

# NEW JERSEY REGISTER



*THE JOURNAL OF STATE AGENCY RULEMAKING*

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**MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 20, 1990**  
See the Register Index for Subsequent Rulemaking Activity.  
**NEXT UPDATE: SUPPLEMENT MARCH 19, 1990**

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**Interested persons** may submit, in writing, information or arguments concerning any of the rule proposals in this issue until **June 6, 1990**. Submissions and any inquiries about submissions should be addressed to the agency officer specified for a particular proposal or group of proposals.

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

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

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## NEW JERSEY REGISTER

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# EXECUTIVE ORDERS

(a)

## OFFICE OF THE GOVERNOR

### Governor James J. Florio Executive Order Number 7(1990) Governor's Management Review Commission

Issued: April 2, 1990.  
Effective: April 2, 1990.  
Expiration: Indefinite.

WHEREAS, the expenditures of State government have increased and the services provided by State government have expanded dramatically in recent years; and

WHEREAS, it is vital to the economic health and prosperity of the State of New Jersey that public services be provided in a sound, efficient and economical manner and that the people of this State be assured of the wise expenditure of their tax dollars; and

WHEREAS, the economic climate in New Jersey is such that State government may be facing a period of severe fiscal constraint in the immediate future;

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

1. There is hereby established the Governor's Management Review Commission. The Commission shall have seven members which shall include representatives of government, business, labor, nonprofit organizations and academia. The Commission may select and retain such agents, assistants and consultants as necessary, and may utilize the services of executives and experts and other contributions from business and industry as it deems necessary to carry out its functions.

2. The Commission shall study and analyze the various departments, commissions, authorities and other functions of State government to ascertain the means by and manner in which the services of the State of New Jersey may be afforded to its citizens in the most efficient, expeditious and economical manner.

3.a. The Commission is authorized to call upon any department, office, division or agency of the State to supply such statistical data, program reports, or other information or personnel and materials as it deems necessary to discharge its responsibilities under this Order.

b. Each department, office, division or agency of the State is authorized and directed, to the extent not inconsistent with law, to cooperate with the Commission and furnish it such information and assistance as it may find necessary in the discharge of its responsibilities under this Order.

4. The Commission shall render to the Governor interim reports as it may deem appropriate or as the Governor may request and, upon the completion of its work, the Commission shall render a full report of its findings and recommendations.

5. This Order shall take effect immediately.

(b)

## OFFICE OF THE GOVERNOR

### Governor James J. Florio Executive Order Number 8(1990) Emergency Solid Waste Assessment Task Force

Issued: April 6, 1990.  
Effective: April 6, 1990.  
Expiration: Indefinite.

WHEREAS, the amount of solid waste that will need to be disposed of can be reduced through such environmentally safe and economically sound methods as source reduction and reuse techniques, recycling and composting; and

WHEREAS, the Solid Waste Management Act, *N.J.S.A. 13:1E-1 et seq.* ("Act"), mandates maximum practicable use of source reduction and reuse techniques, recycling and composting; and

WHEREAS, proper solid waste disposal and recycling programs contribute to solving energy, environmental and economic problems; and

WHEREAS, the lack of coordinated Statewide planning and management has led to insufficient disposal capacity within the State and forced several counties to send their solid waste to out-of-State disposal facilities at great cost and questionable reliability; and

WHEREAS, source reduction, reuse, recycling and composting efforts reduce demand for solid waste disposal facilities and, conversely, waste-to-energy resource recovery facilities discourage the maximum use of other recycling activities; and

WHEREAS, planning and construction of waste-to-energy resource recovery facilities require substantial capital expenditures and a guaranteed flow of processible and combustible waste; and

WHEREAS, source reduction, reuse, recycling and composting must be increased before proceeding with further development of waste-to-energy resource recovery facilities; and

WHEREAS, each county and the Hackensack Meadowlands District currently constitute a solid waste management district ("District") authorized to act independently or in combination with other Districts to plan for the disposal of solid waste; and

WHEREAS, cooperative arrangements among Districts could limit the number of solid waste facilities and result in benefits to the citizens of the State; and

WHEREAS, 12 waste-to-energy resource recovery facilities are currently in the planning, engineering, design or environmental review stages and have not received final approval of solid waste facility engineering designs or begun construction or operation; and

WHEREAS, a sensible plan for dealing with the State's solid waste problem can be achieved by maximizing the use of source reduction and reuse techniques, recycling, composting and other environmentally sound methods for dealing with solid waste, by reassessing options for land-filling, and by reassessing those waste-to-energy facilities that are currently being developed or are operating in this State;

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. An Emergency Solid Waste Assessment Task Force ("Task Force") is hereby established, which shall consist of 15 members to be appointed by the Governor as follows:

a. The Commissioner of Environmental Protection who shall serve as the Chairperson;

b. The President of the Board of Public Utilities or his designee;

c. The Commissioner of Community Affairs or his designee;

d. The Attorney General or his designee;

e. The State Treasurer or his designee;

f. One representative from the Governor's Office;

g. Two representatives of local or county governments;

h. Four representatives of environmental groups;

i. One representative with experience in waste-to-energy resource recovery; and

j. Two representatives with experience in recycling.

2. The Task Force shall:

a. Estimate the quantity and characteristics of the waste stream for each District;

b. Identify and evaluate specific methods for reducing the amount of solid waste produced and for increasing reuse, recycling and composting of solid waste; determine what percentage of the solid waste stream can be eliminated by source reduction and reuse techniques, recycling or composting and when such percentages can be achieved;

c. Review current and projected solid waste disposal needs of the Districts for the next 20 years and evaluate existing landfill capacity;

d. Evaluate the environmental, health, safety and financial impacts of source reduction, reuse, recycling, composting, landfills and waste-to-energy resource recovery facilities; determine whether regionalized facilities would result in net benefits to the citizens of the State, and evaluate the impact on individual Districts;

e. Prepare a preliminary report indicating the amount of solid waste expected to be produced in New Jersey over the next 20 years, the amount that can be eliminated through source reduction, the amount that can be reused, recycled or composted, and the amount that must be disposed of by landfilling and waste-to-energy and other resource recovery methods; and

f. Take public comment, including hearings, on the preliminary report.

GOVERNOR'S OFFICE

EXECUTIVE ORDERS

3. Within 120 days of the date of this Order, the Task Force shall submit recommendations to the Governor on the following:

a. A program to minimize the generation of solid waste and maximize reuse, recycling and composting. This program should specifically identify the percentages of waste which can be removed from the solid waste stream by reuse, recycling and composting and propose a schedule for these reductions in the waste stream;

b. Alternatives for the disposal of solid waste that cannot be removed from the waste stream through source reduction and reuse techniques, recycling or composting;

c. The benefits of and a process for regionalizing solid waste disposal facilities where appropriate;

d. The need for revision of environmental or other standards for resource recovery or other solid waste disposal facilities; and

e. Legislative and regulatory changes which are necessary to achieve the Task Force's recommendations.

4. During the Task Force's deliberations over the next 120 days, the following shall apply:

a. The Department of Environmental Protection shall not issue any final approval of any solid waste management plan that sites, increases the capacity of or approves financing for waste-to-energy resource recovery facilities;

b. The Department of Environmental Protection shall not issue any approval of Preliminary or Final Environmental and Health Impact Statements for any waste-to-energy resource recovery site or facility;

c. The Department of Environmental Protection shall not issue tentative or final approval of any solid waste facility engineering design now pending or hereafter submitted for any waste-to-energy resource recovery facility. Alterations, modifications or amendments to existing permits or approvals previously issued by the Department shall be affected by this Order;

d. The Department of Environmental Protection, the Board of Public Utilities and the Division of Local Government Services within the Department of Community Affairs shall not, pursuant to *N.J.S.A. 13:1E-136 et seq.*, issue any approval or conditional approval of any previously submitted proposed contract for the design, financing, construction, operation or maintenance of a waste-to-energy resource recovery facility; and

e. No State agency, commission or organization shall approve the issuance of debt or extend financing to any person or entity for use in planning, designing, acquiring, constructing, operating or maintaining a waste-to-energy resource recovery facility.

5. The Task Force is authorized to call upon any department, office, division or agency of this State to supply it with data and any other information, personnel or assistance it deems necessary to discharge its duties under this Order. Each department, office, division or agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Task Force and furnish it with such information, personnel and assistance as is necessary to accomplish the purpose of this Order. The Attorney General shall act as legal counsel to the Task Force.

6. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR

Governor James J. Florio

Executive Order Number 9(1990)

Financial Disclosure Requirements

Amendments to Executive Order No. 1(1990)

Issued: April 18, 1990.

Effective: April 18, 1990.

Expiration: Indefinite.

WHEREAS, Executive Order No. 1 established specific financial disclosure requirements for certain State officers and employees; and WHEREAS, Executive Order No. 1 contemplated that the Order would be reviewed after implementation and amended or supplemented if necessary; and

WHEREAS, the Office of the Attorney General and the staff of the Executive Commission on Ethical Standards have completed an initial review of the implementation and content of Executive Order No. 1 and have made recommendations for alterations to the scope of particulars of Executive Order No. 1;

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 definition of "Public employee" in Section 7(a) of Executive Order No. 1 is hereby amended to include the following:

- a) Members of the State Board of Agriculture;
- b) Members of the State Board of Education;
- c) Members of the Board of Higher Education;
- d) Members of the State Parole Board; and
- e) Presidents of the State colleges and universities.

2. The definition of "Public officer" in Section 7(b) of Executive Order No. 1 is hereby amended to include the members of the following boards, independent authorities, and public corporations:

- a) Council on Affordable Housing;
- b) Agriculture Development Committee;
- c) Health Care Facilities Financing Authority;
- d) Election Law Enforcement Commission;
- e) Hazardous Waste Facilities Siting Commission;
- f) Health Care Administration Board;
- g) Hospital Rate Setting Commission;
- h) Low-Level Radioactive Waste Disposal Facility Siting Board;
- i) Merit System Board;
- j) New Jersey State Council on the Arts;
- k) New Jersey Housing and Mortgage Financing Agency;
- l) New Jersey Commission on Science and Technology;
- m) New Jersey Racing Commission;
- n) New Jersey Transit Corporation;
- o) New Jersey Urban Enterprise Zone Authority;
- p) Public Employment Relations Commission;
- q) South Jersey Food Distribution Authority;
- r) State Lottery Commission;
- s) State Planning Commission;
- t) Tidelands Resources Council;
- u) Urban Development Corporation;
- v) Wastewater Treatment Trust; and
- w) Water Supply Authority.

3. The definition of "Public officer" in Section 7(b) is hereby amended to exclude the members of the following boards, commissions, independent authorities, and public corporations:

- a) Rahway Valley Sewerage Authority; and
- b) Education Commission of the States.

4. Section 1(f) of Executive Order No. 1 is hereby amended so that Financial Disclosure Statements filed by public officers shall disclose sources of income for the twelve-month period immediately preceding the filing date of the Statement. Public employees filing Financial Disclosure Statements before July 1 of any year shall provide the amount and source of income from January 1 of the preceding calendar year to date. Public employees filing Financial Disclosure Statements after July of any year shall provide the amount and source of income for the twelve-month period immediately preceding the filing date.

5. This Order shall take effect immediately; however, those public employees and officers who are required to file Financial Disclosure Statements by virtue of paragraphs 1 and 2 of this Order shall comply with this requirement within 60 days of the date of this Order.

# RULE PROPOSALS

## ADMINISTRATIVE LAW

(a)

### OFFICE OF ADMINISTRATIVE LAW

#### Special Education Program: Scheduling of Hearing Proposed Amendments: N.J.A.C. 1:6A-4.2 and 9.1

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

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

Proposal Number: PRN 1990-207.

Submit comments by June 6, 1990 to:  
Steven L. Lefelt, Deputy Director  
Office of Administrative Law  
Quakerbridge Plaza, Bldg. 9  
Quakerbridge Road, CN 049  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

In May 1989, the Department of Education, Division of Special Education, adopted a number of changes to its rules concerning special education, N.J.A.C. 6:28. Under these amended rules, the Department of Education continues to conduct a conference in any matter where a due process hearing is requested; however, participation at the conference by the parent(s) is now voluntary (see N.J.A.C. 6:28-2.7(b)).

In the event that the Department of Education conference results in a transmittal of the case to the Office of Administrative Law, the hearing is scheduled during the Department conference by placing a telephone call to the Clerk of the Office of Administrative Law. When parents have not attended the conference, it is difficult for the Office of Administrative Law to schedule the hearing. In order to comply with the Federally mandated time frames for completing these cases, the hearing must be scheduled within 14 calendar days of the conference unless a later date is approved by a judge. Because participation in the scheduling process by both parties facilitates selection of a mutually acceptable hearing date, when the parents are not at the conference, it is impractical to schedule a hearing date without knowing the parents' availability.

The proposed amendments provide that parents who do not attend the Department's conference should provide the Department with a telephone number where they can be contacted at the time of the conference. This contact by telephone call is for purposes of scheduling a hearing only. If the parents do not attend the conference and do not provide a telephone number where they may be contacted, the hearing date will be assigned by the Clerk without any input from the parents. The rule change does not require parents to attend the conference, nor does failure to attend affect the right to a hearing. The only purpose of the proposed amendments is to facilitate scheduling that is convenient for all parties.

The proposed amendment to N.J.A.C. 1:6A-9.1(a) clarifies that any delay in scheduling of the hearing, whether or not agreed to by the parties, must be approved by the administrative law judge, as required by Federal law, 34 C.F.R. 300.512(c).

The proposed amendments were developed in coordination with the Department of Education. The Department is also proposing an amendment to N.J.A.C. 6:28-2.7(b).

#### Social Impact

The proposed amendments allow parents who choose not to attend the Department's Special Education due process hearing conference to participate in the selection of a hearing date by allowing for telephone contact to be made for scheduling purposes. If the parents do not participate in this process, the Office of Administrative Law must simply assign a hearing date. The proposed amendment to N.J.A.C. 1:6A-9.1(a), which permits the scheduling of the hearing for beyond 14 calendar days after the conference only with approval of the judge, was made to conform with the Federal requirement under 34 C.F.R. 300.512(c). It is not anticipated that the proposed amendments will effect a major change in the practice of scheduling; its purpose is to facilitate selection of a hearing date that is convenient for all parties.

#### Economic Impact

The proposed amendments should reduce the number of requests for adjournment which result when a hearing date is selected unilaterally and will facilitate selection of a hearing date which is acceptable to all parties. Because the adjournment and rescheduling of cases may result in increased costs to all parties, the change in the scheduling process as proposed should result in some economic savings.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments affect scheduling of special education due process hearing conferences.

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

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

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

(f) The board of education or public agency shall insure that a representative attends the conference. Participation by the parents is voluntary. **However, if the parents do not attend the conference, they shall provide the Department of Education with a telephone number where they can be contacted at the time of the conference, so that dates for the hearing may be scheduled.**

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

(a) 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, **either in the presence of the parties or through telephone conference call to the parents pursuant to N.J.A.C. 6:28-2.7(b)** telephone the Clerk of the Office of Administrative Law and the Clerk shall assign a preemptory 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 the parents are not available for scheduling, either at the conference or by telephone conference call, a hearing date shall be assigned by the Clerk.** If a later date is [agreed upon] approved by a judge, 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.

(b) 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.

## AGRICULTURE

(b)

### DIVISION OF REGULATORY SERVICES

#### Commercial Fertilizer and Soil Conditioner Commercial Values

#### Proposed Amendment: N.J.A.C. 2:69-1.11

Authorized By: State Board of Agriculture and

Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:9-15.26 and 15.33.

