission on Radiation Protection, Max M. Weiss, Chairman.

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A.

26:2D-7, 26:2D-9(f), 26:2D-9(h), and 26:2D-10.

DEP Docket Number: 007-90-02.

Proposal Number: PRN 1990-132.

Submit written comments by May 5, 1990 to:

Sue Kleinberg, Esq.
 Division of Regulatory Affairs
 Department of Environmental Protection
 CN 402
 Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 7:28 expires on October 7, 1990. The Commission on Radiation Protection (CORP) and the Department of Environmental Protection (Department) have reviewed these rules and have determined that they are necessary for the purposes for which they were originally promulgated. To ensure the continuation of these rules, the Department and CORP propose to re-adopt these rules with amendments to Subchapter 21, Analytical X-ray Installations.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 7:28-1, General Provisions, defines the purpose and scope of chapter 28 and states that these rules shall be liberally construed to permit the Department, Bureau of Radiation Protection (now the Radiation Protection Programs) and their various agencies to discharge their statutory functions. This subchapter establishes definitions of words and terms used throughout the chapter. This subchapter also lists the telephone numbers and addresses for emergency notifications on incidents involving sources of radiation and for conducting routine business.

SUBCHAPTER 2. USE OF SOURCES OF IONIZING RADIATION AND SPECIAL EXEMPTIONS

This subchapter establishes the requirement that all persons who use, operate, receive, possess, dispose of, transfer, install, transport or store sources of ionizing radiation must comply with the requirements of the chapter. The subchapter also establishes the preconditions that must be met prior to the use of sources of radiation. Among these preconditions are criteria for supervision, instruction for all persons working in or frequenting the vicinity of radiation producing machines or radioactive materials, restrictions on the use of certain radiation-producing equipment, licensing of persons who arrange for intentional human irradiation, and the institution of emergency precautions based upon a study of potential radiation hazards. The subchapter sets forth the Department's right to inspect any source of radiation and its operation, to inspect the facility and premises where located, to examine records, and to require tests deemed necessary for the administration of this chapter. The subchapter also allows the Department, with the approval of the Commission on Radiation Protection, to grant special exemptions from the rules upon application by an individual who shows proof of hardship or compelling need why a rule requirement cannot be met. CORP must determine that granting an exemption will not result in exposure to radiation in excess of the limits specified in N.J.A.C. 7:28-6.

SUBCHAPTER 3. REGISTRATION OF IONIZING RADIATION-PRODUCING MACHINES AND RADIOACTIVE MATERIALS

This subchapter establishes the requirements for registering all ionizing radiation-producing machines located in the State of New Jersey. These requirements include the application process, notification of amendments to the registration, the process for temporary registration, and the notification requirements of the sale, installation, relocation, or disposal of a machine source of radiation. This subchapter also establishes the fee structure for the initial registration application and the annual registration renewal for ionizing radiation-producing machines. The subchapter lists those machine sources and radioactive materials that are exempt from the registration process. This subchapter also establishes the requirements for registering radioactive by-product material, source material and special nuclear material that is licensed by the U.S. Nuclear Regulatory Commission (NRC). The subchapter prohibits the transfer of such registration and requires notification to the State of any changes to the NRC license in order to amend the State registration. This subchapter contains the criteria to deny a registration application and to suspend or revoke a registration.

SUBCHAPTER 4. LICENSING OF NATURALLY OCCURRING AND ACCELERATOR PRODUCED RADIOACTIVE MATERIALS

This subchapter establishes the requirements to obtain a general or specific State license for the production, transfer, receipt, acquisition, ownership, possession, or use of all naturally occurring and accelerator produced radioactive materials. The subchapter includes general and special requirements for obtaining approval of initial licenses, obtaining amendments to and renewal of licenses, and expiration of same. This subchapter also establishes the terms and conditions of general and specific State licenses that must be met. Among these terms and conditions are the requirements that records be kept by the licensee, the obligation to allow the Department access to a licensed facility for inspection, and the requirement that tests on radioactive materials, on facilities which store or use radioactive materials, or on radiation equipment must be performed. Licensing fees are also established. The procedures for modification, revocation, suspension, and termination of general and specific licenses are listed. This subchapter also establishes the rules that allow the applicant for a license to file a confidentiality claim to cover information the applicant considers trade secrets.

PROPOSALS**Interested Persons see Inside Front Cover****ENVIRONMENTAL PROTECTION****SUBCHAPTER 5. CONTROLLED AREAS**

This subchapter establishes the criteria for defining and designating a controlled area. Pursuant to this subchapter, a controlled area is one in which there is a reasonable possibility that an occupant may receive an exposure dose from a source of radiation in excess of the limits specified in N.J.A.C. 7:28-6.2, Radiation levels outside controlled areas. The subchapter addresses the use of residential quarters as a controlled area. The subchapter establishes the precautionary procedures to be taken to ensure that radiation levels do not exceed those permitted in N.J.A.C. 7:28-6. This subchapter also lists the conditions to be met in order to reclassify a controlled area as an uncontrolled area.

SUBCHAPTER 6. PERMISSIBLE DOSE RATES, RADIATION LEVELS AND CONCENTRATION

This subchapter establishes the maximum radiation dose for each calendar quarter that an individual in a controlled area may receive. This subchapter also requires that radiation levels at any point outside a controlled area must be limited to a level at which there is no reasonable possibility of an individual receiving a radiation dose to the whole body, head and trunk, active blood-forming organs, gonads, or lens of the eyes, in excess of 0.5 rem in any one year. This subchapter requires that concentrations of radioactive materials in effluents from controlled areas not exceed the limits specified in N.J.A.C. 7:28-11.2 and 11.3. The maximum permissible average concentrations of radioactive materials in air and water are also established. The procedures to be followed when individuals are exposed to radiation at a level which exceeds the limits specified in N.J.A.C. 7:28-6.1(a) as the result of a radiation incident or emergency are set forth in this subchapter.

SUBCHAPTER 7. RADIATION SURVEYS AND PERSONNEL MONITORING

This subchapter establishes the requirements for performing radiation surveys of controlled and uncontrolled areas to determine compliance with the radiation exposure limits specified in N.J.A.C. 7:28-6. In addition, this subchapter establishes the requirement that owners of installations where radioactive materials are stored or used provide and require the use of personnel-monitoring equipment for each individual entering a controlled area under circumstances detailed in N.J.A.C. 7:28-7.4(a). The requirement to perform a bioassay at the Department's request is also established.

SUBCHAPTER 8. RECORDS

This subchapter establishes the record keeping requirements for personnel-monitoring of radiation exposure, radiation surveys, radioactive materials installations, sealed source testing results, and discontinued radiation installations. The subchapter requires that information obtained from personnel-monitoring equipment be compiled into clear legible records, and that these records be maintained at the installation and made available to both the Department and current and former employees.

SUBCHAPTER 9. RADIOACTIVE CONTAMINATION CONTROL

This subchapter establishes the requirements for minimizing the radioactive contamination of all areas in which radioactive materials are used, and of each individual working therein. These requirements apply to all owners of installations where radioactive materials are used or stored. The subchapter includes personnel and material contamination limits, criteria for the decontamination of premises, and sealed source testing requirements.

SUBCHAPTER 10. LABELING, POSTING, AND CONTROLS

This subchapter establishes the specifications for the conventional radiation caution symbol that appears on signs required to be posted in areas where sources of radiation are being used, stored, or transported. The subchapter requires that labels be placed on equipment and containers that are being used, stored, or transported. This subchapter also requires that specific criteria must be met before the signs and labels can be removed. Also included are the exceptions from posting and labeling requirements.

SUBCHAPTER 11. DISPOSAL OF RADIOACTIVE MATERIALS

This subchapter establishes the requirements for and conditions under which the disposal of radioactive materials is permitted. The methods addressed include: disposal by release into sanitary sewerage systems; disposal by burial in the soil; disposal by transfer to a radioisotope disposal service; disposal by incineration; and disposal by a specially

approved method. This subchapter also requires that sources of radiation be secured against unauthorized removal from the place of storage.

SUBCHAPTER 12. TRANSPORTATION

This subchapter establishes the requirements for the transportation of radioactive material and for approval by the Department of shipping procedures for certain quantities of radioactive materials. These provisions apply to the transportation of certain quantities of radioactive materials into, through, or within the State of New Jersey and to the storage of such materials during or pending transportation. It also establishes the requirements and procedures to apply for a certificate of handling for the transportation of radioactive material, irradiation reactor fuel (spent fuel), radiopharmaceuticals, radioactive exposure devices, and for the storage of intransit radioactive material.

SUBCHAPTER 13. REPORT OF THEFTS AND RADIATION INCIDENTS

This subchapter requires an owner of a source of radiation to immediately report to the Department a theft or loss of radioactive materials and any radiation incident which may have caused or threatens to cause: (1) exposure of the whole body of any individual to 25 rems or more of radiation; exposure of the skin of the whole body of an individual to 150 rems or more of radiation or exposure to the feet, ankles, hands, or forearms of any individual to 375 rems or more of radiation; (2) the release of radioactive materials in concentrations, which, if averaged over a period of 24 hours, would exceed 5,000 times the limits specified for such material in N.J.A.C. 7:28-6.5; (3) a loss of one working week or more of the operation of any facilities affected; or (4) damage to property in excess of \$100,000. The subchapter also establishes the reporting requirements for radiation incidents involving exposure of individuals or the environment to radiation at levels specified in N.J.A.C. 7:28-13.2(a), including specific topics to be addressed in the report, and reporting timetables.

SUBCHAPTER 14. THERAPEUTIC INSTALLATIONS

This subchapter establishes the requirements for therapeutic installations used in the healing arts. The subchapter establishes machine performance standards for therapeutic x-ray systems and therapeutic accelerator systems, facility radiation safety operating procedures, calibration and spot check requirements, and record keeping requirements.

SUBCHAPTER 15. MEDICAL DIAGNOSTIC X-RAY INSTALLATIONS

This subchapter establishes the machine performance standards, shielding requirements, and facility operating procedures for medical fluoroscopic installations, medical radiographic installations, mobile or portable diagnostic equipment, and chest photofluorographic installations. The subchapter prohibits the use of fluoroscopic shoe fitting machines.

SUBCHAPTER 16. DENTAL RADIOGRAPHIC INSTALLATIONS

This subchapter establishes the requirements for dental radiographic installations, which include equipment performance standards, structural shielding requirements, and facility operating procedures.

In a separate proposal in this issue of the New Jersey Register, the CORP is proposing to repeal the current N.J.A.C. 7:26-16 and proposes a new N.J.A.C. 7:26-16 containing state-of-the-art standards for the prevention of exposure to unnecessary radiation during dental radiographic procedures. However, the CORP is proposing to readopt the current standards in order to ensure that these standards remain in effect if the updated standards are not adopted prior to the expiration of the subchapter (October 7, 1990).

SUBCHAPTER 17. INDUSTRIAL AND NONMEDICAL RADIOGRAPHY

This subchapter establishes radiation safety requirements for persons using sealed sources, radiographic exposure devices, or ionizing radiation-producing machines for industrial and nonmedical radiography. These requirements include registration or licensing of equipment, equipment control for radiographic-exposure devices and storage containers, and equipment control for ionizing radiation-producing machines. This subchapter establishes personnel radiation safety training requirements for radiographers and radiographer's assistants and precautionary procedures to be used during the use of industrial radiographic equipment. It also establishes specific standards for cabinet x-ray systems and shielded room radiography.

SUBCHAPTER 18. MAJOR NUCLEAR FACILITIES

This subchapter establishes requirements for the protection of individuals from exposure to radiation in excess of the limits specified in N.J.A.C. 7:28-6.1 and 6.2 that must be met by major nuclear facilities including nuclear reactors, nuclear fuel fabrication plants, nuclear fuel reprocessing plants, and nuclear waste handling or disposal facilities. The subchapter establishes standards to ensure that individuals outside of these facilities receive no radiation exposures from environmental or direct radiation that are in excess of the limits establishment in N.J.A.C. 7:28-6. Subchapter 18 requires that any person constructing a major nuclear facility must first submit a general description of the proposed facility including the plans for the required monitoring systems to the Department. Prior to operation, the facility's emergency plans must be submitted to the Department. It also requires that any radiation incident at a major nuclear facility be reported to the Department.

SUBCHAPTER 19. MEDICAL EXPOSURE TO IONIZING RADIATION BY RADIOLOGIC TECHNOLOGISTS

This subchapter establishes the rules to prohibit and prevent excessive and improper exposure to ionizing radiation through the intentional irradiation of humans. These rules implement N.J.S.A. 26:2D-24 et seq., the Radiologic Technologist Act. This subchapter defines the scope of practice of radiologic technology and establishes the requirements and procedures for obtaining a license to practice radiologic technology. This subchapter establishes the criteria and standards for educational programs of diagnostic, radiation therapy, chest, dental, podiatric, orthopedic, and urologic radiography, including the procedure to obtain program approval and accreditation. This subchapter establishes criteria for admitting students to a radiography program and for the use of x-ray equipment by a student. The examination and licensing fees are also listed.

SUBCHAPTER 20. (RESERVED)

On November 6, 1989 at 21 N.J.R. 3364(a), the CORP proposed N.J.A.C. 7:28-20, Particle Accelerators for Industrial and Research Use. This subchapter has not yet been adopted, and the CORP and the Department are currently evaluating and preparing responses to public comments raised in connection with the proposal. A public hearing was held on December 14, 1989, and public comments were accepted until January 8, 1990. If adopted by CORP, this new subchapter will become part of Chapter 28 and will remain part of the readopted chapter upon adoption of this proposal.

SUBCHAPTER 21. ANALYTICAL X-RAY INSTALLATIONS

This subchapter establishes the requirements for the use of analytical x-ray equipment, including but not limited to, x-ray diffraction, x-ray spectroscopy, x-ray fluorescence, or fluorescence x-ray spectroscopy equipment. General machine performance standards and facility operating procedures are established as well as additional equipment requirements for open beam and closed beam x-ray systems.

CORP is proposing to amend N.J.A.C. 7:28-21 by adding a new section, N.J.A.C. 7:28-21.7, which will exempt certain low energy analytical x-ray units from the requirements of this subchapter under specified conditions. N.J.A.C. 7:28-21.7 maintains the requirement that all analytical x-ray units with a high voltage supply that cannot operate at potentials above 16 kilovolts be registered with the Department and that a radiation survey be performed on the unit with survey results submitted to the Department. In addition, a radiation survey must be performed when the unit has been moved or modified. Where results of the radiation survey show that no radiation measured at all locations five centimeters from any accessible surface of the analytical x-ray unit do not exceed 0.1 mR per hour, then such units are exempt from the requirements of N.J.A.C. 7:28-21.3, 21.4, 21.5, and 21.6(a)3 and 21.6(a)4.

SUBCHAPTER 22. (RESERVED)**SUBCHAPTER 23. (RESERVED)****SUBCHAPTER 24. NUCLEAR MEDICINE TECHNOLOGY**

This subchapter establishes the radiation safety requirements for persons administering radiopharmaceuticals to humans for diagnostic or therapeutic purposes and for performing diagnostic or therapeutic procedures requiring the administration of radiopharmaceuticals to humans. This subchapter also establishes the licensing requirements for individuals who administer radionuclides or radiopharmaceuticals while engaged in the practice of nuclear medicine technology. The criteria for

approval of a nuclear medicine technology educational program and curriculum requirements are established in this subchapter. In addition, the examination and licensing fees are set forth in the subchapter.

SUBCHAPTER 25. RADIATION LABORATORY FEE SCHEDULE

This subchapter establishes the criteria which must be met in order to obtain permission to utilize the State radiation protection laboratory for the purpose of monitoring a public water supply system. This subchapter also sets forth the fees charged by the State radiation protection laboratory to individuals using its services to monitor a public water supply system.

SUBCHAPTERS 26-40. (RESERVED)**SUBCHAPTER 41. MERCURY VAPOR LAMPS**

This subchapter establishes the requirements for the installation and use of a mercury vapor lamp in indoor or outdoor areas which may be occupied by people.

SUBCHAPTER 42. RADIO FREQUENCY RADIATION

This subchapter establishes the limits to exposure of individuals to radiofrequency radiation from fixed radio frequency devices which radiate in the frequency range 300 kHz to 100 GHz. This subchapter establishes the radio frequency protection guides (RFPG) for radio frequency devices including microwave ovens. This subchapter does not apply to the intentional exposure of patients to radiation for the purpose of diagnosis, treatment, or investigation for the prevention or control of diseases.

Social Impact

The use of radiation is an indispensable part of daily living, and in some instances the presence of radiation in the environment is desirable and necessary. However, the goal of this radiation protection program is to prohibit and prevent the use or presence of unnecessary radiation in such a manner as to be, or tend to be, injurious or dangerous to the health of the people, the industrial or agricultural potentials of the State, and the ecology and wildlife of the State. The rules promulgated by the Department and the Commission on Radiation Protection, N.J.A.C. 7:28, constitute the rules of the Department of Environmental Protection's Radiation Protection Programs. These rules require that all sources of radiation be shielded, transported, handled, used, and kept in such a manner as to prevent all users and also persons within effective range from being exposed to unnecessary radiation.

The proposed readoption of N.J.A.C. 7:28 will ensure the continuation of rules required by the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. Without these rules, the Department will not have specific standards for protecting the citizens of New Jersey from unsafe practices from the use of sources of radiation within the State.

The proposed amendment of N.J.A.C. 7:28-21 will provide an exemption from requirements that are not appropriate for the operation of certain low energy analytical x-ray equipment. CORP has determined that such an exemption from the rules will not result in additional exposure to radiation when using low energy analytical x-ray equipment. Instead, the proposed amendment clarifies which standards apply to this equipment and eliminates those standards that do not apply.

Economic Impact

The readoption of N.J.A.C. 7:28 will continue the effect of equipment standards, operational standards including information submittal and recordkeeping requirements, licensing requirements, and fees that have had an economic impact on the users of regulated radiation sources. Each of these impacts is addressed below.

Equipment standards contained in subchapters 14, 15, 16, 17, 21 and 41 of N.J.A.C. 7:28 apply to owners and operators of facilities which use radiation-producing machines in the healing arts or for industrial purposes. Inasmuch as the standards in these subchapters generally reflect the standards of the industry, the economic impact on owners or operators of facilities which meet up to date industry equipment standards is not substantial. Owners or operators of facilities which do not currently meet industry equipment standards or which are purchasing new equipment will have to expend whatever funds are necessary in order to meet the equipment standards of N.J.A.C. 7:28-14, 15, 16, 17, 21 and 41. The CORP has determined that these costs are justified by the need to maintain safe radiation equipment which will protect both the public and operators of radiation-producing machines from exposure to unnecessary radiation.

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Operational standards of N.J.A.C. 7:28-2, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 24 and 42 apply to owners and operators of facilities which use regulated radiation-producing equipment. Compliance with these standards, including information submittal and recordkeeping requirements does result in costs to the regulated community that can be substantial in some circumstances. The CORP has determined that the operational standards of N.J.A.C. 7:28 are necessary to ensure that all facilities which use radiation-producing equipment are operated in a manner which protects both operators and the public from exposure to unnecessary radiation. The CORP believes that the costs associated with meeting the operational standards of N.J.A.C. 7:28 are reasonable in light of the necessary protection of public health and safety.

Licensing requirements of N.J.A.C. 7:28-4 apply to persons who use, transfer, receive, acquire or possess radiation sources. Application for a license pursuant to N.J.A.C. 7:28-4 will result in certain costs to the applicant associated with preparing and submitting the required information. Licenses required pursuant to N.J.A.C. 7:28-19 and 24 apply to persons who use radiation for certain medical purposes such as exposure of humans to x-rays and preparation and application of nuclear medicine. Application for a license pursuant to N.J.A.C. 7:28-19 and 24 will result in costs associated with the application fee and with meeting the educational and experiential requirements for licensing. The CORP has determined that the costs to the regulated community of licensing are justified by the need to have qualified and responsible persons handling and using sources of radiation.

Fees required by N.J.A.C. 7:28-3 apply to all persons who use, possess, receive, store and transfer radioactive materials in the regulated quantities. Fees required by N.J.A.C. 7:28-19 and 24 apply as discussed above. Fees required by N.J.A.C. 7:28-25 apply to persons who utilize the State radiation protection laboratory for certain analytical services. Generally, all of the fees above are necessary to support the Department's radiation protection and potable water programs, including certain administrative and technical staff positions. The Department has determined that these fees are necessary and justified by important regulatory function served by the Department's radiation protection program staff.

In general, all of the costs discussed above result in an economic impact to owners and operators of facilities which utilize radiation-producing equipment. The CORP and the Department have determined that this impact is not unduly burdensome and is necessary to protect the public from exposure to unnecessary radiation. Since the regulatory standards of N.J.A.C. 7:28 have been in place for a number of years, and since the majority of regulated facilities are currently in compliance with these standards, the readoption of N.J.A.C. should not result in any new costs to the regulated community. Thus, the economic impact of the proposed readoption is largely a continuation of existing costs. Additionally, the economic impact will fall upon all new facilities which must comply with the regulatory standards of N.J.A.C. 7:28.

The proposed amendment of N.J.A.C. 7:28-21 requires any person who possesses an analytical x-ray unit which cannot operate at high voltage potentials greater than 16 kilovolts to register it with the Department. Owners of such units are currently required to pay a \$75.00 initial application fee and an annual registration fee of \$75.00. These fees will continue in effect under the proposed amendment of N.J.A.C. 7:28-21.

While the proposed amendment of N.J.A.C. 7:28-21 continues fees and survey requirements for low energy analytical x-ray units, it will otherwise reduce the economic impact of this subchapter by exempting users of these units from outlays for personnel and equipment which are no longer necessary or appropriate.

Environmental Impact

The readoption of N.J.A.C. 7:28 has no additional impact on the environment. The readoption will ensure the continuation of standards to prevent or reduce the release of unnecessary radiation to the environment. Therefore, a positive environmental impact will continue to exist.

The relaxation of the regulatory standards by amendment of N.J.A.C. 7:28-21 will not result in a negative impact on the environment. In preparing this proposal, CORP has determined that at accelerating potentials of 16 kilovolts and below, the structure necessary to maintain a vacuum in the analytical system is sufficient to absorb all internally produced radiation so that no external radiation is detectable. The exempted units must still be registered with the Department of Environmental Protection. In addition, the required radiation safety survey will monitor radiation levels emitted from the unit. If the levels exceed the permissible level specified in the proposed amendment, radiation exposure to the operator and the environment will be minimized through compliance with existing requirements in N.J.A.C. 7:28-21.

Regulatory Flexibility Analysis

Pursuant to the definition of "small business" in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16, approximately 80 percent of the businesses regulated by N.J.A.C. 7:28 are small businesses and will be impacted by the rules. Although the readoption of N.J.A.C. 7:28 will simply continue the impact on small businesses that has previously been in effect, small businesses which are not currently in compliance with the regulatory standards or which are new businesses will have to expend whatever sums are necessary to comply with the regulatory standards. In addition, the readoption of N.J.A.C. 7:28 will require all small businesses to expend funds to ensure continued compliance with equipment standards, operational standards, information submittal requirements, recordkeeping requirements, licensing requirements and fees required by N.J.A.C. 7:28.

The proposed amendment of N.J.A.C. 7:28-21 will apply to all analytical x-ray installations that use an analytical x-ray unit with a high voltage supply that cannot operate above 16 kilovolts. Pursuant to the definition of "small business" in the New Jersey Regulatory Flexibility Act, approximately one percent of the businesses currently registered and operating such equipment in this State are small businesses and will be impacted by this amendment.

It is not anticipated that small businesses will incur capital costs in order to comply with the proposed amendment of N.J.A.C. 7:28-21. Minimal costs associated with the registration fee and radiation survey physicist fee which currently apply to owners of analytical x-ray units with a voltage supply that cannot operate above 16 kilovolts, will continue in effect. Proposed exemption from rules that currently apply will lower personnel and equipment costs to qualifying users.

In proposing the readoption with amendments of N.J.A.C. 7:28, CORP has balanced the need to protect the public from unnecessary radiation against the expected economic impact of the rules and has determined that to minimize the impact of the rules on small businesses would endanger the environment, public health and safety. Therefore, no exemption from the rules is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:28.

Full text of the proposed new rule follows:

7:28-21.7 Analytical x-ray equipment with a high voltage supply that cannot operate at potentials above 16 kilovolts

(a) No person shall use an analytical x-ray unit with a high voltage supply that cannot operate at potentials above 16 kilovolts or cause it to be used unless the following requirements are met:

1. The analytical x-ray unit is registered with the Department pursuant to N.J.A.C. 7:28-3.1;

2. The registrant has had a qualified individual perform a radiation safety survey of the analytical x-ray unit and has had the qualified individual prepare and submit a report of the results of the survey to the registrant. The survey shall be performed when the analytical x-ray unit is first capable of producing radiation and before the analytical x-ray unit is used for any purpose other than installation, assembly, or the conducting of radiation surveys; and

3. The registrant shall submit a copy of the radiation survey report to the Department within 30 days after the date of the survey, and shall maintain the radiation survey report at the analytical x-ray facility for review by the Department during an inspection. The registrant shall retain the radiation survey report in compliance with N.J.A.C. 7:28-8.

(b) The registrant shall not use an analytical x-ray unit with a high voltage supply that cannot operate at potentials above 16 kilovolts or cause it to be used when the unit has been moved to a location different from that identified in the initial radiation survey report or after any modifications have been made in the equipment that may compromise radiation shielding integrity, unless the following conditions are met:

1. The registrant has had a qualified individual perform a radiation safety survey of the analytical x-ray unit and has had the qualified individual prepare and submit a report of the results of the survey to the registrant. The survey shall be performed when the analytical x-ray unit is first capable of producing radiation and before the analytical x-ray unit is used for any purpose other than installation, assembly, or the conducting of radiation surveys; and

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2. The registrant shall submit a copy of the radiation survey report to the Department within 30 days after the date of the survey, and shall maintain the radiation survey report at the analytical x-ray facility for review by the Department during an inspection. The registrant shall retain the radiation survey report in compliance with N.J.A.C. 7:28-8.

(c) If the results of the radiation survey required by (a)2 and (b)1 above reveal that there are no radiation levels above 0.1 mR/hr when measured at all locations five centimeters from any accessible surface of the specific analytical x-ray unit, then this analytical x-ray unit is exempt from the requirements of N.J.A.C. 7:28-21.3, 21.4, 21.5 and 21.6(a)3 and 4.

(a)**COMMISSION ON RADIATION PROTECTION****Dental Radiographic Installations****Proposed Repeal and New Rules: N.J.A.C. 7:28-16**

Authorized By: Commission on Radiation Protection,
Max M. Weiss, Chairman.

Authority: N.J.S.A. 26:2D-1 et seq., specifically N.J.S.A.
26:2D-7, 26:2D-9(f), 26:2D-9(h), and 26:2D-10.

DEP Docket Number: 006-90-02.

Proposal Number: PRN 1990-133.

A **public hearing** concerning this proposed repeal and new rules will be held on April 18 at 10:00 A.M. at:

Department of Environmental Protection
Radiation Protection Programs
Large Conference Room
729 Alexander Road
Princeton, New Jersey

Submit written comments by May 5, 1990 to:

Sue Kleinberg, Esq.
Division of Regulatory Affairs
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In 1958, the Radiation Protection Act, N.J.S.A. 26:2D-1 et seq. (hereinafter, the "Act") was enacted. This Act provides authority to set standards for the possession, handling, transportation and use of sources of radiation within the State of New Jersey. The Act established the State's Radiological Health Program, which was transferred from the State Department of Health to the Department of Environmental Protection's Bureau of Radiation Protection (now Bureau of Radiological Health). The Act also created the New Jersey Commission on Radiation Protection (hereinafter, "CORP") and vested in that body the authority to promulgate rules and regulations as may be necessary to prohibit and prevent unnecessary radiation.

In 1961, CORP promulgated the original version of N.J.A.C. 7:28-16, Dental Radiographic Installations. The purpose of these rules was to establish radiation safety requirements for persons using dental ionizing radiation-producing machines. These rules established safety requirements for the use of radiographic equipment, required structural shielding of the radiographic room, and set operating procedures to reduce unnecessary exposure to radiation to the patient, operator, and the general public during radiographic procedures.

CORP proposes to repeal the current version of N.J.A.C. 7:28-16 and propose a new N.J.A.C. 7:28-16. The new rules substantially revise and update the current regulatory standards which apply to dental radiographic installations. The proposed new rules will ensure that state-of-the-art protection for the prevention of unnecessary exposure to radiation is employed during radiographic procedures. The following references were consulted by CORP and the Department during the preparation of these new rules:

1. Part F of the 1982 edition of the Suggested State Regulation for the Control of Radiation, Volume I, Ionizing Radiation (HHS Publication FDA 83 8203) prepared by the Conference of Radiation Control Program Directors, Inc., U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, and U.S. Food and Drug Adminis-

tration's National Center for Devices and Radiological Health (hereinafter referred to as "Suggested State Regulations");

2. The Code of Federal Regulations, Title 21, Chapter 1, Subchapter J, Part 1020.30 and 31 (21 C.F.R. 1020.30 and 31); and

3. NCRP Report No. 35 Dental X-ray Protection, National Council on Radiation Protection and Measurements, Bethesda, Md.

The Suggested State Regulations document is used throughout the country as a guide for establishing individual State rules for the control of radiation. The objective of the Suggested State Regulations is to promote the adoption of similar rules in all states. The Code of Federal Regulations establishes machine performance standards that are in force nationwide. The NCRP Report No. 35 is widely used as a reference by Federal and State radiation control professionals and health physicists nationwide.

A section-by-section summary of proposed N.J.A.C. 7:28-16 follows:

N.J.A.C. 7:28-16.1 defines the purpose and scope of the subchapter. N.J.A.C. 7:28-16.2 defines relevant terms.

N.J.A.C. 7:28-16.3 is a revision and updating of the equipment requirements for dental radiation-producing machines. The new provisions reflect the generally accepted standards of good practice for this equipment. This section contains updated filtration requirements which are consistent with the Federal Performance standards. This section also establishes requirements for beam-on indicators, timer reproducibility, radiation exposure reproducibility, and stability of tube head.

N.J.A.C. 7:28-16.4 establishes the requirements for multiple dental radiographic tube installations.

N.J.A.C. 7:28-16.5 establishes the requirements for cephalometric radiographic installations.

N.J.A.C. 7:28-16.6 establishes the requirements for panoramic installations.

N.J.A.C. 7:28-16.7 establishes structural shielding requirements for dental radiographic installations.

N.J.A.C. 7:28-16.8 establishes the requirements for radiation safety surveys.

N.J.A.C. 7:28-16.9 establishes the operating criteria for dental radiographic installations.

N.J.A.C. 7:28-16.10 establishes the operating procedures for dental radiographic installations.

Social Impact

Proposed N.J.A.C. 7:28-16 will require all users of dental radiographic equipment to operate, handle and maintain the equipment in such a manner as to safeguard themselves and their patients from unnecessary exposure to radiation. The operational safety procedures and machine performance standards will keep radiation exposure to within acceptable regulatory limits. This will protect not only owners and operators of dental radiographic equipment from excessive exposure to sources of radiation, but will also protect the patients and the general public from unnecessary exposure to radiation.

Since the use of radiation in the diagnosis and treatment of dental conditions is an established practice, the inherent goal of this radiological health program is to eliminate unnecessary exposure to radiation and to reduce radiation dose levels and rates of exposure to a point that is as low as reasonably achievable (ALARA).

Proposed N.J.A.C. 7:28-16 reflects generally accepted radiographic safety standards for equipment now in use. These rules, when adopted, should accomplish the goal of improved radiation safety while at the same time making possible improved dental care for patients.

Economic Impact

Proposed N.J.A.C. 7:28-16 will require minimal new expenditures on the part of the regulated community. For those dental installations currently regulated and installed prior to the effective date of the new rules, there are no substantial equipment requirements that would increase cost for personnel or equipment. The installation of newly manufactured equipment which meets the requirements of the Federal regulations at 21 C.F.R. 1020.30 and 31, will meet the requirements of this subchapter.

Units manufactured prior to the Federal Performance Standards (21 C.F.R. 1020.30 and 31, August 1, 1974) may incur minimal additional expense to comply with the proposed rules.

Significant economic impact will only fall upon dental radiography installations whose equipment or standard of practice are presently seriously deficient. In such instances, the additional cost to comply will be offset by significant decreases in patient and operator radiation exposures.

Environmental Impact

Proposed N.J.A.C. 7:28-16 establishes standards which will protect patients, the operators, and the public from unnecessary exposure to radiation from dental radiographic equipment. By protecting these individuals, CORP is protecting the environment from the impact of the release of radiation from dental x-ray equipment.

Regulatory Flexibility Analysis

It is estimated that of the 10,900 dental units registered with the Department, 4,350 are in private offices which are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-1 et seq., and will be impacted by the rules. An additional 100 dental units are registered to hospitals, educational institutions and industrial facilities. In order to comply with the new rules, the small businesses will have to satisfy the requirements set forth in N.J.A.C. 7:28-16. Although it is anticipated that most small businesses will not need additional professional services or incur capital costs to comply with the new rules, small businesses which presently do not meet the equipment or operational standards of N.J.A.C. 7:28-16 will be required to expend whatever sums are necessary to comply with the rules. Accordingly, some small businesses may need additional professional services or incur capital costs as a result of these rules. In developing these rules, CORP has balanced the need to protect the public from unnecessary exposure to radiation against the economic impact of the proposed rules and has determined that minimizing the impact of the rules on small businesses would continue to allow the public to potentially be exposed to unnecessary radiation without a commensurate health benefit. Therefore, no exemption from the rules is provided.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:28-16.

Full text of the proposal follows:

SUBCHAPTER 16. DENTAL RADIOGRAPHIC INSTALLATIONS

7:28-16.1 Scope

(a) This subchapter establishes the requirements for dental radiographic installations.

(b) No person shall operate or permit the operation of x-ray equipment used in the practice of dentistry unless the equipment and installation meet the applicable requirements of this subchapter.

(c) The provisions of this subchapter are in addition to and not in substitution for the applicable provisions of N.J.A.C. 7:28-1 through 3, 5 through 8, 13 and 19.

7:28-16.2 Definitions

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

"Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"Certified components" means components of x-ray systems which are subject to the regulations promulgated under Public Law 90-602, the Radiation Control for Health and Safety Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J—Radiological Health.

"Certified unit" means any x-ray system which has only certified components.

"Coefficient of variation" or "C" means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{X}} = \frac{1}{\bar{X}} \sqrt{\frac{\sum_{i=1}^n (X_i - \bar{X})^2}{n-1}}$$

- where:
- $\frac{s}{\bar{X}}$ = Estimated standard deviation of the population.
 - \bar{X} = Mean value of observations in sample.
 - X_i = ith observation sampled.
 - n = Number of observations sampled

"Control panel" means the x-ray system component and operational controls that include the indicators for x-ray tube voltage (kVp), tube current (mA), timer setting and beam-on.

"Diagnostic type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one meter (39.37 inches) from the source does not exceed 100 milliroentgens in one hour when the tube is operated at its maximum continuous rated current for the maximum continuous rated tube potential.

"Kilovolts peak" (see "peak tube potential").

"kV" means kilovolts.

"kVp" (see "peak tube potential").

"Image receptor" means any device such as, but not limited to, a fluorescent screen or radiographic film, which transforms incident x-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where a device is provided to preselect portions of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

"Leakage radiation" means all radiation emanating from the diagnostic source assembly except the useful beam. Leakage radiation also means radiation produced when the exposure switch or timer is not activated.

"mA" means milliamperere.

"mAs" means milliamperere second.

"Multiple dental radiographic tube installation" means an installation in which one control panel may energize more than one x-ray tube.

"Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

"Primary protective barrier" (see "protective barrier").

"Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, intercepting the useful beam for protection purposes to reduce the radiation exposure so that it does not exceed two milliroentgens per hour.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to reduce radiation exposure so that it does not exceed two milliroentgens per hour.

"Radiation (ionizing)" means any electromagnetic or particulate radiation capable of producing ions, directly or indirectly, by interaction with matter.

"Scattered radiation" means radiation that, during passage through matter, has changed in direction or in energy.

"Secondary protective barrier" (see "protective barrier").

"Source-to-image distance" or "SID" means the distance from the radiation source to the center of the input surface of the image receptor.

"Source-to-skin distance" or "SSD" means the distance between the radiation source and the skin of the patient. It is also known as the target-to-skin distance.

"Stray radiation" means the sum of leakage and scattered radiation.

"Technique factors" means the following conditions of operation:

1. For capacitor energy storage equipment, the technique factors are peak tube potential in kV and quantity of charge in mAs;

2. For field emission equipment rated for pulsed operation, the technique factors are peak tube potential in kV and number of x-ray pulses;

3. For CT x-ray systems designed for pulsed operation, the technique factors are peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

4. For CT x-ray systems not designed for pulsed operation, the technique factors are potential in kV, scan time in seconds, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time when the scan time and exposure time are equivalent; and

5. For all other equipment, the technique factors are peak tube potential in kV, and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

"Uncertified unit" means an x-ray system comprised of components that are not subject to the regulations promulgated under Public Law 90-602, the Radiation Control Act of 1968, 21 Code of Federal Regulations, Chapter 1, Subchapter J—Radiological Health.

7:28-16.3 Dental radiographic equipment

(a) A person shall not operate or permit the operation of ionizing radiation-producing equipment used in the practice of dentistry unless the equipment meets the requirements listed below:

1. A diagnostic type protective tube housing shall be provided on the x-ray equipment.

2. Diaphragms or cones shall be used to collimate the useful beam and shall provide the same degree of protection as the diagnostic type protective tube housing.

3. For intraoral radiography, the diameter of the useful beam at the end of the cone in contact with the patient shall be no greater than seven centimeters (cm) (2.75 inches) when the source-to-skin distance is 18 cm (seven inches) or more. At SSD's less than 18 cm (seven inches), the diameter of the useful beam at the minimum SSD shall be no greater than six cm (2.36 inches).

4. A cone or spacer frame shall provide a source-to-skin distance of not less than 18 cm (seven inches) when the x-ray unit operates above 50 kVp or not less than 10 cm (four inches) when the x-ray unit operates at or below 50 kVp.

5. All machines purchased, donated, or otherwise obtained after July 1, 1969, shall be equipped with open end cones.

6. The amount of total filtration permanently in the useful beam shall meet the minimum half-value layer (HVL) specified in the following table:

TABLE 1
TABLE OF HALF-VALUE LAYERS FOR DENTAL UNITS
X-ray tube voltage (kilovoltage peak)

Designed operating range (kVp)	Measured operating potential (kVp)	Minimum HVL (mm of Al)
Below 50	30	1.5
	40	1.5
50 to 70	50	1.5
	60	1.5
	70	1.5
	71	2.1
Above 70	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

7. For certified units, the x-ray tube voltage (kilovoltage peak) measured operating potential shall meet the manufacturer's specifications.

8. The exposure control switch shall be of the dead-man type.

9. The exposure control switch shall be provided with a timer that terminates the exposure after a preset time or preset exposure.

10. The exposure control switch button when depressed shall not energize the x-ray tube when the timer is in the "zero" or "off" position.

11. The exposure control switch shall be arranged to allow the operator to stand at least 1.83 meters (six feet) from the patient and well out of the path of the useful beam or to stand behind a protective barrier.

12. The x-ray control panel shall provide visual indication whenever x-rays are produced.

13. For certified units, a signal audible to the operator shall be provided to indicate that the exposure has terminated.

14. For certified units, the coefficient of variation of the timer reproducibility shall not exceed 0.05 measured at any specific combination of technique factors.

15. For uncertified units, the coefficient of variation of the timer reproducibility shall not exceed 0.07 measured at any specific combination of technique factors.

16. For certified units, the timer accuracy shall meet or exceed the manufacturer's specifications. In the absence of manufacturer's specifications, the deviation shall not exceed 10 percent of the indicated value.

17. For certified units, the coefficient of variation of the radiation exposure reproducibility shall not exceed 0.05 measured at any specific combination of technique factors.

18. For uncertified units, the coefficient of variation of the radiation exposure reproducibility shall not exceed 0.07 measured at any combination of technique factors.

19. For uncertified units, the following requirements for linearity shall be met when the equipment is operated on a power supply as specified by the manufacturer for any fixed x-ray tube potential within the range of 40 percent to 100 percent of the maximum rated:

i. For equipment having independent selection of x-ray tube current (mA), the average ratios of exposure to the indicated milliampereseconds product [(C/kg/mAs) or mR/mAs] obtained at any tube current settings shall not differ by more than 0.10 times their sum. This is: $[X_1 - X_2] \leq 0.10(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at any two tube settings.

ii. For equipment having a combined x-ray tube current-exposure time product (mAs) selector, but not a separate tube current (mA) selector, the average ratios of exposure to the indicated milliampereseconds product [(C/kg/mAs) or (mR/mAs)] obtained at any two mAs selector settings shall not differ by more than 0.10 times their sum. This is: $[X_1 - X_2] \leq 0.10(X_1 + X_2)$; where X_1 and X_2 are the average C/kg/mAs (or mR/mAs) values obtained at any two mAs selector settings.

20. For certified systems, the requirement for linearity is as follows:

i. When the equipment allows a choice of x-ray tube current settings and is operated on a power supply as specified by the manufacturer in accordance with the requirements of applicable Federal standards, for any fixed x-ray tube potential within the range of 40 to 100 percent of the maximum rating, the average ratios of exposure to the indicated milliampereseconds product obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum: $[X_1 - X_2] \leq 0.10[X_1 + X_2]$; where X_1 and X_2 are the average (C/kg/mAs) (or mR/mAs) values obtained at each of two consecutive tube current settings.

21. The mechanical support of the tube head and the cone shall maintain the exposure position without movement, unless the diagnostic type protective tube housing movement is a designed function of the x-ray system (for example, as in panoramic units).

7:28-16.4 Multiple dental radiographic tube installations

(a) No person shall use x-ray equipment in a multiple dental radiographic tube installation set-up or cause it to be used unless the following requirements are met:

1. It shall be possible to activate only one dental radiographic tube at any one time.

2. Where two or more radiographic tubes are controlled by one exposure switch, the dental radiographic tube which has been selected shall be clearly indicated prior to initiation of the exposure. For certified units only, there shall be an indicator on both the x-ray control and at or near the dental radiographic tube housing assembly which has been selected.

3. It shall be possible to energize a dental radiographic tube from an exposure switch located at a specific dental radiographic tube's remote station only when that specific dental radiographic tube is selected.

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4. It shall be possible to energize a dental radiographic tube from the main control panel exposure switch only when that specific dental radiographic tube is selected.

7:28-16.5 Cephalometric radiographic installations

(a) No person shall use x-ray equipment or cause it to be used to perform cephalometric radiographic procedures unless the following requirements are met:

1. The x-ray field in the plane of the image receptor shall not exceed each dimension of the image receptor by more than two percent of the source-to-image distance, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition, the center of the x-ray field shall be aligned with the center of the image receptor to within two percent of the SID, or there shall be a device provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

2. The x-ray unit used for cephalometric radiographs shall meet all the requirements of this subchapter with the exception of N.J.A.C. 7:28-16.3(a)3 and 7:28-16.6.

7:28-16.6 Panoramic radiographic installations

(a) No person shall use any panoramic radiographic unit or cause it to be used unless the following requirements are met:

1. The x-ray field in the plane of the image receptor shall not exceed each dimension of the image receptor by more than two percent of the SID, when the axis of the x-ray beam is perpendicular to the plane of the image receptor. In addition, the center of the x-ray field shall be aligned with the center of the image receptor to within two percent of the SID or there shall be a device provided to both size and align the x-ray field such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor.

2. These units shall meet all the requirements of this subchapter with the exception of N.J.A.C. 7:28-16.3(a)3 and 7:28-16.5.

7:28-16.7 Structural shielding

(a) No person shall operate or permit the operation of x-ray equipment used in the practice of dentistry unless the following requirements are met:

1. Permanent structural shielding and protective barriers shall be used to ensure that no person other than the patient being x-rayed receives a radiation dose in excess of two milliroentgens in any one hour.

2. When dental x-ray units are installed in adjacent areas of the same room, such units shall not be used simultaneously unless protective barriers are provided and used in the area between the units when necessary to comply with the radiation exposure limits in N.J.A.C. 7:28-6.

7:28-16.8 Radiation safety surveys

(a) The registrant of a dental ionizing radiation-producing machine shall ensure that a qualified individual performs a radiation survey of the controlled and non-controlled areas within 60 days of the installation of the x-ray equipment to ensure compliance with this chapter. The qualified individual shall provide the registrant with a report of the results of the radiation survey.

(b) The registrant shall submit a copy of the radiation survey report required in (a) above to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the radiographic equipment at that location. The survey report shall be produced for review by the Department during an inspection.

(c) The registrant shall have a radiation protection survey performed by a qualified individual within 60 days after any changes made to shielding or equipment location. The registrant shall submit a copy of the survey to the Department within 30 days after the date of the survey. The registrant shall maintain the original survey report at the facility for at least as long as the registrant owns the equipment in that location. The survey report shall be produced for review by the Department during an inspection.

7:28-16.9 Operating criteria

(a) No person shall operate a dental ionizing radiation-producing machine in such a manner as to expose human beings unless such person is a licensed practitioner or holds a valid license issued by the Department pursuant to N.J.A.C. 7:28-19 and the Radiologic Technologist Act, N.J.S.A. 26:2D-24 through 36.

(b) A person shall operate a dental ionizing radiation-producing machine in a manner consistent with the scope of practice defined on that person's license issued by the Department pursuant to N.J.A.C. 7:28-19.

7:28-16.10 Operating procedures

(a) All persons who operate or permit the operation of dental radiographic equipment shall comply with following operating procedures:

1. No individual other than the patient being x-rayed shall be in the path of the useful beam;

2. During each exposure the operator shall stand at least 1.83 meters (six feet) from the patient or behind a protective barrier;

3. The film shall not be held by the dentist, the operator, or the assistant during any radiographic exposure;

4. The diagnostic type protective tube housing and the cone shall not be hand held during exposures;

5. Fluoroscopy shall not be used in dental examinations; and

6. The registrant shall provide personnel monitoring equipment to and require that it be worn by each individual who enters a controlled area and receives or is likely to receive a dose in excess of 25 millirems in any period of seven consecutive days.

i. Each personnel monitoring device shall be assigned to and worn by only one person.

ii. Records of radiation exposure derived from the personnel monitoring device shall be kept in accordance with the requirements of N.J.A.C. 7:28-8.

iii. The registrant shall keep the personnel monitoring records at the facility. These records shall be kept in accordance with the requirements of N.J.A.C. 7:28-8. These records or true copy of same shall be produced for review by the Department during an inspection, and shall be submitted to the Department upon request.

iv. The personnel monitoring records shall be available to the employees.

**HEALTH
(a)**

**DIVISION OF HEALTH PLANNING AND RESOURCES
DEVELOPMENT**

**Certificate of Need: Review of Long-Term Care
Facilities and Services Policy Manual**

Proposed Readoption: N.J.A.C. 8:33H

Authorized By: Leah Z. Ziskin, M.D., M.S., Acting
Commissioner, Department of Health (with approval of the
Health Care Administration Board).

Authority: N.J.S.A. 26:2H-5 and 26:2H-8.

Proposal Number: PRN 1990-146.

Submit comments by April 18, 1990 to:
John J. Gontarski, Chief
Health System Review Program, Room 604
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625-0360

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 8:33H expires on July 19, 1990. Existing rules require periodic updating, based upon the need to address current activities in the changing long-term care field. The Department has found the existing rules to be necessary, reasonable, and proper, and therefore proposes that they be readopted.

The body of existing rules has been in effect since September 18, 1980. Substantive amendments concerning Medicaid utilization criteria were

adopted June 7, 1982; specific review requirements for long-term care beds in continuing care or life care communities were adopted June 6, 1983 and a new long-term care bed need methodology was adopted October 3, 1983. A number of substantive amendments were adopted November 5, 1984, largely for the purpose of clarifying as well as extending the requirements of existing policies regarding alternatives to long-term care beds, the direct Medicaid admissions, and life care/continuing care communities. In addition, new criteria for determining the need for medical day care facilities were adopted.

The rules were readopted August 19, 1985 and amendments to the rules were adopted January 20, 1987. The current rules reflect the Department of Health's concern with the evolving needs of the elderly population in the State for institutional care and its alternatives. The rules also are an attempt to assure access to long-term care to specific groups demonstrating a need for such care. In order to adequately address the future long-term care needs in New Jersey, a Long Term Care Planning and Advisory Committee has been formed and is currently gathering information which may result in the need for amendments to N.J.A.C. 8:33H. It is the intent of the Department of Health to propose readoption of the existing rules without amendment at this time. Future amendments to the policies contained herein must await the final recommendations of the Long Term Care Planning and Advisory Committee at such time as they complete their deliberations.

The chapter proposed for readoption contains three subchapters. The first subchapter (N.J.A.C. 8:33H-1) describes a number of policies and general provisions to be used in the planning and Certificate of Need review of long-term care facilities and services; the second subchapter (N.J.A.C. 8:33H-2) contains definitions of a number of terms used throughout the rules; and subchapter 3 (N.J.A.C. 8:33H-3) contains specific standards and guidelines used in the planning and Certificate of Need processes for long-term care facilities and related services. These specific standards and guidelines cover the minimum and maximum size of facilities, desired occupancy rates, the need for medical day care and specialized long-term care beds, necessary alternatives to long-term care beds, requirements for the utilization of long-term care beds by Medicaid recipients, requirements for continuing care retirement communities and for facilities located in potentially underserved cities, the long-term care bed need methodology, and other criteria.

Social Impact

N.J.S.A. 26:2H-1 recognizes as "public policy of the State that hospitals and related health care services of the highest quality, of demonstrated need, efficiently provided and properly utilized at a reasonable cost are of vital concern to the public health. In order to provide for the protection and promotion of the health of inhabitants of the State, promote the financial solvency of hospitals and similar health care facilities and contain the rising cost of health care services, the State Department of Health . . . shall have the central, comprehensive responsibility for the development and administration of the State's policy with respect to health planning, hospitals and health care services, and health facility cost containment programs . . ."

The needs of an aging society and the lack of balance in the chronic care system are such that long-term care will have to be a dominant theme of national health and social policy through the balance of this century. Likewise, a major goal of public policy in New Jersey for this decade and beyond must be the provision and financing of an adequate array of long-term care services. These services must range from non-institutional community/social services to full-time institutional medical/nursing services in long-term care facilities. The basic framework or structure of these services must emphasize an integrated, coordinated, and comprehensive system responsive to the enormous variety and frequent instability of impairments and functional deficits of the frail elderly; the delivery of services within the least restrictive environment and emphasizing maximum freedom for the individual; a renewed reliance on the family and community in the provision of care; concern for the cost-effectiveness of service provision and realistic cost-containment measures; and, most importantly, quality of care.

This chapter represents a concrete step toward the development of an improved long-term care system in New Jersey, its intent being the implementation of system goals through the planning and certificate of need review processes. The rules as proposed for readoption will continue the Department of Health policy of encouraging the development of a continuum of care for the elderly. The continuum consists of the following services: long-term care, residential health care, medical day care, congregate living arrangements, and continuing care retirement communities. Any applicant proposing to develop long-term care facilities will, with

readoption, continue to be required to develop appropriate alternatives to that care.

Economic Impact

The New Jersey State Health Plan recognizes that the provision of long-term care services, particularly institutional care, is an important factor contributing to the rapidly escalating costs of health care.

The heavy emphasis on the provision of institutional services organized along a medical model of care has costs climbing. A continued orientation toward costly health services within institutional settings capable of caring for relatively few, at the expense of social and supportive services and housing resources for the increasing population at risk of requiring long-term care predicts serious financial and social consequences.

Financing for long-term care services must assure economic accessibility and should include an appropriate mix of private and public dollars. Inevitable demographic trends will require that significant, increasing amounts of money be spent in the next several decades for long-term care. This will be true even if no changes are made in current programs. In this context, it should be noted that only about five percent of the over 65 population resides, at any given time, in long-term care facilities.

The rules as proposed for readoption have promoted the development of long-term care services in an orderly and cost-effective manner. The continuum of long-term care services has encouraged the cost-effective development of humane alternatives to more restrictive institutional placements.

Regulatory Flexibility Analysis

Facilities affected by these rules consist largely of long-term care facilities of more than 100 beds. These facilities typically employ well over 100 full-time employees. It is possible, however, that smaller facilities and programs will be considered in the application of these rules.

The requirements contained in these rules do require personnel to perform a limited number of record keeping and reporting functions. Such requirements do not necessitate the dedication of staff and should not be considered overly burdensome of the applicant that might be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

In readopting these rules, the Department has had to balance the economic impact of added personnel costs with the need to provide a safe and effective health care service. The Department has determined that to minimize the economic impact of these rules would endanger public health and safety and, therefore, no exception from coverage is provided.

Full text of the proposed readoption can be found in New Jersey Administrative Code at N.J.A.C. 8:33H.

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(a)

THE COMMISSIONER

Records

Procedure for Release of Confidential Inmate or Parolee Records

Reproposed Amendment: N.J.A.C. 10A:22-2.6

Authoried By: William H. Fauver, Commissioner, Department of Corrections.

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

Proposal Number: PRN 1990-138.

Submit comments by April 18, 1990 to:

Elaine W. Ballai, Esq.

Special Assistant for Legal Affairs

Department of Corrections

CN 863

Trenton, New Jersey 08625

The agency proposal follows:

Summary

Amendments to N.J.A.C. 10A:22-2.6 were proposed and published in the November 6, 1989 New Jersey Register at 21 N.J.R. 3411(a). The former proposal specified that any information, files, documents, reports, records or written materials submitted to the State Parole Board shall be deemed confidential and shall not be released by Department of

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Corrections personnel. Because of the confidential nature of these documents, Department of Corrections personnel could not release these documents to another agency or person without the consent of the State Parole Board. The Department of Corrections has rules at N.J.A.C. 10A:22-2 which govern the release and examination of inmate and parole records. The Department of Corrections regularly submits documents to the State Parole Board to facilitate the parole release and revocation processes. It was not the intent of the Department of Corrections to propose that the State Parole Board have control over the release of Department of Corrections documents. The intent of the proposed rule was to prohibit Department of Corrections employees from releasing confidential materials prepared by State Parole Board employees. Therefore, the Department of Corrections is repropounding the amendment to this section to make more specific that employees of the Department are not permitted to release confidential material prepared by State Parole Board personnel. Other portions of the original amendment are being repropounded without change. This proposed amendment supersedes the one published at 21 N.J.R. 3411(a).

Social Impact

The proposed amendment to N.J.A.C. 10A:22-2.6(b) will ensure that the Department of Corrections personnel will not release confidential information that has been prepared by the State Parole Board. The proposed amendments to N.J.A.C. 10A:22-2.6(c) and (d) remain the same as originally proposed and will have no significant social impact because these amendments are minor changes in language which were made for the purposes of clarification. These minor language changes do not alter the intent, meaning or context of these rules in any way.

Economic Impact

The proposed amendments will have no significant economic impact because additional resources will not be needed to implement or maintain these amendments.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposal does not impose reporting, recordkeeping or other compliance requirements on small businesses. The proposed amendments impact on inmates and the New Jersey Department of Corrections and have no significant effect on small businesses.

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

10A:22-2.6 Procedure for release of confidential inmate or parolee records

(a) (No change.)

(b) **Information, files, documents, reports, or records prepared by New Jersey State Parole Board employees, or which pertain to parole determinations or supervision, shall not be released by the New Jersey Department of Corrections personnel pursuant to N.J.A.C. 10A:71-2.1(a) and (c).**

[(b) Only the specific documents or information directly related to the purpose for which the information is sought shall be released.]

(c) **The only confidential information which shall be released shall be the specific information that is directly related to the stated purpose for which the information is requested (see N.J.A.C. 10A:22-2.3 and 4).**

[(c)](d) Requests for **confidential** information [which are deemed irrelevant, improper or not authorized by law] shall be rejected[.] **when:**

1. **The request is unrelated to the stated purpose of the request; and**
2. **The request is unauthorized by law.**

Recodify existing (d) through (e) as (e) and (f). (No change in text.)

(a)

STATE PAROLE BOARD**Parole Board Rules****Proposed Amendments: N.J.A.C. 10A:71-1.3, 3.2, 3.21 and 7.18**

Authorized By: New Jersey State Parole Board,
Louis Nickolopoulos, Chairman.

Authority: N.J.S.A. 30:4-123.48(d).

Proposal Number: PRN 1990-142.

Submit comments by April 18, 1990 to:

Louis Nickolopoulos, Chairman

New Jersey State Parole Board

CN 862

Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 10A:71-1.3(c) provides that correction officers are authorized to be present during various parole hearings if security considerations so warrant. The result is the ensured safety of those attending parole hearings.

The proposed amendment to N.J.A.C. 10A:71-3.2(c)7 eliminates the requirement that future parole eligibility terms imposed upon the denial of parole commence upon the date of the initial parole release hearing in the cases of adult and young adult inmates who were past eligible for parole consideration at the time of the initial parole release hearing; establishes the procedure for the calculation of future parole eligibility dates in the specific cases of inmates returned to confinement from the Intensive Supervision Program and past eligible for parole consideration at the time of return to confinement; and specifies that the amendment is applicable in the cases of inmates denied parole on or after the effective date of the amendment. This amendment was proposed to address a perception, on the part of the inmate population, of a lack of consideration of time served between the date of initial parole eligibility which has passed and the date of the initial parole consideration hearing.

The proposed amendment to N.J.A.C. 10A:71-3.21(e) provides that a two-member Board panel may establish a future parole eligibility date which differs from provisions established at (a) or (b) and (c), in the cases of inmates who have been in continuous confinement and past eligible at the time of the initial parole release hearing. In such cases, the provisions of subsection (d) (that is, reconvening a three-member Board, notice, etc.) are not applicable except in cases where the future parole eligibility date which could be established based on the rules plus the time period from the current book eligibility date to the initial parole release hearing is deemed to be clearly inappropriate. There is a time saving factor in convening the two-member panel in these specific cases and it provides a means of expediting these cases.

The amendment to N.J.A.C. 10A:71-7.18(a) deletes the term "psychiatric" from the rule since the examination conducted pursuant to this section is of a psychological, not psychiatric, nature.

Social Impact

The proposed amendment to N.J.A.C. 10A:71-1.3(c) authorizes the presence of correction officers during the conducting of parole hearings if necessary for security reasons. Therefore, employees of the Department of Corrections and county jail facilities may be requested to be in attendance at parole hearings if deemed necessary by the hearing officer, Board panel or Board.

The proposed amendment to N.J.A.C. 10A:71-3.2(c)7 will have an impact in the cases of adult and young adult inmates who were past eligible for parole consideration at the time of the initial parole consideration hearing and who are required to serve a future parole eligibility term upon the denial of parole. Further, offenders returned to confinement from the Intensive Supervision Program who were past eligible for parole consideration at the time of the initial parole consideration hearing and who are required to serve a future parole eligibility term upon the denial of parole will be affected in that the amendments establish the procedure for the computation of the future parole date in such cases and certain adult and young adult inmates will become eligible for parole consideration earlier than under present practice.

The proposed amendment to N.J.A.C. 10A:71-3.21(e) will impact on the Board in that a two-member Board panel will be authorized to establish a future parole eligibility date, in the cases of inmates past

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eligible at the time of the initial parole consideration hearing, which differs from the future parole eligibility date otherwise required. In such cases, the provisions of subsection (d) (that is, the reconvening of a three-member Board panel, notice, etc.) would not be applicable except in specific circumstances. Under these specific circumstances, the use of a two-member Board panel allows for same day determinations in the establishment of a future parole eligibility date.

Economic Impact

The proposed amendments will have no economic impact of a negative nature on the State Parole Board, the Department of Corrections, the Bureau of Parole, county jail facilities or the inmate population. In reference to the proposed amendment to N.J.A.C. 10A:71-3.2(c)7, it is anticipated that certain adult and young adult inmates will become eligible for parole consideration earlier and the potential exists that these inmates will eventually be released on an earlier date than under the present practice. The Department of Corrections will be housing certain adult and young adult inmates for a lesser time period than under present practice. The Department of Corrections will, therefore, derive a positive economic impact, though the extent of said benefit cannot be readily measured at the present time. There also may be a savings of time and travel expenses in the convening of the two-member instead of a three-member Board panel.

Regulatory Flexibility Statement

The proposed amendments will impose no reporting, recording or compliance requirements on small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments affect the State Parole Board, the Department of Corrections, the Bureau of Parole, county jail facilities and the inmate population. A regulatory flexibility analysis is, therefore, not necessary.

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

10A:71-1.3 Parole release hearings, board panel and board hearings

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

(c) In addition to appropriate Board personnel **and correction officers, if security considerations so warrant**, parole release hearings, Board panel and Board hearings shall be open only to such persons as authorized by the Board panel or Board with the consent of any inmate who may be present for a hearing on his or her case. The inmate's consent shall be in writing and made a part of the Board's record on the inmate.

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

10A:71-3.2 Calculation of parole eligibility terms

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

(c) The parole eligibility terms for adult inmates shall be determined by the following:

1.-6. (No change.)

7. Where the inmate has been denied parole and required to serve a future eligibility term pursuant to N.J.A.C. 10A:71-3.21, a new book eligibility date shall be established by adding the additional term to the current book eligibility date and by including, in the case of an adult inmate, commutation credits based on the additional term only. [If an inmate's parole eligibility date has passed at the time of the initial parole release hearing, upon the inmate being denied parole and being required to serve an additional term pursuant to N.J.A.C. 10A:71-3.21, a new book date shall be established by adding the additional term to the date of the initial parole release hearing and by including, in the case of an adult inmate, commutation credits based on the additional term only and any work and minimum custody credits not applied in the computation of the previous parole eligibility date.]

8. **If an inmate, denied parole release on or after (the effective date of this amendment), has been returned to confinement from the Intensive Supervision Program for any reason and if the inmate's parole eligibility date has passed at the time the inmate is returned to confinement, the following provisions shall apply in the case of an inmate denied parole release:**

i. **A new book eligibility date shall be established by adding the additional term established pursuant to N.J.A.C. 10A:71-3.21 to the date of the inmate's return to confinement.**

ii. **In the case of an adult inmate, the new book date shall include commutation credits based on the additional term only.**

iii. **In the case of an adult inmate, only work and minimum credits earned from the date of the inmate's return to confinement shall be applied in the calculation of the actual eligibility date. In the case of a young adult inmate, program participation credits determined pursuant to N.J.A.C. 10A:71-3.3 shall be applied to reduce the primary eligibility date established pursuant to this section.**

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

10A:71-3.21 Board panel action; schedule of future parole eligibility dates for adult inmates

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

(e) **Upon determining to deny parole to an inmate who has been in continuous confinement and who was past eligible at the time of the initial parole release hearing, a two-member Board panel may establish a future parole eligibility date which differs from that required by the provisions of (a) or (b) and (c) above. In such a case, the provisions of (d) above shall not apply except as follows:**

1. **If, in the opinion of the two-member Board panel denying parole the future parole eligibility date which would be established based on (a) or (b) and (c) above and the time period from the current book eligibility date to the date of the initial parole release hearing is clearly inappropriate.**

(e)-(i) recodified as (f)-(j) (No change in text.)

10A:71-7.18 Adult diagnostic and treatment center examination for sex offenders

(a) If a parolee has been sentenced and paroled under provisions of the "Sex Offender Act", N.J.S.A. 2A:164-3[,], et seq., or N.J.S.A. 2C:47-1[,], et seq., and if the adult Board panel has revoked parole, a request for a complete [psychiatric] examination, containing a copy of the hearing summary of the revocation hearing and the adult Board panel's Notice of Decision, shall be forwarded to the chief executive officer of the Adult Diagnostic and Treatment Center.

(b)-(i) (No change.)

INSURANCE

(a)

DIVISION OF THE REAL ESTATE COMMISSION

Notice of Pre-Proposed Rulemaking Compensation to Real Estate Licensees for Placing Mortgage Loans

Authorized By: New Jersey Real Estate Commission, Daryl G. Bell, Executive Director.

Authority: N.J.S.A. 45:15-3, 6, 16 and 17; *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986) (remanded).

OAL Docket Number: BRE 228-87.

Pre-Proposal Number: PPR 1990-3.

Take notice that, pursuant to the remand order of the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), the Office of Administrative Law conducted joint public hearings for the Department of Insurance, Division of the Real Estate Commission, and the Department of Banking wherein the administrative law judge received and will consider oral and written comment and draft proposed rules from the public, the Public Advocate, the real estate industry, the banking industry, the Department of Banking and the Real Estate Commission, and will recommend appropriate regulation of the mortgage financing activities of real estate licensees and of lenders and mortgage banking and broker licensees under the Real Estate Licensing Law, N.J.S.A. 45:15-1 et seq., and the Mortgage Bankers and Broker's Act, N.J.S.A. 17:11B-1 et seq., to protect real estate consumers and further the public interest. Public hearings on this pre-proposed rulemaking were conducted by the Office of Administrative Law on February 21, 1990, at its Newark offices, and on March 14, 1990, at its Trenton offices.

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Interested Persons see Inside Front Cover

LABOR

Written comments or draft proposed rules should be submitted by March 30, 1990 to:

The Honorable Arnold Samuels, ALJ
Office of Administrative Law
185 Washington Street
Newark, New Jersey 07102

All written materials submitted should contain the following OAL Docket Number: OAL Dkt. No. BRE 228-87.

Background

The need for such regulation has arisen in the context of a variety of recent innovations in the delivery of residential home mortgage financing products and services to the home-buying public. In particular, over the past several years, a number of real estate licensees have proposed or formed financial and contractual relationships with mortgage lenders whereby a real estate buyer may obtain mortgage financing through the affiliated lender, and the real estate broker or, in some cases, salesperson may receive various fees for each loan placed or dividends or other returns on investment from the affiliated lender. Other estate brokers are participating with mortgage loan selection and origination, in real estate brokerage offices. Pursuant to a remand by the New Jersey Supreme Court in *Mortgage Bankers Ass'n v. New Jersey Real Estate Commission, et al.*, 102 N.J. 176 (1986), public hearings are now scheduled to solicit public comments on appropriate regulation of the mortgage financing activities of real estate licensees and mortgage banking and broker licensees. (A plenary, declaratory ruling hearing, governing the proper interpretation of the Real Estate Licensing Law, N.J.S.A. 45:15-17i, was completed in November 1989.)

Issues

The hearings related to Real Estate are intended to consider the following specific topics or areas of discussion and other related areas, including those within the purview of the Department of Banking.

1. What are the various financial and contractual relationships which exist between real estate licensees and mortgage lenders in New Jersey?
2. Do any of the financial relationships between New Jersey real estate licensees and mortgage lenders constitute violations of N.J.S.A. 45:15-17i, when mortgage services are provided to the buyer in the same transaction, where a sales commission is received from the seller?
3. What regulation of the mortgage financing activities of real estate licensees would be appropriate and in the public interest under Real Estate Licensing Law? For example:
 - (a) Have particular problem areas been identified in the hearing which should be addressed by regulation?
 - (b) Would regulations requiring written disclosure of the financial relationships between a real estate licensee and a mortgage lender benefit the involved consumer?
 - (c) Can the provisions of the federal Real Estate Settlement Procedures Act (RESPA) and its regulations serve as a model for state regulation of these activities?
 - (d) Would it be appropriate for agency regulations to differentiate between commercial and residential real estate transactions?

LABOR

(a)

DIVISION OF UNEMPLOYMENT AND TEMPORARY DISABILITY INSURANCE

**Unemployment Benefit Payments
Registration for Work and Claim for Benefits**

**Proposed Repeal: N.J.A.C. 12:17-2.1
Proposed New Rule: N.J.A.C. 12:17-2.1**

Authorized By: Raymond L. Bramucci, Commissioner,
Department of Labor.
Authority: N.J.S.A. 34:1-20, 34:1A-3(e) and 43:21-1 et seq.,
specifically 43:21-11.
Proposal Number: PRN 1990-143.

Submit comments by April 18, 1990 to:

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

The agency proposal follows:

Summary

Under current unemployment rules, each individual claiming unemployment benefits must report in person to his or her local unemployment office to file an initial claim for benefits, register for work and receive weekly payments. Although the current claim procedures have sufficiently served the purpose for which they were intended, the Department believes that switching over to a mail claims system will make it easier for the claimant to obtain unemployment benefits. The mail claims system will also make it easier for the Department to handle unemployment claims.

Thus, the Department is proposing to repeal the existing rules and to propose a new rule which sets forth the procedures for mail claims. Under the proposed new rule, each individual who desires to claim benefits must still report to the unemployment insurance office to file an initial claim for benefits and to register for work and for other job related activities. Under the proposed new rule, the agency may require an individual to continue to file weekly claims in person or by mail in accordance with instructions from the Division of Unemployment and Temporary Disability Insurance. The Division will then mail the benefits check to the claimant.

Social Impact

The mail claims system will make it easier for a claimant to obtain unemployment benefits. The claimant will not have to spend time on line at an unemployment office. The claimant can use this spare time to seek work. The mail claims system will also benefit the Department since it allows the Department personnel to spend more quality time with the claimant on training on how to obtain new jobs.

Economic Impact

The mail claims system will save the Department of Labor money since less manpower and smaller offices will be needed to handle mail claims. The mail claims system will also benefit claimants in that it allows the claimants to receive benefit payments through the mail rather than having to expend time and transportation cost to travel to a local unemployment office.

Regulatory Flexibility Statement

The proposed repeal and new rule impose no reporting, record keeping or compliance requirements on small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules merely affect individuals who are seeking unemployment insurance benefits. Therefore, a regulatory flexibility analysis is not required.

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

[12:17-2.1 Claims and registration for individuals generally

(a) Unless otherwise directed by the Division; any individual claiming benefits or waiting period credit for unemployment shall report in person at the local unemployment insurance claims office nearest to his residence, and shall file a claim for benefits and shall also report to the local employment service office to register for work and for other job related activities.

(b) A claimant will be required to report in person to the local employment service office as directed by the Division.

1. A claimant's failure to report to the local employment service office without good cause on the date and time designated will result in the loss of unemployment benefit rights from the date the failure to report occurred, so such time as the claimant reports to either the local employment service office or the unemployment insurance claims office and is rescheduled for employment services.

(c) The claimant shall report in person to the local unemployment insurance claims office on the date and time designated by a representative of the Division.

1. A claimant's failure to report to the local unemployment office without good cause on the date designated will result in the loss of

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unemployment benefit rights from the date the failure to report occurred, to such time as the claimant reports to the local unemployment insurance claims office.

2. A claimant's failure to report, or notify the local unemployment insurance claims office in writing of the reason for failing to report, within 14 days from the assigned reporting date will result in the loss of benefits for the compensable weeks currently being claimed, until the date the claimant actually reports.

3. In the event a claimant has good cause for not reporting to the local unemployment insurance claims office on the date designated, the claimant must still report as soon as possible after the scheduled reporting date. Failure to report as soon as possible thereafter, without continuing good cause, will result in the loss of benefits for the period during which the claimant failed to report without good cause.

(d) A claimant shall not be denied any benefit rights to which he is entitled, except for his inability to report on his assigned reporting date, when such inability is due to reemployment; provided he notified the local unemployment insurance claims office at which he has been reporting of the reason for his failure to report within 14 days after his assigned reporting date.

(e) A claimant who, without good cause, reports before his designated reporting time may be required to report at the designated time. A claimant who, after being warned, and without good cause, has reported after his designated reporting time may be required to report again at a future designated day and time.

(f) The Division, if satisfied of any individual's inability to report to the local unemployment insurance claims office at which he filed his claim for benefits, may permit such individual to report to any other local unemployment insurance claims office.

(g) During periods when unusual unemployment conditions prevail, or in the case of a temporary mass separation with a specific date of recall the Division, through the Director, may, subject to the approval of the Employment and Training Administration of the United States Department of Labor, direct claimants to report on any periodic basis deemed to be in the best interests of all concerned.

(h) With reference to reporting requirements, good cause includes any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from reporting on the assigned reporting date, or as soon as possible thereafter.

1. Failure to report shall not be considered to have resulted from good cause if the reason for the failure is noncompelling in nature or is characterized by negligence on the part of the claimant or if the claimant could have reasonably adjusted his outside activities to conform to the reporting schedule and failed to do so.]

12:17-2.1 Claims and registration

(a) Each individual who desires to claim benefits shall report to an unemployment insurance claims office and file a claim during the week for which he or she desires to claim the benefits and not after that week has passed. The effective date of the new claim establishes the period of time during which wages can be used for determining the monetary entitlement.

1. Each individual shall report in person to file an initial claim for benefits. The effective date of the claim for benefits shall be the Sunday of the week in which the claim is filed.

(b) Each individual shall report in person to the local employment service office as directed by the Division to register for work and for other job related activities. Failure to report without good cause shall render the individual ineligible for benefits for the week in which such failure to report occurs. For purposes of this section, good cause means any situation over which the claimant did not have control and which was so compelling as to prevent the claimant from reporting as required by the Division.

(c) To maintain continuing eligibility for benefits, an individual shall continue to file weekly claims in person or by mail in accordance with instructions from the Division. No weekly claim for benefits will be allowed until the claimant has signed and furnished to the Division a claim for benefits on the prescribed form.

(d) Each individual shall file a weekly claim as soon as possible after the last week ending date shown on the claim. The Division shall consider that a weekly claim for benefits has been filed timely if

postmarked or received by the Division within 14 days after the last week ending date shown on the claim. The Division shall accept claims received after the deadline if good cause has been shown by the individual for late filing, provided that the individual reports by mail or in person as soon as possible thereafter.

1. Each individual, when directed by the Division, shall report in person to the local unemployment insurance claims office for scheduled interviews. Failure to report in person without good cause shall result in ineligibility for the week in which the failure occurs.

(e) Each individual may reopen his or her claim any time during the 52-week period after first filing a claim, by reporting to a local unemployment insurance office in person as outlined in (a)1 above.

1. Each individual who fails to report by mail for four consecutive weeks of benefits must report to the unemployment insurance office in person to reopen the claim.

2. Each individual who returns to full employment during more than one calendar week in a reporting cycle must report in person to reopen the claim.

(f) The Division shall deny benefit rights to each individual who fails to report as directed by the Division except when the failure to report is due to reemployment and the claimant has notified, in writing, the local unemployment insurance claims office at which he or she has been reporting of the reason for the failure to report within 14 days after the last week ending date being claimed.

(g) Each individual who, without good cause, reports before the designated reporting time may be required to report at the designated time. Each individual who, after being warned, and without good cause, has reported after the designated reporting time may be required to report again at a future day and time.

(h) The Division may permit an individual to report to any other local unemployment insurance claims office if the individual demonstrates to the satisfaction of the Division that he or she is unable to continue to report to the local office where he or she originally filed the claim.

(i) During periods when unusual unemployment conditions prevail, or in the case of a temporary mass separation with a specific date of recall, the Division, through the Director, may, subject to the approval of the Employment and Training Administration of the United States Department of Labor, direct individuals to report on any periodic basis deemed to be in the best interests of all concerned.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Equipment for Emergency Vehicles and Other Specified Vehicles

Proposed Amendments: N.J.A.C. 13:24-1.1, 2.3, 2.8, 4.1 and 5.5

Authorized By: Glenn R. Paulsen, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3, 39:3-43, 39:3-50, 39:3-54, 39:3-54.7 et seq. and 39:3-69.

Proposal Number: PRN 1990-141.

Submit written comments by April 18, 1990 to:

Glenn R. Paulsen, Director
Division of Motor Vehicles
Department of Law and Public Safety
25 South Montgomery Street, 7th Floor
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles recently readopted with amendments N.J.A.C. 13:24, Equipment for Emergency Vehicles and Other Specified Vehicles. The proposed readoption with amendments was published in the August 21, 1989 New Jersey Register at 21 N.J.R. 2460(a); the readoption with amendments was published in the October 16, 1989 New Jersey Register at 21 N.J.R. 3299(c).

Several of the numerous comments which the Division received regarding its proposed re-adoption of N.J.A.C. 13:24 suggested changes to the rules which, although deemed appropriate by the Division, would have required republication of the proposal in the New Jersey Register due to substantive changes between proposal and adoption contrary to N.J.A.C. 1:30-4.3. To avoid the necessity of republication of the proposal, the Division chose to defer any action on the suggested substantive changes to its proposed re-adoption of N.J.A.C. 13:24 which it found to be appropriate until after adoption of the re-adoption. Thus, the proposal that follows reflects proposed changes to N.J.A.C. 13:24 which the Division perceives to be appropriate which were originally suggested in response to the Division's proposed re-adoption of N.J.A.C. 13:24.

The definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 is proposed for amendment to include any vehicle bearing governmental registration when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87. Since a county medical examiner or his or her deputy or assistant has a statutory duty pursuant to N.J.S.A. 52:17B-87 to immediately go to certain scenes of death to take charge of the dead body, a delay in the response time of such individuals to scenes of death will lengthen the time before a traffic accident scene can be cleared. To avoid such a delay, the Division considers it appropriate to expand the definition of "authorized emergency vehicle" to specifically include a vehicle bearing governmental registration when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death. The inclusion of such vehicles being utilized by a county medical examiner or his or her deputy or assistant to travel to the scene of a death as authorized emergency vehicles will enable them to be equipped, without the necessity of a permit, with red lights and sirens, thus enabling such individuals to reach scenes of death without undue delay which should facilitate the clearance of a traffic accident scene.

In conjunction with the foregoing, N.J.A.C. 13:24-2.3(a)1 is also proposed for amendment to specifically provide that vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use a siren during such time of operation. N.J.A.C. 13:24-2.8(h) is also proposed for amendment to specifically provide that vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use red lights during such time of operation.

N.J.A.C. 13:24-2.8(b) currently allows police or law enforcement vehicles that display roof-mounted red lights to be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the vehicles' roof-mounted red lights when open. The proposed amendment of N.J.A.C. 13:24-2.8(b) provides that any authorized emergency vehicle that displays roof-mounted red lights may be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open. The Division perceives it appropriate that this additional safety feature be allowed for use on any authorized emergency vehicle rather than being restricted to only police or law enforcement vehicles.

Also proposed for amendment is N.J.A.C. 13:24-4.1(b). That provision currently allows police or law enforcement vehicles to be equipped with flashing amber lights displayed to the rear of the vehicle as part of its roof-mounted emergency light bar while the vehicle is stationary. The proposed amendment of N.J.A.C. 13:24-4.1(b) provides that any authorized emergency vehicle may be equipped with flashing amber lights facing to the rear of the vehicle as part of its roof-mounted emergency light bar (or which may be centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles) for use while the vehicle is stationary. The Division perceives it appropriate that this additional safety feature be allowed for use on any authorized emergency vehicle rather than being restricted to only police or law enforcement vehicles.

N.J.A.C. 13:24-5.5 is proposed for amendment by deleting paragraph (a)1 of that section and renumbering paragraphs (a)2 and (a)3 as (a)1 and (a)2. N.J.A.C. 13:24-5.5(a)1 currently provides that a blue emergency warning light shall only be used in the municipality where the blue light identification card (permit) was issued, or in a municipality contiguous to the issuing municipality. The proposed amendment of N.J.A.C. 13:24-5.5, which provides for the deletion of paragraph (a)1 of that section, will eliminate any geographical limitation as to where blue emergency warning lights may be utilized by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call. The Division perceives it appropriate to eliminate such a geographical

limitation as to where blue emergency warning lights may be used in response to an emergency call, since it is conceivable that a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call may be required at some time to travel to a somewhat distant municipality outside the immediate geographical area of the municipality in which the permit was issued.

Social Impact

The proposed amendments should have a beneficial social impact upon the public. The proposed amendment of N.J.A.C. 13:24-1.1 to broaden the definition of "authorized emergency vehicle" to include vehicles bearing governmental registration when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death will enable such vehicles to be equipped, without the necessity of a permit, with red lights (to be used as specified by the proposed amendment of N.J.A.C. 13:24-2.3(a)1) and with sirens (to be used as specified by the proposed amendment of N.J.A.C. 13:24-2.8(h)). The use of red lights and sirens on such vehicles by a county medical examiner or his or her deputy or assistant to travel to the scene of a death should expedite their arrival at a traffic accident scene, thus benefitting the motoring public by enabling the traffic accident scene to be cleared without undue delay.

The proposed amendment of N.J.A.C. 13:24-2.8(b) to provide that any authorized emergency vehicle that displays roof-mounted red lights may be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open, and the proposed amendment of N.J.A.C. 13:24-4.1(b) to provide that any authorized emergency vehicle may be equipped with flashing amber lights facing to the rear of the vehicle as part of its roof-mounted emergency light bar (or centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles) for use while the vehicle is stationary, each benefit the public. By allowing the use of these two safety features by any authorized emergency vehicle rather than only by police or law enforcement vehicles, these amendments extend the benefit of these safety features, designed to warn the motoring public that an emergency vehicle is stationary in the road, to many additional emergency vehicles which were not covered by the former version of the rules in question.