Proposal Number: PRN 1990-206.

Submit comments by June 6, 1990 to:

Robert C. Fringer, Director  
New Jersey Department of Agriculture  
Division of Regulatory Services  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-5575

## AGRICULTURE

## PROPOSALS

The agency proposal follows:

**Summary**

The purpose of this proposed amendment to N.J.A.C. 2:69-1.11 is to update the commercial values of primary plant nutrients. The assessed penalties for deficient fertilizers will be based on the values and charged to the manufacturer. Claimed penalty fees are returned to the customer. The State Treasury will receive all unclaimed penalty fees.

**Social Impact**

As a result of the proposed amendment, all consumers of fertilizers will have more monetary protection when deficient fertilizers are detected. Manufacturers will exhibit more care in controlling their formulating processes to avoid a penalty.

**Economic Impact**

All consumers of fertilizers will be equitably compensated for their losses because these proposed values are accurately adjusted to current market prices.

**Regulatory Flexibility Analysis**

This rule implements N.J.S.A. 4:9-15.26, which, although having been altered by revisions, has been in substantially similar form on the books since 1874. The original law was in response to the growing use and availability of commercial fertilizers to farmers in the 1850's, who faced many products of doubtful value. The law and rules are designed to provide accurate verifiable information so the proper amount and type of fertilizer is used on any particular crop and soil. The present rule provides a mechanism to implement a formula to establish the index value of the fertilizer, which is an expression of the difference in the actual found nutrients analysis and what is claimed by the manufacturer on the label. If a deficiency is found, the values of the nutrients in the rule are then used in the formula to produce a figure which is compared to the cost of the product by deficiency in the guaranteed analysis and guaranteed figures are then subtracted and the resulting figure is multiplied by three to find the amount due to the customer or customers, which is then distributed pro rata. If no customer can be identified the money goes to the State Treasury.

In 1987, 868 fertilizer samples were analyzed and 20 percent were found to be in violation. The penalties collected totaled \$24,208 of which \$14,081 was turned over to the Treasury and \$9,284 was refunded to consumers.

The Department had registered with it 835 firms dealing in commercial feeds, fertilizers and liming materials. Many of these are small businesses. However, all farmers in New Jersey are small businesses, by virtue of that term's definition in the Regulatory Flexibility Act. Further, many consumers use fertilizers.

The Regulatory Flexibility Act makes no explicit provision for weighing the harm of a regulation against one group of small businesses and comparing it to the benefits given to others. But the intent of the Act seems to be that the regulatory agency is required to quantify in its analysis the good and harm that is to be done by a regulation to all small businesses. The question of consumer interest is not addressed in the Regulatory Flexibility Act; however, the Legislative history of the original and subsequent Fertilizer Acts makes manifestly clear there is an intent to protect the end user of the commodity. The drafting of the Fertilizer law itself makes clear the benefits which are bestowed by it are to be applied to that end.

The burdens the law and rules place upon the fertilizer manufacturers are the costs of registration, the cost of complying with the guaranteed analysis, such monitoring of production which this might require, and the cost of reporting this information to the consumer via either printing on the bag or supplying the information in written form with bulk deliveries. The rules also provide to the consumer information which is accurate, useful and necessary to apply fertilizers on the basis of nutrients needed by the crop, without the necessity of relying upon brand names, which may or may not in themselves be reliable. There is nothing in the rules which prohibits anyone from selling the grade of fertilizer he wishes, but it could not be mislabeled or claims made for it that are untrue. The matter of adulterants is not in question here and no product tested has been found to contain them in the 1986 year.

The cost of compliance varies with the number of blends and types of fertilizer placed on the market. These costs are solely in the hands of the manufacturer and is solely one that a manufacturer makes to meet the demands of the market.

The law and rules are designed to provide the freest form of safe, honest and understandable competition. They are based on the accepted standards of Association of American Plant and Food Control Officers, Inc.,

whose standards are the basis for the laws and rules of most other states in the union. If the burden on the manufacturer or distributor were lifted, New Jersey manufacturers would be left only with a New Jersey market and would be given no chance to compete in other states or countries. Further, every bag of every fertilizer load would have to be tested by every user to determine if it was desirable for use on each and every area to be covered. Competition in the fertilizer field would soon become based not on results but on brand loyalty, which would further deprive the small manufacturer of the opportunity to compete on merit, requiring them to match the advertising budget of the large manufacturer, which no small manufacturer could do.

Further, the rules and deficiency formula provide a rather economical way to settle disputes on the quality of the product purchased. Otherwise, an action would have to be commenced in court, possibly a class action, with expert testimony and trial costs, which would be disadvantageous to the plaintiff who has a small business and the small business defendant to whom the cost of defending and prosecuting such actions would be disproportionate to the amount that could be recovered.

It is the analysis of the Department that the rules provide more benefits to more small businesses by complying with these rules and law, than are hurt by them. They are the minimum necessary to ensure the honest, understandable trade in the commodity based on the important results deliverable by the product, not upon brand loyalty. It is, as a result, more economically advantageous for small business manufacturers to enter and compete in the market in both New Jersey and the rest of the world.

Lastly, fertilizer is one of the key ingredients of modern agriculture and a source of great consumer pleasure in landscaping and gardening. The overwhelming cost saved in purchasing these products for the results desired provides a sound basis for economical farming and gardening based on science not luck.

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

2:69-1.11 Commercial values

(a) The State Board of Agriculture, pursuant to N.J.S.A. 4:9-15.26, determines the commercial value of primary plant nutrients to be:

- |                              |                  |
|------------------------------|------------------|
| 1. Nitrogen:                 | \$4.00 per unit. |
| 2. Water Insoluble Nitrogen: | \$7.50 per unit. |
| 3. Available phosphoric acid | \$3.00 per unit. |
| 4. Soluble potash:           | \$3.00 per unit. |

(b) These values shall be effective July 1, [1989] 1990 through June 30, [1990] 1991.

(a)

**DIVISION OF REGULATORY SERVICES  
Jersey Fresh Quality Grading Program  
Products and Manner of Use**

**Proposed Amendments: N.J.A.C. 2:71-2.2 through  
2.6**

Authorized By: State Board of Agriculture and Arthur R. Brown, Jr., Secretary, Department of Agriculture.

Authority: N.J.S.A. 4:10-3, 4:10-13 and 4:10-20.

Proposal Number: PRN 1990-231.

Submit comments by June 6, 1990 to:

Robert C. Fringer, Director  
New Jersey Department of Agriculture  
Division of Regulatory Services  
CN 330  
Trenton, New Jersey 08625  
Telephone: (609) 292-5575

The agency proposal follows:

**Summary**

The proposed amendments to the rules for the voluntary "Jersey Fresh Quality Grading Program" were developed to aid packers of red cabbage, savory cabbage, dandelion greens, kohlrabi, hot peppers, snap beans, spinach plants and spaghetti squash to market a uniformly recognized, high grade product. Uniform high grade products have greater acceptance by the consumer and ultimately increase the demands for the superior quality of these New Jersey grown products.

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The sale of logo stickers, by the State Department of Agriculture, is being dropped due to the lack of interest on the part of the growers. A commencement date and one-year duration for licenses and registration numbers, application for and Department application division deadlines are also provided.

**Social Impact**

The people affected by these rules will be the packers using the logo and consumers. Products packed under the logo will enhance the promotion of uniformly packed high quality New Jersey farm products to the benefit of the packers and consumers. Packers will gain new markets for their products, while consumers will have more quality products available.

**Economic Impact**

The economic impact on voluntary logo packers will be positive in that the proposed amendments eliminate the charge for the use of logo labels, imprints and rubber stamps. It will be less costly for a New Jersey grower to participate in the "Jersey Fresh Quality Grading Program."

**Regulatory Flexibility Analysis**

The proposed amendments primarily affect farmers, most of which are small businesses as defined by the Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.). The amendments do impose certain reporting, recordkeeping and other compliance requirements on farmers should they voluntarily elect to participate in the "Jersey Fresh Quality Grading Program." Should a farmer choose to participate, the costs of participating should be offset by prices received for the produce.

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

2:71-2.2 Use of the "Jersey Fresh Quality Grading Program" and "Jersey Fresh Quality Premium Program" Logos, (referred to as the "logos") on containers of certain fresh fruits and vegetables

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

[c) Only those persons, firms, partnerships, corporations or associations licensed by the New Jersey Department of Agriculture pursuant to N.J.S.A. 4:10-5 to use the Jersey Fresh Quality Grading Program Logo or Premium Logo shall be permitted to attach the printed label to or have it printed upon a panel of the container in which the agricultural commodity is to be marketed or to employ its use in advertising or in any manner whatsoever. All containers are subject to the approval of the New Jersey Department of Agriculture.]

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

**(e) All applications approved for issuance of licenses and registration numbers shall have the license granted for the period of one year commencing April 1. Interim licenses and registration numbers may be granted to qualified packers for the remainder of the license year. Applications shall be submitted at least 20 days prior to application approval. The Department shall approve or deny applications within 20 days of receipt.**

2:71-2.3 [Charges]**Fee and reporting requirements for Jersey Fresh Quality Grading Program [logo labels and use of Jersey Fresh Quality logo imprinted containers] participation**

(a) A fee of \$30.00 shall accompany the application form and shall be made payable to the New Jersey Farm Products Publicity Fund. If an applicant is deemed ineligible, the fee shall be refunded.

[b) Licensees may purchase Jersey Fresh logo labels in increments of 1,000. The charge for Jersey Fresh logo labels shall be \$10.00 per thousand. Checks are to be made payable to New Jersey Farm Products Publicity Fund.

(c) The licensed packer using the "logo" on approved containers shall pay to the New Jersey Farm Products Publicity Fund \$1.00 per 1,000 containers on which the "logo" is imprinted. However, for produce in retail packages of 20 pounds or less, the charge shall be based on the weight of the wholesale package. Such charge shall be levied on the quantity of containers delivered to the packer. A copy of each shipping invoice or a statement shall be supplied to the department by the licensed person, firm, partnership, corporation or co-operative that transfers ownership of containers bearing the "logo" to the licensed registrant. Said copy of each shipping invoice

or statement shall include: licensed packer's name and address, the registration number, the number of containers delivered, the type of containers and the date of delivery. The amount of said charge shall be paid by the licensed packer within ten days after date of billing by the department.

(d) Licensees packing Jersey Fresh Quality Grading Program commodities in wooden containers may, upon payment of a \$75.00 fee in the first year and a \$50.00 fee in the second and subsequent years to the New Jersey Farm Products Publicity Fund, use a rubber stamp to identify those commodities as being packed under the "logo" program. The stamps shall remain the property of the New Jersey Department of Agriculture. The use of such stamps shall be restricted to containers constructed of wood.

(e) Each licensed packer shall submit for each license year, by March 1 of that license year, a report on forms supplied by the Department. Information required will include:

1. An inventory of approved Jersey Fresh Quality Grading Program logo imprinted containers;

2. Numbers of Jersey Fresh Quality Grading Program logo containers used.

(f) Failure to timely supply the information in (d) above may be cause for denial or delay of licensing for the following licensing year.

(g) No charge will be levied for a license to transfer ownership of containers bearing the "logo".]

**(b) Licensees packing Jersey Fresh Quality Grading program commodities may mark with self-adhesive labels, rubber stamp or use imprinted fiberboard containers to identify those commodities as being packed under the "logo" program. For required markings, see N.J.A.C. 2:71-2.5.**

**(c) A copy of each shipping invoice or a statement shall be supplied to the Department by the licensed person, firm, partnership, corporation or co-operative that transfers ownership of containers or stamps bearing the "logo" to the licensed registrant.**

**(d) Each licensed packer shall submit by December 31 of each license year a report, on forms supplied by the Department, indicating the number of containers packed by commodity under the Jersey Fresh Quality Grading Program. Failure to timely supply the above may be cause for denial or delay of licensing for the following licensing year.**

2:71-2.4 Agricultural commodities intended to be marketed under the Jersey Fresh Quality Grading Program and Premium Program

(a) Only the following products may be packed in the Quality Grading Program: Sweet anise (fennel), apples, asparagus, beets (bunched), beets (topped), blueberries, broccoli greens, cabbage (domestic, savoy and red), cabbage (Chinese), collard greens, green corn, cubanelle peppers, cubanelle peppers (red), cucumbers, cucumbers (cukes), cucumbers (pickling type), cucumbers (slicing type), dandelion greens, eggplants, endive, escarole, herbs (fresh), kale, kohlrabi, bib Boston lettuce, iceberg lettuce, lettuce (green leaf and red leaf), mustard greens, nectarines, okra, common green onions, parsley, peaches, **hot peppers (green or red)**, sweet peppers, sweet peppers (yellow, bell type), sweet potatoes, white potatoes, radishes (bunched), raspberries, romaine, shallots (topped), **snap beans, spinach plants**, strawberries, summer squash (**yellow or green**), fall and winter type squash (**butternut, acorn and spaghetti**), swiss chard, tomatoes (fresh market), cherry tomatoes, turnips (topped), turnip greens, and watermelon (sugar baby).

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

2:71-2.5 Commodity Grades, packing requirements, packer identification and containers

(a) Each container bearing the "logo" shall have the name and address of the packer in letters not less than three-eighths inches in height. Each container [printed] **stamped or imprinted** with the "logo" must be identified by the [applicable U.S. grade and the] licensed packer's registration number, which also shall be no less than three-eighths inch in height. The registration number shall be printed or marked on the carton in close proximity to the "logo" or the name and address of the registrant. **All imprinted containers must also have "Produce of U.S.A. (NJ)" imprinted no less than three-eighths inch in height.** All containers, packages and packaging materials shall be new.

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(b) Commodities shall be graded, packed, identified and contained as follows:

1. (No change.)

2. Asparagus shall be U.S. No. 1 grade with not less than two-thirds of the stalk length green color. Stalks shall be of the following diameter classifications. Small—five-sixteenths inch to less than eight-sixteenths inch in diameter. Medium—eight-sixteenths inch to less than eleven-sixteenths in diameter. Large—eleven-sixteenths inch to less than fourteen-sixteenths in diameter. Small to medium—five-sixteenths inch to less than eleven-sixteenths inch in diameter. Medium to large—eight-sixteenths inch to less than fourteen-sixteenths inch in diameter. Stalks shall be well trimmed. When packed loose, all containers shall have a tight pack.

3.-5. (No change.)

6. Broccoli greens shall be U.S. No. 1 grade. The pack shall be for [a minimum of] **12 to 16** bunches per container. All containers shall have at least a fairly tight pack.

7. (No change.)

8. Cabbage, Domestic type or savoy type, shall be U.S. No. 1 or U.S. No. 1, Green grade, domestic type [with the] heads [being of] shall be two pound minimum weight to five pound maximum weight, savoy type heads shall be one and a half pound minimum weight to four pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. All containers, except sacks, shall have a tight pack. The U.S. No. 1, Green grade requires that the heads be fairly well trimmed.

9. Cabbage (red type) shall be U.S. No. 1 or U.S. No. 1 new red grade, with the heads being of two pound minimum weight to five pound maximum weight. The U.S. No. 1 grade requires that the heads be well trimmed. The U.S. No. 1 new red grade requires that the heads be fairly well trimmed. All containers, except sacks, shall have a tight pack.

[9.]10. (No change in text.)

[10.]11. Green Corn shall be U.S. Fancy grade with a minimum count of **48 ears per container for large varieties** and 54 ears per container for all other varieties, and when packed in crates, the pack shall be tight. All green corn shall be hydrocooled. All containers shall be marked "hydrocooled".

Existing 11.-16. recodified as 12.-17. (No change in text.)