The proposed amendment of N.J.A.C. 13:24-5.5, which deletes paragraph (a)1 of that section, benefits the public by eliminating any geographical limitation as to where blue emergency warning lights may be utilized by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call, thus facilitating the travel of such volunteers to an emergency call outside the immediate geographical area of the municipality in which the blue light permit was issued. The public will thus benefit from the timely arrival of such volunteers at the scene of an emergency.

Economic Impact

The proposed amendment of N.J.A.C. 13:24-1.1, 2.3(a)1 and 2.8(h), specifying that governmentally registered vehicles being utilized by a county medical examiner or his or her deputy or assistant en route to the scene of a death be considered an "authorized emergency vehicle" and qualify for the use of red lights and sirens, will impact economically on governmental entities in this State only to the extent that such vehicles are to be equipped with red lights and/or sirens. The proposed amendment of the aforementioned provisions will have no economic impact on the general public.

The proposed amendment of N.J.A.C. 13:24-2.8(b) to allow any authorized emergency vehicle to be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof-mounted red lights when open will impact on the owners of such vehicles whether they are governmental entities or private businesses (in the case of certain ambulances which qualify as authorized emergency vehicles) only to the extent that they wish to equip such vehicles with the equipment in question. It must be emphasized that the equipment in question is not required on such vehicles; its use is optional. The proposed amendment of N.J.A.C. 13:24-2.8(b) will have no economic impact on the general public.

The proposed amendment of N.J.A.C. 13:24-4.1(b) to allow any authorized emergency vehicle to be equipped with flashing amber lights facing to the rear of the vehicle as part of its roof-mounted emergency light bar (or centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles) for use while the vehicle is stationary will impact on the owners of such vehicles whether they are governmental entities or private businesses (in the case of certain ambulances which qualify as authorized emergency vehicles) only to the extent that they wish to equip such vehicles with the equipment in question. It must be emphasized that the equipment in question is not

required on such vehicles; its use is optional. The proposed amendment of N.J.A.C. 13:24-4.1(b) will have no economic impact on the general public.

The proposed amendment of N.J.A.C. 13:24-5.5, which deletes paragraph (a)1 of that section and thereby eliminates any geographical limitation as to where blue emergency warning lights may be used by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call, should have no economic impact on either the State or the general public.

Regulatory Flexibility Analysis

The proposed amendment of N.J.A.C. 13:24-1.1, 2.3(a)1 and 2.8(h) will have no impact on small businesses in New Jersey, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because those proposed changes pertain to governmentally registered vehicles being utilized by a county medical examiner or his or her deputy or assistant to travel to the scene of a death. Since vehicles owned or leased by small businesses are not affected by the above-referenced proposed amendments, a regulatory flexibility analysis of those proposed amendments is not required.

The proposed amendment of N.J.A.C. 13:24-2.8(b) will impact small businesses which operate an ambulance which falls within the definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 only in the event that they desire to equip such a vehicle with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof-mounted lights when open. The equipment in question is not required on such vehicles; its use is optional. If a small business equips such a vehicle with the above-referenced equipment, it must comply with applicable mounting and use requirements. The proposed amendment of N.J.A.C. 13:24-2.8(b) imposes no additional reporting or recordkeeping requirements upon such small businesses.

The proposed amendment of N.J.A.C. 13:24-4.1(b) will impact small businesses which operate an ambulance which falls within the definition of "authorized emergency vehicle" in N.J.A.C. 13:24-1.1 only in the event that they desire to equip such a vehicle with flashing amber lights facing to the rear of the vehicle as provided by the proposed amendment for use while the vehicle is stationary. The equipment in question is not required on such vehicles; its use is optional. If a small business equips such a vehicle with the above-referenced equipment, it must comply with applicable mounting and use requirements. The proposed amendment of N.J.A.C. 13:24-4.1(b) imposes no additional reporting or recordkeeping requirements upon such small businesses.

The proposed amendment of N.J.A.C. 13:24-5.5, which deletes paragraph (a)1 of that section to eliminate any geographical limitation as to where blue emergency warning lights may be used, will have no impact upon small businesses because the proposed amendment pertains to the use of such lights by a volunteer firefighter or volunteer first aid or rescue squad member responding to an emergency call. Since the proposed amendment does not impact upon small businesses, a regulatory flexibility analysis of the proposed amendment is not required.

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

13:24-1.1 Words and phrases defined

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

"Authorized emergency vehicle" means a vehicle of the fire department, police vehicles and such ambulances and other vehicles as are approved by the Director of the Division of Motor Vehicles in the Department of Law and Public Safety, when operated in response to an emergency call. Any vehicle which is licensed as an ambulance by the New Jersey Department of Health in accordance with N.J.A.C. 8:40, and any ambulance of a volunteer first aid, rescue or ambulance squad which has been certified as qualified for emergency medical service programs in accordance with N.J.S.A. 27:5F-27, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter when operated in response to an emergency. **Any vehicle bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, shall be considered approved as an authorized emergency vehicle for purposes of N.J.S.A. 39:1-1 and this chapter.**

...

13:24-2.3 Siren, whistle or bell on vehicles

(a) No vehicle shall be equipped with, nor shall any person use upon a vehicle, any siren, whistle or bell with the following exceptions:

1. An authorized emergency vehicle may be equipped with a siren, whistle or bell to be utilized when such vehicle is operated in response to a fire or emergency call. Police vehicles may also use a siren, whistle or bell in pursuit of an actual or suspected violator of the law. **Vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use a siren during such time of operation.** A permit is not required for an authorized emergency vehicle equipped with [such] a siren, whistle or bell.

2.-3. (No change.)

13:24-2.8 Red light mounting and use requirements

(a) (No change.)

(b) [All] **Any** authorized emergency vehicle[s] used for police or law enforcement purposes] that displays roof-mounted red lights may be equipped with interior trunk-mounted flashing red emergency lights if the trunk obscures the roof lights when open.

(c)-(g) (No change.)

(h) Red lights shall only be used when the vehicle is being operated in response to a fire or emergency call; provided, however, that red lights mounted on a vehicle owned or leased by an organization engaged in the manufacture and/or sale of emergency vehicles or equipment for which a permit has been issued by the Director pursuant to N.J.A.C. 13:24-2.5(a)4 may only be used when such vehicle is being operated by an organization employee for the purpose of demonstration or delivery. Police vehicles may also use red lights in the pursuit of an actual or suspected violator of the law. Fire department vehicles may also use red lights while returning from an emergency call. Ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1 may also use red lights when transporting a person to a hospital on an emergency basis. **Vehicles bearing governmental registration, when being operated by a county medical examiner or his or her deputy or assistant to travel to the scene of a death in accordance with N.J.S.A. 52:17B-87, may use red lights during such time of operation.**

13:24-4.1 Persons eligible

(a) (No change.)

(b) Notwithstanding any other provisions of this subchapter, [police or law enforcement] **any authorized emergency vehicle[s]** may be equipped with flashing amber lights which are displayed to the rear of the vehicle as part of its roof-mounted emergency light bar, **or which may be centered between the two rear-facing red upper corner lights on ambulances which qualify as authorized emergency vehicles pursuant to N.J.A.C. 13:24-1.1, for use while the vehicle is stationary.** A flashing amber light permit is not necessary when amber lights are mounted and used on [police or law enforcement] **an authorized emergency vehicle[s]** in such a manner. Such amber lights on [police or law enforcement] **an authorized emergency vehicle[s]** must be controlled by a switch separate from the red lights.

13:24-5.5 Use of blue emergency warning lights

(a) A blue emergency warning light shall only be used:

[1. In the municipality where the identification card (permit) was issued, or in a municipality contiguous to the issuing municipality;]

[2.] 1. While the vehicle is responding to a fire or emergency call; and

[3.] 2. On a motor vehicle owned by the identification card (permit) holder or by a member of his or her household.

(a)

**STATE BOARD OF MEDICAL EXAMINERS
Countersigning of Orders and Prescriptions of
Unlicensed Physicians
Podiatric Trainee**

Proposed Amendment: N.J.A.C. 13:35-6.3

Authorized By: New Jersey Board of Medical Examiners,
Charles A. Janousek, Executive Director.
Authority: N.J.S.A. 45:9-2.
Proposal Number: PRN 1990-130.

Submit written comments by April 18, 1990 to:
Charles A. Janousek, Executive Director
Board of Medical Examiners, Room 602
28 West State Street
Trenton, New Jersey 08608

The agency proposal follows:

Summary

On October 16, 1989, at 21 N.J.R. 3307(a), the Board of Medical Examiners readopted its entire set of rules as amended, N.J.A.C. 13:35. At that time, the Board noted that it would refer to the appropriate Board committee for consideration a comment it had received from the New Jersey Podiatric Medical Society regarding N.J.A.C. 13:35-6.3, which concerns the countersigning of orders and prescriptions of unlicensed physicians and which makes no provision for the podiatric trainee. The Board now wishes to amend N.J.A.C. 13:35-6.3 to clarify its intent that a podiatric physician may countersign orders and prescriptions written by a podiatric trainee.

Social Impact

The proposed amendment of N.J.A.C. 13:35-6.3, which specifically authorizes a podiatric physician to countersign orders and prescriptions of a podiatric trainee, merely clarifies an oversight in the Board's current rule regarding countersigning procedures. These procedures continue to protect the consumer by assuring review by a licensed physician of orders and prescriptions written by interns and residents. Currently, approximately 25 podiatric interns are in training Statewide.

Economic Impact

The proposed amendment to N.J.A.C. 13:35-6.3 should have no economic impact upon consumers or licensed physicians; it is merely a clarification of the existing rule to ensure it is specifically understood that podiatrists may countersign orders and prescriptions written by podiatric trainees.

Regulatory Flexibility Statement

The proposed amendment does not impose additional reporting, record keeping or other compliance requirements upon small businesses; it merely clarifies an oversight in the Board's current rules regarding countersigning of orders and prescriptions. Therefore, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16, is not necessary.

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

13:35-6.3 Countersigning of orders and prescriptions of unlicensed physicians

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

"Intern" or "PGY 1" (a person studying in postgraduate year one) shall mean an unlicensed graduate of a medical school or college of podiatric medicine, who is engaged in a program which has been approved by the Board and which consists of supervised practice in the science and art of medicine or podiatry among patients in a hospital with continued instruction by the staff of the facility. The internship period shall be limited to one year.

"Resident" or "PGY 2 or 3" shall mean a licensed or unlicensed graduate of an approved internship or PGY 1 who is engaged in an approved program for advanced training in podiatric medicine or in a clinical division of medicine, surgery or other special field in preparation for the practice of a specialty, which training shall be continuously supervised by the staff of the facility. Such approved program

must be properly accredited for residency training in the specialty program or programs offered.

"Unlicensed physician" shall mean any unlicensed graduate of a medical school or college of podiatric medicine such as, but not limited to, an intern or resident who is engaged in an approved program or a person possessing an exemption pursuant to law.

(b) A doctor's order written for a patient's care by an unlicensed person engaged in an intern or residency training program in a hospital or institution approved by the Board, or the doctor's order written by a person exempted from the prohibitory provisions of the Medical Practice Act pursuant to law shall be countersigned within 24 hours by a physician possessing a current unrestricted license to practice medicine and surgery in this State. **However, a podiatric physician may countersign a doctor's order written by a podiatric intern or resident.**

(c) Prescriptions written by unlicensed physicians which are to be filled by a pharmacy located outside the hospital or institution where such unlicensed physician is engaged must be countersigned by a physician possessing a current, unrestricted license to practice medicine and surgery in this State. **However, a podiatric physician may countersign prescriptions written by a podiatric intern or resident.**

(b)

STATE BOARD OF VETERINARY MEDICAL EXAMINERS

Duplicate Registration

Proposed New Rule: N.J.A.C. 13:44-2.16

Authorized By: State Board of Veterinary Medical Examiners,
Maurice McQuade, Executive Director.
Authority: N.J.S.A. 45:16-3.
Proposal Number: PRN 1990-131.

Submit written comments by April 18, 1990 to:
Maurice McQuade, Executive Director
State Board of Veterinary Medical Examiners, Room 513
1100 Raymond Boulevard
Newark, New Jersey 07102

The agency proposal follows:

Summary

The State Board of Veterinary Medical Examiners is proposing a new rule, N.J.A.C. 13:44-2.16, under which a veterinarian who practices at any location other than the main location for which a certificate of registration has been issued, must obtain a duplicate registration if his or her projected employment at the adjunct facility is estimated to amount to 400 hours in a calendar year. Duplicate registration is not required of a relief veterinarian who volunteers his or her services and receives no remuneration. A veterinarian who practices at a spay-neuter clinic which is not his or her main office location must obtain a duplicate license regardless of the number of hours employed.

The purpose of this rule is to provide the consumer with increased protection of the health, safety and welfare of animals by making the licensee assume greater responsibility and accountability.

This provision is consistent with the statutory requirement of branch licenses and duplicate certification under N.J.S.A. 45:16-9.4; it extends to veterinarians practicing part-time in a secondary location the same obligation required of a licensee with a branch office. The rule will also provide greater accountability to consumers who utilize the facilities of spay-neuter clinics by ensuring that all veterinarians working at these clinics are duly licensed.

Social Impact

The effect of the proposed rule is to ensure proper health care of animals by requiring greater accountability on the part of the licensed veterinarian; animal owners will clearly be benefitted. This rule will also provide reassurance to consumers who utilize the facilities of spay-neuter clinics by requiring that all veterinarians working at these clinics be licensees of the Board and consequently subject to its rules.

Economic Impact

The adoption of this rule will have no unfavorable impact upon the consumer inasmuch as no increased fees are foreseen in this effort to provide more responsible health care to the consumer. The minimal cost

LAW AND PUBLIC SAFETY

PROPOSALS

that will be imposed upon the licensed veterinarian for securing and maintaining duplicate registration is more than offset by the benefits provided to the owner of animals being treated.

Regulatory Flexibility Analysis

The State Board of Veterinary Medical Examiners currently licenses 1,766 (1,270 active, 496 inactive) individuals. It is impossible to determine how many of the licensees operate individually owned veterinary facilities inasmuch as the Board licenses individuals and not entities.

The proposed rule sets forth no reporting or recording requirements nor does it require additional professional services. Compliance merely requires the licensee to pay a fee and secure a duplicate registration if he or she has part-time employment in a spay-neuter clinic or anticipates working an estimated 400 hours in a calendar year in an adjunct facility other than a spay-neuter clinic.

Compliance will not impose any capital costs on the veterinary facility involved, nor will the rule have any adverse economic impact since the cost of duplicate registration is minimal. Because the intent of the rule is to protect consumer welfare and uphold professional standards by assuring that properly qualified, licensed individuals provide services to animals, no exemption is possible.

Full text of the proposed new rule follows:

13:44-2.16 Duplicate registration

(a) A licensee who practices at any location other than the primary location for which a certificate of registration has been issued must secure a duplicate registration if:

- 1. The projected supplementary employment is at a spay-neuter clinic; or
- 2. The projected supplementary employment at an adjunct facility other than a spay-neuter clinic is estimated to amount to 400 hours in a calendar year.

(b) A licensee who volunteers his or her services as a relief veterinarian and receives no remuneration is not required to secure a duplicate registration.

(a)

**DIVISION OF CONSUMER AFFAIRS
BUREAU OF EMPLOYMENT AND PERSONNEL
SERVICES**

Fees

Proposed New Rule: N.J.A.C. 13:45B-6.1

Authorized By: Robert J. Del Tufo, Attorney General, by Lawrence M. O'Reilly, Attorney General Designee, pursuant to N.J.S.A. 56:8-1.1; Lawrence M. O'Reilly, Deputy Attorney General in Charge of the Division of Consumer Affairs, pursuant to P.L. 1989, c.331.

Authority: P.L. 1989, c.331; N.J.S.A. 56:8-1.1.

Proposal Number: PRN 1990-148.

Submit written comments by April 18, 1990 to:
Charles Tantum, Chief
Bureau of Employment and Personnel Services
1100 Raymond Boulevard, Room 518
Newark, New Jersey 07102

The agency proposal follows:

Summary

P.L. 1989, c.331, an act regulating certain employment agencies, services and firms, and supplementing and repealing prior laws governing the employment industry, was signed into law on January 12, 1990. The new law requires private employment agencies to be licensed, and various other types of enterprises offering employment or personnel services to register with the newly-designated Bureau of Employment and Personnel Services in the Division of Consumer Affairs. The Bureau, formerly called the Private Employment Agencies/Temporary Help Services Section, is directed to establish by rule an annual fee to be charged these various firms for registration. The proposed new rule sets \$250.00 as the annual registration fee for consulting firms, career consulting or outplacement firms, job listing services, and prepaid computer job matching services. The fee is the same amount established by the statute for standard employment agencies, as are the fees for agents and license transfer. Other

fees cover miscellaneous items, such as a \$5.00 fee for an abstract of the law. Also, pursuant to authority granted in the Consumer Fraud Act at N.J.S.A. 56:8-1.1, the Bureau is consolidating in this fee schedule the amounts charged to temporary help service firms for primary registration and for permits to operate at other locations.

Social Impact

The proposed new rule implements legislation designed to protect the consumer by ensuring that various types of firms offering employment and personnel services provide relevant data on ownership and operations to the Division of Consumer Affairs, and conform to current laws.

Economic Impact

The proposed new rule creates the economic impact of \$250.00 per year for the registration of certain firms offering employment-related services or products, to be paid annually, and lesser fees for agents (\$25.00) and technical services provided by the Bureau, such as a \$5.00 fee for an abstract of the law. An estimated 4,000 firms in this State will be affected, plus an unknown number of agents and of out-of-State firms doing business in New Jersey. The total fee income is expected to cover present administrative costs for the mandated licensing and registration program. No economic effect on the general public is anticipated, since the annual maximum impact on an individual firm amounts to less than \$5.00 a week.

Regulatory Flexibility Analysis

The proposed new rule applies to certain firms which offer employment-related services or products and do business in New Jersey; the Bureau of Employment and Personnel Services estimates that virtually all of the firms subject to the rule are small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The annual cost of compliance with the proposed rule is, as a business expense, reasonable. There are no reporting or recordkeeping requirements related to the fees, other than completion of the licensing or registration application or other documents which will accompany payment. Neither P.L. 1989, c.331 nor N.J.S.A. 56:8-1.1 provides for the exemption of small businesses; thus this proposed rule does not, as well.

Full text of the proposed new rule follows:

SUBCHAPTER 6. FEES

13:45B-6.1 Fee schedule

The following fees shall be charged by the Bureau of Employment and Personnel Services:

Employment agency annual license	\$250.00
Consulting firm annual registration	\$250.00
Career consulting or outplacement firm annual registration	\$250.00
Job listing service and registration	\$250.00
Prepaid computer job matching service annual registration	\$250.00
Temporary help service firm annual registration, primary location	\$250.00
Temporary help service firm, permit for operation of each other location	\$10.00
Agent's annual license	\$25.00
Agent's conditional license	\$25.00
Transfer of agent's license	\$10.00
Agent-registrants	\$25.00
Fee for abstract of law	\$5.00

PUBLIC UTILITIES**(a)****BOARD OF PUBLIC UTILITIES****Water and Sewer****Proposed Readoption: N.J.A.C. 14:9****Proposed Recodification: N.J.A.C. 14:9-4 to 14:3-10.20 and 10.21**

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

Authority: N.J.S.A. 48:2-13, 48:2-17, 48:2-20, 48:2-24, 48:2-27, 48:3-3, 48:3-7.8, 48:3-12, 48:13A-1 et seq., and 48:19-17.

BPU Docket Number: AX90020146.

Proposal Number: PRN 1990-150.

Submit comments by April 18, 1990, to:

Edward D. Beslow, Esq.
Regulatory Officer
Board of Public Utilities
Two Gateway Center
Newark, New Jersey 07102

The agency proposal follows:

Summary

The Board of Public Utilities has undertaken a review of its rules contained in N.J.A.C. 14:9, Sewer and Water, in accordance with the "sunset" provisions of Executive Order No. 66(1978) to ensure that they are necessary, adequate, reasonable, understandable and responsive to the purposes for which they were originally promulgated. Pursuant to Executive Order No. 66(1978) these rules will expire, if not readopted, on April 15, 1990. As a result of this review, the Board is proposing to readopt these rules. Note, however, that an amendment has been previously proposed to rule N.J.A.C. 14:9-3.3. The amendment was proposed at 22 N.J.R. 618(a), in the February 20, 1990 issue of the New Jersey Register.

Note also that, for reasons presently unknown to the Board, Subchapter 4, entitled Solid Waste Industries, was included in Chapter 9. The Board proposes to readopt this subchapter and at the same time recodify it to N.J.A.C. 14:3-10, Solid Waste Collection and Solid Waste Disposal, where they more logically belong.

Subchapters 1, 2 and 3, pertaining to plant, service and meters, respectively, were effective prior to September 1, 1969. These subchapters were promulgated to establish standards to be met by utilities in providing service to the public. Adherence to the standards has in the past and will in the future help to ensure that safe, adequate and proper service is provided to sewer and water utility customers.

Subchapter 4 was enacted in 1972-1973 to further the Board's regulation of the solid waste industry under the Solid Waste Utility Control Act of 1970, N.J.S.A. 48:13A-1 et seq. N.J.A.C. 14:9-4.1, was designed to foster competition in the industry by preventing persons from holding or controlling more than one certificate of authority to operate. The rule is in furtherance of N.J.S.A. 48:13A-11 prohibiting monopolies in the solid waste industry. It is being proposed for recodification to N.J.A.C. 14:3-10.20.

N.J.A.C. 14:9-4.2 was promulgated to ensure that solid waste utilities would not be deprived of the property, equipment and facilities needed to provide service. The rule has proved effective because it has required utilities to own the property, equipment and facilities used by them or, in the alternative, to lease same pursuant to a lease recognizing the authority of the Board over the property, equipment and facilities for the term of the lease. This section is being proposed for recodification to N.J.A.C. 14:3-10.21.

Subchapter 5 became effective September 18, 1972. It was promulgated to adopt common, nationally accepted regulations to govern the preservation of records of water utilities. It is reasonable and responsive because it establishes an accepted standard to guide and govern New Jersey utilities in their recordkeeping responsibilities.

Subchapter 6 was adopted effective April 15, 1985 to implement the provisions of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq. It is necessary and responsive as it establishes a procedure to guide the Board and the Department of Environmental Protection in the exercise of their authority under the Act.

The substantive provisions of the rules proposed to be readopted by the Board are summarized as follows:

N.J.A.C. 14:9-1.1 pertains to the standards applicable to the construction and installation of sewer and water utility plant and facilities.

N.J.A.C. 14:9-1.2 pertains to the inspection of valves by sewer and water utilities, and to the testing of hydrants by water utilities.

N.J.A.C. 14:9-2.1 pertains to service connections made by sewer and water utilities.

N.J.A.C. 14:9-2.2 requires water utilities to supply water at adequate pressure and volume to the curb and sufficient pressure and volume at all fire hydrants.

N.J.A.C. 14:9-2.3 pertains to the quality of water.

N.J.A.C. 14:9-2.4 pertains to the standard of service of sewer utilities.

N.J.A.C. 14:9-3.1 requires water utilities with more than 100 meters to provide and maintain facilities for testing meters.

N.J.A.C. 14:9-3.2 establishes a time schedule for testing water meters.

N.J.A.C. 14:9-3.3 pertains to the determination of water meter accuracy.

N.J.A.C. 14:9-4.1 prohibits a person from holding or controlling multiple certificates of solid waste collection or disposal utilities.

N.J.A.C. 14:9-4.2 pertains to the title, use and lease of property, equipment and facilities by solid waste collection and disposal utilities.

N.J.A.C. 14:9-5.1 pertains to the adoption by reference of rules concerning the preservation of records by electric, gas and water utilities.

N.J.A.C. 14:9-6.1 identifies the purposes of the subchapter as an implementation of the provision of the "Small Water Company Takeover Act" (Act), N.J.S.A. 58:11-59 et seq., and establishment of procedures by which a non-complying small water company may be acquired.

N.J.A.C. 14:9-6.2 defines certain terms as used in this subchapter.

N.J.A.C. 14:9-6.3 provides that this subchapter shall be liberally construed and may be jointly amended, repealed or rescinded by the Board and the Department of Environmental Protection (DEP).

N.J.A.C. 14:9-6.4 provides that this subchapter shall apply to all small water companies in New Jersey.

N.J.A.C. 14:9-6.5 provides that a determination that any portion of this subchapter is unconstitutional or invalid shall not affect the remainder of the subchapter.

N.J.A.C. 14:9-6.6 provides that this subchapter may apply to any small water company not in compliance with appropriate standards concerning actual or imminent public health problems.

N.J.A.C. 14:9-6.7 sets out the enforcement options available to the DEP prior to the implementation of procedures under the Act.

N.J.A.C. 14:9-6.8 requires joint informational public hearings by DEP and the Board and specifies notice, conduct and content of same.

N.J.A.C. 14:9-6.9 requires a contested case hearing and specifies the nature, conduct and content of same.

N.J.A.C. 14:9-6.10 pertains to the requirements of a joint takeover order by DEP and the Board.

N.J.A.C. 14:9-6.11 pertains to the methodology of determining acquisition costs in the absence of an agreement.

N.J.A.C. 14:9-6.12 pertains to compliance with a joint order.

N.J.A.C. 14:9-6.13 provides that the Board may allow an acquiring entity to charge and collect a differential rate from customers of the non-complying small water company.

Social Impact

The proposed readoption does not impose substantive changes. Rather, it continues established guidelines that are necessary to ensure the provision of safe, adequate and proper utility service. With regard to water and sewer utilities, the readoption will have a positive social impact in that it:

1. Requires that the construction and installation of plant and facilities be in accordance with accepted standards and that certain facilities be inspected on a regular basis;

2. Sets forth the obligations of the utility to furnish service connections and to provide adequate service as it pertains to pressure, volume and quality;

3. Establishes the standard for water meter accuracy and requires utilities to maintain adequate meter testing facilities and to test meters according to a fixed schedule.

4. Adopts guidelines for the preservation of records; and

5. Establishes procedures for the takeover of non-complying small water companies by the most suitable public or private entity thereby ensuring the availability, potability and provision of water at adequate volume and pressure to customers of small water companies who receive water of inadequate quality, pressure and volume.

With regard to solid waste collection and disposal utilities, the re-adoption will have a positive social impact in that it promotes competition by prohibiting the holding of multiple certificates, unless approved by the Board, and stabilizes services to customers by requiring utilities to either own all property, equipment and facilities utilized in providing service to customers or enter into a lease arrangement under which the property, equipment and facilities would be subject to the jurisdiction of the Board for the term of the lease agreement.

Economic Impact

Utilities will, of necessity, incur expenses such as equipment maintenance and installation costs and costs of testing and monitoring, as well as administrative costs, in complying with the rules at N.J.A.C. 14:9. These expenses, if determined to be reasonable, will be recognized by the Board for ratemaking treatment and, therefore, will be reflected in customer charges. The Board, however, is of the opinion that the obligations imposed by the rules are reasonable and are necessary to ensure that utilities continue to provide safe, adequate and proper service. While there may be some costs incurred in monitoring compliance with the rules, said rules will have no adverse economic impact on the BPU.

The costs incurred by utilities in complying with Subchapters 1, 2, 3 and 5 are such as would be required to provide an acceptable standard of safe, adequate and proper service. As noted above, when shown to be reasonable within the context of a rate proceeding before the Board, such expenses would ultimately be recoverable by utilities through service charges to customers.

With regard to Subchapter 6, major economic impacts will result upon non-complying small water companies, private or public entities ordered to take over non-complying small water companies, and the water usage ratepayers of both the non-complying small water companies and the acquiring entities. During the rate making process the negative economic impact and risks to the acquiring entity by virtue of the takeover of the non-complying small water company will be evaluated and considered to ensure financial viability of the acquiring entity. However, the public health and welfare benefits to the citizens of New Jersey currently receiving inferior and inadequate water service from small water companies favorably counter balances the economic impacts directly resulting from the legislative mandate of the Small Water Company Takeover Act, N.J.S.A. 58:11-59 et seq.

Regulatory Flexibility Analysis

There are presently more than 100 small water utility businesses which meet the definition of a "small business" under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. N.J.A.C. 14:9 imposes certain recordkeeping requirements related to the inspection of facilities and the testing of meters as well as to the preservation and destruction of records on all water companies. Costs may be incurred in the actual inspection and testing required by these rules as well as capital costs in meeting plant, service and metering standards established by these rules. The Board is of the opinion that both large and small water utilities must comply with the requirements of the rules since these compliance requirements are necessary to ensure that such utilities provide safe, adequate and proper service to their customers. This readoption contains no new requirements and therefore imposes no additional capital or annual costs of compliance for small water utilities.

Only in those instances where the economic or operational viability of a small water utility is called into question and the Small Water Utility Company Takeover Act (N.J.S.A. 58:11-59 et seq.) rules in Subchapter 6 are called into operation would additional costs for litigation and recordkeeping be imposed on the utility. Because of the nature of the "Takeover" rules, there is no minimization of the possibility of adverse economic impact on small business. Those utilities which would be subject to such rules would be suffering operational or economic problems of such magnitude that their continued ability to provide safe, adequate and proper service to their customers would be called into question. As such, the rules are designed to protect the consuming public and not the small business.

The Board has weighed the impact of the chapter on small business and has concluded that the need to provide safe, adequate and proper service outweighs the burdens imposed by the rules. Therefore, no small business exemption is provided.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:9.

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

SUBCHAPTER 4. [SOLID WASTE INDUSTRIES](Reserved)

[14:9-4.1]14:3-10.20 Certificates for solid waste disposal

(a) No person, or any person controlling, controlled by, or under common control with such person, shall hold a certificate as a solid waste collector or solid waste disposal operator authorizing operation for the collection or disposal of solid waste, if such person, or any such controlling person, controlled person, or person under common control, holds another certificate to operate as a solid waste collector or solid waste disposal operator.

(b) For the purpose of this regulation, where reference is made to control (in referring to a relationship between any persons), such reference shall be construed to include actual as well as legal control, whether maintained or exercised through or by reason of the method of or circumstances surrounding organization or operation, through or by common directors, officers or stockholders, a voting trust or trusts, a holding or investment company or companies, or through or by any other direct or indirect means; and to include the power to exercise control.

(c) The Board may, for good cause shown consistent with the public interest, find that multiple certificates shall be issued, notwithstanding the provisions set forth in subsections (a) and (b) of this Section.

(d) This rule does not prohibit a person, or any person controlling, controlled by or under common control with such person from holding one certificate as a solid waste collector and one certificate as a solid waste disposal operator.

[14:9-4.2]14:3-10.21 Property, equipment and facilities

(a) All public utilities engaged in the business of solid waste collection or solid waste disposal shall own and have title to all property, equipment and facilities used and useful in providing safe, adequate and proper service.

(b) The solid waste utility may use property, equipment and facilities to which it does not have title provided it enters into an agreement (lease) and said agreement is filed with the Board. Such filing shall contain a statement therein whereby the lessor of the property, equipment and facilities to be used for utility purposes agrees that his interest in such property, equipment and facilities becomes subject to the jurisdiction and regulation of the Board for term of said agreement.

(c) The Board may for good cause shown determine the extent of the property, equipment and facilities which may be used by the solid waste utility not having title thereto.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Police and Firemen's Retirement System

Proposed Readoption: N.J.A.C. 17:4

Authorized By: Police and Firemen's Retirement System,

Anthony Ferrazza, Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1990-134.

Submit comments by April 18, 1990 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Division of Pensions is constantly reviewing the administrative rules within N.J.A.C. 17:4 concerning the Police and Firemen's Retirement System. When the Division becomes aware of a change in the laws or a court decision that possibly could affect the operations of the retirement system, the administrative rules are reviewed and, if changes therein are mandated, steps are taken to propose changes to those rules to

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conform to the new statute or court decision. Additionally, the rules are periodically reviewed by the Division's staff to ascertain if the current rules are necessary and/or cost efficient. After careful scrutiny of the current rules in N.J.A.C. 17:4, the Division is satisfied that they are necessary and needed for the efficient operation of the Police and Firemen's Retirement System. Accordingly, the Division of Pensions, in conjunction with the Board of Trustees of the Police and Firemen's Retirement System, proposes to readopt the current rules within N.J.A.C. 17:4 and to extend through readoption the expiration date for such rules under Executive Order No. 66(1978) to July 1, 1995.

The current rules within N.J.A.C. 17:4, Police and Firemen's Retirement System, deal with administration, enrollment, insurance and death benefits, membership, purchases and eligible service, retirement and transfers. Elsewhere in this issue of the New Jersey Register is proposed an amendment to N.J.A.C. 17:4-1.1 changing the date of the monthly System Board of Trustees meeting.

Social Impact

The rules governing the Police and Firemen's Retirement System affect and work to the benefit of past, present and future police and firemen of the State, counties, municipalities and other public agencies. The taxpaying public is affected by these rules in the sense that public funds are used to fund the system.

Economic Impact

While the readoption of the rules by themselves will not present any adverse economic impact to the public, the payment of the benefits and claims mandated in the statutes, to the economic benefit of enumerated police and firemen, are funded by public employer contributions and thus indirectly by taxpayers. If the administrative rules are not readopted, the benefits and claims mandated by the statutes must still be paid. Without the administrative rules to provide for the efficient operation of the system, financial chaos would occur.

Regulatory Flexibility Statement

The rules of the Police and Firemen's Retirement System only affect public employers and employees. Thus, this proposed readoption and repeal do not impose any reporting, recordkeeping or other compliance requirement upon small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:4.

(a)

DIVISION OF PENSIONS

**Police and Firemen's Retirement System
Date of Board Meetings**

Proposed Amendment: N.J.A.C. 17:4-1.1

Authorized By: Police and Firemen's Retirement System,
Anthony Ferrazzo, Secretary.

Authority: N.J.S.A. 43:16A-13(7).

Proposal Number: PRN 1990-135.

Submit comments by April 18, 1990 to:

Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

This proposed amendment to N.J.A.C. 17:4-1.1 concerns the changing of the meeting dates of the Board of Trustees of the Police and Firemen's Retirement System from the fourth Monday of each month to the third Monday of each month. The proposed amendment is being made in order to accommodate the Management Information Services as well as the Secretarial Services Unit in their functional operation of services.

Social Impact

The proposed amendment will affect members of the public who attend the Board's meetings but will not adversely affect the public at large.

Economic Impact

The proposed amendment will not have any adverse economic impact upon the State, members of the system, or the taxpaying public.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Since the rules of the Division of Pensions only impact upon public employers and/or employees, this amendment will not have any adverse effect upon small business or private industry in general.

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

17:4-1.1 Board meetings

The Board of Trustees shall meet on the [fourth] **third** Monday of each month, unless a change is declared in order by the [chairman] **chairperson** at an appropriate time.

COMMUNITY AFFAIRS

(b)

DIVISION OF HOUSING AND DEVELOPMENT

**Uniform Construction Code
Subcodes**

**Proposed Amendments: N.J.A.C. 5:23-3.14, 3.15,
3.16, 3.17, 3.20 and 3.21**

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

Authority: N.J.S.A. 52:27D-123 and 124.

Proposal Number: PRN 1990-144.

Submit comments by April 18, 1990 to:

Michael L. Ticktin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

Section 5 of the State Uniform Construction Code Act, N.J.S.A. 52:27D-123, provides that "the initial adoption of a model code or standard as a subcode shall constitute adoption of any subsequent revisions or amendments thereto." However, it is necessary, when revisions or amendments are made to model codes, for the Department to amend the appropriate sections of N.J.A.C. 5:23 so that cross-references will be correct. Accordingly, the Department proposes these rule amendments in order to enable code enforcement officials, builders and property owners to use the 1989 Accumulative Supplements to the BOCA National Building Code/1987 and the BOCA National Mechanical Code/1987, the 1989 Supplement to the National Standard Plumbing Code, the National Electrical Code/1990, and the CABO One and Two Family Dwelling Code/1989.

These codes have been adopted by reference as the building, fire protection, mechanical, plumbing, electrical and one- and two-family dwelling subcodes of the State Uniform Construction Code. The codewriting organizations that sponsor these codes engage in a public code change process and issue supplements between succeeding editions of the codes. This enables the codes to respond rapidly to technological change. Modifications made to the supplements and to the new editions of the codes relate to the administration and enforcement procedures of the State Uniform Construction Code and do not alter the technical, substantive provisions of the model codes except to the extent that it is necessary to do so in order to make the adopted codes consistent with each other.

Most of the changes made by this proposal simply recodify the requirements to parallel the recodifications made by the model codes. Other changes have been made to clarify the requirements where there is a conflict between the BOCA and another requirement, such as the CABO or Department of Environmental Protection requirements.

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An amendment has been made to N.J.A.C. 5:23-3.20(c)3 to clarify that, for those tanks which fall under the scope of the Department of Environmental Protection's rules at N.J.A.C. 7:14B, the rules of the Department of Environmental Protection will apply.

An amendment has been made to N.J.A.C. 5:23-3.21(b)lii(5) to clarify the requirement.

An amendment has been made to N.J.A.C. 5:23-3.21(b)2i to clarify the requirements and to conform to the format of the requirements as presented in the model code, so that it will be easier for the regulated public to compare to the model code. N.J.A.C. 5:23-3.21(b)2vi and vii have been deleted, since the 1989 changes to the model code are now the same as the State requirements and, therefore, no exception is necessary. N.J.A.C. 5:23-3.21(b)5, 6 and 7 have been added to clarify the administrative/enforcement requirements, since Section R-108 had been deleted by a previous rulemaking. A requirement that fireplaces be installed according to their listing has been added at N.J.A.C. 5:23-3.21(b)8v.

Social Impact

Adoption of the appropriate references to the most recent editions and supplements of the adopted subcodes will allow users of the State Uniform Construction Code to avoid confusion about what code provisions are in effect and to benefit from the most recent technological innovations upon which they are based.

Economic Impact

These substantive technical changes that have become effective by operation of law may decrease construction costs in some cases and, perhaps, increase them in others. Correct cross-referencing, to the extent that it results in diminished uncertainty as to what is required, may be expected to reduce the chance that work will be done in reliance upon obsolete provisions and then have to be corrected at greater expense.

Regulatory Flexibility Statement

These proposed amendments, made to ensure that the State Uniform Construction Code remains consistent, merely reflect changes already made by codewriting organizations and in effect in New Jersey by operation of law. The Department believes that there should be no differential requirements based on business size. All businesses, regardless of size, are subject to the adopted subcodes of the State Uniform Construction Code and must remain so in order to maintain uniformly safe standards of construction throughout the State.

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

5:23-3.14 Building subcode

(a) Rules concerning the building subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c. 217, the [commissioner] **Commissioner** hereby adopts the model code of the Building Officials and Code Administrators International Inc., known as the "BOCA National Building Code/1987," including all subsequent revisions and amendments thereto. This code is hereby adopted by reference as the building subcode of New Jersey subject to the modification stated in [subsection] (b) [of this section] **below**.

i. Copies of this code may be obtained from the sponsor at: BOCA, International, 4051 W. Flossmoor Road, Country Club Hills, Illinois [60477] **60478-5795**.

ii. (No change.)

2. (No change.)

3. The [1988] **1989 Accumulative** Supplement to the BOCA National Building Code/1987 is adopted by reference with modifications as cited in (c) below as part of the building subcode for New Jersey.

(b) (No change.)

(c) The following articles or sections of the [1988] **1989 Accumulative** Supplement to the building subcode are modified as follows:

1. The following amendment is made to Article 1 of the building subcode, entitled "Administration and Enforcement":

i. Sections **101.6**, 108.2, 108.2.1, 111.4, 115.2, 115.2.3.2, **115.5**, **122.1**, **122.4** are deleted.

2. The following [amendment is] **amendments are** made to Article 2 of the building subcode, entitled "Definitions":

i. (No change.)

ii. **The definition, "Posted use and occupancy" is amended to delete the words "Section 122.0" and substitute in lieu thereof "N.J.A.C. 5:23-3.5".**

3. (No change.)

4. **The following amendments are made to Article 8 of the building subcode, entitled "Means of Egress":**

i. Sections **812.4**, **812.4.1.2** and **812.4.4**, are amended to delete the phrase "**15-pounds (73N)**" and substitute in lieu thereof "**8-pounds (39N)**".

ii. Section **815.4** is amended to delete the second sentence and substitute in lieu thereof "**Barrier Free accessibility shall be in accordance with the Barrier-Free Subcode**".

iii. Section **815.5** is amended to delete the third sentence and substitute in lieu thereof "**Barrier-Free accessibility shall be in accordance with the Barrier-Free Subcode**".

5. **The following amendment is made to Article 11 of the building subcode, entitled "Structural Loads":**

i. Section **1113.4.1** is amended to add the phrase "**unless established otherwise by the Department**" at the end of the second sentence.

Recodify existing 4. as **6**. (No change in text.)

7. **The following amendment is made to Article 32 of the building subcode, entitled "Repair, Alteration, Addition to, and Change of Use of Existing Buildings":**

i. **Article 32 is deleted in its entirety.**

Recodify existing 5. as **8**. (No change in text.)

5:23-3.15 Plumbing subcode

(a) Rules concerning subcode adopted are as follows:

1.-2. (No change.)

3. **The 1988 and 1989 supplements to the National Standard Plumbing Code/1987 are adopted by reference with modifications as cited in (c) and (d) below as part of the plumbing subcode for New Jersey.**

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

(d) The 1989 supplement to the 1987 National Standard Plumbing Code is adopted with the following amendments:

1. (No change.)

2. Chapter 7 of the Plumbing Subcode, entitled "Plumbing Fixtures," is amended as follows:

i. (No change.)

ii. Table 7.24.1 Note #1 is amended to delete the words, "for handicapped requirements see local, state and [nation] **national** ordinances" and substitute, in lieu thereof, the words "for handicapped requirements see the State Barrier Free Subcode, N.J.A.C. 5:23-7[.1 et seq]."

3. Appendix D of the Plumbing Subcode, entitled "Water conservation," is amended as follows:

i. (No change.)

ii. Item D.7 is [deleted in its entirety, and substitute in lieu thereof] **amended to delete the last sentence beginning "Self-closing faucet" and add a note after the first sentence to read "Note: ["]See the State Barrier Free Subcode, N.J.A.C. 5:23-7[.1 et seq]."**

5:23-3.16 Electrical subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the [commissioner] **Commissioner** hereby adopts the Model Code of the National Fire Protection Association known as ["The] **the** "National Electrical Code/[1987]1990," including all subsequent revisions and amendments thereto, as the electrical subcode for New Jersey.

i. (No change.)

2. The National Electrical Code/[1987]1990, including all subsequent revisions and amendments thereto, may be known and cited as "the electrical subcode."

(b) The following chapters or articles of the electrical subcode are amended as follows:

1.-3. (No change.)

4. Chapter 5 of the electrical subcode, entitled "Special Occupancies," is amended as follows:

i. In Article 550, entitled "Mobile Homes and Mobile Home Parks," delete from the title the words "Mobile Homes and".

(1) (No change.)

(2) [Section A] **Part B**, entitled "Mobile Homes," [,] comprising sections [500-5] **550-5** through 550-15, is deleted in its entirety with the exception of section [500-5(a)] **550-5(a)**, which shall be retained.

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ii. In Article 551, entitled "Recreational Vehicles and Recreational Vehicle Parks," [.] delete from the title the words "Recreational Vehicles and."

(1) (No change.)

(2) [Section A, entitled "Recreational Vehicles," comprising sections 551-3 through 551-27(b) is deleted in its] **Parts B, C, D, E and F, comprising sections 551-10 through 551-60, are deleted in their entirety.**

5:23-3.17 Fire protection subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, as amended, the [commissioner] **Commissioner** hereby adopts the following portions of the building, electrical and mechanical subcodes to the extent delineated in N.J.A.C. 5:23-3.4, as the Fire Protection Subcode for New Jersey.

i. **BOCA National Building Code 1987 with 1989 Accumulative Supplement of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.14):**

(1)-(6) (No change.)

(7) Section 2301.0 and 2302.0 of Article 23—Roofs and Roof Coverings;

(8)-(11) (No change.)

ii. **National Electrical Code/[1987]1990 of the National Fire Protection Association (N.J.A.C. 5:23-3.16).**

(1)-(4) (No change.)

iii. **BOCA National Mechanical Code/1987 with 1989 Accumulative Supplement of the Building Officials and Code Administrators International, Inc. (N.J.A.C. 5:23-3.20).**

(1)-(3) (No change.)

2. (No change.)

(b) (No change.)

5:23-3.20 Mechanical Subcode

(a) Rules concerning subcode adopted are as follows:

1.-2. (No change.)

3. The [1988] **1989 Accumulative Supplement** to the **BOCA National Mechanical Code/1987** is adopted by reference with modifications cited in (c) below as part of the mechanical subcode for New Jersey.

(b) (No change.)

(c) The following sections of the [1988] **1989 Accumulative Supplement** to the mechanical subcode are modified as follows:

1. **The following amendment is made to Article 1 of the mechanical subcode, entitled "Administration and Enforcement":**

i. **Section M-101.5 is deleted in its entirety.**

Recodify existing 1. as 2. (No change in text.)

3. **The following amendment is made to article 9 of the mechanical subcode, entitled "Flammable and Combustible Liquid Storage Systems":**

i. **Section M-900.1 is amended to add the sentence "For those tanks that fall under the scope of the Department of Environmental Protection's Underground Storage Tank Systems regulations, N.J.A.C. 7:14B, the requirements of this article that conflict with DEP regulations shall be inapplicable."**

Recodify existing 2. as 4. (No change in text.)

5:23-3.21 One and two family dwelling subcode

(a) Rules concerning subcode adopted are as follows:

1. Pursuant to authority of P.L. 1975, c.217, the Commissioner hereby adopts the model code of the Council of American Building Officials known as "The CABO One and Two Family Dwelling Code/[1986]1989", including all subsequent revisions and amendments thereto, as the one and two family dwelling subcode for New Jersey subject to the modifications stated in (b) below.

i. Copies of this code may be obtained from **BOCA International, 4051 West Flossmoor Road, County Club Hills, Illinois [60477] 60478-5795.**

(b) The following articles or sections of the one and two family building subcode are modified as follows:

1. Chapter 1 entitled "Administrative" is amended as follows:

i. Sections R-101 [to] through R-114 are deleted and substitute in lieu thereof UCC regulations.

ii. Section R-115 is amended to change the definitions as follows:
(1)-(4) (No change.)

(5) The definition of the term "Story (first)" is amended to add, after the word "grade," the phrase "except that a basement shall be considered as a story above grade when the [distance from grade to the] finished surface of the floor above the basement is more than 6 feet [for more than 50 percent of the total perimeter or more than 12 feet at any point] **above grade, more than 6 feet above the finished ground level for more than 50 percent of the total building perimeter, or more than 12 feet above the finished ground level at any point.**

2. Chapter 2 entitled "Building Planning" is amended as follows:

i. Sec. [R-202.2] **R-201.2** is amended to [include the following information in] **modify Table [R-202] R-201.2 to read as follows:**

ii. Sec. [R-203.1] **R-202.1** in the first and third lines, delete "3 feet" and substitute in lieu thereof, "5 feet";

iii. Sec. [R-210.1] **R-209.1—Opening Protection—Delete and substitute in lieu thereof the following:** "Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid core wood doors not less than 1-3/4 inches in thickness or approved equivalent. A raised sill shall also be provided between garage and adjacent interior spaces with a minimum height of 4 inches";

iv. Sec. [R-210.2] **R-209.2—Separation Required—Delete and substitute in lieu thereof the following:** "Private garages located beneath rooms shall have walls, partitions, floors and ceilings separating the garage space from the adjacent interior spaces constructed of not less than 1 hour fire-resistance rating. Attached private garages shall be completely separated from the adjacent interior spaces and the attic area by means of 1/2-inch gypsum board or equivalent applied to the garage side";

v. Sec. [R-213] **R-212** under the second exception in the second line, delete "8½ inches" and substitute in lieu thereof, "8 inches";

[vi. Sec. R-214.2, in the fifth line, delete "4 inches" and substitute in lieu thereof, "6 inches";]

[vii. Sec. R-215.1] **R-214.1**, in the third line delete "four or more risers" and substitute in lieu thereof, "three or more risers";

[viii.] vi. Sec. [R-216.1] **R-215.1** is amended to delete the second paragraph;

[ix.] vii. Sec. [R-216.2] **R-215.2** is amended to delete the words "or in [building which undergo . . . section] buildings" [at the] to end of paragraph;

[x.] viii. Sec. [R-217.2.4] **R-216.2.4**, after the words "foam filled doors" add the phrase "except for fire doors";

[xi.] ix. Add new Sec. [R-221] **R-220** "Height and Area Limitations."

"The provisions of this subcode are limited to Use Group R-4 (detached one and two-family dwellings), 5B construction, with no more than 2 stories or 35 feet in height and 4,800 square feet in area per floor."

3. (No change.)

4. Chapter 4 is amended as follows:

i. Sec. **R-401.1**, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7";

Recodify existing i. as ii. (No change in text.)

[ii.] iii. Sec. R-404.2, in second paragraph, [fourth] **fifth** line, delete "one-third the thickness" and substitute "one half the thickness".

Recodify existing iii. as iv. (No change in text.)

5. Chapter 6 is amended as follows:

i. Sec. **R-601.1**, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

6. Chapter 7 is amended as follows:

i. Sec. **R-701.1**, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

7. Chapter 8 is amended as follows:

i. Sec. **R-801.1**, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".

[5.] 8. Chapter 9 is amended as follows:

i. Sec. [R-902.6] **R-901.7** is amended to add the following phrase after 1800°F.[.]: "and embedded in medium duty refractory mortar complying with ASTM C105." Delete the "EXCEPTION";

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- ii. Sec. [R-904.2] **R-903.2**, in the last line, change "10 inches" to "12 inches";
- iii. Sec. [R-904.5] **R-903.5**, in the second line, change "3/8 inches . . . all imposed loads" to "4 inches solid masonry or equivalent";
- iv. Sec. [R-904.7] **R-903.7**, in the second and fourth lines, change "2 inches" to "4 inches";
- v. Sec. [R-905.1] **R-904.1** item #4, is amended to add after the word "opening" the following: "for a fireplace having an opening of less than 6 square feet. The hearth of a fireplace with a larger opening shall extend a minimum of 20 inches beyond the face of the fireplace opening and a minimum of 12 inches on each side of the fireplace opening." Also, [Sec. R-905 is amended to add the following item #6] **in Item #5 of Sec. R-904.1, delete and substitute in lieu thereof:** "Factory Built Fireplaces shall be listed, labeled and tested according to UL 127, and installed according to their listing";

- vi. Sec. [R-906.1] **R-905**—At the end of the section, add "Factory built fireplace stoves shall be tested according to UL 737."
- [6.19. Part IV—Mechanical, is amended as follows:
- i. **Section M-1001, delete the words "Section R-108" and in lieu thereof insert "UCC regulations N.J.A.C. 5:23-3.6 and 3.7".**
- Recodify existing i.-v. as ii.-vi. (No change in text.)
- Recodify existing 7.-8. as 10.-11. (No change in text.)
- [(c) The 1987 and 1988 amendments to "The CABO One and Two Family Dwelling Code/1986" are adopted with the following modifications:
- 1. Section R-109.3 is deleted.
- 2. The amendments to chapters 20, 22, 23 and 24 are deleted.]

[15 Per DCA Bulletin #81-9 Zone 1 Yes 2'6"(s) 3'0"(n) Yes Yes]

Table No. R-201.2
CLIMATIC AND GEOGRAPHIC DESIGN CRITERIA

ROOF LIVE LOAD (lbs./sq. ft.)	ROOF SNOW LOAD (lbs./sq. ft.)	WIND PRESSURE (lbs./sq. ft.)	SEISMIC CONDITION BY ZONE	SUBJECT TO DAMAGE FROM WEATHERING	FROST LINE DEPTH	SUBJECT TO DAMAGE FROM TERMITE	DECAY
20 See note 1	20 See notes 1, 4	34 see note 5 24 See note 6 18 See note 7	See note 3	Severe See note 2	2'-6" (Southern Area) 3'-0" (Northern Area) See notes 2, 4	Yes	Yes

Notes:

1. Roof live and snow loads are not additive.
2. Weathering may require a higher strength concrete or grade of masonry than necessary to satisfy structural requirements of this code. The grade of masonry units shall be determined from ASTM C34, C55, C62, C73, C90, C145, C216, or C652 listed in Section S-26.201. The frost line depth may require deeper footings than indicated in Figure No. R-303.
3. New Jersey is divided into two zones. Zone 1 consists of Monmouth and Burlington Counties and all counties to the south. Zone 2 consists of Mercer and Middlesex Counties and all counties to the North.
4. The enforcing agency having jurisdiction may establish values other than the ones listed for "roof snow load," and "frost line depth" if warranted by documented local climatic and geographic conditions.
5. Wind pressure for Atlantic, Cape May, Monmouth and Ocean counties, and Bass River, Washington, Woodland townships in Burlington County.
6. Wind pressure for Bergen, Camden, Cumberland, Essex, Gloucester, Hudson, Mercer, Middlesex, Morris, Passaic, Salem, Somerset, Union, and Burlington (except for Bass River, Washington, Woodland townships) counties.
7. Wind pressure for Hunterdon, Warren and Sussex counties.

(a)

**DIVISION OF HOUSING AND DEVELOPMENT
Rooming and Boarding House Standards
Licensing; Nonprofit Religious Drug and Alcohol
Rehabilitation Facilities
Proposed Amendments: N.J.A.C. 5:27-1.6, 1.9, 2.1
and 8.1**

Authorized By: Melvin R. Primas, Jr., Commissioner,
Department of Community Affairs.
Authority: N.J.S.A. 55:13B-4.
Proposal Number: PRN 1990-140.

Submit comments by April 18, 1990 to:
Michael L. Tickin, Esq.
Administrative Practice Officer
Department of Community Affairs
CN 802
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed amendments establish a new fifth class of licensure (Class E) for alcohol and drug rehabilitation facilities subject to the Rooming and Boarding House Act and owned and operated by nonprofit religious

organizations and makes inapplicable to such facilities the following rules: N.J.A.C. 5:27-1.6(i), 1.7(a)5-8, 3.1(a)1-4, 9, 13 and 14, 3.2(d), 3.3(c), 3.4(b), 3.10, 8.1(b)2, 8.2, 8.3, 8.4(a) and 9.2(a). These rules deal, respectively, with discrimination as to creed, background information for "primary owner," rights concerning financial management, clothing, hairstyle and personal effects, communication, services for the facility and religious practice, Bureau veto of house rules, eviction for good cause, notice to social service agencies, disclosure of rates and services, resident's copy of a lease or occupancy agreement, financial records, additional recordkeeping requirements, retention of financial records, and food preferences. The amendments are being proposed because the Department has concluded that alcohol and drug rehabilitation facilities subject to the Rooming and Boarding Home Act have special requirements not applicable to other rooming and boarding homes. It is the opinion of the Department that these rules will permit such facilities to operate in a manner more conducive to the services they provide. To that end, the amendments also permit residents' identities to be kept confidential.

The proposed amendments also require that local zoning approval be obtained prior to licensure for all rooming and boarding homes and prior to an increase in the number of residents in all rooming and boarding homes. This provides for formalization of the role of municipalities in allowing these facilities within their municipalities.

Social Impact

The proposed amendments will allow nonprofit religious organizations to operate alcohol and drug rehabilitation facilities which are subject to N.J.S.A. 55:13B-3 et seq. in accordance with their religious tenets, without

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undue Department regulation. At the same time, the health, safety and welfare of the residents of such facilities will continue to be protected. The proposed amendment at N.J.A.C. 5:27-1.6(m) will allow community input regarding these facilities and of all other classes of facilities subject to N.J.S.A. 5:13B-3 et seq., the Rooming and Boarding Home Act.

Economic Impact

There will be no economic impact, inasmuch as the requirements being lessened generally have no cost involved. The annual fee for a Class E license has been set at the lowest permitted by law, inasmuch as the facilities involved are nonprofit religious organizations. The requirement for local zoning approval being added may have an economic impact, in that a fee for evaluation may be charged; however, such a fee would be set by the municipality in which the application is made. The amount of any applicable fee cannot be determined at this time.

Regulatory Flexibility Analysis

The proposed amendments affect only facilities owned and operated by non-profit religious organizations, of which there are three. All of these organizations may be considered small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendments impose no reporting or recordkeeping requirements. Overall, compliance requirements are reduced. The subject facilities are, however, required to obtain a Class E license, and local zoning approval, prior to licensure and prior to an increase in the number of residents. The capital cost and professional services required for such approval will vary, based upon the individual applicant and the requirements of the municipality in which the facility is located. Since all current members of the regulated class are small businesses, the Department does not consider differentiation based upon business size appropriate.

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

5:27-1.6 Licenses

(a) (No change.)
(b) There shall be [four] **five** classes of licenses, which shall be as follows:

- 1.-3. (No change.)
4. Class D license: Valid only for facilities operated under contract with an agency of the State of New Jersey[.]; **and**
5. **Class E license: Valid only for alcohol and drug rehabilitation facilities owned and operated by non-profit religious organizations.**

(c) The annual fee for licenses shall be as follows:

- 1.-3. (No change.)
4. **Class E license: \$75.00;**
Recodify 4.-6. as 5.-7. (No change in text.)
- (d)-(l) (No change.)

(m) No license to operate a rooming or boarding house shall be issued until the applicant has provided proof of local zoning approval. No increase in the number of residents living in a rooming or boarding house shall be permitted without the applicant first providing proof of local zoning approval.

5:27-1.9 Exceptions and exemptions

(a)-(d) (No change.)
(e) **Owners and operators who have been issued Class E licenses are, with respect to drug or alcohol rehabilitation facilities owned or operated under such licenses, exempt from the following requirements of this chapter:**

1. N.J.A.C. 5:27-1.6(i), with respect to creed only;
2. N.J.A.C. 5:27-1.7(a)5 through 8;
3. N.J.A.C. 5:27-3.1(a)1 through 4, 9, 13 and 14;
4. N.J.A.C. 5:27-3.2(d);
5. N.J.A.C. 5:27-3.3(c);
6. N.J.A.C. 5:27-3.4(b);
7. N.J.A.C. 5:27-3.10;
8. N.J.A.C. 5:27-8.1(b)2;
9. N.J.A.C. 5:27-8.2;
10. N.J.A.C. 5:27-8.3;
11. N.J.A.C. 5:27-8.4(a); **and**
12. N.J.A.C. 5:27-9.2(a).

5:27-2.1 Definitions

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

...
“**Non-profit religious organization**” means an organization that has tax-exempt status as a nonprofit religious organization in accordance with section 501(c)(3) of the Internal Revenue Code and that owns and operates a boarding house that is exempt from local property taxation.
...

5:27-8.1 Residents' records

(a)-(d) (No change.)
(e) **An owner or operator of a boarding house owned and operated under a Class D or E license shall be permitted to develop and follow a method that will permit that the resident may remain anonymous when it is necessary to do so for rehabilitative purposes.**

TRANSPORTATION**(a)****DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID****BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS****Restricted Parking and Stopping**

Routes N.J. 35 in Monmouth County; U.S. 40 in Gloucester County; N.J. 49 in Salem County; N.J. 77 in Gloucester County; U.S. 130 in Burlington County; N.J. 168 in Camden County; and N.J. 12 in Hunterdon County

Proposed Amendments: N.J.A.C. 16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, and 1.62

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Safety Programs.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1, and 39:4-199.
Proposal Number: PRN 1990-136.

Submit comments by April 18, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments will establish “no stopping or standing” zones along Routes N.J. 35 in Red Bank Borough, Monmouth County; U.S. 40 in Franklin Township, Gloucester County; N.J. 77 in Harrison Township, Gloucester County; and N.J. 12 in Kingwood Township, Hunterdon County; and “no parking bus stop” zones along Routes N.J. 49 in Salem City, Salem County; U.S. 130 in Delran Township, Burlington County; and N.J. 168 in Gloucester Township, 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 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 N.J. 35 in Monmouth County; U.S. 40 in Gloucester County; N.J. 77 in Gloucester County; and N.J. 12 in Hunterdon County; and “no parking bus stop” zones along Routes N.J. 49 in Salem County; U.S. 130 in Burlington County, and N.J. 168 in Camden County was warranted.

The Department, therefore, proposes to amend N.J.A.C. 16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, and 1.62, based upon the requests from the local governments and the traffic investigations.

Social Impact

The proposed amendments will establish "no stopping or standing" zones along Routes N.J. 35 in Red Bank Borough, Monmouth County; U.S. 40 in Franklin Township, Gloucester County; N.J. 77 in Harrison Township, Gloucester County; and N.J. 12 in Kingwood Township, Hunterdon County; and "no parking bus stop" zones along Routes N.J. 49 in Salem City, Salem County; U.S. 130 in Delran Township, Burlington County; and N.J. 168 in Gloucester Township, 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 the installation of "no stopping or standing" zones signs and the local governments will bear the costs for "no parking bus stop" zones signs. Motorists who violate the amended rules will be assessed the appropriate fine.

Regulatory Flexibility Statement

The proposed amendments do not place any bookkeeping, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public.

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

16:28A-1.25 Route 35

(a) The certain parts of State highway Route 35 described in this subsection are designated and established as "no stopping or standing" zones.

1. (No change.)

2. No stopping or standing in the Borough of Red Bank, Monmouth County:

i. Along the northbound (easterly) side:

(1) (No change.)

(2) West Front Street—Riverside Avenue:

(A) From Maple Avenue to a point [600 feet northerly therefrom] **35 feet north of the northerly curb line of Allen Place.**

(3) (No change.)

ii-iv. (No change.)

3.-21. (No change.)

(b)-(e) (No change.)

16:28A-1.28 Route U.S. 40

(a) The certain parts of State highway Route [US] U.S. 40 described in this subsection are designated and established as "no stopping or standing" zones.

1. No stopping or standing in Franklin Township, Gloucester County:

i-ii. (No change.)

iii. **Along both sides:**

(1) **Beginning at the westerly curb line of Trail Road to the easterly curb line of Elmwood Avenue.**

(2) **Between a point 1,000 feet west of the westerly curb line of County Road 555 (Main Lake Road) and a point 1,000 feet east of the easterly curb line of County Road 555 (Main Lake Road).**

2.-8. (No change.)

(b) (No change.)

16:28A-1.34 Route 49

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

(c) The certain parts of State highway Route 49 described in this subsection shall be designated and established as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

[1. Along East Broadway westbound on the northerly side in the City of Salem, Salem County:

i. Far side bus stop:

(1) **Market Street—Beginning at the westerly curb line of Market Street and extending 110 feet westerly therefrom.**

ii. Near side bus stop:

(1) **Front Street—Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.**

2. **Along West Broadway westbound on the northerly side in the City of Salem, Cumberland County:**

i. Near side bus stop:

(1) **Front Street: Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.]**

1. **Along the westbound (northerly) side in the City of Salem, Salem County:**

i. **East Broadway:**

(1) **Far side bus stop:**

(A) **Market Street—Beginning at the westerly curb line of Market Street and extending 110 feet westerly therefrom.**

(2) **Near side bus stop:**

(A) **Front Street—Beginning at the easterly curb line of Front Street and extending 155 feet easterly therefrom.**

ii. **West Broadway:**

(1) **Near side bus stop:**

(A) **Front Street—Beginning at the easterly line of Front Street and extending 200 feet easterly therefrom.**

2. **Along the eastbound (southerly) side in the City of Salem, Salem County:**

i. **East Broadway:**

(1) **Near side bus stop:**

(A) **New Market Street—Beginning at the westerly curb line of New Market Street and extending 105 feet westerly therefrom.**

3.-4. (No change.)

(d) (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.-3. (No change.)

4. No stopping or standing in Harrison Township, Gloucester County:

i. Along [the easterly (northbound) side] **both sides:**

(1) [Between the intersection of County Road No. 581 and the intersection of Route 45.] **For the entire length within the corporate limits of the Township of Harrison, 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 shall be posted only in areas where an official township resolution has been submitted to the Department.**

5. (No change.)

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

16:28A-1.46 Route U.S. 130

(a) (No change.)

(b) The certain parts of State highway Route U.S. 130 described in this subsection shall be established and designated as "no parking bus stop" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is hereby granted to erect appropriate signs at the following established bus stops:

1. Along the westerly (southbound) side in the Township of Pennsauken, County of Camden:

i. Mid-block bus stops:

(1) (No change.)

(2) **Hilton Road—Between Hilton Road and John Tipton Boulevard beginning 200 feet south of the southerly curb line of Hilton Road and extending 135 feet southerly therefrom.**

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

[4. Along the westerly (southbound) side in Pennsauken Township, Camden County:

i. Mid-block bus stop:

(1) **Hilton Road—Between Hilton Road and John Tipton Boulevard beginning 200 feet south of the southerly curb line of Hilton Road and extending 135 feet southerly therefrom.]**

[5.] 4. Along the southbound (westerly) side in Delran Township, Burlington County:

PROPOSALS

Interested Persons see Inside Front Cover

TRANSPORTATION

- i. Near side bus stops:
 - (1)-(2) (No change.)
 - (3) Swedes Run Driveway—Beginning at the northerly curb line of Swedes Run Driveway and extending 120 feet northerly therefrom. Recodify existing 6. as 5. (No change in text.)
 - 6.-11. (No change.)
 - (c) (No change.)

16:28A-1.51 Route 168

(a) (No change.)
 (b) The certain parts of State highway Route 168 described in this subsection shall be designated and established as “no parking bus stop” zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

- 1.-5. (No change.)
- 6. Along the northbound (easterly) side in Gloucester Township, Camden County:
 - i. (No change.)
 - ii. Near side bus stops:

- (1) Ninth Street—Beginning at the northerly curb line of Ninth Street and extending 105 feet northerly therefrom.
- (2) Woodland Avenue—Beginning at the southerly prolonged curb line of Woodland Avenue and extending 105 feet southerly therefrom.
- (3) Asyla Road—Beginning at the southerly curb line of Asyla Road and extending 110 feet southerly therefrom.
- (4) Hillcrest Avenue—Beginning at the southerly curb line of Hillcrest Avenue and extending 105 feet southerly therefrom.
- (5) Drexel Avenue—Beginning at the southerly curb line of Drexel Avenue and extending 105 feet southerly therefrom.
- (6) East Lake Avenue—Beginning at the southerly curb line of East Lake Avenue and extending 120 feet southerly therefrom.
- (7) Lincoln Avenue—Beginning at the southerly prolonged curb line of Lincoln Avenue and extending 120 feet southerly therefrom.

- iii. Far side bus stops:
 - (1) Fifth Avenue—Beginning at the northerly curb line of Fifth Avenue and extending 100 feet northerly therefrom.
 - (2) Cressmont Avenue—Beginning at the northerly curb line of Cressmont Avenue and extending 120 feet northerly therefrom.
 - (3) East Church Street—Beginning at the northerly curb line of East Church Street and extending 100 feet northerly therefrom.
 - (4) Coles Road—Beginning at the northerly curb line of Coles Road and extending 120 feet northerly therefrom.

7. Along the southbound (westerly) side in Gloucester Township, Camden County:

- i. Far side bus stops:
 - (1) Almonesson Blenheim Road—Beginning at the southerly curb line of Almonesson Blenheim Road and extending 105 feet southerly therefrom.
 - (2) Cressmont Avenue—Beginning at the southerly prolonged curb line of Cressmont Avenue and extending 100 feet southerly therefrom.
 - (3) Hillcrest Avenue—Beginning at the southerly prolonged curb line of Hillcrest Avenue and extending 110 feet southerly therefrom.
 - (4) Woodland Avenue—Beginning at the southerly curb line of Woodland Avenue and extending 100 feet southerly therefrom.

- ii. Near side bus stops:
 - (1) Lincoln Avenue—Beginning at the northerly curb line of Lincoln Avenue and extending 105 feet northerly therefrom.
 - (2) West Church Street—Beginning at the northerly curb line of West Church Street and extending 105 feet northerly therefrom.
 - (3) Lake Avenue—Beginning at the northerly curb line of Lake Avenue and extending 105 feet northerly therefrom.
 - (4) Elaine Avenue—Beginning at the northerly curb line of Elaine Avenue and extending 105 feet northerly therefrom.
 - (5) Lakeland Road—Beginning at the northerly curb line of Lakeland Road and extending 105 feet northerly therefrom. Recodify existing 7.-9. as 8.-10. (No change in text.)
 - (c) (No change.)

16:28A-1.62 Route 12

(a) The certain parts of State highway Route 12 described [herein below] in this subsection shall be [, and hereby are,] designated and established as [“no parking”] “no stopping or standing” zones where stopping or standing is prohibited at all times [except as provided in N.J.S.A. 39:4-1.39].

[1. No stopping or standing along both sides for its entire length within the corporate limits of the Borough of Flemington including all ramps and connections under the jurisdiction of the Commissioner of Transportation.]

1. No stopping or standing in Flemington Borough, Hunterdon County along both sides for the entire length within the corporate limits of the Borough of Flemington, including all ramps and connections under the jurisdiction of the Commissioner of Transportation.

2. No stopping or standing in Kingwood Township, Hunterdon County along both sides for the entire length within the corporate limits of the Township of Kingwood, 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 shall be posted only where an official township resolution has been submitted to the Department.

RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Special Hearing Rules

Special Education Program

Uniform Administrative Procedure Rules

Representation by Non-lawyers

Adopted Repeal and New Rules: N.J.A.C. 1:6A-1.1, 4.1, 4.2, 4.3, 9.1, 10.1, 12.1, 13.1, 14.1, 14.2, 14.3, 18.1, 18.2, 18.3, 18.4, 18.5

Proposed: September 5, 1989 at 21 N.J.R. 2693(a).

Adopted: February 21, 1990 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: February 21, 1990 as R.1990 d.169, with the proposed amendment to N.J.A.C. 1:1-5.4 and new rule 1:6A-5.1 not adopted and N.J.A.C. 1:6A-4.2 not repealed but recodified as N.J.A.C. 1:6A-5.1.

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

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995, N.J.A.C. 1:6A May 4, 1992, N.J.A.C. 1:1.

Summary of Public Comments and Agency Responses:

The Office of Administrative Law (OAL) proposed the amendment of N.J.A.C. 1:1-5.4 and the replacement of rules at N.J.A.C. 1:6A on September 5, 1989 at 21 N.J.R. 2693(a). The reasons for the proposed changes were explained in the Register notice. Briefly, the repeal and proposed new rules at N.J.A.C. 1:6A were designed primarily to bring the OAL hearing rules into conformity with Department of Education rules which were revised in 1988. The amendment of N.J.A.C. 1:1-5.4 and a related change in N.J.A.C. 1:6A-5.1 were proposed in response to a Federal court decision, *Arons v. New Jersey Board of Education*, 842 F.2d 58 (3rd Cir. 1988). The rule change would limit the use of education specialists (also called non-lawyer advocates or lay advocates) to assistance functions in special education hearings conducted by the OAL for the Department of Education. In *Arons*, the court said that Federal law did not authorize education specialists to "represent" parents in the due process hearings required by the Education for All Handicapped Children Act; the law authorized education specialists only to "assist" parents.

There was a great deal of opposition to the proposal. The OAL received hundreds of letters and petitions urging that advocates be permitted to continue providing representation in hearings. Because of the volume of the response, the OAL decided to conduct public hearings. These were held on October 18, 1989 at the Trenton OAL office and on October 20, 1989 at the Newark OAL office. Pursuant to N.J.S.A. 52:14B-4(g), Administrative Law Judge Beatrice Tylutki served as hearing officer at the public hearings. She filed her findings with OAL Director Jaynee LaVecchia on November 17, 1989. Copies of Judge Tylutki's report are available for public inspection in the libraries at the Trenton and Newark OAL offices. In addition, copies may be obtained from the OAL for the cost of duplication and postage, if mailed. The report is 13 pages long; the price of duplication at copying costs suggested by the Right to Know Law (N.J.S.A. 47:1A-2) would be \$5.75. Postage would be an additional 75 cents.

Judge Tylutki considered all comments on the proposal in making her recommendations. These comments included approximately 500 individual letters, at least that many signatures on petitions, a videotape of remarks made at a meeting sponsored by the Parent Information Center, and the comments made at the two public hearings. Of the comments, only three favored the proposal. Almost all of the comments focused on the non-lawyer representation aspect of the proposal. A few comments concerned other proposed rule changes in N.J.A.C. 1:6A.

It was Judge Tylutki's recommendation that the OAL adopt the amendment and new rule as proposed. On the non-lawyer representation issue, Judge Tylutki said that, based on her reading of the Third Circuit opinion

in *Arons*, N.J.A.C. 1:1-5.4 would have to be amended because otherwise the OAL rule would amount to permitting the unauthorized practice of law.

The OAL rule which allows non-lawyer representation is based on New Jersey Court Rule 1:21-1(e). The Court Rule permits non-lawyer representation in certain categories of OAL hearings, among those "where required by federal statute or regulation." The OAL, when it originally adopted N.J.A.C. 1:1-5.4, thought that this Court Rule category would encompass education specialists, but the *Arons* decision makes clear that the Federal law does not "require" that education specialists be permitted to represent parents. Judge Tylutki also recommended adopting the changes proposed in N.J.A.C. 1:6A.

It was clear from the hundreds of comments received and Judge Tylutki's recommendations that many parents viewed the proposed restriction on the activities of education specialists as a serious impairment of their access to OAL hearings. Because such a perception was a grave concern to the OAL, the Office contacted the New Jersey Supreme Court and requested an amendment of Court Rule 1:21-1(e) to specifically include education specialists among the categories of permitted non-lawyer representatives at OAL hearings. The OAL has been advised by the New Jersey Supreme Court that pursuant to N.J. Const. (1947), Art. VI, Sec. 2, par. 3, the Court has temporarily relaxed R.1:21-1(e) until December 31, 1990 "to permit, upon application, an appearance by a non-attorney in a contested case before the Office of Administrative Law to represent parents of handicapped children in special education hearings provided the non-attorney has special knowledge or training with respect to handicapped pupils and their educational needs, or both." By cover letter, the Court also advised the OAL that during the period until December 31, 1990, The Civil Practice Committee and the Committee on the Unauthorized Practice of Law will consider whether to make permanent the proposed special category amendment to R.1:21-1(e).

Under Agency Rulemaking Rules, a proposal must be acted upon within one year. N.J.A.C. 1:30-4.2(c). Since the Supreme Court has granted an extension of the current practice until December 31, 1990 and OAL's proposal was made on September 5, 1989, the proposal cannot be acted upon during the required one-year period. Accordingly, the OAL will not adopt its proposed amendment of N.J.A.C. 1:1-5.4 and new rule N.J.A.C. 1:6A-5.1. The existing representation rule, N.J.A.C. 1:6A-4.2, was not repealed but was recodified as N.J.A.C. 1:6A-5.1. Therefore, the practice regarding representation in special education hearings will remain unchanged. Should the Supreme Court decline to permit appearances by education specialists, the OAL will repropose the proposed limitations. However, the OAL has decided to repeal and adopt all of the other new rules of N.J.A.C. 1:6A as proposed.

The OAL learned through this rulemaking that many parents feel they need assistance during hearings even though the process is supposed to be informal. Legal representation appears to parents, in many cases, to be either unavailable or beyond the parents' means. Therefore, in addition to seeking a change in the Court Rule, the OAL is also committed to taking other steps to further open the process to those parents who wish to have special education hearings before the OAL. First, the OAL Guide to the Hearing Process in Special Education Case is being rewritten to provide greater guidance to parents. The OAL also is studying the need for periodic educational sessions for interested individuals regarding special education hearing procedures. In addition, the OAL is cooperating in the development of law school programs through which law students under the supervision of experienced attorneys would represent parents who meet the legal aid eligibility standards. The OAL is also working with the State Bar and the Institute for Continuing Legal Education to interest more attorneys in the field of special education.

Because of the number of comments on this proposal, it would be impractical to list all the commenters or respond to them individually. Therefore, the OAL has summarized the comments below, along with the OAL's responses.

The Amendment of N.J.A.C. 1:1-5.4

COMMENT: The rule amendment will force parents to use lawyers to represent them in special education hearings. Many parents cannot afford legal representation. In addition, few lawyers are familiar with the area of special education law. Lay advocates are accessible, inexpensive and well-versed in the field. Parents should have the option to use non-lawyer advocates.

ADOPTIONS

ADMINISTRATIVE LAW

RESPONSE: The OAL recognizes that many parents prefer to be represented by education specialists and that many parents claim not to be able to afford a lawyer. However, to continue to permit non-lawyer representation in OAL special education hearings after *Arons* may constitute the unauthorized practice of law. As explained above, the OAL has applied to the Supreme Court for a rule amendment which, if permanently granted, should eliminate this problem.

COMMENT: Many parents commented that they would not be able to represent themselves in a due process hearings. Some felt they did not have the knowledge or ability to participate in the hearing process. Others said that they would be too emotional to be effective.

RESPONSE: Again, the OAL appreciates these comments and understands the problem. However, we believe that amending N.J.A.C. 1:1-5.4 is required by the *Arons* decision and the Attorney General's Office concurs with this position. That is why the OAL applied to the Supreme Court. It is also hoped that the education programs and other OAL efforts will help alleviate some of the anxiety in the current situation.

COMMENT: The rule proposal is a deliberate attack on Marilyn Arons.

RESPONSE: The amendment of N.J.A.C. 1:1-5.4 is in response to the *Arons* court decision and is, in the OAL's opinion, legally necessary. It is not aimed specifically at Marilyn Arons or any other educational specialist. In the past, Ms. Arons has represented parents in several OAL hearings as a non-lawyer representative under N.J.A.C. 1:1-5.4.

COMMENT: The OAL interpretation of the *Arons* decision is overly broad. The decision dealt with whether Ms. Arons could be compensated for representation services, not whether she could provide those services.

RESPONSE: The *Arons* matter initially arose as a controversy over whether or not Ms. Arons could be compensated for her services provided parents in special education proceedings. In the context of deciding that issue, the Third Circuit examined the representation provision of the Federal Education for All Handicapped Children Act and concluded that the law did not authorize or even contemplate that education specialists would provide representation services. The *Arons* decision went on to note that non-lawyer representation in OAL hearings is permitted by an OAL rule, but the Court did not consider the basis of the OAL rule. That rule was adopted in response to New Jersey Court Rule 1:21-1(e), which carves out specific exceptions to the prohibition against the unauthorized practice of law. One of the exceptions was non-lawyer representation "where required by federal statute or regulation." The Court Rule does not specifically authorize representation by non-lawyer advocates in special education hearings. Until *Arons*, the OAL thought lay advocates would be included in the category "where required by federal" law. Since *Arons* makes clear that non-lawyer representation is not required by the Education for All Handicapped Children Act, the OAL is convinced that its rule cannot authorize representation by education specialists in its hearings unless underlying Court Rule is amended. Accordingly, the OAL has applied to the Supreme Court for such an amendment.

COMMENT: It is illogical for the OAL to require legal representation in special education hearings when the law does not require that administrative law judges be attorneys.

RESPONSE: First, nothing in the proposed amendment of N.J.A.C. 1:1-5.4 requires a parent to be represented by an attorney. Furthermore, there is no connection between the OAL's reason for proposing the amendment and law which establishes the qualifications for administrative law judges.

COMMENT: The Parent Information Center is not a "small business" as described in the proposal's Regulatory Flexibility Analysis section, but a not-for-profit organization. The identification of the Parent Information Center as a small business is politically motivated.

RESPONSE: Pursuant to the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. (effective Dec. 4, 1986), any agency proposing a new rule or rule amendment must identify any potential impact on small businesses. The Regulatory Flexibility Act defines small business as "any business which is resident in this State, independently owned and operated and not dominant in its field, and which employs fewer than 100 full time employees." Profit or non-profit status is not a part of this definition. See also, N.J.A.C. 1:30-3.1(f)4ii. No disadvantage or negative connotation should be inferred from including the Parent Information Center within the Regulatory Flexibility Act. In fact, the Act was intended to be protective of small businesses. The OAL does not dispute that the Parent Information Center is a not-for-profit organization. Additionally, whether or not the Parent Information Center is a "small business" is immaterial to the decision to adopt the proposed rulemaking. Finally, the OAL has explained its basis for proposing these rules. The ulterior

"political motives" asserted by some commenters have no basis in fact and are imagined. The OAL has consistently categorically denied any allegations of "political motivation" associated with this rulemaking.

COMMENT: The Economic Impact section of the proposal notice failed to provide an analysis of the impact of the rule change on the parents of handicapped children.

RESPONSE: The Economic Impact section said, in part, "This rule may require some parents of special education children to hire attorneys if they choose not to represent themselves with the assistance of an education specialist." A rulemaking agency is not required to provide a cost-benefit analysis or financial feasibility study for a proposed rule. It is required to provide a statement which "describes the expected costs, revenues, and other economic impact upon governmental bodies of the State, and particularly any segments of the public proposed to be regulated." N.J.A.C. 1:30-3.1(f)3. The OAL believes its proposal notice complied with legal requirements particularly since the rulemaking does not require any expenditure; parents are not required to be represented by counsel. In any event, the OAL has decided not to adopt this portion of the proposal dealing with education specialists pending a decision by the New Jersey Supreme Court on whether R.1:21-1(e) will be amended.