18. Dandelion greens shall be U.S. No. 1 grade. All containers shall have at least a fairly tight pack.

Existing 17.-23. recodified as 19.-25. (No change in text.)

26. Kohlrabi (green or purple) shall consist of plants of similar varietal characteristics which bulbs are hard and tops are not wilting and which are free from decay, seedstems, growth cracks and dirt, bulbs and tops are not materially affected by discoloration, freezing, disease, insects and mechanical or other injury. Roots shall be cut so that they extend no more than one-half inch beyond the point of attachment of the bulb. Each bulb shall have a minimum of two inches and a maximum of four inches in diameter. The pack shall be for 12 bunches per container. All containers shall have at least a fairly tight pack. In order to allow for variations incident to proper grading and handling, the following tolerances, by weight of bunches, are provided. Not more than a total of 10 percent in any lot may fail to meet the required specifications, including not more than five percent for defects seriously affecting the lot including not more than one percent for decay. For application of tolerances, see N.J.A.C. 2:71-2.6.

[24.]27. Leeks shall be fairly clean, tops and bulbs shall be characteristic color. Tops and bulbs must not be affected by discoloration, wilting, freezing, mechanical damage or by other means. Plants shall be free from decay. If tops are trimmed, it must be done so as not to materially affect the appearance of the individual plant. In order to allow for variations incident proper grading and handling, the following tolerance, by [count] weight of bunches are provided: [ten] 10 percent for plants in any lot which fail to meet the requirements, including therein not more than one percent for plants affected by decay. [Individual packages in a lot may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified.] All containers shall have a tight pack. For application of tolerance, see N.J.A.C. 2:71-2.6.

Existing 25.-32. recodified as 28.-35. (No change in text.)

36. Hot peppers (green or red) shall consist of peppers of similar varietal characteristics which are firm; long hot peppers may have

curved shape; all other varieties must be fairly well shaped for the variety and free from sunscald and decay, and not materially affected by freezing injury, hail, scars, sunburn, discoloration, disease, insects, mechanical or other injury. In lots designated as green shall be full green color for the variety, in lots designated as red. One hundred percent of the peppers shall show full red color. In order to allow for variations incident to proper grading and handling, the following tolerances, by count, are provided. Ten percent in any lot which fails to meet the requirements, but not more than one-half of this amount, or five percent, shall be allowed for peppers which are seriously affected, including therein not more than two percent for peppers affected by decay. All containers shall be well filled. For application of tolerance, see N.J.A.C. 2:71-2.6.

[33.]37. Sweet peppers (Green or Red, Bell type) shall be U.S. No. 1 grade, or better. Minimum size shall be two and one-half inch minimum diameter and two and one-half inch minimum length. Containers shall be packed to a maximum average of no more than 90 peppers per container. Large-Average no more than 75 peppers per container. Extra Large-Average no more than 65 peppers per container. In lots designated U.S. No. 1 Red, [90] 100 percent of the peppers shall show full red color. All containers shall be at least fairly well filled.

[34.]38. Sweet peppers (Yellow, Bell type) shall be U.S. No. 1, as specified by the U.S. Standard for Sweet Peppers, for defects and tolerances with [90] 100 percent of the peppers showing full yellow or orange color. Minimum size and/or count pack shall be as specified under the Sweet Peppers (Green and Red, Bell type) requirements. All containers shall be at least fairly well filled.

Existing 35.-40. recodified as 39.-44. (No change in text.)

45. Snap beans shall be U.S. No. 1 grade. All containers shall be well filled.

46. Spinach plants shall be U.S. No. 1 grade. All containers shall have at least a fairly tight pack.

[41.]47. Squash, Fall and Winter (acorn, [and] butternut and spaghetti) shall be U.S. No. 1 grade and shall meet the following size specifications: acorn shall be a minimum of one pound and a maximum of three pounds in weight. Butternut shall be a minimum of one and one-half pounds and a maximum of four pounds in weight. Spaghetti must have a creamy yellow color, pack shall be for 12 to 16 squash per container, with no more than one under or one over the specified count, but the average must meet the count specified for the pack. All containers shall be [at least fairly] well filled.

Existing 42.-48. recodified as 48.-54. (No change in text.)

## 2:71-2.6 Definitions

For the purposes of this subchapter, the following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Application of tolerances" means, in the case of cabbage (Chinese), kohlrabi, hot peppers (green and red), shallots (topped), swiss chard, leeks and herbs (fresh), that the contents of individual packages in the lot are subject to the following limitations:

1. For a tolerance of 10 percent, individual packages may contain not more than one and one-half times the tolerance specified, provided that the average for the entire lot is within the tolerance specified.

2. For a tolerance of less than 10 percent, individual packages may contain not more than double the tolerance specified, provided that at least one defective specimen may be permitted in any package and provided, further, that the average for the entire lot is within the tolerance specified.

"Fairly tight" means, in the case of eggplants, beets (bunched), broccoli greens, collard greens, dandelion greens, endive, escarole, herbs, kale, kohlrabi, lettuce (green and red leaf), mustard greens, common green onions, radishes (bunched), spinach plants, swiss chard, and turnip greens that the package is sufficiently filled to prevent any appreciable movement of the product and that they are in contact with the lid or cover. In the case of apples, that the apples are of the proper size for molds or cell compartments in which they are packed, and that the molds or cells are filled in such a way that no more than slight movement of apples within molds or cells is possible. The pad over the top layer of apples shall not be more than

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three-quarter inch below the top edge of the carton. In the case of nectarines and peaches packed in mold or cell compartments, that they are of the proper size for the mold or cell compartments in which they are packed and that the molds or cells are filled in such a way that there is no more than slight movement within the mold or cells, and that the pad or tray over the top layer must be in contact with the lid.

...  
 "Fairly well filled" means that in the case of beets (topped), cucumbers, okra, cubanelle peppers (green or red), sweet peppers (green, red or yellow, bell type), sweet potatoes, squash ([fall and winter or] summer), shallots (topped), tomatoes (fresh market), and turnips (topped), except in sacks, are not in contact with the lid or cover, but not more than one-half inch below the lid or cover. In the case of peaches, the container is level full and there is practically no movement of the fruit when the container is closed. In the case of nectarines, the contents of the container may be slightly below the top edge but not more than one-half inch.

"Tight" means, in the case of iceberg lettuce and Big Boston lettuce, that the layers are completely and tightly filled without injury to the heads. In the case of green corn, when packed in crates the package is filled sufficiently to prevent any movement of the product within the package and it has the proper bulge without causing bruised kernels. In the case of asparagus (loose), cabbage (domestic, **savoy red** and Chinese), fennel, leeks, parsley and romaine, that the packages are sufficiently well filled so as to prevent the product from moving in the container, but not overly filled so that injury to the product results.

"Tolerances" means, in the case of packages identified with the Premium Jersey Fresh "logo", the applicable tolerance will be two percent less than the total tolerance stated in the U.S. Standard or the Jersey Fresh Regulations for the commodities in the premium program.

...  
 "Well filled" means, in the case of blueberries, cherry tomatoes, [and] raspberries and strawberries, that the fruit be one-quarter to one-half inch above the rim of the cup. In the case of snap beans and fall and winter squash (acorn, butternut and spaghetti) they shall be in contact with the cover.

**(a)**

**DIVISION OF RURAL RESOURCES  
 State Soil Conservation Committee  
 General Provisions—Soil Erosion and Sediment  
 Control Act; Soil and Water Conservation Project  
 Cost Sharing—Eligible Projects and Procedural  
 Rules**

**Proposed Readoption: N.J.A.C. 2:90**

Authorized By: Arthur R. Brown, Jr., Chairman, State Soil Conservation Committee.

Authority: N.J.S.A. 4:24-3, 4:24-42 and 4:1C-24.  
 Proposal Number: PRN 1990-202.

Submit comments by June 6, 1990 to:  
 Samuel R. Race, Executive Secretary  
 State Soil Conservation Committee  
 CN 330  
 Trenton, N.J. 08625

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66(1978), N.J.A.C. 2:90 is scheduled to expire on June 24, 1990. The readoption of the existing rules will allow for the continuation of these existing programs without interruption.

The Soil Erosion and Sediment Control Act of 1975 (N.J.S.A. 4:24-1 et seq.), as amended, requires that approval of applications for development, where more than 5,000 square feet of land surface area is disturbed, must be conditioned upon certification of a plan for soil erosion and sediment control by the soil conservation district wherein the soil disturbance occurs. The State Soil Conservation Committee is empowered

and required to promulgate technical and administrative standards for such controls. This has been previously accomplished through the promulgation of N.J.A.C. 2:90-1. The Committee proposes to readopt N.J.A.C. 2:90-1, which includes these standards and procedural rules to provide for orderly continuation of the implementation of the Act by the Committee and the local districts. This will enable persons proposing to engage in development activities to meet statutory mandates, and obtain erosion control plan approval upon which municipal land development and construction approvals are conditional. This subchapter also prescribes rules concerning municipal ordinances, fees and enforcement procedures.

N.J.A.C. 2:90-2 and 3 are comprised of the eligible conservation projects and procedural rules necessary for implementation of cost-share provisions of the Farmland Preservation program. Specifically, they describe eligible soil and water projects and procedural rules for approval of applications for cost sharing pursuant to the Agriculture Retention and Development Act, N.J.S.A. 4:1C-11 (P.L. 1983, c.32). The rules are utilized in conjunction with N.J.A.C. 2:76-5. The State Committee proposes to readopt N.J.A.C. 2:90 to provide for orderly continuation of the cost share provisions of the Farmland Preservation program. Participating landowners will thereby be enabled to avail themselves of program benefits. N.J.A.C. 2:90-2 prescribes the required standards and specifications and the projects which are eligible for cost sharing. N.J.A.C. 2:90-3 prescribes eligibility requirements and procedures for landowner participation and the required approvals of participating public agencies.

**Social Impact**

The proposed readoption of N.J.A.C. 2:90-1, which is comprised of procedural rules to implement the Soil Erosion and Sediment Control Act, will have a favorable impact upon the citizens of New Jersey through the continued control of soil erosion, sedimentation and water quality degradation related to construction and land development activities. Quality of living and the environment will be enhanced through the prevention of such damages.

Readoption of N.J.A.C. 2:90-2, prescribing eligible conservation cost share practices, will enable farmland owners enrolled in the Farmland Preservation Programs to receive cost share funding for installation of approved soil and water conservation projects. This program provides incentives to retain agriculture in the State thereby benefiting all citizens.

Readoption of N.J.A.C. 2:90-3, prescribing procedural rules for the State cost share program, will assure that applications are processed in a manner which will result in enhancement of the environment and promote the continuation of agricultural operations.

**Economic Impact**

The proposed readoption of N.J.A.C. 2:90-1, prescribing the Soil Erosion and Sediment Control Act (P.L. 1975, c.251) rules, will have a favorable impact upon the public through reduction in losses of soil and sedimentation damages from construction, mining and other land disturbance. Enhancement of water quality will be continued, thereby reducing public costs for correcting such problems. Persons who engage in land disturbances will be required to prevent offsite damages at their own cost, thereby reducing public costs for correcting such damages. Costs for corrective measures have been demonstrated to be at least 20 times the cost of preventive measures which are required by these rules. A significant public benefit-cost ratio will result.

Readoption of N.J.A.C. 2:90-2, prescribing eligible conservation practices, will have a beneficial economic impact by encouraging capital investment by landowners on agricultural lands which promote increased water use efficiency and erosion control. Farmland productivity will also be enhanced thereby providing a continuing and reliable food supply to State residents.

Readoption of N.J.A.C. 2:90-3, which prescribes procedural rules, will have a positive economic impact by assuring that all agency approvals are granted in a manner which is fully accountable with the requirements of the cost share provisions of the Farmland Preservation Act.

**Environmental Impact**

Potential soil loss and sedimentation and resulting water and air quality impairment from construction related land disturbances will continue to be minimized by the installation of appropriate controls required by the Soil Erosion and Sediment Control Act. Projects which cause land disturbance may not commence until proposed controls are approved and installed, thereby minimizing adverse environmental impacts.

N.J.A.C. 2:90-2, prescribing eligible conservation practices, will result in a positive environmental impact by assisting participation in the in-

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stallation of preventive and corrective land treatment measures which will control or minimize pollution and enhance soil productivity on agricultural lands.

Readoption of N.J.A.C. 2:90-3, which prescribes the procedural rules, will assure that cost share projects are installed in accordance with best management practices and have the required technical agency review and approval. Such approvals ensure that beneficial environmental impact will result.

**Regulatory Flexibility Analysis**

The proposed readoption has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules in subchapter 1, pursuant to the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., directly affect contractors in the State, the vast majority of whom are considered small businesses as defined by the Regulatory Flexibility Act. The rule at N.J.A.C. 2:90-1.14, Minor subdivision is designed to exempt the construction of one single-family dwelling from certain rules. However, compliance with all other soil erosion control measures, without exception for small businesses, is felt to be necessary due to the overarching environmental issues as described in the Environmental Impact statement above. The protection of the public air and water quality is felt to amply balance the cost to the contractor of compliance. In addition, the preponderance of small businesses in the regulated sections does not allow realization of the objectives of the rules should such businesses be granted lesser requirements or exemptions.

The vast majority of farmland owners affected by the conservation cost share program rules, in subchapters 2 and 3, are small businesses as defined by the Regulatory Flexibility Act. There are application and compliance requirements for participation in the cost share programs. The compliance requirements are based on conservation standards and maintenance and form the very basis of the programs. The desire and need to maintain the conservation standards and the benefit to the farmland owners outweighs any costs incurred to the owners. They benefit directly by installing erosion control and production enhancing practices under the voluntary cost share programs.

The proposed readoption of these rules places no new requirements on the persons or businesses regulated by the rules.

Full text of the proposed readoption appears in the New Jersey Administrative Code as N.J.A.C. 2:90.

**PERSONNEL**

**(a)**

**MERIT SYSTEM BOARD**

**Medical and/or Psychological Disqualification Appeals**

**Proposed Amendment: N.J.A.C. 4A:4-6.5**

Authorized By: Merit System Board, Peter J. Calderone,  
Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:4-1 and 45:14B-1 et seq.

Proposal Number: PRN 1990-220.

A public hearing concerning the proposed amendment will be held on:  
Thursday, May 24, 1990 at 5:30 P.M.  
Office of Administrative Law  
9 Quakerbridge Plaza, 1st Floor  
Trenton, New Jersey

Please call the Legislative Analysis and Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

Submit written comments concerning the proposed amendment by June 6, 1990 to:

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

The agency proposal follows:

**Summary**

The amendment to N.J.A.C. 4A:4-6.5 is being proposed to accurately reflect statutory law (N.J.S.A. 45:14B-1 et seq.) concerning the licensing of psychologists. The current law allows an individual who is not a

licensed psychologist to practice psychology at a State, county or local government institution or agency as long as these activities are in accordance with the duties of the individual's title. The Board, therefore, proposes to amend N.J.A.C. 4A:4-6.5 to allow an appointing authority, in a psychological disqualification proceeding, to furnish the Department of Personnel with a copy of the psychological report prepared and signed either by a New Jersey licensed psychologist or a psychologist who is qualified and employed by the appointing authority in the Clinical Psychologist title series.

**Social Impact**

The proposed amendment to N.J.A.C. 4A:4-6.5 would not change existing requirements concerning the licensing of psychologists. It simply would clarify for the benefit of appointing authorities as well as prospective or current employees of those appointing authorities in the Clinical Psychologist title series that such employees need not possess a State license for the practice of psychology.

**Economic Impact**

The only economic impact of the proposed amendment to N.J.A.C. 4A:4-6.5 is a potential reduction in the need for appointing authorities to use outside consultants for psychological evaluations of candidates for employment.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required since this proposed amendment will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment would regulate employment in the public sector.

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

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

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a [New Jersey licensed] physician, psychologist or psychiatrist [, to the Department of Personnel to support the removal request] who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (e) below for report requirements.

[2.] 3. (No change in text.)

(b)-(g) (No change.)

**(b)**

**MERIT SYSTEM BOARD**

**Family Leave**

**Proposed Amendments: N.J.A.C. 4A:6-1.1, 1.3, 1.8, 1.10 and 4A:8-2.4**

**Proposed New Rule: N.J.A.C. 4A:6-1.21**

Authorized By: Merit System Board, Peter J. Calderone,  
Assistant Commissioner, Department of Personnel.

Authority: N.J.S.A. 11A:6-1, 11A:8-1 and P.L. 1989, c.261.

Proposal Number: PRN 1990-240.

A public hearing concerning the proposed amendments and new rule will be held on:

Thursday, May 24, 1990 at 5:30 P.M.  
Office of Administrative Law  
9 Quakerbridge Plaza, 1st Floor  
Trenton, New Jersey

Please call the Legislative Analysis and Regulations Unit at (609) 984-0118 if you wish to be included on the list of speakers.

## PROPOSALS

## Interested Persons see Inside Front Cover

## PERSONNEL

Submit written comments concerning the proposed amendments and new rule by June 6, 1990 to:

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

The agency proposal follows:

#### Summary

The proposed amendments to N.J.A.C. 4A:6-1.1 (general leave provisions), 1.3 (sick leave), 1.8 (pregnancy-disability and child care leave in State service) and 1.10 (leave without pay in State service) would provide cross references to proposed new rule N.J.A.C. 4A:6-1.21. The new rule is intended to inform public employees and employers of the provisions of the recently enacted Family Leave Act, P.L. 1989, c.261. Although the Division on Civil Rights is charged by the new law with enforcement and regulatory responsibilities in this area, the existing rules on leave time for employees in the merit system must be revised to reflect the new law.

The proposed new rule defines terminology central to the new law, including "family leave," "employee," and "employer." The rule explains that family leave may be taken by an employee because of the birth or adoption of a child or because of the serious health condition of a family member, for up to 12 weeks in a 24-month period. However, an employee who is among the highest paid five percent or seven highest paid employees, whichever is greater, may be denied family leave if the denial is necessary to prevent substantial economic injury to the employer. The new rule further notes that such leave may be taken on a reduced schedule or intermittently if certain conditions are met. The new rule would also include the requirement that the employer must maintain the employee's group health insurance for the duration of the leave and that the employee retains all layoff rights as if he or she had not taken the leave.

Finally, to clarify that an employee's seniority will continue to accrue for layoff purposes during the employee's family leave, an amendment to N.J.A.C. 4A:8-2.4(c) is proposed to add family leave to the list of those leaves which are not to be deducted from seniority calculations.

#### Social Impact

The proposed amendments and new rule in N.J.A.C. 4A:6 explaining the provisions of the Family Leave Act are intended to make the leave rules a comprehensive source to which employees and appointing authorities may turn to obtain guidance. The social impact of these amendments should be limited to the convenience and clarity of including all basic leave information in Chapter 6 of the merit system rules. The Family Leave Act itself and any substantive, implementing rules which the Division on Civil Rights promulgates may have additional social impact, of course. Likewise, the amendment to N.J.A.C. 4A:8-2.4(c) would simply reflect seniority rights provided for in the Family Leave Act.

#### Economic Impact

The Family Leave Act will undoubtedly have a substantial economic impact on both employees and appointing authorities. However, the proposed amendments and new rule would not add to this impact, since their effect should be informational only.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required since these amendments and new rule will have no effect on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments and new rule would regulate employment in the public sector.

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

#### 4A:6-1.1 General provisions

(a) In local service, appointing authorities shall establish types of leaves and procedures for leaves of absence.

1.-4. (No change.)

**5. Employees may be eligible for family leave. See N.J.A.C. 4A:6-1.21.**

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

#### 4A:6-1.3 Sick leave

(a)-(f) (No change.)

(g) Sick leave may be used by employees who are unable to work because of:

1.-2. (No change.)

3. Care, for a reasonable period of time, of a seriously ill member of the employee's immediate family (see N.J.A.C. 4A:1-1.3 for definition of immediate family and see N.J.A.C. 4A:6-1.21 for family leave); or

4. (No change.)

(h) (No change.)

4A:6-1.8 Pregnancy-disability and child care leave: State service

(a) (No change.)

(b) **Employees eligible for family leave (see N.J.A.C. 4A:6-1.21) may use such leave for child care purposes.** Child care leave may be granted to other State employees under the same terms and conditions as all other leaves without pay. See N.J.A.C. 4A:6-1.10.

4A:6-1.10 Leave without pay: State service

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

(e) For family leave see N.J.A.C. 4A:6-1.21.

#### 4A:6-1.21 Family leave

(a) This section describes leaves for which employees in State and local service may be eligible, pursuant to the Family Leave Act, L.1989, c.261. The Division on Civil Rights, Department of Law and Public Safety, has the authority to promulgate rules pursuant to the Family Leave Act.

(b) The following definitions are used in this section:

1. "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of a parent who is under 18 years of age or 18 years of age or older but incapable of self-care because of a mental or physical impairment.

2. "Employ" means to suffer or permit to work for compensation and includes ongoing, contractual relationships in which the employer retains substantial direct or indirect control over the employee's employment opportunities or terms and conditions of employment.

3. "Employee" means a person who is employed for at least 12 months by an employer, with respect to whom benefits are sought under the Family Leave Act, P.L.1989 c.261, for not less than 1,000 base hours during the immediately preceding 12-month period, and includes employees in the career, senior executive and unclassified services.

4. "Employer" means a legal entity which engages the services of an employee and which from May 4, 1990 to May 3, 1991, employed 100 or more persons; from May 4, 1991 to May 3, 1993, employed 75 or more persons; and from May 4, 1993 and thereafter employed 50 or more persons.

i. In State service, "employer" refers to the department or autonomous agency. In local service, "employer" refers to the county, municipality or autonomous agency. An autonomous agency in local service is one which, by statute, is a body corporate and has the powers of an appointing authority.

5. "Employment benefits" means all benefits and policies provided or made available to employees by an employer, and includes group life insurance, health insurance, disability insurance, sick leave, annual leave, pensions, or other similar benefits.

6. "Family leave" means leave from employment so that the employee may provide care made necessary by reason of:

i. The birth of a child of the employee;

ii. The placement of a child with the employee in connection with adoption of such child by the employee; or

iii. The serious health condition of a family member of the employee.

7. "Family member" means a child, parent, or spouse.

8. "Parent" means a person who is the biological parent, adoptive parent, foster parent, step-parent, parent-in-law or legal guardian, having a "parent-child relationship" with a child as defined by law, or having sole or joint legal or physical custody, guardianship, or visitation with a child.

9. "Reduced leave schedule" means leave scheduled for fewer than an employee's usual number of hours worked per workweek but not fewer than an employee's usual number of hours worked per workday, unless agreed to by the employee and the employer.

10. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which requires:

## PERSONNEL

i. Inpatient care in a hospital, hospice, or residential medical care facility; or

ii. Continuing medical treatment or continuing supervision by a health care provider.

(c) An employee shall be entitled to a family leave of 12 weeks in any 24-month period.

1. Leave taken because of the birth or placement for adoption of a child may commence at any time within a year after the date of the birth or placement for adoption.

2. An employee shall be entitled, at the option of the employee, to take this leave on a reduced leave schedule, except that:

i. The employee shall not be entitled to a reduced leave schedule for a period exceeding 24 consecutive weeks; and

ii. The employee shall not be entitled to take the leave on a reduced leave schedule without an agreement between the employer and employee, if the leave is taken upon the birth or adoption of a healthy child.

3. The employee shall make a reasonable effort to schedule reduced leave so as not to disrupt unduly the operations of the employer and the employee shall provide the employer with prior notice of the care, medical treatment, or continuing supervision by a health care provider necessary due to a serious health condition of a family member.

4. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of family leave to which an employee is entitled.

5. In the case of a family member who has a serious health condition, the leave may be taken intermittently when medically necessary, if:

i. The total time within which the leave is taken does not exceed a 12-month period for each serious health condition episode;

ii. The employee provides the employer with prior notice of the leave; and

iii. The employee makes a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

6. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently if agreed to by the employer and the employee.

(d) Family leave may be denied to an employee if the employee is among the highest paid five percent of the employer's employees or the seven highest paid employees of the employer, whichever is greater, and the denial is necessary to prevent substantial and grievous economic injury to the employer's operations.

(e) No employee shall, during any period of family leave, perform services on a full-time basis for any employer for whom the employee did not provide those services immediately prior to commencement of the leave.

(f) During a family leave, the employer shall maintain coverage under any group health insurance policy, group subscriber contract or health care plan at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously from the date the employee commenced the leave to the date the employee returns to work or the date on which the employee's coverage would have expired had the employee not been on leave, whichever is sooner.

(g) If a layoff occurs during a family leave, the employee shall retain all rights available under N.J.A.C. 4A:8 as if the employee had not taken the leave.

#### 4A:8-2.4 Seniority

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

(c) The following types of leaves shall not be deducted from seniority calculations: all leaves with pay including sick leave injury (SLI); military, educational, gubernatorial appointment, personal sick, disability, **family** and voluntary alternative to layoff leave without pay; and, in local service, leave to fill elective public office. Suspensions, other leaves of absence without pay and any period an employee is laid off shall be deducted in calculating seniority.

(d)-(g) (No change.)

## PROPOSALS

## EDUCATION

(a)

### STATE BOARD OF EDUCATION

#### Pupil Records

#### Proposed Amendments: N.J.A.C. 6:3-2.1, 2.2, 2.5, 2.6, 2.7 and 2.8

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

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:36-19, 18A:36-19a and Public Law 94-142.

Proposal Number: PRN 1990-223.

Submit comments by June 6, 1990 to:

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

The agency proposal follows:

#### Summary

In 1986, amendments to N.J.A.C. 6:3-2 were adopted to address certain issues raised on appeal before the State Board of Education in *East Brunswick Education Association v. Board of Education of the Township of East Brunswick*, Agency Docket No. 486-12/82A (decided by State Board of Education, November 7, 1984). Of particular concern was the question of whether and to what extent noncertified health aides should be permitted access to pupil records. The 1986 amendments permit secretarial and clerical personnel, acting under the direct supervision of certified school personnel, to have access to pupil records under certain conditions (N.J.A.C. 6:3-2.5(c)6). The rules were also amended to address security precautions for computerized informational systems and to comply with Federal regulations that related to the retention and destruction of pupil records. In addition, the 1986 amendments also addressed the issue of rights of access by military recruiters in accordance with N.J.S.A. 18A:36-19.1.

On April 6, 1988, the State Board of Education adopted amendments to N.J.A.C. 6:3-2 in response to P.L. 1986, c. 160 (N.J.S.A. 18A:36-19a). N.J.A.C. 6:3-2.5(c)6 requires chief school administrators to request a pupil's records from the school district of previous attendance within two weeks of the pupil's enrollment in the new school district.

The Department of Education is proposing the current amendments to comply with amendments to the Federal Educational Rights and Privacy Act of 1984 (F.E.R.P.A.), as amended, enacted as 20 U.S.C. 1232g. A Departmental committee composed of representatives from the Divisions of Special Education, Executive Services and General Academic Education met to review and recommend necessary changes to bring the pupil records rules, N.J.A.C. 6:3-2, into compliance with the Federal regulations. The proposed changes provide for the adult pupil to have access to pupil records information.

The following is a review of proposed amendments:

N.J.A.C. 6:3-2.1 is being revised to include in the definition of an adult pupil the phrase "or is attending an institution of postsecondary education" to ensure that adult pupils who may be enrolled in a college or other postsecondary institution have access to their pupil records pursuant to 34 C.F.R. 99.3 of the regulations promulgated under F.E.R.P.A.

N.J.A.C. 6:3-2.1 is being revised to include the term "adoptive" in the definition of a "parent".

At N.J.A.C. 6:3-2.2(d), the proposed addition of the phrases "and adult pupils" and "their dominant language" requires district boards of education to notify parents and adult pupils in a manner that ensures their rights of access to pupil records.

At N.J.A.C. 6:3-2.2(f), the term "adult pupil" is being added. The term "adult pupil" has been added throughout the rules where reference is made to rights accorded parents pursuant to 20 U.S.C. 1232g of the F.E.R.P.A.

N.J.A.C. 6:3-2.2(g)6 is being revised to include language that would provide a parent or adult pupil with a period of 10 days for the purpose of submitting in writing to the chief school administrator a statement refusing to allow the institution to designate any or all types of information about the student to be included in the student information directory. The inclusion of the provision for prior notification to the

school in writing by parents or adult pupils, pursuant to 34 CFR 99.37(2), will assist schools in having formal notification of those students who should be excluded from the information directories prior to compiling the directories.

N.J.A.C. 6:3-2.2(i) is being revised to insure compliance with N.J.A.C. 6:28, which requires that notice be given for classified students prior to the deletion of information no longer descriptive of the pupil or the education situation.

At N.J.A.C. 6:3-2.2(k), the statements in (k) 1 and 2 are being combined to eliminate the redundant language.

At N.J.A.C. 6:3-2.5(c)3, the addition of a new sentence prohibits the parent of a financially dependent adult pupil from disclosing information from the pupil's record to a third party without the consent of the adult pupil.

N.J.A.C. 6:3-2.5(c)9v is being recodified and a new subparagraph (c)9v has been added to provide for the notification of a parent or adult pupil when disclosures of the pupil records are made to other educational agencies and institutions. Pursuant to 34 CFR 99.30(c)2 of the regulations promulgated under the F.E.R.P.A., the agency or institution shall provide a copy of the records disclosed if the parent or adult pupil makes such a request.

N.J.A.C. 6:3-2.6(a)1 is being revised to omit the term "written" from the statement because it restricts the mode of request that can be made for the review of records. Also, "Commissioner" is being upper cased throughout and in N.J.A.C. 6:3-2.7(b).

At N.J.A.C. 6:3-2.8(b) and (c)2, the term "adult pupil" is being added, whenever reference is made to the parent, to comply with the Federal code language.

#### Social Impact

The proposed amendments will affect each of the 591 public school districts, parents and adult pupils as they require school districts to amend their policies and procedures in order to ensure the protection of parents and adult pupils' rights of access to information in pupil records. The rules currently make provision for the chief school administrator or his or her designee to ensure the security and confidentiality of pupil records and will continue to do so.

Federal and State right to privacy laws provides the adult pupil and parents with the same rights of access to and disclosure of pupil record information. Districts as well as parents have previously been unclear regarding this issue as it relates to N.J.A.C. 6:3. The amendments to N.J.A.C. 6:3 will have a positive social impact by providing clarity and direction to districts, parents and adult pupils. The amendments establish equal rights for adult pupils and parents consistent with Federal and State law.

The amendment which provides 10 days to parents or adult pupils to respond to districts with written refusal of disclosure of pupil records information prior to educational, occupational, and military recruiters being accorded access to student information will ensure that ample opportunity is given for response, since present timelines are often inadequate.

The amended rules contain more explicit language which will enable parents and adult pupils to more easily exercise their rights of access to information contained in the pupil records.

#### Economic Impact

Adoption of the proposed amendments will have no significant economic impact for the State, districts boards of education or the public since no additional staff or resources are required. Minimum administrative costs may be incurred as a result of the provision for parents and adult pupils to submit in writing their refusal for disclosure of pupil records information.