Proposed New Rule N.J.A.C. 1:6A

COMMENT: The proposed deletion of N.J.A.C. 1:6A-3.2(e), which provided for an adjournment of up to 15 days of the settlement conference held by the Department of Education, will disadvantage handicapped pupils. Parents need this time to obtain professional advice, seek out experts and schedule evaluations. Instead of eliminating the adjournment, the rules should extend it to 30 days.

RESPONSE: The settlement conference is held by the Department of Education prior to transmittal of a case to the OAL for hearing. Therefore, rules concerning the settlement conference are within the jurisdiction of the Department of Education. The Department deleted the adjournment provision from its rules. Therefore, N.J.A.C. 1:6A has been amended to conform to the Department of Education's rules. It is not within the OAL's jurisdiction to regulate the conduct of the Department of Education settlement conference. The OAL has, however, continued to provide for adjournment of the OAL hearing at N.J.A.C. 1:6A-14.1(c).

COMMENT: It is not in the best interests of the handicapped child to require that the child be present at hearings and meetings.

RESPONSE: Apparently, the commenters misunderstood the proposal. N.J.A.C. 1:6A-14.1(b) provides that parents may have the child present at the hearing. There is no intent to require the child's presence.

COMMENT: The discovery rules in the Uniform Administrative Procedure Rules at N.J.A.C. 1:1-10 should apply in special education hearings. The discovery provision at N.J.A.C. 1:6A-10.1 is not adequate.

RESPONSE: The proposal did not make any change in the discovery practice that has been in effect since the OAL began conducting special education hearings in 1982. Discovery has been one of the prime sources of delay in judicial proceedings. In establishing the special education hearing process, the OAL attempted to balance the parties' legitimate discovery needs against the federal requirements for expedition. Since these rules were not proposed for amendment, the OAL declines to make any modifications in this process at this time.

COMMENT: N.J.A.C. 1:6A-18.4(a) should be amended so that parents are not prevented from changing a child's placement pending the outcome of an administrative hearing. The Federal law does not intend to prevent parents from obtaining a more appropriate setting for their child at any time, including during a hearing.

RESPONSE: The Federal rules at 34 C.F.R. 300.513(a) provide that a child must remain in his or her present educational placement pending the outcome of the administrative hearing, unless the parties agree otherwise. The OAL believes its rule must continue to reflect the "stay-put" provision of the Federal rule. It should be noted that parents cannot be compelled to leave a child in a placement pending the outcome of a hearing. However, parents who make a unilateral change in their child's placement do so at their own risk. These parents may or may not be reimbursed for any associated costs through the hearing's outcome.

COMMENT: N.J.A.C. 1:6A-2.1 and 2.2(a)-(d) should not be repealed. Department of Education regulations do not offer the same safeguards.

RESPONSE: N.J.A.C. 1:6A-2.1 deals with the procedures to be followed when a board of education or public agency proposes to make a change in a child's placement. N.J.A.C. 1:6A-2.2(a)-(d) deal with procedures for requesting a hearing. The OAL deleted these provisions because they involve matters which take place before a case is transmitted to the OAL for hearing and, therefore, these issues are within the jurisdiction

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tion of the Department of Education and subject to the Department's rules.

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

1:1-5.4 Representation by non-lawyers; authorized situations, applications, approval procedures

(a) (No change.)

(b) The non-lawyer applicants in (a) above may apply for permission to appear by supplying the following information and by complying with the following procedures:

1. (No change.)

2. A written Notice of Appearance/Application on forms supplied by the Office of Administrative Law shall be required in cases where a non-lawyer employee seeks to represent a State agency; in Civil Service cases, where a union representative seeks to represent a State, county or local government employee; ***where a non-lawyer seeks to represent a party in a special education hearing;*** where a principal seeks to represent a close corporation, and where a non-lawyer from a legal services program seeks to represent an indigent. A non-lawyer from a legal services program seeking to represent a recipient or applicant for services in Division of Public Welfare, Division of Medical Assistance and Health Services and Division of Youth and Family Services cases may make oral application to represent the recipient or applicant by complying with the requirements of (b)1 above.

iv. ***[(Reserved)]* In special education hearings the non-lawyer applicant shall include in his or her Notice an explanation of how he or she satisfies the Federal and State requirements for non-lawyer representation.***

v.-viii. (No change.)

**CHAPTER 6A
SPECIAL EDUCATION PROGRAM**

CROSS REFERENCE (Old to New)

Old Citation	New Citation	Old Citation	New Citation
1:6A-1.1	1:6A-1.1	1:6A-4.1	1:6A-14.1
1:6A-2.1	Repealed	1:6A-4.2	1:6A-5.1
1:6A-2.2(a)-(d)	Repealed	1:6A-4.3	1:6A-14.2
1:6A-2.2(e)	1:6A-4.1	1:6A-4.4	1:6A-14.3
1:6A-3.1	1:6A-12.1	1:6A-5.1(a)	Deleted
1:6A-3.2(a)-(d),(f)	1:6A-4.2	1:6A-5.1(b)	1:6A-18.1
1:6A-3.2(e)	Repealed	1:6A-5.2	1:6A-18.2
1:6A-3.3	1:6A-10.1	1:6A-5.3	1:6A-18.3
1:6A-3.4	1:6A-9.1	1:6A-5.4	1:6A-18.4
1:6A-3.5	1:6A-4.3	1:6A-5.5	1:6A-18.5

CROSS REFERENCE (New and Old)

New Citation	Old Citation	New Citation	Old Citation
1:6A-1.1	1:6A-1.1	1:6A-14.1	1:6A-4.1
1:6A-4.1	1:6A-2.2(e)	1:6A-14.2	1:6A-4.3
1:6A-4.2	1:6A-3.2	1:6A-14.3	1:6A-4.4
1:6A-4.3	1:6A-3.5	1:6A-18.1	1:6A-5.1(b)
1:6A-5.1	1:6A-4.2	1:6A-18.2	1:6A-5.2
1:6A-9.1	1:6A-3.4	1:6A-18.3	1:6A-5.3
1:6A-10.1	1:6A-3.3	1:6A-18.4	1:6A-5.4
1:6A-12.1	1:6A-3.1	1:6A-18.5	1:6A-5.5
1:6A-13.1	New Section		

SUBCHAPTER 1. APPLICABILITY

1:6A-1.1 Applicability

(a) The rules in this chapter shall apply to the notice and hearing of matters arising out of the Special Education Program of the Department of Education, pursuant to N.J.A.C. 6:28. Any aspect of notice and hearing not covered by these special hearing rules shall be governed by the Uniform Administrative Procedure Rules (U.A.P.R.) contained in N.J.A.C. 1:1. To the extent that these rules are inconsistent with the U.A.P.R., these rules shall apply.

(b) These rules are established in implementation of Federal law, at 20 U.S.C.A. 1415 et seq. and 34 CFR 300 et seq. These rules do

not duplicate each provision of Federal law, but highlight some of the key Federal provisions which form the source or authority for these rules. Where appropriate, the Federal source or authority for a rule or Federal elaboration of a rule will be indicated in brackets following the rule. In any case where these rules could be construed as conflicting with Federal requirements, the Federal requirements shall apply.

(c) Since these rules are established in implementation of Federal law, they may not be relaxed except as specifically provided herein or pursuant to Federal law.

SUBCHAPTER 2. (RESERVED)

SUBCHAPTER 3. (RESERVED)

SUBCHAPTER 4. AGENCY RESPONSIBILITY BEFORE TRANSMISSION TO THE OFFICE OF ADMINISTRATIVE LAW

1:6A-4.1 Notice of available legal service

(a) In its acknowledgement of a hearing request, the Department of Education shall inform the parties of any free or low-cost legal and other relevant services available, including:

1. The Division of Advocacy for the Developmentally Disabled in the Department of the Public Advocate;
2. The New Jersey State Bar Association and county bar association lawyer referral services;
3. The Association of Trial Lawyers—New Jersey lawyer referral service; and
4. The Legal Aid and Legal Services offices in New Jersey (34 CFR 300.506(c)).

1:6A-4.2 Conference by the Department of Education

(a) Within seven days of receipt of any hearing request, the Department of Education shall conduct a conference at a time and place convenient to both parties.

(b) The purpose of the conference is to assist the parties in defining issues, identifying evidence, exchanging information, stipulating facts and listing possible witnesses for a hearing. Mediation will be available at the conference if both parties agree to participate.

(c) If a settlement is reached, the terms shall be reduced to writing and signed by the parties and the representative of the Department of Education.

(d) If a settlement is not reached, the Department of Education representative shall prepare a written document at the conference that specifies the issues in dispute, any stipulations, and evidence and witness lists for each party. This document shall be included with the transmittal form and shall be immediately forwarded to the Office of Administrative Law. Copies of the written document and of the transmittal form shall be sent to the parties. Any exhibits that both parties agree are admissible may be attached to the document.

(e) The Department of Education shall include with the transmittal any unsettled jurisdictional matters, notice problems, or other preliminary motions from the parties.

(f) The board of education or public agency shall ensure that a representative attends the conference. Participation by the parents is voluntary.

1:6A-4.3 Ongoing settlement efforts

(a) The scheduling of a hearing shall not preclude voluntary ongoing efforts by the parties to settle the matter before or at the hearing.

(b) Any ongoing settlement efforts by the parties shall not delay, interfere with, or otherwise impede a request for a hearing or the progress thereof, nor be grounds for adjournment of a hearing, unless a party requests an adjournment and the judge approves the adjournment to a specific date. Any such adjournment shall extend the deadline for decision, as established in N.J.A.C. 1:6A-18.1, Deadline for decision, by an amount of time equal to the adjournment.

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SUBCHAPTER 5. REPRESENTATION

1:6A-5.1 Representation *[by lawyers and assistance by education specialists]*

*(a) At a special education proceeding, any parent may be represented by a lawyer and/or assisted by an individual with special knowledge or training with respect to handicapped pupils and their educational needs, or both.

(b) Individuals with special knowledge or training with respect to handicapped pupils and their educational needs may not perform any assistance outside of the parents' presence and may not prepare any documents or sign any documents for parents, except for expert witness reports. These education specialists may testify for parents, serve subpoenas for parents, consult with parents, help parents negotiate settlements and advise parents about educational decisions. These specialists, however, may not make oral arguments, present evidence, cross-examine witnesses, make objections or otherwise perform representational services at the evidentiary hearing, unless the judge finds that it is necessary to permit the performance of some of these functions on a limited, restricted basis in order to assist a parent in making a particular point or presenting a piece of evidence.]*

*(a) At a hearing, any party may be accompanied and advised by legal counsel or by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both.

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-5.4 and shall be bound by the approval procedures, limitations and practice requirements contained in N.J.A.C. 1:1-5.5.*

SUBCHAPTERS 6 THROUGH 8. (RESERVED)

SUBCHAPTER 9. SCHEDULING

1:6A-9.1 Scheduling of hearing by Office of Administrative Law

If the matter is not fully resolved at the conference, as required in N.J.A.C. 1:6A-4.2, the representative of the Department at the conference shall, in the presence of the parties, telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a preeminent hearing date. The hearing date shall, to the greatest extent possible, be convenient to all parties but shall be no later than 14 days from the date of the conference, unless a later date is agreed upon by all parties and approved by a judge. If a later date is agreed upon, the deadline for decision, as established in N.J.A.C. 1:6A-18.1, shall be extended by a time equal to the amount of delay. The Commissioner of Education shall, no later than three days after the conference, transmit the matter to the Office of Administrative Law. Copies of all notices, requests, pleadings, filings, stipulations of issues and facts, evidence and witness lists compiled at the conference and a description of the positions of each party shall be included with the standard Office of Administrative Law transmittal form required by N.J.A.C. 1:1-8.2.

SUBCHAPTER 10. DISCOVERY

1:6A-10.1 Discovery

(a) All requests for information, records or other discovery shall be made before or at the conference. All responses to these requests shall be completed no later than five days before the date of the hearing.

(b) Each party shall disclose to the other party any documentary evidence and summaries of testimony intended to be introduced at the hearing.

(c) Upon application of a party the judge shall exclude any evidence at hearing that has not been disclosed to that party at least five days before the hearing, unless the judge determines that the evidence could not reasonably have been disclosed within that time.

(d) Discovery shall to the greatest extent possible consist of the informal exchange of questions and answers and other information. Discovery may not include requests for formal interrogatories, formal admissions or depositions.

SUBCHAPTER 11. (RESERVED)

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SUBCHAPTER 12. MOTIONS

1:6A-12.1 Emergency relief pending settlement or decision

(a) As part of a hearing pending, or at any time after a hearing is requested, the affected parent(s), guardian, board or public agency may apply in writing for emergency relief pending a settlement or decision on the matter. An emergency relief application shall set forth the specific relief sought and the specific circumstances which the applicant contends justifies under (e) below the relief sought. Each application shall be supported by an affidavit prepared by an affiant with personal knowledge of the facts contained therein and, if an expert's opinion is included, the affidavit shall specify the expert's qualifications.

(b) Prior to the transmittal of the hearing request to the Office of Administrative Law, applications for emergency relief shall be addressed to the Department of Education, attention Division of Special Education, with a copy to the other party. The Department shall forward to the Office of Administrative Law by the end of the next business day all emergency relief applications that meet the procedural requirements in (a) above and which set forth on the face of the application and affidavits circumstances which would justify emergency relief under this section. Emergency relief applications which show no right to emergency relief or fail to comply with the procedural requirements shall be processed by the Department in accordance with N.J.A.C. 1:6A-4.2.

(c) After transmittal, applications for emergency relief must be made to the Office of Administrative Law, with a copy to the other party.

(d) The Office of Administrative Law shall schedule an emergency relief application hearing on the earliest date possible and shall notify all parties of this date. Except for extraordinary circumstances established by good cause, no adjournments shall be granted but the opponent to an emergency relief application may be heard by telephone on the date of the emergency relief hearing. If emergency relief is granted without all parties being heard, provision shall be made in the order for the absent parties to move for dissolution or modification on two days' notice. Such an order, granted without all parties being heard, may also provide for a continuation of the order up to 10 days.

(e) At the emergency relief hearing, the judge may allow the affidavits to be supplemented by testimony and/or oral argument. The judge may order emergency relief if the judge determines from the proofs that:

1. The applicant has a reasonable probability of ultimately prevailing on the merits;
2. Either serious physical harm will result to a student or students if the relief is not granted, or the student's education program will be terminated or interrupted; and
3. The relief requested is narrowly defined to prevent the specific harm from occurring and will not cause unreasonable expense and substantial inconvenience.

(f) Judges may decide emergency relief applications orally on the record and may direct the prevailing party to prepare an order embodying the decision. If so directed, the prevailing party shall promptly mail the order to the judge and shall mail copies to every other party in the case. Unless a party notifies the judge and the prevailing party of his or her specific objections to the order within five days after such service, the judge may sign the order.

(g) After granting or denying the requested emergency relief, the judge shall either return the parties to the Department of Education for a conference under N.J.A.C. 1:6A-4.2 or schedule hearing dates if a conference has already been conducted.

SUBCHAPTER 13. PREHEARING CONFERENCES

1:6A-13.1 Prehearing conferences

Prehearing conferences shall not be scheduled in special education hearings.

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SUBCHAPTER 14. CONDUCT OF CASES

1:6A-14.1 Procedures for hearing

(a) To the greatest extent possible, the hearing shall be conducted at a time and place convenient to the parent(s) or guardian.

(b) At the hearing, parents shall have the right to open the hearing to the public, and to have the child who is the subject of the hearing present.

(c) For good cause shown on the record, the judge may adjourn the hearing for a specified time, and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, Deadline for decision, will be extended by an amount of time equal to the adjournment.

(d) A verbatim record shall be made of the hearing.

(e) The judge's decision shall be based on the preponderance of the credible evidence, and the proposed action of the board of education or public agency shall not be accorded any presumption of correctness.

1:6A-14.2 Interpreters

Where necessary, the judge may require the Department of Education to provide an interpreter at the hearing or written translation of the hearing, or both, at no cost to the parent(s) or guardian.

1:6A-14.3 Independent educational evaluation

(a) For good cause and after giving the parties an opportunity to be heard, the judge may order an independent educational evaluation of the pupil. The evaluation shall be conducted in accordance with N.J.A.C. 6:28-1 by an appropriately certified or licensed professional examiner(s) who is not employed by and does not routinely provide evaluations for the board of education or public agency responsible for the education of the pupil to be evaluated. The independent evaluator shall be chosen either by agreement of the parties or, where such agreement cannot be reached, by the judge after consultation with the parties. The judge shall order the board of education or public agency to pay for the independent educational evaluation at no cost to the parent(s) or guardian. (34 CFR 300.503)

(b) Where an independent educational evaluation is ordered, the judge upon the request of a party may adjourn the hearing for a specified period of time and the deadline for decision, as established in N.J.A.C. 1:6A-18.1, will be extended by an amount of time equal to the adjournment.

SUBCHAPTERS 15, 16 and 17. (RESERVED)

SUBCHAPTER 18. DECISION AND APPEAL

1:6A-18.1 Deadline for decision

Subject to any adjournments for a specified period of time, the judge shall issue a written decision no later than 45 days from the date of the hearing request.

1:6A-18.2 Confidentiality

(a) In a written decision, the judge shall use initials rather than full names when referring to the child and the parent(s) or guardian, and may take other necessary and appropriate steps, in order to preserve their interest in privacy.

(b) Records of special education hearings shall be maintained in confidence by the Office of Administrative Law pursuant to Federal regulations, 34 CFR 300.500 et seq. The Clerk of the Office of Administrative Law, 185 Washington Street, Newark, NJ 07102, (201) 648-6006, shall maintain these records.

1:6A-18.3 Appeal, use of hearing record, obtaining copy of record, and contents of record

(a) Any party may appeal the decision of the judge either to the Superior Court of New Jersey, pursuant to the Rules Governing the Courts of the State of New Jersey, or to a district court of the United States, pursuant to 20 U.S.C.A. 1415(e)(3).

(b) A party intending to appeal the administrative law judge's decision or an authorized representative is permitted to use, or may request a certified copy of, any portion or all of the original record of the administrative proceeding, provided a copy remains on file at the Office of Administrative Law. The requesting party shall bear the cost of any necessary reproduction. Written requests for this

material should be directed to Decision Control, Office of Administrative Law, 185 Washington Street, Newark, NJ 07102.

(c) The record shall consist of all documents transmitted by the Department of Education to the Office of Administrative Law; correspondence; any documents relating to motions; briefs; exhibits; transcripts, if any; the administrative law judge's decision; and any other material specifically incorporated into the record by the judge.

1:6A-18.4 Stay of implementation

(a) Unless the parties otherwise agree, the educational placement of the pupil shall not be changed prior to the issuance of the decision in the case, pursuant to 34 C.F.R. 300.513.

(b) Where a party appeals any portion of the decision not involving a change in the pupil's educational placement, and upon request by any party, the judge may stay implementation of the decision if immediate implementation would be likely to result in serious harm to the pupil or other pupils in the event that the decision is rejected or modified upon appeal.

1:6A-18.5 Motion to reopen hearing

(a) Any party may file with the presiding judge, and serve on each other party, a motion to reopen the hearing no later than 10 days following the issuance of the decision.

(b) The judge may reopen the hearing for reasons of:

1. Mistake, inadvertence, surprise or excusable neglect;
2. Newly discovered evidence which would probably alter the decision and which, by due diligence, could not have been discovered in time for the hearing; or
3. Fraud, misrepresentation or misconduct of another party.

COMMUNITY AFFAIRS

(a)

OFFICE OF THE COMMISSIONER

Organization of the Department of Community Affairs

Office of the Commissioner; Divisions

Adopted Amendment: N.J.A.C. 5:2-1.1

Adopted: February 9, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs. Filed: February 14, 1990 as R.1990 d.159.

Authority: N.J.S.A. 52:27D-3 and 52:14B-3 and 4.

Effective Date: February 14, 1990.

Expiration Date: April 10, 1994.

Take notice that Melvin R. Primas, Jr., Commissioner, Department of Community Affairs, has adopted an amendment to N.J.A.C. 5:2-1.1.

This amendment is organizational in nature and, as such, in accordance with N.J.S.A. 52:14B-4(b), is adopted without prior notice or hearing and is effective upon filing.

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

5:2-1.1 Office of the Commissioner; Divisions

(a) (No change.)

(b) The Office of the Commissioner includes the Commissioner, the Deputy Commissioner, two Assistant Commissioners, and the following subordinate offices and personnel who report either to the Commissioner or the Deputy Commissioner:

1. Reporting to the Commissioner:
 - i. Chief of Staff (**including the Public Information Office**);
 - ii. [Director of Public Affairs] **Office of the Municipal and County Ombudsman** (including Internal Control [, the Office of the Municipal and County Ombudsman, the Public Information Office and Public Relations]);
 - iii-iv. (No change.)
2. (No change.)
- (c)-(g) (No change.)

ADOPTIONS

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(a)

**DIVISION OF HOUSING AND DEVELOPMENT
 Notice of Administrative Correction
 Maintenance of Hotels and Multiple Dwellings
 Interpretation; Matters Covered; Bureau
 Inspections; Certificate of Registration;
 Mechanical Ventilation
 N.J.A.C. 5:10-1.5, 1.8, 1.10, 1.11 and 16.3**

Take notice that the Department of Community Affairs has discovered errors in the text of N.J.A.C. 5:10-1.5, 1.8, 1.10, 1.11 and 16.3. In N.J.A.C. 5:10-1.5(b) and 1.8(b), the third word in each subsection, "of," should be "or." In N.J.A.C. 5:10-1.10(d)1, the second "or" in the phrase, "... an immediate threat to the safety or health or persons using or in near proximity to the premises . . .," should be "of."

In N.J.A.C. 5:10-1.11(g), the requirement that the new owners of a hotel or multiple dwelling file with the Bureau of Housing Inspection an application for a certificate of registration and appoint an agent for service of process within 30 days of the transfer of ownership is changed to require filing and appointment within 20 days. This change is necessary due to the 1981 amendment (P.L. 1981, c.442) to N.J.S.A. 55:13A-12(c), which reduced the filing and appointment time from 30 to 20 days.

In N.J.A.C. 5:10-16.3(a)3, the reference to N.J.A.C. 5:10-25.4 is deleted, as this section no longer exists. The correct current citation added is to N.J.A.C. 5:18-4.7(g).

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

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

5:10-1.5 Interpretation

(a) (No change.)

(b) Any conflict [of] or inconsistency between the requirements of these regulations and applicable local and Federal laws and regulations shall be resolved in favor of the more restrictive requirements.

(c) (No change.)

5:10-1.8 Matters covered

(a) (No change.)

(b) Any matter [of] or requirement essential for the fire or structural safety of a new or existing building or essential for the safety or health of the occupants or users thereof or the public, and which is not covered by the provisions of this chapter shall be the subject of determination by the Bureau of Housing Inspection in specific cases.

5:10-1.10 Bureau inspections

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

(d) Inspection of private living quarters shall require the consent of the occupant of the premises, except as hereunder described:

1. In case of emergencies where facts known to Bureau of Housing Inspection personnel or statements of persons having personal knowledge thereof indicate that conditions exist on any premises subject to the jurisdiction of the Bureau which are either an immediate threat to the safety or health [or] of persons using or in near proximity to the premises or of such a nature that the delay necessary to secure a warrant would render the inspection of no value in confirming the existence of the suspected violation, an inspection may be demanded and, if possible without the use of force, made to determine whether or not a violation of the law or regulations in fact exists.

2. (No change.)

(e)-(g) (No change.)

5:10-1.11 Certificate of registration

(a)-(f) (No change.)

(g) In the case of any transfer of the ownership of any hotel or multiple dwelling, whether by sale, assignment, gift, intestate succession, testate devolution, reorganization, receivership, foreclosure or execution process, it shall be the duty of the new owner thereof to file with the Bureau of Housing Inspection, within [30] 20 days of said transfer, an application for a certificate of registration

pursuant to (a) above and to appoint an agent for the service of process pursuant to (f) above. The transferer shall, within 30 days of such transfer, return to the Bureau of Housing Inspection his certificate of registration, indicating thereon the name and address of the new owner.

(h)-(k) (No change.)

5:10-16.3 Mechanical ventilation

(a) Where the required natural ventilation is not provided, then there shall be ventilation by mechanical means, expelling air directly to the outdoors, conforming to the following requirements:

1.-2. (No change.)

3. For commercial kitchens see N.J.A.C. [5:10-25.4.] 5:18-4.7(g);

4.-5. (No change.)

(b)

**DIVISION OF HOUSING AND DEVELOPMENT
 Notice of Administrative Correction
 Rooming and Boarding Houses
 Financial Services
 Check Cashing
 N.J.A.C. 5:27-11.2**

Take notice that the Department of Community Affairs has discovered an error in the text of N.J.A.C. 5:27-11.2(a). The word "enforced" in that subsection is an incorrect word usage, or a misspelling of the correct word "endorsed." This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7(a)1 and 3.

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

5:27-11.2 Check cashing

(a) No check payable to a resident may be cashed by a licensee unless such check has been [enforced] **endorsed** by the resident voluntarily and without coercion.

(b) (No change.)

EDUCATION

(c)

**STATE BOARD OF EDUCATION
 State Library Assistance Programs
 Readoption with Amendments: N.J.A.C. 6:68**

Proposed: December 18, 1989 at 21 N.J.R. 3822(a).

Adopted: February 7, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: February 26, 1990 as R.1990 d.179, with technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:74-3.3, 18A:74-6, 18A:74-10 and 18A:-74.14.

Effective Date: February 26, 1990, Readoption; March 19, 1990, Amendments.

Expiration Date: February 26, 1995.

Summary of Public Comments and Agency Responses:

One individual spoke at the December 20, 1989 public testimony session provided by the State Board of Education and one letter with comments was received.

COMMENT: A commenter suggested that small or urban libraries may be adversely affected by the requirement to meet all per capita State aid criteria to receive aid.

RESPONSE: The Department disagrees. The purpose of the per capita State aid program is to act as an incentive for public libraries to meet minimum requirements for its receipt. The reason for allowing partial compliance originally was to allow a transition period for those libraries

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initially unable to meet all standards. Libraries currently not meeting all standards have shown no improvement over at least five years. If they are not able to achieve these minimums, they should join a larger unit of service.

COMMENT: A commenter recommended that "for library use" be added to the definition of library materials to help avoid bypassing bidding for library supplies by State offices.

RESPONSE: The Department declines to make the requested change, as language in the definition refers only to permissible expenditures under grants to libraries. No other agencies are authorized the money.

COMMENT: The same commenter suggested that the definition of privately supported library be changed to reflect that no more than 25 percent of the parent agency's funding be from governmental sources.

RESPONSE: The Department disagrees. This definition is used for purposes of N.J.A.C. 6:68-10.4 to allow for maintenance of collections to any privately supported library pursuant to N.J.S.A. 18A:74-3.2

COMMENT: The same commenter suggested that N.J.A.C. 6:68-2.8(b) acts as an incentive for libraries to spend more than may be necessary and to discourage activities to foster cost cutting.

RESPONSE: The Department disagrees and considers the language proper to allow libraries a reasonable time period to expend aid and to accumulate funds for larger projects, for example, renovation or automation. The State Librarian may withhold aid if the State Library does not approve a spending plan for use of balances.

COMMENT: The same commenter suggested that under N.J.A.C. 6:68-3.1 small units of service could be linked to nationwide data bases and become part of a much larger computerized service.

RESPONSE: The Department considers the proposed language proper. Pursuant to N.J.A.C. 18A:74-6, the purpose of this program is to encourage the formation and development of larger units of service. The program also encourages more efficient units of service.

COMMENT: The same commenter suggested that language for membership on a library advisory committee removes public community members from the committee and should be restored.

RESPONSE: The Department disagrees, as any change is unnecessary. Proposed language continues to include community members as part of the library advisory committee.

The Department has made several technical changes upon adoption to correct spelling and word usage.

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

6:68-1.1 Purpose

The purpose of this chapter is to describe the library grant programs available from State funds and to establish general rules for the application process and for the awarding of these funds to libraries. These general rules will govern the State Library grant process unless different procedures are given in the rules relating to a specific grant program.

6:68-1.2 Definitions

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

"Academic library" means a library within a publicly or privately supported institution of higher education.

"Associate librarian" means a person who holds an associate educational media specialist certificate in accordance with N.J.A.C. 6:11-12.22.

"Association library" means a library established pursuant to N.J.S.A. 15A:1-1 et seq. and receiving public funds pursuant to N.J.S.A. 40:54-35.

"Audio-visual" means communications resources which rely on a device for transmission, reproduction, or enlargement to be effectively utilized or understood. Also included are non-print resources such as art works and objects.

"Audio-visual materials" means materials in audio and visual formats which convey information primarily by sound and image rather than by text and which rely on a device for transmission, reproduction or enlargement to be effectively utilized or understood. Ex-

cluded are print and print substitutes such as microform, but included are computer software, art works and objects.

"Audio-visual public library services" means provision of access to audio-visual materials to clientele of a public library.

"Branch library" means an auxiliary public library (county or municipal) which has all of the following, but which is administered from a central unit:

1. Separate quarters from the central unit;
2. A permanent basic collection of library materials;
3. A permanent paid staff; and
4. A regular schedule for opening to the public.

"Central library" means the main library building of a municipality, county or other type of public library or those facilities which house the administrative headquarters of a public library system, including system-wide services provided from a single location.

"Collection development" means activities relating to the development of a library collection, including but not limited to the determination and coordination of selection policies, assessment of needs of users and potential users, collection use studies, collection evaluation, identification of collection needs, selection of materials, planning for resource sharing, collection maintenance and weeding, and purchase of library materials in any format.

"Collection evaluation" means the process of assessing a library collection in terms of specific objectives or in terms of the needs of the patrons of the particular collection.

"Collection maintenance" means activities to preserve the materials in a collection, including care and handling, binding, mending, repairing, marking and shelving.

"Collection of historical or special interest" means all or part of a group of materials with permanent significance to New Jersey's documentary heritage or with general research value and uniqueness.

"Collection" means library materials in any format.

"Coordinated collection development plan" means an agreement extended by a group of libraries to take responsibility for building and maintaining collections in specific subject areas to increase the resource sharing capabilities of the libraries.

"County library" means a public library established pursuant to N.J.S.A. 40:33-1 to 13 and 40:33-15 to 23.

"Evening hours" means any two hours the library is open after 6:00 P.M.

"Expanded programs of library services" means new services, changes in or expansion of services already offered.

"Extended long-term loan" means a loan of 12 months or more.

"In kind" means the current and recurring costs of the operation of the library and its programs/services that were present before the development and implementation of the grant program.

"Institution" means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, nursing homes and boarding homes.

"Institutional library" means any library within an institution directly serving the institutional client group.

"Interlibrary loan" means a transaction between libraries, a form of resource sharing by which one library's collection is utilized by another library in response to a mediated request for a specific item on behalf of its users. The original or a copy of the item may be provided.

"Joint library" means a library established pursuant to N.J.S.A. 40:54-29.3 to 29.26.

"Librarian" means a professional librarian, an educational media specialist or an associate educational media specialist who holds, or is eligible to hold, a certificate in accordance with N.J.A.C. 6:11-12.7 Professional librarian; N.J.A.C. 6:11-12.21, Educational media specialist; or N.J.A.C. 6:11-12.22, Associate educational media specialist.

"Library" means an organized collection of accessible print and/or non-print materials with appropriate staff to maintain such materials and to provide reference, research and other services to the public.

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"Library clerk" means a person employed in a library who performs clerical or support functions.

"Library materials" means print, non-print items and electronic software.

"Library-related agency" means a county audio-visual aids commission established under N.J.S.A. 18A:51; a learning resource center; a regional curriculum services unit; or any other nonprofit organization meeting the criteria for membership in a regional library cooperative in accordance with N.J.A.C. 6:70-1.5(b).

"Library services" means all activities rendered by the library to its users.

"Municipal library" means a library established pursuant to N.J.S.A. 40:54-1 to 29.2.

"Overhead" means current or recurring expenses such as rent, insurance, lighting, heating, accounting or office expenses.

"Part-time employee" means an employee whose regular hours of duty are less than the normal work week for that class or agency in accordance with Civil Service Rule N.J.A.C. 4:1-2.1.

"Periodical" means a serial publication which is issued in a continuous series under the same title, usually published at regular intervals, more frequently than annually, over an indefinite period, individual issues in the series being numbered consecutively or each issue being dated.

"Periodical indexes" means subject indexes to a newspaper or to a group of periodicals which are provided for patron and staff use whether in print, micro or electronic format.

"Privately supported library" means a library whose parent agency receives less than 50 percent of its annual funding support from governmental sources.

"Public library" means a municipal, county, association or joint library, which receives public funding.

"Publicly supported library" means a library whose agency receives 50 percent or more of its regular annual funding support from governmental sources.

"Regional library" means a library established pursuant to N.J.S.A. 40:33-13.3 et seq.

"School library" means a library/media center within any publicly or privately supported elementary or secondary school, or in any post-secondary vocational or technical school.

"Special census" means a census conducted by the United States Secretary of Commerce pursuant to 13 U.S.C. 196.

"Special library" means a library/information center of a business, a professional, scientific, or trade association, a government, hospital or other for-profit or nonprofit institution or organization which provides that organization with information, library materials, and technical bibliographic and research services.

"Subject collection" means a collection of materials on a subject covering a specific topic, specific period of time or pertaining to a specific geographic area.

"User studies" means a method of determining the information needs of current library patrons or potential library patrons.

6:68-1.3 Grant application procedures

(a) The State Library requires the use of a standard application for the grant programs unless otherwise specified. Application forms, unless otherwise specified, may be obtained from:

New Jersey State Library
Grant Applications
185 West State Street
CN 520

Trenton, New Jersey 08625-0520.

(b) Applications must conform to the requirements for completion and the deadline dates as specified by the State Librarian in the annual program announcement and its supplement.

6:68-1.4 Criteria for approval

(a) Evaluation of the applications may be based on, but not necessarily be limited to, the following criteria:

1. A statement of the applicant's need as it relates to the Request for Proposal's stated purpose;

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2. A rationale providing a description of the potential project and the basis for the selection of a particular solution or method for the project;

3. Goals and objectives describing the outcomes or results expected from the project;

4. An action plan describing the activities and resources needed to reach the stated objectives of the project;

5. An evaluation plan describing the applicant's proposed method to evaluate the progress and outcomes of the project; and

6. A budget listing how requested funds will be used to support the action plan. Appropriate budget forms are supplied with application forms.

(b) Each application will contain specific, expanded definitions of these criteria to assist applicants to develop appropriate information for the grant application.

6:68-1.5 Reports and audits

Grant recipients shall be required to submit reports and financial audits as specified by the State Librarian in the grant announcement.

6:68-1.6 Notification of applicants

Applicants will be informed of the State Librarian's recommendations of approval or rejection within 90 days of application deadline.

6:68-1.7 Appeal procedures

(a) If a recipient agency requests the results of a denied proposal, the State Librarian will provide a written explanation of the denial.

(b) Applicants whose projects have been rejected may submit a written request for an informal fair hearing before the State Librarian. A hearing will be held only if it is alleged that the State Library has violated a statutory or regulatory provision in the awarding of a grant. An appeal will not be heard based upon a challenge to the final evaluation score of a grant proposal.

(c) In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9 et seq. The hearing shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1).

SUBCHAPTER 2. STATE LIBRARY AID

6:68-2.1 Purpose

The purpose of this program is to provide per capita library aid to public libraries according to N.J.S.A. 18A:74-1 et seq.

6:68-2.2 Governance

(a) Any municipal library which has been established pursuant to N.J.S.A. 40:54-1 et seq. or pursuant to any special Act shall provide for a library board of trustees in the manner and with the duties and powers specified in N.J.S.A. 40:54-1 et seq. or any special Act.

(b) Association libraries receiving local tax support under N.J.S.A. 40:54-35 shall be governed by a board of trustees and shall be incorporated as a non-profit corporation pursuant to N.J.S.A. 15A:1-1 et seq.

(c) Any joint library which has been established pursuant to N.J.S.A. 40:54-29.3 et seq. shall provide for a library board of trustees in the manner and with the duties and powers specified in N.J.S.A. 40:54-12, 40:54-29.10, 40:54-29.12 and 40:54-29.13.

6:68-2.3 (No change in text.)

6:68-2.4 Employees

(a) All public libraries (municipal, joint, association and county) shall meet the following minimum requirements based on the population of the area from which the library receives tax support:

1. Number of employees: All libraries shall employ a minimum of one full-time staff member. In addition, one full-time employee or the equivalent thereof in part-time paid employment for the initial 4,000 population and each succeeding 4,000 population shall be employed as set forth in Chart A below. All of the above are exclusive of security, janitorial or custodial employees.

Chart A

(No change in text.)

i. Full-time means a minimum of 30 hours per week except that for municipalities of under 5,000 population, full-time may be defined as two part-time persons. At no time shall either part-time employee work less than 10 hours per week.

2. Professional staff:

i.-ii. (No change in text.)

iii. Libraries serving a population over 50,000 must employ a minimum of one full-time professional librarian or the full-time equivalent for every 10,000 population up to 50,000 and one additional full-time professional librarian or the full-time equivalent for each 20,000 population over 50,000 as set forth in Chart B below.

Chart B

(No change in text.)

6:68-2.5 Library materials

(a) A minimum collection of 8,000 volumes or one volume per capita, whichever is greater, shall be available in all libraries established pursuant to the provisions of N.J.S.A. 40:54-1 et seq., N.J.S.A. 40:54-29.3 et seq. and N.J.S.A. 40:33-1 et seq.

(b) A minimum of 1/10 of volume per capita shall be purchased annually. Audio-visual materials, computer software and electronic reference services may be equated to volumes purchased. To equate audio-visual materials, computer software and electronic reference services with print purchases:

1. (No change.)

2. Divide total expenditure for audio visual materials, computer software and electronic reference services by average price per volume as computed in New Jersey Library Statistics for the preceding calendar year. Add resulting figure to number of volumes purchased. The total of the two figures should be equal to or exceed the minimum requirement of 1/10 volume.

(c) (No change.)

(d) Those libraries which are in municipalities providing tax support for a county library may count the materials provided by the county library to the local library toward meeting the requirements of (a), (b) and (c) above. The materials provided can be used to satisfy the requirements for volumes purchased, minimum collection, and periodical subscriptions and holdings by the exact number provided by the county library in each category.

6:68-2.6 Hours of service

(a) (No change.)

(b) Minimum hours open to the public must be scheduled to provide some service five days per week with a minimum of three evenings and some weekend hours every week. Seasonal (summer or other special) variations are permitted for three months per year. The State Librarian may authorize other variations to accommodate local conditions.

(c) (No change.)

6:68-2.7 Loss of aid for failure to meet minimum requirements

Failure to meet the requirements of N.J.A.C. 6:68-2.2 through 6:68-2.6 will result in the loss of all per capita State Aid.

6:68-2.8 Use of per capita aid; decision by public library board of trustees or county library officials

(a) Upon receipt of State Aid checks pursuant to N.J.S.A. 18A:74-3, municipal and county treasurers shall make these funds immediately available to public library trustees, county library commissioners or, in counties which have reorganized the administrative structure of county government according to N.J.S.A. 40:41A-1 et seq., the board of chosen freeholders as the case may be. Decisions on the use and expenditures of per capita State Aid rest with the board of trustees of municipal, joint and association libraries and with the county library commission of the county libraries or the county board of chosen freeholders. The State Librarian may require a certified audit if he or she deems necessary.

(b) State Aid funds must be expended within two years of the date of receipt of the funds. If not expended, the board of trustees, the county library commission or the board of chosen freeholders must

submit to the State Librarian a plan for the use of the unspent balances at least 60 days before the deadline for expenditure. Failure to submit such a plan, or disapproval of the plan by the State Librarian, shall result in the withholding of State Aid payments.

(c) (No change.)

6:68-2.9 Application of special census

An application for the use of a special census for the receipt of aid pursuant to N.J.S.A. 18A:74-3 shall be submitted in writing to the State Librarian for transmittal to the State Commissioner of Education on or before October 15 of the year preceding that in which the special census would be used as a basis for the payment of per *[capital]* *capita* aid. The application must include the new census figure to be used, and written verification from the United States Bureau of Census.

6:68-2.10 Library buildings; submission of program

Any library planning to use State Aid moneys for new construction, an addition or structural changes to the present building shall submit its building program and preliminary building plans to the State Librarian for review and approval.

6:68-2.11 Revision of criteria

The State Librarian shall review all State Library Aid rules and regulations periodically, and at least every five years the Advisory Council of the Division of the State Library shall recommend appropriate revision to the State Board of Education to ensure that libraries throughout the State move toward the achievement of national standards and develop appropriate systems of library service.

6:68-2.12 State Library Aid application

(a) An application form is available at the following address:

New Jersey State Library
Per Capita State Aid
185 West State Street CN520
Trenton, New Jersey 08625-0520

6:68-2.13 Appeals procedure

Appeals arising from any action of the State Librarian in administering the rules of this subchapter may be requested, and an opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such an informal hearing, appellants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 18A:6-24, and 18A:6-27. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., as implemented by N.J.A.C. 1:1).

SUBCHAPTER 3. INCENTIVE GRANT PROGRAM

6:68-3.1 Purpose

(a) The intention of the incentive grant program is to encourage the establishment of expanded or enhanced forms of service through the development of larger units of library service. It is designed to maximize the use of established library services and to encourage the dissolution of small, inefficient units of service.

(b) There are two separate incentive grant categories:

1. Program A—Municipal library assistance aid for planning and development of joint libraries; and

2. Program B—County library assistance aid for planning and development for expanded county library service.

(c) The priority for grant categories and percentage of funds allocated to each category shall be established each year by the State Librarian.

6:68-3.2 Definitions

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

“Expand” means to add services or to extend existing services to previously unserved clientele.

“Larger units of library service” means the creation of a new entity encompassing a broad geographic area or population base for the delivery of library services. This may include the creation of an entity

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where none exists or the combining of existing entities through appropriate legal steps to serve a broader area or population base. Examples of larger units of service include but are not limited to:

1. Formation of a joint library by an existing municipal library or existing association library and a municipality which is not currently supporting library services;
2. Formation of a joint library by two or more existing municipal libraries or two or more existing association libraries;
3. Formation of a joint library by an existing association library and an existing municipal library;
4. Development of a new branch library for a county library system;
5. Reorganization of county library services through the county library reorganization law (N.J.S.A. 40:33-13.2d et seq.);
6. Expansion of county library services to new populations; and
7. Enhancement/strengthening of county library services.

"Operating expense" means the current and recurrent costs necessary to the provision of library service, such as personnel, library materials, binding, supplies, repair or replacement of existing furnishings and equipment, and costs incurred in the operation and maintenance of the physical facility.

6:68-3.3 Program A—Municipal library assistance for planning and development of joint libraries

(a) There are two phases to Program A: Phase 1—Planning for joint libraries and Phase 2—Aid for development and implementation of joint libraries.

(b) Phase 1 provides municipal library assistance aid for planning.

1. Municipal library assistance aid for planning will make funds available to develop a master plan on the feasibility of uniting two or more contiguous municipalities in a larger unit of service through the formation of a joint library. This program will be in effect only in counties where a county library has not been established.

2. The result of the municipal planning assistance aid will be a written master plan documenting the feasibility of establishing and maintaining a larger unit of library service through a joint library. The master plan must contain the following elements:

- i. The goal of the master plan;
- ii. Objectives of the master plan;
- iii. A report on the demographic characteristics of the communities;
- iv. A report on library resources, if applicable;
- v. A report on library services, if applicable;
- vi. A report on estimated cost of the project;
- vii. A recommendation on feasibility of the project;
- viii. A recommendation on a possible site for the joint library; and
- ix. A projected three year timetable for implementation.

3. All costs directly associated with the development of a master plan are eligible for funding, except for overhead expenses and inkind costs. Eligible costs include, but are not limited to, the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as a community survey or patron survey; and any support costs directly associated with the project including data processing costs and mailing costs.

4. Applications will be evaluated on the basis of the following criteria:

- i. One of the municipal or association libraries must, at the time of application, meet in full the quantitative State Aid rules for libraries servicing its population (N.J.A.C. 6:68-2).
- ii. First priority in funding shall be given to the project anticipated to serve the largest number of individuals.
- iii. Applications will also be evaluated against the "Criteria for approval" in N.J.A.C. 6:68-1.4.

5. A grant not to exceed \$30,000 will be made for the development of a master plan for library service for a population up to 50,000.

6. A grant not to exceed \$50,000 will be made for the development of a master plan for library service for a population up to 100,000.

7. The boards of trustees of any association, joint or municipal libraries investigating the possibility of entering into a joint library agreement must file a joint application. If there is currently no library

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service in a municipality, the local governing body would be eligible to apply as a joint applicant.

(c) Phase 2 provides municipal library assistance aid for development.

1. Grant funds will be available to assist in the development and initial financing of a joint municipal library. Any library entering Phase 2 must have a master plan for joint library service approved by the State Librarian. The municipalities entering into the joint library agreement must meet the following criteria:

- i. Serve a combined population base of not less than 15,000;
- ii. Serve contiguous municipalities; and
- iii. In order to participate in the municipal library assistance aid program for development, participating municipalities must pass a resolution stating that no less money would be generated for library services in the municipalities than was generated in the year prior to the formation of the joint library.

2. Upon establishment of a joint free public library pursuant to N.J.S.A. 40:54-29.3 et seq., a library shall be eligible for a minimum grant of \$50,000 for initial operating costs associated with the establishment of a new library. Additional funding may be available for this purpose.

i. Examples of eligible costs that can be included are personnel, books and materials, equipment, data processing equipment and furnishings.

ii. These grant funds may not be used for construction or renovation projects costing in excess of \$10,000.

3. The board of trustees of the newly created joint library shall be eligible for funding under this program.

4. During the initial year of operation of the joint library, grant funds will be awarded to the municipalities which created the library. These funds will be awarded on a per capita basis. This per capita grant shall be used by the municipalities to fund additional library services. It may not be used to reduce local required support of library service.

5. The governing officials of municipalities who disestablish their existing local public libraries shall be eligible for funding under this program.

6:68-3.4 Program B—County library assistance aid for planning and development for expanded county library service

(a) There are two phases to Program B: Phase 1—Assistance aid for planning and Phase 2—Development and implementation of expanded county library services.

(b) In Program B, Phase I, county library assistance aid for planning will be available to fund or update a master plan to study the feasibility of developing options for expanded county library service. There are three possible options: development of new branch libraries; expansion of county library service to new populations; and enhancement or strengthening of county library branch service.

1. The product of county library assistance aid will be a written or updated master plan documenting the feasibility of developing any of the options listed above. The master plan shall contain the following elements, which may be further defined in the annual Request for Proposal for this program:

- i. The goal of the master plan;
- ii. Objectives of the master plan;
- iii. A report on the demographic characteristics of the county;
- iv. A report on library resources;
- v. A report on library services;
- vi. A report of estimated cost for options;
- vii. The feasibility of options; and
- viii. A projected timetable for implementation of the options.

2. All costs directly related to the development of a master plan are eligible for funding except overhead expenses and inkind costs. Eligible costs include, but are not limited to, the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as community survey and patron survey; and any support costs directly associated with the project, including data processing costs and mailing costs.

3. Additional criteria for approval are as follows:

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i. The county library must, at the time of the application, meet in full the quantitative State Aid rules for library service to its population (N.J.A.C. 6:68-2).

ii. All initial applications shall be ranked in terms of the counties' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion used to determine financial ability shall be the ratio of equalized valuation of the year preceding the date of application to the population estimate of the county for the same year. (Equalized valuations shall be as listed in the Table of Equalized Valuation published by the New Jersey Division of Taxation and population shall be based upon estimates of the Department of Labor.)

4. The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government according to N.J.S.A. 40:41A-1 et seq., the board of chosen freeholders shall be eligible to receive funding. In either case, the awards of grant funds shall be made payable to the treasurer of the county.

5. A grant not to exceed \$20,000 will be available for the development of a master plan for library service for a population up to 50,000. A grant not to exceed \$30,000 will be available for the development of a master plan for library service for a population up to 100,000. A grant not to exceed \$40,000 will be available for the development of a master plan for library service for a population over 100,000.

(c) In Program B, Phase 2 a library applying for funding must have a master plan for county library services which contains the same elements required under Program A of this subchapter, and it must be approved by the State Librarian. There are three options in Program B, Phase 2. Each option has several stages of funding. The three options are: county library branches; expansion of county library services to populations; and strengthening/enhancing county library services.

1. Option 1 will fund grants to assist in the development and initial operation of county library branches. There are four stages under this option. Applications for these stages must be made sequentially. In order to be eligible for the next stage, applicants must meet requirements for the preceding stage(s).

i. In Stage 1, a grant up to \$20,000 will be provided to fund additional planning and preparation costs associated with the establishment of a county library branch. This planning must ensure that the county library branch meets the following qualifications:

(1) A county branch must be established as part of an overall master plan for county-wide library service;

(2) It must be under the full-time supervision of a paid certified librarian;

(3) It must have a population service base of not less than 15,000 nor more than one quarter of the entire population serviced by the county library system; and

(4) It must have a library building adequate to house the collection, a separate meeting room, and at least three readers' seats for every 1,000 population in the branch service area. The building may be owned by either a municipality or the county, or it may be rented.

ii. In order to be eligible for Stage 2, the county library making the application must meet all applicable State Library Aid criteria (N.J.A.C. 6:68-2) as well as the requirements listed in Stage 1.

(1) The newly established branch must be established in accordance with the provisions of the county master plan and must also meet the four basic qualifications of a county branch enumerated in N.J.A.C. 6:68-3.4(c)1i.

(2) An exception may be granted to the quantitative State Aid criteria (N.J.A.C. 6:68-2) if it can be shown that the criteria will be met by the end of the year.

(3) Exceptions may be granted for N.J.A.C. 6:68-3.4(c)1i, if the exception requested can be justified by the county master plan and is approved by the State Librarian.

(4) A county library having newly established and contracted for a branch meeting the above minimum criteria or having been granted by the State Librarian one or more exceptions to those criteria shall be eligible in the first year of the branch's operation for an incentive grant of 25 percent of the branch's budget, not to exceed \$50,000.

iii. In order to be eligible for Stage 3, during the second year of operation under this program, the newly established branch must meet all of the quantitative State Aid criteria (N.J.A.C. 6:68-2) as well as the four basic qualifications of a county branch library and all the requirements listed in Stage 2.

(1) Where the branch to be funded meets these criteria, the county library shall be eligible for an incentive grant of 20 percent of the amount of the branch library's operating budget, not to exceed \$50,000.

iv. In Stage 4, during the third year of the operation under this program, the branch must continue to meet all of the State Aid criteria as well as the four basic qualifications of a county branch library and all the requirements listed in Stage 3. The county library will be eligible for an incentive grant of 15 percent of the amount of the branch's operating expenditure, not to exceed \$30,000.

v. The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive funding. In either case, the award of grant funds shall be made payable to the treasurer of the county.

2. Option 2 will provide funding to assist a county library to expand library service to a community which had previously maintained a municipal free public library. Before funding will be awarded under this option, the municipal library must be disestablished through appropriate legal methods.

i. The county library and the local municipality applying for this grant shall jointly share the funding received. Under this option, the county library commission shall be eligible to receive one-half of the grant funding of this project on behalf of the county library. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive this funding for the county library. In either case the award of grant funds shall be made payable to the treasurer of the county.

ii. The governing officials of the local municipality shall be eligible to receive one-half of the grant funding for this project.

iii. Under this option, the county library shall use its portion of the per capita grant for any operating expense. The millage rate for county library service shall not be reduced as a result of this program.

iv. The municipality shall use its portion of the grant award to offset the local residents' portion of the county dedicated tax for library service.

v. This grant option shall be phased in over a three year grant cycle. A per capita grant shall be awarded during the first year of funding under this option. The award shall be shared equally by the county library and the local municipality. A per capita grant equal to 75 percent of the first year grant shall be shared during the second year of this option. A per capita grant equal to 50 percent of the first year grant shall be shared during the third year of this option.

3. Option 3 will provide funds to expand or enhance county library services by providing additional hours or services at county branch facilities. Methods for expanded/enhanced library service include, but are not limited to:

i. Expansion of branch library hours to include evenings or Saturday or Sunday hours,

ii. Expansion of branch library services to include adult or children's programming,

iii. Enhancement of branch library service through increased telecommunication with main library, and

iv. Enhancement of branch library service through increased access to technology, such as commercial bibliographic utilities, electronic database reference services, and telefacsimile.

(1) The county library commission shall be eligible to receive funding under this program. In counties which have reorganized the administrative structure of county government, the board of chosen freeholders shall be eligible to receive funding. In either case, the award of grant funds shall be made payable to the treasurer of the county.

(2) In general, all costs directly associated with the project will be eligible for funding. These include personnel, books and other library materials, equipment and overhead costs such as electricity or heat.

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(3) Under this option, grant funding must be matched by an expenditure of local county funds which is equal to 50 percent of the total cost of the project. In-kind services, such as release time for staff, are not eligible to be considered matching funds.

(4) Grant funding shall not exceed \$20,000 for this option.

(5) A county library may receive only one grant under this option per year. Libraries may apply to have projects continued for up to an additional two years after the first grant. These continuation applications will be evaluated, as are first year applications, on the criteria found in N.J.A.C. 6:68-1.4.

SUBCHAPTER 4. EMERGENCY AID

6:68-4.1 Purpose

The purpose of this emergency aid grant program is to help alleviate unforeseeable, emergency conditions in any municipal or county library.

6:68-4.2 Definitions

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

"Adequate insurance" means insurance covering, at a minimum, losses of 80 percent of replacement value, resulting from fire, floods, lightning, aircraft, earthquake, vehicles, explosions, riots, civil commotion, vandalism or malicious mischief.

"Emergency" means any damage or loss suffered by a public library in excess of \$50,000 or 10 percent of that library's current operating budget, whichever is less, and which directly affects the accessibility to the library and its collections to the public. Damages or losses caused by normal wear and tear, deterioration, defect, mechanical breakdown or neglect are not considered emergencies.

6:68-4.3 (No change in text.)

6:68-4.4 Method of application

(a) A letter of application for emergency aid under N.J.S.A. 18A:74-6 must be sent by certified mail to the State Librarian. This letter of application, made by an authorized representative of the library's board of trustees, shall include:

1.-6. (No change.)

7. The library's maintenance budget for the preceding five years;

8. An assurance that the library holds adequate insurance; and

9. Any additional reports or information the State Librarian may request.

(b) An intent to file request for emergency aid must be received by the State Librarian within 30 days of damage or loss.

(c) Actual application for emergency aid must be received by the State Librarian within 90 days of damage or loss.

6:68-4.5 Eligibility

(a) In order to be eligible for assistance, the library must demonstrate that:

1. Adequate insurance was in effect for 12 months prior to the emergency;

2. Preventive maintenance was budgeted for and performed during each of five years prior to the emergency; and

3. Reasonable effort has been made to correct the condition that caused the emergency. Written documentation, such as copies of bills, requests for quotations, work orders, must be submitted.

SUBCHAPTER 5. LIBRARY CONSTRUCTION INCENTIVE PROGRAM

6:68-5.1 Purpose

Under the provisions of the New Jersey Library Construction Incentive Act, N.J.S.A. 18A:74-14, the State Librarian, as the designated representative of the Commissioner of Education of the State of New Jersey, is authorized to supervise and administer State funds to assist in the construction, expansion, renovation or acquisition of a public library building. The following are minimum requirements for participation in the grant program.

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6:68-5.2 Definitions

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

"Library Construction Advisory Board" means a Board appointed by the State Librarian whose members have had extensive experience in the planning and construction of at least two public library buildings. The Board shall review and recommend projects for approval to the State Librarian.

6:68-5.3 Eligible projects

(a) The following types of construction are eligible for a grant:

1. Construction of a new building;

2. Acquisition of an existing building adaptable for use as a public library;

3. Addition to an existing building; or

4. Renovation of an existing building.

(b) If the project is an addition to an existing building, the new construction for the addition must result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.5(f).

(c) The acquisition or the substantial renovation of an existing structure may be an eligible project. In order to be eligible, the acquisition or the renovation must be extensive and comprehensive as distinguished from routine maintenance and repair projects. In no case may costs for furnishings and equipment in excess of 30 percent of the total acquisition or renovation costs of the project be considered eligible for matching.

(d) An application may be submitted which combines renovation and construction of an addition. An acquisition or renovation application must result in total floor space which, when added to the floor space of the existing structure, shall meet the minimum size criteria in N.J.A.C. 6:68-5.5(f). An acquisition or renovation analysis and program must be prepared by a registered architect and shall be part of the application. The architect shall also certify that the proposed acquired or renovated structure and all its component parts shall have a life expectancy of 20 years or more. Studies made by the architect regarding the following shall be submitted in substantiation of the suitability and practicality of the acquisition or renovation:

1. The building shall be examined to determine that it is structural sound;

2. All interior and exterior finishes, general construction, safety factors, ceiling lights, and ventilation shall be examined to determine if the existing structure is suitable for acquisition or renovation and upon completion will require no more than normal, annual maintenance;

3. Careful analysis of the space requirements and allocation of space shall be made to determine if the structure, as acquired or renovated, will meet modern concepts of library services to the community it serves;

4. All mechanical aspects of construction shall be carefully analyzed to determine the need for replacement or improvement.

(e) Minimum size for any new construction project shall be 3,500 square feet of floor space.

(f) Preliminary applications may be accepted for review which, while being innovative or providing a unique service fail to meet the criteria outlined in this section. Exceptions may be considered where the public library building program demonstrates initiative and seeks to solve local problems in an original or cost-effective manner.

(g) The signing of construction contracts before full approval by the State Librarian shall make the project ineligible for participation in the grant program.

6:68-5.4 Eligible project costs

(a) (No change.)

(b) In order to promote the construction of projects in an economical manner, a ceiling periodically shall be set by the State Librarian describing a maximum per square foot project cost beyond which project *[cost,]* *costs* will not be eligible in the computation of the State share of funding.

(c) Should some portion of the proposed construction be intended for use for other than library purposes, such as municipal offices or

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a general municipal meeting room, this space may not be included in the computation of available square feet of space. Construction costs relating to these nonpublic-library-use areas are not eligible to be used for matching purposes. The application must clearly designate the nonpublic-library-use areas and their related costs. Reimbursable costs must be reduced by the amount of those related costs. The cost of any shared-space submitted for reimbursable purposes must be prorated on the basis of the percentage of library use, for example a meeting room that will be used 50 percent of the time by the public library is eligible to be reimbursed only 50 percent of those costs.

(d) Costs for renovation of an existing structure to be included together with costs of an addition will be computed separately and not averaged to determine amount of grant.

6:68-5.5 Project criteria

(a) All applications must meet the requirements and criteria of these regulations. Those interested in applying for possible exceptions must request an interview with the Library Construction Advisory Board. Exceptions to the requirements and criteria may be allowed.

(b) During the calendar year prior to submission of application, a municipal, joint or association library shall have received tax support at the level equal to at least 1/3 of a mill on every dollar of assessable property within such municipality based on the equalized valuation of such property as certified by the Director of Taxation in the Department of the Treasury. A county or regional library, during the calendar year prior to submission of application, shall have received tax support at the level equal to at least 1/15 of a mill on every dollar of the apportionment valuation.

(c) During the calendar year prior to submission of application, the library shall have met the minimum criteria for receipt of State Library Aid (N.J.A.C. 6:68-2) or submit a plan detailing steps to meet all the criteria which is acceptable to the Library Construction Advisory Board.

(d) The applicant must be in possession of a fee simple title or such other estate or interest in the site, including access thereto, as is sufficient to assure undisturbed use and possession of the facilities for not less than 20 years. Ownership of site by the applicant includes ownership of the land by the municipality(ies) of the applicant or the county(ies) in the case of a county or regional library application, provided that such land has been formally dedicated to library use. In the case of an association library, title to the land and building shall be in the name of the municipality in which the library is located.

(e) The applicant must have local matching funds for the project (the difference between project costs and the potential grant award) before final approval can be given. Within three months following notification of eligibility for a grant award, evidence must be submitted that funds have been appropriated for financing of the project. Such evidence shall include copies of the ordinance of appropriation passed on final reading and approved.

(f) Floor space is meant to include total square footage of space available for public library purposes including outer walls. This shall include areas provided for mechanical equipment and maintenance requirements. In calculating square footage, only those areas shall be included that have heat, light and ventilation adequate for public and staff usage, excepting that those areas designated for mechanical, maintenance and storage purposes have heat, light and ventilation and square footage commensurate with their purposes.

1. The estimated population 10 years after the year in which application is made shall be used to determine the population base of the area served by the applicant library. For areas experiencing a population decline, the population estimate of the New Jersey Department of Labor for one year prior to the fiscal year in which the grant application is made shall be used as the population base.

2. For new construction, the population base as determined above shall be used to compute the minimum project size required to qualify as an applicant for a grant as specified in Table A.

Table A

Population to be Served by the Project	Minimum Square Feet of Floor Space
Under 10,000	3,500 sq. ft. + .7 sq. ft. per capita over 5,000 pop.
10,000-25,000	7,000 sq. ft. + .6 sq. ft. per capita over 10,000 pop.
25,000-50,000	16,000 sq. ft. + .45 sq. ft. per capita over 25,000 pop.
50,000-100,000	27,250 sq. ft. + .35 sq. ft. per capita over 50,000 pop.
100,000-200,000	44,750 sq. ft. + .25 sq. ft. per capita over 100,000 pop.
200,000-500,000	69,750 sq. ft. + .2 sq. ft. per capita over 200,000 pop.
500,000+	129,750 sq. ft. + .15 sq. ft. per capita over 500,000 pop.

3. If the project is an addition to an existing building, the new construction for the addition must result in total floor space, which when added to the floor space of the existing structure, shall meet the minimum size criteria as shown in Table A.

4. The percentages in Table B below may be used to reduce the floor space requirements in Table A above for the construction, acquisition or renovation of a central library.

Table B

Population Served by Central Library	Percent of Allowable Reduction
Under 39,999	25
40,000- 49,999	26
50,000- 59,999	27
60,000- 69,999	28
70,000- 79,999	29
80,000- 89,999	30
90,000- 99,999	31
100,000-109,999	32
110,000-119,999	34
120,000-129,999	36
130,000-139,999	38
140,000-149,999	40
150,000-159,999	42
160,000-169,999	44
170,000-179,999	46
180,000-189,999	48
190,000-199,999	50
200,000-209,999	52
210,000-219,999	54
Over 219,999	55

(g) Library buildings and facilities shall be designed in accordance with the minimum standards contained in the "Buildings and Facilities for Providing Access and Usability for Physically Handicapped People," ANSI A117.1—1986. The 1986 edition of this publication with all subsequent amendments and supplements is hereby incorporated by reference and adopted as a rule.

1. This document is available for review at the Division of the State Library, Department of Education, 185 West State Street, CN 520, Trenton, New Jersey 08625-0520.

2. This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

3. The applicant shall also comply with N.J.A.C. 5:23-7, Barrier-Free Subcode pursuant to N.J.S.A. 52:32-4 through 12.

(h) (No change in text.)

(i) All contracts shall be awarded to the lowest qualified bidder on the basis of open competitive bidding as specified in the Local Public Contracts Law*[""], N.J.S.A. 40A:11-1 et seq.

(j) In developing plans for public library facilities, the local and State codes with regard to fire and safety will be observed. In situations where local fire and safety codes do not apply, recognized State codes shall be observed.

6:68-5.6 Priorities for the receipt of construction grants

(a) General provisions for priorities for the receipt of construction grants shall include the following:

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1. Those applications properly submitted and found to be in an approvable form shall first be assigned to one of two priority groupings as described in this section. All applications of the first priority fulfilling the criteria of these rules shall be awarded grants before applications of the second priority are funded. Availability of funds and number of applications within each priority grouping shall, within any one fiscal year, determine the projects to be funded.

2. Within each of the two priority groupings, all applications shall be ranked in terms of ability to pay by the municipalities and counties. The ratio of the average equalized valuation* of the three years preceding the date of the application to the population estimate of the municipality(ies) or county(ies) by the New Jersey Department of Labor for the year preceding the date of application shall be used as the criterion determining this financial ability. The first grant within each priority grouping shall be awarded that applicant demonstrating the least financial resources through the lowest ratio of equalized valuation to population. Each succeeding grant shall be awarded to the remaining applicant whose ability to pay is lowest.

i. First priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to, an addition to or renovation of a central or branch building of a municipal, joint or county library.

ii. Second priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to, an addition to or renovation of a central or branch building of an association library.

(b) Any governmental jurisdiction, board of trustees or library commission which has previously received a construction grant shall be placed automatically in the second priority and be ranked last in the priority for two fiscal years succeeding the fiscal year in which the grant was awarded, after which time it shall resume its normal status.

*Equalized Valuation as listed in the "Certification of Table of Equalized Valuations" promulgated annually on October 1, by the Division of Taxation, New Jersey Department of Treasury.

6:68-5.7 Amount of grant and method of allocation

(a) Generally, the minimum State share of eligible project costs of any project eligible for a grant shall be no less than 25 percent.

(b) Should funds be insufficient to allow all projects eligible for a grant to receive at least 25 percent of eligible project costs, funds shall be distributed according to priority ranking (see N.J.A.C. 6:68-5.6) until the funds are depleted.

(c) Should funds be sufficient to allow all approved projects to receive more than 25 percent of eligible project costs, the 25 percent grants shall be considered as base grants and remaining funds shall be distributed to approved applicants on the basis of the ratio of each project's square footage to the total square footage of all approved projects. The maximum grant will not exceed 50 percent of eligible project costs or \$500,000, whichever is less.

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

6:68-5.8 Review and approval procedures

(a) Application for a grant must be in the completed official form NJLCIA-2, "Application for Construction Grant."

(b) The application shall be made by the body charged with the responsibility for the establishment and maintenance of the library (board of trustees or county library commission, or county board of chosen freeholders as appropriate). The governing body of the municipality in which the library is located, or of the county(ies) in the case of a county library, shall be cosignator of the application.

(c) If a library facility is to be constructed by a municipality with the provision that it be equipped or stocked or staffed or supported by a library not an agency of that municipality (for example, a municipally constructed building which will be operated by a county library as a branch library), the application shall be in the names of both or all parties concerned.

(d) The person authorized to submit the application shall be an officer of the body named as applicant, preferably, the president or chairperson of this body. A statement to be signed and completed by the responsible officer of the applicant, for example, secretary of a board of trustees, shall certify this authorization. If the application

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is jointly submitted, an individual from each body shall be authorized and certified. The signature of each authorized person is required on the application.

(e) The State Librarian shall appoint a Library Construction Advisory Board which is composed of no fewer than three persons who each have had experience in public library services and the construction of at least two public library buildings. The responsibilities of the Library Construction Advisory Board shall include the evaluation of the applicant's building plans, building site and program of service. It shall recommend to the State Librarian for approval those applicants whose projects will result in efficient and effective library buildings.

(f) Applicants seeking an exception to the provisions and criteria enumerated in these rules must request an interview with the Library Construction Advisory Board. Requests for exceptions must be directed to the State Librarian.

(g) In addition, the Board shall advise the State Librarian on the development and formulation of rules and criteria for the construction grant program.

(h) The application process shall consist of two phases. In Phase I, a notice of intent shall be submitted by each applicant. Upon acceptance of this document, the State Librarian shall assign a member of the Library Construction Advisory Board to work with each applicant to assist in the preparation of Phase II required documents. In Phase II, a community survey, a building program and schematic plans, including outline specifications, shall be submitted for review by the Library Construction Advisory Board. Applicants may be required to appear before the Board to present the plans. Upon successful completion of Phase I and Phase II, applicants shall receive notification of eligibility for a grant award. Documents required for Phase II must be submitted to the Library Construction Advisory Board within six months of the acceptance of the Phase I document.

(i) Building plans shall be prepared by an architect licensed by the State of New Jersey.

(j) Any changes or revisions affecting the application, including any structural changes in the building plans, shall be submitted on appropriate forms for approval. The State Librarian shall have the power to revoke approval of any application or grant for failure to submit and receive approval of substantial changes in the application.

(k) Full approval of the proposed construction project must be given by the State Librarian before construction contracts are signed.

(l) Architectural or engineering supervision and inspection will be provided by the applicant at the construction site to ensure that the completed work conforms to the approved plans and specifications. For the purpose of inspection, representatives of the State Librarian will have access at all reasonable times to all construction work being done under the New Jersey Library Construction Incentive Act, N.J.S.A. 18A:74-14 et seq. The owner and contractor will be required to facilitate such access and inspection.

(m) (No change.)

(n) In general, the grant shall be paid to the applicant in three installments as shown below, but only upon receipt of satisfactory evidence of completion of each phase. Architect's certification and on-site inspection shall be considered satisfactory evidence.

1. Forty percent upon approval of the award of construction contract(s);

2. Fifty percent when construction is 50 percent complete; and

3. Ten percent upon submission and acceptance of audit of expenditure, subject to adjustment to reflect the actual cost.

(o) (No change.)

SUBCHAPTER 6. AUDIO-VISUAL PUBLIC LIBRARY SERVICES

6:68-6.1 Purpose

(No change in text.)

6:68-6.2 (No change in text.)

6:68-6.3 Categories in award of grants

(a) (No change in text.)

(b) The priority of categories and the percentage of funds allocated to each category shall be established each year by the State Librarian.

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SUBCHAPTER 7. INSTITUTIONAL LIBRARY SERVICES

6:68-7.1 Purpose

(a) The rules in this subchapter provide for the development of library services in State, county and municipal institutions, pursuant to the provisions of the Library Development Aid Law, (P.L. 1985, c.297), N.J.S.A. 18A:74-3.2 through 3.4.

(b) Three separate institutional grant categories have been developed:

1. Institutional Library Services per capita State aid grants provide funds to institutions whose library services meet minimum standards and maintain a level of expenditure for library service equal or above the level of the preceding calendar year.

2. Institutional Library Services Developmental Grants provide funds to assist institutions in meeting minimum standards for library services.

3. Institutional Library Services Incentive Grants provide funds to institutions whose library services meet minimum standards, for the purpose of expanding or developing library services.

(c) To be eligible for any of the three programs, institutions must establish a library advisory committee. Membership on the committee will include one person from each of the following: the institutional library staff, representatives of the administration, the departments of the institution, client population, and the community. The primary model for institutional library services is that of public library services.

6:68-7.2 Definitions

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

“Access” means the on-site use of the library facility and its resources and services or the ability to use library materials and services from remote locations; in institutions, access includes open hours of the library facility and service hours to rooms, cells or wards unduplicated by library facility hours. Limitations on access include permissions required and restrictions imposed on client use of services.

“Client groups” means mentally disabled, mentally retarded, and physically handicapped persons; also adults and juveniles in correctional and related programs. Excluded are residents of general hospitals, nursing homes and boarding homes.

“Institution” means an adult or juvenile health, mental health, mental retardation, veterans, residential, correctional and other similar facility other than a public school, which is operated by or under contract to the State or to county or municipal governments to carry out health, welfare, educational and correctional programs. Excluded are general hospitals, nursing homes and boarding homes.

“Institutional library” means any library, within an institution, directly serving the institutional client group.

“Institutional library services developmental grants” means funds made available to institutions to bring library services up to the minimum standards.

“Institutional library services incentive grants” means funds made available to institutions already meeting minimum standards to expand or develop programs of library services.

“Institutional library services per capita State aid grants” means funds made available to institutions whose library services meet minimum standards and maintain a level of library expenditures for library services equal or above to the level in the preceding calendar year.

“Library advisory committee” is a group within the institution which will assist in the development of a plan for library services.

“Library facility” means a space devoted solely or primarily to library services and materials and may include circulation desk, reading and study area, group program area, book stacks and other shelving for materials, office space for library staff, work room or space for cataloging and other related functions, and storage for materials and equipment.

“Library materials” means print, non-print items and electronic software accessible through a library and its services. Library materials do not include texts or curriculum materials; they do include a range of recreational, cultural, and informational items.

“Library service” is a general term for all of the activities performed and programs offered by libraries in meeting the need of their target groups. As such, it can encompass a range of services, such as information services or circulation services, which are determined in a particular library by its roles and goals. The primary model for institutional library services is the public library services model.

“Plan of library service” is a written plan for all of the activities to be performed and programs to be offered by a library in order to meet the needs of its target group(s). Such a plan is based on the mission and roles adopted by a library and generally includes goals, objectives and activities to be implemented.

“Room/cell/ward library service” means those activities performed and programs offered by an institutional library in meeting the information needs of those groups unable to avail themselves of the library facility within an institution due to limitations on mobility.

“Titles” are unique monographs (books) or distinctly titled materials held; this is not the same as volumes or items, which includes all multiple copies of a single title. This definition applies to books, to audio-visual materials, and to computer software.

6:68-7.3 Minimum standards for institutional library services

(a) The following minimum standards shall apply to institutional library services:

1. Staff shall be assigned by the institution in accordance with the chart set forth below:

Average Annual Resident Population	Minimum Number of Paid Staff
Less than 100	One staff member part-time.
100 to 300	Associate librarian full-time. One library clerk, part-time.
301 to 999	One librarian full-time. Two library clerks, one of whom must be full-time.
1,000 or more	One librarian full-time. Three library clerks, two of whom must be full-time.

2. Materials to meet the informational, educational and recreational needs of the population shall be provided as follows:

i. A minimum of five titles per client. Titles can include print and non-print materials; and

ii. Equipment to support library materials.

3. Access shall be provided to client groups as follows:

i. A library with only part-time staff shall provide library services at least 20 hours per week; and

ii. A library with full-time staff shall provide library services at least 30 hours per week.

4. Facilities and furnishings will be adequate to support the library and its services and will be determined in accordance with guidelines established by the State Librarian.

6:68-7.4 Institutional library services per capita State aid grants

(a) Per capita State aid grants will provide funds to institutions which meet minimum standards for library services.

(b) Institutions which meet minimum standards and maintain a level of library expenditures for library services equal to or above the level in the preceding calendar year will be eligible, annually, for a grant of \$1,000 per institution plus a minimum of \$7.50 per capita.

(c) The sum payable as State aid, as finally determined by the Commissioner, shall be payable on October 1. Payment shall be made payable to the governing body of each institution qualifying for aid under this chapter.

6:68-7.5 Institutional library services developmental grants

Developmental grants will provide funds to assist institutions in bringing their library services to minimum standards.

6:68-7.6 Institutional library services incentive grants

Incentive grants will provide funds to institutions to develop or expand programs of library services. Institutional library services must meet minimum standards prior to an application for this grant. Library services may be provided through cooperation with other institutions or with other libraries.

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6:68-7.7 Priorities and funding among grant categories

The priorities among the three institutional grant categories and the percentage of funds allocated in each program shall be established annually by the State Librarian.

6:68-7.8 Use of funds

Funds received pursuant to these rules shall not be applied to any purpose other than institutional library services. Institutional library services budgets shall not be reduced due to receipt of institutional *[state]* *State* library aid.

6:68-7.9 Reports and audits

(a) On or before March 1 in each year, each institutional library receiving institutional library services per capita State aid grants according to this subchapter shall prepare and transmit a report to the State Librarian of such information, as the State Librarian shall require, based upon the records and statistics of the preceding calendar year.

(b) On or before August 1 in each year, each institutional library receiving institutional library services developmental or institutional library services incentive State aid according to this subchapter shall prepare and transmit a report to the State Librarian of such information, as the State Librarian shall require, based upon the records and statistics of the preceding fiscal year.

(c) Grant recipients shall be required to submit other reports and financial audits as specified by the State Librarian in the grant announcement.

SUBCHAPTER 8. MUNICIPAL BRANCH LIBRARY SERVICES

6:68-8.1 Purpose

(a) The rules in the subchapter provide funds to any municipal library which receives State aid pursuant to N.J.S.A. 52:27D-178 et seq. and maintains one or more branch libraries to assist in maintaining, operating and improving branch libraries, pursuant to the provisions of the Library Development Aid Law (P.L. 1985, c. 297, N.J.S.A. 18A:74-3.2 through 3.4).

(b) There are two separate grant programs which are eligible for funding: Program A—Municipal branch library assistance aid for planning, and Program B—Municipal branch library assistance aid for operations and improvements.

6:68-8.2 Program A—Municipal branch library assistance for planning

(a) Municipal branch library assistance aid for planning will be available to fund or update a master plan for municipal branch library service.

(b) The master plan which results from this planning process shall contain the following elements, which may be further defined in the grant application issued annually by the State Library:

1. Goal of the master plan;
2. Objectives of the master plan;
3. Report on the demographic characteristics of each branch library or proposed branch library;
4. Report on library resources of the municipal branch library system;
5. A report on other existing library and information resources in the community;
6. Report on library services of the municipal branch library system;
7. Options for library service through the municipal branch library system;
8. Report on estimated costs for these options;
9. Feasibility of options; and
10. Projected timetable for implementation of the options.

(c) All costs directly associated with the development of a master plan for a municipal branch library system are eligible for funding, except overhead expenses and in-kind costs.

1. Examples of costs that can be included are the employment of a library consultant to conduct the study; costs associated with administering and conducting any surveys related to the plan, such as

a community survey or a patron survey; and any support costs directly related to the project including data processing and mailing costs.

(d) The amount of award will fall into the following categories:

1. A grant not to exceed \$20,000 will be available for the development of a master plan for library service for a population up to 50,000.

2. A grant not to exceed \$30,000 will be available for the development of a master plan for library service for a population up to 100,000.

3. A grant not to exceed \$40,000 will be available for the development of a master plan for library service for a population over 100,000.

(e) Additional criteria for approval are as follows:

1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population, N.J.A.C. 6:68-2.

(f) The boards of trustees of municipal libraries located in municipalities which receive State Aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.

6:68-8.3 Program B—Municipal branch library assistance for operations and improvements

(a) Any library applying for funding under this program must have a plan for municipal branch library service which has been approved by the State Librarian. This master plan may have been developed under a planning grant provided by Program A of this subchapter or a master plan which contains the same elements required for a master plan funded under Program A and was completed within and approved the five years preceding the application for this program.

(b) Options for municipal branch library service include but are not limited to:

1. Expansion of branch library hours to include evenings or weekend hours;
2. Expansion of branch library services through additions of staff, materials or equipment;
3. Expansion of branch library service to include adult or children's programming;
4. Expansion of branch library service through programs targeted for special populations;
5. Expansion of branch library services through employment of a coordinator for specialized services; and
6. Expansion of branch library services through cooperation with other types of libraries.

(c) Projects funded under this program may involve one branch of the system or several branches of the system.

(d) In general, any operating expense directly associated with the project will be eligible for funding. These include personnel, books and other library materials, equipment and overhead costs such as electricity or heat. Grant funds may not be used for construction or renovation projects costing in excess of \$10,000.

(e) Under this program grant funding shall not exceed \$50,000 per library.

1. Under this program, a municipal library may apply annually for only one branch library grant.

2. The application may be for either a new project or for a continuation of a previously funded grant.

3. Grants may be funded for a total of three years, the initial grant and two continuation grants.

4. Initial and continuation applications will be evaluated by the criteria found in N.J.A.C. 6:68-1.4.

(f) Additional criteria for approval are as follows:

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1. All initial applications shall be ranked in terms of the municipalities' ability to pay with priority given to applicants demonstrating the least financial resources. The criterion to be used in determining financial ability shall be the ratio of equalized valuation (as listed in the "Certification of Table of Equalized Valuations", promulgated annually on October 1st by the New Jersey Division of Taxation) of the year preceding the date of application of the population estimate (as promulgated by the New Jersey Department of Labor) of the municipality for the year preceding the date of application.

2. The municipal library must at the time of the application meet in full the quantitative State Aid rules for library service to its population N.J.A.C. 6:68-2.

(g) The boards of trustees of municipal libraries located in municipalities which receive *[state]* *State* aid pursuant to N.J.S.A. 52:27D et seq. and maintain one or more branch libraries are eligible applicants.

SUBCHAPTER 9. COLLECTION EVALUATION AND DEVELOPMENT

6:68-9.1 Purpose
(No change in text.)

6:68-9.2 Eligible projects
(a)-(b) (No change.)
(c) Subject specialty development grants will be available to a public library(ies) to develop and/or to strengthen specific subject collections *[subject]* through the purchase of materials.

6:68-9.3 (No change from proposal.)

SUBCHAPTER 10. MAINTENANCE OF LIBRARY COLLECTIONS

6:68-10.1 Purpose
(No change in text.)

6:68-10.2 Definitions
The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise.

...
"Housing" means the provision of equipment, products, supplies and appropriate environmental conditions or their creation and maintenance for the long-term storage and maintenance of a collection.
...

6:68-10.3 Eligible projects
(a)-(b) (No change.)
(c) The State Librarian may establish annual priorities for the awarding of funds.

6:68-10.4 Funding allocation
(a)-(b) (No change.)

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(a)

DIVISION OF WATER RESOURCES

Water Supply Allocation Permits

Readoption with Amendments: N.J.A.C. 7:19

Proposed: November 20, 1989 at 21 N.J.R. 3594(a).
Adopted: February 23, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: February 26, 1990 as R.1990 d.180, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4).

Authority: N.J.S.A. 13:1D-9, 58:1A-1 et seq., 58:4A-4.1 et seq., and 58:12A-1 et seq.

DEP Docket Number: 049-89-10.
Effective Date: February 26, 1990, Readoption; March 19, 1990, Amendments.
Expiration Date: February 26, 1995.

Summary of Public Comments and Agency Responses:

On November 20, 1989, the New Jersey Department of Environmental Protection ("Department") proposed to readopt with amendments its rules governing water supply allocation permits. Two public hearings were held; the first was held December 7, 1989, and the second was held December 8, 1989. A total of six people testified at the hearings and 14 people submitted written comments. In addition, notification was published November 20, 1989 in the following newspapers: The Star Ledger, The Asbury Park Press, The Bergen Record, The Trenton Times, and The Atlantic City Press.

COMMENT: Four commenters stated that they should have been given better notice of the public hearings.

RESPONSE: The Department provided notice of the proposal in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. Notice was published in the New Jersey Register as well as newspapers of general circulation throughout the State.

COMMENT: One commenter asked why the changes were being made to the rules now, and not when the master plan was completed.

RESPONSE: The new Water Supply Master Plan is not scheduled for completion until December of 1991, and the current rules would have expired prior to its completion. If changes to the Water Supply Master Plan require further amendments to N.J.A.C. 7:19, the Department will make the necessary changes through the rule making process. The changes made to the fee schedule at this time are necessary due to the need for additional funds to administer the program. Other changes made at this time were for the purpose of streamlining the application process and more clearly defining the requirements for a complete water supply allocation permit application.

COMMENT: One commenter suggested that the Department confer with the regulated community prior to formulating new rules to get their input.

RESPONSE: In accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., the regulated community is afforded an opportunity to submit oral or written comments regarding a proposed rule. During the administration of the water supply allocation permit program, the regulated community discusses various aspects of the rules with the Department.

COMMENT: One commenter suggested that the permit costs should be spread out over the largest number of people possible.

RESPONSE: Permit costs are spread out over all persons using the water. This will minimize the impact upon any one group. Larger users pay larger fees due to the amount of water which they are allocated.

COMMENT: One commenter suggested that the Department has not caught many of the people who are pumping above the legal limit without a permit.

RESPONSE: The Department disagrees with this comment. Each year the Department finds persons who are not aware that a water allocation permit is required to divert the amounts of water which they are diverting. There is no evidence of a substantial number of persons diverting water without the necessary permit.

COMMENT: One commenter requested that a mechanism be set up whereby case-by-case waivers of some of the rules can be given to some of the smaller permittees.

RESPONSE: The Department disagrees with this comment. These rules are structured to provide the Department with the necessary management strategies and regulatory controls to assure the purity and adequacy of current and future water supplies.

COMMENT: One commenter complained that the Department continues to have "too much power" under these rules and suggests that a board of appeals, composed of applicants, be set up to handle appeals of Departmental decisions.

RESPONSE: The authority to promulgate these rules has been given to the Department by the Legislature as set forth in the enabling statutes, N.J.S.A. 13:1D-9, 58:1A-1 et seq., 58:4A-4.1 et seq., and 58:12A-1 et seq. The appeal procedure set forth in N.J.A.C. 7:19-2.15 has been established pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. as well as the New Jersey Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The Department needs this authority to ensure that the citizens of the State have enough water to meet their current and future needs and provide such water with an adequate margin of safety. It is necessary that the State, through the Department, have the power to

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manage the State's water resources through regulation. The appeal procedure ensures that the interests of aggrieved persons as well as the public are adequately addressed and protected.

COMMENT: One commenter requested that the schedule for re-adoption and implementation be publicized.

RESPONSE: The re-adoption of N.J.A.C. 7:19 is published in the New Jersey Register pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The amendments to N.J.A.C. 7:19 are effective upon publication in the New Jersey Register. If filed before the expiration date, all provisions readopted without change continue in full force and effect.

COMMENT: Two commenters expressed concern with the economic effect of these rules on public purveyors. If the rules are implemented after the adoption of their 1990 budgets, there may not be sufficient funds allocated for the new fee schedule.

RESPONSE: The Department notified all water allocation permittees in July 1989 that billing would take place in January of each fiscal year instead of July. No billing took place in July 1989. Furthermore, said notice indicated a new fee schedule was being proposed for this billing. This fee schedule appeared in the November 20, 1989 New Jersey Register in addition to the newspaper publication set forth above. The six month delay in billing in addition to the notice of the proposed amendment of the fee schedule provided adequate notice of the new fees, therefore, enabling permittees to consider these fees in their 1990 budgets.

COMMENT: One commenter expressed concern that the two acts proposed as additional authority for the rules in N.J.A.C. 7:19-1.1(a), that is, the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq., do not apply to the proposed rules and should be eliminated from these rules.

RESPONSE: The two acts added as authority for N.J.A.C. 7:19 are the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq. Both acts provide the Department with the authority to regulate the management of water quantity and quality through the State and therefore clearly are authority for N.J.A.C. 7:19.

COMMENT: One commenter requested elimination of the term "may" from the definition of "Water Supply Critical Aquifer" in N.J.A.C. 7:19-1.3. This will eliminate any confusion caused by differences in interpretation.

RESPONSE: The Department cannot state with absolute certainty that the conditions of a water supply critical aquifer exist due to the probabilistic nature of ground water hydrology. Therefore, the term "may be" is more appropriate as it ensures that the Department has the latitude to act to protect ground water resources when certain conditions exist as set forth in the definition of water supply critical aquifer.

COMMENT: One commenter stated that definitions are needed for the following words: "reasonable," "practicable," and "equitable."

RESPONSE: The terms "reasonable," "practicable" and "equitable" as used in N.J.A.C. 7:19-1.3 are not meant to confer any special meaning other than their common usage. Therefore, definitions are not necessary.

COMMENT: One commenter requested that the term "person" as used in the definition of "applicant" be defined or a reference to N.J.S.A. 58:1A-3 be made.

RESPONSE: The term "person" is defined in N.J.A.C. 7:19-1.3, Definitions. It did not appear with the proposed amendments because it is not being amended.

COMMENT: One commenter requested that in N.J.A.C. 7:19-1.3, the 100 foot criteria for a replacement well be deleted and the definition be changed to meet the criteria established in N.J.A.C. 7:19-1.4(a)6.

RESPONSE: N.J.A.C. 7:19-1.3 provides a definition for a "replacement well." N.J.A.C. 7:19-1.4(a)6 outlines the information which must be submitted to the Department, by the applicant, in order that the Department can determine if the well meets the definition of "replacement well" as contained in N.J.A.C. 7:19-1.3. Relocation of a well at a distance greater than 100 feet increases the possibility that the well may impact others; therefore, this requirement is not being deleted.

COMMENT: One commenter suggested that any proposed changes to definitions of "Water Supply Critical Area" and "Water Supply Critical Aquifer" contained in N.J.A.C. 7:19-1.3 be made in N.J.A.C. 7:19-6.2 as well.

RESPONSE: The intent of the definitions of "Water Supply Critical Area" as contained in N.J.A.C. 7:19-1.3 and N.J.A.C. 7:19-6.2 is the same. The wording, however, is not identical. In order to reduce confusion, the definition contained in N.J.A.C. 7:19-1.3 for "Water Supply Critical Area" will be modified to read exactly the same as the definition in N.J.A.C. 7:19-6.2. Regarding the definition for "Water Supply Critical

Aquifer," this term is not used in 7:19-6; therefore, it will not be added to that subchapter.

COMMENT: One commenter requested that in N.J.A.C. 7:19-1.4, the term "having the ability to divert" be defined.

RESPONSE: The Department does not believe that this phrase needs to be defined. "Having the ability to divert" within the context of N.J.A.C. 7:19-1.4 simply means having wells with the pumping capacity of more than 100,000 gallons per day or more.

COMMENT: One commenter stated that he felt the reduction of the maximum length of an emergency diversion of water from three months to 31 days as proposed in N.J.A.C. 7:19-1.4(a)4, might present a hardship to permit holders.

RESPONSE: The emergency provisions outlined in N.J.A.C. 7:19-1.4(a) are for those who do not have a permit and suddenly need to divert a large amount of water. This provision is solely for unanticipated short-term uses such as emergencies and major fires and does not apply to those holding a valid allocation permit; therefore, it is not expected to present a hardship to permit holders.

COMMENT: One commenter recommended that in N.J.A.C. 7:19-1.4, existing permits be excluded from the proposed requirements and new permit terms until such time as the permit is renewed. The current language indicates all existing permittees are affected.

RESPONSE: N.J.A.C. 7:19-1.4 established the diversions to which this chapter applies. Existing permit holders are required to follow the new application procedures for renewals and modifications as well as the new fee schedule.

COMMENT: One commenter requested that an exception from the requirement to apply for a permit modification be made for instances where the pump capacity of an existing well is being increased, but the existing allocation limit is not being changed.

RESPONSE: Any increase in pump capacity increases the zone of influence of the well; this would increase the possibility of creating an adverse impact upon other users. Therefore, an exception cannot be made for increasing the pump capacity.

COMMENT: One commenter stated that a permit for construction of a water works is required from the Department prior to construction of a replacement well. As the information requested in N.J.A.C. 7:19-1.4(a)6 is already provided to the Department with the application to construct a water works, this section should be deleted in order to reduce duplication.

RESPONSE: The permit for construction of water works applies only to public community water systems where water allocation permits apply to a broader class of water use. Where applicants are applying for both permits simultaneously the Department makes every effort to coordinate the permit review procedures.

COMMENT: One commenter suggested that N.J.A.C. 7:19-1.4(a)6iv allow the well abandonment report to be submitted after the new well is installed.

RESPONSE: The Department agrees with this comment and will allow a 30-day period to submit an abandonment report because an applicant may still need to use the existing well while the new well is being installed. N.J.A.C. 7:19-1.4(a)6iv will be deleted and the following is added at N.J.A.C. 7:19-1.4(a)7: "A copy of the well abandonment report for the existing well shall be submitted within 30 days of installation of the new well." This change is made for administrative clarity.

COMMENT: One commenter suggested that for billing purposes, water use be averaged on a yearly basis rather than a per day basis.

RESPONSE: Apparently the commenter has confused the necessity for obtaining a permit with the billing class. The Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., does not make any reference to average water, and sets the use of 100,000 gallons per day as the threshold limit after which a permit is needed. The billing class is simply the monthly allocation divided by 31; this is done to simplify the billing process.

COMMENT: Two commenters questioned the validity of issuing penalties in accordance with N.J.A.C. 7:14-8 for violations as set forth in the penalty section of these rules (see N.J.A.C. 7:19-1.6(b)). N.J.A.C. 7:14-8 does not reference water supply terms and was adopted pursuant to N.J.S.A. 58:10A-1 et seq. The commenter further requested an explanation of how the Department intends to utilize N.J.A.C. 7:14-8.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:14-8 references the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. N.J.A.C. 7:14-8 will be used by the Department in assessing civil administrative penalties for violations of the enabling statutes or these rules.

COMMENT: One commenter suggested that Department staff be given the right to waive submission of information required under

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N.J.A.C. 7:19-2.2, if it is available at the Department and/or if it does not aid in the decision making process.

RESPONSE: The Department has the right to require the submission of all items outlined in N.J.A.C. 7:19-2.2. However, the Department has the right to waive the submission of any information which is not applicable to the specific application being processed. If the applicant has questions concerning the necessity of submitting any of the information required in N.J.A.C. 7:19-2.2, they should contact the Bureau of Water Allocation to obtain guidance. All applicants are encouraged to have a preapplication meeting with Bureau staff to determine the information that will be required for a complete submission.

COMMENT: Four commenters expressed concern that the information requested for permit renewal and modification will increase the hidden costs to the purveyors and municipalities. Examples of these requirements are those contained in N.J.A.C. 7:19-2.2 and N.J.A.C. 7:19-2.18.

RESPONSE: The Department's objective is not to increase costs. This information is necessary to insure compliance with these rules and the enabling statutes. Permit renewals and modifications do not require the submission of all of the information set forth in N.J.A.C. 7:19-2.2. Furthermore, the Department may waive the submission of any information which is not applicable to the specific permit.

COMMENT: Two commenters objected to the submission of information as set forth in N.J.A.C. 7:19-2.2 as it requires the applicant to submit information already existing in Department files. The Department has access to this information and, therefore, should not be requiring the applicant to submit it. It is suggested that "as a minimum" the applicant be required to submit the information only for new permits.

RESPONSE: The Department does make information available to the applicants. It is the applicant's responsibility to insure that the requisite information accompanies their application. Modifications of permits may involve the development of a new source of water. Therefore, this information must be submitted for permit modifications as well.

COMMENT: Two commenters pointed out that the word "division" was used where the word "diversion" should have been used in the first sentence of N.J.A.C. 7:19-2.2(c).

RESPONSE: The Department agrees with this comment. This is a typographical error and has been corrected.

COMMENT: One commenter stated that in N.J.A.C. 7:19-2.2(d)1 a detailed land use study should not be required and requested that the terms "general land use characteristics" be used in place of the terms "land use".

RESPONSE: Within the context of this provision, "general land use characteristics" more accurately reflects the nature of the required information. Therefore, N.J.A.C. 7:19-2.2(d)1 is amended accordingly. The requirements are not changed by this amendment, only the terminology.

COMMENT A: Two commenters stated that the hydrological evaluation for proposed diversions required by N.J.A.C. 7:19-2.2(d)7 is unnecessary and burdensome as it will adversely impact the purveyor's rates.

COMMENT B: Two commenters stated that a hydrological evaluation is unnecessary in cases where no one objects to a diversion. Such an evaluation adds unneeded costs.

RESPONSE: The hydrological evaluation is necessary to determine not only that there is a sufficient yield of water, but also that the proposed diversion will not adversely impact existing diversions or supplies. This information is essential; therefore, any associated costs are considered to be necessary.

COMMENT: One commenter asked the meaning of the term "evaluation" in N.J.A.C. 7:19-2.2(d)7, and requests that the scope of the "evaluation" be defined.

RESPONSE: No special meaning is inferred other than that stated in N.J.A.C. 7:19-2.2(d)7: A comprehensive hydrogeological evaluation of the proposed diversion is an analysis of the impacts of the proposed diversion upon the hydrogeologic regime of the watershed and upon other permitted uses in accordance with N.J.A.C. 7:19-2.2(f).

COMMENT A: One commenter suggested that the Department make its files containing the information requested in N.J.A.C. 7:19-2.2(e) available to applicants.

COMMENT B: One commenter stated that the information required to be submitted to the Department in N.J.A.C. 7:19-2.2(e)4 and 5 and (f)7 is not readily available to the applicant. This information includes the location of domestic wells within a one mile radius, landfills and contamination sites within a five mile radius, and proof of adequate sewage facilities for the area to be served.

RESPONSE: The majority of this information is available from various bureaus within the Department and can be reviewed by contacting the appropriate bureau. The Bureau of Water Allocation's files can be reviewed by calling (609) 292-2957 and making an appointment. Local health departments should also be consulted. It is the applicant's responsibility to obtain the requisite information for submission with an application.

COMMENT: One commenter suggested that N.J.A.C. 7:19-2.2(e)1 should only apply to all "permitted" diversions.

RESPONSE: The Department agrees with this comment; however, agricultural water users are not "permitted" but rather, are "certified." Therefore, "permitted and certified" will be added to N.J.A.C. 7:19-2.2(e)1. This will not impose or relax any burden placed upon by the regulated community. These terms are added for clarification of the rules.

COMMENT: Two commenters suggested that the requirement that the applicant identify all domestic wells in the same or interconnected aquifer within a one mile radius, N.J.A.C. 7:19-2.2(e)4, should only apply to all "registered" or "recorded" domestic wells.

RESPONSE: The Department disagrees with this comment. This cannot be done because many wells were installed prior to the start of the State well permitting program. Therefore, these wells are neither registered nor recorded with the Department in the well permit program. However, local health departments may have knowledge of the existence of these wells.

COMMENT: Two commenters recommended a modification of N.J.A.C. 7:19-2.2(e)4 and 5 which require an applicant to provide a United States Geological Survey map showing all domestic wells in the same or interconnected aquifer within a one mile radius and landfills and ground water contamination sites within a five mile radius. This requirement should be for information regarding "known" domestic wells and "known" landfills and contamination sites.

RESPONSE: The Department disagrees with this comment. Use of the term "known" is too subjective. The intent of requiring this information is to ensure that all available information is submitted with the application. This information is available from State and local agencies and through on-site surveys.

COMMENT A: Five commenters requested that the term "zone of influence", in N.J.A.C. 7:19-2.2(e)6, be defined. They further question if the term "delineated" wetlands refers to: National Wetlands Inventory (Fish, Game and Wildlife maps), Bureau of Freshwater Wetlands maps, or a field survey. Is the applicant responsible for the delineation of freshwater wetlands which are not on their property?

COMMENT B: Two commenters stated that the delineation of wetlands as required in N.J.A.C. 7:19-2.2(e)6 will be very costly for the purveyor.

RESPONSE: The Department is not regulating wetlands through these rules. The applicant is not required to delineate wetlands but is expected to make use of existing information and field observations within the estimated zone of influence. If a delineated wetland is located within the zone of influence of a well, a copy of the application will be forwarded to the Bureau of Freshwater Wetlands. A zone of influence is the area of ground water which experiences an effect attributable to the pumping well. Zone of influence can be applied to both confined and water table aquifers. Only diversions from water table aquifers will have a direct impact on wetlands. Therefore, N.J.A.C. 7:19-2.2(e)6 and (f)9 are modified to limit the requested information to proposed diversions from water table aquifers. For purposes of clarification, the definition of "zone of influence" has been added to N.J.A.C. 7:19-1.3.

COMMENT: One commenter questioned the ability of the Department's Division of Coastal Resources to provide the information requested in N.J.A.C. 7:19-2.2(e)6 to the applicant in a timely manner.

RESPONSE: The Department's Division of Coastal Resources is not the sole source of this information. This information can also be obtained by reviewing United States Fish and Wildlife maps, county soil surveys and on-site inspections. Therefore, the applicant has other means of obtaining this information in a timely manner.

COMMENT: One commenter suggested that N.J.A.C. 7:19-2.2(f) be strengthened so as to protect prior diversionary rights and that the burden of proof that prior water rights are not diminished be placed upon the applicant. Additionally, this concept should be incorporated into N.J.A.C. 7:19-2.2(g) as well.

RESPONSE: This commenter has misinterpreted the rules. The burden of proof is placed upon the applicant as indicated in N.J.A.C. 7:19-2.2(f)4. It is the applicant's responsibility to insure that there is no adverse impact

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on existing diversions as outlined in N.J.A.C. 7:19-2.2(f)4. It is also the applicant's burden under N.J.A.C. 7:19-2.2(g) to show the availability of a more viable alternative source of water.

COMMENT: Three commenters are of the opinion that even extensive engineering efforts could not establish the proof needed to satisfy N.J.A.C. 7:19-2.2(f)4, and suggest the establishment of minimum standards, and criteria for determining if the submission is adequate.

RESPONSE: The Department disagrees with this comment. A hydrogeological investigation and analysis can adequately identify the impact of a proposed diversion upon other permitted withdrawals. A case-by-case determination is necessary for the Department to identify an impact as adverse.

COMMENT A: Two commenters stated their concern with the proposed amendments to N.J.A.C. 7:19-6.10. The removal of the term "reduce" and insertion of "substitute water from a reasonably available alternative source" may mean that total diversion will be taken away by the Department.

COMMENT B: One commenter questioned why the word "cutbacks" was removed from N.J.A.C. 7:19-2.2(f)4.

RESPONSE: These changes were made necessary by the Appellate Division's holding *In the Matter of Water Supply Critical Area No. 2, 233 N.J. Super. 280* (App. Div. 1989). Total diversions will not be taken away by the Department pursuant to N.J.A.C. 7:19-6.10.

COMMENT: One commenter is concerned that N.J.A.C. 7:19-2.2(f)5 does not adequately protect prior diversion rights.

RESPONSE: The burden of proof is on the applicant to insure that the plans for the proposed diversion are just and equitable to the other water users affected thereby, and that the withdrawal from the aquifer does not adversely affect other permitted withdrawals, either ground or surface. A proposed diversion cannot interfere with the ability of another to divert.

COMMENT: Two commenters commented that N.J.A.C. 7:19-2.2(f)7 which requires that the applicant demonstrate that there are adequate sewage facilities for the area to be served, does not allow for facilities now under construction, and suggests that the Department conditionally approve diversions based upon adequate facilities coming on line, or allowing for the use of holding tanks.

RESPONSE: The Bureau of Water Allocation reviews applications on a case by case basis with the Bureau of Construction and Connection Permits to determine if conditional approval can be granted where new facilities are coming on line. The use of holding tanks are subject to the requirements set forth in N.J.A.C. 7:9A-3.12, may require a Treatment Worker Approval and cannot be inconsistent with Statewide Water Quality Management Planning N.J.A.C. 7:15-1.

COMMENT: One commenter suggested that the term "sewage" be replaced with the term "wastewater" in N.J.A.C. 7:19-2.2(f)7, as this term is more relevant on a regional scale.

RESPONSE: The Department agrees with this comment. The term "sewage" will be replaced with "wastewater." The term is more relevant on a regional scale and will add clarity and eliminate confusion.

COMMENT: Two commenters requested that N.J.A.C. 7:19-2.2(f)7 be eliminated as water supply demands and adequate sewerage facilities are not necessarily related. Water suppliers should not be punished or restricted from developing new sources of water supply because of inadequate sewerage systems.

RESPONSE: The Department disagrees with this comment. Water supply demands and adequate sewage facilities are directly related. Increased water withdrawals increase wastewater flows which will overload inadequate sewage facilities.

COMMENT: One commenter suggests that an applicant be permitted to submit a list of all domestic wells within a one mile radius of a diversion and the suspected aquifer from which they draw water instead of the requirement contained in N.J.A.C. 7:19-2.2(e)4 which requires the identification of all wells in the same or interconnected aquifer within a one mile radius. It may not be possible to identify aquifers for older wells.

RESPONSE: The Department disagrees with this comment. In order to demonstrate that a withdrawal will not adversely impact other users, they must identify those diversions that are in the same or interconnected aquifers.

COMMENT: Three commenters recommend clarifying the meaning of "wetlands delineation" as contained in N.J.A.C. 7:19-2.2(f)9 and (e)6 to eliminate any confusion as to when it is required, and what should be submitted.

RESPONSE: For the purpose of N.J.A.C. 7:19, the applicant is required to determine the existence of wetlands through the use of United

States Fish and Wildlife maps, county soil surveys, and field surveys. The applicant is not required to perform the delineation under these rules.

COMMENT: One commenter requested that in N.J.A.C. 7:19-2.2(f)9 the term "contained" be defined with regard to a freshwater wetland and a zone of influence.

RESPONSE: A zone of influence must be established for proposed water table diversions and a determination must be made as to the existence of wetlands within that zone. If a zone of influence contains wetlands, the Bureau of Freshwater Wetlands will be notified. They will determine if any further action is necessary.

COMMENT A: One commenter suggests that N.J.A.C. 7:19-2.2(f)9 be changed to read "*Where the proposed diversion is not for drinking water that the zone of influence of any proposed well . . .*" The proposed rule, as written, conflicts with the Freshwater Wetlands Act.

COMMENT: One commenter objected to N.J.A.C. 7:19-2.2(f)9 as being "totally overbearing," in requiring the applicant to actually delineate wetlands in the zone of influence, as zones of influence could extend off the applicant's property. They further question: (1) Have any studies been done that indicate that ground water withdrawal wells in New Jersey have been significantly affecting wetlands? (2) What does the Department plan on doing with the information on delineated wetlands? (3) Would a permit actually be denied if there are freshwater wetlands in the zone of influence?

RESPONSE: The intent of N.J.A.C. 7:19-2.2(f)9 is to identify wetlands which may be located within the zone of influence of any proposed water table diversion regardless of its intended use. The Bureau of Freshwater Wetlands will determine if any further action, such as further delineation, is necessary. Permits which adversely affect delineated wetlands will be conditional upon meeting the requirements of N.J.S.A. 13:9B-1 et seq. and N.J.A.C. 7:7A. The Department is not aware of any formal studies having been conducted regarding the effect of ground water withdrawal on wetlands. However, there is evidence that ground water withdrawals from water table aquifers can adversely affect wetlands.

COMMENT A: Two commenters questioned the criteria under which N.J.A.C. 7:19-2.2(g) will be applied.

COMMENT B: One commenter requested the reference to a "more viable alternative source of water" be deleted from N.J.A.C. 7:19-2.2(g).

RESPONSE: The intent of N.J.A.C. 7:19-2.2(g) is to maximize the use of existing water supply sources, such as transmission mains, prior to permitting new diversions. Permits will not be issued where another viable water alternative is available. An alternative is considered viable if it has sufficient capacity and is of sufficient quality to provide for the needs of the intended use. This is consistent with regional planning as outlined in the Water Supply Master Plan.

COMMENT A: One commenter states that requiring the use of the lower quality water in N.J.A.C. 7:19-2.2(h) would place additional costs for treatment on the purveyors. Additionally, concern is expressed that an adverse impact on health, safety and welfare exists by giving the Department the power to require an applicant to utilize lower quality water.

COMMENT B: One commenter contends that the applicant should be encouraged to develop the highest quality water and not the lowest, and questions the need for water quality language in the allocation rules.

COMMENT C: One commenter suggests that N.J.A.C. 7:19-2.2(h) be clarified as to encourage those not needing high quality water to use lower quality water. It should not be the intent to require community water suppliers to use lower quality water or substantiate the use of higher quality water.

RESPONSE: The purpose of N.J.A.C. 7:19-2.2(h) is to encourage non-potable users to utilize lower quality water for operations such as irrigation, non-contact cooling, dust suppression, etc. This is done with the intent of reserving the highest quality water available for public water supplies in areas of the State where such supplies are limited. To clarify this, N.J.A.C. 7:19-2.2(h) is modified to identify the use as non-potable.

COMMENT: Two commenters point out that in N.J.A.C. 7:19-2.2(k) the reference should be to N.J.A.C. 7:19-2.20 and not N.J.A.C. 7:19-2.24.

RESPONSE: The Department agrees with this comment. This is a typographical error and has been corrected.

COMMENT: One commenter questioned why N.J.A.C. 7:19-2.3 is missing from the proposal. Is it being kept unchanged or is the numbering in error?

RESPONSE: This entire section remained unchanged and, therefore, was not included as a proposed amendment.

COMMENT: One commenter recommends clarification of N.J.A.C. 7:19-2.5(a) which requires that applications for renewal of existing permits

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be submitted three months prior to the expiration of the current permit, to ensure that applicants are aware that the procedure applies only to renewals without modification. The applicant should understand that the modification will require a complete permit review.

RESPONSE: N.J.A.C. 7:19-2.5(a) is clear as written, that is, it applies to renewals without "modification" as defined in N.J.A.C. 7:19-1.3. All renewals with "modification" shall follow the procedures outlined in N.J.A.C. 7:19-2.2.

COMMENT: One commenter inquires as to the type of information required on the "appropriate application forms" listed in N.J.A.C. 7:19-2.5(b), and requests that a deadline be established for the Department's acting upon a permit renewal.

RESPONSE: The Department currently uses and makes available to applicants copies of the "CP #1" and "DWR-083" forms which require information in accordance with type of application and the requirements of N.J.A.C. 7:19-2.2. As long as a complete application for renewal is received, the Department views the applicant as operating under their existing permit pursuant to N.J.A.C. 7:19-2.5(d). Specifically, an existing permit may be extended for a period not to exceed one year.

COMMENT A: One commenter requests that N.J.A.C. 7:19-2.5(a) begin with "Upon receipt of renewal notice from the Department . . ."

COMMENT B: One commenter objects to N.J.A.C. 7:19-2.5(c) as being unnecessarily punitive in nature and feels that a notice that the permit is about to expire should be provided by the Department.

RESPONSE: As a matter of courtesy, the Department currently provides and will continue to provide notice of a permit's expiration date to the permittee. It is the applicant's responsibility for insuring that they renew their permit.

COMMENT A: One commenter requests that a time frame be set up for processing applications, and that deficiencies be addressed all at one time.

COMMENT B: Two commenters request that the deadline of 20 days for application review not be deleted from N.J.A.C. 7:19-2.6(b). An upper limit of 120 days should be placed on the Department to complete the review and issue a decision.

RESPONSE: The 20 day deadline for the Department's application review in N.J.A.C. 7:19-2.6(b) was inadvertently proposed in deletion and has been retained in adoption. The Department disagrees with the suggestion of an upper limit of 120 days to complete a review and issue a decision on the permit application because it would limit the applicant's ability to respond to public hearing comments which may result in additional hydrogeologic investigation.

COMMENT A: One commenter objects to N.J.A.C. 7:19-2.8 including the 45 day public notice period and the necessity of having a second comment period after the hearing. It is suggested that the Department establish a maximum 120 review period, deadlines for setting hearing dates (giving public notice to interested parties), and a maximum 30 day comment period. Additionally, the Department should provide the applicant copies of all objections and the staff report 15 days prior to the hearing date and establish time limits for the issuance of the hearing officer's report, decision makers statement and issuance or denial of the permit.

COMMENT B: One commenter suggests that in N.J.A.C. 7:19-2.8(a)3v, the reopened public comment period be extended to 30 days from the hearing date, with the hearing officer having the power to extend the comment period if necessary.

RESPONSE: The time frames established are required to insure the orderly administration of the program. If a hearing is held there will be a second comment period to allow sufficient time for all parties to address the issues raised. The Hearing Officer may extend the comment period if he deems it necessary. The Department makes every effort to supply the applicant with copies of the hearing record and the staff report to allow the applicant or any interested persons adequate time to comment before the Department renders a decision on the application. The amendments at N.J.A.C. 7:19-2.8 were made because it has been the Department's experience that a large majority of the scheduled public hearings were cancelled due to lack of public comment. The amendments to N.J.A.C. 7:19-2.8 insures that a public hearing will only be scheduled when requested either by the applicant, the Department, or an interested person. This will eliminate the delays caused by the former procedure for holding public hearings.

COMMENT: Two commenters stated that the cost of the public hearings will be a great financial burden on smaller towns.

RESPONSE: The costs only encompass the publication fee and stenographic fee. These fees are necessary and not considered excessive.

COMMENT: One commenter requests that water supply systems be classified based upon monthly allocations since they are most common.

RESPONSE: The Department classifies water users based upon a monthly average. This is expressed in N.J.A.C. 7:19-3.8(d) in terms of million gallons per day. The number used to determine which class a system is in is simply the monthly allocation divided by 31.

COMMENT: Two commenters request that additional provisions for a longer permit duration be made for facilities which may require long term financing.

RESPONSE: N.J.A.C. 7:19 allows for longer permit durations for projects which require long term financing. This has been clarified by rewording N.J.A.C. 7:19-2.2(f)8 to reflect the fact that the duration of a permit varies by class as set forth in N.J.A.C. 7:19-2.16(a)1.

COMMENT A: One commenter objects to the permit durations outlined in N.J.A.C. 7:19-2.16(a)1 as the seven year planning horizon is more appropriate.

COMMENT B: One commenter objects to the four year duration of Class 4 through 6 permits contained in N.J.A.C. 7:19-2.16(a)1 as it adds administrative costs. A permit duration of 10 years is suggested as this will achieve greater savings.

COMMENT C: One commenter objects to the permit durations established in N.J.A.C. 7:19-2.16(a)1 as they waste human resources. The commenter states that the shorter permit durations are being used by the Department to justify their need for additional staff by artificially increasing the workload. In addition, the allocation permit is generally the first one obtained and therefore construction is not complete until the permit is nearly expired.

COMMENT D: One commenter approved of the changes made regarding the renewal process. However it is suggested that as a renewal was ". . . simply an administrative task, rather than a complete review . . ." all renewal permits should be given a seven year term.

RESPONSE: The majority of the 700 Water Policy Permits which were reissued as Water Allocation Permits in 1983 were given five year permit terms causing a majority to become due for renewal in 1988. Therefore, the current permit durations were established to alleviate this unmanageable task and distribute the workload. Shorter permit durations are needed to adequately manage the constantly changing supply and demand needs.

COMMENT: One commenter recommends defining the term "daily" in N.J.A.C. 7:19-2.16(a)2 as it is not clear if it refers to maximum day, average day maximum month, or average day for the year.

RESPONSE: N.J.A.C. 7:19-2.16(a)2 indicates that a permit will contain a maximum diversion rate which may be expressed in terms of daily, monthly and/or annual allocations. Therefore, "daily" refers to maximum day and is based upon the pump capacity which is specified in gallons per minute.

COMMENT: One commenter objects to the new metering requirement in N.J.A.C. 7:19-2.16(a)4, as other less expensive means of measuring or calculating flow are available. These are especially applicable for large surface diversions.

RESPONSE: Metering has been required for several years. Weirs and staff gauges can be used for calculating passing flow. Meters are needed for all diversions to insure compliance with permit diversion limits. Other "accurate" measuring devices are allowed for specific applications such as hydroelectric dams, etc., and where their applicability can be demonstrated.

COMMENT: One commenter asks what constitutes "evidence of meter calibration," and questions where it is required. It is also suggested that the meter requirements be included in subchapter 6.

RESPONSE: Evidence includes a copy of the certification from the vendor, or in the case of self calibration, a copy of the procedures followed and copy of the inventory statement of meters with dates of calibration. The requirements are specified in the permit. The Department disagrees that these requirements should be contained in subchapter 6 because they apply to metering of diversion sources and not individual service connections.

COMMENT: One commenter objects to the conditions outlined for inspection rights in N.J.A.C. 7:19-2.16(a)5 as being overly broad and allowing Department field personnel to make on-site decisions that could be disruptive, and make requests that would cause disruption of normal operating procedures.

RESPONSE: The Department has authority to make inspections pursuant to N.J.S.A. 13:1D-9. It is not anticipated that requests will cause disruption of normal operating procedures. The Department needs this authority to perform site inspections to determine compliance with permit

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conditions. These include the existence of meters, readings on meters, number of wells and other physical aspects of the water system.

COMMENT: One commenter recommends that N.J.A.C. 7:19-2.16(a)5i be changed to provide that the Department can enter any site, building or equipment, or any portion thereof, owned or operated by the permittee, at "any reasonable time" rather than "anytime."

RESPONSE: The Department disagrees with this comment. The term reasonable is far too subjective and will prohibit the Department from taking proper action in emergent situations. The Department will act reasonably under the circumstances.

COMMENT: One commenter requests clarification of N.J.A.C. 7:19-2.16(a)5ii specifically, the language concerning "equipment." Additionally, it is questioned why the Department's personnel are not properly equipped and may require the permittee to make their equipment available to the Department for the purpose of taking cooperative measurements.

RESPONSE: The "equipment" referred to in N.J.A.C. 7:19-2.16(a)5ii is basically equipment used to measure water levels in wells and the amount of water being diverted. This equipment is required by the permit and includes flow meters and air line gauges. A situation may arise where the Department must make use of the permittee's equipment. This should not present a problem as it is required to be on site under the permit.

COMMENT: One commenter suggests that the annual status report for a water conservation plan in N.J.A.C. 7:19-2.16(b) should not have to be submitted without a request from the Department. Furthermore, N.J.A.C. 7:19-2.16(b) should outline the form of this submittal and the minimum acceptable information to be contained therein.

RESPONSE: An essential element of a water conservation plan is an annual status report to assure the Department that the particular plan is being implemented properly by the applicant. For this reason, the Department requires the submittal of the annual status report. The Department has developed guidelines and a "fill in the blank" form to simplify this task. These can be obtained by contacting the Bureau at (609) 292-2957.

COMMENT: One commenter states that the requirement of filing a water conservation plan and annual status report on all implemented conservation measures as set forth in N.J.A.C. 7:19-2.16(b) is repetitive. It already exists in N.J.A.C. 7:19-6.5.

RESPONSE: The Department disagrees with this comment. N.J.A.C. 7:19-6.5 only refers to public community water systems, the majority of which do not divert more than 100,000 gallons per day; therefore, they do not need a water allocation permit. N.J.A.C. 7:19-2.16(b) applies to all water allocation permit holders of which approximately 45 percent are public community water supply systems.

COMMENT: One commenter suggests that language be added to N.J.A.C. 7:19-2.17(a) to allow the Department to recall a permit when such action is necessary "for the public interest." This would be consistent with N.J.S.A. 58:1A-8.

RESPONSE: The Department agrees with this comment. In order to eliminate confusion and to be consistent with N.J.S.A. 58:1A-8, "for the public interest" will be added where appropriate. This is already required by statute; therefore, its addition will not impose or relax any requirements placed upon the regulated community.

COMMENT: Two commenters question the legal authority for requiring the reporting of water use under N.J.A.C. 7:19-2.18.

RESPONSE: The legal authority for requiring the reporting of water use under N.J.A.C. 7:19-2.18 is derived from the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq., and the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq. The Department is empowered to supervise the natural resources of the State pursuant to N.J.S.A. 58:4A-5. Furthermore, N.J.S.A. 58:12A-4 provides the Department with broad powers to regulate water systems throughout the State. The reporting requirements in N.J.A.C. 7:19-2.18 are necessary to ensure that the Department is aware of diversions which may adversely affect the quantity and quality of the State's water supplies.

COMMENT: One commenter requests that the regulated community be given the rationale for the inactive well provisions in N.J.A.C. 7:19-2.19.

RESPONSE: The rationale is that the Department needs to distinguish between an abandoned well and an inactive well. N.J.S.A. 58:4A-4.1 et seq. permits the Department to order a well not in operation for three or more years to be deemed abandoned and ordered sealed. N.J.A.C. 7:19-2.19 allows inactive wells which have an intended future use and are not endangering or threatening the subsurface and percolating waters of the State, to be maintained and not sealed.

COMMENT: One commenter asks what is meant by "operating order" as used in N.J.A.C. 7:19-2.19(c). Does this refer to a well pump or a well with a pump? What is the status report certifying?

RESPONSE: "Operating order" means a well which is structurally competent, with the casing, pump, piping and wellhouse maintained in such a manner as to not present a threat to the aquifer and/or human health and safety. This definition has been added to N.J.A.C. 7:19-1.3 for clarification purposes. The status report is certifying that the well is in operating order and is protected from vandalism and contamination.

COMMENT: Two commenters stated that the certification of information requested on the forms for permit renewal and modification places a hardship upon the officials signing the forms. They further stated that the phrase "to the best of my knowledge (belief)" should be used in N.J.A.C. 7:19-2.20.

RESPONSE: The Department disagrees with this comment. It is the applicant's responsibility to have full knowledge of the workings of his or her business. This will ensure that management is personally responsible for the operations of his or her facility and will be incentive for management to make sure the facility is operating properly.

COMMENT: One commenter requests that "certified" as used in N.J.A.C. 7:19-2.20(a) be made more specific as to who is seeking the certification. The commenter further asks that the "highest ranking individual" be specified.

RESPONSE: The requirement in N.J.A.C. 7:19-2.20(a)1i for the signature of the individual "seeking certification" is an error and has been deleted. The "highest ranking individual" at a facility varies as to each facility and therefore cannot be specified. It is simply the highest ranking individual at the facility with overall responsibility for that facility.

COMMENT: One commenter feels that the phrase "at the facility" is confusing in N.J.A.C. 7:19-2.20(a)1i as larger purveyors may not have management personnel at the site. The commenter is of the opinion that certification in N.J.A.C. 7:19-2.20(a)2 covers this adequately.

RESPONSE: The Department disagrees with this comment. The certification in N.J.A.C. 7:19-2.20(a)1 is for the highest ranking individual at the facility as discussed in the previous response. The certification in N.J.A.C. 7:19-2.20(a)2 is for those persons outlined in N.J.A.C. 7:19-2.20(a)2i who may not necessarily be the "on-site" individual. This is distinguished in N.J.A.C. 7:19-2.20(b).

COMMENT: Two commenters object to the amendment of N.J.A.C. 7:19-3.5 to include adjustment of the fee schedule based upon an "inflation factor" as it appears to be an attempt to bypass the public hearing process, does not allow for proper regulatory control, and is not justified under N.J.S.A. 58:1A-11.

RESPONSE: The inflation adjustment is being proposed to eliminate the need for major fee schedule adjustments by taking into account the cost of program increases due to inflationary effects upon salaries and program overhead. This method is an objective means to adjust the fee schedule and reduce program costs by not holding a hearing every year.

COMMENT: One commenter states that for public utilities an invoice is required prior to making payment; therefore, the wording of N.J.A.C. 7:19-3.7(a) should be changed to read "Failure to pay the annual permit fee after receipt of invoice from the Department . . ."

RESPONSE: The Department currently sends invoices to applicants for annual billing; therefore, the public utilities will have an invoice for purposes of making payment.

COMMENT: Four commenters state that the March due date for the annual bill as set forth in N.J.A.C. 7:19-3.7(a) should be extended to allow for proper budgeting at the municipal level.

RESPONSE: The Department's billing procedures provide for a "second notice." This gives the affected parties an additional 45 days to submit payment. This will give adequate time for proper budgeting at the municipal level.

COMMENT: One commenter expresses concern that these fees are "quintupling," specifically, Class 5.

RESPONSE: Under the prior rules, Class 5 referred to a person diverting between 10,000 and 100,000 gallons of water per day. In the proposed rules Class 5 refers to a person diverting between 5,000,000 and 10,000,000 gallons of water per day. The new Class 5 refers to a much larger diversion, therefore, requiring a larger fee. Technically, the fee for Class 5 is not quintupling but rather reflects the charge for the larger diversion.

COMMENT: One commenter protested the fees as being detrimental to small users.

RESPONSE: In developing the amendments to these rules, the Department has balanced the need to protect and manage the water resources of the State against economic considerations and has determined that to

minimize the impact of the rule will endanger the environment. The fee schedule is based upon the allocation class. The size of the fee reflects the size of the allocation, therefore, smaller diversions pay lower fees.

COMMENT: Nine commenters stated that the costs for permit fees are not justified, and that the Department should be more accountable for the fees.

RESPONSE: Present revenues have failed to reach a level necessary to fund the program adequately resulting in a projected deficit of \$1,240,000 for Fiscal Year (FY) 1990. A full explanation of the fee justification is contained in the Economic Impact Statement of the rule proposal.

COMMENT: One commenter requests that the number of people in the various categories (classes) be provided.

RESPONSE: For the last complete billing year, the State's FY 1989, the number of permits per class was:

Class 1—279
Class 2—118
Class 3—117
Class 4—236

At this time the Department estimates the number of permits for FY 1990 is as follows:

Class 1—313
Class 2—103
Class 3—104
Class 4—117
Class 5—62
Class 6—57

COMMENT: One commenter requested that the fee structure include agricultural water users.

RESPONSE: The Department is prohibited from imposing a fee for agricultural water by N.J.S.A. 58:1A-7.2.

COMMENT: One commenter objects that there are no proposed standards for allowable planning horizons for future water demands. Under N.J.A.C. 7:19-3.9, the Department can regulate the frequency of permit modifications by setting diversion limits at levels less than requested, thereby forcing the applicant to make future modifications and in turn to pay more fees.

RESPONSE: The effect of pumping ground water from an aquifer is not as predictable as the Department would like. Therefore, increased withdrawals must be done incrementally to allow the effects of the increased pumping to be monitored.

COMMENT: One commenter suggests that all Department fee programs be audited annually to determine the adequacy of funding, collection efforts, and revenues.

RESPONSE: Internal audits are performed by the Department to ensure the adequacy of funding, collection efforts and revenues.

COMMENT: Two commenters requested an explanation of how the Department determined each class of purveyor's cost sharing in the rates.

RESPONSE: The fee schedule was based upon the premise that the more water you are allocated the more fees you pay. The assumption is that the larger the allocation, the more water is being used and, therefore, there is a greater chance of impacting a larger area. Thus, there is a corresponding increase in the amount of work which is associated with analyzing the data submitted.

COMMENT: Three commenters stated that since N.J.A.C. 7:19-6.10(c) was declared invalid by the Court, why is it being readopted. They further request a clarification of the meaning of "a reasonably available alternative source," and question the validity of this section.

RESPONSE: The provisions of N.J.A.C. 7:19-6.10(c) which were declared void pursuant to the Appellate Division holding *In the Matter of Water Supply Critical Area No. 2*, 233 N.J. Super. 280 (App. Div. 1989), have been deleted. The remainder of N.J.A.C. 7:19-6.10(c) remains in full force and effect. A reasonably alternative source is one which is available to the permittee and is not from a Water Supply Critical Aquifer.

COMMENT: One commenter objects to N.J.A.C. 7:19-7 as it gives the Department authority to void or reject contracts, or to alter specific contract conditions. The enabling statutes do not intend this.

RESPONSE: The Department disagrees with this comment. The Department's authority for N.J.A.C. 7:19-7 is contained in the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

COMMENT: One commenter asks what is the intent of N.J.A.C. 7:19-7.2, concerning contract review.

RESPONSE: The intent of N.J.A.C. 7:19-7 is to allow the Department to determine if the safe yield of a system or permit is being exceeded. This will also help the Department to better analyze water use trends on a regional basis.

COMMENT: One commenter expressed concern that fees were increasing at an alarming rate and suggested that, as effective and efficient management of the water resources impact all of the citizens of the State, the Department should lobby for additional State appropriations.

RESPONSE: The Legislature has determined that this is a fee-based program. The permittees must pay for the costs of this program. Thus, the Department must raise its fees based upon the estimated cost of processing, monitoring, administering, and enforcing the diversion permits in accordance with N.J.S.A. 58:1A-11.

Summary of Agency-Initiated Changes Upon Adoption:

N.J.A.C. 7:19-2.8(a)2i has been modified by the addition of the phrase "... if a public hearing is held in accordance with N.J.A.C. 7:19-2.10." This change is made for clarity and consistency with N.J.A.C. 7:19-2.10.

In N.J.A.C. 7:19-6.2, the term "critical water supply area" has been modified to read "water supply critical area" in order that the term is consistent throughout the rules. Additionally, the term "officially" has been deleted and the term "meeting" has been replaced with "hearing." This is done to insure that an official record of the proceedings is kept for review by interested persons and that notice is provided in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19.

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]*):

7:19-1.1 Scope and authority

(a) This chapter shall constitute the Department's rules governing the establishment of privileges to divert water, the management of water quantity and quality, and issuance of permits pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq. the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the Subsurface and Percolating Waters Act, N.J.S.A. 58:4A-4.1 et seq. This chapter establishes the schedule persons diverting more than 100,000 gallons of water per day shall follow in order to establish their privilege to divert water and obtain a Water Supply Allocation Permit, and in addition, prescribes the application, review, notification and hearing procedures for establishing those privileges.

(b) This chapter also establishes the reporting procedures for persons who have the ability to divert 100,000 gallons of water per day or more from wells but who do not presently do so.

7:19-1.2 Construction

(a) This chapter shall be liberally construed to permit the Department to discharge its statutory functions under the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

(b) (No change.)

7:19-1.3 Definitions

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

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

"Applicant" means any person filing or required to file an application to establish a privilege to divert water or for a Water Supply Allocation Permit pursuant to this chapter or the Act.

"Contract" means the document setting out the entire agreement between a Water Supply Allocation Permittee and a purchaser for the bulk sale or purchase of water.

"Decision maker" means the person designated by the Department to make decisions on applications for permits and claims of privileges to divert water.

"Inactive well" means a well which is not presently being used and is being held in abeyance for future use.

"Modification" means a change to an existing permit including but not limited to, an increase in allocation, the addition of a new source,

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an increase in pump capacity of an existing source, the change of use of water or other changes deemed necessary by the Department.

...
"Operating order" means a well which is structurally competent, with the casing, pump, piping and wellhouse maintained in such a manner as to not present a threat to the aquifer and/or human health and safety.*

...
 "Recall" is the process by which the Department reexamines an existing water supply allocation permit to determine the need for modification or revocation.

"Replacement well" means a new well that is to replace an existing well which will be sealed in accordance with N.J.A.C. 7:9-9 and where the proposed well will be approximately the same depth as the existing well and diverting from the same aquifer; have the same or lesser pump capacity; and be within 100 feet of the existing well.

...
 "Water Supply Allocation Permit" means the document issued by the Department to a person granting that person the privilege, so long as the person complies with the conditions of the document, to divert 100,000 or more gallons of water per day for any purpose other than agricultural or horticultural purposes.

"Water Supply Critical Aquifer" means an aquifer within a water supply critical area where there may be either insufficient water supply, shortage of ground water by overdraft, threat of salt water intrusion or contamination, or where other circumstances exist requiring the Department to impose special water supply management provisions by rule under N.J.A.C. 7:19-6.10.

"Water Supply Critical Area" or "critical area" ***[means a water supply area in which it is determined by the Department pursuant to N.J.A.C. 7:19-6, after public notice and a public hearing, that adverse conditions exist, related to ground or surface water, which require special measures in order to achieve the objectives of the Act.]*** ***means a water supply area in which it is determined by the Department, after public notice and a public hearing, that adverse conditions exist, related to the ground or surface water, which require special measures in order to achieve the objectives of the Act.***

"Well sealing" means the permanent closure of a well in accordance with the procedures set forth in N.J.A.C. 7:9-9.

"Zone of influence" is the area of ground water which experiences an effect attributable to the pumping well.*

7:19-1.4 Applicability

(a) This chapter applies to all persons holding existing permits, or diverting, having the ability to divert, or claiming the right to divert more than 100,000 gallons of water per day and to all persons who in the future wish to divert more than 100,000 gallons of water per day except as specified below:

1. This chapter does not apply to diversions for agricultural or horticultural purposes.
2. This chapter does not apply to diversion of salt water except where salt water diversion and usage may affect utilization of fresh water as determined by the Department.
3. (No change.)
4. This chapter does not apply to emergency diversion of water extending for periods of less than 31 days. An emergency diversion includes the taking of water for the purpose of fire fighting, flood prevention, hazardous substance and/or waste spill response, or other emergency diversion of water as determined by the Department. In all cases of emergency diversion, the party responsible for the diversion shall contact the Department within 48 hours of initiation of the emergency diversion. If it is determined that the emergency diversion is expected to continue for 31 days or more, then a permit shall be applied for within 30 days after the beginning of such diversion, in accordance with this chapter.
5. A plant site or group of contiguous properties under common ownership which have a total demand of over 100,000 gallons of water per day may be provided with a water diversion by a single permit.
6. An application for a water supply allocation permit is not required for a replacement well included in an existing water allocation permit. However, prior to the installation of the well, a permittee

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shall provide the following information to the Department for the new well and the existing well that is to be replaced:

- i. The location;
- ii. Pump capacity and depth; ***and***
- iii. Well permit number and local name or number*[; and]**.*
[iv. A copy of the well abandonment report for the existing well.]

7. ***A copy of the well abandonment report for the existing well shall be submitted within 30 days of installation of the replacement well.***

[7.]**8. This chapter does not apply to a diversion of 100,000 gallons of water per day or more for periods of less than 31 days annually. However, the person diverting water shall contact the Department 15 days prior to the initiation of the short term diversion; submit a short term water use report on the forms provided; and repair or replace any well or surface water supply system which becomes damaged, dry, has reduced capacity, reduced water quality, or is otherwise rendered unusable as a result of the diversion.

7:19-1.5 Schedule for applying for Water Supply Allocation Permits

(a) Any person presently diverting or claiming the right to divert more than 100,000 gallons of water per day and who does not hold a valid permit is subject to penalties provided for under N.J.A.C. 7:19-1.6 and shall apply for a permit immediately.

(b) Any person who intends to divert more than 100,000 gallons of water per day shall apply for a permit by following the application procedures set forth in N.J.A.C. 7:19-2.

7:19-1.6 Penalties

- (a) (No change.)
- (b) Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.

7:19-1.7 Program information

Unless otherwise specified, any questions concerning the requirements of this chapter shall be directed to the Bureau of Water Allocation, Water Supply Element, Division of Water Resources, New Jersey Department of Environmental Protection, CN 029, Trenton, New Jersey 08625.

7:19-1.8 General prohibition

No person shall divert water without obtaining a Water Supply Allocation Permit or filing a water use report in accordance with this chapter.

7:19-1.9 (No change in text.)

7:19-2.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants and the Department when applying for and processing applications for Water Supply Allocation Permits and water use reports.

7:19-2.2 General Water Supply Allocation Permit application procedures

- (a) An applicant for a permit shall contact the Department in accordance with N.J.A.C. 7:19-1.7 to obtain application forms and other instructions necessary to file a complete application.
- (b) The applicant shall follow all the instructions, complete the application forms, obtain and prepare all other documents required by the instructions, and submit the completed application and other documents to the Department.
- (c) The applicant for the ***[division]* *diversion*** of ground water shall show the classification of land use for all land within half a mile of the proposed ***[division]* *diversion*** point and provide a discussion of the geology.
- (d) The applicant for the diversion of surface water shall provide information on the watershed, including:
 1. ***[Land use]* *General land use characteristics***;
 2. Size of drainage area to the diversion point;
 3. Stream water quality classification;
 4. Stream flow record;
 5. Upstream and downstream diversions;
 6. Upstream and downstream wastewater dischargers; and

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7. A comprehensive hydrological evaluation of the proposed diversion.

(e) The applicant shall provide a United States Geological Survey map with the following items shown:

1. All ***permitted or certified*** diversions of greater than 100,000 gallons of water per day within a one mile radius;
2. All public water supply sources within a five mile radius;
3. The proposed withdrawal site;
4. All domestic wells in the same or interconnected aquifer within a one mile radius;
5. Landfills and ground water contamination sites within a five mile radius; and
6. Delineated freshwater wetlands within the zone of influence ***for proposed diversions from a water table aquifer***.

(f) In general, an applicant for a permit shall provide all information which may establish:

- 1.-3. (No change.)
4. That the plans for the proposed diversion are just and equitable to the other water users affected thereby, and that the withdrawal from the aquifer does not adversely affect other permitted withdrawals, either ground or surface;
5. That the proposed diversion will not reduce the dry season flow of any stream so as to adversely affect sanitary conditions, or otherwise unduly injure public or private interests;
6. That, in the case of ground water only, the proposed diversion does not lie within a cone of depression where the aquifer to be utilized is overstressed or threatened by saline intrusion; that the location relative to hazardous waste disposal sites or other major sources of pollution is not likely to cause or spread ground water contamination and that the diversion will not interfere with any ground water contamination clean-up plans or activity;
7. That there are adequate ***[sewage]* *wastewater*** facilities for disposal from the areas to be served;
8. If permit application is made for a period of more than ***[five years]* *those listed in N.J.A.C. 7:19-2.16(a)10***, reasons why a permit of such duration is required by economic considerations, including for example necessity of amortizing a new investment over an extended period of time, and the public interest; and
9. That the zone of influence of any proposed ***[well]* *diversions from a water table aquifer*** does not contain a delineated freshwater wetland. If this is not shown, the applicant ***[will]* *shall*** comply with N.J.S.A. 13:9B-1 et seq. and N.J.A.C. 7:7A.

(g) If any of the items in (f) above are not established or there is a more viable alternative source of water available, the application may be denied.

(h) The applicant shall submit any other information which substantiates the need for the proposed allocation and supports the designated choice of water for the allocation. ***[The]* *For nonpotable purposes the*** applicant shall analyze the availability and utilization of lower quality water and provide documentation that the diversion is of the lowest acceptable quality considering the intended use. If it is determined that the applicant can use lower quality water, the permit will be issued only for the use of the lower quality water.

(i) (No change in text.)

(j) The applicant shall submit information for all contracts which have been entered into for the bulk sale or purchase of water. Details shall include the effective and expiration dates of the contract and the quantity of water contracted for.

(k) All applications shall be signed in accordance with the requirements of N.J.A.C. 7:19-***[2.24]**2.20***.

7:19-2.4 Additional Water Supply Allocation Permit application requirements for privately owned public water supplies

(a) (No change in text.)

7:19-2.5 Applications for renewal of existing permits

(a) Applications for renewal of existing permits shall be submitted three months prior to expiration of the current permit.

(b) Applicants for renewal of existing permits shall submit appropriate application forms and other information as requested by the Department for the proper implementation of the Act and this chapter.

(c) In a case where the permittee does not comply with (a) and (b) above, the Department may take the following action:

1. Notify the permittee by certified mail that the permit has expired;

2. Take appropriate enforcement action including the assessment of penalties under N.J.A.C. 7:19-1.6; and

3. Require the permittee to file an application as a new permittee in accordance with N.J.A.C. 7:19-2.2, 2.3 and 2.4 and pay the initial permit fee and annual permit fee as defined in N.J.A.C. 7:19-3.

(d) The Department, following receipt of an application for renewal of an existing permit, may, in its discretion, grant an extension of the permit for a period not to exceed one year.

7:19-2.6 Preliminary application review

(a) The Department shall make a preliminary review of the material to determine that the applicant has submitted with its application all documents needed to meet the requirements of N.J.A.C. 7:19-2.2 through 2.5.

(b) Upon a determination by the Department that the application is insufficient, incomplete or improperly prepared, the applicant shall be so advised and instructed ***within 20 working days*** as to those steps it is required to take to make the application complete.

7:19-2.7 Opportunity to review application by interested parties

Once the Department determines that an application is complete in accordance with N.J.A.C. 7:19-2.6, the application may be reviewed in person at the Department by any interested parties and copies may be obtained from the Department upon payment of the fee for duplication prescribed by law.

7:19-2.8 Review and notice of hearing requirements

(a) The Department, following a determination that the application is complete, shall:

1. In the case of renewal applications not involving an increase or decrease in the amount of water diverted, review the material submitted and either issue a new permit containing appropriate conditions, or follow the procedures described in (a)2 below.

2. In all other cases:

i. Set a date for a public hearing on the application ***if a public hearing is to be held in accordance with N.J.A.C. 7:19-2.10***;

ii. Have a notice of the hearing published in a newspaper circulating in the territory affected by the application at least 45 days prior to the scheduled hearing. If the Department determines that an emergency or other similar circumstances require an expedited hearing, the notice of the hearing shall be published in a local newspaper at least 14 days prior to the scheduled hearing; and

iii. Notify in writing the applicant, the governing bodies of municipalities and counties and water allocation permit holders within a one mile radius of the diversion and officials of existing public water systems within a five mile radius of the proposed diversion.

3. The notice shall contain:

i. A description of the application;

ii. A date for the end of the public comment period, which shall be at least 30 days in duration;

iii. A statement that written comments, arguments or objections to the application may be submitted until the end of the public comment period;

iv. A statement that a hearing shall be scheduled if any interested parties, including the applicant and the Department, request that a hearing be held before the end of the comment period. Notice of the hearing date provided in accordance with (a)2 above;

v. If the Department schedules a public hearing, the comment period will be reopened for a period of 30 days during which time the public hearing will be held.

4. If a hearing is held, it shall be before a hearing officer specified by the Department.

(b) Between the time the notice is published and the scheduled date for the hearing, the Department shall review the application and develop staff recommendations concerning the disposition of the application and any conditions that should be included in the permit if issued. These recommendations shall be:

1. Presented at the hearing to be commented upon or objected to; or

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2. If there is no hearing, the recommendations shall be submitted to the decision maker for his or her review along with other information prior to making a final determination whether or not to issue the permit and the conditions to be contained therein. Upon written request to the Department, the staff recommendations shall be made available to the applicant or any interested person.

7:19-2.9 Expenses of hearing

The cost of advertisement and stenographic record shall be certified to the applicant who shall pay the bill by the specified due date. Payment in full of the bill shall be a condition of the final permit approval.

7:19-2.10 The public hearing

(a) The Department shall hold a public hearing on the date specified in the notice or on the day or days to which it has been adjourned when:

1. A timely request has been filed; or
2. It has been determined that a hearing would be in the public interest.

(b) At the public hearing, the applicant shall make an oral presentation justifying the application. Any other written or oral comments from interested parties relevant to the application may be presented at this time.

(c) The hearing officer shall provide the applicant with reasonable time following the hearing to correct deficiencies in its application and/or respond to comments received at the public hearing and to allow any other interested party time for additional comments relevant to the application.

7:19-2.11 The public hearing report

The hearing officer shall review the application, comments received, and the transcript and shall prepare and submit written findings and recommendations to the decision maker for a final decision on the application for a permit.

7:19-2.12 Decision making

(a) Where no hearing has been held the decision maker shall review the recommendations of the Department's staff and the comments received during the public comment period before deciding whether to issue the permit and the accompanying conditions.

(b) Where a hearing has been held the decision maker shall review the hearing report and decide whether to issue the permit and the accompanying conditions.

(c) (No change.)

(d) Permits will be issued after the applicable fees have been paid.

7:19-2.13 Notification of decision

The applicant shall be notified in writing of the Department's decision. In addition, all persons who testified at the public hearing or who provided written comments shall be notified by letter of the decision.

7:19-2.14 Record of decision

(a) The Department shall maintain for each application a record that consists of the following:

1.-5. (No change.)

(b) This record may be reviewed by interested parties at the Department and copies of it may be obtained from the Department upon payment of the fee for duplication prescribed by law.

7:19-2.15 Appeal procedure

(a) An applicant or any person who believes himself or herself to be aggrieved, with respect to decisions made by the Department regarding any permit may contest the decision and request a contested case hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the New Jersey Uniform Administrative Procedure Rules N.J.A.C. 1:1, if the Department:

1. Denies an application for a water supply allocation permit, or any part thereof;
2. Revokes, withdraws or modifies a previously issued approval; or

3. Denies a contract for the sale of water under N.J.A.C. 7:19-7.

(b) Requests for a contested case hearing shall be submitted to:

Assistant Director
Water Supply Element
Department of Environmental Protection
CN 029
Trenton, New Jersey 08625

(c) All requests for a contested case hearing must be received by the Department within 20 calendar days after the date upon which the notice of decision was received.

(d) All requests for a contested case hearing shall be submitted by the applicant in writing to the Department and shall contain:

1. The name, address and telephone number of the person making such request;
2. A statement of the legal authority and jurisdiction under which the request for a hearing is made;
3. A brief and clear statement of specific facts describing the Department decision being appealed, as well as the nature and scope of the interest of the requester in such decision; and

4. A statement of all facts alleged to be at issue and their relevance to the Department decision for which a hearing is requested. Any legal issues associated with the alleged facts at issue must also be included.

(e) A hearing request not received within 20 days after receipt of the notification by the applicant or interested party shall be denied by the Department.

(f) If the applicant or interested party fails to include all the information required by (d) above, the Department may deny the hearing request.

(g) The Department shall determine whether any request for a contested case hearing should be granted. In making such determination, the Department shall evaluate the request to determine whether a contested case exists and whether there are issues of fact which, if assumed to be true, might change the Department's decision. Where only issues of law are raised by a request for a hearing, the request will be denied. Denial by the Department of a request for a contested case hearing shall constitute the final decision of the Department for the purposes of judicial appeal.

(h) The hearing if granted shall be held before an administrative law judge and in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the rules and regulations promulgated thereto.

7:19-2.16 Permit conditions

(a) Each permit shall contain specific and general conditions including, but not limited to, the following:

1. The term of the permit. The maximum term of a permit shall be based on the size of the diversion as specified under N.J.A.C. 7:19-3.8(d)

Class	Permit Duration (years)
1	7
2	6
3	5
4	4
5	4
6	4

2. The maximum allowable diversion, expressed in terms of a daily, monthly and/or annual allocation;

3. That the monthly diversion amount be reported on a quarterly basis. The quarters shall end on March 31, June 30, September 30 and December 31. The reports shall be submitted within 30 days after the close of the quarter;

4. That the diversion be metered and evidence of meter calibration shall be provided as required;

5. Allow the Department, and its representatives to:
i. Enter and inspect any site, building or equipment, or any portion thereof, owned or operated by the permittee, at any time, in order to ascertain compliance or non-compliance with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., this subchapter, or any other agreement or order issued or entered into pursuant thereto. Such

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right shall include, but not be limited to, the right to test any equipment at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or applicant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

ii. Permittees and any employees or representatives thereof, shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. This assistance includes allowing the Department and its representatives to accompany the person while performing any regulated activity, at a particular building or property for the purpose of inspection of those activities. During such inspection by the Department, the person shall operate equipment under normal routine operating conditions or under such other conditions as may be requested by the Department. The person, shall, upon request, make available such sampling and measurement equipment to the Department for the purpose of making comparative measurements.

6. Allow the transfer of a permit, with the consent of the Department, but only for the identical use of the waters by the transferee; and

7. That the Department may modify or revoke the permit, after notice and hearing for violations of permit conditions, rules adopted or orders issued by the Department, and when deemed necessary for the public interest.

(b) All permittees shall be required to file a water conservation plan and an annual status report on all conservation measures that have been implemented.

7:19-2.17 Procedures for the recalling of a permit

(a) Upon a determination that the permittee has failed to comply with N.J.S.A. 58:1A-1 et seq., 58:4A-4.1 et seq., 58:12A-1 et seq., rules promulgated pursuant to those acts or its permit conditions and/or if there is substantiated evidence that the permittee is adversely affecting others ***and/or when in the public interest***, the Department may recall the permit to determine if revocation or modification is necessary.

(b) Prior to revoking or modifying the permit, the Department shall provide the permittee with notice and a public hearing in accordance with N.J.A.C. 7:19-2.10.

(c) Between the time the notice of the hearing is published and the hearing is held, the Department shall prepare a fact finding report which details all permit deficiencies and provides recommended solutions. This report shall be presented for comment at the public hearing.

(d) The expenses of the hearing shall be paid in accordance with N.J.A.C. 7:19-2.9.

(e) The hearing officer shall issue a public hearing report in accordance with N.J.A.C. 7:19-2.11.

(f) The permittee shall be notified of the Department's decision in accordance with N.J.A.C. 7:19-2.13.

(g) The permittee or any interested party who would be adversely affected by the Department's decision may request a hearing in accordance with N.J.A.C. 7:19-2.15.

7:19-2.18 Water use reporting requirements

(a) Any person having the ability to divert more than 100,000 gallons of water per day but not presently doing so shall report their diversion by June 30, 1990 with the Department, on appropriate forms. Within 30 days following receipt of the report forms by the Department, the applicant shall receive a water use report number.

(b) All persons with a water use report number shall submit an annual report detailing monthly water usage for the previous year on forms provided by the Department by January 31 of the following year.

(c) All sources of water shall be metered within 60 days of assignment of a water use report number by the Department or within 60 days of completion of a well, whichever occurs last.

(d) All existing wells described in (a) above shall have all sources metered within 120 days of the effective date of this section.

7:19-2.19 Inactive wells

(a) Any person with an inactive well having the capacity to pump more than 100,000 gallons per day who intends to use the well in the future shall inform the Department that the well is to be placed on the Department's inactive well list.

(b) The Department shall maintain a record of these inactive wells.

(c) Each person described in (a) above shall submit an inactive well status report form, provided by the Department, by December 31 of each year. This report shall certify that the well is in operating order and is protected from vandalism and contamination. If the well has pumped during the year, the report shall include the total number of hours and gallons pumped.

(d) If it is determined by the Department that the inactive well will not be used in the future or poses a threat to public health, the well shall be sealed in accordance with N.J.S.A. 58:4A-4.1 et seq. and N.J.A.C. 7:9-9 by a New Jersey licensed well driller who is certified to seal wells.

(e) If the conditions of the inactive well status report form are not met, the Department, in its discretion, may order that the well be sealed.

7:19-2.20 Signatories

(a) All applicants for a water supply allocation permit shall, upon submission of initial or renewal applications, sign the following certification on the application forms:

1. "I certify under penalty of law that the information provided in this document is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including fines and or imprisonment."

i. The certification set forth in (a) above shall be signed by the *[individual seeking certification and the]* highest ranking individual at the facility with overall responsibility for that facility.

2. "I certify under penalty of law that I have personally examined and am familiar with the information submitted in this application and all attached documents, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate and complete. I am aware that there are significant civil and criminal penalties for submitting false, inaccurate or incomplete information, including the possibility of fine and/or imprisonment."

i. The certification required by (a)2 shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a municipality, State, Federal or other public agency, by either the principal executive officer or ranking elected official.

(b) In cases where the highest ranking corporate, partnership, or governmental officer or official at the facility as required in (a)1i above is the same person as the official required to certify in (a)2i, only the certification in (a)1 need be made. In all other cases, the certifications of (a)1 and 2 shall be completed.

(c) All signatures required by this section shall be notarized.

7:19-3.2 Purpose

The purpose of this subchapter is to establish fees for the water allocation program set forth in N.J.A.C. 7:19-1 and 2 based upon and not to exceed the estimated cost of processing, monitoring, administering and enforcing water supply allocation permits. The fee schedule shall be annually reviewed with respect to any changes in the costs of processing, monitoring, administering and enforcing water supply allocation permits. The expenses of public hearings to be charged to applicants by the Department pursuant to N.J.A.C. 7:19-2.9 shall not be included in the calculations of the fee schedule set forth in this subchapter.

7:19-3.3 Definitions

For the purpose of this subchapter, the following definitions in addition to those found in N.J.A.C. 7:19-1.3 are applicable:

"Annual fee" means a fee charged annually during the period of validity of every permit.

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“Dewatering” means the diversion of ground water on a temporary basis from wells or excavations in order to facilitate construction.

“Initial fee” means the fee charged for the review of all applications for new permits.

“Modification fee” means the fee charged for the review of applications for proposed permit modifications.

7:19-3.5 Establishment of fee schedule

The Department shall review the fee schedules set forth in this subchapter prior to September 1 of each year. The figures will be adjusted up or down annually by the previous 12 month inflation factor. The inflation factor is based upon the United States Department of Labor, Bureau of Labor Statistics data published in the monthly CPI Detailed Report. The data will be taken from the most recent report available on July 1 of each year and the actual percentage used will be the past year percent change for the U.S. city average, all items, all urban consumers.

7:19-3.6 Payment of annual permit fee

(a) The Department shall submit a bill for next year’s annual permit fee to each permittee prior to January 1 of each year.

(b) (No change.)

7:19-3.7 Failure to submit the annual permit fee payment in a timely manner

(a) Failure to pay the annual permit fee by March 1 of each year shall be considered a violation of the act and subject to the penalty provisions of N.J.A.C. 7:14-8.13 and a voluntary termination and surrender of the permit by the permittee, unless the Department has granted the permittee a written extension of the time to pay the fee.

(b) Any permittee who has surrendered his permit in accordance with (a) above and continues to divert water shall be subject to the penalty provisions set forth in N.J.S.A. 58:1A-16 and N.J.A.C. 7:14-8 and shall apply for a new permit in accordance with 7:19-2.2.

7:19-3.8 Fees for Water Allocation Permits

(a) All applicable fees shall be paid in accordance with the fee schedule established in N.J.A.C. 7:19-3.9. Any person who applies for a new permit or to modify an existing permit shall submit along with the application, the applicable initial or modification fee set forth in N.J.A.C. 7:19-3.9, based on the size of the allocation, listed in (d) below. If the permit is approved for a smaller class allocation the difference in the initial or modification fee will be refunded.

7:19-3.9 Fee schedule

(a) Fees shall be charged for permits, as applicable, pursuant to the following schedules:

1. Initial fees for new applications:

	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6
i. Surface water diversions	\$2160	\$2430	\$3135	\$5400	\$5900	\$6400
ii. Ground water diversions	\$2700	\$3030	\$3915	\$6750	\$7350	\$7850
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$1290	\$1725	\$2160	\$2595	\$2995	\$3395

2. Modification fees:

i. Surface water diversions	\$1000	\$1135	\$1465	\$2520	\$3020	\$3520
ii. Ground water diversions	\$1260	\$1415	\$1825	\$3150	\$3650	\$4150
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$600	\$805	\$1110	\$1210	\$1310	\$1410

3. Annual fees for permits:

i. Surface water diversions	\$1040	\$1220	\$2090	\$3600	\$4600	\$5600
ii. Ground water diversions	\$1400	\$1620	\$2610	\$4500	\$5500	\$6500
iii. Ground and surface water diversions in which waters are returned undiminished to the source	\$460	\$750	\$1440	\$1730	\$2020	\$2310

(b) Each applicant for a permit shall pay the appropriate annual fee prior to issuance of the permit as follows:

1. The total annual fee, if the application is approved during the first quarter of the calendar year;

2. Three-quarters of the annual fee, if the application is approved during the second quarter of the calendar year;

3. One-half of the annual fee, if the application is approved during the third quarter of the calendar year;

4. One-quarter of the annual fee, if the application is approved during the fourth quarter of the calendar year.

(c) (No change.)

(d) An applicant for a permit shall be placed in the appropriate class below based on the size of the allocations approved in terms of a monthly average:

1. Class 1: 0.1 mgd to less than 0.5 mgd;

2. Class 2: 0.5 mgd to less than 1.0 mgd;

3. Class 3: 1.0 mgd to less than 2.0 mgd;

4. Class 4: 2.0 mgd to less than 5.0 mgd;

5. Class 5: 5.0 mgd to less than 10.0 mgd; and

6. Class 6: 10.0 mgd and above.

(e) For the purpose of assessing fees under this subchapter the following shall apply:

1. (No change.)

2. For a water system supplying or servicing a single municipality only, all surface and ground water diversions may be treated as a single permit.

3.-5. (No change.)

(f) Any hearing expenses shall be paid in full prior to issuance of the permit. If the application has been withdrawn after the public hearing or if the application is denied, the hearing expenses shall be paid by the specified due date of the bill.

(g) If a water supply allocation permit application is withdrawn after the public notice has been given to schedule a public hearing, the applicant shall be responsible for payment of the cost of the legal advertisement. The applicant shall be refunded 50 percent of the initial or modification fee that was paid when the application was filed.

(h) If the water supply allocation permit application is withdrawn prior to the public notice being given to schedule the public hearing, the applicant will be refunded 75 percent of the initial or modification fee that was paid when the application was filed.

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7:19-6.2 Definitions

The following words and terms shall have the following meanings unless the context indicates otherwise:

...
 ["Critical water supply area] **"Water supply critical area**" or "critical area" means a water supply area in which it is *[officially]* determined by the Department, after public notice and a public *[meeting]* *hearing*, that adverse conditions exist, related to the ground or surface water, which require special measures in order to achieve the objectives of the Act.
 ...

7:19-6.10 Water supply critical areas; general

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

(c) Within water supply critical areas of the type described in (a)1 and 2 above, where it is necessary to balance competing needs, the Department may require those users to substitute water from a reasonably available alternative source. To the extent practicable, all users shall equitably share the burden of costs of replacement supplies. Procedures set forth in N.J.A.C. 7:19-2 are applicable to re-allocations.

(d) Within critical water supply areas of the type described in (a)2 and 3 above, the Department may require the following:

- 1. (No change.)
- 2.-4. (No change in text.)

(e)-(l) (No change.)

SUBCHAPTER 7. PROCEDURES FOR CONTRACT REVIEW AND APPROVAL

7:19-7.1 Scope

This subchapter prescribes the procedures which shall be followed by applicants applying for approval of contracts for the sale of water.

7:19-7.2 Applicability

This subchapter applies to contract arrangements between purveyors for the routine sale and purchase of water. Contract arrangements for emergency purposes are excluded.

7:19-7.3 Procedures for contract approval

(a) The applicant for approval of a contract shall be the party which is selling water.

(b) The applicant shall contact the Department in accordance with N.J.A.C. 7:19-1.7 to obtain application forms and other instructions necessary to file a complete application.

(c) The applicant shall follow the instructions to complete the application forms and shall submit the completed application with a copy of the contract to the Department.

(d) For new contracts, the contract and application forms shall be filed at least two months prior to the effective date of the contract.

(e) For all contracts which are in force as of the effective date of this subchapter, the applicant shall file an application and copy of the contract with the Department within six months after the effective date of this subchapter.

(f) The Department, upon receipt of the contract and application forms, shall review the material and determine whether the applicant has sufficient allocation to supply the buyer.

7:19-7.4 Appeal procedure

The applicant or any interested party who would be adversely affected by the Department's decision may request a hearing in accordance with N.J.A.C. 7:19-2.15.

(a)

DIVISION OF WATER RESOURCES

Emergency Water Supply Allocation Plan Regulations

Adopted New Rules: N.J.A.C. 7:19A

Proposed: January 16, 1990 at 22 N.J.R. 102(a).

Adopted: February 16, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: February 20, 1990 as R.1990 d.163, **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. 58:1A-1 et seq.; specifically 58:1A-4 and 5.

DEP Docket No.: 057-89-12.

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted as new rules, since they expired February 19, 1990, pursuant to Executive Order No. 66(1978), and the readoption was not filed with the Office of Administrative Law until February 20, 1990.

A public hearing on this proposed readoption with amendments was held on February 6, 1990 at the Hall of Records in Freehold, New Jersey. Four members of the public attended the hearing and one commenter presented oral comments. Four commenters submitted written comments prior to the close of the comment period on February 15, 1990.

COMMENT: One commenter expressed disappointment with the lack of attendance at the public hearing given the importance of the issues. Many local politicians have stressed the issue of water costs and there was no testimony at the public hearing.

RESPONSE: The Department agrees with the commenter's disappointment and would always prefer input on any revisions to the Department's rules. The Department is satisfied that the lack of attendance was not caused by the lack of advertising for the hearing. Notice of the hearing and the opportunity to present written comments was published in the New Jersey Register as well as the Newark Star Ledger, the Trenton Times, the Atlantic City Press, the Camden Courier Post, the Asbury Park Press and the Bergen Record. In addition, the Department sent individual notices to all water systems serving over 3,000 people.

COMMENT: One commenter stated that the definition of "drought warning" in N.J.A.C. 7:19A-1.4 is vague and that in combination with the proposed broad powers of the Department during a "drought warning" in N.J.A.C. 7:19A-3.6, the definition essentially gives the Department the same power as during a drought emergency. If the definition is to remain vague, the requirements under N.J.A.C. 7:19A-3.6 must be revised. The commenter recommended the elimination of N.J.A.C. 7:19A-3.6(a)5 where the Department may require any "other modifications or measures to insure an adequate water supply" because it gives the Department the same powers it has under a drought emergency. N.J.A.C. 7:19A-3.6(a)1 through 4 may be premature for a drought warning stage. The commenter recommends the following list of requirements in place of the ones proposed: (1) investigate alternative water supplies; (2) test interconnections to be used in a water supply emergency; (3) communicate with state and local agencies; and (4) update emergency response plans, if required.

RESPONSE: The proposed definition of "drought warning" in N.J.A.C. 7:19A-1.4 is simply a restatement of the preexisting rules regarding drought warnings in N.J.A.C. 7:19A-5.1(d). The preexisting rule provided that the Department could declare a drought warning condition under its nonemergency powers prior to the actual declaration of a water emergency. The powers the Department may exercise during a drought warning condition are nonemergency powers and clearly are not equivalent to the Department's emergency powers to ban adjustable water uses, impose the water emergency rate schedule in N.J.A.C. 7:19B, or impose mandatory water rationing for residential and industrial users. The Department does not agree that N.J.A.C. 7:19A-3.6(a)5 should be eliminated. Requiring "other modifications or measures to insure an adequate water supply" during a drought warning will not give the Department the same powers that it has during a water emergency because in order to exercise the emergency powers, the Department is required to declare a water emergency in accordance with N.J.A.C.

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7:19A-5.1. In addition and as proposed in N.J.A.C. 7:19A-5.1(d), the Department will give notice and hold a public hearing prior to the implementation of any of the drought warning requirements in N.J.A.C. 7:19A-3.6.

The commenter's proposed revisions to the drought warning requirements are not appropriate responses to a drought warning condition where an actual drought emergency may be imminent. The proposed requirement to investigate alternative water supplies is necessary but not sufficient during a drought warning. There may be as little as one month's time between the declaration of a drought warning to the time when weather conditions necessitate a declaration of a water emergency. Therefore, the development of alternative water supplies is required rather than requiring only the investigation of supplies. The commenter's proposed requirement to test interconnections to be used in a water supply emergency is also necessary, but assumes that interconnections are in a state to be tested. The Department has experienced the need to improve the physical condition of the interconnection prior to any testing. With respect to the third revision, timely communication with State and local agencies is clearly essential and the Department's proposal to hold a public hearing prior to the imposition of a drought warning should accomplish this objective. The final revision requiring the updating of emergency response plans is presently required under N.J.A.C. 7:19A-3.2.

COMMENT: One commenter stated that there is no definition in N.J.A.C. 7:19A-1.4, or any reference in N.J.A.C. 7:19A, to a "Drought Coordinator" as referenced in N.J.A.C. 7:19B. The commenter assumes that if such a position does exist, he or she should have a role in the activities described in N.J.A.C. 7:19A. A possible solution may be to revise the definition of "Chairman" to make the Chairman of the Water Emergency Task Force also serve as the Drought Coordinator.