#### Regulatory Flexibility Statement

A regulatory flexibility statement is not required because these rules do not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules impact solely upon New Jersey school districts and on schools operated by the New Jersey Department of Education.

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

#### 6:3-2.1 Definitions

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

...  
 "Adult pupil" means a person who is [or was enrolled in the public school and who is] at least 18 years of age, or is **attending an institution of postsecondary education**, or is an emancipated minor.

"Parent" means the natural parent(s) or legal guardian(s), foster parent(s) or parent surrogate(s) of a pupil. Where parents are separated or divorced, "parent" means the person or agency who has legal custody of the pupil, as well as the natural or **adoptive** parents of the pupil, provided such parental rights have not been terminated by a court of appropriate jurisdiction.

#### 6:3-2.2 General considerations

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

(d) The district board of education shall notify parents and adult pupils annually in writing of their rights in regard to pupil records and pupil participation in educational, occupational and military recruitment programs. Copies of the applicable State and Federal laws and local policies shall be made available upon request. District boards of education shall make every effort to notify parents **and adult pupils** in [the] **their dominant** language [of the parent].

(e) (No change.)

(f) The parent or **adult pupil** shall either have access to or be specifically informed about only that portion of another pupil's record that contains information about his or her own child or **him or herself**.

(g) Each district board of education shall establish written policies and procedures for pupil records which:

1.-5. (No change.)

6. **Provide the parent or adult pupil a 10-day period to submit a written statement to the chief school administrator prohibiting the institution from including any or all types of information about the student in any student information directory before allowing access to such directory and school facilities** to [Accord] educational, occupational and military recruiters [access to school facilities and student information directories] pursuant to N.J.S.A. 18A:36-19.1[.]; [provided that any adult pupil or parent may request in writing to the chief school administrator to be excused from participating in all recruitment programs or having their name appear in student information directories for all recruitment purposes.]

7.-8. (No change.)

(h) (No change.)

(i) The chief school administrator or his or her designee shall require all permitted pupil records of currently enrolled pupils to be reviewed annually by certified school personnel to determine the educational relevance of the material contained therein. The reviewer shall cause data no longer descriptive of the pupil or educational situation to be deleted from the records **except that prior notice must be given for classified students in accordance with N.J.A.C. 6:28**. Such information shall be destroyed and not be recorded elsewhere. No record of any such deletion shall be made.

(j) (No change.)

(k) When the parent's or **adult pupil's** dominant language is not English or the parent or **adult pupil** is deaf, the district board of education shall [make every effort to:] [1. Provide] **provide** interpretation of the pupil record in the dominant language of the parent[; or] or **adult pupil**.

[2. Assist the parent in securing an interpreter.]

#### 6:3-2.5 Access to pupil records

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

(c) Authorized organizations, agencies and persons shall include only:

1.-2. (No change.)

3. The adult pupil and the pupil's parent who has the written permission of such pupil, except that the parent shall have access without consent of the pupil as long as the pupil is financially dependent on the parent and enrolled in the public school system or if the

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pupil has been declared legally incompetent by a court of appropriate jurisdiction[;]. **The parent of the financially dependent adult pupil may not disclose information contained in the adult pupil's record to a second or third party without the consent of the adult pupil;**

4. Certified school district personnel who [has] have assigned educational responsibility for the pupil;

5.-8. (No change.)

9. Officials of other district boards of education within the State of New Jersey in which the pupil is placed, registered or intends to enroll, subject to the following conditions:

i.-iv. (No change.)

v. **The chief school administrator or his or her designee of the school district of last attendance shall, upon request, provide a parent(s) or an adult pupil with a copy of the records disclosed to other educational agencies or institutions.**

[v.]vi. Proper identification, such as a certified copy of the pupil's birth certificate, shall be requested at the time of enrollment in a new school district.

10.-13. (No change.)

6:3-2.6 Conditions for access to pupil records

(a) All authorized organizations, agencies and persons defined in this subchapter shall have access to the records of a pupil, subject to the following conditions:

1. No pupil record shall be altered or destroyed during the time period between a [written] request to review the record and the actual review of the record.

2.-4. (No change.)

5. A record may be withheld from a parent of a pupil under 18 or from an adult pupil only when the chief school administrator in consultation with the professional staff is convinced that the disclosure would create a substantial risk of harm to the pupil or to a person with whom the record is concerned. When the chief school administrator is convinced that the risk is of such high degree, he or she shall notify the parent or adult pupil in writing within five days that access to the record has been denied and that the person has the right to appeal this decision to the Commissioner of Education. If an appeal is made, the [commissioner] **Commissioner** shall designate a professional of the same discipline as the originator of the record to review the record and to recommend whether access should be granted. The [commissioner] **Commissioner** shall make a determination within 30 days of the receipt of the request. Any decision made by the [commissioner] **Commissioner** may be appealed to the State Board of Education.

6:3-2.7 Rights of appeal for parents and adult pupils

(a) (No change.)

(b) To appeal, a parent or adult pupil must notify the chief school administrator in writing of the specific issues relating to the pupil record. Within 10 days of notification, the chief school administrator or his or her designee shall meet with the parent or adult pupil to review the issues set forth in the appeal. If the matter is not satisfactorily resolved, the parent or adult pupil may appeal this decision either to the district board of education or the Commissioner of education within 10 days. If appeal is made to the district board of education, a decision shall be rendered within 20 days. The decision of the district board of education may be appealed to the [commissioner] **Commissioner** pursuant to N.J.S.A. 18A:6-9 and rules adopted in accordance with such statute. At all stages of the appeal process, the parent or adult pupil shall be afforded a full and fair opportunity to present evidence relevant to the issue. A record of the appeal proceedings and outcome shall be made a part of the pupil record with copies made available to the parent or adult pupil.

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

6:3-2.8 Retention and destruction of pupil records

(a) (No change.)

(b) Mandated pupil records of currently enrolled pupils, other than that described in (e) below, may be destroyed after the information is no longer necessary to provide educational services to a pupil. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted or after reasonable attempts of

such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

(c) Upon graduation or permanent departure of a pupil from the school system:

1. (No change.)

2. Information in pupil records, other than that described in (e) below, may be destroyed but only in accordance with the Destruction of Public Records Law, N.J.S.A. 47:3-15 et seq. Such destruction shall be accomplished only after written parental or adult pupil notification and written parental or adult pupil permission has been granted, or after reasonable attempts at such notification and reasonable attempts to secure parental or adult pupil permission have been unsuccessful.

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

ENVIRONMENTAL PROTECTION

(a)

**DIVISION OF WATER RESOURCES  
Bureau of Marine Water Classification and Analysis  
Shellfish Growing Water Classification  
Proposed Amendments: N.J.A.C. 7:12-1.1, 2.1, 3.2,  
4.1 and 4.2**

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

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.

DEP Docket Number: 013-90-04.

Proposal Number: PRN 1990-225.

Submit comments by June 6, 1990 to:

James M. Murphy, Esq.  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The Department of Environmental Protection (Department) proposes to amend its rules on the classification of certain shellfish beds as the result of surveys conducted by the Bureau of Marine Water Classification and Analysis in the Division of Water Resources.

The survey work consists of the collection and analysis of water samples, the inventory of actual and potential sources of pollution, and hydrographic studies of flow patterns which distribute pollution. These surveys are conducted in accordance with applicable State and Federal (Food and Drug Administration (FDA) ) guidelines and regulations as described in the National Shellfish Sanitation Program Manual of Operations (Part I—Sanitation of Shellfish Growing Areas). The FDA further requires that each state annually appraise the quality of those waters classified as Approved for the harvest of shellfish. New Jersey conducts investigatory work and research and, pursuant to N.J.S.A. 58:24-1 et seq., revises the rules annually.

The reasons for the proposal to revise the rules fall into three categories: (1) changes in water quality; (2) enhanced monitoring; and (3) clarification of existing rules.

These proposed amendments will result in the reclassification of approximately 7,459 acres of shellfish growing waters with a net gain of approximately 6,465 acres. The majority of this gain is a consequence of improved water quality resulting from a new regional wastewater treatment facility coming on-line in Cape May County. The names of the waterways and number of acres to be reclassified are listed below in general terms.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

Chart #	Area	Action	Acres
3	Manasquan River	Special Restricted to Prohibited	424
7	Absecon Bay	Seasonal to Approved	140
7	Ship Channel	Approved to Seasonal	107
8	Ludlam Bay	Approved to Special Restricted	74
8	Ludlam Thorofare	Prohibited to Approved	38
8	Ware Thoro-Mill Creek	Prohibited to Approved	51
9	Atlantic Ocean	Prohibited to Approved	2760
9	Great Sound Area	Seasonal to Approved	281
9	Great Channel	Prohibited to Seasonal	437
9	Jenkins Sound Area	Prohibited to Seasonal	1034
9	Grassy Sound/Richardson Sound	Prohibited to Seasonal	1724
10	Maurice River Cove	Approved to Seasonal	389

**Social Impact**

The adoption of these amendments benefits the more than 23,000 persons licensed to harvest shellfish by increasing the total acreage of shellfish growing waters which are harvestable. The amendments also benefit the far greater number of consumers who utilize the shellfish harvested from New Jersey waters by increasing the potential supply of shellfish brought to market. At the same time, the downgrading of some waters may, in limited cases, reduce recreational opportunities. The continued monitoring efforts undertaken by the Department ensure that the State's shellfish resource remains a wholesome food product, available to both recreational and commercial harvesters.

**Economic Impact**

The shellfish growing water reclassifications contained in these amendments represent an increase in the availability of harvest water to shellfishermen. The overall economic impact of these regulatory changes is favorable to the shellfish industry while allowing the Department to fulfill its statutory responsibility to protect the public health.

**Environmental Impact**

The continuous monitoring of New Jersey's shellfish growing waters benefits the State not only by affording protection from shellfish related disease, but also by serving as an environmental yardstick by which the progress of pollution abatement programs can be measured.

The need for an objective method of evaluating the impact of human activities upon complex estuarine and marine systems is increasing. The criteria associated with the National Shellfish Sanitation Program, which forms the basis of these water quality classifications, are but one suggested method that can be utilized to quantify the impact of development.

The amendments represent a tangible measurement of the quality of New Jersey's surface waters as well as providing a historical record for future comparison. The adoption of these amendments will exert a positive environmental impact primarily by sanctioning the extensive monitoring efforts that precede the specific changes recommended herein.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that these amendments will not impose reporting, recordkeeping or other compliance requirements on small business. The proposed revision merely delineates areas for shellfish harvesting and those areas from which shellfish cannot be harvested.

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

7:12-1.1 General provisions

(a)-(h) (No change.)

(i) Charts designating growing water classifications as hereinafter referenced are available from the Bureau of Marine Water Classification and Analysis Offices, Marine Police Stations, and Shellfisheries Field Offices at Bivalve and Nacote Creek. However, all persons are cautioned that emergency closures may be necessary and may not be charted. These Shellfish Growing Water Classification Charts are developed from Nautical Charts Number 12327 New York Harbor, 81st Edition, March 15, 1986; Number 12324 Intracoastal Waterway, Sandy Hook to Little Egg Harbor, [23rd Edition, June 1, 1985;] **24th Edition, November 1986**; Number 12316 Intracoastal Waterway, Little Egg Harbor to Cape May, [22nd

Edition May 4, 1985;] **23rd Edition, January 1987**; and Number 12304 Delaware Bay, [30th Edition, March 16, 1985.] **31st Edition, December 26, 1987**. The Department of Environmental Protection hereby condemns all shellfish growing waters as described in this chapter and other places from which shellfish are or may be taken as listed in N.J.A.C. 7:12-9 at all times of the year, except when otherwise noted in N.J.A.C. 7:12-4 and [6]5.

(j) (No change.)

7:12-2.1 Shellfish growing water classification—Prohibited

(a) The following shellfish growing waters are classified Prohibited:

1.-4. (No change.)

5. Manasquan River area (Note: A portion is also designated as a Special Restricted area. See N.J.A.C. 7:12-3): [All of the Point Pleasant Canal.]

**i. All of the Point Pleasant Canal; and**

**ii. All of the waters of the Manasquan River and tributaries located north and west of the State Highway Route 70 bridge.**

6.-11. (No change.)

12. Strathmere and Sea Isle City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4) [;]:

i.-ii. (No change.)

iii. All of Ludlam Thorofare from a line bearing approximately 229 degrees T through Flashing Red [light] **Light 120 (Fl R 8ft "120")** to a line bearing approximately [305 degrees T through Flashing Red light 138 (Fl R 8ft "138")] **122 degrees T through Flashing Red Light 8ft 134 (Fl R 8ft "134")**; and

iv. All of Sunks Creek [, Mill Creek, Ware Thorofare] and tributaries thereof.

13. (No change.)

14. Stone Harbor area (Note: [Portions are] **A portion** is also designated as [Special Restricted and] Seasonal. See N.J.A.C. 7:12-3 and 4):

[i. All the Great Channel south of the Stone Harbor Boulevard Bridge;]

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

[v.]iv. All of Scotch Bonnet **northwest of the line defined by two Department maintained markers approximately 700 yds. northwest of the junction with Great Channel;**

[vi All that creek connecting Oyster Creek and Scotch Bonnett]

v. **All of Ludlam Gut;**

Recodify existing vii.-xii. as vi.-xi. (No change in text.)

15. Jenkins Sound Area:

i. All of Jenkins Sound [and Genesis Bay;] **north of a line from a Department maintained marker northeast of the Darking area at Shellbed Landing and bearing approximately 078 degrees T to another Department maintained marker and terminating; and**

ii. [All of Nichols Channel, Dung Thorofare and Bluefish Creek] **All of Genesis Bay north of a line defined by two Department maintained markers outside the mouth of Hetty Creek;**

[iii. All of Jenkins Channel and Drum Thorofare; and

iv. All of Great Flat Thorofare.]

16. The Wildwoods Area (Note: [A portion is] **Portions** are also designated as [a] Special Restricted **and Seasonal** [area]. See: N.J.A.C. 7:12-3 **and 4**).]:

[i. All of Hereford Inlet. (Note: This condemnation adjoins the closure defined in (a)20viii below);]

[ii.]i. All of Grassy Sound Channel and tributaries thereof **south of a line defined by Department maintained markers on either shoreline approximately 100 yds. south of Fl R 8ft "26";**

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

[v.]iv. All of Grassy Sound and tributaries thereof **south of a line from the southern end of the railroad bridge over Grassy Sound Channel and bearing approximately 072 degrees T across Grassy Sound to another Department maintained marker;**

Recodify existing vi.-viii. as v.-vii. (No change in text.)

[ix. All of Richardson Sound and tributaries thereof;] **viii. All of the tributaries of Richardson Sound northwest of the Intracoastal Waterway;**

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Recodify existing x.-xv. as ix.-xiv. (No change in text.)

17.-19. (No change.)