RESPONSE: The existing rules purposefully define two different positions "Drought Coordinator" and "Chairman" of the Water Emergency Task Force in order to allow the positions to be filled by two individuals. Since each water emergency has its own characteristics of severity, geographical extent, etc., the existing rules are designed to allow the Department the flexibility to designate the same individual or separate individuals to the above mentioned positions. The Chairman of the Water Emergency Task Force is responsible for implementing the provisions in N.J.A.C. 7:19A, while the Drought Coordinator is responsible for implementing the provisions of N.J.A.C. 7:19B.

COMMENT: A commenter understands the reasons for having excess diversion fees, as described in the Department's summary. However, if the Commissioner has ordered a purveyor to alter (lower) their passing flow requirement, the Commissioner has hopefully balanced the emergent water supply needs with the impact on the downstream users and environment. To penalize a purveyor by the collection of excess diversion fees, as proposed in N.J.A.C. 7:19A-2.2(a)6, after a direct order to lower them, may provide a "disincentive . . . for the purveyor to exceed [their] diversion limit," but it also is contradictory to the goal of providing an additional water supply. In addition, in accordance with current rate making practice and policy, investor owned utilities will not be able to recover this additional expense. If this proposal stands as is, the Department's rule should allow for recovery of the excess diversion fee in rates.

RESPONSE: The collection of excess diversion fees is a disincentive and should be continued even if, during a water emergency, there is an order to reduce passing flows. The reduction of passing flows effectively increases the storage available in the purveyor's reservoir. Neither the reduction of passing flows nor the collection of diversion fees are punitive in nature, in fact, they both act as a necessary deterrent during a water emergency. The Department does not have the authority to authorize water purveyors to recover excess diversion fees in rates. Water purveyors may request this authority through the Board of Public Utilities, which regulates the rate setting process.

COMMENT: Two commenters stated that the amendments in N.J.A.C. 7:19A-3.2(a)1 which require emergency response plans from water purveyors serving more than 3,000 residents, expand the requirements for the submittal of emergency response plans and are too restrictive for small authorities. One commenter recommended limiting the amendments in N.J.A.C. 7:19A-3.2(a)1 to purveyors serving a population over 25,000 or 5,000 to 10,000 water users. The other commenter suggested that all of the emergency response plans required by the Department in this rule and in other rules are duplicative. The commenter suggested that the Department should consolidate in one rule all of the emergency response plans required by the Department.

RESPONSE: As set forth in the Department's proposal at 22 N.J.R. 103, the Department's existing rule in N.J.A.C. 7:19A-3.2(a)1 presently requires any water purveyor to submit an emergency response plan when

requested by the Department. The amendments to N.J.A.C. 7:19A-3.2(a)1 simply set forth that emergency response plans from water purveyors serving more than 3,000 residents are due within one year of the effective date of this re-adoption. The Department agrees that consolidation of the Department's emergency response plans in one rule may be effective and the Department will consider this suggestion in future rule proposals.

COMMENT: Once emergency response plans have been prepared and approved, major revisions will be required on an infrequent basis. Therefore, it is suggested that major revisions to the emergency response plan be required at least every five years, rather than every two years as proposed in N.J.A.C. 7:19A-3.2(a)2. It is also recommended that each applicable purveyor submit a revised personnel and phone list every six months. Such a procedure may be easier to enforce than a requirement that each change be reported in two weeks.

RESPONSE: The proposed requirement that emergency response plans be revised and updated at least every two years, as proposed in N.J.A.C. 7:19A-3.2(a)2, recognizes the importance of timely and accurate emergency response plans. The two year time frame is a realistic period in which changes are likely to have occurred. The submission of changes in emergency response personnel or telephone numbers within two weeks of the changes may appear to be stringent, but when faced with a water emergency this requirement will prove to be very reasonable and necessary. In any event, changes in personnel are not likely to occur so frequently that the requirement becomes punitive.

COMMENT: A commenter strongly objects to the revision proposed in N.J.A.C. 7:19A-3.4(a), which requires water purveyors to require submission of water user contingency plans. The commenter believes that the Department has the legal authority to make this requirement, not the water purveyor. The section should remain unchanged.

RESPONSE: The Department agrees with this comment and has revised the proposed language in N.J.A.C. 7:19A-3.4(a) to require the water users with a rate of use of 250,000 gallons per day to submit contingent plans to their respective water purveyors within a time frame established by the Department.

Full text of the adopted new rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19B.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*).

7:19A-1.1 Scope and authority

This chapter, adopted pursuant to the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq., constitutes the rules governing the management of the waters of the State during drought warnings, water supply emergencies, and water quality emergencies severe enough to constitute a water supply emergency. This chapter partially implements the emergency provisions under the Act; however, it in no way limits the emergency powers now or hereafter vested in the Governor or the Commissioner.

7:19A-1.4 Definitions

For the purposes of this chapter, the following definitions shall apply, unless the context clearly indicates a different meaning:

"Adjustable water uses" means, but is not limited to, the following:

1. (No change.)
2. The washing of vehicles, except by businesses engaged exclusively in car washing on its own business site, including self-service car washes equipped with total recycle of both wash and rinse water, or in those instances where a threat to public health may exist;
- 3-8. (No change.)
9. The washing of buildings or other structures, except for windows; and
10. Any other uses of water as may be designated by the Commissioner as adjustable. Such designations shall be made by rule or order and shall be effective immediately upon adoption by the Commissioner and shall be published in the New Jersey Register as soon thereafter as possible;
11. Exemptions from the adjustable water uses as listed herein may be designated by the Commissioner as provided for at N.J.A.C. 7:19A-9.1.

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"Drought warning" means the status declared by the Department, pursuant to N.J.A.C. 7:19A-5.1, where there exists a relative lack of precipitation or a lower than normal storage of water supplies.

"Water Emergency Task Force" or "Task Force" means that State body consisting of inter-agency representatives whose purpose is to assist the Commissioner in the formulation of policy and make recommendations to the Commissioner during a water emergency. The Task Force shall be composed of representatives of the following agencies: the Department of Environmental Protection, the Department of Commerce and Economic Development, the Department of Education, the Department of Labor, the Department of Law and Public Safety, the Department of Community Affairs, the Board of Public Utilities, the Department of Agriculture, the Department of Health, the Department of Treasury and other agencies as designated by the Commissioner.

7:19A-2.2 Restrictions and requirements placed on water purveyors

(a) The restrictions and requirements placed by the Commissioner on water purveyors during a water emergency may include the following:

1.-5. (No change.)

6. Alteration of passing flow requirements. Such alteration in passing flow requirements does not exempt the purveyor from paying appropriate excess diversion fees;

7-12. (No change.)

7:19A-3.2 Water purveyor emergency response plans and teams

(a) Water purveyors serving more than 3,000 residents, and other purveyors when requested by the Department*,* shall develop and submit to the Department:

1. Emergency response plans by February 16, 1986, for water purveyors serving more than 50,000 residents or *[within one year of the effective date of this readoption]* ***by March 19, 1991*** for water purveyors serving more than 3,000 residents but not more than 50,000 residents.

i. The plans shall include, but not be limited to:

(1) Organization structure including names of emergency response team members and telephone numbers;

(2) Emergency notification and communication procedures;

(3) Interconnections and backup supplies to be utilized;

(4) Interim water restrictions, conservation measures and alternate sources of water;

(5) Coordination procedures for emergency response with other agencies;

(6) Resources inventory;

(7) Vulnerability assessment; and

(8) Any other information the Department deems necessary to respond to unforeseen water emergencies and long-term relatively predictable water emergencies.

2. Revised and updated emergency response plans whenever there is a significant change to the procedures in the plan, but in all cases at least every two years. Any change in emergency response personnel or their telephone numbers shall be reported to the Department within two weeks after such change.

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

7:19A-3.4 Large user contingency plans

(a) Water purveyors shall *[require]* ***request that*** all water users with a rate of use of 250,000 gallons per day or more to submit contingency plans to their respective purveyors. ***Such users shall submit contingency plans to their respective purveyors within a time frame established by the Department.*** Self-supplied users with a rate of use of 250,000 gallons per day or more shall submit contingency plans to the Department. Such large user contingency plans shall include but shall not be limited to the following:

1.-2. (No change.)

7:19A-3.5 Other water use information

Water purveyors and water users shall provide any additional information necessary to properly manage a water emergency as required by the Department.

7:19A-3.6 Drought warning requirements

(a) During a drought warning condition identified in accordance with N.J.A.C. 7:19A-5.1(d), the Department may order water purveyors to comply with any or all of the following requirements:

1. Development of an alternative water supply where possible;

2. The rehabilitation and activation of interconnections between water supply systems;

3. Complete interconnection flow tests;

4. The transfer of water from any public or private system; and

5. Other modifications or measures to insure an adequate water supply.

7:19A-4.1 Scope

(a) This subchapter establishes the purpose of the Water Emergency Task Force which is created to:

1. Review and make recommendations to the Commissioner regarding applications for hardship exemptions from the ban on adjustable water uses;

2. Hear appeals of water purveyors' decisions regarding applications for hardship exemptions from the requirements of the water rationing plans and make recommendations to the Commissioner; and

3. (No change.)

7:19A-5.1 Scope

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

(d) Prior to actual declaration of a water emergency by the Governor, the Department may call for action to be taken under its non-emergency powers in order to reduce the likelihood or impact of any impending emergency. Where such situations involve a relative lack of precipitation or a lower than normal storage of water supplies, the Department may identify the affected area or the State as a whole as being in a "Drought Warning" condition. The Department shall give notice of and hold a public hearing prior to implementing any of the drought warning requirements in N.J.A.C. 7:19A-3.6.

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

7:19A-5.5 Phase III: Further rationing required

This stage requires further rationing of water supplies to all sectors or the selective curtailment of industrial water users in accordance with N.J.A.C. 7:19A-6.

7:19A-6.2 Procedure for the selective curtailment during a water emergency situation

(a) The Department shall require the purveyors and water users to submit appropriate information upon request in order to prepare for possible water curtailment.

Recodify existing (c) and (d) as (b) and (c). (No change in text.)

7:19A-6.4 Submission of water supply information

Industrial users, water purveyors and other water users, shall submit to the Department, upon its request, all information relating to water consumption and employment required by N.J.A.C. 7:19A-3.4, 3.5, 6.2 and 6.3.

7:19A-7.1 Penalties

Failure by any person to comply with any requirement of the Act including, but not limited to, a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.

7:19A-9.1 Application procedures for hardship exemption from the ban on adjustable water uses

(a) Any person wishing to be exempt wholly or partially from the ban on adjustable water uses may apply, during a water emergency, for a hardship exemption according to the following procedures:

1.-2. (No change.)

3. After the Task Force's review of the application and the Task Force's recommendation to the Commissioner, the Commissioner shall notify the applicant in writing of his or her decision and the reasons for the decision. Before making a recommendation, the Task Force may request the applicant to supply additional documentation. An exemption approved by the Commissioner may be rescinded

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should public health, safety and the welfare require further reduction in water use.

4. (No change.)

7:19A-9.2 Application procedures for hardship exemption from the requirements of water rationing

(a) Any person wishing to be exempt from the requirements of water rationing may, within 30 days following the receipt of the surcharge bill issued pursuant to N.J.A.C. 7:19B, file an application for a hardship exemption with the appropriate water purveyor on a form obtained from the water purveyor according to the following procedures:

1.-5. (No change.)

6. The water purveyor is required to notify the Task Force within seven days of all of its approvals. The Task Force may, at its discretion, review any approval granted and recommend to the Commissioner whether to uphold or deny said approval.

(b) An appeal to the Water Emergency Task Force shall contain the following documentation:

1.-2. (No change.)

3. No appeal from the decision of the water purveyor on an exemption application will be accepted unless received by the Task Force within 30 days following the date of the denial by the water purveyor.

(c) The Task Force shall review the request for appeal and all supporting documentation and make a recommendation to the Commissioner. The Commissioner shall notify the applicant in writing of his or her decision and the reasons for the decision. Before making a recommendation, the Task Force may request the applicant to supply additional documentation.

7:19A-10.2 Appeal procedure

(a) The party to whom an order has been issued, and/or aggrieved by a decision of the Department, shall have the right to request a hearing thereon, if requested in writing within 20 days of receipt of the order or decision.

(b)-(e) (No change.)

(a)

DIVISION OF WATER RESOURCES

Water Emergency Surcharge Schedule Rules

Adopted New Rules: N.J.A.C. 7:19B

Proposed: January 16, 1990 at 22 N.J.R. 106(a).

Adopted: February 16, 1990 by Judith A. Yaskin, Commissioner, Department of Environmental Protection.

Filed: February 20, 1990 as R.1990 d.164, with a substantive change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 58:1A-1 et seq., specifically 58:1A-4 and 5.

DEP Docket Number: 058-89-12.

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

Pursuant to N.J.A.C. 1:30-4.4(f), the rules proposed for readoption with amendments are adopted as new rules, since they expired February 19, 1990, pursuant to Executive Order No. 66(1978), and the readoption was not filed with the Office of Administrative Law until February 20, 1990.

A public hearing on this proposed readoption with amendments was held on February 6, 1990 at the Hall of Records in Freehold, New Jersey. Four members of the public attended the hearing and one commenter presented oral comments. Four commenters submitted written comments prior to the close of the comment period on February 15, 1990.

COMMENT: One commenter expressed disappointment with the lack of attendance at the public hearing given the importance of the issues. Many local politicians have stressed the issue of water costs and there was no testimony at the public hearing.

RESPONSE: The Department agrees with the commenter's disappointment and would always prefer input on any revisions to the Department's rules.

The Department is satisfied that the lack of attendance was not caused by the lack of advertising for the hearing. Notice of the hearing and the opportunity to present written comments was published in the New Jersey Register as well as the Newark Star Ledger, the Trenton Times, the Atlantic City Press, the Camden Courier Post, the Asbury Park Press and the Bergen Record. In addition, the Department sent individual notices to all water systems serving over three thousand people.

COMMENT: Two commenters questioned where the surcharges collected pursuant to N.J.A.C. 7:19B are retained and how the surcharges are to be utilized. One commenter stated that the restrictions placed on utilizing the surcharges seems restrictive even if aimed at water conservation.

RESPONSE: Pursuant to N.J.A.C. 7:19B-1.7, the Department of Treasury places all surcharges in a special fund designated the Water Emergency Fund. The use of these funds, although aimed at water conservation, is specifically limited to the Drought Coordinator, in consultation with the Commissioner, for the promotion of water conservation, the reimbursement of water purveyors for reasonable costs incurred with respect to the accelerated rate schedule and the reasonable costs incurred by the State in administering the water emergency.

COMMENT: Two commenters asked how the existing surcharge schedule of \$5.00 and \$10.00 was established. It appears that such an amount is excessive and would place an unfair burden on users or water systems even during a drought period. While the philosophy of the regulations is laudable, these amounts do not appear to be rationally related to the purpose intended, which is to conserve water. To the contrary, this appears to be purely punitive in nature.

RESPONSE: In the development of the original surcharge system, the Department convened a group of representatives from the water purveyors, water customers, and other governmental entities to suggest specific approaches. The amount of reduction in demand to be achieved and the surcharges to be applied were deemed to be at such levels to provide an effective disincentive to high water use and yet not be an excessive economic burden. In cases where an economic burden is thought to be excessive, the Department has an existing mechanism in N.J.A.C. 7:19A-9.2 to apply for exemptions from the surcharges.

COMMENT: The present methodology for residential surcharges in N.J.A.C. 7:19B-1.5(a)1 places an extraordinary recordkeeping and census data gathering burden on the water purveyor to a point where the system cannot easily be managed and the goals of the system could be undermined. As such, the commenter would like to propose a different methodology which is more realistic and will achieve the same overall conservation goals.

According to the commenter's records, the average New Jersey-American Water Company customer uses approximately 74 gallons per capita per day (gpcd). In order to reach a goal of 50 gpcd, a reduction of approximately 33 percent of average usage is required. If the Department adopted a goal of a 33 percent reduction of normal residential water use for each customer, the management and recordkeeping would be on a per customer basis rather than a per person basis and the system would be easier to enforce. Normal residential water use should be defined as the average water use for the three years prior to the time a Phase II water emergency is declared.

When a Phase II emergency is declared, water purveyors should be required to provide a notice to water users that the drought surcharge system is in force. Assuming that most residential water users are billed on a quarterly basis, water use for all quarterly bills after the notice date will be subject to the surcharge if a 33 percent reduction is not met when usage is compared to "normal" usage. For billing periods where the surcharge was only partially in effect, the surcharge bill should only be applied on a prorated basis, based upon the number of applicable surcharge days in the billing period.

Again, the commenter feels that a system of across the board 33 percent reduction of water use on a customer usage basis will better serve the goal of water conservation, and will provide a system for water purveyors which is more manageable in terms of information gathering, data processing, and billing.

RESPONSE: The Department considered applying the residential surcharge on all water used above that used in a base or normal period. The Department decided that this approach would lead to another whole set of implementation problems. For example, utilizing average use over the three years prior to the water emergency penalizes families who move; given the mobility of modern society, such an approach would cause difficulties for purveyors and the Department. Moreover, as time goes on and water conservation is practiced more and more, it will become increasingly difficult to reduce usage by a fixed percentage. The Department

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ment consulted water purveyors, water customers and governmental agencies in arriving at the present system, which was felt to be less onerous to administer, than a fixed percentage reduction in demand compared to a base period.

COMMENT: One commenter stated that in N.J.A.C. 7:19B-1.5(a)2 the phrase "up to a maximum of 0.50 times the normal rate" should read "up to a maximum of the normal rate plus 0.50 times the normal rate."

RESPONSE: The Department agrees with this comment and is changing N.J.A.C. 7:19B-1.5(a)2 upon adoption to clarify the proposed language.

COMMENT: In N.J.A.C. 7:19B-1.6(b), the proposed bi-monthly reporting requirement is too frequent. Since most residential billing cycles are based upon quarters, a quarterly report would be appropriate.

RESPONSE: The Department has found from prior experience that receiving reports in three month intervals would not be sufficiently frequent for monitoring the implementation of its rationing program during a water emergency.

Full text of the adopted new rules proposed for re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 7:19B.

Full text of the adopted amendments follows (additions to proposal indicated in boldface with asterisks *thus*; deletion from proposal indicated in brackets with asterisks *[thus]*).

7:19B-1.3 Definitions

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

"Act" means the Water Supply Management Act, N.J.S.A. 58:1A-1 et seq.

...

"Customer of record" means any person, corporation, company, partnership, firm, association, political subdivision of the State and any state, or interstate agency or Federal agency receiving water service from an applicable water purveyor.

...

7:19B-1.5 Establishment of the water emergency surcharge schedule

(a) Once a water emergency has been declared, as provided at N.J.S.A. 58:1A-4, and at the initiation of Phase II, the Drought Coordinator shall cause to be implemented the following water surcharge schedules established for the retail cost of water:

1. During Phase II of a water emergency the normal water rate shall be charged residential users for the first 50 gallons per capita used daily. Any water used above the prescribed amount in each billing period shall be charged the normal rate plus a \$5.00 surcharge for each additional 100 cubic feet or portion thereof (one cubic foot equals about 7.5 gallons). This rate may be increased, up to a maximum surcharge of \$10.00 for each additional 100 cubic feet or portion thereof, at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.
2. During Phase II of a water emergency, non-residential users of water shall be charged the normal water rate plus 0.33 times the normal rate as a surcharge for all water purchased. This rate may be increased, up to a maximum of ***the normal rate plus*** 0.50 times the normal rate, at the discretion of the Drought Coordinator should Phase II continue or should desired conservation levels not be met.

3.-4. (No change.)

5. The Drought Coordinator may authorize the owner of any building or complex with multiple dwelling units, where the individual dwelling units lack individual water meters, to pass through the surcharge to the occupants of the individual dwelling units. The pass-through shall be pro rated in proportion to the number of bedrooms served by the water meter. No political subdivision of the State shall enact or enforce any ordinance, rule, regulation, or order which shall prevent such a pass-through. Prior to the imposition of a pass-through, the owner of any building or complex with multiple dwelling units shall comply with the following requirements, including, but not limited to:

- i. An inspection for leaks and the repair of water fixtures;
- ii. The installation of water conservation fixtures and devices;
- iii. The dissemination of information to the building's occupants on the need for water conservation; and

iv. The submission of a report to the Drought Coordinator detailing the owner's compliance with the above requirements and setting forth the procedures to be used to insure proper collection and payment of the surcharges.

(1) The Drought Coordinator may require owners to submit updated reports and may revoke an authorization to pass-through surcharges where the owner has failed to comply with the requirements of this paragraph.

7:19B-1.6 Submission of the water emergency surcharge schedule; quarterly report

- (a) (No change.)
- (b) For monitoring purposes, each applicable water purveyor shall submit a bi-monthly report on its surcharge and rationing activities to the Water Emergency Task Force using forms provided by the Department.
- (c) (No change in text.)
- (d) The purveyors shall submit any additional reports and submittals necessary to properly manage a water emergency as may be required by the Department.

7:19B-1.7 Collection of the emergency water surcharges; water emergency fund

- (a)-(d) (No change.)
- (e) A customer of record shall pay the surcharge assessed pursuant to (a) above to its water purveyor within 30 days after receipt of a bill for such surcharge.

7:19B-1.9 Penalties

Failure by any person to comply with any requirement of the Act including but not limited to a violation of any rule, license, permit, administrative order or this chapter may result in a penalty in accordance with N.J.A.C. 7:14-8.

(a)

PINELANDS COMMISSION

**Pinelands Comprehensive Management Plan
Adopted Amendments: N.J.A.C. 7:50**

Proposed: November 6, 1989 at 21 N.J.R. 3381(a).

Adopted: February 15, 1990 by the New Jersey Pinelands Commission, Terrence D. Moore, Executive Director.

Filed: February 22, 1990 as R.1990 d.170, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 13:18A-6j.

Effective Date: March 19, 1990.

Expiration Date: Exempt

Summary of Public Comments and Agency Responses:

In association with publication of the proposed rules in the November 6, 1989 issue of the New Jersey Register, the Pinelands Commission transmitted the proposal to each Pinelands Area municipality and county for review and comment. Additionally, the Pinelands Commission:

- Sent notice of the hearing to all persons and organizations which subscribe to the Commission's public hearing registry; and
- Placed advertisements on the hearing in the five official newspapers of the Commission.

A public hearing was held on December 1, 1989. Two persons commented orally. Written comments were received from four organizations.

Oral comments were recorded on magnetic tape which is on file at the Commission's office at Springfield Road, New Lisbon, New Jersey. Written comments may be examined or the tapes may be heard during normal business days from 9:00 A.M. to 5:00 P.M.

COMMENT: One commenter felt that N.J.A.C. 7:50-4.2(c)lii, requiring resolution of existing violations before an application may be deemed complete, was unfair and denied the applicant due process. The commenter felt that the violation could be on an unrelated section of land, might have no relation to the proposed use, and that in any case the allegation of a violation could be in error.

RESPONSE: The proposed amendment clarifies the existing provision regarding determination of completeness of applications where there are

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violations, and adds in N.J.A.C. 7:50-4.2(c)iii administrative due process provisions for aggrieved applicants. It should be noted that the provision, both existing and as amended, applies only to violations on the same parcel as the application. In addition, the amendment provides due process through the reconsideration provisions of N.J.A.C. 7:50-4.91, which ensures the applicant the opportunity to be heard by the full Commission. If the applicant is still aggrieved by the decision of the Commission, he or she may seek judicial review pursuant to N.J.A.C. 7:50-4.92.

COMMENT: One person expressed support for the addition at N.J.A.C. 7:50-4.5 of emergency powers of the Executive Director to take minimal actions necessary to remedy or prevent a situation that is dangerous to life, health or safety, but felt that the wording was somewhat vague and implied that standards of the Plan would be waived, which the commenter felt was not intended.

RESPONSE: The intent of the provision as drafted is to authorize the Executive Director, after consultation with the Chairman, to take whatever immediate action as is minimally necessary to remedy or prevent a dangerous condition. The reference in the regulation to minimally necessary is intended to constrain the action to that which, after consideration of alternative courses of action and their effectiveness in remedying the condition, is the most practical and consistent with the standards of the Comprehensive Management Plan.

While it must, therefore, be presumed that the standards of the Plan will be enforced to the greatest extent reasonably possible, it is possible that the action required could involve an exemption from a procedural, land use or development standard of the Plan.

COMMENT: One person expressed concern that the revision of N.J.A.C. 7:50-5.23(b)16 and of N.J.A.C. 7:50-5.24(b)13 pertaining to airports may be overly permissive. Another person expressed support for the amendment.

RESPONSE: Airports were previously a permitted use in Forest and Agricultural Production Areas, and were effectively deleted by amendments adopted in 1987. Upon adoption of the 1987 amendments, existing airports were subject to N.J.A.C. 7:50-5.2 which indicates that lawful uses in existence on January 14, 1981 may be expanded in floor area or capacity by 50 percent. The concept of 50 percent expansion is difficult to apply in the case of many airport facilities such as cross wind runways. The proposed amendment would return existing airports to the status of a permitted use, and would allow somewhat greater flexibility and clarity regarding expansion, similar to that previously contained in the Comprehensive Management Plan. As written, the policy applies to only three such airports in the Pinelands. The amendment would, therefore, not allow any additional new airports, nor would it enable inappropriate massive expansion of existing airports.

COMMENT: Two commenters felt that amendment of N.J.A.C. 7:50-5.24, limiting subdivision for farm related purposes to one lot every five years, would work at cross purposes to the goal of assisting the farming industry and create hardship and expense for farmers.

RESPONSE: Actually, the five-year limitation on subdivision is not a new requirement; it has been in effect since November 1987. Instead, the proposed amendments serve to clarify the effect of the limitation; that it does not apply to subdivisions approved pursuant to the cultural housing provisions of the Comprehensive Management Plan and that it limits the number of residential lots created at any one time.

Although the Commission recognizes that any controls on the development of housing, whether for farm use or not, may be viewed as unnecessary or overly restrictive, the clarification does not broaden their application but should assist landowners and municipal planning boards in implementing them properly.

It should also be noted that the amendment does not apply to seasonal agricultural employee housing or other farm related housing which does not require subdivision. Therefore, these uses, which may be integral to certain farm operations, are not affected.

COMMENT: Two commenters opposed reduction of Regional Growth Area densities in Camden County municipalities. One of these felt that densities of 1.5 units per acre were not really appropriate Regional Growth Area densities to begin with. Further reductions would compromise the purpose of the Regional Growth Areas and integrity of the Comprehensive Management Plan and undermine the success of the PDC program.

The other commenter questioned the statement in the rule proposal that excess development capacity exists. The commenter noted the existence of a third party analysis which found that only 4.4 percent of southern New Jersey will be classified vacant and developable under the cumulative impact of all comprehensive land use plans. (Commission staff

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contacted the commenter to learn that the cited report was *Economic Development in Southern New Jersey*, one of the five reports in the *21st Annual Report of the Economic Policy Council and Office of Economic Policy*. A copy of the report was supplied to the Commission staff by the Office of Economic Policy.) This and another commenter also asked whether the Commission intended to increase densities elsewhere to replace the lost development potential.

RESPONSE: The Comprehensive Management Plan defines Regional Growth Areas as land areas which are: (1) in or adjacent to existing developed areas; (2) experiencing growth demands and pressure for development; and (3) capable of accommodating development without jeopardizing the most critical elements of the Pinelands environment. Average densities specified in the Comprehensive Management Plan were based on a comparison of various projections of overall estimates of need versus the nature of existing development in the area. Densities in the subject Regional Growth Areas were determined in this manner, and were thought to be appropriate at the time of the Comprehensive Management Plan's adoption. The reduction in density has since been found to be needed to avoid jeopardizing critical elements of the Pinelands environment. This was based upon the results of a detailed study, *An Assessment of Sewer and Water Supply Alternatives for Pinelands Growth Areas in the Mullica River Basin, Camden County*, a copy of which may be obtained from the Pinelands Commission.

In terms of development capacities, several observations are important. First and foremost, the amount of development permitted in the Pinelands must be predicated upon its potential impact upon the environment, not the extent to which development capacities elsewhere are high or low.

Second, the Commission is aware that the 4.4 percent estimate may not fully account for development potential since, for example, Pinelands and Coastal Areas were not considered, it is based upon the preliminary rather than the final state plan, it excludes areas identified in the preliminary state plan (Exurban Reserves, villages, etc.) which may be available for development, and the economic report itself characterizes the 4.4 percent as a low estimate within a range extending as high as 20 percent.

Third, the decreased development potential in these three Camden County growth areas will not necessarily be replaced elsewhere in the Pinelands, primarily because other areas have yet to be found suitable for more development than is currently permitted.

Last, the newly permitted densities will still allow for PDC use, although at a 25 percent lower level than before. This statement takes into consideration the fact that overall, in the entire Pinelands Area, twice as many opportunities for the use of PDCs are zoned for than are actually available for use. Therefore, the minor reduction of PDC opportunities in a small portion of the Pinelands will not undermine the PDC program.

COMMENT: One commenter questioned the statement in the rule proposal that the amendment would protect the Pinelands environment, including protecting the Pinelands from the negative impacts of pollution from sewage control facilities, since it is unclear why this is necessary when the sewage discharges would be outside the Pinelands. This commenter further noted that designation of areas as Regional Growth Areas followed by a finding that sewer service cannot meet Pinelands environmental standards appears to be a "Catch 22" situation.

RESPONSE: It should be noted that the range of alternatives considered for providing sewer service in lower Camden County included the possible alternative of treating and discharging all sewage within the Mullica River basin. The total amount of pollution that could have been introduced into the basin through that alternative would have been cause for concern. The selected alternative (reducing future water demand through a reduction in development, limiting treatment and disposal of sewage effluent within the Mullica basin to 1.4 million gallons per day (mgd), transporting 1.2 mgd of sewage effluent for treatment and disposal out of the basin, and strategic placement of water supply wells) considerably reduces the amount of pollution that will ultimately be introduced into the basin, while also controlling the impacts of water withdrawal and export. It is, on balance, the alternative which best: (1) allows central sewer service as a means to facilitate development; (2) limits the effects of pollutant loading on the Mullica basin; and (3) minimizes the hydrologic impacts caused by a net loss of water from the basin.

COMMENT: One commenter felt that the proposed amendment lowering densities in Camden County Regional Growth Areas would result in inefficient land use, thereby leading to inefficient use of infrastructure. The commenter proposed that densities should remain the same but that

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the use of Pinelands Development Credits should be discontinued in these three municipalities.

RESPONSE: It is recognized that lower densities in this instance may reduce the efficiency of land use and infrastructure use. However, the reduction in density is necessary to protect the environmental resources of the Pinelands, which is a higher priority than achieving maximum land use efficiency. In addition, the affected municipalities have the opportunity to make the reductions in any of numerous ways; for example, they may choose to reduce densities across the board, they may choose to reduce densities in one or two zones only, or they may propose that the growth area be reduced in size. Given this flexibility, if infrastructure efficiency is of paramount importance, the municipalities may concentrate considerable density in certain zones, and thereby achieve a high degree of efficiency in those zones. For example, zones which permit residential development at densities of two, three and eight dwellings per acre currently exist in Chesilhurst; three, four, six and seven dwellings per acre in Waterford; and two, four and seven dwellings per acre in Winslow.

The proposal to eliminate the use of PDCs is clearly inconsistent with the purpose of the PDC program and its integral role in the overall Comprehensive Management Plan.

COMMENT: Concern was expressed that these rules may be exclusionary regarding affordable low income housing.

RESPONSE: Pursuant to the Mount Laurel II decision and the Fair Housing Act, municipalities are required to ensure that opportunities exist for the creation of affordable housing. They may voluntarily seek certification of their housing and fair share plans by the Council on Affordable Housing pursuant to the Council's adopted procedural and substantive regulations, N.J.A.C. 5:91 and 5:92. In most cases, municipalities are able to devise these plans without conflict with the standards of the Comprehensive Management Plan. While it is unlikely that the amendment to the standards of the Comprehensive Management Plan will interfere with fair share plans by any of the three affected municipalities, the Council on Affordable Housing through its adopted regulations and its memorandum of understanding with the Pinelands Commission, may adjust municipal fair share targets if necessary to maintain consistency with the environmental standards of the Comprehensive Management Plan.

Finally, as stated earlier, municipalities may orient zoning districts and densities which permit higher densities in certain areas and lower densities in others. This is a technique which can be used as means to provide greater opportunities for the development of affordable housing in higher density residential zones.

COMMENT: Two commenters felt that N.J.A.C. 7:50-5.28(a)6, requiring nonresidential development approved by "use" variance (in a residential zone with PDC provisions) to utilize Pinelands Development Credits, is contrary to the use variance provisions of the Municipal Land Use Law. One of these commenters questioned whether an increase in floor area ratio would be permitted through PDC purchase.

RESPONSE: It should first be noted that the amendment would only apply where PDC opportunities exist and the approval of the non-residential development via "use" variance would extinguish those opportunities. The Municipal Land Use Law is mute on the subject of PDCs, not only in the context of use variances, but throughout. This is because the authority for the establishment of the PDC program is not embodied in the Municipal Land Use Law, but the Pinelands Protection Act. The proposed amendment does not change or contradict the standards of the Municipal Land Use Law regarding the granting of use variances. Rather, if a municipal zoning board is able to make the necessary findings to justify the granting of a use variance, a further determination must be made regarding whether PDC use opportunities would be extinguished, and if so, the number of PDCs required would then be determined.

No increase in floor area ratio or other measure of non-residential land use intensity would result from PDC purchase. Indeed, because the non-residential use is not ordinarily permitted in the subject zone, there would be no established standard to increase.

It should also be noted that absent this amendment, some applications having received municipal variances would be reviewed and subsequently denied by the Commission due to inconsistency with the standards of the Plan regarding PDC redemption opportunities. The amendment provides a basis for the Commission to concur with the municipal decision to grant a variance.

COMMENT: Two commenters questioned the statement in the rule proposal that PDCs may slightly increase costs, and subsequently increase profits.

RESPONSE: The cost of PDCs, where used, would be added to the baseline costs of land and development. Use of PDCs to increase housing

densities will increase profits as more houses are allowed; however, the impact of higher land costs on commercial development is more problematic. Nevertheless, land zoned for business uses is often more valuable than residentially zoned land, and the regulation being proposed only requires Pinelands Development Credit redemptions when a variance is approved which permits business use in a residential zone which has been designated by the municipality as a PDC receiving area.

It should also be noted that the use of PDCs provides an economic return to owners of land in the sending areas, as intended by the Comprehensive Management Plan.

COMMENT: One commenter felt that amendment of N.J.A.C. 7:50-5.43(b)3ii so that existing farm housing or the retained right to build farm related housing would reduce the property's PDC entitlement by .25 PDC per unit would work at cross purposes to the goal of assisting the farming industry.

RESPONSE: The primary reason for proposing a universal adjustment of .25 Pinelands Development Credits (PDC) for each existing home or retained right to build a home in the future is to simplify the PDC program. Varying adjustments have proven to be difficult for program participants to understand and more difficult to administer.

Although there are undoubtedly reasons for exempting farm housing and possibly other types of housing (for example, cultural) from the adjustment process, several factors were considered. First and foremost is the fact that these amendments do not prevent a property owner from retaining a right to build one or more homes in the future but merely standardize the manner in which Pineland Development Credits adjustments are made. Second, it does not apply to seasonal housing that directly assists the farm industry. Third, the manner in which adjustments have heretofore been made is inconsistent. (For example, a farm related home which predated the Comprehensive Management Plan could result in an adjustment as low as .5 PDCs while a future right to build a farm related home in a Special Agricultural Production Area could require an adjustment as high as two PDCs.) Lastly, the purpose of the PDC program is not to encourage residential development in designated conservation or agricultural areas nor to unduly penalize participants who truly see a need to retain a residential development right. Rather, the purpose of the program is to transfer development to more appropriate areas and when not transferred, to institute an equitable adjustment process.

In addition to public comment, the Commission staff determined that N.J.A.C. 7:50-3.56 and 3.57 are duplicates in substance. In order to eliminate redundancy, N.J.A.C. 7:50-3.56 is deleted, and N.J.A.C. 7:50-3.57 is appropriately renumbered and the word "Plan" in its title modified to be plural. This is a purely technical change which does not change the substance of the Comprehensive Management Plan.

A change to further clarify the intent of N.J.A.C. 7:50-4.66(a)1 is being made. This is intended to make clear the fact that only contiguous lands (which are either held in common ownership or reasonably available) are considered in determining whether a beneficial use of the property exists. This is a change of language only, with no change of substance.

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

7:50-2.11 Definitions

When used in this Plan, the following terms shall have the meanings herein ascribed to them.

"Accessory structure or use" means a structure or use which:

1. Is subordinate to and serves a principal building or a principal use, including, but not limited to, the production, harvesting, and storage as well as washing, grading and packaging of unprocessed produce grown on-site; and
- 2.-4. (No change.)

"Parcel" means any quantity of land capable of being described with such definiteness that its location and boundaries may be established, and which is designated by its owner as land to be used as a unit.

"Subdivision" means the division of a parcel of land into two or more lots, tracts, parcels or other divisions of land. The following shall not be considered subdivisions within the meaning of this Plan, if no development occurs or is proposed in connection therewith:

1. Divisions of property by testamentary or intestate provisions;
2. Divisions of property upon court order; and

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3. Conveyances so as to combine existing lots by deed or other instrument.

*[7:50-3.56 Amendments to Federal installation plans

Each Federal installation and the Commission may propose amendments to an installation plan from time to time. Such amendments shall be reviewed in the manner provided in Part V of this subchapter for review of the original plan and such amendments shall not require the revision or approval of the plan as a whole.]*

7:50-[3.57]* *3.56* Amendments to Federal installation plan*s*

Each Federal installation and the Commission may propose amendments to an approved installation plan from time to time. Such amendments shall be reviewed in the manner provided in Part V of this subchapter for review of the original plan and such amendments shall not require the revision or approval of the plan as a whole.

7:50-[3.58]* *3.57* through 7:50-3.60 (Reserved)

7:50-4.2 Pre-application conference; application requirements

(a) (No change.)

(b) Application requirements.

1.-6. (No change.)

7. Application for resource extraction: Unless the submission requirements are modified or waived pursuant to (b)3 above, an application filed pursuant to N.J.A.C. 7:50-4.13 or 4.33 for resource extraction shall include at least the following information:

i.-vii. (No change.)

viii. A restoration plan which includes:

(1)-(7) (No change.)

ix.-x. (No change.)

8.-10. (No change.)

(c) Determination of whether application is complete.

1. Determination by Executive Director:

i. Within 30 days following receipt of any application or any additional information concerning an application filed pursuant to this Plan except as provided in N.J.A.C. 7:50-4.34(b), the Executive Director shall determine whether such application is complete. If he determines that the application is not complete, he shall mail a written statement to the applicant specifying the deficiencies of the application. The Executive Director shall take no further action on the application until the deficiencies are remedied.

ii. Except for a completed application made pursuant to provisions of the subchapter which is exclusively to resolve an outstanding violation, no application shall be deemed complete by the Executive Director if there are outstanding unresolved violations of this Plan on the parcel which is the subject of the application. Where no application made exclusively to resolve a violation has been completed, a violation shall be deemed to be unresolved until such time as the violator has specifically agreed in writing to take all measures that have been specified by the Executive Director as being necessary to eliminate the violation in a time period acceptable to the Executive Director.

iii. Any applicant who is aggrieved by any determination by the Executive Director pursuant to (c)lii above may within 15 days of that determination seek reconsideration of the Executive Director's determination by the Commission as provided by N.J.A.C. 7:50-4.91.

2.-3. (No change.)

7:50-4.3 Commission hearing procedures

(a) (No change.)

(b) Notice of public hearing.

1. (No change.)

2. Persons entitled to notice:

i. Notice of public hearing shall be given by the Commission:

(1)-(4) (No change.)

(5) If the public hearing involves certification of a county or municipal master plan or municipal land use ordinance or county development ordinance, by publication of a copy of the notice, at least once, in an official newspaper of the Pinelands Commission having general circulation in the area.

ii. (No change.)

3. Time of notice: All notices required by (b)2 shall be published, posted or mailed at least 10 days in advance of the hearing.

4. (No change.)

(c) (No change.)

7:50-4.5 Emergency provision

Notwithstanding any other provisions of this subchapter, in any case where the Executive Director determines that immediate action pursuant to this plan is necessary to remedy or prevent a condition that is dangerous to life, health or safety, the Executive Director may, after consultation with the Commission Chairman, pursuant to such a finding, perform whatever action is minimally necessary to remedy or prevent the danger to life, health or safety. The Executive Director shall inform the Commission of any action taken pursuant to this provision at its next regularly scheduled meeting. Should action by the Commission be necessary, the Commission may take such action as it deems appropriate.

7:50-4.6 through 7:50-4.10 (Reserved)

7:50-4.53 Pre-application conference and submission requirements

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

(d) In addition to the requirements of (a) and (b) above, a public agency seeking approval for major development, as defined in N.J.A.C. 7:50-2.11, which either is for chemical control of vegetation in a water body where no permanent alteration of the water table is proposed or will not be located on a specific parcel, including a proposed development located within a right-of-way or easement, shall provide notice of the application for public development as follows:

1.-2. (No change.)

(e) through (h) (No change.)

7:50-4.62 Application

(a) An application for a waiver shall be submitted to the Commission in accordance with the requirements of N.J.A.C. 7:50-4.2(b). An application for waiver may be filed prior to filing an application for development. If during review of an application for development it appears necessary to obtain a waiver, the applicant may apply for a waiver. Any application for a waiver shall stay the time period for review set forth in Parts II, III or IV of this subchapter as the case may be while the application for the waiver is pending.

(b) through (g) (No change.)

7:50-4.66 Standards

(a) An application for a waiver shall be approved only if the applicant satisfies (b) below and an extraordinary hardship or compelling public need is determined to have been established under the following standards:

1. The particular physical surroundings, shape or topographical conditions of the specific property involved would result in an extraordinary hardship, as distinguished from a mere inconvenience, if the provisions of this Plan are literally enforced. The necessity of acquiring additional land to meet the minimum lot size requirements or management standards of this Plan shall not be considered an extraordinary hardship, unless the applicant can demonstrate that there is no contiguous land which is reasonably available. Any contiguous lands in common ownership at any time on or after January 14, 1981, shall be considered to be reasonably available. An applicant shall be deemed to have established the existence of extraordinary hardship only if he demonstrates, based on specific facts, that the subject property, along with any contiguous lands ***which are either*** in common ownership or ***[which]*** are reasonably available, does not have any beneficial use if used for its present use or developed as authorized by the provisions of this Plan, and that this inability to have a beneficial use results from unique circumstances peculiar to the subject property which:

i. through iii. (No change.)

2. (No change.)

(b) and (c) (No change.)

7:50-5.2 Expansion of existing uses

(a) (No change.)

(b) A municipality may include in its ordinance a provision which, notwithstanding the use restrictions contained in Part III of this

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subchapter, permits a change in any lawful use existing on January 14, 1981, and not subsequently abandoned, other than those uses which are expressly limited in N.J.A.C. 7:50-6, provided that:

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

7:50-5.13 Goals and objectives of Pinelands Management Areas

(a) through (e) (No change.)

(f) Pinelands Villages and Towns are existing spatially discrete settlements in the Pinelands. These traditional communities are appropriate for infill residential, commercial and industrial development that is compatible with their existing character.

1. Pinelands Area Villages are:

- i. through xlv. (No change.)
- xlvi. Vincentown;

Recodify existing xlv. through xlviii. as xlv. through xlix. (No change in text.)

2. through 4. (No change.)

(g)-(h) (No change.)

7:50-5.23 Minimum standards governing the distribution and intensity of development and land use in Forest Areas

(a) (No change.)

(b) In addition to uses permitted under (a) above, municipality may, at its option, permit the following uses in a Forest Area:

1. through 15. (No change.)

16. Airport facilities provided:

- i. The airport is publicly owned or serves a Pinelands Town; and
- ii. The airport was in existence on January 14, 1981; and
- iii. The area of the airport is limited in size to that which existed on January 14, 1981; and

iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District or Special Agricultural Production Area.

(c) and (d) (No change.)

7:50-5.24 Minimum standards governing the distribution and intensity of development and land use in Agricultural Production Areas

(a) The following uses shall be permitted in an Agricultural Production Area:

1. Residential dwellings on lots of 3.2 acres in accord with N.J.A.C. 7:50-5.32.

2. Residential dwelling units not to exceed a gross density of one unit per 10 acres provided that:

i.-iii. (No change.)

iv. The dwelling is located on a lot which has an active production history or where a farm management plan has been prepared which demonstrates that the property will be farmed as a unit unto itself or as part of another farm operation in the area;

v. A residential lot has not been subdivided from the property within the previous five years unless the lot has been subdivided pursuant to N.J.A.C. 7:50-5.32; and

vi. No more than one lot may be created for a dwelling accessory to an active agricultural operation pursuant to this provision at any one time.

3. through 9. (No change.)

(b) In addition to the uses permitted under (a) above, a municipality may, at its option, permit the following uses in an Agricultural Production Area:

1. through 12. (No change.)

13. Airport facilities provided:

- i. The airport is publicly owned or serves a Pinelands Town; and
- ii. The airport was in existence on January 14, 1981; and
- iii. The area of the airport is limited in size to that which existed on January 14, 1981; and

iv. The use will not generate subsidiary or satellite development not otherwise permitted in the Forest Area, Preservation Area District, Special Agricultural Production Area or Agricultural Production Area.

7:50-5.28 Minimum standards governing the distribution and intensity of development and land use in Regional Growth Areas

(a) Any use may be permitted in a Regional Growth Area, provided that:

1. Except as provided in (a)2, 3, 4, 5 and 6 below and Part IV of this subchapter, the total number of dwelling units authorized by a municipality for a Regional Growth Area shall be equal to and not exceed the following density per acre of developable land:

i. through v. (No change.)

vi. In Chesilhurst Borough: 1.125 dwelling units per acre.

vii. through xxviii. (No change.)

xxix. In Waterford Township 2.25 dwelling units per acre;

xxx. In Winslow Township 1.125 dwelling units per acre.

2. (No change.)

3. The land use element of a municipal master plan and land use ordinance shall reasonably permit development to occur within a range of densities provided that the total amount of residential development permitted in (a)1 above, is exceeded by at least 50 percent; that a reasonable proportion of the density increase permits the development of single family detached residences; and that the residentially zoned districts in which the ranges are established are reasonably expected to be developed within the assigned density ranges.

i. (No change.)

ii. Municipal master plans or land use ordinances shall provide that development at a density which is greater than the lowest density in each range can be carried out if the increase in density is achieved through a density bonus for use of Pinelands Development Credits.

4. Any local variance for an approval of residential development approved at a density which exceeds the maximum permitted in that zone shall require that Pinelands Development Credits be used for all dwelling units which exceed the maximum otherwise permitted.

5. Any local variance for an approval of residential development approved in a zone in which residential development is not otherwise permitted shall require that Pinelands Development Credits be used for all dwelling units in such development.

6. Any local variance for an approval of nonresidential development in a zone in which nonresidential development is not otherwise permitted, and in which density may be increased through use of Pinelands Development Credits pursuant to (a)3ii above, shall require that Pinelands Development Credits be used at the maximum rate permitted for the zone in which the development is located.

7. (No change in text.)

(b) (No change.)

7:50-5.43 Pinelands Development Credits established

(a) (No change.)

(b) Pinelands Development Credits are hereby established at the following ratios:

1.-2. (No change.)

3. The allocations established in (b)1 and 2 above shall be reduced as follows:

i. Any property of 10 acres or less which is developed for a commercial, industrial, resource extraction, intensive recreation, institutional, campground or landfill use shall not receive Pinelands Development Credit entitlement. For such an improved property of more than 10 acres, the area actively used for such use or 10 acres, whichever is greater, shall not receive Pinelands Development Credit entitlement.

ii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each existing dwelling unit on the property.

iii. The Pinelands Development Credit entitlement for a parcel of land shall be reduced by .25 PDC for each reserved right to build a dwelling unit on the parcel retained by the owner of the property pursuant to N.J.A.C. 7:50-5.44(b).

4. If the allocations established in (b)1 and 2 above are less than one-quarter of a Pinelands Development Credit, the allocation shall be increased to one-quarter of a Pinelands Development Credit if the owner of record of one-tenth or greater acres of land in the Preservation Area District, Agricultural Production Areas and Special

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Agricultural Production Areas, as of February 7, 1979 owns a vacant parcel of land that was not in common ownership with any contiguous land on February 7, 1979.

(c) (No change.)

7:50-5.44 Limitations on use of Pinelands Development Credits

(a) (No change.)

(b) Notwithstanding the provisions of (a) above, an owner of property from which Pinelands Development Credits are sold may retain a right for residential development on that property provided that the recorded deed restriction expressly provides for same and that the total allocation of Pinelands Development Credits for that property is reduced by .25 Pinelands Development Credit for each reserved right to build a dwelling unit. Subdivision of the property shall not be required until such time as the residential development right is exercised.

(c) (No change.)

7:50-5.47 Recordation of deed restriction

(a) (No change.)

(b) Such deed restriction shall specify the number of Pinelands Development Credits sold and that the property may only be used in perpetuity for the following uses:

1.-2. (No change.)

3. In Agricultural Production Areas:

i. Agriculture; forestry; low intensity recreational uses in which the use of motorized vehicles is not permitted except for necessary transportation, access to water bodies is limited to no more than 15 feet of frontage per 1,000 feet of frontage on the water body, clearing of vegetation does not exceed five percent of the parcel, and no more than one percent of the parcel will be covered with impermeable surfaces; agricultural sales establishments, excluding supermarkets and restaurants and convenience stores, where the principal goods or products available for sale were produced in the Pinelands and the sales area does not exceed 5,000 square feet; and agricultural products processing facilities.

ii. (No change.)

(c) (No change.)

7:50-6.65 (Reserved)

7:50-6.154 Designation of historic resources and districts

(a) Those historic resources within the Pinelands which are from time to time listed in the State or National Registers of Historic Places, pursuant to N.J.S.A. 13:1B-15.128 et seq. and P.L. 89-665; 80 Stat 915: 16 U.S.C. 470, respectively, are hereby designated as historic resource of significance to the Pinelands.

(b)-(g) (No change.)

7:50-6.156 Treatment of resources

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

(d) Effect of issuance of Certificate of Appropriateness.

1. (No change.)

2. Notwithstanding (d)1 above, a certificate of appropriateness issued for a resource determined to be significant pursuant to N.J.A.C. 7:50-6.155 but not presently designated pursuant to N.J.A.C. 7:50-6.154 shall be valid for one year. If the resource is not designated by the Pinelands Commission or by the municipal governing body in the zoning ordinance within one year, the standards of this Part shall thereafter not apply to the cultural resource in question.

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Pharmaceutical Assistance to the Aged and Disabled Manual
Income Standards; Capital Gain**

Adopted Amendments: N.J.A.C. 10:69A-1.2 and 6.2

Proposed: October 2, 1989 at 21 N.J.R. 3047(a).

Adopted: February 26, 1990 by William Waldman, Acting Commissioner, Department of Human Services.

Filed: February 26, 1990 as R.1990 d.182, **without change.**

Authority: N.J.S.A. 30:4D-20, 21, 24; P.L. 1989, c.16, effective February 1, 1989.

Effective Date: March 19, 1990.

Expiration Date: April 20, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1. Chapter 194, Laws of 1975, effective August 21, 1975. Amended by Chapter 312, Laws of 1975, effective February 19, 1976;
2. Chapter 268, Laws of 1977, effective January 1, 1978;
3. Chapter 171, Laws of 1978, effective December 22, 1978;
4. Chapter 27, Laws of 1979, effective March 1, 1979;
5. Chapter 499, Laws of 1981, effective March 1, 1982;
6. Chapter 209, Laws of 1985, effective August 1, 1985;
7. Chapter 221, Laws of 1987, effective July 29, 1987 and retroactive to December 31, 1986; and
8. Chapter 16, Laws of 1989, effective February 1, 1989.

(b) (No change.)

10:69A-6.2 Income standards

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

(c) All income, from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. (No change.)
2. Sources of income which are excluded in considering eligibility for PAAD are as follows:
 - i. Benefit amounts received under the New Jersey State Lifeline Credit Program/Tenants Lifeline Assistance Program;
 - ii. Benefits received under the New Jersey State Homestead Rebates;
 - iii. Proceeds from spouse's life insurance; and
 - iv. The one-time capital gain up to \$125,000 from the sale of a principal residence for individuals age fifty-five or older which is excluded from the State gross income tax pursuant to N.J.S.A. 54A:6-9.

(d)-(i) (No change.)

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

**Medicaid Only
New Eligibility Computation Amounts**

Adopted Concurrent Amendments: N.J.A.C.

10:71-5.4, 5.5, 5.6 and 5.7

Proposed: January 16, 1990 at 22 N.J.R. 251(a).
Adopted: February 23, 1990, by William Waldman, Acting
Commissioner, Department of Human Services.
Filed: February 23, 1990 as R.1990 d.177, **without change.**
Authority: N.J.S.A. 30:4D-3i, N.J.S.A. 30:4D-7a, b, and c; 42
CFR 435.210 and 435.1005.

Effective Date: February 23, 1990.
Expiration Date: January 6, 1991.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

10:71-5.4 Includable income

(a) Any income which is not specifically excluded under the provisions of N.J.A.C. 10:71-5.3 shall be includable in the determination of countable income. Such income shall include, but is not limited to, the following:

1.-11. (No change.)

12. Support and maintenance furnished in-kind (community cases): Support and maintenance encompasses the provision to an individual of his or her needs for food, clothing, and shelter at no cost or at a reduced value. Persons determined to be "living in the household of another" in accordance with N.J.A.C. 10:71-5.6 shall not be considered to be receiving in-kind support and maintenance as the income eligibility levels have been reduced in recognition of such receipt. Persons not determined to be "living in the household of another" who receive in-kind support and maintenance shall be considered to have income in the amount of:

\$148.67 for an individual

\$213.00 for a couple

i. (No change.)

13. (No change.)

(b) (No change.)

10:71-5.5 Deeming of income

(a)-(f) (No change.)

(g) A table for deeming computation amounts follows:

TABLE A
Deeming Computation Amounts

1. Living allowance for each ineligible child	\$193.00.		
2. Remaining income amount	Head of Household \$193.00	Receiving Support and Maintenance	\$128.67
3. Spouse to Spouse Deeming—Eligibility Levels			
a. Residential Health Care Facility			\$729.05
b. Eligible individual living alone with ineligible spouse			\$796.36
c. Living alone or with others			\$610.25
d. Living in the household of another			\$430.31
4. Parental Allowance—Deeming to Child(ren)			
Remaining income is:	1 Parent	Parent & Spouse of Parent	
a. Earned only	\$772.00	\$1,158.00	
b. Unearned only	\$386.00	\$ 579.00	
c. Both earned and unearned	\$386.00	\$ 579.00	

- 10:71-5.6 Income eligibility standards
 - (a)-(b) (No change.)
 - (c) Non-institutional living arrangements 1.-4. (No change.)
 - 5. Table B follows:

TABLE B

Variations in Living Arrangement	Individual	Medicaid Eligibility Income Standards Couple
I. Residential Health Care Facility	\$536.05	\$1,053.36
II. Living Alone or with Others	\$417.25	\$ 604.36
III. Living alone with Ineligible Spouse	\$604.36	
IV. Living in the Household of Another	\$301.65	\$ 479.09
V. Title XIX Approved Facility	\$1,158.00†	

Includes persons in acute general hospitals, skilled nursing facilities, intermediate care facilities (level A, B, and ICFMR) and licensed special hospitals (Class A, B, C) and Title XIX psychiatric hospitals (for persons under age 21 and age 65 and over) or a combination of such facilities for a full calendar month.

†Gross income (that is, income prior to any income exclusions) is applied to this Medicaid "Cap".

(d)-(g) (No change.)

10:71-5.7 Deeming from sponsor to alien

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

(e) To determine the amount of income to be deemed to an alien, the CWA shall proceed as follows:

1. (No change.)

2. Subtract \$386.00 for the sponsor, \$579.00 for the sponsor if living with his or her spouse, \$772.00 for the sponsor if his or her spouse is a co-sponsor.

3. Subtract \$193.00 for any other dependent of the sponsor who is or could be claimed for Federal Income Tax purposes.

4. (No change.)

(f) (No change.)

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(b)

DIVISION OF FINANCIAL EXAMINATIONS AND LIQUIDATIONS

Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange

Adopted New Rules: N.J.A.C. 11:1-28

Proposed: November 20, 1989 at 21 N.J.R. 3607(a).

Adopted: February 16, 1990 by Jasper J. Jackson, Acting Commissioner, Department of Insurance.

Filed: February 20, 1990 as R.1990 d.162, **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. 17:1-8.1, 17:1C-6(e), 17:17-1 et seq., 17:46A-1 et seq.; 17:46B-1 et seq. and 17:50-1 et seq.

Effective Date: March 19, 1990.

Expiration Date: February 3, 1991.

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Summary of Public Comments and Agency Responses:

The Department received comments from Professional Insurance Agents of New Jersey (PIANJ) and PROPAC Underwriters, Inc. (PROPAC) regarding these proposed new rules.

PIANJ commented that they support the proposed rules and its goal of formalizing, clarifying and strengthening the current guidelines governing the formation of domestic property and casualty insurers.

PROPAC's comments were limited to the extent the proposed rules govern the formation of a reciprocal insurance exchange (reciprocal) and are as follows:

COMMENT: The commenter stated generally that the Department lacks statutory authority to subject reciprocals to the same formation requirements as stock or mutual companies. The unique characteristics involved in the right to exchange contracts and the formation and operation of reciprocals resulted in the enactment of N.J.S.A. 17:50-1 et seq. which provides that reciprocals be formed and regulated differently than other insurance companies. In support of this position, the commenter referred to N.J.S.A. 17:50-1 which provides that "such contracts and the exchange thereof and such subscribers, their attorneys in fact and representatives shall be regulated by this act, and by no other statute of this State relating to insurance, except as herein otherwise provided."

Finally, the commenter stated that the individual right to contract under the United States and New Jersey State Constitutions cannot be restricted by rule without authority.

Based on the foregoing, the commenter suggested that the formation of reciprocals be regulated separately in different rules from the current proposal governing the formation of stock and mutual insurance companies.

RESPONSE: The Department disagrees. The Department may subject reciprocals to the same formation requirements as other insurers pursuant to N.J.S.A. 17:50-10 which provides that "upon issuance of a permit by the [Commissioner of Insurance], and under such conditions as he may impose, powers of attorney and applications for . . . insurance contracts may be solicited . . ." (emphasis added). The rules are clarified to reflect that these conditions are in compliance with the requirements in N.J.A.C. 11:1-28.5, 28.6 (except for the capital, surplus and deposit requirements, which are due at the time of the organization examination required by N.J.A.C. 11:1-28.8) and 28.7. Thus, compliance with N.J.A.C. 11:1-28.5, 28.6 and 28.7 are required before the Commissioner may issue a permit to solicit to a reciprocal pursuant to N.J.S.A. 17:50-10.

The Department may also require a proposed reciprocal to undergo an organization examination after the issuance of the permit to solicit in order to ensure that the proposed reciprocal is in compliance with N.J.S.A. 17:50-1 et seq. before the Commissioner issues a certificate of authority to the reciprocal pursuant to N.J.S.A. 17:50-11.

The Department also believes that the operations of a reciprocal are not unique in that their operations closely resemble that of a mutual insurer. In fact, the Property/Liability Guaranty Association (Association) is responsible for the payment of any covered unpaid claims of a reciprocal if it becomes insolvent. Since reciprocals are treated as insurers in this instance, the Department believes that it is appropriate to require the filing of information in sufficient detail to evaluate the proposed reciprocal before issuing a permit to solicit in order to ensure that the reciprocal's proposed methods of operations will not be hazardous to the public or policyholders. The Department may require this information pursuant to N.J.S.A. 17:50-10.

In addition, the Department does not agree that these rules restrict the constitutional right to contract in that the right to exchange insurance contracts is created by N.J.S.A. 17:50-1 et seq. and is thus not a right granted by either the United States or New Jersey State Constitutions. Thus, the Department may promulgate these rules which implement the intent of the Legislature as expressed in N.J.S.A. 17:50-1 et seq.

Since the Department possesses the statutory authority to subject reciprocals to the same formation requirements as stock or mutual insurers, the Department believes that the formation of reciprocals should be regulated by the same rules governing the formation of stock or mutual companies in the interests of consistency and uniformity.

COMMENT: The commenter stated that the "four-tiered" application process contained in the proposed rules is inappropriate, unworkable and not authorized for the formation of a reciprocal and contradicts N.J.S.A. 17:50-1 et seq. in that this statute provides for a two-step application process for reciprocals. Step one is the issuance of a permit to solicit powers of attorney and applications for insurance contracts by the Commissioner, pursuant to N.J.S.A. 17:50-10. Step two is the issuance of a certificate of authority by the Commissioner, pursuant to N.J.S.A.

17:50-11 to show that the reciprocal has complied with the requirements of N.J.S.A. 17:50-1 et seq.

RESPONSE: The Department disagrees. As was stated in the response to the previous comment, the Department believes that the proposed rules are appropriate, workable and authorized for the formation of reciprocals and are thus consistent with N.J.S.A. 17:50-1 et seq.

The Department further believes that the statute does not mandate a "two-step" formation process as was suggested. The permit to solicit may be issued under such conditions as the Commissioner may impose pursuant to N.J.S.A. 17:50-10. The statute thus provides for more than a "one-step" process in the issuance of the permit to solicit depending upon the conditions that may be imposed by the Commissioner. As was stated in the response to the previous comment, the Department has determined to require a proposed reciprocal to comply with the requirements in N.J.A.C. 11:1-28.5, 28.6 (except for the capital, surplus and deposit requirements) and 28.7 before the Commissioner may issue a permit to solicit to the reciprocal pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter stated that the definition of "actuary" in N.J.A.C. 11:1-28.3 is both inappropriate and unconstitutional. The *American Heritage Dictionary* defines an actuary as a "statistician who compiles insurance risks and premiums." Furthermore, no definition of "actuary" found in major dictionaries indicates that an actuary is anything other than a person possessing certain kinds of statistical knowledge relevant to the evaluation of insurance risks and premiums.

In the absence of a statutorily mandated licensing procedure for actuaries in New Jersey, the commenter stated that it is discriminatory and arbitrary, and therefore unconstitutional, for the Department to attempt by the promulgation of a rule to deny recognition to any actuary unless he or she is a member of the Casualty Actuary Society. The commenter further stated that this discriminates against any individual who processes the requisite knowledge and experience but has not chosen to become a member of the Casualty Actuarial Society.

Finally, the commenter suggested that the definition include a criterion of minimum educational requirements as a permissible alternative to membership in the Casualty Actuarial Society.

RESPONSE: The Department disagrees. The Department believes that these requirements are appropriate in order to ensure that the actuary possesses minimum qualifications and expertise.

The Department does not believe that these requirements are discriminatory or arbitrary. The Casualty Actuarial Society imposes objective standards that must be met in order for a person to be designated either an "associate" or "fellow". This ensures consistency in that if a person is an associate or fellow in good standing of the Casualty Actuarial Society, that person has met nationally recognized and standardized requirements and possesses the requisite minimum qualifications and expertise.

Furthermore, the definition of actuary in these rules is identical to the definition of actuary in the Loss Reserve Opinions rules (N.J.A.C. 11:1-21) which require a statement of opinion by a qualified actuary. Since reciprocals are required to file an Annual Statement pursuant to N.J.S.A. 17:50-8, reciprocals are subject to the Loss Reserve Opinions rules, and are thus required to engage an actuary as defined in N.J.A.C. 11:1-21 once in operation. The Department believes that it is appropriate and not arbitrary or unreasonable to utilize the same standards regarding the qualifications of an actuary contained in the Loss Reserve Opinions rules for the purposes of these rules.

Finally, the Department does not believe that the use of minimum educational requirements as an alternative to the requirements in the proposed rules is appropriate as this would require the Department to review and verify the individual's qualifications on a case by case basis. Such individual review and verification would be time consuming and could result in inconsistency in the approval of such individuals. Therefore, the Department believes that no change to the definition is warranted.

COMMENT: The commenter stated that the feasibility study, required by N.J.A.C. 11:1-28.5, appears to replace the "permission to solicit" stage provided by N.J.S.A. 17:50-10, which, if unsuccessful, ends the formation process. Therefore, the feasibility study stage exceeds the statutory authority provided by N.J.S.A. 17:50-1 et seq.

RESPONSE: As was stated in a response to a previous comment, the feasibility study is not intended to replace the "permission to solicit" stage, but, rather is intended to be one part of this stage in addition to the requirements contained in N.J.A.C. 11:1-28.6 and 28.7. The rules are changed to reflect this clarification. The feasibility study requirement does not exceed the statutory authority granted by N.J.S.A. 17:50-1 et seq.

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in that the feasibility study is a condition under which a permit to solicit may be issued pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter stated that it is too early in the application process, and therefore inappropriate, to require the submission of a detailed plan of operation, as provided in N.J.A.C. 11:1-28.5(b)1.

The commenter also suggested that the rules be clarified to indicate whether the description of the qualifications of the individuals to be responsible for carrying out the policies of the applicant, required by N.J.A.C. 11:1-28.5(b)1vii, refers to top management only or all employees which would be inappropriate at the "permission-to-solicit" stage.

Finally, the commenter stated that the time and expense of submitting all of the items required by proposed N.J.A.C. 11:1-28.5(b) prior to the "permission-to-solicit" stage is unreasonable, unfair and restrictive of the constitutional right of an individual to exchange contracts as intended in N.J.S.A. 17:50-1 et seq.

RESPONSE: The Department disagrees. The Department believes that a plan of operation should be developed as preliminary matter and imposes no undue burden on the proposed reciprocal. Furthermore, the Department believes that it is necessary and appropriate to review the reciprocal's proposed plan of operation in order to ensure that the plan is feasible before issuing a permit to solicit.

The Department agrees, however, that clarification is needed regarding the description of the qualifications of the individuals to be responsible for carrying out the policies of the applicant. Therefore, the rules are clarified to reflect that this requirement refers to the senior officers of the applicant responsible in the areas of claims, underwriting and investment.

Finally, the Department disagrees that the requirements of N.J.A.C. 11:1-28.5(b) are unreasonable, unfair and restrictive of the constitutional right of an individual to exchange contracts. The Commissioner may require this information before he or she issues a permit to solicit to a reciprocal pursuant to N.J.S.A. 17:50-10. This requirement is consistent with the intent of the Legislature as expressed in N.J.S.A. 17:50-1 et seq.

COMMENT: The commenter stated that N.J.A.C. 11:1-28.5(c) and 28.6(c), which provide that the Commissioner may require additional information he or she deems necessary in order to make an adequate evaluation of the applicant, is overly broad, vague and may exceed and conflict with N.J.S.A. 17:50-3 depending on what information, if any the Commissioner requires in addition to the items specified in N.J.S.A. 17:50-1 et seq.

RESPONSE: The Department disagrees. N.J.S.A. 17:50-10 provides that the Commissioner may issue a permit to solicit under such conditions as he may impose. The statute does not require that conditions be imposed by the promulgation of a regulation. The Department proposed these rules in order to ensure that proposed insurers or reciprocals are fully apprised of the formation requirements. Since specifics may vary depending upon the circumstances of each application, all conditions cannot be contained in a rule. These rules therefore provide for the submission of additional information the Commissioner may deem necessary in order to make an adequate evaluation of the applicant pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter stated that the \$1,000 filing fee, required by N.J.A.C. 11:1-28.5(d), may require specific statutory authority in order to apply to reciprocals since it is not contained in N.J.S.A. 17:50-1 et seq.

RESPONSE: The Department may require the \$1,000 filing fee pursuant to N.J.S.A. 17:1-8, which provides: "The Commissioner shall charge for a license and for all services performed by him the fees provided in this Title, or in lieu thereof or where not so provided, such fees as he shall prescribe by rule or regulation."

COMMENT: The commenter suggested that the phrase "after 60 days" in N.J.A.C. 11:1-28.5(e) be revised to read "within 60 days."

The commenter further stated that the requirements that the Commissioner determine whether the operation of a reciprocal is feasible at this stage of its formation, with a specific mandatory waiting period, goes beyond the specific requirements of N.J.S.A. 17:50-1 et seq. and therefore requires specific statutory authority.

Finally, the commenter stated that the use of the word "complete" in N.J.A.C. 11:1-28.5(e), in combination with N.J.A.C. 11:1-28.5(c), which provides that the Commissioner may require additional information he or she deems necessary, is overly broad and vague in triggering the 60-day waiting period.

RESPONSE: The Department did not intend to create a mandatory waiting period of 60 days. Therefore, N.J.A.C. 11:1-28.5(e) is revised to read "within 60 days."

The Department, however, believes that it is appropriate and authorized, pursuant to N.J.S.A. 17:50-10, to conduct an evaluation of the reciprocal in order to determine whether its proposed operations are feasible before issuing a permit to solicit. Since the Department must review the feasibility study submitted pursuant N.J.A.C. 11:1-28.5, the rules provide for a 60-day review period within which the Department will notify an applicant if its feasibility study is accepted or rejected. The Department believes that a 60-day review period is reasonable and therefore no change is warranted.

Finally, the Department agrees that the use of the word "complete" in N.J.A.C. 11:1-28.5(e) in combination with N.J.A.C. 11:1-28.5(c) may be vague in triggering the 60-day review period. Therefore N.J.A.C. 11:1-28.5(e) is revised to indicate that a complete feasibility study consists of the information required by N.J.A.C. 11:1-28.5(b) and the filing fee required by N.J.A.C. 11:1-28.5(d).

COMMENT: The commenter stated that the security deposit described in N.J.A.C. 11:1-28.6(a)4 should not be due from a reciprocal until the time of the organization examination required by N.J.A.C. 11:1-28.8 in that N.J.S.A. 17:50-10 provides that a reciprocal may be issued a permit to solicit without compliance with the other provisions of N.J.S.A. 17:50-1 et seq., which thus includes the filing of a security deposit pursuant to N.J.S.A. 17:50-6.

RESPONSE: The Department agrees. The rules are changed to reflect that the statutory deposit as well as the required capital and surplus requirements are due at the time of the organization examination required by N.J.A.C. 11:1-28.8 for all applicants.

COMMENT: The commenter requested that the rule be clarified to indicate the stage of the formation process at which the criminal history record check requirements in N.J.A.C. 11:1-28.7 apply and the statutory authority for these requirements.

RESPONSE: Criminal history record check requests shall be submitted with the "additional information requirements" set forth at N.J.A.C. 11:1-28.6. The rules are changed to reflect this clarification. The Department may require the criminal history record check requests pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter stated that the phrase "any complaint" in proposed N.J.A.C. 11:1-28.7(c) is overly broad and unclear. Therefore, the commenter suggested that the rules clarify whether this phrase means court complaints only, civil or criminal complaints, complaints previously or later dismissed for any reason, how long ago made, at what levels of courts, in which states, etc.

The commenter further stated that depending upon the scope of this phrase's meaning, or because of its vagueness, proposed N.J.A.C. 11:1-28.7(c) may exceed statutory authority.

RESPONSE: The Department disagrees. This additional information will be required in those specific instances where the criminal history record check indicates a history of criminal activity. The Commissioner would then request the specified information deemed necessary to allow the adequate evaluation of the information contained in the criminal history record check. Since the information believed would be specified at the time of the request, the Department believes that no clarification to the rules is necessary.

Regarding the question of statutory authority, as was stated in the response to the previous comment, the Department may require this information pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter suggested that N.J.A.C. 11:1-28.8(b)7 be clarified to indicate whether the "complete ownership chart" requirement applies to a reciprocal or its attorney in fact. The commenter also requested clarification as to what constitutes a "complete" ownership chart.

RESPONSE: The Department agrees. The complete ownership chart requirement applies to the attorney in fact and not to the reciprocal.

For instance, a complete ownership chart must be in the format of Schedule Y—Organization Chart of the Annual Statement. For reciprocals, it must show the interrelationship between the parent and all affiliates engaged in the business of insurance and illustrate the relationship to the parent and all intermediate parent(s) having control of the attorney in fact.

The rules are changed to reflect these clarifications.

COMMENT: The commenter suggested that the requirement that the applicant file an audited financial statement of the intermediate and ultimate parent(s) be clarified as it applies to reciprocals, in that if both a reciprocal and its attorney in fact are a new organization, then the audited financial statement requirement appears to be inappropriate.

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RESPONSE: The Department agrees. The rules are clarified to provide that the Commissioner may, in the case of reciprocals, accept a report other than an audited financial statement, if in his or her opinion the structure of the attorney in fact is such that an audited financial report is not prepared in the normal course of business.

COMMENT: The commenter suggested that the phrase "as applicable" be added at the end of the sentence in N.J.A.C. 11:1-28.8(b)11.

RESPONSE: The Department agrees. The rules are changed to reflect this clarification. However, the Department believes that the phrase should read "if applicable" as a matter of form.

COMMENT: The commenter suggested that "policy forms" not be included in N.J.A.C. 11:1-28.8(b)17ii since they are not part of a rating system and, therefore, it is inappropriate to require policy forms as part of the summary of the applicant's initial rating system.

RESPONSE: Since policy forms set forth the coverages to which rates apply, they may be considered a part of a "rating system."

However, the Department agrees with the commenter that policy forms are not necessary at this stage of the formation process. The rules are thus changed to reflect this clarification. In addition, "policy forms" is deleted from N.J.A.C. 11:1-28.5(b)2ii, in the interest of consistency.

COMMENT: The commenter suggested that N.J.A.C. 11:1-28.9(a) be clarified to reflect that only the requirements of N.J.S.A. 17:50-1 et seq. must be satisfied in order for a reciprocal to be granted a certificate of authority.

RESPONSE: The Department disagrees. The Commissioner has the authority to require a reciprocal to undergo an organization examination in order to ensure that the reciprocal is in compliance with the provisions of N.J.S.A. 17:50-1 et seq. The Commissioner thus has the authority to review and evaluate the information obtained from this examination in order to ensure that the proposed methods of operation of the applicant and the background of the officers and directors are not such as would render its operation hazardous to the public or policyholders before issuing a certificate of authority to a reciprocal. Therefore no change is warranted.

COMMENT: The commenter stated that proposed N.J.A.C. 11:1-29.9 and the "four-tiered" application process appear to eliminate the initial step of "permission to solicit" and therefore contradicts N.J.S.A. 17:50-1 et seq. without statutory authority.

RESPONSE: As was stated in a response to a previous comment, the rules do not eliminate the "permission to solicit" stage. Rather, they set forth the requirements that must be satisfied before the Commissioner will issue such a permit, pursuant to N.J.S.A. 17:50-10.

COMMENT: The commenter suggested that N.J.A.C. 11:1-28.10 explain the effect of a denial of certificate of authority. The commenter asked whether the applicant must start over; whether the application is put on hold; whether there is a time period and procedure to correct any failure to comply; and whether there is a waiting period before reapplying.

RESPONSE: This section relates to willful non-compliance with these rules rather than good faith error. If an applicant is denied a certificate of authority under these circumstances, the applicant would be required to recommence the entire application process.

COMMENT: The commenter suggested that the appendices to the rule address the declaration filed by the attorney in fact pursuant to N.J.S.A. 17:50-3.

RESPONSE: The Department does not believe that it is necessary to restate the contents of the declaration filed by the attorney in fact in the appendices since N.J.S.A. 17:50-3 specifically describes the information that such declaration must contain.

Summary of Agency Initiated Changes:

1. In N.J.A.C. 11:1-28.3, the word "and" is added to the definition of "property casualty insurance" as a matter of form.

2. Changes are made to the title of the subchapter and to N.J.A.C. 11:1-28.4(a)1 to correct printing errors.

3. A new section—N.J.A.C. 11:1-28.8, Permit to solicit—is added. This added section clarifies that the requirements contained in N.J.A.C. 11:1-28.5, 28.6 and 28.7 comprise the "permit to solicit" stage in that these are the conditions under which a permit to solicit may be issued by the Commissioner pursuant to 17:50-10.

Because this new section is added, N.J.A.C. 11:1-28.9 through 28.11 are recodified as 28.10 through 28.12, without change in text from the proposal.

4. A change is made in Appendix C as a matter of form.

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 28. *[Formation of a Domestic Property and Casualty Insurance Corporation (Stock or Mutual) or Reciprocal Insurance Exchange]* *FORMATION OF A DOMESTIC PROPERTY AND CASUALTY INSURANCE CORPORATION (STOCK OR MUTUAL) OR RECIPROCAL INSURANCE EXCHANGE*

11:1-28.1 Purpose

This subchapter sets forth the filing requirements for the granting of a certificate of authority to transact property and casualty insurance in this State, pursuant to N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., and 17:46B-1 et seq., and to transact business as a reciprocal insurance exchange, pursuant to N.J.S.A. 17:50-1 et seq.

11:1-28.2 Scope

This subchapter applies to all persons seeking to form a property and casualty insurance corporation or reciprocal insurance exchange in this State.

11:1-28.3 Definitions

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

"Actuary" means a person who is a fellow in good standing of the Casualty Actuarial Society with three years recent experience in loss reserving or an associate in good standing of the Casualty Actuarial Society with five years recent experience in loss reserving.

"Annual statement" means the form of statement that is described in N.J.S.A. 17:23-1.

"Applicant" means a domestic corporation seeking to obtain a certificate of authority to transact property and casualty insurance in this State or the attorney in fact representing a proposed reciprocal insurance exchange seeking to obtain a certificate of authority to transact business pursuant to N.J.S.A. 17:50-1 et seq.

"Attorney in fact" or "attorney" means a person or corporation possessing the power of attorney to act on behalf of a reciprocal insurance exchange.

"Certificate of authority" means a certificate issued by the Commissioner evidencing the authority of a corporation to transact insurance in this State.

"Commissioner" means the Commissioner of the New Jersey Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Domestic insurer" means an insurer formed under the laws of this State.

"Property *and* casualty insurance" means all lines of business for which an insurance company may be formed to transact, pursuant to N.J.S.A. 17:17-1, and includes mortgage guarantee insurance and title insurance pursuant to N.J.S.A. 17:46A-1 et seq. and 17:46B-1 et seq., respectively.

11:1-28.4 Types of insurance

(a) The following are the types of insurance which a company may be formed to transact under the stated paragraphs of N.J.S.A. 17:17-1:

1. Paragraph "a" means fire and allied lines, earthquake*[s]* and growing crops;

2. Paragraph "b" means ocean marine, inland marine, automobile physical damage and aircraft physical damage;

3. Paragraph "e" means worker's compensation and employer's liability, automobile liability (bodily injury), automobile liability (property damage) and other liability;

4. Paragraph "f" means boiler and machinery;

5. Paragraph "g" means fidelity and surety;

6. Paragraph "i" means credit;

7. Paragraph "j" means burglary and theft;

8. Paragraph "k" means glass;

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9. Paragraph "l" means sprinkler leakage and water damage;

10. Paragraph "m" means livestock;

11. Paragraph "n" means smoke and smudge; and

12. Paragraph "d" means accident and health insurance as defined in N.J.S.A. 17B:17-4.

(b) The following are the miscellaneous coverages allowed under N.J.S.A. 17:17-1, paragraph "o":

1. All loss to buildings and structures, including consequential loss, and against loss or damage to property of others, caused by an insured;

2. The perils of radioactive contamination and all other perils causing physical loss to nuclear energy installations and facilities including consequential loss; and

3. All other miscellaneous coverage, including, but not limited to, the following:

i. Loss or damage to property by epidemic;

ii. Loss or damage to property by power failure or mechanical breakdown;

iii. Loss or damage to property or any insurable interest therein caused by insects or by radiation resulting from atomic fission;

iv. Engine breakdown;

v. Loss or damage to property of the assured caused by falling of tanks or equipment for protecting property against fire, by explosion other than steam boilers, pipes, engines, motor, and machinery connected therewith (except fire);

vi. Loss resulting from the right to participate in associations or pools, such as NEPIA and NELIA, which associations or pools are authorized to write "All Risks" insurance involving nuclear fuel exposure;

vii. Economic security; and

viii. All other liability not covered under N.J.S.A. 17:17-1(e), including voluntarily assumed liability.

(c) A stock insurance company may be formed to transact solely the following lines of business:

1. Mortgage guarantee insurance, pursuant to N.J.S.A. 17:46A-1 et seq.; and

2. Title insurance, pursuant to N.J.S.A. 17:46B-1 et seq.

11:1-28.5 Feasibility study

(a) In order for an applicant to be granted a certificate of authority to transact property and casualty insurance in this State ***or, in the case of reciprocal insurance exchanges, to be issued a permit to solicit pursuant to N.J.S.A. 17:50-10***, the requirements of this section shall be satisfied in addition to any other requirements in this subchapter or any other provision of law.