20. Atlantic Ocean:

i.-viii. (No change.)

ix. All of the ocean waters inshore of a line beginning at the [American Legion Building (the old Coast Guard Station) located at the corner of Second Avenue and 117th Street, Borough of Stone Harbor, with coordinates of latitude 39 degrees 02.4 minutes N., longitude of 74 degrees 46.2 minutes W., and bearing approximately 180 degrees T for approximately 3.4 nautical miles to a point with coordinates of latitude 38 degrees 59.0 minutes N., longitude 74 degrees 46.2 minutes W. (generally marked by a buoy charted as R "8" Fl R 4sec BELL at the entrance of Hereford Inlet), then bearing approximately 246 degrees T towards the 641 ft Fl R Lt LORAN TOWER located on the United States Coast Guard Electronic Engineering Center, Lower Township, with coordinates of latitude 38 degrees 57.0 minutes N., and longitude of 74 degrees 52.0 minutes W.,] **southeasternmost point of the City of North Wildwood and bearing approximately 224 degrees T towards the light at the end of the eastern jetty of Cape May Inlet charted as Fl 4s 30ft 7M** for approximately [2.8] **2.4** nautical miles until it intersects a line bearing approximately 130 degrees T from the standpipe located on the corner of Park Boulevard and Myrtle Road, Borough of Wildwood Crest, with coordinates of latitude 38 degrees 58.4 minutes N., longitude 74 degrees 50.4 minutes W. This point of intersecting lines is approximately [0.5] **0.4** nautical miles from the shoreline and has coordinates of latitude 38 degrees 57.9 minutes N., longitude 74 degrees [49.5] **49.6** minutes W. Then proceeding in a southeasterly direction along that line [for] **to a point** approximately 1.5 nautical miles from the shoreline [to a point] with coordinates of **latitude** 38 degrees 57.2 minutes N., longitude 74 degrees 48.5 minutes W., then proceeding parallel to the shoreline in a southwesterly direction 1.5 nautical miles offshore for approximately 2.4 nautical miles to a point with coordinates of latitude 38 degrees 55.4 minutes N., longitude 74 degrees 50.5 minutes W., then bearing approximately 310 degrees T (reciprocal 130 degrees T) for approximately 1.2 nautical miles to the light **noted above** at the end of the eastern jetty of Cape May Inlet [charted as Fl 4 sec 30 ft 7M], then along that jetty to the shore and terminating[.]; [This closure adjoins those Prohibited waters defined in (a)16i above; and]

x.-xii. (No change.)

7:12-3.2 Shellfish growing waters that are classified as Special Restricted

(a) The following shellfish growing waters are classified as Special Restricted:

1.-4. (No change.)

5. All of Manasquan River and tributaries [except the Point Pleasant Canal (See N.J.A.C. 7:12-2 (a) 5ii). (Note: This closure adjoins those Prohibited waters defined in N.J.A.C. 7:12-2.1 (a) 20i] **located south and east of the State Highway Route 70 bridge to its union with the Atlantic Ocean at the Manasquan Inlet (See N.J.A.C. 7:12-2).**

6.-27. (No change.)

28. Strathmere and Sea Isle City area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i. (No change.)

ii. That portion of Ludlam Bay lying south and west of a line beginning at a Department maintained marker on the shoreline of the barrier island [and bearing approximately 336 degrees T to marker R "118" then bearing approximately 232 degrees T] **near the mouth of Swimming Creek and bearing approximately 315 degrees T to a Department maintained marker near the Intracoastal Waterway, then bearing approximately 226 degrees T to a Department maintained marker on the mainland and terminating.**

iii.-iv. (No change.)

v. The area of Townsend Channel adjacent to the town of Townsends Inlet contained within a line beginning at the street end of 77th St. and [running] **bearing approximately 212 degrees T to a Department maintained marker at the mouth of Middle Thorofare, then bearing approximately 171 degrees T to the southernmost pier in**

Townsend Channel (at the end of 94th Street) then running along that pier to the shore and terminating.

29.-33. (No change.)

7:12-4.1 Seasonally approved growing waters (Approved November 1 through April 30 yearly, Special Restricted May 1 through October 31, yearly)

(a) The following shellfish growing waters designed on the charts referred to in N.J.A.C. 7:12-1.1 shall be Special Restricted for the harvest of shellfish from May 1 through October 31 yearly and Approved for the harvest of shellfish from November 1 through April 30 yearly:

1.-3. (No change.)

4. Absecon Bay-Absecon Channel Reed Bay area: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Middle Thorofare, Wills Thorofare, Absecon Channel, Absecon Inlet, Little Panama, [Low] **Lower** Water Thorofare and Absecon Bay contained within a line beginning at the point of land on the western shore at the mouth of Point Bar Thorofare, then along that shoreline and across the mouth of Newfound Thorofare, then along that shoreline and across the mouth of Jonathan Thorofare, then along that shoreline to the Department maintained marker located at the mouth of the first major man-made cut or lagoon (not including mosquito ditches) and bearing approximately 036 degrees T to another Department maintained marker on the opposite bank and continuing along that shoreline in a northeast direction to the Department maintained marker, [then bearing approximately 137 T degrees to a Department maintained marker, then bearing approximately 165 degrees T across the mouth of Steelman Thorofare to a Department maintained marker,] **then bearing approximately 134 degrees T to the Department maintained marker at the mouth on the west shore of Wills Thorofare, then bearing approximately 075 degrees T across Wills Thorofare,** then along the northeast shore of Wills Thorofare and Absecon Channel, then across the mouth of Middle Thorofare and along the eastern shoreline of two unnamed islands, including Low Water Thorofare and an unnamed thorofare, and across the mouth of Little Panama and along the shoreline in a southerly direction to Absecon Channel, then in a seaward direction across the mouth of St. George's Thorofare and along that shoreline to the seaward end of the jetty, then channelward to a line from R "2" (Fl R 2.5s) and bearing approximately 328 degrees T to the midspan of the Vincent Haneman Bridge, then along that line to the Rte. 87 bridge, then along the bridge in a westerly direction to the base of the bridge, then along the shoreline in a northerly direction across the mouth of Clam Thorofare and Beach Thorofare and along that shoreline to the point of origin at the point of land at Point Bar Thorofare.

ii. (No change.)

5.-6. (No change.)

7. Ocean City-Somers Point-Great Egg Harbor Bay: Seasonal-Special Restricted May 1 through October 31, yearly, Approved November 1 through April 30 yearly;

i. (No change.)

ii. All the waters of Ship Channel contained within a line from the base of Somers Point-Ocean City Bridge in Somers Point, then along the bridge to the northern end of the bascule, then bearing approximately 056 degrees T to Flashing light "1" (Fl "1"), then bearing approximately [118 degrees T to a Department maintained marker, then along the shoreline in a northerly direction, then in a westerly direction across the mouth of an unnamed lagoon, continuing along the shoreline and across the mouth of Bass Harbor and on to the point of origin at the base of the Somers Point-Ocean City Bridge and terminating] **134 degrees T to marker B W N "A", then bearing approximately 027 degrees T to a Department maintained marker at Anchorage Point, then in a westerly direction, then northwesterly direction along the shoreline and across the mouth of an unnamed lagoon, continuing along the shoreline and across the mouth of Bass Harbor continuing to the point of origin at the base of Somers Point-Ocean City Bridge and terminating.**

8. (No change.)

9. Great Sound area:

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i. (No change.)

ii. [All of Cresse Thorofare, Gull Island Thorofare, Great Channel, Shark Creek and Goths Creek contained within a line starting at a Department maintained marker on Halfmile Point, continuing along the shoreline of Cresse Thorofare in a southerly direction, across the mouths of Little Oyster and Oyster Creeks, continuing along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole to the Stone Harbor Boulevard Bridge, then along the bridge in a southeasterly direction to the Stone Harbor shoreline, then along the shoreline (excluding harbors and basins) in a northeasterly direction across the mouths of Stone Harbor Creek and Oldman's Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction along Sturgeon Hole to a Department maintained marker, then bearing approximately 290 degrees T to a Department maintained marker on Gull Island and continuing to the point of origin at Halfmile Point.] All of Cresse Thorofare, Gull Island Thorofare, Great Channel and Scotch Bonnet contained within a line starting at the base of the Stone Harbor Blvd. Bridge and proceeding in a northeast direction along the Stone Harbor shoreline, across the mouths of Snug Harbor, South Basin, North Basin, Stone Harbor Creek and Oldmans Creek, continuing along the shoreline including Shark Creek, then along that shoreline in a northerly direction to a Department maintained marker along Sturgeon Hole, then bearing approximately 232 degrees T to the mouth of Southeast Creek (on Gull Island), then along the shoreline in a southeasterly direction (excluding Southeast Creek), then in a northwesterly direction to a Department maintained marker, then bearing approximately 271 degrees T across Cresse Thorofare to another Department maintained marker, then in a southerly direction along the shoreline and across the mouth of Scotch Bonnet and continuing along the shoreline including Goths Creek, continuing along the shoreline and across the mouth of Muddy Hole, continuing along the shoreline and across the second mouth of Muddy Hole, then along the shoreline to the mouth of Scotch Bonnet then along the Scotch Bonnet shoreline to a Department maintained marker, then bearing approximately 215 degrees T through R 2 sec 6ft "2" to another Department maintained marker, then along the shoreline in a southeasterly direction to the junction of Great Channel and along that shoreline in a southwesterly direction across an unnamed creek and continuing along the shoreline and across the mouth of Dung Thorofare and the shoreline of Nummy Island to a Department maintained marker and bearing approximately 296 degrees T to another Department maintained marker, then along the Stone Harbor shoreline in a northeasterly direction to the base of the Ocean Drive Bridge (Rt. 619), then bearing approximately 018 degrees T to the point of land at the junction of Great Channel and Pleasure Bay and continuing along the shoreline of Great Channel across the mouth of Stone Harbor and Shelter Haven to the point of origin at the base of the Stone Harbor Blvd. Bridge.

10. Jenkins Sound-Grassy Sound-Richardson Sound: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

i. All of Nichols Channel, Dung Thoro, Great Flat Thoro, Drum Thoro, Jenkins Channel, Genesis Bay, Jenkins Sound and tributaries thereof contained within a line beginning at the Darking area at Shellbed Landing and continuing along the Jenkins Sound shoreline in a southwesterly direction to a Department maintained marker at the mouth of an unnamed tributary to Race Cove, then bearing approximately 126 degrees T to another Department maintained marker, then in a southeasterly direction along the Jenkins Channel shoreline excluding tributaries to Dead Thoro Point, then in a southwesterly direction to Grassy Sound Channel, then bearing approximately 118 degrees T to Nummy Island, then along that shoreline in a northeasterly direction including tributaries to Great Channel, then bearing approximately 013 degrees T to the opposite shoreline, then along the shoreline of Dung Thoro and Nichols Channel, excluding tributaries to a Department maintained marker on the shoreline of Genesis Bay, then bearing approximately 279 degrees T to a Department maintained marker, then along the shoreline in a southerly direction to a Department maintained marker, then bearing approximately 258 degrees T to a Department

maintained marker, then along the shoreline in a southwesterly direction to the point of origin and terminating.

ii. All of Richardson Sound, Grassy Sound, Grassy Sound Channel and Hereford Inlet contained within a line beginning on the western shoreline of Grassy Sound Channel, at the Rt. 147 Bridge, then continuing along that shoreline in a southwesterly direction across the mouth of Old Turtle Thoro and continuing along the Grassy Sound Channel and along the western shoreline of Grassy Sound and the northern shoreline of Richardson Sound and across the mouth of Old Turtle Thoro and along the northwest shoreline of Richardson Sound (excluding tributaries) to a Department maintained marker, then bearing approximately 126 degrees T to another Department maintained marker, then along the southwestern shoreline of Richardson Sound to a Department maintained marker at the mouth of Grassy Sound Channel, then bearing approximately 094 degrees T across the channel and along the shoreline in a northeasterly direction to the base of the railroad bridge, then bearing approximately 072 degrees T across Grassy Sound to another Department maintained marker, then along the Grassy Sound shoreline in a northeasterly direction and along the Grassy Sound Channel shoreline and across the mouth of Beach Creek and along the shoreline of Hereford Inlet to Fl 10S 57ft 24M. then bearing approximately 030 degrees T to the southeasternmost tip of Stone Harbor, then along the shoreline in a western direction, then northern direction along the shoreline to a Department maintained marker, then bearing approximately 116 degrees T to another Department maintained marker on Nummy Island, then along the shoreline in a northwesterly direction and across the mouth of Great Flat Thoro and continuing along the shoreline of Grassy Sound Channel and across the mouth of Turtle Gut and continuing along the shoreline to the point of origin at the base of the Rt. 147 Bridge.

[10.]11. Delaware Bay area:

i.-ii. (No change.)

iii. Maurice River Cove: Seasonal-Special Restricted May 1 through October 31 yearly, Approved November 1 through April 30 yearly:

(1) All those waters inside of a line beginning at the East Point Lighthouse and bearing approximately 311 degrees T (known as the Summer Line) to a marker on the western bank at the mouth of New England Creek, then along the shoreline in a westerly direction [to the first tower, then bearing approximately 144 degrees T to Flashing Green 4 Second 5 (Fl G 4 sec "5")] approximately 1600 yds to a Department maintained marker, then bearing approximately 132 degrees T to Flashing Green 2.5 second "5" (Fl G 2.5 sec "5"), then bearing approximately 048 degrees T to the East Point Lighthouse and terminating; and

(2) (No change.)

iv.-vii. (No change.)

7:12-4.2 Seasonally Approved Growing Waters (Approved January 1 through April 30 yearly, Special Restricted May 1 through December 31 yearly)

(a) The following shellfish growing waters, designated on the charts referred to in N.J.A.C. 7:12-1.1, shall be Special Restricted for harvest of shellfish from May 1 through December 31 yearly and Approved January 1 through April 30 yearly:

1.-4. (No change.)

5. Tuckerton area: Seasonal-Special Restricted May 1 through December 31 yearly, Approved January 1 through April 30 yearly:

i. All those waters of Tuckerton Cove between the line described in N.J.A.C. 7:12-3.2(a)18 and a line connecting the east and west banks of the cove formed by the alignment of the range (Department maintained) located on the west bank of the Tuckerton Cove and the telephone pole (P-35877) on the east bank. When the range is aligned, the bearing it creates is approximately [254] 227 degrees T (reciprocal [74] 47 degrees).

6.-8. (No change.)

(a)

**DIVISION OF FISH, GAME AND WILDLIFE****Endangered and Nongame Species****Proposed Amendment: N.J.A.C. 7:25-4.13****Proposed Repeal and New Rule: N.J.A.C. 7:25-4.17**

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

Authority: N.J.S.A. 23:2A-1 et seq.

DEP Docket Number: 012-90-04.

Proposal Number: PRN 1990-215.

Submit comments by June 6, 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 The Endangered and Nongame Species Conservation Act (Act), N.J.S.A. 23:2A-1 et seq., the Commissioner of the Department of Environmental Protection (Department) may by regulation promulgate a list of those indigenous species and subspecies of wildlife determined to be endangered, shall periodically review this list, and may by regulation amend this list. The list was last significantly amended in 1987. On the basis of information relating to populations, distribution, habitat needs, limiting factors and other biological and ecological data reviewed by the Office of Endangered and Nongame Species in the Department and by members of the Endangered and Nongame Species Advisory Committee, a committee of experts established at N.J.S.A. 23:2A-7e to advise and assist the Commissioner in carrying out the intent of Act, the proposed amendment to N.J.A.C. 7:25-4.13 deletes one species and adds seven species to the List of Endangered Species. Specifically the breeding status of the Cliff Swallow (*Hirundo pyrrhonata*) is changed from endangered to threatened, and the following species are added to the endangered list:

Red-shouldered Hawk, *Buteo lineatus* (Breeding population)  
Bob cat, *Lynx rufus*  
Eastern Woodrat, *Neotoma floridana*  
Mitchell's Satyr, *Neonympha mitchelli mitchelli*  
Northeastern Beach Tiger Beetle, *Cicindella dorsalis dorsalis*  
American Burying Beetle, *Nicrophorus americanus*  
Dwarf Wedge Mussel, *Alasmidonta heterodon*

In addition, the current list of indigenous nongame and endangered wildlife in N.J.A.C. 7:25-4.17 is repealed and replaced with a more current and therefore more accurate list which reflects recent research. This list adds breeding or non-breeding status of two birds to the threatened category, of six birds to the declining category, of eight birds to the stable category, of two birds to the peripheral category, and of four birds to the increasing category. With the exception of the removal of the cliff swallow from the endangered list to the threatened category, of the great blue heron from the threatened to the stable category, and of newly-listed birds described as peripheral or increasing, none of which were previously thought to exist in the State, all additions represent an increase in the seriousness of the status of the listed birds. In addition, one amphibian is removed from the introduced to the undetermined category and four terrestrial and three marine mammals are removed from their nongame species list entirely, as there is no evidence of any occurrence in this State. The list no longer includes endangered species as these species are specifically excluded from the term "nongame species" as defined at N.J.S.A. 23:2A-3. Endangered species remain listed at N.J.A.C. 7:25-4.13.