(b) Any applicant seeking to obtain a certificate of authority to transact property and casualty insurance in this State ***or, in the case of reciprocal insurance exchanges, seeking to obtain a permit to solicit pursuant to N.J.S.A. 17:50-10,*** shall first submit a feasibility study to the Commissioner which shall include, but not be limited to, the following:

1. A detailed plan of operation of the applicant which shall:

i. Include and explain its plans of operation;

ii. Explain its source of funding;

iii. Describe its marketing strategy;

iv. Describe its underwriting procedures and guidelines;

v. Explain the administrative and legal arrangements to be made for the adjustment of claims and the recovery of salvage and subrogation;

vi. Describe its territory of operation;

vii. Describe the qualifications of the ***[individuals to be responsible for carrying out the policies of the applicant]* *senior officers of the applicant responsible in the areas of claims, underwriting and investment***;

viii. Describe the proposed maximum amount of coverage by line of business;

ix. Describe the proposed retention by line of business;

x. Describe the proposed reinsurance arrangements;

xi. Describe the proposed methods for the handling of consumer complaints;

xii. Include the applicant's proposed organization chart; and

xiii. Describe the proposed dividend policy;

2. A summary of the applicant's initial rating system to the extent its proposed operations are regulated which shall include:

i. Rates by lines of business;

[ii. Policy forms;]

[iii.]ii.*** Proposed statistical agents (if any);

[iv.]iii.*** Independent filings; and

[v.]iv.*** The rating bureau (if any);

3. A five year projection of the following certified by a qualified actuary and accompanied by a narrative explaining the sources of anticipated premium and all assumptions made in developing the entire projection:

i. Assets, liabilities and surplus and other funds in the format of the Assets page and the Liabilities and Surplus and Other Funds page in the Annual Statement representing the start-up year of the applicant and the five successive year-ends;

ii. Underwriting and investment income in the format of the Underwriting and Investment Exhibit, Statement of Income in the Annual Statement for each of the five years;

iii. The following information by line of business for each of the five years (the line of business classifications shall be those set forth in the Underwriting and Investment Exhibit, Part Two in the Annual Statement):

(1) Premiums earned;

(2) Losses incurred;

(3) Loss expenses incurred; and

(4) Ratios of the sum of the losses and loss expenses to premium earned; and

iv. The projected values required in the Underwriting and Investment Exhibit, Part Four—Expenses in the Annual Statement; and

4. The name of the proposed insurer or reciprocal insurance exchange which shall be reviewed for acceptability by the Commissioner, and if acceptable, shall be reserved for the time that such proposed insurer's or reciprocal insurance exchange's application is pending.

(c) In addition to the requirements in (b) above, the Commissioner may require any additional information he or she deems necessary in order to make an adequate evaluation of the applicant.

(d) Each applicant shall submit a \$1,000 filing fee with the filing of the information required by (b) above to cover the costs of Department review of such information.

(e) ***[After]**Within*** 60 days from the receipt of a complete feasibility study and filing fee required by (b)*[, (c)]* and (d) above, the Commissioner shall notify the applicant in writing that he or she either accepts or rejects the applicant's feasibility study. If the Commissioner notifies the applicant that the feasibility study is accepted, the applicant shall comply with the additional information requirements set forth in N.J.A.C. 11:1-28.6.

11:1-28.6 Additional information requirements

(a) After review and acceptance of the feasibility study pursuant to N.J.A.C. 11:1-28.5, an applicant seeking to obtain a certificate of authority ***or a permit to solicit in the case of reciprocal insurance exchanges,*** shall submit the following to the Commissioner:

1. The corporation's original certificate of incorporation, which the Department will submit for review and certification by the State Attorney General of New Jersey.

i. A suggested form for the preparation of a certificate of incorporation is appended to this subchapter as Appendix A, which is hereby incorporated by reference as part of these rules.

ii. After approval and certification by the State Attorney General of New Jersey, the corporation shall submit the certificate of incorporation to the county clerk of the county of the corporation's domicile for recording. The corporation shall then file the original recorded certificate of incorporation with the Commissioner.

iii. In the case of proposed reciprocal insurance exchanges, in lieu of the requirements in (a)li and ii above, the attorney in fact, if a corporation, shall file with the Commissioner a copy of its certificate of incorporation. The attorney in fact shall also file a declaration containing the information required in N.J.S.A. 17:50-3 and an instrument authorizing service of process on the Commissioner, pursuant to N.J.S.A. 17:50-4;

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2. Biographical affidavits for each incorporator, officer and director of the proposed insurance corporation or attorney in fact, as applicable, in the format of Appendix B appended to this subchapter, which is hereby incorporated by reference as part of these rules; ***and a criminal history record check request pursuant to N.J.A.C. 11:1-28.7; and***

3. The by-laws of the proposed insurer or reciprocal insurance exchange, as applicable[*]; and]**.*

*[4. A security deposit pursuant to N.J.S.A. 17:20-1, 17:46B-7 and 17:50-6, as applicable, registered in the following format:

"Commissioner of Insurance of the State of New Jersey, as trustee, in trust for the benefit and security of the policyholders of (Name of company F.I.D. No.)."]*

[(b) In addition to the requirements in (a) above, a stock company shall deposit the whole amount of capital stock set forth in the certificate of incorporation and the required minimum surplus in cash, and a mutual company shall deposit the amount of cash equal to the required minimum net assets, for all lines of insurance such stock or mutual company is authorized to write pursuant to its certificate of incorporation. A reciprocal insurance exchange shall deposit the required minimum capital and surplus requirements pursuant to N.J.S.A. 17:50-5.]

*[(c)]***(b)* All filings required by this subchapter or other information reasonably deemed necessary by the Commissioner or otherwise required by law shall be sent to:

New Jersey Department of Insurance
Financial Exams Division
20 West State Street
CN 325
Trenton, New Jersey 08625
Attention: Formation of domestic companies

11:1-28.7 Criminal history record check

(a) The applicant shall submit New Jersey State Police Requests for Criminal History Record Information and the fee required to pay for their processing, for each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and for each member of the board of trustees, as applicable.

(b) Upon request by the Commissioner, each officer, director, incorporator or stockholder with controlling interest of the proposed insurer or attorney in fact and each member of the board of trustees, as applicable, shall have impressions taken and submit them to the Commissioner on a New Jersey State Police fingerprint card with the fee required to pay for their processing.

(c) Upon request by the Commissioner, an applicant shall submit copies of any complaint, indictment, judgment of conviction or other related documents.

*11:1-28.8 Permit to solicit

In the case of reciprocal insurance exchanges only, after review and evaluation of the information filed pursuant to N.J.A.C. 11:1-28.5, 28.6 and 28.7, the Commissioner may issue a permit to solicit to such reciprocal exchange as provided in N.J.S.A. 17:50-10. After such permit is issued, such proposed reciprocal exchange shall comply with the remaining sections of this subchapter.*

11:1-28.8[28.8]**28.9* Organization examination

* (a) A stock company shall deposit the whole amount of capital stock set forth in the certificate of incorporation and the required minimum surplus in cash, and a mutual company shall deposit the amount of cash equal to the required minimum net assets, for all lines of insurance such stock or mutual company is authorized to write pursuant to its certificate of incorporation. A reciprocal insurance exchange shall deposit the required minimum capital and surplus requirements pursuant to N.J.S.A. 17:50-5.*

* (b) All applicants shall also submit a security deposit pursuant to N.J.S.A. 17:20-1, 17:46B-7 and 17:50-6, as applicable, registered in the following format:

"Commissioner of Insurance of the State of New Jersey, as trustee, in trust for the benefit and security of the policyholders of (Name of company F.I.D. No.)."*

*[(a)]***(c)* After the required capital and surplus amounts have been deposited and credited in cash to the applicant *[pursuant to

N.J.A.C. 11:1-28.6(b)]* ***and a security deposit has been filed with the Commissioner pursuant to (a) and (b) above***, the applicant shall notify the Commissioner in writing that such deposit*s* *[has]* ***have*** taken place. Within 30 days after such notification the Department will contact the applicant and arrange for an organization examination to be conducted on the site of the applicant's home office.

*[(b)]***(d)* The applicant shall make available to the Department for review and copy as necessary to conduct an organization exam the following, without limitation:

1. The Certificate of Incorporation;
2. Certified copies of the incorporators', stockholders', company's and attorney in fact's organization resolutions, as applicable;
3. The names, home addresses (including zip codes) and occupations of directors elected;
4. The names and titles of the applicant's officers;
5. The name and address of the bank in which the securities are deposited and the person to contact to verify securities owned;
6. The name of the applicant's registered agent and the resolution authorizing him to accept service of process;
7. A complete ownership chart depicting a diagram of ultimate control ***in the format of Schedule Y—Organization Chart contained in the Annual Statement***;

i. For the purposes of the ownership chart, control exists if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing five percent or more of the voting securities of any other person;

ii. In the case of reciprocal insurance exchanges, the ownership chart shall show the interrelationship between the parent and all affiliates of the attorney in fact engaged in the business of insurance and shall also show the relationship of the attorney in fact to the ultimate parent and illustrate all intermediate parent(s) having control of the attorney in fact as the term control is defined in (d)7i above;

8. An audited financial statement of the intermediate and ultimate parent(s) ***or attorney in fact, as applicable,*** prepared by a certified public accountant;

i. For the purposes of the audited financial statement, intermediate and ultimate parent means any person, directly or indirectly, who owns, controls, holds with power to vote, or holds proxies representing 10 percent or more of the voting securities of any other person;

ii. In the case of an attorney in fact, the Commissioner may accept a report other than an audited financial statement if, in his or her opinion, the structure of the attorney in fact is such that an audited financial statement is not prepared in the normal course of business;

9. A pro forma balance sheet of the company certified by an officer of the applicant;

10. A certified copy of the by-laws of the proposed insurer or reciprocal insurance exchange, as applicable;

11. A copy of the applicant's stock certificate ***if applicable***;

12. Complete copies of the biographical sketches of the applicant's incorporators, directors and officers;

13. Any financing agreements with a bank or other financial institution;

14. Management, operating or expense sharing agreements;

15. An original affidavit of the officers and directors completed and signed in the format of Appendix C appended to this subchapter, which is hereby incorporated by reference as part of these rules;

16. Reinsurance agreements or proposed reinsurance programs;

17. A detailed written outline from the applicant explaining its plan of operations containing the information specified in N.J.A.C. 11:1-28.5(b)1, and a summary of the applicant's initial rating system which shall include:

i. Rates by lines of business;

[ii. Policy forms;]

*[iii.]**ii.* Statistical agent;

*[iv.]**iii.* Independent filings; and

*[v.]**iv.* The rating bureau (if any);

18. A five year projection certified by a qualified actuary containing the information required by N.J.A.C. 11:1-28.5(b)3; and

19. Documents pertaining to authority to write workers' compensation insurance (if applicable).

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11:1-[28.9]28.10*** Certificate of authority

(a) When satisfied that an applicant has complied with all of the requirements of this subchapter and all of the requirements of N.J.S.A. 17:17-1 et seq., 17:46A-1 et seq., 17:46B-1 et seq. and 17:50-1 et seq., as applicable, to entitle it to engage in business and that the proposed methods of operation of the applicant and the background of the officers and directors are not such as would render its operation hazardous to the public or its policyholders, the Commissioner shall issue a certificate to the applicant authorizing it to commence business. The Commissioner shall specify in the certificate the particular kind or kinds of insurance the applicant is authorized to transact.

(b) The Commissioner may refuse to issue a certificate of authority if he or she finds that any of the applicant's directors or officers has been convicted of a crime involving fraud, dishonesty or like moral turpitude or that said persons are not persons of good character and integrity.

(c) No corporation shall transact the business for which it is incorporated until it has received a certificate of authority from the Commissioner. Except for reciprocal insurance exchanges, if any corporation fails to obtain such certificate within one year from the date of certification of its certificate of incorporation by the Attorney General pursuant to N.J.S.A. 17:17-5, the corporation shall be dissolved and its certificate of incorporation shall be null and void.

11:1-[28.10]28.11*** Failure to comply with subchapter; denial of certificate of authority

Failure to submit the information required by this subchapter completely and accurately may result in the denial of a certificate of authority to transact property and casualty insurance in this State.

11:1-[28.11]28.12*** Severability

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid, the remainder of the subchapter and the application of such provision to other persons or circumstances shall not be affected thereby.

APPENDIX A

Format for the Preparation of a Domestic Property/Liability Insurance Company's Certificate of Incorporation

1. On the face of the certificate, the title should be called the following:
"CERTIFICATE OF INCORPORATION OF _____ "

2. The introductory paragraph upon the face of said certificate should open as follows:

"We, the undersigned, intending to form a corporation under Chapters 17 to Title 17 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

OR

"This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:"

NOTE: If the proposed company intends to write "health insurance" as defined in N.J.S.A. 17B:17-4 of the life and health insurance code, as part of paragraph "d" of N.J.S.A. 17:17-1, the introductory paragraph upon the face of said certificate should open as follows:

"This is to certify that we, the undersigned, intending to form a corporation under Title 17, Chapters 17 to 33 and Title 17B, Chapter 17-4 of the Revised Statutes of New Jersey as amended and supplemented, do hereby certify and state:

3. **FIRST:** The name of the corporation shall be:
(Name of the Proposed Corporation)

4. **SECOND:** The principal office of the corporation in the State of New Jersey, which shall also be its registered office, is to be located at (name and number of the street, road, etc.), (City or Township of _____, or Borough of _____), County of _____, State of New Jersey, and the registered agent upon whom process may be served shall be (the corporation and/or a name of an individual).

5. **THIRD:** The kinds of insurance to be transacted by the corporation shall be the kinds of insurance specified by the following paragraphs under N.J.S.A. 17:17-1 and 17B:17-4:

(a) Against direct or indirect, loss or damage to property, including loss of use or occupancy by fire, etc.

ALL PARAGRAPHS DESIRED MUST BE SPELLED OUT IN FULL. Paragraphs "c" and "h" may not be included. Coverages available under paragraph "o" are on an attached list. If the corporation desires to write any coverages under paragraph "o", these must also be spelled out in full. If health insurance is desired, 17B:17-4 must be quoted.

6. **FOURTH:** The corporation is to be a stock company.

7. **FIFTH:** The amount of capital stock of the corporation shall be \$ _____ divided into _____ shares of common stock having a par value of \$ _____ per share. See 17:17-8. The whole amount of the capital stock set forth in the certificate of incorporation must be actually paid in.

8. **SIXTH:** The duration of the corporation shall be perpetual.

At Option of the Company:

9. **SEVENTH:** The corporation may issue both participating and non-participating policies with respect to any kind of insurance which the corporation is authorized to transact. Dividends shall be in accordance with rates and rules applicable to such kind or kinds of insurance as may be determined by the Board of Directors, subject to statutory requirements. The Board of Directors shall have the power to adopt by-laws pertaining to such declaration and payment which, in their judgment, seems necessary or desirable.

10. **EIGHTH:** The principal officers of this corporation shall be a Chairman of the Board of Directors, one or more Vice Chairmen of the Board of Directors, a President, one or more Vice Presidents, a Secretary, a Treasurer, and such other officers as the Board of Directors may determine to elect in accordance with the provisions of the by-laws of this corporation by resolution adopted by a majority of the entire Board. All officers shall hold office for a term of one year unless sooner removed by the entire Board of Directors.

11. **NINTH:** The Board of Directors, in addition to all other rights and powers bestowed upon it by law, shall have the power, without the assent or vote of the shareholders, to make, alter, and repeal by-laws as set forth in the by-laws. (By-laws made by the Board may be altered, repealed, and new by-laws made by the shareholders.)

12. **TENTH:** The company reserves the right to amend, alter, change, or repeal any provision contained in this certificate, in the manner now or hereafter prescribed by law. All rights and powers conferred herein on shareholders, directors, and officers are subject to this reserved power.

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13. ELEVENTH: The names and addresses of the incorporators are as follows:

(ten or more) Name Typed, Home Address

14. TWELFTH: The names and addresses of the first Board of Directors and Officers of the corporation and their term of office are as follows:

Name Typed, Home Address, Term of Office

IN WITNESS WHEREOF, we the undersigned have hereunto set our hands effective this ___ day of ___, 19__.

(L.S.) (Names)

STATE OF ___) ss COUNTY OF ___)

On this ___ day of ___, 19 ___, before me a Notary Public within and for said County, personally appeared (ten or more names), known to be persons named as incorporators and who executed this Certificate of Incorporation and, who being duly sworn, depose and say that they executed the same as their free act and deed and for the uses and purposes therein expressed.

Notary Public

(Notary Seal)

APPENDIX B BIOGRAPHICAL AFFIDAVIT

(Print or Type) Name and Address of Company:

In connection with the above named company, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NONE" OR "NO EXCEPTIONS", SO STATE.

- 1. Affiant's Full Name: Marital Status: 2. Other Names Used at any Time: 3. Date of Birth: Place of Birth: Color of Hair: Eyes: Height: Weight: 4. Social Security No.: 5. Schooling: High School College Graduate or Professional Degree (List)

(ATTACH LIST OF ALL EDUCATIONAL INSTITUTIONS AND LOCATION—CITY AND STATE)

6. Member of Professional Societies or Associations List):

7. I control directly or indirectly, or own legally or beneficially 10% or more of the outstanding capital stock (in voting power) of, the following insurers:

7a. If any of the above stock is pledged or hypothecated in any way, please detail fully:

8. Present Chief Occupation:

Position or Title Employer's Name Address

How long in this Position?

How long with this employer? Where?

9. Other jobs, positions, directorates, or officerships concurrently held at present:

10. Complete Employment Record for Past 20 Years:

[Dates] *EMPLOYER AND *DATES* ADDRESS* *[Title]**TITLE*

(Use Reverse Side If Necessary)

11. For the last 10 years, I have lived at the following address or addresses:

[Address] *ADDRESS* *[City]**CITY* *[Dates]**DATES*

12. I have never been adjudicated as bankrupt, except as follows:

13. I have never been convicted or had a sentence imposed, suspended or had pronouncement of a sentence suspended or been pardoned for conviction of, or pleaded guilty of or nolo contendere to an information or an indictment charging a felony for embezzlement, theft or larceny, mail fraud, or violating any corporate securities statute or any insurance law, nor have I been the subject of a cease and desist order of any federal or state securities regulatory agency, except as follows:

14. During the last 10 years, I have neither been refused a professional, occupational, or vocational license by any public or governmental licensing agency or regulatory authority, nor has such a license held by me ever been suspended or revoked, except as follows:

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- 14a. I presently hold or have held in the past the following professional, occupational, and vocational licenses issued by public or governmental licensing agencies or authorities (state date license issued, issuer of license, date terminated, reason for termination): _____
- 15. I have never been an officer, director, trustee, investment committee member, key employee, or controlling stockholder of an insurer which, while I occupied any such position or capacity with respect to it, became insolvent or was placed in conservatorship or was enjoined from or ordered to cease and desist from violating any securities or insurance law, except as follows: _____
- 16. The certificate of authority or license to do business of any insurance company of which I was an officer, director or key management person has never been suspended or revoked while I occupied such position, except as follows: _____
- 17. No insurer of which I was an officer, director or key management person at the time has ever been denied or refused or voluntarily withdrawn its application for a license or certificate of authority, except as follows: _____
- 18. Neither I nor any company of which I was an officer, director or key management person at the time has ever been subject to any civil action alleging fraud, negligence or violation of any applicable racketeering statutes (state or federal), except as follows: _____

Dated and signed this _____ day of _____ at _____

I hereby certify under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief and further, by the affixation of my signature hereon, I hereby give my certified consent to the New Jersey Department of Insurance to verify the representations and information supplied in response to all questions on the biographical data form, with any Federal, State, municipal or other agency which may have knowledge and/or information thereof.

(Signature of Affiant)

State of _____)

ss

County of _____)

Personally appeared before me the above named _____, personally known to me, who, being duly sworn, deposes and says that affiant executed the above instrument and that the statements and answers contained therein are true and correct to the best of affiant's knowledge and belief.

Subscribed and sworn to before me this _____ day of _____ 19 _____

Notary Public

My Commission Expires _____

APPENDIX C
AFFIDAVIT OF OFFICERS AND DIRECTORS
OF

STATE OF NEW JERSEY)

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COUNTY OF _____)

The undersigned _____ President,
_____ Secretary, and _____

a majority of the directors of _____ Insurance Company, a corporation formed under Title 17, Chapter 17, of the "Revised Statutes", and having its principal office at No. _____ Street, in the _____ of _____ in said State, being duly sworn, on their respective oaths do depose and say that they are the officers and directors of the said corporation as above mentioned; that the amount of the capital stock of the said company set forth in its certificate of incorporation is \$ _____ consisting of _____ shares of a par value of \$ _____; that the whole amount of such capital has been subscribed for and taken in good faith by diverse individuals, firms and/or corporations and has been paid in cash as follows:

_____ Shares @ _____% of par value or \$ _____ per share amounting to \$ _____	
_____ Shares @ _____% of par value or \$ _____ per share amounting to _____	
_____ Shares @ _____% of par value or \$ _____ per share amounting to _____	
_____ Shares @ _____% of par value or \$ _____ per share amounting to _____	
Total Paid In	\$ _____
being applicable to Capital	\$ _____
Surplus	_____
Other Funds (to be specified)	_____
.....	\$ _____

Said deponents further severally depose and say that the assets arising from the sale of said capital stock was and is bona fide the property of said company, and is now possessed by it, in its corporate name and capacity, either in money or in such stocks, bonds, bonds and mortgages, and other investments required and allowed by law, and that no part of the said capital has been withdrawn, pledged or in any manner impaired, and that no part or portion thereof has been loaned or advanced to said company by any persons, partnership or corporation, for the purpose of being used as such capital on the organization of said company.

And the deponents further severally depose and say that all the books, accounts and records containing the transactions with the subscribers to capital and in the acquisition of assets have been submitted to _____ the person appointed by the Commissioner of *[Banking and]* Insurance of the State of New Jersey to examine the capital, securities and affairs of said company on its organization and that to such person there were exhibited the assets composing the original capital and surplus of said company paid in by the stockholders on its organization.

And the said deponents further severally say, according to the best of their respective knowledge, information and belief, that there is no intention or design existing on the part of any person or persons whomsoever, to withdraw any part or portion of the said moneys and capital, until the same is wanted for investment or to be otherwise legitimately used or appropriated to and for the sole and exclusive use and benefit of the said company in its corporate capacity, in strict conformity with the statute in such case made and provided; and that there is not any agreement, arrangement or understanding, either expressed or implied, made or existing between the said company or its officers or directors, or any or either of them, or any other person or persons, to the effect or import that the money advanced or paid in by any stockholder shall be loaned or returned to him, or to any stockholder, or any other person or persons,

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RESPONSE: The Department disagrees with the commenter. The Department believes the rate of inflation may impact the verbal and zero thresholds differently.

COMMENT: Several commenters expressed their concern with N.J.A.C. 11:3-16A.4(a)2iii(1), which specifies that the flex rate percentage should be set at zero for physical damage where both model year rating and vehicle series rating are used. The commenters argue that this specification of a flex rate percentage without reference to annual trends is at odds with the flex rate statute. The commenters contend that while the Commissioner may find that the required flex rate percentage is lower (even zero) for physical damage than for liability, there is the possibility that loss cost trends on physical damage will exceed the built-in increases due to model year and vehicle series rating. The commenters suggested that the Commissioner should be required to analyze the relationship of these offsetting factors and order a non-zero percentage when indicated.

RESPONSE: The Department agrees and has changed this section accordingly to provide for an analysis of these factors each year.

COMMENT: One commenter stated that the limitation contained in N.J.A.C. 11:3-16A.4(a)2ii fails to reflect that it may be necessary to revise territory and classification relativities in order to remain in compliance with the capping provision set forth in the New Jersey Insurance Code.

RESPONSE: The Department agrees with the commenter and has changed this section accordingly.

COMMENT: One commenter argued that the Department seems to be opposed to model year rating programs and seems to have concluded that model year rating programs used in conjunction with the flex rating will produce excessive rates. The commenter stated that this position is incorrect, and the attempt to attack model year rating programs using this rule seems arbitrary, capricious and unreasonable.

RESPONSE: The Department is not attempting to attack model year rating systems in this rule. The Department recognizes that model year and vehicle series rating constitute automatic premium increases and a flex rate increase in addition to those automatic increases should not be allowed. If a company needs additional rate increases for these coverages, it may file a prior approval filing. The Department will do a study every year, and to the extent losses outpace premiums the Department will adjust the rate.

COMMENT: One commenter stated that the flex rating law, N.J.S.A. 17:29A-44, directs the Commissioner to set the flex band for physical damage coverage by adding three percentage points to the last published increase in the automobile maintenance and repair components of the National Consumer Price Index (U.S. City average). The commenter argues that it seems the Department seeks to exceed this statutory directive simply to minimize the level of permissible increase under flex rating.

RESPONSE: N.J.S.A. 17:29A-44(d) gives the Commissioner the authority to modify the statewide average rate change. The Department is carrying out the statutory directive set forth in N.J.S.A. 17:22A-44 through this rule.

COMMENT: One commenter expressed concern with the enabling statute, N.J.S.A. 17:29A-44, which provides an alternative to prior approval filings for rates "of private passenger automobile insurance in the voluntary market."

The commenter states that it does not write "private passenger automobile insurance". The commenter states that it is a speciality carrier writing primarily mobile home and recreational vehicle insurance, as well as motorcycle and lender's collateral protection coverage. The commenter asserts that mobile home and recreational vehicle insurance is not subject to these rules.

RESPONSE: The Department disagrees. The Department considers motor homes to be "private passenger automobiles" in that they are not used for commercial purposes, they carry passengers and are designed for use on the public roads and highways.

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 16A. FLEX RATE PERCENTAGE CALCULATIONS FOR PRIVATE PASSENGER AUTOMOBILE INSURANCE

11:3-16A.1 Purpose and scope

(a) The purpose of this subchapter is to set forth the methodology for determining the flex rate percentage increase for private passenger automobile insurance permitted by N.J.S.A. 17:29A-44.

(b) This subchapter shall apply to rates filed by:

1. All insurers writing or transacting private passenger automobile insurance in the voluntary market in this State;
2. All rating organizations authorized in this State; and
3. All coverages described herein, subject to the conditions stated for private passenger automobile insurance.

11:3-16A.2 Definitions

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

"Commissioner" means the Commissioner of Insurance of the State of New Jersey.

"Flex rate" means a Statewide average rate change as set forth in N.J.S.A. 17:29A-44.

"Flex rate percentage" means the maximum rate change permitted by N.J.S.A. 17:29A-44 that is calculated and modified, if required, in accordance with this subchapter.

"Private passenger automobile" means a vehicle that meets the definition in N.J.S.A. 39:6A-2a.

11:3-16A.3 Flex rate percentage calculations for private passenger automobile insurance

(a) The flex rate percentage shall be based upon the following:

1. For personal injury protection coverage, bodily injury ***liability*** and property ***damage*** liability coverage, the flex rate percentage shall be calculated from the last published increase in the medical care service components of the National Consumer Price Index (CPI), all urban consumers, U.S. City Average, plus three percentage points; and
2. For physical damage coverage, the flex rate percentage shall be calculated from the last published increase in the automobile maintenance and repair components of the National Consumer Price Index, U.S. City Average, plus three percentage points.

(b) The CPI used for determining the flex rate percentage may be calculated annually by using the factors set forth in (a) above by:

1. Fitting an exponential curve to a 12 month moving average starting in December and ending 14 months later in February of the current year. This method provides a stabilized yearly average of the month-to-month changes in the CPI;
2. Using the annual change from February of the previous year to February of the current year. This method produces a rate that is responsive to recent market changes reflected by changes in the CPI; and
3. Averaging the two figures in (b)1 and 2 above. This calculation permits the Commissioner to utilize the strengths of both methods by striking a balance between stability and responsiveness.

(c) The flex rate percentage may be modified pursuant to N.J.S.A. 17:29A-44(d) if the Commissioner finds that the flex rate percentage as calculated in (b) above will produce rate levels that are excessive.

11:3-16A.4 Establishment of the flex rate

(a) The Commissioner shall annually issue an order establishing the allowable flex rate.

1. The order issued by the Commissioner shall set forth the flex rate for the following coverages:

- i. Personal Injury Protection;
- ii. Bodily Injury Liability (Underinsured/Uninsured):
 - (1) Verbal Threshold; and
 - (2) Zero Threshold;
- iii. Property Damage Liability; and
- iv. Physical Damage:
 - (1) With model year rating; and
 - (2) Without model year rating.

2. If a modification ***to the flex rate pursuant to N.J.S.A. 17:29A-44*** has been made by the Commissioner, the order shall set forth the amount of and reason for the modification.

i. New Jersey currently has no actuarial data ***under P.L. 1988, c.119*** to compare bodily injury liability rates for the verbal threshold and zero threshold optional coverages. ***[Therefore]* *Until sufficient New Jersey data is developed***, the relative flex rate between the verbal and zero thresholds ***[shall]* *may*** be based on the Department's examination of the rate of trends in states with no-fault or tort

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systems. States with no-fault systems would be the basis for data for the verbal threshold, and tort system states would be the basis for data for the zero threshold.

(1) If the Commissioner finds that the rate of trend is **[lower]** **different** in no-fault states than in states using the tort system, the flex rate for the verbal threshold **[rate]** shall be set **[lower]** **at a different rate** than the zero threshold flex rate.

ii. Individual classification rating factors (for example, territory, deductibles, increased limits, factors, age, etc.) shall be subject to prior approval and shall not be changed through the use of the flex rate*, **except to the extent needed to comply with N.J.S.A. 17:29A-36***.

(1) The purpose of flex rating is to permit insurers to increase their overall revenue. The use of flex rating was not intended to permit insurers to alter the relative premium paid by various classes of insureds without first obtaining prior approval by the Department.

iii. The Commissioner **[shall]** **may** modify the flex rate for physical damage based on an insurer's or rating organization's use of the following rating systems:

(1) For insurers and rating organizations using both model year and vehicle series/symbol group rating systems: **[the flex rate shall be set at zero for physical damage. Both model]** **Model** year rating systems and vehicle series/symbol group rating systems*, **when used in conjunction,*** provide for built-in premium increases from year to year and therefore **[already]** **may** contain appropriate yearly premium increases ***for physical damage coverages***. A flex rate increase in addition to the yearly automobile premium increases **[would]** **may** result in rate levels that are excessive.

(2) For insurers and rating organizations using only vehicle series/symbol group rating systems, a partial flex rate shall be set forth by the Commissioner in an order to be issued annually. Vehicle series/symbol group rating systems provide some built-in premium increases from year to year and therefore are entitled to a portion of the flex rate increase as set forth by the Commissioner in an order.

(b) All insurers and rating organizations may implement the flex rate on a combined basis for both physical damage coverages. The overall flex rate for collision and comprehensive on a combined basis shall not exceed the physical damage flex rate pursuant to N.J.S.A. 29A-44(2).

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(a)

DIVISION OF STATE POLICE

Motor Vehicle Race Track Rules

Adopted Repeal: N.J.A.C. 13:22

Adopted New Rules: N.J.A.C. 13:62

Proposed: November 20, 1989 at 21 N.J.R. 3646(a).

Adopted: February 20, 1990 by Colonel Justin J. Dintino, Superintendent, Division of State Police.

Filed: February 23, 1990 as R.1990 d.175, **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. 5:7-8 et seq. and Attorney General's Executive Directive 1982-2.

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

The following comments regarding the proposed motor vehicle race track rules were received prior to the comment period closing date. The Division's response is listed after the comment.

COMMENT: Vincent Napoliello, owner of Old Bridge Township Raceway Park commented that Subchapter 13, Special Age Provision, at N.J.A.C. 13:62-13.1(a), may be inconsistent with the motorcross section (N.J.A.C. 13:62-6.7) regarding age requirements.

RESPONSE: N.J.A.C. 13:62-13.1 has been changed to indicate persons between the ages of 10 to 18 instead of 14 to 18. This will make the rule consistent with N.J.A.C. 13:62-6.7. Additionally, the word

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"motorcycle" was deleted from N.J.A.C. 13:62-13.1(a) as N.J.A.C. 13:62-6.6 requires all motorcycle racers to be 18 years of age.

COMMENT: James Grbac, owner of New Egypt Speedway, made the following comments:

1. N.J.A.C. 13:62-11.7(b) should apply to stock vehicles and not to modified vehicles, as there are specific classes of modified vehicles that require exterior alterations.

2. N.J.A.C. 13:62-11.8(b) should apply only to modified vehicles as stock vehicles are covered by N.J.A.C. 13:62-11.8(a) and racing lap belts and shoulder harnesses are not required for safety on stock vehicles.

3. N.J.A.C. 13:62-11.10 is not required as mud hops are not a contact event.

4. N.J.A.C. 13:62-11.11 should allow shielded batteries in the driver's compartment.

5. N.J.A.C. 13:62-11.12(a) should apply only to modified vehicles, because there is little danger of stock vehicles overturning in the event of a broken drive shaft.

6. N.J.A.C. 13:62-11.12(b) should be eliminated as exposed carburetors in mud hop events are not practical.

7. N.J.A.C. 13:62-11.12 should allow radiators to be moved provided they are separated from the driver by a firewall.

8. N.J.A.C. 13:62-11.14 should apply only to modified vehicles as stock vehicles in mud hop events do not reach speeds conducive to explosion of the transmission.

RESPONSE: After studying the above comments, it was determined that, with the exception of comment #3 regarding bumpers, changes in the rules as suggested were warranted. Although mud hops are not a contact event, bumpers are a necessary safety precaution in the event of a collision with stationary objects or service vehicles. As a result, for example, N.J.A.C. 13:62-11.12(b) regarding an opening in the hood to expose the carburetor was eliminated. The subsequent subsections of N.J.A.C. 13:62-11.12 were recodified to maintain continuity of the rule. In addition, the Division has clarified N.J.A.C. 13:62-4.10(a) by providing the extent of the metal flooring necessary for driver protection.

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

CHAPTER 62

MOTOR VEHICLE RACE TRACK RULES

SUBCHAPTER 1. DEFINITIONS

13:62-1.1 Words and phrases defined

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

"Acceleration and performance tests" means a straightaway race against time or another vehicle, including acceleration and deceleration.

"Ambulance" means a motor vehicle certified to provide emergency medical services pursuant to the New Jersey Highway Traffic Safety Act of 1987, N.J.S.A. 27:5F-18 et seq., and the New Jersey Medical Assistance Health Services Act, N.J.S.A. 30:4D-6.2 et seq.

"Enduro event" means an oval race in which the winner is determined by the leading car at the expiration of a determined time or number of laps.

"Go-cart" means a small four-wheel vehicle consisting of a frame, seat, one or more engines mounted to the rear of the driver's seat, steering mechanism and a braking system, and having no spring suspension system.

"Go-cart racing event" means a race involving vehicles commonly known as go-carts as defined in this chapter, either on a circular or oval track or on a road course involving curves, chicanes or other track characteristics designed to simulate varied road conditions.

"Motorcycle special events" means motorcrosses, scrambles and other events utilizing open road courses.

"Mud hops" means an event exhibiting driving skill in which the winner is determined by distance or time on a mud obstacle course.

"Pit area" means that portion of a racing location where vehicles are serviced, repaired, or refueled during a racing event.

"Racing event" means a motor vehicle race or exhibition of driving skill, including that time period prior to the actual race or exhibition,

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as well as the time period during the race or exhibition and until the conclusion of the race or exhibition wherein all competing vehicles have been removed from the racing surface.

"Reaction powered vehicles" means vehicles powered by jet or rocket engines.

"Snowmobile" means an engine driven motor vehicle designed primarily to travel over ice or snow of a type that uses sled type runners, skis, continuous belt trend, cleats or any combination of these similar means of contact with the surface upon which it is operated.

"Snowmobile racing event" means a race involving vehicles commonly known as snowmobiles as defined in this chapter on a circular or oval track, a road course involving curves, chicanes, or a straight-away race against time or other snowmobiles.

"The Superintendent" means the Superintendent of the Division of State Police.

"Thrill shows" means events specifically designed to demonstrate driving skill including, but not limited to, ramp jumps and events requiring the intentional crashing or crushing of participating vehicles.

"Trained first aid attendant" means a person certified as an emergency medical technician to provide emergency medical services pursuant to the New Jersey Highway Traffic Safety Act of 1987, N.J.S.A. 27:5F-18 et seq. and the New Jersey Medical Assistance Health Services Act, N.J.S.A. 30:4D-6.2 et seq.

SUBCHAPTER 2. MOTOR VEHICLE RACE TRACK LICENSE REQUIREMENTS AND LICENSEE RESPONSIBILITIES

13:62-2.1 License application procedure

(a) A license shall be required for any operation or conduct of motor vehicle races and exhibitions of motor vehicle driving and the tracks or places at which the same are operated and conducted. The application for a motor vehicle race track license must be submitted at least 90 days prior to the first day of racing or exhibition. An application for renewal of a license shall be submitted within 60 days of the expiration date of the license and is to be accompanied by:

1. An insurance certificate;
2. A duplicate of the insurance policy;
 - i. The policy shall be issued by a company approved by the Superintendent;
 - ii. The policy and the certificate are to contain a statement to the effect that they are noncancellable except upon 30 days prior written notice to the Superintendent;
3. A certified check or postal money order in the amount prescribed by law as the license fee;
4. A certification from the building inspector of the municipality where the track is located to the effect that he has inspected the spectator seats and found them safe for use. Where the municipality does not have a building inspector, or a building code, a certification from a New Jersey State licensed structural engineer may be accepted; and
5. A sketch or sketches of the track and associated areas, as near to scale as practicable, indicating the location of required safety features such as hub rails, fences, light or flagman positions, spectator seating, entrances and exits, pit facility locations and other physical factors affecting the safety of spectators and participants. This requirement shall not apply to locations licensed prior to January 1, 1963, unless alterations are made to the track and associated areas on or after January 1, 1963.

13:62-2.2 Licensee's responsibility

The licensee is responsible for any violations of N.J.S.A. 5:7-8 et seq. or any of the provisions of this chapter.

13:62-2.3 Restrictions upon licensee

- (a) The Superintendent may impose reasonable restrictions upon any licensee.
- (b) The restrictions may include, but shall not be limited to:
1. Requirements for special protective devices for the participants in, or spectators attending, any race or exhibition; and/or
 2. Limitations concerning spectator areas; and/or

3. Limitations concerning types of events and classes of vehicles; and/or

4. Requirements for the protection of participants and spectators.

(c) The licensee will comply with any special restriction imposed by the Superintendent after receiving written notice thereof from the Superintendent.

13:62-2.4 Procedures for approval of unspecified events

(a) When a licensee requests for approval to conduct a racing event as defined herein which is not specifically addressed by these rules, the licensee shall apply to the Superintendent for approval for the conduct of said event. Approval shall not be granted unless the Superintendent is satisfied that:

1. The request for an approval was made in writing to the Superintendent at least 20 days prior to the racing event;
2. The request contains a sufficient description of the event; and
3. The approval will not adversely affect the safety of the public or participants at a racing event.

13:62-2.5 Infield pit areas; inspection

(a) Tracks having the pit area in the infield of a substantially circular or oval track will be subject to special inspection to determine whether arrangements are sufficient to provide reasonable protection for pit area personnel.

(b) Such inspection will be made following application to the Superintendent which shall be filed in conjunction with the application for the race track license.

13:62-2.6 Alcoholic beverages and drugs

(a) No alcoholic beverages, nor narcotic, hallucinogenic or habit producing drugs will be permitted on the race track proper, the pit area, or any other area having unrestricted access to the race track proper. No person who has partaken of any alcoholic beverage or narcotic, hallucinogenic or habit producing drug in any amount whatsoever shall participate in any race or exhibition of driving skill, or perform any duties in the pit or pit area.

(b) Any vehicle containing alcoholic beverages or narcotic, hallucinogenic or habit producing drugs, and any person found to have partaken of alcoholic beverages or narcotic, hallucinogenic or habit producing drugs shall be removed from the pit area as soon as is practicable and shall be prohibited from returning to the pit area.

(c) No person who has been convicted of the use or possession of a controlled dangerous substance, as provided in the Comprehensive Drug Reform Act of 1986, N.J.S.A. 2C:35-1 et seq., shall be permitted to enter into a pit area for a period of one year from the date of conviction.

13:62-2.7 Pit credentials

(a) The track management shall be responsible for the issuance of pit credentials and only those credentials issued by the track management shall be recognized as valid.

(b) Only persons holding pit credentials shall be admitted to the pit area or racing area.

(c) Reporters and photographers of the working press in possession of valid pit credentials shall be limited to safe areas.

(d) The issuance of pit credentials shall be limited to:

1. Mechanics assigned to race cars with a maximum of four to each car;
2. Drivers having cars entered in one of the events in the race;
3. Members of the track staff having business in the pit area;
4. Race officials; and
5. Accredited photographers and reporters of the working press.

(e) The track management shall be responsible for the checking of credentials of persons entering the pit area to determine that no person shall enter the pit area or engage in a race or exhibition unless such person shall produce credentials showing age which satisfies the age requirement for a particular event.

(f) The licensee or the Superintendent may require a person to produce satisfactory evidence attesting to said person's physical and mental well-being as a prerequisite to obtaining permission to enter the pit area. Such evidence shall be on a form signed by a New Jersey licensed physician.

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13:62-2.8 Announcements

(a) The licensee shall be responsible to make a suitable announcement over the public address system in the pit area, advising the public and pit personnel of the following:

1. The minimum age of persons permitted in the pit area;
2. The prohibition against smoking in the area where fuel is stored or refueling of vehicles takes place;
3. The prohibition against the use of alcoholic beverages in the pit area; and
4. The prohibition against the use of narcotic, hallucinogenic or habit producing drugs in the pit area.

(b) The announcement is to be made approximately 15 minutes before the start of the day's program and twice during the program.

(c) The licensee shall post a sign at all entrances to the pit area advising authorized persons in the pit area of the following:

1. The minimum age of persons permitted in the pit area;
2. The prohibition against the possession or use of alcoholic beverages or narcotic, hallucinogenic or habit producing drugs in the pit area; and
3. The prohibition against smoking in areas where fuel is stored or refueling of vehicles takes place.

13:62-2.9 Monthly reports

The licensee shall file with the Superintendent a monthly report on the form approved and provided by the Superintendent. This report shall include the date of racing events held in the reported month, the type of event, the attendance, the number of vehicles as well as an account of any other unusual incidents occurring at the track during the reporting period. The report shall further include the monthly schedule of events.

13:62-2.10 Accident reports and impounding of certain vehicles

(a) Accidents involving injury or death must be reported to the office of the Superintendent, by telephone, no later than the first business day following the accident.

(b) Such a report must be followed within 48 hours by a complete written report of the accident.

(c) Any vehicle which is involved in a crash resulting in serious or fatal injuries to a driver or spectators thereof shall be impounded by the licensee and detained until such time as an inspection of the vehicle may be made by a representative of the Superintendent.

13:62-2.11 Report of deaths to local police

In addition to the reports to the Superintendent, the licensee shall report any accident resulting in a fatality to the police agency having jurisdiction by the quickest means available.

13:62-2.12 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. Vehicles not meeting the requirements set forth for the specified event shall be barred by the licensee from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

13:62-2.13 Braking system and pedal reserve

(a) The licensee will be required to test and approve each race car for pedal reserve before the car leaves the pit area to enter the track.

(b) The licensee shall not permit any vehicle to participate in any race or exhibition if the braking system includes the direct application of pressure to any of the tires or with any apparent deficiency.

13:62-2.14 Refueling

(a) In all instances where refueling is permitted with the engine running, the licensee shall insure that a member of the pit crew equipped with an approved type fire extinguisher be in close proximity to the fill pipe of the fuel tank.

(b) The licensee shall not permit smoking in any area where fuel is being transferred or stored.

(c) The licensee shall not permit the use of welding and acetylene torches in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

13:62-2.15 Water overflow tanks

The licensee shall not permit water overflow tanks or reservoirs to be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

13:62-2.16 Security personnel

(a) The licensee shall furnish sufficient security protection to maintain peace and good order.

(b) Guard personnel will be furnished by the licensee at each unlocked gateway between the spectator areas and the track and/or pit areas.

(c) Guard personnel will be furnished by the licensee at each unlocked gateway between the pit area and the track area.

13:62-2.17 Ambulances; first aid attendant

The licensee shall not permit any race or exhibition of driving skill to be conducted unless there is available for immediate use at the licensed location at least one vehicle suitable for ambulance purposes, together with one trained first aid attendant.

13:62-2.18 Fire fighting equipment

(a) The licensee shall not permit any race or exhibition of driving skill to be conducted unless there is available at suitable locations around the track Class B Underwriter labeled approved fire extinguishers.

(b) All extinguishers shall be fully charged at the beginning of each day's activities.

(c) The licensee shall check all extinguishers at least once a year and carry a label to show the date of inspection.

(d) In addition there shall be a reserve consisting of a recognized paid or voluntary fire company with their equipment or at least 350 pounds of dry chemical available to move to the scene of any major fire.

13:62-2.19 Wreckers

(a) The licensee shall permit only authorized personnel to ride on any wrecker.

(b) No person shall be permitted to ride outside the cab of any wrecker.

(c) Wreckers shall be operated with due care and circumspection.

SUBCHAPTER 3. CONSTRUCTION REQUIREMENTS

13:62-3.1 Hubrails

(a) Hubrail construction shall comply in all respects with the requirements of this chapter, or in the alternative, the owner or operator must have written authority for any changes from the Superintendent.

(b) Hubrails must be provided and maintained on the outer circumference of the track and around the entire circumference thereof and where spectators are allowed in the infield or within the inner circumference of the track, a hubrail, as described in this section, will be required around the inner circumference of the track.

(c) The hubrail shall consist of at least two planks of hard wood or other suitable materials, at least 10 inches in width by three inches in thickness.

(d) The hubrail shall be supported by posts of similar material of at least six inches in width and six inches in thickness or round posts not less than seven inches in diameter, which are set in the ground at least four feet and shall extend above the ground at least two feet. The post shall be no higher than the hubrail planking and shall be spaced no more than six feet apart.

(e) Two planks of hardwood or other suitable material shall be mounted on the side of the post facing the track and running horizontally and parallel to each other.

(f) On the opposite side of the posts, not more than eight inches from the top thereof, there shall be a three-quarter inch steel cable running around the circumference of the track and securely fastened to the post with eye bolts.

(g) The hubrail entrance and exit gates to the pit area shall be closed while vehicles are in motion on the track, unless alternate arrangements have been made by the installation of barriers of a type which will prevent cars out of control from leaving the track and entering the immediate pit working area.

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(h) Where the licensee wishes to use methods other than gates, an inspection of such installations by a representative of the Superintendent will be required.

(i) The hubrail opening for vehicles shall be so located that a vehicle leaving the track must turn 90 degrees before entering the pit area.

(j) At locations using methods other than gates between the pit area and track, a guard will be required to prevent unauthorized persons from entering the track area.

(k) The use of baled hay or straw or any similar material as a protective device between participating vehicles and spectators is specially prohibited.

13:62-3.2 Fences

All fences installed for the purpose of limiting spectator areas shall be constructed of welded wire fabric or chain link and shall be at least six feet in height and so constructed as not to be easily lifted, climbed over or moved aside, except at motorcross events the fence shall be of the same construction but at least five feet in height.

13:62-3.3 Red and amber lights

(a) Each track used for automotive racing, except those used for acceleration and performance tests, must be equipped with a system of at least four red lights and four amber lights so arranged that at least one light of each color will be visible to the drivers as they enter each turn.

(b) Strips used for acceleration and performance tests need be equipped with only one red light on the starting tree.

(c) The lights shall be so arranged as to be controlled by a single switch and a responsible person must be assigned to be on duty, and to operate such switch during the entire time of each race.

(d) When the red lights are illuminated, all racing vehicles on the track will be required to stop as soon as possible and to remain stopped until such time as the red lights are turned out.

(e) When the amber lights are illuminated, all racing vehicles on the track will be required to slow down and maintain their position unless otherwise directed to change position by a track official.

13:62-3.4 Flagmen

(a) Tracks over one mile in length may use flagmen in lieu of the red and amber lights, provided the assistant flagman in the starter's stand is in constant two-way radio or telephone communication with all flagmen.

(b) Where flags are used, the display of the red flag will cause all racing vehicles to stop as soon as possible and to remain stopped until such time as the red flag is removed from display.

(c) Where flags are used, the display of the amber flag will cause all racing vehicles to slow down and maintain their position.

13:62-3.5 Starters

(a) Starter(s) shall be located within a starter's stand with an unobscured view of the entire racing surface from which to control the racing event.

(b) All circular or oval tracks, road courses and other locations utilizing the services of flagmen to control the event shall also have an assistant flagman in the starter's stand. The assistant flagman used to control or start a race shall be in the starter's stand when starting and during the race.

13:62-3.6 Maximum protection

(a) All hubrails, fences, stands and buildings must be constructed and maintained so as to afford maximum protection for spectators.

(b) Any spectator stand erected or relocated on or after April 1, 1960, must be located at least 25 feet from the hubrail.

SUBCHAPTER 4. SAFETY REQUIREMENTS FOR VEHICLES AND PERSONNEL: OPEN COCKPIT

13:62-4.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

13:62-4.2 Safety belts, shoulder harness and crotch belt

(a) A quick release type safety belt, shoulder harness and crotch belt in good condition shall be compulsory on all vehicles.

(b) Both ends of the safety belt, shoulder harness and crotch belt must be fastened to the frame of the vehicle.

(c) All fittings and connections of the safety belt, shoulder harness and crotch belt must be metal.

(d) All safety belts and shoulder harnesses must be worn properly the entire time the vehicle is being driven in a race.

(e) All safety belts and shoulder harnesses must bear the date of manufacture and shall not be used for more than five years from that date.

(f) The shoulder harness shall be secured to the frame of the vehicle and come over a round bar at the driver's shoulder height.

(g) No alterations shall be allowed to any manufactured design of seat belts.

13:62-4.3 Inspection of vehicles

(a) The licensee shall arrange for the inspection of each participating vehicle prior to the event, to determine that it meets the requirements of this chapter. Vehicles not meeting the requirements of this chapter shall be barred by the licensee from participation or practice.

(b) Vehicles which are to be used in automobile races or exhibitions of driving skill are subject to unannounced inspection and approval at any time by the Superintendent or designee.

13:62-4.4 Number of persons in vehicle

No vehicle shall carry more than one person at any time during a race or warm-up, except during a bona fide training period an instructor may accompany the trainee.

13:62-4.5 Seats

A molded metal or fiberglass seat with openings which allow a seat belt bolted to the frame to come through, shall be attached to the frame with at least four three line five-sixteenths inch bolts. Two bolts shall be installed at the bottom of the seat not more than three inches from the outside edge and two bolts shall be installed at the two most practical widely spaced points at the top of the seat back. A metal strap at least two inches in width and at least one-eighth inch thick shall connect each set of bolts.

13:62-4.6 Bumpers

(a) All vehicles shall be equipped with bumpers on the rear.

(b) The bumper shall be fastened to the frame or structural component of the car.

(c) The height of the bumper must be as high as the center of the wheel and at least two inches in height.

13:62-4.7 Rollover bars

(a) All vehicles shall be equipped with a rollover bar of a design, construction and quality recognized by industry standard and maintained with a view toward affording the driver maximum protection against injury.

(b) Rollover bars must be a minimum of three inches above the driver's head.

(c) Rollover bars must be bolted or welded to the frame of the vehicle.

13:62-4.8 Nerfing bars

(a) All vehicles shall be equipped with auxiliary bumpers, also known as nerfing bars, of a construction and design to afford the driver maximum protection against injury.

(b) Nerfing bars shall extend within two inches of, but not beyond, the outside edge of the tire.

13:62-4.9 Exhaust system

(a) The outlet for the exhaust system shall be outside of the vehicle and extend at least to the rear of the front firewall.

(b) The exhaust system shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

13:62-4.10 Fire wall and flooring

(a) All vehicles shall have suitable metal flooring ***from the front firewall to the center of the driver's seat***.

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(b) All vehicles shall have a permanent fire wall between the fuel supply and driver, unless the fuel supply consists of a shell with an inner rubber bladder in which case the fire wall is not required.

13:62-4.11 Fuel lines and fuel pumps

(a) No fuel line or fuel pump will be permitted in the driver's compartment unless shielded properly to prevent leakage in the event the line or pump is damaged or broken.

(b) Fuel lines must be more than three inches from the headers, or if closer than three inches, be shielded by metal.

13:62-4.12 Fuel tanks

(a) Except as set forth in (b) below, vehicles using a self-contained fuel cell with an inner rubber bladder shall bolt the self-contained fuel cell to the frame of the vehicle with at least three five-sixteenths inch three line bolts.

(b) Units not bolted to the frame shall require a one inch metal strap, two-eighths inch thick, bolted to the frame of the vehicle by at least two three-eighths inch three line bolts and angled in such a manner so as to apply maximum pressure against the tank to the frame.

(c) A conventional type tank shall be bolted within the frame of the vehicle.

(d) A reinforcing member of the same kind and size material as that used in the roll cage of the chassis shall be installed to the rear of the fuel tank joining the rearmost portion of the chassis.

(e) A vehicle utilizing a fuel tank mounted to the front of the front fire wall shall have a reinforcing member of the same kind of material as that used in the roll cage or chassis, installed in such a manner as to afford maximum protection to the tank.

13:62-4.13 Fuel supply shutoff valve

(a) All vehicles shall be equipped with a fuel shutoff valve or switch which is easily accessible to the driver.

(b) The fuel shutoff valve or switch shall be conspicuously marked with a brightly colored paint.

13:62-4.14 Refueling

(a) In all instances where refueling is permitted with the engine running, a member of the pit crew, equipped with a 10 BC or greater fire extinguisher, shall be in close proximity to the fill pipe of the fuel tank.

(b) Smoking shall not be permitted in any area where fuel is being transferred or stored.

(c) The driver compartment shall not be occupied when the vehicle is being refueled if the fill pipe is located within 24 inches of the cockpit, except that the driver compartment may be occupied when the vehicle is being refueled from gravity fed fuel containers.

(d) The use of welding and acetylene torches is not permitted in any area where fuel is being transferred or stored unless a fully charged fire extinguisher is in close proximity.

13:62-4.15 Batteries

(a) Wet cell batteries, if located in the driver compartment, shall be shielded to prevent leakage in the event of damage or turnover.

(b) Batteries shall be properly secured and not located adjacent to the fuel supply of the vehicle.

13:62-4.16 Braking system and pedal reserve

(a) The licensee or designee shall test and approve each race car for pedal reserve before the car leaves the pit area to enter the track.

(b) Licensee or designee shall not permit any vehicle to participate in any event or exhibition if the braking system includes the direct application of pressure to any of the tires or with apparent deficiencies.

13:62-4.17 Tires

(a) No vehicle shall be permitted to participate in any race if the tires are equipped or fitted with any studs, hobs, or other projections.

(b) This section is not intended to prohibit the use of rubber knobbed tires normally used on dirt race tracks.

(c) No vehicle shall be permitted to participate in any race if the tires are in an unsafe condition.

13:62-4.18 Ignition switch

All vehicles shall have an ignition switch which is easily accessible within the driver compartment and conspicuously marked.

13:62-4.19 Repairs

No repairs shall be made on any vehicle during the course of a race unless the vehicle is removed to the pit area.

13:62-4.20 Drivers

(a) All drivers must be at least 18 years of age.

(b) All drivers are required to wear fire resistant underwear and one piece fire resistant clothing covering their body, legs, and arms.

(c) All drivers are required to wear gloves of a fire resistant material.

13:62-4.21 Helmets and head cushions

(a) All drivers must wear a helmet in safe condition which meets or exceeds the American National Standard Institute (A.N.S.I.) Z-90.1 testing standard.

(b) All vehicles shall be equipped with a head cushion attached to the roll-on bar or to the back portion of a one-piece seat. The cushion shall be mounted so that it shall be at the approximate height of the center of the driver's helmet.

(c) The head cushion shall be a minimum of 16 square inches in area with at least two inch padding. The minimum length of any side of the head cushion shall be four inches.

(d) A support cushion shall be located behind the rear portion of the seat, attached to the roll cage and at least one eighth of an inch thick.

13:62-4.22 Goggles or face shield

Windproof, shatterproof goggles or a face shield of the type which meets or exceeds U.S.A. Standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard shall be worn by the driver of all vehicles not equipped with windshields.

13:62-4.23 Arm restraints; window nets

All drivers are required to use arm restraints or window nets.

13:62-4.24 Transmission safety mats

(a) Any vehicle equipped with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by the fragmentation of the automatic transmission upon explosion.

(b) All cooling devices within the driver's compartment shall be shielded from the driver to protect against injuries.

13:62-4.25 Enclosed drive shaft

The drive shaft of a vehicle shall be enclosed or secured, front and rear, by a steel strap one-quarter inch thick by one inch wide, a one-half inch steel rod, or one inch steel tubing with .06 wall thickness.

13:62-4.26 Water overflow tank

Water overflow reservoirs shall not be installed inside the driver compartment. Tanks or reservoirs mounted in the roll cage must be fully shielded to protect the driver.

SUBCHAPTER 5. ACCELERATION AND PERFORMANCE TESTS

13:62-5.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

13:62-5.2 Location

(a) A location approved for acceleration and performance tests shall provide for a stopping distance at least equal to the acceleration and timing distance.

(b) The acceleration area shall not exceed 1,386 feet.

(c) The entire racing strip, including the deceleration area, must be paved.

(d) The end of the acceleration area may be marked by an overhead banner; provided, the supports are of such construction that they will not present a hazard to the vehicles. The height of the banner shall be at least 14 feet above the surface of the strip.

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13:62-5.3 Vehicle equipment

(a) All of the safety devices and precautions specified in N.J.A.C. 13:62-4 for other types of automobile racing shall be required for this type event with the exception that cars need not have rollover bars or door fastening; provided, there has been no modification of either body or engine.

(b) Exhaust systems shall be designed and constructed so as to direct the exhaust flow out and away from the driver.

(c) All vehicles equipped with parachutes shall have a red streamer attached to the safety pin. The safety pin shall be removed from the parachutes before the starting lights are activated.

(d) All vehicles utilizing two or more parachutes shall have at least two anchoring points for each parachute, each separate from the other.

13:62-5.4 Spectator protection

Spectator protection is to be provided by a standard hubrail and six-foot high welded wire fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

13:62-5.5 Pit area fences

The pit area, if located behind the starting line, shall be separated from the track by a six-foot high welded wire fabric or chain link fence so constructed as not to be easily lifted, climbed over or moved aside.

13:62-5.6 Vehicle positioning

Racing vehicles may line up behind the starting line, provided that only drivers and officials may be permitted in this area.

13:62-5.7 "Burnouts"

No "burnouts" shall be made unless the driver is secured in the vehicle and the doors are firmly closed.

SUBCHAPTER 6. MOTORCYCLE, MOTORCROSS AND QUAD VEHICLES

13:62-6.1 Licensed facilities

Motorcycle, motorcross and quad vehicles events shall only take place in licensed facilities.

13:62-6.2 Hubrail construction

(a) Hubrail construction shall comply in all respects with the provisions of N.J.A.C. 13:62-3.1 or, in the alternative, the licensee shall obtain written authority for any changes from the Superintendent or designee.

(b) Hubrail posts shall be no higher than the hubrail planking.

(c) Hubrails constructed for use on motorcycle tracks shall consist of safety rails two feet high, constructed of two two-inch by 12-inch planks, on four-inch by four-inch stanchions spaced not more than six feet apart, and so embedded in the ground that they will not pull out if struck.

(d) As an alternative to the two-inch by 12-planks, two planks made of marine plywood, three-quarter inches thick and 12 inches wide may be used on motorcycle tracks. These rails shall be backed up either by a wire cable similar to the wire cable used on automobile hubrails, except that it need not exceed one-half inch in diameter, or in the alternative, a mound of packed earth shall be constructed in the back of the safety rail at least 18 inches high, and tapering to the ground level between the rail and the spectators.

13:62-6.3 Flagmen and eye protection

(a) Flagmen may be used in lieu of red and amber lights. Flagmen shall be positioned so as to be visible to drivers entering each turn on the track or course.

(b) All working personnel and officials having access to the pit area or racing surface shall be at least 18 years of age, except additional motorcross and quad vehicle flagmen.

(c) All competitors, while engaged in an event, shall wear goggles or a face shield protecting their eyes. Any person not properly utilizing this equipment shall be disqualified from the event.

13:62-6.4 Braking system

(a) A representative of the track licensee will be required to test front and rear brake application before the vehicle leaves the area to enter the track.

(b) This section is not to be construed to require brakes on racing motorcycles with a compression ratio higher than 10 to one or with a compression ratio which, in the opinion of the Superintendent, is sufficiently high to bring the motorcycle to a stop when the ignition is cut off.

13:62-6.5 Shutoff device

(a) A "shutoff" device must be affixed to the handlebars on all competing motorcycles.

(b) A "shutoff" device must be of a type which is designed, constructed and maintained to stop the motor of the motorcycle immediately upon releasing or pressing the said device.

13:62-6.6 Minimum age requirements of motorcycle racing events

(a) No person will be permitted to participate in a motorcycle race or to enter the pit area while a motorcycle race is in progress unless that person shall have reached 18 years of age and shall produce documentation of the participant's operation of a motorcycle upon request.

(b) A motorcycle driver's license bearing appropriate date of issuance will be accepted as proof that the holder has had the requisite driving experience.

(c) All persons participating in an event shall have proper documentary evidence to substantiate proof of age.

13:62-6.7 Motorcross racing events

(a) The following guidelines shall be utilized for motorcross events:

1. Participants ages 10 to 15 may compete provided the vehicle does not exceed 85 cc.

2. Participants ages 12 to 15 may compete in any additional class not exceeding 125 cc, provided the driver possesses one year racing experience and can demonstrate racing ability to the satisfaction of track officials.

3. Participants ages 14 to 18 may compete in a separate class.

4. A person competing in any one of the above classes shall not participate in any other class.

5. Motorcross flagmen must be 16 years of age. The designation "cc" shall be conspicuously marked on the racing vehicle.

13:62-6.8 Quad vehicle requirements

(a) Quad vehicles shall be equipped with a functional tether type mechanical kill device, so that the ignition may be shut off upon the driver's separation from the vehicle.

(b) Quad vehicle engines shall be fitted with a guard completely enclosing the primary drive.

(c) Rear chain guards, roll bars and seat belts are not required. Quad vehicle flagmen must be 16 years of age.

SUBCHAPTER 7. SNOWMOBILE EVENTS

13:62-7.1 Track construction

Construction of hubrails, fences and other safety devices for snowmobile events must comply with the provisions of this chapter or in the alternative the licensee must have written authority for any changes from the Superintendent.

13:62-7.2 Safety requirements; vehicles and personnel

(a) All participants in a snowmobile race must wear a safety helmet which meets or exceeds the American National Standard Institute (ANSI) Z-90.1 testing standard.

(b) All participants in a snowmobile race shall wear windproof goggles or face shields which meet or exceed U.S.A. Standard Specifications for Head, Eye and Respiratory Protection Z2.1-1959 testing standard.

13:62-7.3 Exhaust system

All exhaust systems shall be directed out of the cowl area and away from the operator.

13:62-7.4 Snow flaps

All snowmobiles shall be equipped with a rear snow flap designed and maintained to contain snow, water, mud and the like at all speeds.

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13:62-7.5 Shutoff device

A "shutoff" device must be affixed to the handlebars near the hand position. This device must be of the type which is designed, constructed, and maintained to stop the motor immediately upon releasing or pressing of said device.

13:62-7.6 Engine and transmission shielding

All snowmobiles shall have engine and transmission shields designed and constructed to protect the driver or bystander from fragments in the event of disintegration.

SUBCHAPTER 8. GO-CART EVENTS

13:62-8.1 Licensed facilities

Go-cart events shall only take place in licensed facilities.

13:62-8.2 Track construction

(a) Construction of hubrails, fences and other safety devices for go-cart events must comply in all respects with provisions of this subchapter or in the alternative, the licensee must have written authority for any changes from the Superintendent or his designee.

(b) The hubrail construction for go-cart events may be the same as the hubrail construction used for motorcycle events in that planks made of marine plywood three-quarter inches thick and 12 inches wide may be used.

(c) The licensee shall erect along any part of the track where spectators are permitted, whether outside of the track or in the infield, in addition to the hubrail, a fence six feet in height and located not less than four feet from the edge of the track.

13:62-8.3 Safety requirements

(a) Go-carts and personnel participating in races or exhibitions of driving skill on any track or facility licensed by the Superintendent shall comply with the following requirements except as provided by N.J.A.C. 13:62-8.4.

1. No person under 18 years of age may operate a go-cart in any race or exhibition of driving skill, nor shall any such person be permitted in the pit area during any such race or exhibition of driving skill.

2. Go-carts participating in races or exhibitions of driving skill shall have a wheel base of not less than 40 inches nor greater than 50 inches measured from the center of the axle.

3. Go-carts participating in races or exhibitions of driving skill shall be of a length not exceeding 72 inches.

4. Go-carts participating in races or exhibitions of driving skill shall be of a width at least two-thirds of the wheelbases as measured from the center of the tread of the front tires.

5. Go-carts participating in races or exhibitions of driving skill shall be of a height not exceeding 26 inches as measured from the top of the driver's seat.

6. The frame of all go-carts shall be of metal construction.

7. All go-carts shall contain a metal fire wall between the driver and engine with no openings between engine and driver. The fire wall shall be so constructed as to not present any sharp edges.

8. All go-carts shall contain a floor plan of metal constructions with no openings between the driver and the ground.

9. Steering must be direct with all linkage bolts and nuts cotter-keyed or safety-wired. All rods ends must have universal type swivel joints.

10. No go-cart will be permitted to participate in any race or exhibition of driving skill unless it is equipped with a braking system which is operated by a foot pedal. No go-cart will be permitted to participate if the braking system includes direct application of pressure to any of the tires or with apparent deficiencies.

11. The exhaust system must be designed and constructed so that exhaust gases are carried away from and to the rear of the driver.

12. All go-carts shall be equipped with a foot-operated throttle.

13. The fuel and lubrication system on all go-carts must be designed so as to prevent leakage or spillage during competition.

14. No go-cart shall be equipped with a transmission, gear-box or other device which permits a change of gear or sprocket ratios while the vehicle is in motion.

15. All go-carts must be equipped with a suitable chain guard or guards.

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16. The driver's compartment shall be equipped with side rails, side plates or such other device as to afford the driver lateral support and protection.

17. Every go-cart must be equipped with a quick release type of seat belt in good condition. The seat belt must be fastened to the frame of the cart at both ends. The seat belt must be in use during the entire time the vehicle is being driven in a race. All fittings and connections on the safety belt must be metal. Safety belts with cloth or plastic fittings on connections may not be used. All safety belts must bear the date of manufacture and may not be in use for more than five years.

18. Every go-cart shall be equipped with a rollover bar mounted so as to be a minimum of three inches above and six inches behind the driver's head designed and constructed so as to provide maximum protection for the driver.

19. Every go-cart must be equipped with auxiliary bumpers, sometimes known as "nerfing bars," of a construction and design to afford a participant maximum protection against injury.

20. Windproof, shatterproof goggles must be worn by all drivers of a go-cart in any race or exhibition of driving skill. Such goggles shall meet or exceed U.S.A. Standard Specifications for Head, Eye, and Respiratory Protection Z2.1-1959 testing standards.

21. No repairs may be made on any go-cart during the course of a race unless the vehicle is removed to the pit area.

22. A starting apron shall be provided where the go-carts are to be started. Persons shall not enter the race course to push a go-cart. A go-cart which has not been started on the starting apron may not be pushed on to the track proper but must be returned to the pit area or to the rear of the starting apron. No person may enter the race course for the purpose of starting a stalled car while any race or exhibition is in progress.

23. Safety helmets shall be worn by all participants as set forth in N.J.A.C. 13:62-4.20(a).

13:62-8.4 Serpentine go-cart road course

(a) When a go-cart race course has been designed with a winding or serpentine roadway, for the purpose of reducing the overall speed of the go-carts, the following applies:

1. Persons aged 10 to 13 may compete in a special class of vehicles equipped with a restriction plate placed behind the carburetor to restrict the flow of fuel to the engine.

2. Competitors aged 14 to 17 may race in a separate class.

3. Seventeen year olds with a minimum of one year racing experience, and who possess a valid driver license, may compete in the 18 year old and up class, provided they can demonstrate their racing ability to the satisfaction of track officials.

4. Sixteen year olds and up may compete in a lower horse power senior class (5 H.P. stock, 4 cycle or U.S. 820 class, 2 cycle), provided any entrant below the age of 18 years has had at least one year of racing experience and has demonstrated their racing ability to the satisfaction of track officials.

5. Hub rails are not required except in those areas where the roadways are within 25 feet of each other.

6. Safety belts and roll-over bars are not required.

7. All additional requirements as set forth in N.J.A.C. 13:62-8.2 and 13:62-8.3 shall be met.

SUBCHAPTER 9. DEMOLITION DERBY AND TRACTOR PULLS

13:62-9.1 Demolition derby vehicles

(a) In a demolition derby event, any stock, American made, hard-top automobile may be used.

(b) In a demolition derby event, jeeps, carryalls, station wagons, ambulances, and other vehicles utilizing a truck chassis are not permitted.

(c) All glass, including rear windows, headlights, tail lights, and parking lights, must be removed with the exception of the windshield. If the windshield is removed it must be replaced with heavy mesh screening with a center post or plexiglass.

(d) All chrome strips must be removed from a participating vehicle.

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(e) Gas tanks may be moved to a different position, but may not be located within the driving compartment. A metal fire wall must be between the driver and the gas tank.

(f) Fuel lines and pumps will not be allowed in the driving compartment.

(g) All doors must be securely fastened by either welding, metal strips or chains.

(h) Doors opening during an event will automatically disqualify that automobile.

(i) Batteries located within the driver compartment must have a suitable cover and be securely fastened.

(j) All vehicles must be equipped with a securely installed safety belt.

(k) Rear seats must be removed from a participating vehicle.

(l) No vehicle emitting heavy smoke will be allowed to participate. A vehicle discharging heavy smoke after an event has started must be disqualified.

13:62-9.2 Demolition derby participants

(a) Participants in a demolition derby event shall be 18 years of age or older.

(b) A participant must remain in the vehicle until the event has been completed.

(c) All drivers must wear a safety belt and approved safety helmet as set forth in N.J.A.C. 13:62-4.20 while participating in an event.

13:62-9.3 Demolition derby exhibition area

(a) The demolition derby exhibition area shall be no more than 250 feet wide with a depth of 100 feet.

(b) The outer edge of the exhibition area shall be marked with poles or similar devices so as to contain the participants' vehicles.

(c) No one shall be allowed within this area except track officials and participants.

(d) If mechanics or newsmen are allowed in the infield portion, a suitable fence shall be erected 50 feet from the outer edge of the exhibition area.

(e) Spectators shall not be permitted within infield portions of the exhibition area unless protected by a fence of at least 6 feet in height erected no closer than 50 feet from the outer edge of the exhibition area.

13:62-9.4 Demolition derby tow vehicles

(a) Tow vehicles shall be permitted to enter the demolition derby exhibition area for vehicle removal.

(b) There shall be no more than two persons per tow vehicle.

(c) No riders shall be permitted on outside of tow vehicle.

13:62-9.5 Tractor pull age requirement

All competitors, working personnel and officials of a tractor pull event having access to the pit area or racing surface must be at least 18 years of age.

13:62-9.6 Tractor pull kill switch requirement

All vehicles competing in a tractor pull event shall be equipped with a kill switch in operating order.

SUBCHAPTER 10. ENDURO EVENTS

13:62-10.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

13:62-10.2 Driver and vehicle requirements

(a) All drivers in enduro events shall be a minimum of 18 years of age and must be in possession of a valid driver's license recorded on the entry form which shall be checked by the licensee for validity.

(b) Drivers shall wear safety helmets as set forth in N.J.A.C. 13:62-4.20.

(c) The driver's helmet shall possess a face shield or goggles.

(d) All drivers in enduro events shall wear fire retardant suits. Fire retardant underwear is recommended.

1. Fire resistant clothing shall be one piece covering body, legs and arms.

2. Gloves of a fire resistant material are recommended.

(e) No driver shall compete with their head or arm extended outside of the doors or windows.

(f) A driver shall remain with his vehicle if it is disabled during the race.

1. During a red light or red flag, the driver must exit the vehicle and return to the pit area at direction of track personnel.

2. Racing should be stopped (red flagged) at 15-minute intervals to allow drivers to exit to pit area. The time intervals may be extended if no disabled vehicles are located on the track.

(g) Each vehicle shall have a minimum 104-inch wheelbase.

(h) No convertibles, pickup trucks, station wagons, or vans shall participate in enduro events.

13:62-10.3 Windshield

(a) The originally installed windshield may remain and all other glass must be completely removed from a participating vehicle.

(b) Window net or screen shall be securely installed on the driver's side.

13:62-10.4 Mirrors

Inside rear view mirrors shall be permitted. No outside view mirrors shall be allowed.

13:62-10.5 Vehicle interior and exterior requirements

(a) Chrome and nonmetallic trim shall be removed from sides of the vehicle.

(b) Passenger seats shall be removed from the interior of the vehicle.

(c) A safety hub or reinforced wheel shall be required on the vehicle's right front wheel.

(d) All doors shall be bolted, chained or welded closed. Any door opening during an event shall constitute automatic disqualification.

(e) The exterior of the driver's side door must have at least one metal brace at bumper height.

1. All vehicles must retain stock appearance with no alterations to fenders or wheel wells.

2. A guardrail type portion of the inner door installed by manufacturer will not be considered as a brace to satisfy this requirement.

3. The portion of the inner roll cage will not be considered a brace to satisfy this requirement.

13:62-10.6 Tires

(a) Passenger tires with United States Department of Transportation numbers shall be allowed with a maximum tread width of seven inches.

(b) Studs or "cheater-slicks" are prohibited.

(c) Wheel rim width shall not exceed seven inches.

13:62-10.7 Gas tanks

(a) The gas tank or fuel cell shall be installed in the trunk and secured by chain or metal strap to the body.

(b) A metal fire wall shall be installed between the fuel tank and driver's compartment to afford the driver maximum protection.

13:62-10.8 Fuel lines

Fuel lines shall not pass through the passenger compartment of the vehicle.

13:62-10.9 Engine and suspension requirements

(a) The engine shall remain stock with a factory installed carburetor and manifold.

(b) Altering of suspension or torching of springs shall be prohibited.

13:62-10.10 Seat belts

(a) A shoulder harness and four point racing lap belt in good working condition shall be installed and properly worn during the event.

(b) A lap belt and shoulder harness installed in a position other than manufacturer's shall be affixed to the outer floor utilizing four inch by four inch steel plate and bolts of adequate tempered steel strength.

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13:62-10.11 Rollover cage

(a) All race cars shall be equipped with a rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) The outside diameter of the rollover bars shall be a minimum of one and three-quarters inch and wall thickness a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by one-quarter inch base plate.

(e) Vehicles having uni-body construction may install a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by one-quarter inch base plate affixed to outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detailed drawing establishing the dimensions and material utilized.

13:62-10.12 Bumpers

All vehicles shall be equipped with stock bumpers securely fastened on the front and rear. Outside bracing of bumpers shall be prohibited.

13:62-10.13 Batteries

Batteries shall be securely installed under the front hood and not adjacent to the fuel supply.

13:62-10.14 Seats

(a) A factory installed front seat shall be utilized provided it is equipped with a headrest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, five-sixteenths inch bolts.

(c) The base of the seat shall be installed with four five-sixteenths inch bolts not more than three inches from the outside edge at the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and one-eighth inch in thickness shall connect every two bolts.

13:62-10.15 Miscellaneous equipment requirements

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of the vehicle.

(b) All vehicles shall have an opening in the hood to properly expose the carburetor.

(c) The radiator shall remain in the manufacturer's position. Any movement of the radiator shall be prohibited.

(d) The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.

(e) Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances shall be prohibited.

(f) Transmission and radiator cooling cores located inside the vehicle shall be prohibited.

13:62-10.16 Additional track responsibilities

(a) The licensee shall maintain safe conditions during all pit stops.

(b) The licensee shall insure that disabled vehicles are left at the point of disablement.

(c) The licensee shall maintain adequate fire apparatus on location during the event.

1. A fire vehicle with a minimum of 300 pounds of dry chemical shall be utilized and shall meet the National Fire Protection Association standards of a mini pumper.

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating shall be maintained on location during an event.

3. A minimum of two sets of protective turn-out gear shall be available to track personnel.

SUBCHAPTER 11. MUD HOP

13:62-11.1 Construction requirements

All construction requirements as set forth in N.J.A.C. 13:62-3 shall be satisfied by the licensee.

13:62-11.2 Licensed facilities

Mud hop events are prohibited from non-licensed facilities.

13:62-11.3 Alcohol/drugs prohibited

No alcohol or drugs will be permitted within the pit area. Anyone departing the pit area shall be prohibited from returning during the duration of the event.

13:62-11.4 Driver requirements

(a) Mud hop drivers shall be a minimum 18 years of age and be in possession of a valid driver's license.

(b) The driver's license shall be recorded on an entry form and checked by the licensee for validity.

(c) The driver shall remain with a disabled vehicle until properly escorted from the racing track.

13:62-11.5 Equipment requirements

(a) Mud hop participants shall wear a safety helmet as set forth at N.J.A.C. 13:62-4.20.

(b) Drivers shall be suitably attired with a minimum of shirt, long pants and shoes.

(c) The extension of the driver's head or arm outside the vehicle shall be prohibited.

13:62-11.6 Windows

(a) The windshield of the participating vehicle may remain as originally installed.

(b) Heavy mesh screening with a metal post covering the entire opening or plexiglass with a center post shall be utilized where the original windshield is removed.

13:62-11.7 Vehicle interior and exterior requirements

(a) Sharp edges created by accidental vehicle contact shall be folded over to render the vehicle safe.

(b) Alterations to the fenders or wheel wells are prohibited ***on stock vehicles***.

(c) All doors of participating vehicles shall remain closed during an event. Any opening shall constitute automatic disqualification.

13:62-11.8 Seat belts

(a) Seat belts shall be required and properly worn during the event.

(b) A racing lap belt and shoulder harness shall be installed and utilized ***on any modified vehicle provided,*** provided they are:

1. Approved through technical inspection and found to be in good condition; and

2. Securely affixed to the outer flooring and reinforced by a four inch by four inch steel plate and bolts of adequate tempered steel strength.

(c) Cable, chain or straps securing devices for seat belts are prohibited.

13:62-11.9 Rollover cage

(a) Open cab vehicles shall be equipped with a rollover cage surrounding the driver of a design, construction and quality affording the driver maximum protection against injury.

(b) Rollover bars installed in vehicle shall be a minimum of three inches above and six inches behind the driver's head.

(c) The rollover bars' outside diameter shall be a minimum of one and three-quarters inch and wall thickness a minimum of .09 inch.

(d) Rollover bars welded, bolted or fastened to the flooring shall utilize a six inch by six inch by one-quarter inch base plate.

(e) Vehicles having uni-body construction may install a rollover bar welded to the frame of the vehicle utilizing six inch by six inch by one-quarter inch base plate affixed to outer flooring.

(f) Rollover bars shall be plainly visible with the exception of built-in or integral rollover bars.

(g) Vehicles with built-in or integral rollover bars shall maintain and provide upon request by the Superintendent or designee the manufacturer's detailed drawing establishing the dimensions and material utilized.

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13:62-11.10 Bumpers

All vehicles shall be equipped with bumpers securely fastened on the front and rear. Outside bracing of bumpers shall be prohibited.

13:62-11.11 Batteries

Batteries shall be securely fastened and not within the driver's compartment or adjacent to the fuel supply ***unless shielded to prevent leakage in the event of damage or overturn***.

13:62-11.12 Miscellaneous equipment requirements

(a) The drive shaft loop shall be installed not more than 24 inches from the front and rear yokes of ***[the] *modified* vehicle*s***.

[(b)] All vehicles shall have an opening in the hood to properly expose the carburetor.]

[(c)] The radiator shall remain in the manufacturer's position. Any movement of the radiator shall be prohibited.]* *[(b)] The radiator, if moved from the manufacturer's position, shall be shielded from the driver by a firewall.

***[(d)] *[(c)] The front and rear trunk lid shall remain securely fastened with cable or chain throughout the entire event. Any incidental opening shall disqualify the vehicle from the event.**

***[(e)] *[(d)] Outer decorations on the vehicle utilizing poles, flags, staffs or other hazardous protuberances shall be prohibited.**

***[(f)] *[(e)] Transmission and radiator cooling lines or cooling cores shall be equipped with a metal fire wall separating the driver and insuring maximum security.**

***[(g)] *[(f)] Tow hooks or tow bars shall be installed and secured to the frame of the vehicle.**

***[(h)] *[(g)] No vehicle shall transport more than one person at any time during an event or warm-up.**

13:62-11.13 Braking system and pedal reserve

(a) The licensee shall test and approve each vehicle for pedal reserve prior to the vehicle departing the pit area.

(b) No vehicle shall be permitted to participate in any event if the braking system includes a direct application of pressure to any of the tires or any apparent deficiencies.

13:62-11.14 Automatic transmission safety mats

Any ***modified* vehicle** ***[equipped]*** with an automatic transmission shall have a steel mat, plate, or blanket installed over the transmission so as to protect the driver from injury caused by the fragmentation of the automatic transmission upon explosion.

13:62-11.15 Seats

(a) Factory installed front seats may be utilized provided it is equipped with a head rest.

(b) Seats shall be attached to the main frame of the vehicle, the frame of the roll cage or to a substantial metal plate utilizing a minimum of six, three line, five-sixteenths inch bolts.

(c) The base of the seat shall be installed with four five-sixteenths inch bolts not more than three inches from the outside edge at the four most practical points.

(d) Two bolts shall be installed at the two most practical points at the top of the back of the seat and a metal strap of at least two inches in width and one-eighth inch in thickness shall connect every two bolts.

13:62-11.16 Additional track responsibilities

(a) The licensee shall meet the necessary requirements set forth at N.J.A.C. 13:62-2.

(b) The licensee shall maintain safe conditions during all pit stops.

(c) The licensee shall maintain adequate fire apparatus on location during the event.

1. A fire vehicle shall meet the National Fire Protection Association standards of a mini pumper.

2. Twenty-pound fire extinguishers, at a minimum, with a minimum of 10 B.C. rating shall be maintained on location during an event.

3. A minimum of two protective turn out gear shall be available to track personnel.

SUBCHAPTER 12. REACTION POWER VEHICLES, THRILL SHOWS AND GYMKHANAS

13:62-12.1 Licensed facilities

(a) Reaction powered vehicles and thrill shows are prohibited from non-licensed facilities.

(b) Notification shall be given to the Superintendent at least 20 days prior to any such scheduled event. Notification of an upcoming thrill show shall include a full description of the type of event.

13:62-12.2 Vehicle equipment

(a) All vehicles equipped with parachute(s) shall have a red streamer attached to the safety pin(s). The safety pin shall be removed from the parachute prior to the starting lights being activated.

(b) All vehicles utilizing two or more parachutes shall have at least two anchoring points for each parachute, each point separate from the other.

SUBCHAPTER 13. SPECIAL AGE PROVISION

13:62-13.1 Participant requirements

(a) Notwithstanding any other provision of this chapter to the contrary, a person between the ages of ***[14]* *10*** and 18 years of age may be permitted to participate in go-cart, snowmobile, ***[motorcycle,]*** and motorcross events providing the following conditions are met:

1. The participant between the ages of ***[14]* *10*** and 18 is covered by accidental death and dismemberment insurance in an amount not less than \$10,000 for accidental death and \$3,000 for dismemberment.

2. The participant between the ages of ***[14]* *10*** and 18 shall be required to furnish proof of successful completion of an operational and safety course for the particular vehicle which the participant desires to operate.

13:62-13.2 Licensee responsibilities

(a) It shall be the responsibility of the licensee to insure that all conditions set forth in this chapter are met prior to permitting an individual to participate in any event.

(b) It shall further be the responsibility of the licensee to insure that the operation of vehicles covered by this subchapter by persons between the ages of 14 and 18 shall be restricted to the confines of an approved race or exhibition area and adjoining pit area.

SUBCHAPTER 14. APPEALS OF ADMINISTRATIVE ACTION

13:62-14.1 Hearings

(a) In the case of the suspension, denial or refusal to renew a license the Superintendent shall notify the applicant or licensee in writing of such action and the reasons for the action shall be stated in the notice.

(b) Upon such notification the Superintendent shall afford the applicant or licensee an opportunity for a hearing to appeal the action of the Superintendent. A request for a hearing of the Superintendent's action shall be made in writing to the Superintendent within 15 days from the receipt of the notice.

(c) If a request for a hearing is timely received, the Superintendent shall take the appropriate action in accordance with the provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Rules of Practice, N.J.A.C. 1:1-1 et seq.

(a)

BOARD OF ARCHITECTS AND LANDSCAPE ARCHITECT EXAMINATION AND EVALUATION COMMITTEE

New Jersey State Board of Architects Rules

Redoption: N.J.A.C. 13:27

Proposed: January 2, 1990 at 22 N.J.R. 18(a).

Adopted: February 8, 1990 by the State Board of Architects, Frank H. Radey, Jr., President.

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Filed: February 20, 1990 as R.1990 d.165, **without change**.
Authority: N.J.S.A. 45:3-3 and 7 and N.J.S.A. 45:1-3.2.
Effective Date: February 20, 1990.
Expiration Date: February 20, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:27.

(a)

**DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY
Use of General Anesthesia**

Adopted Amendment: N.J.A.C. 13:30-8.3

Proposed: October 1, 1989 at 21 N.J.R. 3062(a).
Adopted: February 7, 1990, by the State Board of Dentistry,
Samuel Furman, D.D.S., President.
Filed: February 23, 1990 as R.1990 d.173, **with substantive changes**
not requiring additional public notice and comment (see
N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:6-3.
Effective Date: March 19, 1990.
Expiration Date: April 15, 1990.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed amendment, N.J.A.C. 13:30-8.3, relating to the use of general anesthesia. The official comment period ended on November 1, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on October 2, 1989 at 21 N.J.R. 3062(a). Announcements were also forwarded to the Newark Star Ledger, Trenton Times, Asbury Park Press, Courier Post, and Bergen Record, newspapers of general circulation, The New Jersey Dental Association, New Jersey Hospital Association, New Jersey Dental Assistant Association, American Dental Hygiene Association, New Jersey Department of Health, the United States Department of Justice Drug Enforcement Administration and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting William Gutman, Executive Director, Board of Dentistry, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Dentistry received five comments from interested parties during the 30-day comment period.

COMMENT: A comment was received from the New Jersey Society of Oral and Maxillofacial Surgeons, Inc. which suggested that the rule should include reference to nitrous oxide inhalation or a combination of oral sedation with nitrous oxide.

RESPONSE: While the Board appreciates the interest of the oral surgeons, it wishes to go forward with the proposed amendment (and proposed repeal and new rule published in the same issue of the Register) because it is of the opinion at this time that the use of nitrous oxide as a separate entity does not pose as high a level of risk as that which exists in the use of parenteral conscious sedation or general anesthesia. The Board is not ruling out the possibility of regulation of the use of nitrous oxide some time in the future. The Board began in 1976 with the regulation of the use of general anesthesia and is now moving into the area of parenteral conscious sedation. If a need is demonstrated at some time in the future, the Board will address the regulation of the use of nitrous oxide.

COMMENT: A comment was received from the New Jersey State Society of Anesthesiologists which suggested that "monitoring" be specifically defined to include the pulse oximeter in addition to the traditional EKG and blood pressure cuff.

RESPONSE: The Board believes that the list of basic equipment which is set forth in the general anesthesia rule at N.J.A.C. 13:30-8.3(f) is intended to establish a list of basic equipment and supplies which would be minimally required to deal with emergency situations. Certainly nothing prevents any practitioner from using the latest technological equipment. It is anticipated that the Board will review and assess the

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prescribed basic list on an ongoing basis, but with the rapid change in medical technology, it would be impossible to include in a regulation each piece of equipment as it is developed.

COMMENT: The New Jersey Association of Nurse Anesthetists requested that the Board provide an exemption from the permit requirements for the use of both parenteral conscious sedation and/or general anesthesia if the dentist uses the services of a certified registered nurse anesthetist.

RESPONSE: The amended rule (and the previously mentioned repeal and new rule) provides such an exemption from the permit requirements if the dentist uses the services of another parenteral conscious sedation or general anesthesia permit holder or an M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital. The Board at this time does not wish to expand its list of exemptions. Certainly, a dentist can utilize the services of a certified registered nurse anesthetist and, in view of their level of training and education, it is anticipated that many dentists will do so. However, the Board does not feel that a licensee should be relieved of personal responsibility for the treatment of a patient by delegating that responsibility to anyone other than another qualified dentist or physician.

COMMENT: A comment was received from the New Jersey Dental Association which strongly supports the Board's efforts to increase the standards regarding the use of these modalities. However, the Association questioned the requirement that a dentist employ no fewer than two persons who will be present in the office and assist in monitoring the patient.

RESPONSE: The Board's reason for requiring two persons was to assure that at least one person would always be available for each patient being treated. For example, if there were only one trained person in the office, the licensee would not be able to commence treatment on another patient until a prior patient who was being monitored by that assistant was fully recovered. The Board acknowledges that there may be some ambiguity here and has altered the language to read that no fewer than two persons must be present in the office, at least one of whom will assist in monitoring the patient under general anesthesia.

COMMENT: Morton W. Winner, D.D.S., sent the Board a letter in which he made several suggestions. First, he suggested that the Board permit a dentist to take a course equivalent to "Basic Life Support: Course C" of the American Heart Association which is specified in the proposed rules.

RESPONSE: The Board agrees with this comment and the rule is adopted to state "or its equivalent" after every reference to the aforementioned specified course.

COMMENT: Second, Dr. Winner addressed the issue of the requirement of two fully trained persons in the office.

RESPONSE: That comment is addressed in a preceding Comment/Response.

COMMENT: Finally, Dr. Winner suggested additional language which would extend the responsibility of the permit holder or physician who works in conjunction with a dentist, at subsection (g).

RESPONSE: The Board believes that the proposed language which provides that such person must remain present and bear full responsibility during the entire procedure and until any patient has recovered fully and has been dismissed is sufficient to protect the patients.

Summary of Changes Made Upon Adoption:

In response to comments, the following changes were made upon adoption of this amendment:

Instead of the rule reading that every applicant for a general anesthesia permit must certify that he or she employs no fewer than two persons who must be present in the office to assist in monitoring the patient under general anesthesia, it is adopted to read that no fewer than two persons must be present in the office, at least one of whom will assist in monitoring the patient under general anesthesia. Also, wherever there is reference to the requirement of "Basic Life Support: Course C" of the American Heart Association, the words "or its equivalent" have been added.

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

13:30-8.3 Use of general anesthesia

(a) The use or employment of general anesthesia by a dentist without first having met the minimum standards of training and procedure as stated herein shall constitute a deviation from the normal standards of practice required of a licensee.

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(b) General anesthesia consists of the deliberate use of any drug, combination of drugs, element or other material with the specified intent to induce a loss of sensation and consciousness.

(c) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless such dentist possesses a permit issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed biennially.

(d) In order to receive such a permit, the dentist shall apply on an official application form and submit certified or verifiable proof that he or she:

i. Has completed a minimum of three years postdoctoral training in oral surgery, or a minimum one-year training course in anesthesiology; or

ii. Is a diplomate in oral surgery or is Board-eligible in oral surgery; or

iii. Is a fellow of the American Dental Society of Anesthesiology, or is a member of the American Society of Oral Surgeons and/or is a member of the New Jersey Society of Oral Surgeons.

(e) Every applicant for a general anesthesia permit must certify that he or she employs no fewer than two persons who must be present in the office **[to]**, **at least one of whom shall** to assist in monitoring the patient under general anesthesia. Such personnel shall be certified by the permit holder as being trained in and capable of monitoring vital signs, and of assisting in emergency procedures.

(f) Every applicant for a general anesthesia permit must certify that he or she possesses basic equipment and supplies to deal with emergency situations, which equipment and supplies shall be readily accessible and in good order. This shall consist of no less than the list that shall be supplied by the Board.

(g) The dental facility of any permit holder shall be inspected and approved by the State Board of Dentistry or its designee, once every six years.

(h) This permit shall be renewed biennially upon satisfactory proof being submitted to the Board that the holder has completed at least 20 hours during the previous two year period in continuing education courses devoted to general anesthesia and approved by the Board.

(i) Satisfactory credit hours to fulfill the continuing education requirement may be obtained in any one of the following areas:

1. Professional service review organizations;
2. Teaching;
3. Lectures;
4. Seminars; or
5. Other methods approved by the Board.

(j) Prior to the administration of an anesthetic agent for the purpose of controlling pain, a physical evaluation shall be made by the permit holder and a complete medical history which shall include previous medications, allergies and sensitivities shall be obtained. Said history shall be maintained in the files of each dentist for a period of not less than seven years succeeding the taking of same. Specific records on use of general anesthesia shall be kept and shall include type of agent, dosage and duration.

(k) Any dentist who utilizes the services of a permit holder or an M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital shall not be deemed to be practicing general anesthesia provided that such permit holder or anesthesiologist remains present and bears full responsibility during the entire procedure and until any patient regains consciousness. Any permit holder invited by a dentist to provide general anesthesia services shall bear full responsibility for compliance with all terms and conditions of this rule including, but not limited to, the minimum requirements for equipment and assisting staff.

(l) Every applicant for a permit to use general anesthesia must obtain emergency training by completing the "Basic Life Support: Course C" of the American Heart Association ***or its equivalent*** and must maintain current certification in said course. This training also shall be required of all persons who assist in monitoring a patient under general anesthesia. The permit applicant must furnish proof of said training and certification to the Board.

(m) Any designee of the Board shall be authorized during ordinary business hours to enter and inspect any dental office for the purpose of enforcing the provisions of this rule.

(n) Any licensee who administers general anesthesia without first having obtained a permit from the Board or any licensee who fails to comply with the rules set forth herein, shall be deemed to have engaged in professional misconduct and/or gross malpractice or negligence and may be subjected to appropriate disciplinary action including an action for the suspension or revocation of the licensee's license to practice dentistry in the State of New Jersey.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF DENTISTRY**

Parenteral Conscious Sedation

Adopted Repeal: N.J.A.C. 13:30-8.11

Adopted New Rule: N.J.A.C. 13:30-8.2

Proposed: October 2, 1989 at 21 N.J.R. 3060(a).

Adopted: February 7, 1990 by the State Board of Dentistry, Samuel Furman, D.D.S., President.

Filed: February 23, 1990 as R.1990 d.174, with substantive changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:6-3.

Effective Date: March 19, 1990.

Expiration Date: April 15, 1990.

The State Board of Dentistry afforded all interested parties an opportunity to comment on the proposed repeal of N.J.A.C. 13:30-8.11 and proposed new rule, N.J.A.C. 13:30-8.2, relating to parenteral conscious sedation. The official comment period ended on November 1, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on October 2, 1989 at 21 N.J.R. 3060(a). Announcements were also forwarded to Newark Star Ledger, Trenton Times, Asbury Park Press, Courier Post, and Bergen Record, newspapers of general circulation, New Jersey Dental Association, New Jersey Hospital Association, New Jersey Dental Assistant Association, American Dental Hygiene Association, New Jersey Department of Health, The United States Department of Justice Drug Enforcement Administration and to other interested individuals and organizations.

A full record of this opportunity to be heard can be inspected by contacting William Gutman, Executive Director, Board of Dentistry, Room 510, 1100 Raymond Boulevard, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

The Board of Dentistry received five comments from interested parties during the official 30-day comment period.

COMMENT: A comment was received from the New Jersey Society of Oral and Maxillofacial Surgeons, Inc. which addresses the fact that neither the proposed rule nor the proposed amendment of N.J.A.C. 13:30-8.3 published in the same issue of the Register on the use of general anesthesia addresses the regulation of nitrous oxide inhalation or a combination of oral sedation with nitrous oxide.

RESPONSE: The Board appreciates the interest of the oral surgeons. However, the Board wishes to go forward with the proposed repeal, new rule and amendment because it is of the opinion at this time that the use of nitrous oxide as a separate entity does not pose as high a level of risk as that which obtains in the use of parenteral conscious sedation and general anesthesia. The Board is not ruling out the regulation of the use of nitrous oxide at some time in the future. The Board began in 1976 with the regulation of the use of general anesthesia and is now moving into the area of parenteral conscious sedation. If a need is demonstrated at some time in the future, the Board will address the regulation of the use of nitrous oxide.

COMMENT: A comment was received from the New Jersey State Society of Anesthesiologists which suggested that "monitoring" be specifically defined to include the pulse oximeter in addition to the traditional EKG and blood pressure cuff.

RESPONSE: The Board believes that the list of basic equipment and supplies which is listed in the parenteral conscious sedation rule at N.J.A.C. 13:30-8.2(g) and in the general anesthesia rule at N.J.A.C. 13:30-8.3(f) is intended to set forth a list of basic equipment and supplies which would be minimally required to deal with emergency situations. Certainly nothing prevents practitioners from using the latest technologi-

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cal equipment, and it is hoped that the Board will review and assess the prescribed basic list on an on-going basis, but with the rapid change in medical technology, it would be impossible to include in a regulation each piece of newly developed equipment.

COMMENT: A comment was received from the New Jersey Association of Nurse Anesthetists requesting that the Board provide an exemption from the permit requirements for the use of both parenteral conscious sedation and/or general anesthesia if the dentist uses the services of a certified registered nurse anesthetist.

RESPONSE: The proposed repeal, new rule and previously-mentioned amendment provide an exemption from the permit requirement if the dentist uses the services of another parenteral conscious sedation or general anesthesia permit holder or an M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital. The Board does not wish to expand the list of exemptions at this time. Certainly, a dentist can utilize the services of certified registered nurse anesthetists and in view of their level of training and education, it is anticipated that many dentists will do so. However, the Board does not feel that a licensee should relinquish personal responsibility to anyone other than another qualified dentist or physician.

COMMENT: A comment was received from the New Jersey Dental Association which strongly supports the Board's efforts to increase the standards regarding the use of these modalities. However, the Association questioned the requirement that a dentist employ no fewer than two persons who will be present in the office and assist in monitoring the patient.

RESPONSE: The Board's reason for requiring two persons was to assure that at least one person would always be available for each patient being treated. If there were only one trained person in an office, the licensee would not be able to commence treatment on a second patient until the first patient who was being monitored by that assistant was fully recovered, since no other person would be available in the office. The Board agrees that the language as proposed may be unclear and is revising its language to make clear its intent.

COMMENT: A letter was received from Morton A. Winner, D.D.S., a practitioner in Hammonton, New Jersey, who made several comments. First, he suggested that the Board permit a dentist to take a course equivalent to "Basic Life Support: Course C" of the American Heart Association which is specified in the proposed rule and amendment to N.J.A.C. 13:30-8.3.

RESPONSE: The Board agrees with this suggestion and has altered the language to read "or its equivalent" after every reference to the aforementioned course.

COMMENT: Second, Dr. Winner addressed the issue of two fully trained persons in the office.

RESPONSE: That comment is addressed fully in a preceding Comment/Response.

COMMENT: Dr. Winner further commented that the word "inhalation" should not appear after the words nitrous oxide in N.J.A.C. 13:30-8.2(d), because, he contends, it is not a parenteral route for conscious sedation.

RESPONSE: The Board deliberately included inhalation in the rule for the purpose of regulation despite the fact that parenteral generally refers to intravenous or intramuscular routes. The Board believes that conscious sedation can be induced by inhalation agents which have a high potential for risk and that they therefore should be regulated.

COMMENT: Next, Dr. Winner objected to certain language used in the Social Impact statement which referred to the higher possibility of injury in this type of anesthesia than with most other forms of anesthesia.

RESPONSE: The Board's response is that the prefatory material will never appear in any future printing of this rule. At the time, the Board believed it appropriate to make the need for a new rule absolutely clear.

COMMENT: Finally, Dr. Winner suggested language that would extend the responsibility of the permit holder or physician who works in conjunction with a dentist.

RESPONSE: The Board believes that the proposed language which provides that such person must remain present and bear full responsibility during the entire procedure and until any patient has recovered fully and has been dismissed is sufficient to protect the patients.

Summary of Changes Made Upon Adoption:

In response to comments, therefore, the following changes were made upon adoption of this rule:

N.J.A.C. 13:30-8.2(f) is changed to clarify the intent of the Board that every applicant for a permit to use PCS shall certify to the Board that he or she employs no fewer than two persons who will be present in the

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office when PCS is being administered and that at least one of them will be available and capable of assisting in monitoring the patient whenever PCS is employed.

After every reference to "Basic Life Support: Course C" of the American Heart Association, the words "or its equivalent" have been added.

In N.J.A.C. 13:30-8.2(c), the phrase "six months from the effective date of this rule" is replaced with the actual date, September 19, 1990.

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

13:30-8.2 Parenteral conscious sedation

(a) The use of parenteral conscious sedation (hereinafter referred to as "PCS") by a dentist without first having met the minimum standards of training and procedure as stated herein shall constitute a deviation from the normal standards of practice required of a licensee.

(b) Parenteral conscious sedation is defined as a depressed level of consciousness produced by the parenteral administration of pharmacologic substances that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command. This modality includes administration of medications via all parenteral routes, that is, intravenous, intramuscular, subcutaneous, submucosal, or inhalation, but does not include nitrous-oxide inhalation analgesia.

(c) No dentist shall use PCS for dental patients after *[six months from the effective date of this rule]* ***September 19, 1990*** unless such dentist possesses a PCS permit issued by the State Board of Dentistry. The dentist holding such permit shall be subject to review, and such permit shall be renewed in November 1991 and biennially thereafter.

(d) Any dentist who wishes to obtain a Board permit to employ PCS shall complete an application as provided by the Board office and shall provide one of the following:

1. An affidavit attesting that the dentist has administered PCS on a regular routine basis in his or her daily practice during the three year period immediately preceding the effective date of this rule. "Regular routine basis" shall be defined as an average of no less than three times per week; or

2. Certified or verifiable proof that the dentist has completed a minimum of 100 hours of continuing education in didactic training and 100 hours in clinical training in PCS within three years preceding the effective date of this rule or thereafter.

(e) Every applicant for a permit to use PCS shall obtain emergency training by completing "Basic Life Support: Course C" of the American Heart Association ***or its equivalent*** and shall maintain current certification in the course. The applicant shall furnish proof of this training and certification to the Board upon application for a permit and proof of recertification upon biennial renewal of the permit.

(f) Every applicant for a permit to use PCS additionally shall certify to the Board that the dentist employs no fewer than two persons who will be present in the office ***[and assist in monitoring the patient whenever PCS is employed]**, at least one of whom will assist in monitoring the patient whenever PCS is employed.*** The applicant shall further certify that these persons are trained in and capable of monitoring vital signs and of assisting in emergency procedures and that they maintain current certification in "Basic Life Support: Course C*[*]**" ***or its equivalent.***

(g) Every applicant for a permit to use PCS shall certify as part of the application that he or she possesses basic equipment and supplies to deal with emergency situations. The permit holder's facility shall contain the following readily accessible and properly operating equipment: emergency drug kit; positive pressure oxygen; stethoscope; suction; nasopharyngeal tubes; oropharyngeal tubes; and a blood pressure monitoring device.

(h) Any licensee who holds a current general anesthesia permit issued by the Board of Dentistry shall be authorized to use PCS and shall not be required to make application for a permit pursuant to this section.

(i) Any dentist who utilizes the services of a PCS permit holder or an M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital shall not be deemed to be practicing PCS, provided that such permit holder or anesthesiologist must remain

present and bears full responsibility during the entire procedure and until any patient has recovered fully and has been dismissed. Any permit holder invited by a dentist to provide PCS services shall bear full responsibility for compliance with all terms and conditions of this rule including, but not limited to, the minimum requirements for equipment and assisting staff.

(j) Prior to the administration of a PCS agent for the purpose of controlling pain, a physical evaluation shall be made by the permit holder and a complete medical history shall be obtained which shall include previous medications, allergies and sensitivities. Said history shall be maintained in the files of each dentist for a period of not less than seven years. Specific records on the use of PCS shall be kept as part of every patient chart and shall include the type of agent, the dosage and the duration of sedation.

(k) Every licensee who holds a PCS permit shall present satisfactory proof to the Board upon biennial renewal that the holder has completed at least 20 credit hours during the previous two year period in continuing education courses devoted to PCS and presented by an accepted program in a suitable institution. Satisfactory credit hours to fulfill this continuing education requirement may be obtained from the following:

1. Professional service review organizations;
2. Teaching;
3. Lectures;
4. Seminars; or
5. Other methods approved by the Board.

(l) Any designee of the Board shall be authorized during ordinary business hours to enter and inspect any dental office for the purpose of enforcing the provisions of this rule.

(m) Any licensee who administers PCS without first having obtained a permit from the Board or any licensee who fails to comply with the rules set forth herein, shall be deemed to have engaged in professional misconduct and/or gross malpractice or negligence and may be subjected to appropriate disciplinary action including an action for the suspension or revocation of the licensee's license to practice dentistry in the State of New Jersey.

(a)

**DIVISION OF CONSUMER AFFAIRS
BOARD OF MEDICAL EXAMINERS**

**Preparation of Patient Records, Access to or
Release of Information; Confidentiality, Transfer
or Disposal of Records**

Adopted Repeal and New Rule: N.J.A.C. 13:35-6.5

Proposed: October 16, 1989 at 21 N.J.R. 3253(a).

Adopted: January 31, 1990, by the New Jersey Board of Medical Examiners.

Filed: February 23, 1990 as R. 1990 d. 176, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.S.A. 1:30-4.3).

Authority: N.J.S.A. 45:9-2.

Effective Date: March 19, 1990.

Expiration Date: September 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed repeal and new rule, N.J.A.C. 13:35-6.5, relating to preparation of patient records, access to or release of information, confidentiality and transfer or disposal of records. The official comment period ended on November 15, 1989. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on October 16, 1989 at 21 N.J.R. 3253(a). Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Chiropractic Society, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

The Board of Medical Examiners received 10 comments on the proposed repeal and new rule. These comments were received from the Department of Insurance, the Department of the Public Advocate, the Medical Societies of Union, Hudson, Passaic and Essex Counties, the New Jersey Psychiatric Association, the University of Medicine and Dentistry of New Jersey and two physicians. A summary of the comments received and the responses of the Medical Board follows:

N.J.A.C. 13:35-6.5(a)

COMMENT: The director of Clinical Records at the University of Medicine and Dentistry—Community Mental Health suggested that the definition of "authorized representative" be modified to include, in addition to representatives of minors, representatives of patients who are physically or legally incompetent to obtain records. The commenter offered language excerpted from the New Jersey Hospital Association's Consent Manual.

RESPONSE: The Board is of the opinion that authorizing others to consent to medical treatment is somewhat different from authorizing others to obtain records on behalf of an incompetent patient. The Board states that the proposed rule does recognize that a court can designate a representative to obtain records and notes that it has not experienced problems in this regard in the past.

N.J.A.C. 13:35-6.5(b)1 through 9

COMMENT: The Essex County Medical Society stated it has no argument with the record steps outlined but believes the required record content should be advisory rather than mandatory. The Society's president suggested that doctors will refer patients to an emergency room on weekends to avoid the risk of disciplinary action resulting from failure to prepare a complete record.

RESPONSE: The Board views the delineation of the substantive content of a record to be one of the most significant benefits of the new rule, and, therefore, no modification will be made.

N.J.A.C. 13:35-6.5(c)1

COMMENT: The Public Advocate questioned why a physician should require 30 days just to make a record available for review. Attorneys, governmental agencies or consulting physicians often require faster access to patient records, and review is less cumbersome than obtaining copies. The Public Advocate suggested that record review be authorized on reasonable notice as soon as possible.

RESPONSE: The Board points out that governmental agencies can obtain records in less than 30 days through a subpoena. However, the Board is substituting the words "no later than" for "within" in the first sentence of the rule. Since the tone of that new language is more directory, the Board hopes licensee will be encouraged to comply in a more timely fashion.

N.J.A.C. 13:35-6.5(c)1 and 3

COMMENT: A practitioner commented that the use of the term "subjective" here may be misleading since to a health professional "subjective" in the context of a medical record refers to the patient's complaints and does not include the physician's plan and assessment.

RESPONSE: The Board reviewed this comment and concludes that the logical reading of the term in context includes plan and assessment and that it is generally not confusing.

N.J.A.C. 13:35-6.5(c)2

COMMENT: The Public Advocate expressed concern that permitting a physician to summarize a record at his or her discretion gives the physician carte blanche to withhold relevant details. This would impede investigations by attorneys, leading to increased litigation in cases of alleged malpractice even where the record disproves the charges. The Public Advocate suggested that summarization be allowed only with the patient's approval or where verbatim disclosure would be harmful.

RESPONSE: The Board notes that a physician may not withhold relevant details in preparing a record summary since the regulation requires that the summary be comprehensive; a physician may provide a summary only if it adequately reflects the patient's history and treatment. Further, the Board is of the opinion that where the actual record disproves an allegation of malpractice, a physician would have no reason to withhold it. Finally, the board believes that a summary may actually

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serve as a benefit to the patient since it will be more readable and understandable than the record itself. Accordingly, no modification to this rule will be made.

COMMENT: The Department of Insurance stated that this rule should be amended because it would frustrate compliance with N.J.S.A. 39:6A-13(b) and the corresponding regulations, which require that records be produced when an insurer or the Unsatisfied Claim and Judgment Fund requests them. In addition, the Department believes policyholders may have claims denied because they are insufficiently documented; that an insurer may unknowingly pay expenses for which there is no coverage under the policy; and that the Department's Insurance Fraud Prevention Unit would be hampered in its work.

RESPONSE: The Board has added language to clarify that a licensee may elect to produce a record summary only when the record itself is not otherwise required by law.

N.J.A.C. 13:35-6.5(c)3

COMMENT: The Public Advocate believes the licensee should notify the patient of any refusal to release the patient's record or record summary and the reason for such refusal and that the licensee should be permitted to withhold only those portions of the record deemed harmful if disclosed.

RESPONSE: The Board is of the opinion that notifying the patient of the licensee's reason for refusing to release the record would defeat the intent of this provision, which is, of course, to protect the patient from information which may be harmful if known to him.

N.J.A.C. 13:35-6.5(c)3iii

COMMENT: The Essex County Medical Society is of the opinion that insurance companies are not entitled to a patient's full medical record or to a summary but merely to a "Universal Health Insurance form."

RESPONSE: In fact, such a construction is not supported by law. Insurance company entitlement to access to complete medical records is governed by the terms of the patient's contract with the insurance company as well as by the provisions of N.J.S.A. 39:6A-13(b).

N.J.A.C. 13:35-6.5(c)4

COMMENT: The Essex County Medical Society objected to the definition of "reasonable fee," stating it does not allow for inflation and does not take into account whether a physician has to photocopy the record or dictate a summary.

RESPONSE: The Board is confident that the definition provides practitioners with guidance as to what the Board will consider reasonable.

N.J.A.C. 13:35-6.5(c)5

COMMENT: The Union County Medical Society was concerned that this rule could be interpreted to require a transcript upon a patient's request simply because the patient was unfamiliar with the medical terminology contained in the record.

RESPONSE: The Board reviewed the language of the rule and believes it is clear that the patient can request a transcription only if the record is illegible or prepared in a language other than English and that the physician has no obligation to translate the record into laymen's terms.

COMMENT: The Essex County Medical Society is concerned that a physician will be expected to translate the records of others that have been incorporated into the file.

RESPONSE: The Board intends "treatment record" in the context of this rule to mean the record produced by the treating physician and not records of other health care practitioners which have been incorporated into the file of the treating physician. The Board believes the rule is sufficiently clear in that respect and that no modification is required.

N.J.A.C. 13:35-6.5(c)6

COMMENT: The Passaic County Medical Society suggested that this rule be modified to require that medical records be released only to other health care professionals, since a patient with an unpaid balance would be able to obtain the records merely by advising that the records were needed for ongoing care, whether or not that was the case.

RESPONSE: The plain language of the provision does require that there be a need for the records by another health care professional. The Board expects that if a licensee is not sure that the records are needed for ongoing care, the licensee will verify that need before allowing the release.

N.J.A.C. 13:35-6.5(d)3

COMMENT: The Public Advocate believes this rule could be interpreted to authorize non-consensual disclosure to consultants of sensitive mental health information or identifying information, contrary to the physician's duty of confidentiality and the patient's rights of self-determination.

RESPONSE: The Board disagrees with this interpretation and points out that when a licensee releases information about a patient's treatment to another health care professional whose expertise may assist the licensee in rendering professional services, such release is generally accomplished without revealing identifying information. When information is released to another health care professional who is providing or has been asked to provide treatment, the information is released in the patient's best interests only. The Board stresses that this is a common practice among physicians in their endeavor to provide the highest quality medical care.

N.J.A.C. 13:35-6.5(d)3 and 4

COMMENT: A representative of the University of Medicine and Dentistry expressed the opinion that a licensee should have limited immunity in connection with the release of records without patient consent.

RESPONSE: While the Board is not in a position to grant immunity pursuant to regulation, the Board believes the requirement that records may be released without patient consent only in the patient's best interests would certainly give a licensee a good defense in any legal action.

N.J.A.C. 13:35-6.5(f)

COMMENT: The Hudson County Medical Society suggested that this rule should require third parties who are seeking medical reports to specify the nature of the report sought.

RESPONSE: The Board has no jurisdiction over third parties but expects that a licensee would obtain clarification if the licensee was unsure of the nature of the report sought.

N.J.A.C. 13:35-6.5(h)

COMMENT: The Essex County Medical Society suggested that upon cessation of practice a physician be required to employ only one of the three mechanisms outlined for notifying patients of record retrieval procedures. The Society also suggested that this rule should apply only to patients requiring continuing care and not to patients seen only once.

RESPONSE: The Board believes all three mechanisms are valuable in attempting to contact patients and that this rule should not be modified.

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COMMENT: A practitioner suggested that the Board should incorporate into this rule a mechanism for reporting physicians who are delinquent in the preparation of hospital charts.

RESPONSE: The Board believes that subject is best left to a rule relating to hospital reporting.

COMMENT: A practitioner suggested that the Board provide guidelines for the preparation of medical legal reports.

RESPONSE: The Board believes that is beyond the scope of this rule.

COMMENT: The New Jersey Psychiatric Association expressed its support for the proposal, stating that the new rule will reinforce its continuing efforts to provide high quality medical and psychiatric care to the public.

RESPONSE: The Board acknowledges and agrees with this comment.

Summary of Changes Made Upon Adoption:

1. In N.J.A.C. 13:35-6.5(b)8, the word "quantities" was added to the list of information required to be supplied in the treatment record. This word was inadvertently left out of the proposal and the Board wishes to clarify that when listing medications prescribed, administered or dispensed, the quantity as well as the dosage and strength of the medication must be listed in the record.

2. In response to a comment from the Public Advocate, the more direct words "no later than" were substituted for the word "within" in the first sentence of N.J.A.C. 13:35-6.5(c)1 to encourage licensees to provide professional treatment records in a more timely fashion. In addition, the word "results" was added following the word "x-rays" in the last sentence of the paragraph to clarify that the x-ray results, not the x-rays themselves, must be included in the record.

3. In response to a comment received from the Commissioner of the Department of Insurance, the words "unless otherwise required by law" were added to N.J.A.C. 13:35-6.5(c)2 to clarify that a licensee may elect to provide a record summary only if the record itself is not otherwise required by law.

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4. The word "and" has been substituted for the word "or" which was inadvertently used in the first sentence of N.J.A.C. 13:35-6.5(h). The Board intends this provision to apply to licensees who temporarily leave the practice as well as to those who have determined to cease engaging in practice.

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

13:35-6.5 Preparation of patient records, access to or release of information; confidentiality, transfer or disposal of records

(a) The following terms shall have the following meanings unless the context in which they appear indicates otherwise:

"Authorized representative" means, but is not necessarily limited to, a person who has been designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of an insurance carrier with whom the patient has a contract which provides that the carrier be given access to records to assess a claim for monetary benefits or reimbursement. If the patient is a minor, a parent or guardian who has custody (whether sole or joint) will be deemed to be an authorized representative.

"Examinee" means a person who is the subject of professional examination where the purpose of that examination is unrelated to treatment and where a report of the examination is to be supplied to a third party.

"Licensee" means any person licensed or authorized to engage in a health care profession regulated by the Board of Medical Examiners.

"Patient" means any person who is the recipient of a professional service rendered by a licensee for purposes of treatment or a consultation relating to treatment.

(b) Licensees shall prepare contemporaneous, permanent professional treatment records. Licensees shall also maintain records relating to billings made to patients and third-party carriers for professional services. All treatment records, bills and claim forms shall accurately reflect the treatment or services rendered. Treatment records shall be maintained for a period of seven years from the date of the most recent entry. To the extent applicable, professional treatment records shall reflect:

1. The dates of all treatments;
2. The patient complaint;
3. The history;
4. Findings on appropriate examination;
5. Progress notes;
6. Any orders for tests or consultations and the results thereof;
7. Diagnosis or medical impression;
8. Treatment ordered, including specific dosages*, quantities* and strengths of medications if prescribed, administered or dispensed; and
9. The identity of the treatment provider if the service is rendered in a setting in which more than one provider practices.

(c) Licensees shall provide access to professional treatment records to a patient or an authorized representative in accordance with the following:

1. *[Within]* ***No later than*** 30 days *[of]* ***from*** receipt of a request from a patient or an authorized representative, the licensee shall provide a copy of the professional treatment record, and/or billing records as may be requested. The record shall include all pertinent objective data including test results and x-ray*[s]* ***results***, as applicable, and subjective information.

2. The licensee may elect to provide a summary of the record, so long as that summary adequately reflects the patient's history and treatment*, **unless otherwise required by law***.

3. If, in the exercise of professional judgment, a licensee has reason to believe that the patient may be harmed by release of the subjective information contained in the professional treatment record or a summary thereof, the licensee may refuse to provide such information. That record or the summary, with an accompanying notice setting forth the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:

- i. The patient's attorney;

- ii. Another licensed health care professional; or
- iii. The patient's health insurance carrier.

4. The licensee may require a record request to be in writing and may charge a reasonable fee for the reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the cost of copying or transcription.

5. If the patient or a subsequent treating health care professional is unable to read the treatment record, either because it is illegible or prepared in a language other than English, the licensee shall provide a transcription at no cost to the patient.

6. The licensee shall not refuse to provide a professional treatment record on the grounds that the patient owes the licensee an unpaid balance if the record is needed by another health care professional for the purpose of rendering care.

(d) Licensees shall maintain the confidentiality of professional treatment records, except that:

1. The licensee shall release patient records as directed by a subpoena issued by the Board of Medical Examiners or the Office of the Attorney General, or by a demand for statement in writing under oath, pursuant to N.J.S.A. 45:1-18. Such records shall be originals, unless otherwise specified, and shall be unedited, with full patient names. To the extent that the record is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide a translation. All x-ray films and reports maintained by the licensee, including those prepared by other health care professionals, shall also be provided.

2. The licensee shall release information as required by law or regulation, such as the reporting of communicable diseases or gunshot wounds or suspected child abuse, etc., or when the patient's treatment is the subject of peer review.

3. The licensee, in the exercise of professional judgment and in the best interests of the patient (even absent the patient's request), may release pertinent information about the patient's treatment to another licensed health care professional who is providing or has been asked to provide treatment to the patient, or whose expertise may assist the licensee in his or her rendition of professional services.

4. The licensee, in the exercise of professional judgment, who has a good faith belief that the patient because of a mental or physical condition may pose an imminent danger to himself or herself or to others, may release pertinent information to a law enforcement agency or other health care professional in order to minimize the threat of danger.

(e) Where the patient has requested the release of a professional treatment record or a portion thereof to a specified individual or entity, in order to protect the confidentiality of the records, the licensee shall:

1. Secure and maintain a current written authorization, bearing the signature of the patient or an authorized representative;

2. Assure that the scope of the release is consistent with the request; and

3. Forward the records to the attention of the specific individual identified or mark the material "Confidential."

(f) Where a third party or entity has requested examination, or an evaluation of an examinee, the licensee rendering those services shall prepare appropriate records and maintain their confidentiality, except to the extent provided by this section. The licensee's report to the third party relating to the examinee shall be made part of the record. The licensee shall:

1. Assure that the scope of the report is consistent with the request, to avoid the unnecessary disclosure of diagnoses or personal information which is not pertinent;

2. Forward the report to the individual entity making the request, in accordance with the terms of the examinee's authorization; if no specific individual is identified, the report should be marked "Confidential"; and

3. Not provide the examinee with the report of an examination requested by a third party or entity unless the third party or entity consents to its release, except that should the examination disclose abnormalities or conditions not known to the examinee, the licensee shall advise the examinee to consult another health care professional for treatment.

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(g) (Reserved)

(h) If a licensee ceases to engage in practice *[and]* *or* it is anticipated that he or she will remain out of practice for more than three months, the licensee or designee shall:

1. Establish a procedure by which patients can obtain treatment records or acquiesce in the transfer of those records to another licensee or health care professional who is assuming the responsibilities of that practice;
2. Publish a notice of the cessation and the established procedure for the retrieval of records in a newspaper of general circulation in the geographic location of the licensee's practice, at least once each month for the first three months after the cessation; and
3. Make reasonable efforts to directly notify any patient treated during the six months preceding the cessation, providing information concerning the established procedure for retrieval of records.

TRANSPORTATION

(a)

**DIVISION OF TRANSPORTATION ASSISTANCE
OFFICE OF AVIATION**

Air Safety and Hazardous Zoning

Readoption: N.J.A.C. 16:62

Proposed: January 16, 1990 at 22 N.J.R. 158(a).
 Adopted: February 16, 1990 by Robert A. Innocenzi, Acting
 Commissioner, Department of Transportation.
 Filed: February 26, 1990 as R.1990 d.178, **without change**.
 Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-32 and "Air
 Safety and Hazardous Zoning Act of 1983," P.L. 1983, c.260.
 Effective Date: February 26, 1990.
 Expiration Date: February 26, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:62.

TREASURY-GENERAL

(b)

STATE AFFIRMATIVE ACTION OFFICE (PUBLIC CONTRACTS)

**Affirmative Action Rules
Establishment of Goals**

**Adopted Amendment: N.J.A.C. 17:27-2.1
Adopted Repeals and New Rules: N.J.A.C. 17:27-5.2
and 7.3**

Proposed: November 6, 1987 at 22 N.J.R. 3439(b).
 Adopted: February 9, 1990 by Richard Wright, Deputy State
 Treasurer.
 Filed: February 16, 1990 as R.1990 d.160, **without change**.
 Authority: N.J.S.A. 10:5-31 et seq.; specifically 10:5-36k.
 Effective Date: March 19, 1990.
 Expiration Date: October 7, 1993.

Summary of Public Comments and Agency Responses:
 There was one comment letter received from the Utility and Transportation Contractors Association of New Jersey posing questions regarding the application of the new rules for establishing goals.
COMMENT: The Association requested an explanation of the impact of the volume of work in a county on the goals established for each contractor and whether differences in volume between counties would be considered when goals are established.

RESPONSE: The goals for each contractor will depend on the availability data reflecting the percentage of minority and female workers available within the county for the particular trades being utilized during the project. Therefore, a contractor involved in road construction will not necessarily have the same goal as a building contractor. All contractors within a county using the same trades will have the same goals regardless of the number of projects in that county. A contractor's compliance continues to be based on documented good faith efforts to attain the goals.

COMMENT: The volume of work in a county should be a factor in making a good faith determination.

RESPONSE: Although the number of construction contracts with a particular county is not explicitly stated as a factor used in making a good faith determination, the volume of work in a county has always been a consideration. The field staff of the State Affirmative Action Office is organized by county; therefore, the person making the compliance determination has the information needed regarding volume as well as the number of minority and female workers actually working on public contracts within the county.

COMMENT: Proposed N.J.A.C. 17:27-7.3(c) refers to good faith efforts of contractors and subcontractors. Other considerations for compliance should include the number of qualified minority and female workers by trade from the respective New Jersey labor unions with jurisdiction for the county.

RESPONSE: During the office's first contact with contractors on a new project, whether it is at the first job meeting or on the office's initial job site review, office personnel routinely ask the identification of the contractor's referral source to determine with which trade union local the contractor has a referral agreement and require that the contractor send a letter to the union requesting its assistance and cooperation in achieving the hiring goal on their particular project.

Full text of the adoption follows.

17:27-2.1 Definitions

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

"Minority worker" means a worker who is Black, Hispanic, Asian, or American Indian defined as follows:

- 1.-3. (No change.)
4. American Indian means a person having origins in any of the original people of North America and who maintain cultural identification through tribal affiliation or community recognition.

17:27-5.2 Establishment of goals

(a) The affirmative action office shall individually establish the minority and female employment goals for each procurement or service contractor or subcontractor. The affirmative action office shall analyze the types of jobs offered by each procurement or service contractor or subcontractor and compare that analysis to the number of qualified minorities and females available by county in 503 occupational classes as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) When a procurement or service contractor or subcontractor submits an initial employee information report as required by N.J.A.C. 17:27-4.3, the affirmative action office shall schedule an orientation and profile visit within 30 business days of the issuance of a certificate of employee information report to obtain detailed information on which of the 503 occupation classes comprise each of the nine Federal equal employment opportunity (EEO) categories in that procurement or service contractor's or subcontractor's work force. The affirmative action office shall compare that information to the availability data for the county in which the procurement or service contractor's or subcontractor's offices, plants or distribution centers are located to establish the employment goals based upon the occupational mix within the procurement or service contractor's or subcontractor's workforce. When a procurement or service contractor or subcontractor has offices, plants or distribution centers located in more than one county, the affirmative action office shall establish goals for each county.

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(c) The affirmative action office shall establish overall goals for each procurement or service contractor or subcontractor based upon the average of the individually established goals for the EEO categories in which that contractor has employees.

(d) Each procurement or service contractor or subcontractor submitting an application for renewal of a certificate of employee information report pursuant to N.J.A.C. 17:27-4.5(c), shall include information detailing the occupational classes that comprise each EEO category within their workforce to provide the affirmative action office with information to establish the individualized goals prior to the compliance review.

(e) In cases in which a public agency, contractor, subcontractor, or affected minority or female worker submits in writing a request to the affirmative action office for a determination of what employment goals should apply for a procurement or service contractor or subcontractor, the affirmative action office shall determine the proper employment goals. Any such employment goal determination by the affirmative action office shall be binding.

17:27-7.3 Establishment of goals

(a) The affirmative action office shall individually establish the minority and female employment goals for each construction contractor and subcontractor for each trade on each contract. The affirmative action office shall review the trades to be utilized during the completion of the work as reported on the initial project manning report and determine the employment goals based upon the number of qualified minorities and females available as reported by the New Jersey Department of Labor, Division of Planning and Research in its report, EEO Tabulation—Detailed Occupations by Race/Hispanic Groups.

(b) The affirmative action office shall provide written notification of the employment goals within seven working days of receipt of the initial project manning report to each construction contractor and public agency awarding the contract.

(c) During the initial job site meeting or first site monitoring visit, the affirmative action office representative shall discuss the construction contractor's and/or subcontractor's plans for attaining the employment goals and the good faith criteria used in determining compliance with this chapter. The affirmative action office shall evaluate compliance with the employment goals by reviewing the utilization of minorities and females as reported in the work hours per trade and the good faith efforts of each construction contractor or subcontractor. The affirmative action office shall calculate the work hours per trade based upon information on monthly project manning reports submitted pursuant to N.J.A.C. 17:27-7.6 and verified by site visits.

(d) Public agencies, contractors, subcontractors or affected minority or female workers may submit written requests to the affirmative action office for a determination of what employment goals should apply for a particular contract. The determination made by the affirmative action office in such cases shall be binding.

purpose of the rules. The Division was commended for its attempts to address the regulatory changes affecting the savings institution industry and for recognition of the fact that the group has members with business activities in more than one state.

Since N.J.A.C. 18:36 expired on February 4, 1990, pursuant to Executive Order No. 66(1978), and the adoption of the proposed readoption with amendments was not filed with the Office of Administrative Law until after that date, the rules proposed for readoption with amendments are adopted herein as new rules, pursuant to N.J.A.C. 1:30-4.4(f).

Full text of the adopted new rules proposed for readoption appears in the New Jersey Administrative Code at N.J.A.C. 18:36.

Full text of the adopted amendments to rules proposed for readoption follows.

CHAPTER 36

SAVINGS INSTITUTION TAX ACT

SUBCHAPTER 1. GENERAL PROVISIONS

18:36-1.1 Rate of tax

For taxes due in calendar year 1980 and each year thereafter, the tax rate is three percent.

18:36-1.2 Income of certain interest or dividends

Any income received from interest or dividends on obligations or securities of the State of New Jersey, its political subdivisions and authorities, as well as obligations of any authority, commission, instrumentality or territorial possession of the United States received on or after January 1, 1979, must be included in the tax base.

18:36-1.3 Partial payments

(a) With respect to fiscal or calendar accounting years ending after September 30, 1979, every taxpayer shall pay the excise tax due and such payment shall include a partial prepayment of eighty per cent of the tax liability as calculated under the provisions of the Savings Institution Tax Act.

(b) In succeeding accounting periods, taxpayer will be allowed a credit for such partial payment.

18:36-1.4 Accounting method

(a) If a taxpayer under the Savings Institution Tax Act, N.J.S.A. 54:10D-1 et seq., has distinct business activities within and outside the State of New Jersey, the taxpayer may utilize a source based method to account for income and expense attributable to activities within New Jersey and may calculate its tax based upon such method. Such method shall accurately reflect the portion of income derived from sources within New Jersey and attributable to New Jersey.

(b) For purposes of administering this section, the Director or any employee of the Division may make such review or examination of taxpayer's records, papers, vouchers, accounts and documents as may be needed to support such calculation (see N.J.S.A. 54:50-2).

OTHER AGENCIES

(b)

ELECTION LAW ENFORCEMENT COMMISSION

Office Hours and Copying Fees

Adopted Repeal: N.J.A.C. 19:25-2.2

Adopted Amendment: N.J.A.C. 19:25-2.4

Proposed: January 2, 1990 at 22 N.J.R. 22(a).

Adopted: February 23, 1990 by the Election Law Enforcement Commission, Frederick M. Herrmann, Ph.D., Executive Director.

Filed: February 23, 1990 as R.1990 d.172, **without change**.

Authority: N.J.S.A. 19:44A-6.

Effective Date: March 19, 1990.

Expiration Date: January 9, 1991.

Summary of Public Comments and Agency Responses:

No comments received.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Savings Institution Tax Rules

Adopted New Rules: N.J.A.C. 18:36

Proposed: January 16, 1990 at 22 N.J.R. 161(a).

Adopted: February 26, 1990 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: February 26, 1990 as R.1990 d.181, **without change**.

Authority: N.J.S.A. 54:50-1, 54:10D-14 and P.L. 1979, c.160, §4.

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

The Division of Taxation received one letter from a trade group favoring the recommended change to the rules which it felt better defined the

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Full text of the adoption follows.

19:25-2.2 (Reserved)

19:25-2.4 Copies of documents; fees

(a) Photocopies of documents maintained by the Commission pursuant to N.J.A.C. 19:25-2.3 shall be provided at a fee of \$0.15 per page, and for purposes of establishing fees under this section a two-sided photocopy shall be deemed as two pages.

(b) Computer-generated data shall be provided at the following fees:

1. \$0.10 per page (approximately 15 inches by 8-1/2 inches) of computer-printed data;

2. \$0.10 per computer-printed gummed, address label; and

3. \$125.00 per magnetic, 9-track computer tape (approximately 3,600 feet).

(c) The above fees shall be due and payable at such time as the photocopies or computer-generated data has been prepared.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Gaming Plaques; Physical Characteristics

Adopted Amendment: N.J.A.C. 19:46-1.2

Proposed: January 2, 1990 at 22 N.J.R. 23(a).

Adopted: February 22, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.

Filed: February 22, 1990, as R.1990 d.171, **without change**.

Authority: N.J.S.A. 5:12-63(c).

Effective Date: March 19, 1990.

Expiration Date: April 28, 1993.

Summary of Public Comments and Agency Responses:

COMMENT: Roberto Rivera-Soto, Vice President and Corporate Counsel of the Sands Hotel and Casino, supports the proposed amendment to N.J.A.C. 19:46-1.2.

RESPONSE: Accepted.

COMMENT: Patricia M. Wild, Associate General Counsel of Trump Plaza Hotel and Casino, supports the proposed amendment to N.J.A.C. 19:46-1.2.

RESPONSE: Accepted.

COMMENT: The Division of Gaming Enforcement supports the proposed amendment to N.J.A.C. 19:46-1.2.

RESPONSE: Accepted.

Full text of the adoption follows.

19:46-1.2 Gaming plaques; physical characteristics

(a) (No change.)

(b) Unless otherwise authorized by the Commission, each gaming plaque shall be square, rectangular, or oval in shape and no smaller than three inches in length by two inches in width which, in the case of oval gaming plaques, shall be measured at the points of greatest length and width. Each denomination of gaming plaque utilized by a casino licensee shall be of a different shape.

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

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(b)

DIVISION OF HEALTH PLANNING AND RESOURCES DEVELOPMENT

Certificate of Need: Surgical Facilities

Readoption: N.J.A.C. 8:33A

Proposed: December 18, 1989 at 21 N.J.R. 3888(a).

Adopted: February 16, 1990 by Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 20, 1990 as R.1990 d.168, **without change**.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Effective Date: February 20, 1990.

Expiration Date: February 20, 1992.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:33A.

(c)

DIVISION OF HEALTH PLANNING AND RESOURCE DEVELOPMENT

Certificate of Need: Designation of Trauma Centers Level I and Level II

Adopted New Rules: N.J.A.C. 8:33P

Proposed: December 18, 1989 at 21 N.J.R. 3889(a).

Adopted: February 16, 1990 by Leah Z. Ziskin, M.D., M.S., Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Filed: February 20, 1990 as R.1990 d.166, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 26:2K-35 et seq. and 26:2H-1 et seq.

Effective Date: March 19, 1990.

Expiration Date: March 19, 1995.

Summary of Public Comments and Agency Responses:

Comments were received from the following organizations and individuals:

- Allentown First Aid Squad (several individual members)
- Atlantic Health Systems
- The Honorable Anthony J. Cimino
- Hackensack Medical Center
- Healthcare Planning and Marketing Society of New Jersey
- Jersey City Medical Center
- The Honorable Francis J. McManimon
- New Jersey Hospital Association
- Policy and Plan Development Committee
- Robert Wood Johnson University Hospital
- St. Clares Riverside Medical Center
- St. Francis Medical Center
- St. Joseph's Hospital and Medical Center
- The Honorable Jennye W. Stubblefield
- Trenton Emergency Medical Service

COMMENT: The members of the Policy and Plan Development Committee of the Statewide Health Coordinating Council submitted the following comment: We are writing to express our full support for the promulgation of the regulations regarding the designation of trauma centers. The Policy and Plan Development (PPD) Committee of the Statewide Health Coordinating Council developed these regulations over the course of several open public meetings. The input from various interested parties was valuable and important to the development of the final proposal currently before the Health Care Administration Board. While a number of individuals were extremely helpful to the PPD in our

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work in developing the regulations, very special mention must be made of the late C. Clayton Griffin. Dr. Griffin gave generously of his time and expertise to the PPD and his patient guidance through many difficult and technical areas contributed to the development of regulations that assure quality and access in trauma care. It is clear that without his enthusiastic participation, these regulations would not be as valuable in trauma systems development as we are sure they will be. Dr. Griffin's untimely passing is a loss not only to the University Hospital/UMDNJ, but also to the entire trauma care network in the State. PPD has lost a friend and a colleague, and he will be missed.

RESPONSE: The Department acknowledges the support of the PPD Committee and thanks its members for the many hours they devoted to developing this rule. The Department also shares the Committee's thoughts about Dr. Griffin's contribution to this discussion and how much he will be missed.

COMMENT: Robert Wood Johnson University Hospital expressed general support for the proposed rules and specific support for recognizing the need for a Level I trauma center in central New Jersey and for recognizing the need to review trauma data and needs within two years.

COMMENT: The HealthCare Planning and Marketing Society of New Jersey submitted two comments regarding trauma DRGs. First, it stated that trauma DRGs define trauma so restrictively that they are unusable for purposes of planning or certificate of need review. Second, because of the narrow definition, these DRGs are not likely to provide adequate reimbursement. Similar comments were submitted by St. Joseph's Hospital and Medical Center.

RESPONSE: These comments apparently refer to DRGs 730 through 734 (Major Diagnostic Category 25), which apply to "multiple significant" trauma cases and which were added by Version 6.0 of the DRG grouper. The Department agrees that these DRGs include only a fraction of major trauma cases and a small fraction of all trauma cases and therefore are not by themselves appropriate for planning trauma services. The Department notes that trauma is not defined according to DRGs in the rules but rather according to Injury Severity Scores (ISS) and triage criteria (see discussion below). The Department has no intention of limiting trauma planning or data collection to MDC 25.

With regard to reimbursement, the Department notes that trauma cases are not required to fall into DRGs 730 through 734 to be reimbursed. Patients hospitalized for injuries which are not multiple and significant will fall into many other DRGs (see, for example, 439 through 446), and will be reimbursed accordingly.

Because there were multiple comments submitted for each of several provisions in the proposed rules, the remainder of the comments and responses will be organized according to section number:

N.J.A.C. 8:33P-1.2 Definitions

COMMENT: Atlantic Health Systems objected to the definition of "promptly available" because it specified that personnel can be attending patients at the trauma center within a maximum of 30 minutes from the time they are called. It points out that the American College of Surgeons did not specify a time period in their guidelines, and it suggests that the definition of "on call and promptly available" be left to each designated facility.

RESPONSE: The Department is making no change in the definition of "promptly available." The 30 minute period is specified in order to provide an objective, measurable standard of performance for rapid response by trauma center personnel, which is essential to providing effective trauma care. Not specifying a time period for such response would cause uncertainty and confusion among trauma centers.

N.J.A.C. 8:33P-1.3 Advertising and marketing of trauma services

COMMENT: St. Joseph's Hospital and Medical Center asked what repercussions there would be for non-designated hospitals which continue to use terms such as "trauma center" in violation of this provision.

RESPONSE: Persons or facilities which violated this provision would be subject to the range of penalties available for enforcement of the requirements of the Health Care Facilities Planning Act and rules promulgated thereunder. These penalties include fines, placing licensees on provisional or probationary status, and license suspension or revocation (see N.J.S.A. 26:2H-13). In addition, such violations could be considered in certificate of need or reimbursement decisions. Cases involving individual health care professionals would be referred to the Board of Medical Examiners or other professional licensure boards.

N.J.A.C. 8:33P-2.3 Availability of hospital resources

COMMENT: St. Joseph's Hospital and Medical Center asks for clarification of the term "available" in paragraph (a) and in paragraph (a)6.

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It also asks whether paragraph (a)6 requires the presence of a team of nurses in the trauma operating room in addition to the team that handles urgent and non-trauma emergencies.

RESPONSE: As stated in this provision, the 24-hour availability of the six resources listed is "further specified for each Level in" subchapters 3 through 5 of N.J.A.C. 8:33P. Thus, the precise requirements for staff availability (generally in-hospital 24 hours a day) are found in subsequent sections of the chapter, as follows:

- General surgeon and neurosurgeon—N.J.A.C. 8:33P-3.4(a)-(b).
- Anesthesiologist—N.J.A.C. 8:33P-3.5(a)2.
- Radiology (X-ray and CT)—N.J.A.C. 8:33P-4.1(a)4.ix. and 4.8(a)2.
- Clinical laboratory—N.J.A.C. 8:33P-5.2(a).
- Operating room—N.J.A.C. 8:33P-5.1(a)1.

The answer to the question about nurse staffing of the trauma operating room is yes; that is, N.J.A.C. 8:33P-2.3(a)6 and N.J.A.C. 8:33P-5.1(a)1 do require that an operating room be staffed by nurses, as well as surgeons, who are immediately available in-hospital 24 hours a day. The same nurses cannot meet 24-hour in-house availability requirements for both the ER and the trauma OR simultaneously.

N.J.A.C. 8:33P-2.4 Need criteria

COMMENT: A number of comments concerning the need criteria for trauma centers were submitted. The criterion of one Level I or Level II trauma center per million population in each HSA area, which yields a need for two trauma centers in each of the four HSA regions, was viewed by several commenters as too restrictive. Several similar comments argued that there was a need for a Level II trauma center in Mercer County for reasons of access. This argument was based on a number of factors including population, current volume of trauma patients, influx of visitors to Mercer County, and travel time to other areas of the State. A similar comment was made by Jersey City Medical Center with regard to Hudson County.

These and other commenters also stressed the importance of factors other than population—such as patterns of motor vehicle traffic and accidents, seasonal and transient population patterns, travel time, and population density—in determining need for trauma centers. It was suggested that a need methodology sensitive to all of these variables should be developed before designations are made.

RESPONSE: The Department agrees with the comment that the access-related and other factors noted by the commenters should be taken into account in planning for trauma centers. We note that a number of specific review criteria related to geographic access, transportation, population migration, etc. are included in N.J.A.C. 8:33P in the provisions on volume projection, geographic access, and competitive review (see N.J.A.C. 8:33P-2.5(a)2-4, 2.6, and 2.8(a)4).

The Department notes that nothing in N.J.A.C. 8:33P is intended to reflect any preference for or against designating trauma centers in any particular location, beyond recognizing a need for two trauma centers in each of the four major regions of the State. The access and geographic variables will be considered in making choices among competing applicants from different locations within each HSA region.

The criterion of one Level I or II trauma center per million population was based on data and analysis in the trauma research literature. This ratio is derived from striking a balance between considerations of access, the need to maintain a minimum volume of patients at each trauma center, and the costs associated with maintaining the 24-hour staffing required for trauma care. Volume is critically important in assuring that the trauma surgical team develop and maintain the skills necessary for high quality trauma care. For this reason, the Department is not proposing any revision to the need criterion in the rule.

However, the Department agrees with those commenters who point out the need to collect and analyze more detailed data on trauma care specific to New Jersey and to refine planning criteria in light of this data. N.J.A.C. 8:33P-2.4(c) requires the Department to develop a trauma care element for the State Health Plan within 24 months of designating trauma centers, including a revised need methodology and data analysis. The most comprehensive source of clinical trauma data will be that collected for the trauma registry in which all designated trauma centers will be required to participate (see N.J.A.C. 8:33P-5.3(a)5).

N.J.A.C. 8:33P-2.5 Minimum volume requirements

COMMENT: The Healthcare Planning and Marketing Society of New Jersey submitted a comment concerning the minimum volume requirements for major trauma cases and how major trauma is defined for this purpose. Similar comments were also submitted by Atlantic Health Sys-

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tems, St. Francis Medical Center, and St. Joseph's Hospital and Medical Center.

This section requires that trauma center applicants project a minimum annual volume of major trauma cases of 600 for Level I and 350 for Level II. In making the projections, applicants are to take into account those patients with an "Injury Severity Score" (ISS) of 10 or greater. The commenters ask whether only patients with ISS of 10 or more can be categorized as "major trauma" in projecting volume; they note that about half of the patients admitted to the two designated Level I trauma centers in New Jersey have ISS scores of less than 10.

RESPONSE: A substantial number of patients who have relatively low ISS scores are sent to trauma centers because of the "overtriage" built into a regionalized system. Overtriage results from sending such patients to a trauma center because the limited information available at the scene does not allow the EMS personnel to rule out the need for trauma care. It is appropriate to refer such doubtful cases for trauma center care in an effort to minimize "undertriage", which is failure to send a patient who needs trauma care to a trauma center. The appropriate level of overtriage is estimated by experts in the field to be roughly 50 percent.

Thus, it would be reasonable to double the number of patients with ISS of 10 or more in projecting trauma volume. In addition, the volume of cases at applicant hospitals with ISS of five or more and of one or more will be reviewed by the Department. Major trauma cases currently being treated at other hospitals in an applicant's service area will also be reviewed, since some fraction of such cases can be projected to be referred to the applicant if it is designated.

The Department also notes that volume projections will be compared among competing applicants in each HSA, using a uniform threshold for each hospital. High volume is one of several competitive review criteria. The rule does not permit designation of more than the number of trauma centers called for in the need criteria, even if more than this number can project the minimum volume. While 350 major trauma cases per year is a minimum requirement, the optimal volume level is much higher, perhaps 1,000 cases per year.

The Department has computer software which generates ISS scores for patients based on ICD9-CM diagnostic codes. This software is being used to calculate the number of patients by hospital by ISS score for 1988, and these data will be disseminated to all applicants and interested parties in advance of the application submission date.

N.J.A.C. 8:33P-2.8 Competitive review criteria

COMMENT: Jersey City Medical Center submitted a comment objecting to the competitive review criterion in N.J.A.C. 8:33P-2.8(a)1, which is, "Existence, size, and experience of accredited surgical residency program." The Medical Center feels that the important criterion is the 24-hour in-hospital availability of surgeons, whether or not they are residents. It argues that preference should be given to attending surgeons over residents and that a surgical teaching program is not relevant.

RESPONSE: It is correct that the requirement for 24 hour in-hospital availability of general and neurologic surgery specialists can be met by attending staff specialists rather than residents. The criterion relating to surgical residency programs is included for two reasons. First, it is generally more cost effective for Level II trauma centers to meet the surgical availability requirements with senior residents experienced in trauma cases. Second, the Department does not agree that the presence of a teaching program in surgery is irrelevant. While teaching in trauma surgery is strictly required only at Level I, it is appropriate to give preference to hospitals with such programs at Level II.

COMMENT: St. Joseph's Hospital and Medical Center recommends that availability of maternal-fetal medicine specialists be added to the competitive review criteria.

RESPONSE: The Department feels that the need for these specialized services is adequately reflected in N.J.A.C. 8:33P-4.7, on perinatal services.

N.J.A.C. 8:33P-2.9 Compliance by designated trauma centers

COMMENT: The Healthcare Planning and Marketing Society of New Jersey suggested that this section include a specific requirement that the Department develop licensure rules for trauma and that designated trauma centers comply with such rules. St. Joseph's Hospital and Medical Center recommends that trauma licensure standards be developed within 12 months of designation.

The Society also supported the participation by the applicants for trauma center designation in the Verification Program of the Committee on Trauma of the American College of Surgeons, as recommended by

the Department, for the purpose of identifying which required resources are not present in each hospital.

RESPONSE: In developing a process for evaluating compliance with trauma center standards in accordance with this provision, the Department intends to carefully consider what combination of licensure, reimbursement, and certificate of need standards and monitoring is the best approach to ensuring compliance. In addition, the Department will consider the advisability and feasibility of using the ACS Verification Program in ongoing monitoring of compliance. The Department feels it is not appropriate to specifically require licensure standards without first considering their relationship to other approaches. The compliance process developed by the Department will be promulgated in accordance with the Administrative Procedure Act and will be proposed in the New Jersey Register.

N.J.A.C. 8:33P-3.4 Surgical specialties availability

COMMENT: St. Clares Riverside Medical Center comments that the requirement for 24 hour in-hospital availability of general surgeons places an excessive financial burden on non-teaching hospitals. The medical center states that it is sufficient to have surgeons on call, if they are required to respond within 30 minutes.

RESPONSE: The Department disagrees with this comment. The requirement for having trauma surgeons present in the hospital full time is essential to a high quality trauma center. The source of this requirement is the set of standards published by the American College of Surgeons (ACS) Committee on Trauma, the recognized national experts in trauma surgery. Its importance has been confirmed by trauma surgeons from the Level I trauma centers in New Jersey. It was also extensively discussed by the Policy and Plan Development Committee of the Statewide Health Coordinating Council, which strongly supported this requirement.

N.J.A.C. 8:33P-4.1 Emergency department

COMMENT: The New Jersey Hospital Association recommends that N.J.A.C. 8:33P-4.1(a)1 be expanded to read "A designated physician director, preferably someone with experience in the position and appropriate qualifications."

RESPONSE: The Department's intent is that optimum emergency medical services be provided throughout the State in a coordinated network. The Association's suggestion is consistent with this intent; however, for clarity, the Department has specified the suggested requirements further to state, "A designated physician director, preferably one with experience in emergency medicine and appropriate qualifications, such as completion of an Advanced Trauma Life Support (ATLS) course or board certification in emergency."

N.J.A.C. 8:33P-4.4 Acute hemodialysis capability

COMMENT: St. Joseph's Hospital and Medical Center objects to N.J.A.C. 8:33P-4.4(b)3 because it would permit Level II trauma centers to transfer acute hemodialysis patients who also need trauma care.

RESPONSE: The Department notes that this provision gives preference to Level II trauma applicants with in-house dialysis capability and is more strict than the comparable ACS standard. This language reflects discussion by the PPD Committee and input from clinical experts, prior to initial publication of these rules. The Department feels that patient safety can be protected with appropriate transfer criteria and clinical judgment in individual cases.

N.J.A.C. 8:33P-4.5 Organized burn care

COMMENT: Hackensack Medical Center submitted a comment that there are no designated burn "centers" in New Jersey. Thus, this section would require trauma centers to have a transfer agreement with out-of-State hospitals. Hackensack also feels that it and other hospitals with burn "programs" should not be required to have a transfer agreement.

RESPONSE: The Department is revising this section to clarify that the transfer agreement can be with either a burn center or a burn "unit". There are no designated burn centers in New Jersey, and the only designated burn "unit" is St. Barnabas Medical Center. The transfer agreement requirement should apply to all hospitals, even those with burn programs. These programs have not been designated by the State and do not necessarily have the capability to treat all burn victims.

N.J.A.C. 8:33P-4.7 Perinatal services

COMMENT: St. Joseph's Hospital and Medical Center generally supports this provision but objects, for reasons of patient safety, to the fact that it would permit trauma centers to transfer trauma patients to another hospital which is Level III or Level IIA Perinatal Center.

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RESPONSE: The Department feels that patient safety can be protected with appropriate transfer criteria and clinical judgment in individual cases, as with dialysis patients.

N.J.A.C. 8:33P-4.8 Radiological special capabilities

COMMENT: St. Joseph's Hospital and Medical Center asks for clarification as to whether N.J.A.C. 8:33P-4.8(a)2 requires a CT technician to be in the hospital 24 hours a day.

RESPONSE: Yes, a CT technician is required to be in the hospital 24 hours a day. CT services are frequently needed during the evaluation and treatment of trauma, as are x-ray services. Other radiological special capabilities, such as angiography, sonography and nuclear scanning, are not as frequently utilized on a 24 hour basis. The rule has been amended to clarify the need for CT services 24 hours a day.

COMMENT: St. Joseph's Hospital and Medical Center asks which drugs patients must be screened for, according to N.J.A.C. 8:33P-5.2(a)8.

RESPONSE: What this standard requires is the capability to screen for various drugs or alcohol as clinically indicated in individual cases. In general, the trauma center would be expected to screen for drugs of abuse such as those which would be suspected in a drug overdose case. These would include controlled substances classified as Schedule I, illegal drugs, or Schedule II, prescription drugs which are potentially addictive, under the narcotics laws.

N.J.A.C. 8:33P-5.3 Quality assurance

COMMENT: Hackensack Medical Center points out that the word "unit" in N.J.A.C. 8:33P-5.3(a)1 should be "audit."

RESPONSE: "Audit" is correct; this is a typographical error which is corrected in the final rule.

N.J.A.C. 8:33P-5.9 Participation in regional EMS and trauma systems

COMMENT: Atlantic Health Systems comments that the Department should give more emphasis to the important role of pre-hospital EMS personnel in the trauma system.

RESPONSE: The Department agrees that the pre-hospital component of the EMS system is extremely important. The Department points out that this section specifically requires designated trauma centers to work with Basic and Advanced Life Support providers, and N.J.A.C. 8:33P-5.7 requires trauma centers to be involved in continuing education of emergency medical technicians and paramedics. There is a need for voluntary and educational approaches in this area, in part because local volunteer rescue squads are not subject to regulatory mandates.

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

CHAPTER 33P

CERTIFICATE OF NEED: DESIGNATION OF TRAUMA CENTERS, LEVEL I AND LEVEL II

SUBCHAPTER 1. GENERAL PROVISIONS

8:33P-1.1 Scope and purpose

The purpose of this chapter is to establish criteria and standards for review of certificate of need applications from hospitals applying to be designated as Level I or Level II trauma centers and to specify the personnel, equipment, organization, and other resources required for hospitals to qualify for, and operate as, specialized trauma centers.

8:33P-1.2 Definitions

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

"Advanced life support" means an advanced level of prehospital, interhospital, and emergency service care which includes basic life support functions, cardiac monitoring, cardiac defibrillation, telemetered electrocardiography, intravenous therapy, administration of specific medications, drugs and solutions, use of adjunctive ventilation devices, trauma care, and other techniques and procedures authorized by the Commissioner.

"Basic life support" means a level of prehospital care which includes patient stabilization, airway clearance, external closed chest cardiopulmonary resuscitation, control of hemorrhage, initial wound care, fracture stabilization, victim extrication, and other techniques and procedures authorized by the Commissioner, and contained in the most recent curriculum of the Emergency Medical Technician—

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Ambulance: National Standard Curriculum, U.S. Department of Transportation—National Highway Traffic Safety Administration, available from Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Department" means the New Jersey State Department of Health. "Desirable" applies to a criterion or standard which is not mandated or required for a trauma center but is suggested, compliance with which may be considered in competitive review of certificate of need applications.

"Emergency medical technician" (EMT) means an individual who has completed a course of instruction and who has been issued certification by the Commissioner to provide basic life support services, in accordance with the standards contained in the most recent curriculum of the Emergency Medical Technician—Ambulance: National Standard Curriculum, U.S. Department of Transportation—National Highway Traffic Safety Administration, available from the U.S. Printing Office, Washington, D.C. 20402.

"Essential" applies to a criterion or standard, compliance with which is mandated or required for trauma center designation.

"Health care facility" means a facility so defined in the Health Care Facilities Planning Act, N.J.S.A. 26:2H-1 et seq.

"In-hospital" means present at all times and immediately available to the trauma center. On call personnel are not considered to be in-hospital.

"Injury severity score" means the score calculated in accordance with the Abbreviated Injury Scale, 1985 revision, prepared by the Committee on Injury Scaling of the American Association for Automotive Medicine, Morton Grove, Illinois.

"Medical control" means direction by a hospital-based physician of basic and/or advance life support services delivered in the field by authorized personnel from a licensed emergency room.

"Mobile intensive care paramedic" means a person trained in advanced life support services.

"Mobile intensive care unit" (MICU) means a specialized emergency medical service vehicle staffed by mobile intensive care paramedics or mobile intensive care nurses trained in advanced life support nursing and operated for the provision of advanced life support services under the direction of an authorized hospital.

"On call" means that personnel are responsible for attendance at the trauma center when their presence is required, in accordance with an on call roster.

"Promptly available" means that personnel can be attending patients at the trauma center within a maximum of 30 minutes from the time they are called.

"Trauma" means a physical wound or injury. For purposes of this chapter, "major trauma" refers to a wound or injury which is sufficiently serious or severe to be treated at a Level I or Level II trauma center, as measured by whether it is ***[immediaetly]*** ***immediately*** life-threatening; the presence of injuries to multiple systems; Injury Severity Score or other trauma scoring systems; and/or the application of appropriate trauma triage decision criteria.

8:33P-1.3 Advertising and marketing of trauma services

Only a hospital which has been designated by the Department of Health as a Level I or Level II Trauma Center may use the terms "Trauma Center", "Trauma Service", "Trauma Unit", "Trauma Facility", "Trauma Program", "Trauma Hospital" or any similar terms in advertising or marketing materials, or may in any other way hold itself out to the public as providing trauma treatment or services of the type offered by Level I or Level II Trauma Centers, as described in this chapter.

SUBCHAPTER 2. CRITERIA FOR PLANNING AND CERTIFICATE OF NEED REVIEW

8:33P-2.1 Submission dates for certificate of need applications.

(a) Applications for designation as a Level I or a Level II trauma center shall be competitively reviewed at each level pursuant to batching procedures set forth in N.J.A.C. 8:33-1.5. The following schedule shall apply for the submission of certificate of need applications for trauma center designation during calendar years 1990 and 1991:

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<u>Deadlines for Submission</u>	<u>Cycle Begins</u>
March 1, 1990†	April 15, 1990†
April 1, 1990†	May 15, 1990†
April 1, 1991	May 15, 1991

†For one time only, applications for designation as a Level I Trauma Center in EMS Region II as shown in Appendix A, which is identical to HSA Region IV as shown in Appendix B, shall be submitted on March 1, 1990 rather than April 1, 1990. Level II applications shall be submitted on April 1, 1990.

(b) Beginning in calendar year 1992, the schedule shall be:

<u>Deadlines for Submission</u>	<u>Cycle Begins</u>
April 1	May 15
October 1	November 15

8:33P-2.2 Types of applications

(a) The application for a trauma center certificate of need shall specify whether the applicant seeks designation as:

1. A Level I Trauma Center only;
2. A Level II Trauma Center only; or
3. A Level I Trauma Center, but also seeks designation as a Level II Trauma Center if it is not designated as a Level I Trauma Center.

(b) Applications shall identify a single hospital and single site for the trauma center.

8:33P-2.3 Availability of hospital resources

(a) Applicants for designation at either Level I or Level II shall demonstrate that they will have the following resources available 24 hours a day, seven days a week, as further specified for each Level in N.J.A.C. 8:33P-3 through 5, as soon as possible after certificate of need approval, but in no case later than 12 months after such approval:

1. A general surgeon;
2. A neurosurgeon;
3. An anesthesiologist;
4. Radiology equipment and personnel;
5. A clinical laboratory; and
6. An operating room equipped and staffed and available at all times for trauma cases.

(b) The availability of the resources specified in (a) above shall be documented during this period to the Health Systems Agency in the area and to the Department of Health.

(c) Applicants for designation at either Level I or Level II shall also demonstrate that they have developed the written protocols and policies described in N.J.A.C. 8:33P-5.3(g)1 through 7 as soon as possible after certificate of need approval, but in no case later than 12 months after such approval. These protocols and policies shall be documented during this period to the Health Systems Agency in the area and to the Department of Health.

8:33P-2.4 Need criteria

(a) There is a need for one Level I trauma center in each of the three EMS regions shown on the map in Appendix A, incorporated herein by reference. No certificate of need application shall be accepted from any EMS region with an existing designated Level I trauma center.

(b) The need for Level II trauma centers shall be calculated as follows: The total number of trauma centers, including both Level I and Level II centers, needed in each of the four HSA regions shown in Appendix B, incorporated herein by reference, shall be equal to the total population for the region, according to the most recent Department of Labor estimates, divided by one million (1,000,000), rounded to the nearest whole number. Any currently designated trauma centers in the region, either Level I or Level II, shall be subtracted from this total to determine net need for Level II trauma centers in each HSA region.

(c) Within 24 months of the first designation of Level II trauma centers subsequent to the adoption of this chapter, the Department of Health shall develop a State Health Plan element on trauma services, which shall include data analysis and a revised need methodology.

8:33P-2.5 Minimum volume requirements

(a) Applicants shall submit data on their current volume of major trauma cases and project a volume of major trauma cases of at least 350 per year for Level II centers and at least 600 per year for Level I centers by the end of the second full year after designation. In making these projections, the applicants shall take the following into account:

1. Current trauma volume, particularly for those trauma patients with an Injury Severity Score of 10 or greater;
2. Service area covered, with regard to population and proximity to other hospitals treating trauma cases;
3. Patterns in the service area of motor vehicle transportation and accidents; and
4. Patterns of seasonal and transient population in the service area.

8:33P-2.6 Geographic access

Applicants shall address the accessibility of their trauma center to emergency transport vehicles via ground and air transportation routes.

8:33P-2.7 Letters of support

Applicants shall submit to the Department any letters of support from pre-hospital advanced life support and basic life support providers in their service areas.

8:33P-2.8 Competitive review criteria

(a) If the number of applications for designation as a Level I or Level II trauma center in an EMS or HSA region exceeds the number calculated according to the method described in N.J.A.C. 8:33P-2.4, the applications shall be competitively reviewed according to the following factors, in addition to the criteria in N.J.A.C. 8:33P-3 through 5:

1. Existence, size, and experience of accredited surgical residency program;
2. Medical and nursing staff credentials, experience, and qualifications specific to treatment of major trauma cases, particularly surgical trauma cases;
3. Current and projected volumes of major trauma cases treated, in particular those with Injury Severity Scores of 10 or greater;
4. Geographic location and accessibility to major transportation routes;
5. Support or endorsement from the Health Systems Agency, other hospitals, and advanced life support and basic life support providers;
6. Most cost effectiveness in terms of operating costs;
7. Implementation and availability, in the shortest period of time, of the following resources 24 hours a day, seven days a week, as further specified for each Level in N.J.A.C. 8:33P-3 through 5:
 - i. A general surgeon;
 - ii. A neurosurgeon;
 - iii. An anesthesiologist;
 - iv. Radiology equipment and personnel;
 - v. A clinical laboratory; and
 - vi. An operating room equipped and staffed and available at all times for trauma cases;
8. Development, in the shortest period of time, of the written protocols and policies described in N.J.A.C. 8:33P-5.3(g)1 through 7; and
9. Availability of acute hemodialysis capability in-house, as a first preference, or through an Interhospital Outreach Program (IHOP), as a second preference.