A summary and source document description for the change in status for affected species is available at the Division of Fish, Game and Wildlife, 5 Station Plaza, 501 East State Street, Trenton, New Jersey and is on file with the Office of Administrative Law, 9 Quakerbridge Plaza, CN 301, Trenton, New Jersey.

**Social Impact**

The adoption of the proposed amendment and new rule will have a largely beneficial social impact. Regular evaluation and revision of the State's endangered species list and nongame species status list, when justified on the basis of scientific data, improves the reliability of these lists and enhances the credibility of the Department and the Endangered and Nongame Species Program and thus furthers the efforts of this

program in conservation of the State's indigenous wildlife population. The reporting of list revisions increases public awareness and concern for this vital natural resource and also gives the public the opportunity to participate in such revisions.

The negative impact of this amendment and new rule is limited to the amateur collectors of four species, who will no longer be able to collect specimens of protected species and who, by virtue of their lack of scientific qualifications and affiliations, will not qualify for permits under N.J.A.C. 4:25-4.14. This negative impact is minimized by the fact that these species are so rare that the vast majority of collectors have not been able to find them and is more than balanced by the benefits of increased public awareness and the beneficial environmental impact.

**Economic Impact**

The proposed amendment and new rule may have a negative economic impact on a very small percentage of the citizens of this State subject to land use regulatory programs which implement such statutes as the Coastal Area Facilities Review Act (N.J.S.A. 13:19-1 et seq.), the Freshwater Wetlands Protection Act (N.J.S.A. 13:9B-1 et seq.), the Pinelands Protection Act (N.J.S.A. 13:18A-1 et seq.), as well as various municipal initiatives that use the official list of endangered wildlife to protect endangered species' habitats. Certain development or construction activities may be curtailed or inhibited if any of the endangered or nongame species added to these rules, or their habitats, are present in the affected areas. However, the six species that are proposed for addition to the endangered species list are very rare and occur at only several small areas in the State. The habitat of these species is so limited that the negative economic impact would be insignificant. Moreover, the preservation of the ecosystem will have a positive impact on the State as a whole, since even seemingly insignificant species can have an impact on agricultural production, livestock proliferation, crop pollination, and pest control, which affect every economic sector of the State.

**Environmental Impact**

Adoption of a more current endangered species list and indigenous nongame wildlife status list will contribute to positive environmental impacts by contributing to the preservation of the species on the list. The Department's wildlife status lists are used by a variety of agencies whose actions directly and indirectly affect these species. These agencies include not only those charged with implementing the Coastal Area Facilities Review Act, the Wetlands Protection Act, and the Pinelands Protection Act, but municipal authorities, who use these lists for habitat protection purposes and private, non-profit organizations who use these lists for the entire panoply of conservation purposes which they have assumed. Thus, they serve to preserve the State ecosystem by maintaining the natural resource diversity that is essential to a healthy, stable human environment.

**Regulatory Flexibility Statement**

In accordance with the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that the proposed amendment and proposed new rule would not impose any reporting, record keeping or compliance requirements on small businesses as defined under the Act. The proposed amendment and new rule contain no reporting, record keeping or compliance requirements.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 7:25-4.17.

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

7:25-4.13 List of endangered species.

(a) (No change.)

(b) In accordance therewith, the following species are determined to be endangered:

1.-13. (No change.)

**14. Red-shouldered Hawk, *Buteo lineatus* (Breeding population)**

[14.-16.] **15.-17.** (No change in text.)

[17. Cliff Swallow, *Hirundo pyrrhonota*]

18.-35. (No change.)

**36. Bobcat, *Lynx rufus***

**37. Eastern Woodrat, *Neotoma floridana***

**38. Mitchell's Satyr, *Neonympha mitchelli mitchelli***

**39. Northeastern Beach Tiger Beetle, *Cicindella dorsalis dorsalis***

**40. American Burying Beetle, *Nicrophorus americanus***

**41. Dwarf Wedge Mussel, *Alasmidonta heterodon***

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**ENVIRONMENTAL PROTECTION**

**7:25-4.17 Defining status of indigenous wildlife species of New Jersey**  
 The following table defines the status of indigenous nongame wildlife species of New Jersey:

<u>Species</u>	<u>Scientific Name</u>	<u>Species Status</u>
<b>REPTILES</b>		
Common Snapping Turtle	<i>Chelydra s. serpentina</i>	S
Common Musk Turtle	<i>Kinosternon odoratum</i>	S
Eastern Mud Turtle	<i>Kinosternon s. subrubrum</i>	U
Spotted Turtle	<i>Clemmys guttata</i>	U
Wood Turtle	<i>Clemmys insculpta</i>	T
Eastern Box Turtle	<i>Terrapene c. carolina</i>	S
Map Turtle	<i>Graptemys geographica</i>	U
Red-bellied Turtle	<i>Pseudemys rubriventris</i>	U
Red-eared Turtle	<i>Chrysemys scripta elegans</i>	I
Eastern Painted Turtle	<i>Chrysemys p. picta</i>	S
Midland Painted Turtle	<i>Chrysemys picta marginata</i>	U
Atlantic Green Turtle	<i>Chelonia mydas</i>	T
Eastern Spiny Softshell	<i>Trionyx spiniferus</i>	I
Northern Fence Lizard	<i>Sceloporus undulatus hyacinthinus</i>	S
Five-lined Skink	<i>Eumeces fasciatus</i>	U
Ground Skink	<i>Scincella lateralis</i>	U
Northern Water Snake	<i>Nerodia s. sipedon</i>	S
Queen Snake	<i>Regina septemvittata</i>	U
Northern Brown Snake	<i>Storeria d. dekayi</i>	S
Northern Red-bellied Snake	<i>Storeria o. occipitamaculata</i>	S
Eastern Garter Snake	<i>Thamnophis s. sirtalis</i>	S
Eastern Ribbon Snake	<i>Thamnophis s. sauritus</i>	S
Eastern Smooth Earth Snake	<i>Virginia v. valeriae</i>	U
Eastern Hognose Snake	<i>Heterodon Platyrhinos</i>	D
Northern Ringneck Snake	<i>Diadophis punctatus edwardsi</i>	S
Southern Ringneck Snake	<i>Diadophis p. punctatus</i>	S
Eastern Worm Snake	<i>Carphophis a. amoenus</i>	U
Northern Black Racer	<i>Coluber c. constrictor</i>	U
Rough Green Snake	<i>Opheodrys aestivus</i>	S
Eastern Smooth Green Snake	<i>Opheodrys v. vernalis</i>	U
Black Rat Snake	<i>Elaphe o. obsoleta</i>	U
Northern Pine Snake	<i>Pituophis m. melanoleucus</i>	T
Eastern King Snake	<i>Lampropeltis g. getulus</i>	U
Eastern Milk Snake	<i>Lampropeltis t. triangulum</i>	S
Northern Scarlet Snake	<i>Cemophora coccinea copei</i>	U
Northern Copperhead	<i>Agkistrodon contortrix mokasen</i>	U
<b>AMPHIBIANS</b>		
Marbled Salamander	<i>Ambystoma opacum</i>	D
Jefferson Salamander	<i>Ambystoma jeffersonianum</i>	D
Silvery Salamander	<i>Ambystoma platineum</i>	D
Spotted Salamander	<i>Ambystoma maculatum</i>	D
Red-spotted Newt	<i>Notophthalmus v. viridescens</i>	S
Northern Dusky Salamander	<i>Desmognathus f. fuscus</i>	S
Mountain Dusky Salamander	<i>Desmognathus ochrophaeus</i>	U
Red-backed Salamander	<i>Plethodon c. cinereus</i>	S
Slimy Salamander	<i>Plethodon g. glutinosus</i>	S
Four-toed Salamander	<i>Hemidactylum scutatum</i>	D
Northern Spring Salamander	<i>Gyrinophilus p. porphyriticus</i>	D
Northern Red Salamander	<i>Pseudotriton r. ruber</i>	D
Eastern Mud Salamander	<i>Pseudotriton m. montanus</i>	T
Northern Two-lined Salamander	<i>Eurycea b. bislineata</i>	S
Long-tailed Salamander	<i>Eurycea l. longicauda</i>	T
Eastern Spadefoot Toad	<i>Scaphiopus h. holbrookii</i>	D
American Toad	<i>Bufo americanus</i>	S
Fowler's Toad	<i>Bufo woodhouseii fowleri</i>	S
Northern Cricket Frog	<i>Acris c. crepitans</i>	U
Northern Spring Peeper	<i>Hyla c. crucifer</i>	S
Barking Treefrog	<i>Hyla gratiosa</i>	U
Northern Gray Treefrog	<i>Hyla versicolor</i>	S
New Jersey Chorus Frog	<i>Pseudacris triseriata kalmi</i>	S
Upland Chorus Frog	<i>Pseudacris triseriata feriarum</i>	U
Bullfrog	<i>Rana catesbeiana</i>	S
Carpenter Frog	<i>Rana variegatipes</i>	U
Green Frog	<i>Rana clamitans melanota</i>	S
Wood Frog	<i>Rana sylvatica</i>	S
Southern Leopard Frog	<i>Rana spenocephala</i>	S
Pickerel Frog	<i>Rana palustris</i>	S

<u>Species</u>	<u>Scientific Name</u>	<u>Breeding Status</u>	<u>Non-Breed Status</u>
<b>MAMMALS</b>			
Masked Shrew	<i>Sorex cinereus</i>		S
Tuckahoe Masked Shrew	<i>Sorex cinereus nigriculus</i>		U
Water Shrew	<i>Sorex palustris</i>		U
Smokey Shrew	<i>Sorex fumeus</i>		U
Long-tailed Shrew	<i>Sorex dispar</i>		U
Short-tailed Shrew	<i>Blarina brevicauda</i>		S
Least Shrew	<i>Cryptotis parva</i>		U
Hairy-tailed Mole	<i>Parascalops breweri</i>		U
Eastern Mole	<i>Scalopus aquaticus</i>		S
Star-nosed Mole	<i>Condylura cristata</i>		U
Little Brown Bat	<i>Myotis lucifugus</i>		S
Keen Myotis	<i>Myotis keenii</i>		U
Small-footed Myotis	<i>Myotis subulatus</i>		U
Silver-haired Bat	<i>Lasionycteris noctivagans</i>		U
Eastern Pipistrel	<i>Pipistrellus subflavus</i>		U
Big Brown Bat	<i>Eptesicus fuscus</i>		S
Red Bat	<i>Lasiurus borealis</i>		S
Northern Yellow Bat	<i>Lasiurus intermedius</i>		P
Hoary Bat	<i>Lasiurus cinereus</i>		U
New England Cottontail	<i>Sylvilagus transitionalis</i>		U
European Hare	<i>Lepus capensis</i>		I
Black-tailed Jackrabbit	<i>Lepus californicus</i>		I
Eastern Chipmunk	<i>Tamias striatus</i>		S
Red Squirrel	<i>Tamiasciurus hudsonicus</i>		S
Southern Flying Squirrel	<i>Glaucomys volans</i>		U
Northern Flying Squirrel	<i>Glaucomys sabrinus</i>		U
Marsh Rice Rat	<i>Oryzomys palustris</i>		S
White-footed Mouse	<i>Peromyscus leucopus</i>		S
Red-backed Mouse	<i>Clethrionomys gapperi</i>		S
Meadow Vole	<i>Microtis pennsylvanicus</i>		S
Pine Vole	<i>Pitymys pinetorum</i>		S
Southern Bog Lemming	<i>Synaptomys cooperi</i>		U
Black Rat	<i>Rattus rattus</i>		I
Brown Rat	<i>Rattus norvegicus</i>		I
House Mouse	<i>Mus musculus</i>		I
Woodland Jumping Mouse	<i>Napaeozapus isignis</i>		U
Meadow Jumping Mouse	<i>Zapus hudsonius</i>		U
Porcupine	<i>Erethizon dorsatum</i>		INC
Harbor Seal	<i>Phoca vitulina</i>		S
Harp Seal	<i>Pagophilus groenlandica</i>		P
Gray Seal	<i>Halichoerus grypus</i>		P
Hooded Seal	<i>Cystophora cristata</i>		P
Goose-beaked Whale	<i>Ziphius cavirostris</i>		U
Dense Beaked Whale	<i>Mesoplodon densirostris</i>		U
Gervais Beaked Whale	<i>Mesoplodon europaeus</i>		U
True's Beaked Whale	<i>Mesoplodon mirus</i>		U
Pygmy Sperm Whale	<i>Kogia breviceps</i>		U
Dwarf Sperm Whale	<i>Kogia simus</i>		U
Beluga Whale	<i>Delphinapterus leucas</i>		P
Bridled Spotted Dolphin	<i>Stenella frontalis</i>		U
Spotted Dolphin	<i>Stenella plagiodon</i>		U
Striped Dolphin	<i>Stenella coeruleoalba</i>		U
Saddle-backed Dolphin	<i>Delphinus delphis</i>		U
Bottle-nosed Dolphin	<i>Tursiops truncatus</i>		S
Atlantic Killer Whale	<i>Orcinus orca</i>		U
Risso's Dolphin	<i>Grampus griseus</i>		U
Long-finned Pilot Whale	<i>Globicephala malaena</i>		U
Short-finned Pilot Whale	<i>Globicephala macrothyncus</i>		U
Harbor Porpoise	<i>Phocoena phocoena</i>		U
Minke Whale	<i>Balaenoptera acutorostrata</i>		U
<b>BIRDS</b>			
Red-throated Loon	<i>Gavia stellata</i>		S
Common Loon	<i>Gavia immer</i>		S
Pied-billed Grebe	<i>Podilymbus podiceps</i>	E	S
Horned Grebe	<i>Podiceps auritus</i>		S
Red-necked Grebe	<i>Podiceps grisegena</i>		D
Cory's Shearwater	<i>Calonectris diomedea</i>		S
Greater Shearwater	<i>Puffinus gravis</i>		INC
Sooty Shearwater	<i>Puffinus griseus</i>		S
Wilson's Storm-petrel	<i>Oceanites oceanicus</i>		S
Leach's Storm-petrel	<i>Oceanodroma leucorhoa</i>		S
Northern Gannet	<i>Sula bassanus</i>		S