8:33P-2.9 Compliance by designated trauma centers

(a) After designation, Level I and Level II trauma centers shall have the burden of demonstrating to the Department of Health full and continuing compliance with all applicable "essential" Level I or Level II criteria, including the minimum volume requirement, according to a process specified by the Department of Health. Designated Trauma Centers shall be first evaluated for compliance no later than 24 months after initial designation.

(b) The process for evaluation of compliance referred to in (a) above shall be adopted by the Department of Health within 18 months after the first designations made after adoption of this chapter.

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(c) Hospitals which are found by the Department of Health to be out of compliance with the requirements of this chapter shall be subject to certificate of need, licensure, and reimbursement sanctions, including termination of designation as a trauma center.

SUBCHAPTER 3. HOSPITAL ORGANIZATION**8:33P-3.1 Trauma service**

(a) Except as otherwise noted, the following are essential for both Level I and Level II:

1. Specified delineation of privileges for the trauma service shall be made by the medical staff Credentialing Committee;

2. The trauma team shall be organized and directed by a general surgeon expert in and committed to care of the injured. All patients with multiple-systems or major injury shall be initially evaluated by the trauma team. The surgeon who will be responsible for overall care of a patient (the team leader) shall be identified as such within the institution. A team approach is required for optimal care of patients with multiple-system injuries;

3. There shall be an individual who is identified and accountable for operation of the trauma service and who shall be qualified to serve in the capacity. The standards for this individual are:

i. Evidence of clinical qualifications, including:

(1) Educational preparation, by Continuing Medical Education (CME) documentation or fellowship;

(2) Experience in traumatology; and

(3) Board certification in surgery;

ii. Evidence of continuing medical education that is trauma related, which shall include 100 hours of continuing medical education (CME) credit in the prior two-year period for Level I and 70 hours of CME credit in the prior two-year period for Level II;

iii. Participation in the development of trauma care systems on a local, regional, state, or national level (essential for Level I, desirable for Level II).

iv. Educational involvement, such as:

(1) The Advanced Trauma Life Support (ATLS) course;

(2) Teaching at the undergraduate, graduate, and/or postgraduate levels; and

(3) Training programs within the department of surgery;

v. Participation in clinical, epidemiological, or basic research in trauma and publication of the results; and

vi. Evidence of active participation in the resuscitation or surgery, or both, of multisystem trauma patients;

vii. The provision of a written job description and organizational chart defining the relationship between the trauma service director and other hospital services; and

4. There shall be evidence of a structured method for monitoring and evaluating trauma patients throughout their hospital stay. Such plan shall show evidence of interface and collaboration between nursing management responsible for the trauma nursing service and the physician management responsible for the trauma service.

8:33P-3.2 Surgery departments/divisions/services/sections

(a) Surgery departments/divisions/services/sections shall be staffed by qualified specialists in the following specialties:

1. Essential for both Level I and Level II:

i. Orthopaedic Surgery;

ii. General Surgery; and

iii. Neurologic Surgery.

2. Essential for Level I; desirable for Level II:

i. Plastic/Maxillofacial Surgery;

ii. Urologic Surgery;

iii. Obstetrics-Gynecologic Surgery;

iv. Ophthalmic Surgery;

v. Cardiothoracic Surgery;

vi. Pediatric Surgery; and

vii. Otorhinolaryngologic Surgery; and

3. Desirable for both Level I and Level II:

i. Oral Surgery—Dental.

8:33P-3.3 Emergency department/division/service/section

The emergency department staff, including the emergency department physician, shall function to insure immediate access and ap-

propriate care to the trauma patient. The emergency department physician should function as a designated member of the trauma team and the relationship between emergency department physicians and other participants of the trauma team shall be established on a local level, consistent with resources but adhering to established standards and ensuring optimal care. A working relationship, directed toward the goal of patient care, shall be established in-hospital as well as with other hospitals that refer patients to the Level I or Level II trauma center.

8:33P-3.4 Surgical specialties availability

(a) The following qualified specialists shall be available in-hospital 24 hours a day, as an essential requirement for both Level I and Level II:

1. General Surgery. This requirement shall be fulfilled by attending surgeons credentialed in trauma care by the institution and capable of assessing emergent situations; and

2. Neurologic Surgery. An attending neurosurgeon shall be promptly available to the trauma service. The in-hospital requirement may be fulfilled by an in-hospital neurosurgeon or a surgeon who has special competence (as judged by the Chief of Neurosurgery) in the care of patients with neural trauma, and who is capable of initiating measures directed at stabilizing the patient and initiating diagnostic procedures.

(b) For Level II trauma centers, but not for Level I, the requirements specified in (a) above may be fulfilled by senior residents (Post-Graduate Year 4 or Post-Graduate Year 5) in the hospital's accredited surgical training program capable of assessing emergent situations in their specific specialties, providing surgical treatment immediately, and providing control and surgical leadership to the trauma team. Whenever a senior resident is used to fulfill the availability requirement, a staff specialist shall be on call and promptly available.

(c) The following qualified specialists shall be on call and promptly available from inside or outside the hospital as follows:

1. Essential for both Level I and Level II:

i. Orthopaedic Surgery;

ii. Plastic/Maxillofacial Surgery;

iii. Urologic Surgery;

iv. Ophthalmic Surgery;

v. Otorhinolaryngologic Surgery; and

vi. Thoracic Surgery; and

2. Essential for Level I; desirable for Level II:

i. Obstetrics-Gynecologic Surgery;

ii. Oral Surgery—Dental;

iii. Microsurgery capabilities;

iv. Hand Surgery;

v. Cardiac Surgery; and

vi. Pediatric Surgery

8:33P-3.5 Non-surgical specialties availability

(a) The following qualified non-surgical specialists shall be available in-hospital 24 hours a day, as an essential requirement for both Level I and Level II, as follows:

1. Emergency Medicine. A specialist in emergency medicine shall be available 24 hours a day. This requirement may be fulfilled by senior level emergency medicine residents in the hospital's accredited training program who are capable of assessing emergency situations in trauma patients and who are capable of directing and providing for indicated treatment. When residents are used to fulfill this requirement, a staff specialist shall be immediately informed and promptly available.

2. Anesthesiology:

i. For Level I, this requirement shall be fulfilled by an attending anesthesiologist capable of assessing emergent situations in trauma patients and providing for any indicated treatment.

ii. For Level II, this requirement may be fulfilled by an anesthesiology resident in the hospital's accredited training program or certified nurse anesthetist (CRNA) capable of assessing emergent situations in trauma patients and providing for any indicated treatment. When an anesthesiology resident or CRNA is used to fulfill this requirement, the staff anesthesiologist on call shall be advised and promptly available.

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(b) The following qualified non-surgical specialists shall be on call and promptly available from inside or outside the hospital as follows:

1. Essential for both Level I and Level II:
 - i. Cardiology;
 - ii. Hematology;
 - iii. Internal Medicine;
 - iv. Nephrology;
 - v. Pathology;
 - vi. Pediatrics; and
 - vii. Radiology; and
2. Essential for Level I; desirable for Level II:
 - i. Psychiatry;
 - ii. Infectious diseases;
 - iii. Chest medicine; and
 - iv. Gastroenterology; and
3. Desirable for Level I:
 - i. Neuroradiology.

SUBCHAPTER 4. SPECIAL FACILITIES/RESOURCES/
CAPABILITIES

8:33P-4.1 Emergency department (ED)

(a) The following emergency department (ED) personnel and equipment are essential for both Level I and Level II:

1. A designated physician director ***with experience in emergency medicine and appropriate qualifications, such as completion of an Advanced Trauma Life Support (ATLS) course or board certification in emergency medicine;***
2. A physician with special competence in care of the critically injured who is a designated member of the trauma team and physically present in the ED 24 hours a day;
3. RNs, LPNs, and nurses' aides in adequate numbers; and
4. Equipment for resuscitation and to provide life support for the critically injured or seriously injured, which shall include, but not be limited to:
 - i. Airway control and ventilation equipment including laryngoscopes and endotracheal tubes of all sizes, bag-mask resuscitator, pocket masks, oxygen, and mechanical ventilator;
 - ii. Suction devices;
 - iii. Electrocardiograph-oscilloscope-defibrillator;
 - iv. Apparatus to establish central venous pressure monitoring;
 - v. All standard intravenous fluids and administration devices, including intravenous catheters;
 - vi. Sterile surgical sets for procedures standard for ED, such as thoracostomy and cut-down;
 - vii. Gastric lavage equipment;
 - viii. Drugs and supplies necessary for emergency care;
 - ix. X-ray capability, 24-hour coverage by in-hospital technician;
 - x. Two-way radio lined with vehicles of emergency transport system; and
 - xi. Skeletal traction device for cervical injuries.

8:33P-4.2 Intensive care units (ICUs) for trauma patients

(a) ICUs may be separate specialty units or surgical ICU's. The following are essential for ICUs in both Level I and Level II:

1. A designated medical director;
2. A physician on duty in ICU 24 hours a day, or immediately available from in-hospital, who is not the emergency department physician;
3. A nurse-patient minimum ratio of 1:2 on each shift;
4. Immediate access to clinical laboratory services; and
5. Equipment as follows:
 - i. Airway control and ventilation devices;
 - ii. Oxygen source with concentration controls;
 - iii. Cardiac output monitoring;
 - iv. Temporary transvenous pacemaker;
 - v. Electrocardiograph-oscilloscope-defibrillator;
 - vi. Cardiac output monitoring;
 - vii. Electronic pressure monitoring;
 - viii. Mechanical ventilator-respirators;
 - ix. Patient weighing devices;
 - x. Pulmonary function measuring devices;
 - xi. Temperature control devices;

- xii. Drugs, intravenous fluids, and supplies; and
- xiii. Intracranial pressure monitoring devices.

8:33P-4.3 Postanesthetic recovery room

A postanesthetic recovery room shall be essential for both Level I and Level II. The room shall be staffed by registered nurses and other essential personnel 24 hours a day. The room shall contain appropriate monitoring and resuscitation equipment. A surgical intensive care unit shall be considered to fulfill the requirement for a postanesthetic recovery room.

8:33P-4.4 Acute hemodialysis capability

(a) Full in-house acute hemodialysis capability shall be essential for Level I.

(b) Acute hemodialysis capability shall be essential for Level II, in accordance with the following preferences:

1. First preference: full in-house capability;
2. Second preference: inter-hospital outreach program (IHOP);
3. Third preference: transfer agreement with a Level I or Level II trauma center with full acute hemodialysis capability, including clinically appropriate criteria for safe transfer of trauma patients who also need acute hemodialysis.

8:33P-4.5 Organized burn care

(a) The following are essential for both Level I and Level II:

1. There shall be an organized burn ***unit or*** center staffed by physicians and nursing personnel trained in burn care. In facilities that cannot provide for a burn ***unit or*** center within the institution, there shall be a written and signed transfer agreement between the institution and a nearby burn ***unit or*** center;
2. The burn ***unit or*** center shall be properly staffed and equipped for care to the extensively burned patient; and
3. The burn ***unit or*** center shall have a designated physician director who has had specialized training in burn therapy or equivalent experience in burn care.

8:33P-4.6 Acute spinal cord/head injury management

(a) A team approach to the initial care and continued management of the acute spinal cord injury victim shall exist and shall include active participation for members of rehabilitation services.

(b) In circumstances where another hospital in the region is a spinal cord/head injury center, a written and signed transfer agreement with the hospital shall be prepared.

8:33P-4.7 Perinatal services

As an essential requirement for both Level I and Level II, any trauma center which is not itself designated as a Level III or Level IIA perinatal center shall have a written transfer agreement with a New Jersey hospital designated as a Level III perinatal center, with clinically appropriate criteria for safe transfer of trauma patients who also need specialized perinatal or neonatal services.

8:33P-4.8 Radiological special capabilities

(a) The following radiological special capabilities are essential for both Level I and Level II:

1. Angiography of all types; and
 2. In-hospital computerized tomography, with technician ***who is available in-hospital 24 hours a day.***
- (b) The following radiological special capabilities are essential for Level I and desirable for Level II*[*] *[*] *[*]:
1. Sonography*[*] *[*] *[*] and
 2. Nuclear scanning.

8:33P-4.9 Rehabilitation medicine

(a) The following are essential for both Level I and Level II*[*]**:*

1. The applicant shall provide documentation that the rehabilitation potential of each trauma patient will be assessed by a ***[psychiatrist]* *physiatrist*** and that a written rehabilitation plan of care will be implemented by the applicant in accordance with the patient's needs;
2. The applicant shall provide documentation that a multi-disciplinary trauma team, including a social worker or discharge planner, will develop and implement a discharge plan for each trauma patient; and

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3. To assure continuity of care for trauma patients who may require inpatient comprehensive rehabilitation, as it is defined in N.J.A.C. 8:33M-1.2, applicants which are not themselves licensed rehabilitation hospitals shall submit documentation of existing or anticipated transfer agreements with licensed rehabilitation hospitals located throughout the proposed service area.

8:33P-4.10 Social services

(a) Social work staff shall intervene with the patient, patient's family, significant others, community, and members of the interdisciplinary team and/or hospital staff, as indicated, providing diagnostic, therapeutic and concrete services.

(b) There shall be documentation in the patient's record of the social work services provided.

SUBCHAPTER 5. OTHER REQUIREMENTS

8:33P-5.1 Operating suite special requirements

(a) The following equipment-instrumentation shall be required for both Level I and Level II:

1. An operating room, adequately staffed, in-hospital. Both the operating room and the staff shall be immediately available 24 hours a day;
2. Thermal control equipment:
 - i. For patients; and
 - ii. For blood.
3. X-ray capability;
4. Endoscopes, all varieties;
5. A craniotome; and
6. Monitoring equipment.

(b) The following equipment-instrumentation is essential for Level I and desirable for Level II:

1. Cardiopulmonary bypass capability; and
2. An operating microscope.

8:33P-5.2 Clinical laboratory service

(a) The following clinical laboratory services shall be available 24 hours a day, as an essential requirement for both Level I and Level II:

1. Standard analyses of blood, urine, and other body fluids;
2. Blood typing and cross-matching;
3. Coagulation studies;
4. Comprehensive blood bank or access to a community central blood bank and adequate hospital storage facilities;
5. Blood gases and pH determinations;
6. Serum and urine osmolality;
7. Microbiology; and
8. Drug and alcohol screening.

8:33P-5.3 Quality assurance

(a) Level I and Level II trauma centers shall have organized quality assurance programs (Level II programs shall be coordinated with the regional Level I center) which shall include the following:

1. A special *[unit]* **audit*** for all trauma deaths and other specified cases;
2. A morbidity and mortality review;
3. A multidisciplinary trauma conference;
4. A medical nursing audit, utilization review, and tissue review; and
5. A trauma registry review, as follows:
 - i. A registry shall be maintained of all major trauma admissions with pertinent treatment and outcome data, as determined by the New Jersey State Department of Health, Office of Emergency Medical Services. The registry shall be based at the Level I centers, and all Level II centers shall participate; and
 - ii. The trauma registry shall include, at a minimum:
 - (1) Severity of injury, including the probability of death;
 - (2) Anatomic site(s) of injury (injuries);
 - (3) Nature of injury (injuries);
 - (4) Mechanism of injury;
 - (5) Classification of patient injuries, including subgroups;
 - (6) Demographic information as to age, sex, and other factors;

(7) Appropriate injury severity scores and/or trauma scores, as determined by the Department of Health at various points in the patient's treatment;

(8) Information on the patient's length of stay, including length of stay in the trauma ICU, and step-down units, and regular patient areas; and

(9) Outcome;

iii. All data and statistics in the registry shall be reviewed for completeness by the trauma center staff and missing information supplied before final analysis is begun; and

iv. An analysis shall be made of data collected, with the resulting findings and conclusions sent monthly to the New Jersey State Department of Health, Office of Emergency Medical Services; and

6. A review of prehospital and regional systems of trauma care.

(b) The hospital shall provide written protocols and policies to support a systematic and comprehensive approach to the care of trauma patients with the following identified requirements:

1. Trauma patient triage protocols;
2. Trauma team response protocols;
3. Trauma patient resuscitation and stabilization protocols;
4. Operating room protocols for support of the trauma team with explicit recognition to the priority given to trauma patients;
5. Trauma patient transport protocols, both for emergency department to the operating room, and from one hospital to another;
6. A special audit for trauma deaths at least every month;
7. A morbidity review and cost-of-care review monthly; and
8. For a Level II center, a transfer agreement with the regional Level I trauma center.

8:33P-5.4 Outreach program

The outreach program shall be based at the Level I centers, and Level II centers shall cooperate in its implementation. The program shall include telephone and on-site consultations with physicians of the community and outlying areas. The Level I trauma center shall serve as a resource on outreach programs for all Level II trauma centers and providers of EMS services in its region.

8:33P-5.5 Public education

Both Level I and Level II centers shall provide education regarding injury prevention in the home and industry, and on the highways and athletic fields; standard first-aid; and problems confronting the public, the medical profession, and hospitals regarding optimal care for the injured.

8:33P-5.6 Trauma research program

The Level I centers shall conduct a trauma research program, including analysis of trauma registry data, in which the Level II centers shall participate.

8:33P-5.7 Training program

(a) Both Level I and Level II centers shall provide formal programs in continuing education, with the Level II programs provided in cooperation with the Level I center, for:

1. Staff physicians;
2. Nurses;
3. Allied health personnel, such as emergency medical technicians and paramedics;
4. Community physicians; and
5. Community nurses, including registered and licensed practical nurses.

8:33P-5.8 Nursing requirements

(a) The following nursing requirements in (b) through (i) shall be essential for both Level I and Level II.

(b) The hospital shall define the roles of the nursing team members and their areas of responsibility, accountability, and authority.

(c) The hospital shall designate an individual as the trauma nurse coordinator.

(d) The trauma nurse coordinator shall be responsible for monitoring the quality of care given by the nursing staff as the trauma patient moves through the hospital system.

(e) The trauma nurse coordinator shall have the responsibility to monitor and promote all trauma related activities associated with patient care.

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(f) The trauma plan for the nursing department shall include:

1. The ability to immediately mobilize qualified nursing resources from inpatient areas for initial multiple resuscitation efforts; and
2. A defined and structured role for the trauma nurse coordinator or the nurse administrator responsible for the overall coordination and integration of the trauma service.

(g) The standards for the individual who shall be designated the trauma nurse coordinator are:

1. Evidence of qualification, including:
 - i. Educational preparation;
 - ii. Certification; and
 - iii. Experience;
2. Evidence of continuing education related to trauma care and the trauma system;
3. Participation in the development of trauma care systems on a local, regional, state, or national level;
4. Documentation of participation as either program coordinator, consultant, or as a faculty member, in trauma education activities comparable to the Advanced Trauma Life Support **[(ATLAS)]** ***(ATLS)*** course which are separate from the institution's in-hospital trauma education program and which offer evidence of the application of the trauma nursing activities; and
5. Participation in trauma research either through promoting or coordinating such research.

(h) There shall be a written job description and organizational chart defining the relationship between the trauma nurse coordinator and other ***[hosptial]* *hospital*** services.

(i) There shall be evidence of the participation of the trauma nurse coordinator in establishing programs to influence the nursing care of the trauma patient.

8:33P-5.9 Participation in regional EMS and trauma systems

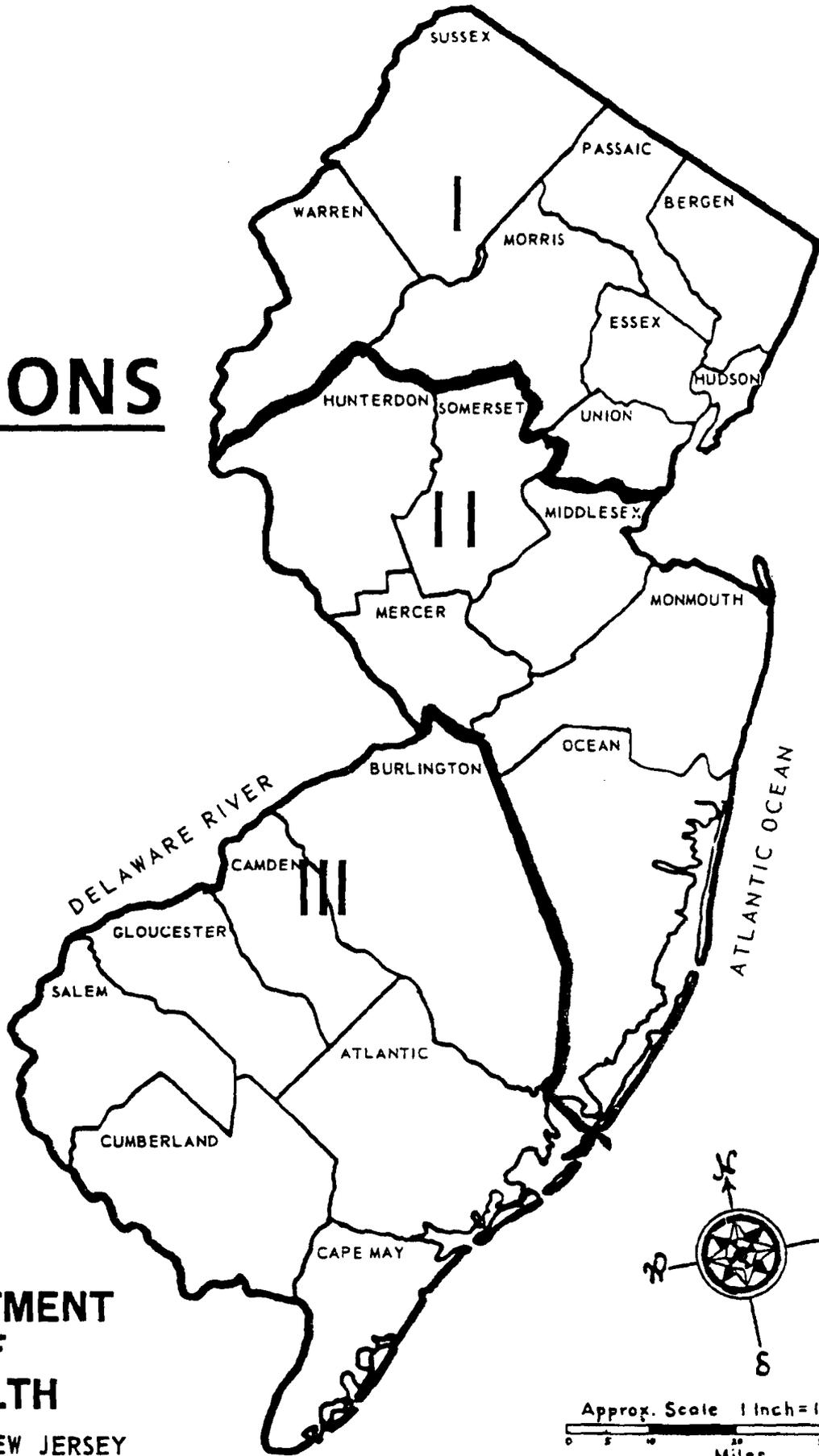
(a) Level I and Level II trauma centers shall establish working relationships with each other, as well as with basic and advanced life support and emergency transportation providers, community hospitals and other elements of the regional trauma network, with Level I centers taking the lead.

(b) Both Level I and Level II centers shall document active involvement in the local and regional emergency medical services (EMS) systems. This involvement can be demonstrated by:

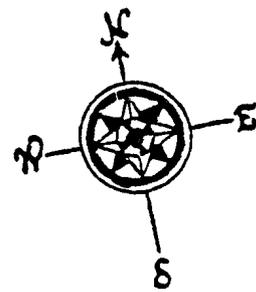
1. Providing joint educational programs with other institutions, including instruction in the equipment, supplies, and drugs specific to the major trauma patient;
2. Providing on-line medical control; and
3. Assisting in the development of regional policies, procedures and protocols.

APPENDIX A

EMS REGIONS

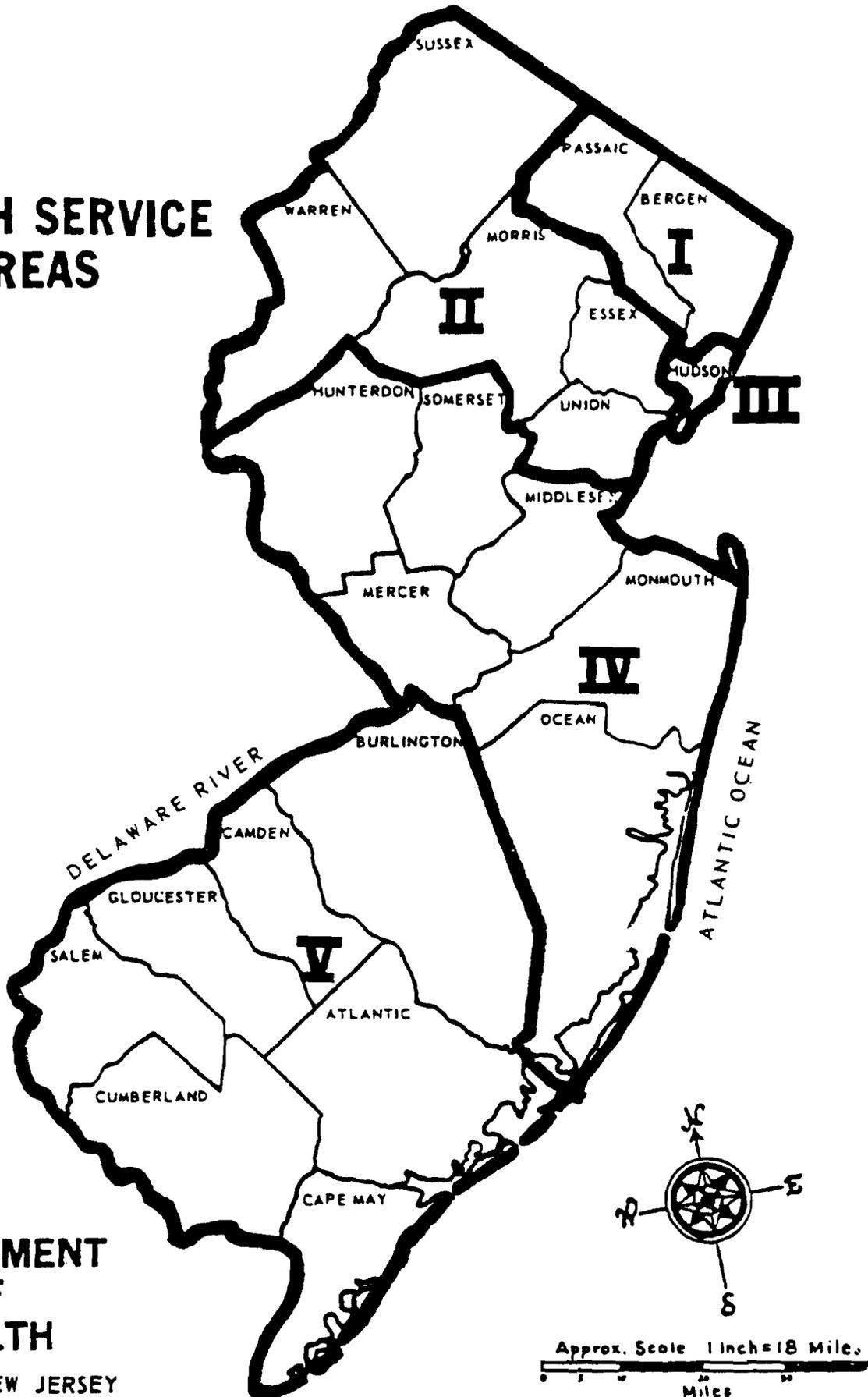


DEPARTMENT
OF
HEALTH
STATE OF NEW JERSEY



APPENDIX B

HEALTH SERVICE AREAS



DEPARTMENT OF HEALTH
STATE OF NEW JERSEY

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Notice of Receipt of Petition for Rulemaking Hazardous Waste Recycling

Petitioner: Electrum Recovery Works, Inc.

Take notice that on February 1, 1990, the Department of Environmental Protection (Department) received a petition for rulemaking concerning hazardous waste recycling. Petitioner requests that the Department amend N.J.A.C. 7:26-8 to allow for partial, rather than full, regulation of hazardous wastes which are destined for recycling.

In accordance with the provisions of N.J.A.C. 7:1-1.2, the Department shall subsequently mail to the petitioner, and file with the Office of Administrative Law, a notice of action on the petition.

(b)

DIVISION OF WATER RESOURCES Amendment to the Sussex County Water Quality Management Plan Public Notice

Take notice that an amendment to the Sussex County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would adopt a Wastewater Management Plan (WMP) for Byram Township. 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.

This notice is being given to inform the public that a plan amendment has been developed for the Sussex County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Sussex County Water Resource Management Program, 55-57 High Street, Newton, New Jersey 07860; and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, CN-029, Third Floor, 401 East State Street, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

The Sussex County Board of Chosen Freeholders will hold a public meeting on the proposed Sussex County WQM Plan amendment. The public meeting will be held on Tuesday, March 27, 1990 at 7:30 P.M. in the Freeholder meeting room, County Court Building, 39 High Street, Newton, New Jersey. Interested persons may submit written comments on the amendment to Ms. Lyn Halliday at the Sussex County Water Resource Management Program address cited above; and Mr. Barry Chalofsky, Acting Chief, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 30 days of the date of this public notice or until 15 days following the public meeting, whichever is later. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by the Sussex County Board of Chosen Freeholders with respect to the amendment request. In addition, if the amendment is adopted by Sussex County, the NJDEP must review the amendment prior to final adoption. The comments received in reply to this notice will also be considered by the NJDEP during its review. Sussex County and the NJDEP thereafter may approve and adopt this amendment without further notice.

(c)

NEW JERSEY CLEAN AIR COUNCIL

Notice of Public Hearing Trucks, Buses and Cars: Emissions and Inspections

Take notice that the New Jersey Clean Air Council, pursuant to the New Jersey Air Pollution Control Act, N.J.S.A. 26:2C-1 et seq., will hold a public hearing entitled "Trucks, Buses and Cars: Emissions and Inspections." The public hearing will be held at the following time and place:

Monday, April 2, 1990 at 9:00 A.M.
Lewis Herrmann Labor Education Center Auditorium
Ryderson Lane west of Route #1
Rutgers University
New Brunswick, New Jersey

The two objectives of the Clean Air Council 1990 public hearing are to ascertain the health impact of motor vehicle pollution and to assess the effectiveness of control mechanisms to improve New Jersey's air quality. Existing programs may need to be strengthened, modified, or eliminated. New programs may be adopted.

Persons wishing to make oral presentations are asked to reserve a 15-minute time period by telephoning or writing to the following addressee:

Mrs. Helen Benedetti
New Jersey Department of Environmental Protection
Division of Environmental Quality
CN 027
401 East State Street
Trenton, New Jersey 08625
609-292-6704

Presenters should bring 15 copies of their remarks to the hearing for use by the Council members, the hearing transcriber, and the press. The hearing record will be held open for 15 days following the date of the public hearing so that additional written testimony can be received.

Submit written comments by April 17, 1990 to the following addressee:

Mrs. Linda Stansfield, Hearing Chairperson
New Jersey Clean Air Council
c/o New Jersey Department of Environmental Protection
Division of Environmental Quality
CN 027
401 East State Street
Trenton, New Jersey 08625

The Clean Air Council wants to explore the following questions at the hearing:

1. What ambient air impacts occur due to emissions from motor vehicles powered by diesel fuel? gasoline? alternate or modified fuel?
2. What are the health effects of emissions from diesel, gasoline or alternate fuel-powered vehicles?
3. Are evaporative emissions from these fuels of significance?
4. What techniques do you recommend to reduce health impacts?
5. What emission standard is most appropriate for New Jersey? (federal or California)
6. What fuel standards should New Jersey adopt for various fuels?
7. What improvements can be made in New Jersey's inspection-maintenance program?
8. What costs are attributable to the health impact?
9. What costs are attributable to selected control measures?
10. What is the potential effect of each recommended strategy on total air emissions? Can that potential be quantified?

(d)

DIVISION OF HAZARDOUS WASTE MANAGEMENT Notice of Action on Petition for Rulemaking Hazardous Waste Recycling

Petitioner: Electrum Recovery Works, Inc.

Take notice that on February 1, 1990, the Department received a petition for rulemaking concerning the recycling of hazardous wastes. A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on February 16, 1990 and appears in this issue of the New Jersey Register.

PUBLIC NOTICES

Petitioner requests that the Department amend N.J.A.C. 7:26-8 to allow for partial, rather than full, regulation of hazardous wastes destined for recycling. The petitioner has requested that the Department amend its hazardous waste management rules to allow for a lesser degree of regulation of hazardous waste which will be recycled.

In accordance with N.J.A.C. 7:1-1.2, the Department gives notice that it has deferred the matter for further deliberation. Since such an action would be a major policy change for the Department, the Department believes that further deliberation is required before taking action on the petition.

The Department will deliberate on these issues until no later than June 5, 1990, at which time the results of its deliberation will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

(a)

**DIVISION OF HAZARDOUS WASTE MANAGEMENT
Notice of Action on Petition for Rulemaking
Operational Requirements for Hazardous Waste
Landfills**

N.J.A.C. 7:26-10.8(e)7

Petitioner: PPG Industries, Inc.

Authority: N.J.S.A. 13:1E-6(a)2; 52:14B-4(f).

Take notice that on January 24, 1990, the Department of Environmental Protection received a petition from PPG Industries, Inc. requesting an amendment to N.J.A.C. 7:26-10.8(e)7, concerning operational requirements for hazardous waste landfills. A notice acknowledging receipt of the petition was filed with the Office of Administrative Law on February 8, 1990 and appeared in the March 5, 1990 New Jersey Register.

Specifically, petitioner is requesting an amendment to the present requirement that no waste disposal or waste disposal operation shall occur within 200 feet (60.6 meters) of the property boundary. Petitioner requests the creation of a variance for this setback requirement for hazardous waste landfills.

In accordance with N.J.A.C. 7:1-1.2, the Department gives notice that it has deferred the matter for further deliberation. Since such an action would be a significant change in the requirements for hazardous waste landfills, the Department believes that further deliberation is required before taking action on the petition.

The Department will deliberate on these issues no later than May 25, 1990, at which time the results of its deliberation will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

A copy of this notice has been mailed to the petitioner, as required by N.J.A.C. 7:1-1.2.

HEALTH

(b)

**DIVISION OF ALCOHOLISM AND DRUG ABUSE
Notice of Administrative Correction
Intoxicated Driving Program/Intoxicated Driver
Resource Center**

N.J.A.C. 8:66A-1.1

Take notice that the Department of Health has discovered an error in the adopted text of N.J.A.C. 8:66A-1.1 published in the March 5, 1990 New Jersey Register at 22 N.J.R. 848(a). The phrase "after October 4, 1984" should appear after the word "vessel," in accordance with the text of this subsection as changed upon adoption and properly filed with the Office of Administrative Law.

This notice of administrative correction is effective March 5, 1990 and is published in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (additions indicated in boldface thus):

LAW AND PUBLIC SAFETY

8:66A-1.1 Purpose and scope

The purpose of this chapter is to improve the driving behavior of individuals who have been identified as having some alcohol or drug involvement in connection with the operation of a motor vehicle or vessel. The chapter applies to all county Intoxicated Driver Resource Centers, all approved treatment programs, and the Department of Health, and all individuals convicted in New Jersey of a drug or alcohol offense related to the operation of a motor vehicle or vessel after October 4, 1984.

(c)

**DIVISION OF EPIDEMIOLOGY
Notice of Availability of Grants
Cancer Control and Risk Reduction
Assistance for Adults with Cystic Fibrosis**

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6 (P.L. 1987, c.7), the Department of Health hereby publishes notice of the availability of the following grant:

A. Name of grant program: Assistance for Adults with Cystic Fibrosis, Grant Program No. 90-82-CIP.

B. Purpose for which the grant program funds will be used: To provide grant funds to a non-profit agency to develop and implement a program to assist adults with Cystic Fibrosis to purchase supplemental nutritious food, prescription drugs and medical supplies/equipment. It is expected that between 60 to 200 persons will receive assistance under this program.

C. Amount of money in the grant program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified on this form to determine whether the funds have been awarded and to receive further information.

D. Group or entities which may apply for the grant program: Non-profit organizations which have experience in providing financial assistance and direct services to persons with Cystic Fibrosis are eligible to apply for these funds.

E. Qualifications needed by an applicant to be considered for the grant: Applicants must demonstrate experience in providing financial assistance and direct services to persons with Cystic Fibrosis.

F. Procedures for eligible entities to apply for grant funds: Contact Department of Health's official designee listed below and request current "Request for Proposal" (R.F.P.) and the Application for Health Services Grant.

G. For information contact:

Georgette Korch Boeselager, M.S., R.D.
Public Health Consultant
Cancer Control and Risk Reduction
Division of Epidemiology and Disease Control
CN 369
Trenton, New Jersey 08625-0369
(609) 588-7470

H. Deadline by which applications must be submitted: May 1, 1990.

I. Date by which applicant shall be notified whether they will receive funds: June 1, 1990.

LAW AND PUBLIC SAFETY

(d)

**BOARD OF PHARMACY
Notice of Receipt of Petition for Rulemaking
Prescriptions for Schedules III and IV Controlled
Substances**

N.J.A.C. 13:39

Petitioner: New Jersey State Board of Medical Examiners.

Authority: N.J.S.A. 45:14-3.

Take notice that on January 11, 1990, petitioner, New Jersey State Board of Medical Examiners, filed a petition with the State Board of Pharmacy concerning prescriptions for Schedules III and IV controlled substances.

LAW AND PUBLIC SAFETY

PUBLIC NOTICES

Petitioner requests that the Board of Pharmacy promulgate a new regulation requiring that prescriptions for controlled substances listed in Schedules III or IV be maintained in a file separate from all other prescriptions. Petitioner states that prescriptions for Schedules I and II substances are required to be filed separately, thereby allowing Enforcement Bureau inspectors to notice prima facie irregular prescribing patterns by any physician and to then make that information available to the Board of Medical Examiners for such further investigation as the Board deems appropriate. However, inspectors must "sift through tens of thousands of PLD prescriptions to locate any CDS, III, IV, or V. Such investment of time and staff resources is not feasible, and is therefore not normally done." The Medical Board further states that investigations have frequently turned up situations of questionable prescribing, but only when the Medical Board has already acquired, by chance, a copy of an individual patient record. The Medical Board believes the rule would place no significant compliance requirements on pharmacists and that it would "facilitate administrative efforts to curb the pandemic of drug abuse and/or inappropriate prescribing by Medical Board licensees, to promote the public weal."

This petition will be considered by the Board of Pharmacy in accordance with the provisions of N.J.S.A. 52:14B-4(f).

(a)

OFFICE OF THE ATTORNEY GENERAL

Notice of the Availability of the Quarterly Report of Legislative Agents for the Fourth Quarter of 1989 Ending December 31, 1989

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 Fourth Quarter of 1989, accompanied by a Summary of the Quarterly Report.

At the conclusion of the Fourth Quarter of 1989, the Notices of Representation filed with this office reflect that 622 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 Fourth Calendar Quarter of 1989, 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 Fourth Calendar Quarter of 1989:

No. 30 Helen Yeldell, representing N.J. State League of Municipalities.

No. 393 Judith L. Johnston, representing American Ass'n of University Women.

No. 393 Mildred M. Neylon, representing American Ass'n of University Women.

No. 393 Elizabeth H. Schuyler, representing American Ass'n of University Women.

No. 393 Ann Marlow, representing American Ass'n of University Women.

No. 394 Melissa Vance Kirsch, representing N.J. Ass'n of School Administrators.

No. 551 Christine R. O'Brien, representing MWW Strategic Communication, Inc.

No. 559 James Albert Calderwood, representing Society of Glass & Ceramic Decorators.

No. 560 David Aronson, representing American Society of Mechanical Engineers.

No. 561 William H. Lewis, Jr., representing N.J. Education Ass'n.

No. 562 Cynthia L. Povich, representing Independent Lobbyist.

No. 563 Robert S. Raymar, representing GAP Corp.

No. 565 Barbara J. Martin, representing JNESO (Nursing and Health Care).

No. 566 John L. Kraft, representing Mercer County Improvement Authority and Kraft & McManimon.

No. 566 Leslie G. London, representing Mercer County Improvement Authority and Kraft & McManimon.

No. 569 Charles J. Hollenbeck, representing N.J. State Bar Ass'n.

Following is a list of all Legislative Agents who have filed Notices of Termination during the Fourth Calendar Quarter of 1989:

REGISTRATION NUMBER	LEGISLATIVE AGENT
3	Kenneth Dolan
12	Casey Barrs
24	Patrick Witmer
26	Robert J. Del Tufo
26	Louise L. Stanton
39	John Lazzarotti
63	Thomas A. Chizmadia
140	Richard S. Goldman
444	Craig A. Becker
198	James E. McGreevey
247	Charles E. King
281	Nazareno Monticelli
319	Richard H. Feldman
408	Fred Ellerbusch
466	Roy Hanover
493	Walter T. Peters

For further information contact the Legislative Agents Unit at (609) 984-9371.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Notice of Receipt of Petition for Rulemaking Fingerprinting

N.J.A.C. 13:2

Petitioner: David S. Steinburg, Esq., Assistant General Counsel for Prime Motors Inn Inc.

Authority: N.J.S.A. 52:14B-4(f), N.J.S.A. 33:1-3 and N.J.S.A. 33:1-39.

Take notice that on January 24, 1990 the New Jersey Division of Alcoholic Beverage Control in the Department of Law and Public Safety received a petition for rulemaking with regards to the fingerprinting of an applicant or officers of a corporate applicant applying for the issuance of a plenary retail license. The petitioner requests a rule change which would permit the fingerprinting of the applicant for a retail liquor license by any duly authorized police department, or other agency designated by the Director. The fingerprinting function would not be limited to only the police department of the municipality which issues the specific license. In addition, the petitioner requests a rule change to permit fingerprints taken previously in connection with a prior license application to be used in connection with a subsequent license application pending before another municipality.

In submitting its petition, the petitioner indicates that it has an interest in over 20 plenary retail consumption licenses. Most of these licenses are issued in connection with the operation of hotels containing in excess of 100 guest sleeping rooms. The petitioner avers that a hardship occurs when it applies for new licensure before other municipalities since it must send senior management personnel, who have previously been fingerprinted and approved, to various municipalities, which at times are considerable distances from their place of employment, to be re-fingerprinted. The petitioner submits that there are legitimate goals and reasons for the fingerprinting requirement but states that these goals are not furthered by having corporate officers fingerprinted multiple times in various locations throughout the State when they have been previously finger-

PUBLIC NOTICES

printed and approved. The petitioner states that these goals can be furthered and the applications expedited by permitting fingerprinting to be performed at authorized and designated police locations and have the fingerprint cards transmitted to the proper authorities of the issuing authority. Alternatively, the petitioner states that the Division could maintain a library with sets of all individual fingerprints previously taken and release copies upon authorized requests to the various municipalities when necessary.

In accordance with the provisions of N.J.S.A. 52:14B-4(f) and N.J.S.A. 33:1-39, the petitioner for rulemaking will be reviewed to determine what action should be taken in response to the same. Thereafter, notice of such action will be mailed to the petitioner and filed with the Office of Administrative Law for publication in the New Jersey Register.

OTHER AGENCIES

(a)

HACKENSACK MEADOWLANDS DEVELOPMENT COMMISSION

Notice of Action Regarding Petition for Rulemaking Official Zoning Map

N.J.A.C. 19:4-6.28

Petitioner: Brancason's.

Authority: N.J.S.A. 13:17-1 et seq.

Take notice that a petition for a rule to amend N.J.S.A. 19:4-6.28, the Official Zoning Map, requesting a rezoning of Block 123, Lots 7, 8, 9,

OTHER AGENCIES

in the Borough of Carlstadt, New Jersey, from Marshland Preservation to Light Industrial "B" Zone was filed with the Hackensack Meadowlands Development Commission (HMDC) on August 17, 1989, notice of which was published in the November 6, 1989 New Jersey Register at 21 N.J.R. 3566(c).

The Commission has reviewed the request and has denied the petition, without prejudice. The Commission determined that the property in question was appropriately zoned since virtually all of the property was purported to be wetland and substantial riparian claims constrained the utility of the parcels under consideration.

In addition, it was determined that the property is highly contaminated as a result of mercury, PCB and other pollutant disposal in the adjacent waterways. In this regard, the New Jersey Department of Environmental Protection recommended a deferral of rezoning until a study of pollution remediation in Berry's Creek is completed, in approximately five years.

The Commission also determined that the property was located at the confluence of Berry's Creek and Peach Island Creek and was almost entirely within the 100 year flood plain of those waterbodies. Further, any development would necessitate the placement of fill in the wetland and flood hazard area, potentially exacerbating the flooding situation in the area.

The Commission also considered that additional information concerning the property may become evident with the result of the ongoing Special Area Management Plan being conducted by the USEPA, ACOE, and HMDC and the HMDC Master Plan revision.

The Commission, therefore, concluded that the rezoning and the subsequent development of the tract could adversely impact the natural environment, reduce flood storage along the Berry's Creek basin, potentially further impact the ecosystem with contaminated materials, and generally be harmful to the public welfare.

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 February 5, 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 JANUARY 16, 1990

NEXT UPDATE: SUPPLEMENT FEBRUARY 20, 1990

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
21 N.J.R. 659 and 810	March 20, 1989	21 N.J.R. 3043 and 3204	October 2, 1989
21 N.J.R. 811 and 954	April 3, 1989	21 N.J.R. 3205 and 3330	October 16, 1989
21 N.J.R. 955 and 1036	April 17, 1989	21 N.J.R. 3331 and 3584	November 6, 1989
21 N.J.R. 1037 and 1178	May 1, 1989	21 N.J.R. 3585 and 3688	November 20, 1989
21 N.J.R. 1179 and 1474	May 15, 1989	21 N.J.R. 3689 and 3812	December 4, 1989
21 N.J.R. 1475 and 1598	June 5, 1989	21 N.J.R. 3813 and 3986	December 18, 1989
21 N.J.R. 1599 and 1762	June 19, 1989	22 N.J.R. 1 and 88	January 2, 1990
21 N.J.R. 1763 and 1934	July 3, 1989	22 N.J.R. 89 and 272	January 16, 1990
21 N.J.R. 1935 and 2148	July 17, 1989	22 N.J.R. 273 and 584	February 5, 1990
21 N.J.R. 2149 and 2426	August 7, 1989	22 N.J.R. 585 and 686	February 20, 1990
21 N.J.R. 2427 and 2690	August 21, 1989	22 N.J.R. 687 and 884	March 5, 1990
21 N.J.R. 2691 and 2842	September 5, 1989	22 N.J.R. 885 and 1010	March 19, 1990
21 N.J.R. 2843 and 3042	September 18, 1989		

N.J.A.C. CITATION

ADMINISTRATIVE LAW—TITLE 1

1:1-5.4	Nonlawyer representation
1:1-12.5	Partial summary decisions
1:1-14.11	Transcripts of OAL hearings
1:1-19.2	Withdrawal of request for hearing or defense raised
1:6A	Special education hearings
1:6A	Special education hearings: public hearings
1:11-10.1	Discovery in private passenger automobile insurance rate hearings
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear

Most recent update to Title 1: TRANSMITTAL 1989-6 (supplement December 18, 1989)

AGRICULTURE—TITLE 2

2:2-3.3	Tuberculin testing of cattle
2:5-2.2, 3.1	Equine infectious anemia; avian influenza: administrative corrections
2:24	Registration and transportation of bees
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks

Most recent update to Title 2: TRANSMITTAL 1990-1 (supplement January 16, 1990)

BANKING—TITLE 3

3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal
3:1-14	Revolving credit equity loans
3:1-17	Senior citizen homeowner's reverse mortgage loans
3:2	Advertising by financial institutions
3:3-1.1	Department organization
3:18-3.5	Repeal (see 3:1-14)
3:42-2.2, 7	Pinelands Development Credit Bank: resale of bank-owned credits

Most recent update to Title 3: TRANSMITTAL 1990-1 (supplement January 16, 1990)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)

PERSONNEL—TITLE 4A

Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)

COMMUNITY AFFAIRS—TITLE 5

5:1-1.1, 2.1, 6, 7.4	Standards of conduct
5:2-1.1	Department organization
5:10-1.5, 1.8, 1.10, 1.11, 16.3	Hotels and multiple dwellings: administrative corrections
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates
5:11-1.2, 6.2	Relocation assistance: definitions; relocation plans

PROPOSAL NOTICE (N.J.R. CITATION)

DOCUMENT NUMBER

ADOPTION NOTICE (N.J.R. CITATION)

21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
22 N.J.R. 3(a)		
21 N.J.R. 3587(a)	R.1990 d.68	22 N.J.R. 334(a)
21 N.J.R. 3589(a)	R.1990 d.71	22 N.J.R. 334(b)
21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
21 N.J.R. 3045(a)		
21 N.J.R. 3815(a)		
22 N.J.R. 91(a)		
21 N.J.R. 3333(a)		22 N.J.R. 628(a)
21 N.J.R. 3045(b)		
22 N.J.R. 3(b)		
22 N.J.R. 275(a)		
21 N.J.R. 3333(b)		
21 N.J.R. 3207(b)		
22 N.J.R. 690(b)		
Exempt	R.1990 d.103	22 N.J.R. 335(a)
21 N.J.R. 3333(b)		
21 N.J.R. 3691(a)	R.1990 d.119	22 N.J.R. 628(b)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:12	Homelessness Prevention Program	21 N.J.R. 2845(a)	R.1990 d.68	22 N.J.R. 336(b)
5:14-4.1	Neighborhood Preservation Balanced Housing Program: administration of affordability controls	21 N.J.R. 3695(a)	R.1990 d.100	22 N.J.R. 337(a)
5:18	Uniform Fire Code	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:18A	Fire Code Enforcement	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18A-4	Repeal (see 5:18C)	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:18B	High Level Alarms	21 N.J.R. 3344(a)	R.1990 d.72	22 N.J.R. 337(b)
5:18C	Uniform Fire Code: fire service training and certification	21 N.J.R. 1655(a)	R.1990 d.114	22 N.J.R. 337(c)
5:22	Exemptions from local property taxation	21 N.J.R. 3345(a)	R.1990 d.60	22 N.J.R. 350(a)
5:22-2.5	Rehabilitation of multiple dwellings: administrative correction	_____	_____	22 N.J.R. 632(a)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12-4.15, 4.21, 4.22, 4.24-4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Mitigation Subcode	21 N.J.R. 3696(a)		
5:23-1.4	Uniform Construction Code: underground storage tank compliance	21 N.J.R. 3345(b)	R.1990 d.57	22 N.J.R. 350(b)
5:23-2.18A	Utility load management devices: public hearing concerning installation programs	21 N.J.R. 1185(b)		
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5:23-3.15	UCC: plumbing subcode	21 N.J.R. 3346(a)	R.1990 d.58	22 N.J.R. 351(a)
5:23-4.5, 4.19, 4.20	UCC enforcing agencies: standardized forms; remittance of training fees	21 N.J.R. 3346(b)	R.1990 d.61	22 N.J.R. 351(b)
5:23-4.17	Dedication of fee revenue for UCC enforcement	21 N.J.R. 3348(a)	R.1990 d.115	22 N.J.R. 352(a)
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-9.3	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)		
5:25-5.4	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)		
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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)		
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5:80-28.1	Housing and Mortgage Finance Agency: nonpublic records	21 N.J.R. 3351(a)		
5:91-1.2, 4.5, 6.2, 7.1-7.6	Council on Affordable Housing: mediation and post mediation process	21 N.J.R. 1773(a)		
5:92-8.2	Council on Affordable Housing: inclusionary development on environmentally sensitive lands	22 N.J.R. 730(a)		
5:92-18	Council on Affordable Housing: municipal conformance with State Development and Redevelopment Plan	21 N.J.R. 1186(a)		

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5:100	Ombudsman for institutionalized elderly: practice and procedure	21 N.J.R. 1510(a)		
5:100	Ombudsman practice and procedure: extension of comment period	21 N.J.R. 1995(a)		

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6:21-7.6	Pupil transportation: administrative correction			22 N.J.R. 366(b)
6:22-1.1, 1.3, 1.4, 1.7, 1.8	Private school and State facilities for handicapped pupils	21 N.J.R. 3210(a)	R.1990 d.110	22 N.J.R. 366(a)
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)		
6:29	Health, safety and physical education	21 N.J.R. 3815(b)	R.1990 d.154	22 N.J.R. 793(a)
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6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)		
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)	R.1990 d.179	22 N.J.R. 921(c)

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7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)		
7:5C-5.1	Endangered plant species	22 N.J.R. 94(a)		
7:7A-9.2	Freshwater wetlands protection: Statewide general permits	22 N.J.R. 278(a)		
7:11-2.1, 2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir System: schedule of rates	21 N.J.R. 3836(a)		
7:11-4	Manasquan Reservoir Water Supply System: rate schedule	21 N.J.R. 3838(a)		
7:11-4	Manasquan Reservoir Water Supply System rate schedule: change of public hearing location	22 N.J.R. 4(a)		
7:11-5	Use of water from Manasquan Reservoir water supply system	21 N.J.R. 3701(a)		
7:12-1.2, 9	Soft clam and hard clam depuration	22 N.J.R. 97(a)		
7:13-7.1	Redelineation of Rowe Brook in Tewksbury Township, Hunterdon County	21 N.J.R. 3843(a)		
7:13-7.1	Redelineation of Pond Run in Hamilton Township, Mercer County	21 N.J.R. 3843(b)		
7:14A-1.8	NJPDES fee schedule for permittees and applicants	21 N.J.R. 3590(a)		
7:14A-4.7	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		
7:14A-6.15	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:14A-12.22, 12.23	Sewer connection ban exemptions	21 N.J.R. 2240(c)		
7:14B-1.3, 1.4, 1.6, 2.1-2.5, 2.7, 2.8, 3.1, 3.2, 3.4, 3.5, 4-12, 15	Underground storage tank systems	21 N.J.R. 2242(a)		
7:14B-13	Underground Storage Tank Improvement Fund loan program	21 N.J.R. 2265(a)		
7:17	Repeal (see 7:12-1.2, 9)	22 N.J.R. 97(a)		
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)		
7:19	Water supply allocation permits	21 N.J.R. 3594(a)	R.1990 d.180	22 N.J.R. 932(a)
7:19A	Emergency water supply allocation	22 N.J.R. 102(a)	R.1990 d.163	22 N.J.R. 944(a)
7:19B	Water emergency surcharge schedule	22 N.J.R. 106(a)	R.1990 d.164	22 N.J.R. 947(a)
7:20-1	Dam safety standards	22 N.J.R. 279(a)		
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7:25-12.9	Surf clamming: administrative correction			22 N.J.R. 633(a)
7:25A	Oyster resource management	22 N.J.R. 283(a)		
7:26-1.4, 7.4, 7.7, 8.2, 8.3, 8.4, 8.13, 9.1, 9.2, 10.6, 10.7, 10.8, 11.3, 11.4, 12.1	Hazardous waste management: polychlorinated biphenyls (PCBs)	21 N.J.R. 1047(a)		

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7:26-2A.8	Sanitary landfill requirements: administrative correction	_____	_____	22 N.J.R. 382(b)
7:26-6.5	Interdistrict and intradistrict solid waste flow: Bergen County	21 N.J.R. 1486(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)		
7:26-8.2, 12.3	Radioactive mixed wastes	21 N.J.R. 1053(a)		
7:26-8.13	Manifesting of nonhazardous waste: preproposal	21 N.J.R. 3220(a)		
7:26-8.21, 12.2	NJPDES program: list of hazardous constituents for groundwater monitoring	21 N.J.R. 3844(a)		
7:26-9, App. A	Requirements for hazardous waste facilities: administrative correction	_____	_____	22 N.J.R. 383(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)		
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-27	Certification of radon testers and mitigators	21 N.J.R. 3369(a)		
7:29	Noise control	22 N.J.R. 307(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)		
7:45-1.2, 1.3, 2.6, 2.11, 4.1, 6, 9, 11.1-11.5	Delaware and Raritan Canal State Park review zone rules	21 N.J.R. 828(a)	R.1990 d.106	22 N.J.R. 383(b)
7:50-2.11, 4.2, 4.3, 4.5, 4.53, 4.62, 4.66, 5.2, 5.13, 5.23, 5.24, 5.28, 5.43, 5.44, 5.47, 6.65, 6.154, 6.156	Pinelands Comprehensive Management Plan	21 N.J.R. 3381(a)	R.1990 d.170	22 N.J.R. 948(a)

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8:19-2	Newborn biochemical screening	21 N.J.R. 3633(b)	R.1990 d.146	22 N.J.R. 844(a)
8:19-2	Newborn biochemical screening: public hearing	21 N.J.R. 3708(a)		
8:20	Birth defects registry	21 N.J.R. 3636(a)		
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(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)		
8:31B-5.3	Hospital reimbursement: Diagnosis Related Groups classification	21 N.J.R. 3873(b)		
8:31B-5.3	Diagnosis Related Groups classification: correction to proposal and extension of comment period	22 N.J.R. 308(a)		
8:31B-App. XI	Hospital reimbursement: graduate medical education	22 N.J.R. 735(a)		
8:33A	Surgical facilities: certificate of need	21 N.J.R. 3888(a)	R.1990 d.168	22 N.J.R. 983(b)
8:33I-1.2, 1.3, 1.5	Megavoltage radiation oncology units: need review	21 N.J.R. 3640(a)	R.1990 d.132	22 N.J.R. 633(b)
8:33P	Designation of trauma centers: certificate of need	21 N.J.R. 3889(a)	R.1990 d.166	22 N.J.R. 983(c)
8:39-29.4	Licensed nursing homes: non-prescription medications	21 N.J.R. 1607(a)	R.1990 d.131	22 N.J.R. 634(a)
8:39-44	Respite care services	21 N.J.R. 2924(a)	R.1990 d.133	22 N.J.R. 634(b)
8:40	Invalid coach and ambulance services	22 N.J.R. 595(a)		
8:43B-1-17	Hospital licensing standards (repeat)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43B-18	Anesthesia (recodify to 8:43G-6)	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43F	Adult day health care facilities: standards for licensure	21 N.J.R. 3385(a)	R.1990 d.136	22 N.J.R. 635(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		

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8:43G-1, 2, 5, 19, 21, 22, 24, 26, 29, 30, 31, 35	Hospital licensure: administration, obstetrics, oncology, pediatrics, plant safety, psychiatry, physical and occupational therapy, renal dialysis, respiratory care, postanesthesia care	21 N.J.R. 2926(a)	R.1990 d.95	22 N.J.R. 441(b)
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(a)		
8:43G-4	Hospital licensure: patient rights	21 N.J.R. 2160(b)	R.1990 d.98	22 N.J.R. 484(a)
8:43G-4.2	Patient rights (advisory)	21 N.J.R. 2160(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-6	Hospital licensure: anesthesia	21 N.J.R. 2925(a)	R.1990 d.77	22 N.J.R. 488(a)
8:43G-7	Hospital licensure: cardiac services	21 N.J.R. 2162(a)	R.1990 d.97	22 N.J.R. 488(b)
8:43G-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)		
8:43G-8	Hospital licensure: central supply	21 N.J.R. 1609(a)	R.1990 d.96	22 N.J.R. 496(a)
8:43G-8.3, 8.5, 8.8	Central supply (advisory)	21 N.J.R. 1609(a)		
8:43G-9	Hospital licensure: critical and intermediate care	21 N.J.R. 2167(a)	R.1990 d.94	22 N.J.R. 498(a)
8:43G-9.3, 9.6, 9.8, 9.10, 9.12, 9.15, 9.17, 9.22	Critical and intermediate care (advisory)	21 N.J.R. 2167(a)		
8:43G-10	Hospital licensure: dietary standard	21 N.J.R. 1611(a)	R.1990 d.78	22 N.J.R. 505(a)
8:43G-10.2, 10.5, 10.7, 10.9	Dietary standards (advisory)	21 N.J.R. 1611(a)		
8:43G-11	Hospital licensure: discharge planning	21 N.J.R. 1612(a)	R.1990 d.93	22 N.J.R. 507(a)
8:43G-11.2	Discharge planning (advisory)	21 N.J.R. 1612(a)		
8:43G-12	Hospital licensure: emergency department	21 N.J.R. 1613(a)	R.1990 d.92	22 N.J.R. 510(a)
8:43G-12.4, 12.6, 12.8	Emergency department (advisory)	21 N.J.R. 1613(a)		
8:43G-13	Hospital licensure: housekeeping and laundry	21 N.J.R. 1616(a)	R.1990 d.91	22 N.J.R. 514(a)
8:43G-13.3, 13.6	Housekeeping and laundry (advisory)	21 N.J.R. 1616(a)		
8:43G-14	Hospital licensure: infection control and sanitation	21 N.J.R. 1618(a)	R.1990 d.90	22 N.J.R. 517(a)
8:43G-14.2, 14.4	Infection control and sanitation (advisory)	21 N.J.R. 1618(a)		
8:43G-15	Hospital licensure: medical records	21 N.J.R. 2171(a)	R.1990 d.88	22 N.J.R. 520(a)
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)		
8:43G-16	Hospital licensure: medical staff standard	21 N.J.R. 1621(a)	R.1990 d.89	22 N.J.R. 524(a)
8:43G-16.4	Medical staff standard (advisory)	21 N.J.R. 1621(a)		
8:43G-17	Hospital licensure: nurse staffing	21 N.J.R. 1623(a)	R.1990 d.87	22 N.J.R. 530(a)
8:43G-17.2	Nurse staffing (advisory)	21 N.J.R. 1623(a)		
8:43G-18	Hospital licensure: nursing care	21 N.J.R. 1624(a)	R.1990 d.86	22 N.J.R. 531(a)
8:43G-18.4, 18.6, 18.8	Nursing care (advisory)	21 N.J.R. 1624(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)		
8:43G-20	Hospital licensure: employee health	21 N.J.R. 2173(a)	R.1990 d.85	22 N.J.R. 535(a)
8:43G-20.3, 20.5	Employee health (advisory)	21 N.J.R. 2173(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-23	Hospital licensure: pharmacy	21 N.J.R. 1626(a)	R.1990 d.84	22 N.J.R. 537(a)
8:43G-23.5, 23.7, 23.11	Pharmacy (advisory)	21 N.J.R. 1626(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-25	Hospital licensure: post mortem standard	21 N.J.R. 1628(a)	R.1990 d.83	22 N.J.R. 541(a)
8:43G-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-27	Hospital licensure: quality assurance	21 N.J.R. 1630(a)	R.1990 d.82	22 N.J.R. 542(a)
8:43G-27.4, 27.6	Quality assurance (advisory)	21 N.J.R. 1630(a)		
8:43G-28	Hospital licensure: radiology	21 N.J.R. 2174(a)	R.1990 d.81	22 N.J.R. 544(a)
8:43G-28.3, 28.4, 28.6, 28.9, 28.11, 28.15, 28.17, 28.21	Radiology (advisory)	21 N.J.R. 2174(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)		
8:43G-31.4, 31.6, 31.8, 31.10, 31.13	Respiratory care (advisory)	21 N.J.R. 2926(a)		

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8:43G-32, 34	Hospital licensure: same-day stay; surgery	21 N.J.R. 2177(a)	R.1990 d.80	22 N.J.R. 548(a)
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)		
8:43G-33	Hospital licensure: social work	21 N.J.R. 1631(a)	R.1990 d.79	22 N.J.R. 555(a)
8:43G-33.4, 33.5, 33.7	Social work (advisory)	21 N.J.R. 1631(a)		
8:43G-34.2, 34.10, 34.12	Surgery (advisory)	21 N.J.R. 2177(a)		
8:43G-35.5, 35.8	Postanesthesia care (advisory)	21 N.J.R. 2926(a)		
8:45	Clinical laboratory services: licensure and charges	21 N.J.R. 3708(b)	R.1990 d.145	22 N.J.R. 846(a)
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8:57-3.1, 3.2	Reportable occupational and environmental diseases and poisonings	21 N.J.R. 3907(a)		
8:57-6	Cancer Registry (recodify to 8:57A)	21 N.J.R. 3909(a)		
8:59-1.3, 5.3, 8.10, 9.2, 9.3, 11.1	Worker and Community Right to Know: administrative corrections			22 N.J.R. 847(a)
8:59-App. A, B	Worker and Community Right to Know: proposed Hazardous Substance List and Special Health Hazard Substance List	21 N.J.R. 1194(a)		
8:60	Asbestos training courses	22 N.J.R. 736(a)		
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8:66A-1.1	Intoxicated Driving Program: administrative correction			22 N.J.R. 995(b)
8:71	Interchangeable drug products (see 21 N.J.R. 2107(c), 2996(a))	21 N.J.R. 662(a)	R.1989 d.575	21 N.J.R. 3665(a)
8:71	Interchangeable drug products (see 21 N.J.R. 2997(a), 3664(a))	21 N.J.R. 1790(a)	R.1990 d.37	22 N.J.R. 214(b)
8:71	Interchangeable drug products	21 N.J.R. 3292(a)	R.1990 d.43	22 N.J.R. 214(c)
8:71	Interchangeable drug products	21 N.J.R. 3710(a)		
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
8:71	Interchangeable drug products	22 N.J.R. 596(a)		

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9:4-1.3, 1.9, 1.10, 2.1-2.15, 7.5	County community colleges: governance and administration	21 N.J.R. 1269(a)	R.1990 d.153	22 N.J.R. 841(c)
9:4-2.4	County community colleges: code of ethics	22 N.J.R. 755(a)		
9:4-7.6	Evaluation of community college presidents	21 N.J.R. 2697(a)		
9:6	State Colleges: policies and standards	22 N.J.R. 755(b)		
9:7-3.2	Tuition Aid Grant 1990-91 Award Table	22 N.J.R. 309(a)		
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10:37-7.8	Community mental health services: fee collection	21 N.J.R. 3221(a)		
10:38	Interim Assistance Program for discharged psychiatric hospital clients	21 N.J.R. 2280(a)		
10:39	Community residences for mentally ill: licensure standards	21 N.J.R. 1995(b)		
10:44B	Community care residences for developmentally disabled	22 N.J.R. 756(a)		
10:45	Guardianship services for developmentally disabled persons	21 N.J.R. 607(a)	R.1990 d.76	22 N.J.R. 653(b)
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10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:52	Manual for Hospital Services	21 N.J.R. 3911(a)	R.1990 d.157	22 N.J.R. 799(b)
10:53	Manual for Special Hospital Services Coverage	22 N.J.R. 765(a)		
10:55	Prosthetic and Orthotic Services Manual	22 N.J.R. 4(b)		
10:60-4	Home Care Expansion Program	22 N.J.R. 597(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)		
10:63-1.15	Long-term care facilities: Medicaid Program requirements and sanctions	22 N.J.R. 5(a)		
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10:69A-1.2, 6.2	Pharmaceutical Assistance to Aged and Disabled: income standards	21 N.J.R. 3047(a)	R.1990 d.182	22 N.J.R. 953(a)
10:70-3.4	Medicaid program: newborn care	21 N.J.R. 965(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)		
10:71-5.4, 5.5, 5.6, 5.7	Medicaid Only eligibility computation amounts	22 N.J.R. 251(a)	R.1990 d.177	22 N.J.R. 954(a)
10:72-3.4	Medicaid program: newborn care	21 N.J.R. 965(a)		
10:81-14.18	REACH program: post-AFDC child care	22 N.J.R. 136(a)		
10:83-1.11	Supplemental Security Income payment levels	22 N.J.R. 64(a)	R.1990 d.149	22 N.J.R. 800(a)
10:85-3.3	General Assistance: income and eligibility	21 N.J.R. 836(b)		
10:85-4.6	Emergency shelter assistance for individuals with AIDS/HIV positive with symptoms and for terminally ill	21 N.J.R. 3790(a)	R.1990 d.117	22 N.J.R. 355(a)
10:87-2.2, 2.3, 2.14, 2.17, 2.19, 2.20, 2.21, 2.23, 2.28, 2.29, 2.31, 2.34-2.38, 3.1, 3.6-3.8, 3.11, 4.3, 4.5, 4.8, 4.12, 5.1, 5.2, 5.4, 5.6, 5.9, 5.10, 6.3, 6.19, 7.6, 7.16, 7.18, 9.5, 10.7, 10.12, 11.31	Food Stamp Program administration	22 N.J.R. 139(a)		
10:89	Home Energy Assistance	22 N.J.R. 599(a)		
10:91	Commission for the Blind and Visually Impaired: operations and procedures	21 N.J.R. 2753(a)		
10:95	Repeal (see 10:91)	21 N.J.R. 2753(a)		
10:99	State Use Program for blind and severely handicapped	22 N.J.R. 766(a)		
10:121	Adoption of children	21 N.J.R. 3047(b)		
10:121	Adoption of children: extension of comment period	22 N.J.R. 310(a)		
10:123-1	Financial eligibility for Social Services Program	21 N.J.R. 2438(a)		
10:123-1	Financial eligibility for services through Social Services	22 N.J.R. 310(b)		
10:123-3.2	Block Grant program: extension of comment period Residential health care facilities and boarding homes: personal needs allowance for GPA and SSI recipients	21 N.J.R. 3912(a)	R.1990 d.137	22 N.J.R. 661(a)
10:125	Youth and Family Services capital funding program	21 N.J.R. 1514(a)		
10:125	Youth and Family Services capital funding program: reopening of public comment period	22 N.J.R. 766(b)		
10:126A	Family day care standards	22 N.J.R. 13(a)		
10:130	Shelters for victims of domestic violence	22 N.J.R. 767(a)		

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10A:2-10	Grants procedure	22 N.J.R. 14(a)		
10A:5-3.1, 3.2	Administrative segregation	21 N.J.R. 3409(a)	R.1990 d.120	22 N.J.R. 661(b)
10A:9-4	Reduced custody consideration	21 N.J.R. 3050(a)		
10A:16-5.2, 5.6	Medical and health services: guardianship of an adult inmate	21 N.J.R. 2851(a)		
10A:16-11	Special Medical Units	22 N.J.R. 310(c)		
10A:18-2.6	Incoming correspondence: inspection and identification	22 N.J.R. 147(a)		
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10A:18-6.4	Employee visits with incarcerated relatives	21 N.J.R. 3410(a)	R.1990 d.124	22 N.J.R. 662(a)
10A:22-2.6	Release of confidential inmate or parolee records	21 N.J.R. 3411(a)		
10A:31	Adult county correctional facilities	21 N.J.R. 2853(a)	R.1990 d.140	22 N.J.R. 801(a)
10A:31	Adult county correctional facilities: public hearing	21 N.J.R. 3411(b)		
10A:32	Juvenile detention facilities	22 N.J.R. 313(a)		
10A:71	Parole Board rules	21 N.J.R. 3411(c)	R.1990 d.141	22 N.J.R. 825(a)
10A:71-3.4	Parole release hearings: administrative correction	_____	_____	22 N.J.R. 356(a)

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11:1-5.2	Cancellation and nonrenewal of fire and casualty coverage	21 N.J.R. 3240(b)	R.1990 d.107	22 N.J.R. 391(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)		
11:1-27	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:1-28	Formation of property and casualty insurance corporation or reciprocal insurance exchange	21 N.J.R. 3607(a)	R.1990 d.162	22 N.J.R. 954(b)

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11:1-32	Exportable list of surplus lines: hearing and promulgation procedures	22 N.J.R. 314(b)		
11:2-3.1, 3.12	Credit life insurance and credit accident and health insurance: clarification of public comments			22 N.J.R. 392(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)		
11:3-1	Commercial Automobile Insurance Plan	21 N.J.R. 3613(a)	R.1990 d.118	22 N.J.R. 392(b)
11:3-8.2, 8.4	Nonrenewal of automobile policies	22 N.J.R. 316(a)		
11:3-8.4	Nonrenewal of automobile policies: administrative correction and extension of comment period	22 N.J.R. 769(a)		
11:3-16	Private passenger automobile rate filings	21 N.J.R. 2182(a)	R.1990 d.116	22 N.J.R. 399(a)
11:3-16A	Automobile coverage: flex rate percentage calculations	21 N.J.R. 3719(a)	R.1990 d.161	22 N.J.R. 963(a)
11:3-18	Review of rate filings for private passenger automobile coverage	21 N.J.R. 3422(b)	R.1990 d.109	22 N.J.R. 421(a)
11:3-19	Multi-tier and good driver rating plans	21 N.J.R. 3721(a)		
11:3-25.4	Residual market equalization charges: suspension of certain changes to N.J.A.C. 11:3-25.4; new public comment period	21 N.J.R. 2208(a)		
11:3-29	Automobile insurance personal injury protection: medical fee schedules	21 N.J.R. 842(b)		
11:3-31	Private passenger automobile insurers: examination of financial experience	21 N.J.R. 3726(a)	R.1990 d.108	22 N.J.R. 425(a)
11:4-9	Life and health insurance: unfiled policy forms	21 N.J.R. 1492(a)		
11:4-11.6	Insurer record retention and production for examination	21 N.J.R. 2210(a)		
11:4-16.6, 16.8, 23.6, 23.8, App.	Medicare supplement coverage	22 N.J.R. 771(a)		
11:4-18.4, 18.5	Individual health insurance rate filings	21 N.J.R. 3428(a)		
11:4-25	Medicare supplement minimum standards transition rule for 1990	22 N.J.R. 320(a)		
11:5-1.28	Approved real estate schools	22 N.J.R. 777(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	Commercial 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)		
11:17-3.4	Insurance producer continuing education: delay of operative date			22 N.J.R. 662(b)
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12:19-1	Unemployment Compensation and Temporary Disability: program definitions	22 N.J.R. 605(a)		
12:40-1	Worker Adjustment and Retraining Notification (WARN) procedures	21 N.J.R. 3630(a)	R.1990 d.105	22 N.J.R. 357(a)
12:56-16	Payroll deductions for mass transit commutation tickets	22 N.J.R. 148(a)		
12:100-4.2, 10, 17	Safety standards for firefighters	21 N.J.R. 1090(a)		
12:100-4.2, 10, 17	Safety standards for firefighters: public hearing	21 N.J.R. 1500(a)		
12:100-5.2	Public employee safety and health: excavations	22 N.J.R. 607(a)		
12:102-1	Field sanitation for seasonal farm workers	21 N.J.R. 2224(b)		
12:120	Asbestos training courses	22 N.J.R. 736(a)		
12:235-14	Workers' compensation: uninsured employer's fund	21 N.J.R. 3852(a)		

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12A:31-2	Development Authority: loan guarantee program	22 N.J.R. 610(a)		
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12A:55	Solar energy systems: criteria for sales and use tax exemption (recodified to 14:25)	21 N.J.R. 282(a)		
12A:55	Solar energy systems criteria for sales and use tax exemptions: extension of comment period	21 N.J.R. 1969(a)		
12A:61	Energy emergencies (formerly at 14A:2)	21 N.J.R. 1272(a)		
12A:80-1	Urban Development Corporation: economic development programs	22 N.J.R. 780(a)		
12A:81	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		
12A:82	Repeal (see 12A:80-1)	22 N.J.R. 780(a)		

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13:18-2, 10	Motor Vehicles: Unsatisfied Claim and Judgment Fund rules (repeal)	21 N.J.R. 3432(a)	R.1990 d.121	22 N.J.R. 662(c)
13:21-15.3	Long-term leasing of motor vehicles: business licensure	21 N.J.R. 3853(a)		
13:22	Repeal (see 13:62)	21 N.J.R. 3646(a)	R.1990 d.175	22 N.J.R. 965(a)
13:25	Motorized bicycles	22 N.J.R. 323(a)		
13:27	State Board of Architects rules	22 N.J.R. 18(a)	R.1990 d.165	22 N.J.R. 974(a)
13:27-8.6	Landscape architect certification: experience requirement	22 N.J.R. 325(a)		
13:30	Board of Dentistry rules	22 N.J.R. 149(b)		
13:30-8.2, 8.11	Parenteral conscious sedation in dental practice	21 N.J.R. 3060(a)	R.1990 d.174	22 N.J.R. 976(a)
13:30-8.3	Use of general anesthesia in dental practice	21 N.J.R. 3062(a)	R.1990 d.173	22 N.J.R. 975(a)
13:30-8.4	Announcement of practice in special area of dentistry	22 N.J.R. 783(a)		
13:30-8.12	Board of Dentistry: accuracy of dental insurance forms	22 N.J.R. 153(a)		
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)		
13:33	Practice of ophthalmic dispensers and technicians	22 N.J.R. 154(a)		
13:34-1.1	Marriage counselor examination fee	21 N.J.R. 3854(a)	R.1990 d.152	22 N.J.R. 831(a)
13:35-6.2	Pronouncement and certification of death	22 N.J.R. 154(b)		
13:35-6.5	Standards for patient records in medical practice	21 N.J.R. 3253(a)	R.1990 d.176	22 N.J.R. 978(a)
13:36-3.5, 3.6, 3.7	Mortuary science: examination requirements and review procedure	21 N.J.R. 1820(a)		
13:36-10	Mortuary science: continuing education	21 N.J.R. 3655(a)		
13:37	Board of Nursing rules	21 N.J.R. 3854(b)	R.1990 d.122	22 N.J.R. 663(a)
13:39A-5.1	Licensure of foreign-trained physical therapists	21 N.J.R. 3855(a)		
13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
13:39A-5.7	Licensure as physical therapist: language comprehension requirement	21 N.J.R. 3856(a)		
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)		
13:44-2.6	Continuance of veterinary practice	22 N.J.R. 326(b)		
13:44-4.1	Board of Veterinary Medical Examiners fee schedule	22 N.J.R. 18(b)	R.1990 d.151	22 N.J.R. 831(b)
13:44C-4	Provisional licensure as audiologist or speech-language pathologist (repeal)	21 N.J.R. 3433(a)	R.1990 d.111	22 N.J.R. 358(a)
13:44C-7.2	Audiology and speech language pathology: practice exemptions	21 N.J.R. 2702(a)		
13:44C-7.2	Audiology and speech language pathology practice exemptions: extension of comment period	22 N.J.R. 327(a)		
13:45A-16.2	Home improvement contracts: written requirement	21 N.J.R. 3433(b)	R.1990 d.125	22 N.J.R. 662(d)
13:45A-19.1	Division of Consumer Affairs: petitions for rulemaking	22 N.J.R. 786(a)		
13:45A-25.2	Sellers of health club services: registration fee	21 N.J.R. 3657(a)	R.1990 d.104	22 N.J.R. 358(b)
13:47A-10	Registration of securities	21 N.J.R. 2903(a)		
13:61	State Police: boat safety course	21 N.J.R. 3434(a)	R.1990 d.142	22 N.J.R. 831(c)
13:61	State Police boat safety course: extension of comment period	22 N.J.R. 149(a)		
13:62	Motor vehicle race tracks	21 N.J.R. 3646(a)	R.1990 d.175	22 N.J.R. 965(a)
13:62	Motor vehicle race tracks: extension of comment period	22 N.J.R. 149(a)		
13:70	Thoroughbred racing	21 N.J.R. 3856(b)	R.1990 d.127	22 N.J.R. 663(b)
13:70-29.19	Thoroughbred racing: elimination from place and show wagering	21 N.J.R. 3254(a)		
13:71	Harness racing	21 N.J.R. 3861(a)	R.1990 d.126	22 N.J.R. 667(a)
13:71-27.18	Harness racing: elimination from place and show wagering	21 N.J.R. 3255(a)		
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14:1-8.6	Access to documents filed with Board of Public Utilities	21 N.J.R. 3864(a)		
14:3-3.2	Customer's proof of identity	22 N.J.R. 615(a)		
14:3-3.6	Utility service discontinuance	22 N.J.R. 616(a)		
14:3-4.5, 4.10	Billing disputes and meter test options	22 N.J.R. 617(a)		
14:3-4.7	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:3-4.11	Meter tampering	21 N.J.R. 3865(a)		
14:3-4.11	Meter tampering: extension of comment period	22 N.J.R. 327(b)		
14:3-7.5	Return of customer deposits	22 N.J.R. 619(a)		
14:3-7.13	Late payment charges	22 N.J.R. 619(b)		
14:3-7.14	Discontinuance of service to multiple family premises	21 N.J.R. 3865(b)		
14:3-11	Earned return analysis of utility rates	21 N.J.R. 2003(a)		
14:3-11	Earned return analysis of utility rates: extension of comment period	21 N.J.R. 2704(a)		
14:9-3.3	Water meter accuracy and billing adjustments	22 N.J.R. 618(a)		
14:10-5	InterLATA telecommunications carriers	21 N.J.R. 3631(a)		
14:18	Cable television rules: preproposal	22 N.J.R. 327(c)		
14:25	Solar energy systems: criteria for sales and use tax exemption	21 N.J.R. 282(a)	R.1990 d.64	22 N.J.R. 832(a)
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14A:22	Commercial and Apartment Conservation Service Program	21 N.J.R. 2010(a)		
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15A:2-1.1	Department organization	Exempt	R.1990 d.56	22 N.J.R. 557(a)
15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		
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