ENVIRONMENTAL PROTECTION

PROPOSALS

Brown Pelican	<i>Pelecanus occidentalis</i>		INC	Red-necked Phalarope	<i>Phalaropus lobatus</i>		S
Great Cormorant	<i>Phalacrocorax carbo</i>		S	Red Phalarope	<i>Phalaropus fulicarius</i>		S
Double-crested Cormorant	<i>Phalacrocorax auritus</i>		INC	Pomarine Jaeger	<i>Stercorarius pomarinus</i>		S
American Bittern	<i>Botaurus lentiginosus</i>	T	S	Parasitic Jaeger	<i>Stercorarius parasiticus</i>		S
Least Bittern	<i>Ixobrychus exilis</i>	D	S	Long-tailed Jaeger	<i>Stercorarius longicaudus</i>		S
Great Blue Heron	<i>Ardea herodias</i>	T	S	Laughing Gull	<i>Larus atricilla</i>	S	S
Great Egret	<i>Casmerodius albus</i>	S	S	Little Gull	<i>Larus minutus</i>		S
Snowy Egret	<i>Egretta thula</i>	S	S	Common Black-headed Gull	<i>Larus ridibundus</i>		S
Little Blue Heron	<i>Egretta caerulea</i>	T	S	Bonaparte's Gull	<i>Larus philadelphia</i>		S
Tricolored Heron	<i>Egretta tricolor</i>	INC	S	Ring-billed Gull	<i>Larus delawarensis</i>		INC
Cattle Egret	<i>Bubulcus ibis</i>	INC	INC	Herring Gull	<i>Larus argentatus</i>	S	S
Green-backed Heron	<i>Butorides striatus</i>	S	S	Iceland Gull	<i>Larus glaucooides</i>		S
Black-crowned Night Heron	<i>Nycticorax nycticorax</i>	D	S	Lesser Black-backed Gull	<i>Larus fuscus</i>		INC
Yellow-crowned Night Heron	<i>Nyctanassa violaceus</i>	T	T	Glaucous Gull	<i>Larus hyperboreus</i>		S
Glossy Ibis	<i>Plegadis falcinellus</i>	D	S	Great Black-backed Gull	<i>Larus marinus</i>	INC	S
Fulvous Whistling Duck	<i>Dendrocygna bicolor</i>		P	Black-legged Kittiwake	<i>Rissa tridactyla</i>		S
Tundra Swan	<i>Cygnus columbianus</i>		INC	Gull-billed Tern	<i>Sterna nilotica</i>		S
Mute Swan	<i>Cygnus olor</i>	I		Caspian Tern	<i>Sterna caspia</i>		S
Eurasian Wigeon	<i>Anas penelope</i>		S	Royal Tern	<i>Sterna maximus</i>		S
King Eider	<i>Somateria spectabilis</i>		S	Common Tern	<i>Sterna hirundo</i>	D	S
Harlequin Duck	<i>Histrionicus histrionicus</i>		S	Forster's Tern	<i>Sterna forsteri</i>	INC	S
Black Vulture	<i>Coragyps atratus</i>	INC	S	Black Tern	<i>Chlidonias niger</i>		S
Turkey Vulture	<i>Cathartes aura</i>	S	S	Dovekie	<i>Alle alle</i>		D
Osprey	<i>Pandion haliaetus</i>	T	T	Thick-billed Murre	<i>Uria lomvia</i>		D
American Swallowtail Kite	<i>Elanoides forficodus</i>		INC	Razorbill	<i>Alca torda</i>		D
Mississippi Kite	<i>Ictinia mississippiensis</i>		INC	Rock Dove	<i>Columba livia</i>	I	
Northern Harrier	<i>Circus cyaneus</i>	E	U	Mourning Dove	<i>Zenaida macroura</i>	INC	S
Sharp-shinned Hawk	<i>Accipiter striatus</i>	U	U	Black-billed Cuckoo	<i>Coccyzus erythrophthalmus</i>	S	S
Northern Goshawk	<i>Accipiter gentilis</i>	T	T	Yellow-billed Cuckoo	<i>Coccyzus americanus</i>	S	S
Red-shouldered Hawk	<i>Buteo lineatus</i>	E	T	Common Barn Owl	<i>Tyto alba</i>	S	S
Broad-winged Hawk	<i>Buteo platyterus</i>	S	S	Eastern Screech Owl	<i>Otus asio</i>	S	S
Red-tailed Hawk	<i>Buteo jamaicensis</i>	INC	INC	Great Horned Owl	<i>Bubo virginianus</i>	INC	S
Rough-legged Hawk	<i>Buteo lagopus</i>		S	Snowy Owl	<i>Nyctea scandiaca</i>		S
Golden Eagle	<i>Aquila chrysaetos</i>		S	Barred Owl	<i>Strix varia</i>	T	T
American Kestrel	<i>Falco sparverius</i>	INC	S	Long-eared Owl	<i>Asio otus</i>	T	T
Merlin	<i>Falco columbarius</i>		S	Short-eared Owl	<i>Asio flammeus</i>	E	U
Yellow Rail	<i>Coturnicops noveboracensis</i>		U	Northern Saw-whet Owl	<i>Aegolius acadicus</i>	S	S
Black Rail	<i>Laterallus jamaicensis</i>	T	T	Common Nighthawk	<i>Chordeiles minor</i>	S	S
King Rail	<i>Rallus elegans</i>	U	U	Chuck-will's-widow	<i>Caprimulgus carolinensis</i>	INC	S
Black-bellied Plover	<i>Pluvialis squatarola</i>		S	Whipporwill	<i>Caprimulgus vociferus</i>	D	S
Lesser Golden Plover	<i>Pluvialis dominica</i>		S	Chimney Swift	<i>Chaetura pelagica</i>	S	S
Semipalmated Plover	<i>Charadrius semipalmatus</i>		S	Ruby-throated Hummingbird	<i>Archilochus colubris</i>	D	S
Killdeer	<i>Charadrius vociferus</i>	S	S	Belted Kingfisher	<i>Ceryle alcyon</i>	S	S
American Oystercatcher	<i>Haematopus palliatus</i>	INC	S	Red-headed Woodpecker	<i>Melanerpes erythrocephalus</i>	T	T
Black-necked Stilt	<i>Himantopus mexicanus</i>		INC	Red-bellied Woodpecker	<i>Melanerpes carolinus</i>	INC	S
American Avocet	<i>Recurvirostra americana</i>		INC	Yellow-bellied Sapsucker	<i>Sphyrapicus varius</i>		S
Greater Yellowlegs	<i>Tringa melanoleuca</i>		S	Downy Woodpecker	<i>Picoides pubescens</i>	S	S
Lesser Yellowlegs	<i>Tringa flavipes</i>		S	Hairy Woodpecker	<i>Picoides villosus</i>	S	S
Solitary Sandpiper	<i>Tringa solitaria</i>		S	Northern Common Flicker	<i>Colaptes auratus</i>	S	S
Willet	<i>Catoptrophorus semipalmatus</i>	INC	S	Pileated Woodpecker	<i>Dryocopus pileatus</i>	S	S
Spotted Sandpiper	<i>Actitis macularia</i>	S	S	Olive-sided Flycatcher	<i>Contopus borealis</i>		S
Whimbrel	<i>Numenius phaeopus</i>		S	Eastern Wood Pewee	<i>Contopus virens</i>	S	S
Hudsonian Godwit	<i>Limosa haemastica</i>		D	Yellow-bellied Flycatcher	<i>Empidonax flaviventris</i>		S
Marbled Godwit	<i>Limosa fedoa</i>		D	Acadian Flycatcher	<i>Empidonax virescens</i>	INC	S
Ruddy Turnstone	<i>Arenaria interpres</i>		S	Alder Flycatcher	<i>Empidonax alnorum</i>	S	S
Red Knot	<i>Calidris canutus</i>		D	Willow Flycatcher	<i>Empidonax traillii</i>	INC	S
Sanderling	<i>Calidris alba</i>		D	Least Flycatcher	<i>Empidonax minimus</i>	S	S
Semipalmated Sandpiper	<i>Calidris pusillus</i>		S	Eastern Phoebe	<i>Sayornis phoebe</i>	S	S
Western Sandpiper	<i>Calidris mauri</i>		S	Great Crested Flycatcher	<i>Myiarchus crinitus</i>	S	S
Least Sandpiper	<i>Calidris minutilla</i>		S	Western Kingbird	<i>Tyrannus verticalis</i>		S
White-rumped Sandpiper	<i>Calidris fuscicollis</i>		S	Eastern Kingbird	<i>Tyrannus tyrannus</i>	D	D
Baird's Sandpiper	<i>Calidris bairdii</i>		D	Horned Lark	<i>Eremophila alpestris</i>	D	S
Pectoral Sandpiper	<i>Calidris melanotos</i>		S	Purple martin	<i>Progne subis</i>	D	S
Purple Sandpiper	<i>Calidris maritima</i>		INC	Tree Swallow	<i>Tachycineta bicolor</i>	S	S
Dunlin	<i>Calidris alpina</i>		INC	Northern Rough-winged Swallow	<i>Stelgidopteryx serripennis</i>	S	S
Curlew Sandpiper	<i>Calidris ferruginea</i>		S	Bank Swallow	<i>Riparia riparia</i>	S	S
Stilt Sandpiper	<i>Calidris himantopus</i>		INC	Cliff Swallow	<i>Hirundo pyrrhonota</i>	T	S
Buff-breasted Sandpiper	<i>Tryngites subruficollis</i>		S	Barn Swallow	<i>Hirundo rustica</i>	S	S
Ruff	<i>Philomachus pugnax</i>		INC	Blue Jay	<i>Cyanocitta cristata</i>	INC	S
Short-billed Dowitcher	<i>Limnodromus griseus</i>		S	Fish Crow	<i>Corvus ossifragus</i>	INC	S
Long-billed Dowitcher	<i>Limnodromus scolopaceus</i>		S	Black-capped Chickadee	<i>Parus atricapillus</i>	INC	S
Wilson's Phalarope	<i>Phalaropus tricolor</i>		INC	Carolina Chickadee	<i>Parus carolinensis</i>	S	S

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

Boreal Chickadee	Parus hudsonicus		S
Tufted Titmouse	Parus bicolor	INC	S
Red-breasted Nuthatch	Sitta canadensis	S	S
White-breasted Nuthatch	Sitta carolinensis	S	S
Brown Creeper	Certhia americana	S	S
Carolina Wren	Thryothorus ludovicianus	S	S
House Wren	Troglodytes aedon	S	S
Winter Wren	Troglodytes troglodytes		S
Marsh Wren	Cistothorus palustris	D	S
Golden-crowned Kinglet	Regulus satrapa	S	S
Ruby-crowned Kinglet	Regulus calendula		S
Blue-gray Gnatcatcher	Poliotilta caerulea	INC	S
Eastern Bluebird	Sialia sialis	S	S
Veery	Catharus fuscescens	S	S
Gray-cheeked Thrush	Catharus minimus		S
Swainson's Thrush	Catharus ustulatus		S
Hermit Thrush	Catharus guttatus	S	S
Wood Thrush	Hylocichla mustelina	S	S
American Robin	Turdus migratorius	S	S
Catbird	Dumetella carolinensis	S	S
Northern Mockingbird	Mimus polyglottos	INC	S
Brown Thrasher	Toxostoma rufum	D	S
Water Pipit	Anthus spinoletta		S
Cedar Waxwing	Bombycilla cedrorum	S	S
Northern Shrike	Lanius exubiter		S
European Starling	Sturnus vulgaris	I	
White-eyed Vireo	Vireo griseus	D	S
Solitary Vireo	Vireo solitarius	S	S
Yellow-throated Vireo	Vireo flavifrons	S	S
Warbling Vireo	Vireo gilvus	S	S
Philadelphia Vireo	Vireo philadelphicus		S
Red-eyed Vireo	Vireo olivaceus	INC	INC
Blue-winged Warbler	Vermivora pinus	INC	S
Golden-winged Warbler	Vermivora chrysoptera	D	S
Tennessee Warbler	Vermivora peregrina		S
Orange-crowned Warbler	Vermivora celata		S
Nashville Warbler	Vermivora reficapilla	S	S
Northern Parula	Parula americana	P	S
Yellow Warbler	Dendroica petechia	S	S
Chestnut-sided Warbler	Dendroica pensylvanica	S	S
Magnolia Warbler	Dendroica magnolia	S	S
Cape May Warbler	Dendroica tigrina		S
Black-throated Blue Warbler	Dendroica caerulescens	S	S
Yellow-rumped Warbler	Dendroica coronata		S
Black-throated Green Warbler	Dendroica virens	S	S
Blackburnian Warbler	Dendroica fusca	S	S
Yellow-throated Warbler	Dendroica dominica	S	S
Pine Warbler	Dendroica pinus	S	S
Prairie Warbler	Dendroica discolor	S	S
Palm Warbler	Dendroica palmarum		S
Bay-breasted Warbler	Dendroica castanea		S
Blackpoll Warbler	Dendroica striata		S
Cerulean Warbler	Dendroica cerulea	S	S
Black and White Warbler	Miniotilta varia	S	S
American Redstart	Setophaga ruticilla	S	S
Prothonotary Warbler	Protonotaria citrea	INC	S
Worm-eating Warbler	Helmitheros vermivorus	S	S
Ovenbird	Seiurus aurocapillus	S	S
Northern Waterthrush	Seiurus noveboracensis	S	S
Louisiana Waterthrush	Seiurus motacilla	S	S
Kentucky Warbler	Oporornis formosus	S	S
Connecticut Warbler	Oporornis agilis		S
Mourning Warbler	Oporornis philadelphia		S
Common Yellowthroat	Geothlypis trichas	S	S
Hooded Warbler	Wilsonia citrina	D	S
Wilson's Warbler	Wilsonia pusilla		S
Canada Warbler	Wilsonia canadensis	S	S
Yellow-breasted Chat	Icteria virens	D	S
Summer Tanager	Piranga rubra		S
Scarlet Tanager	Piranga olivacea	S	S
Northern Cardinal	Cardinalis cardinalis	INC	INC
Rose-breasted Grosbeak	Pheucticus ludovicianus	S	S
Blue Grosbeak	Guiraca caerulea	INC	S

Indigo Bunting	Passerina cyanea	S	S
Dickcissel	Spiza americana	EX	U
Rufous-sided Towhee	Pipilo erythrophthalmus	S	S
American Tree Sparrow	Spizella arborea		S
Chipping Sparrow	Spizella passerina	S	S
Field Sparrow	Spizella pusilla	S	S
Lark Sparrow	Chondestes grammacus		S
Savannah Sparrow	Passerculus sandwichensis	T	T
Ipswich Sparrow	Passerculus sandwichensis princeps	T	T
Grasshopper Sparrow	Ammodramus savannarum	T	T
Sharp-tailed Sparrow	Ammodramus caudacuta	S	S
Seaside Sparrow	Ammodramus maritima	S	S
Fox Sparrow	Passerella iliaca		S
Song Sparrow	Melospiza melodia	S	S
Lincoln's Sparrow	Melospiza lincolni		S
Swamp Sparrow	Melospiza georgiana	S	S
White-throated Sparrow	Zonotrichia albicollis	S	S
White-crowned Sparrow	Zonotrichia leucophrys		INC
Dark-eyed Junco	Junco hyemalis	S	S
Lapland Longspur	Calcarius lapponicus		S
Snow Bunting	Plectrophenax nivalis		S
Bobolink	Dolichonyx oryzivorus	T	T
Red-winged Blackbird	Agelaius phoeniceus	S	S
Eastern Meadowlark	Sturnella magna	D	S
Rusty Blackbird	Euphagus carolinus		S
Boat-tailed Grackle	Quiscalus major	INC	S
Common Grackle	Quiscalus quiscula	INC	S
Brown-headed Cowbird	Molothrus ater	INC	S
Orchard Oriole	Icterus spurius	S	S
Northern Oriole	Icterus galbula	S	S
Pine Grosbeak	Pinicola enucleator		S
Purple Finch	Carpodacus purpureus	S	S
House Finch	Carpodacus mexicanus	INC	S
Red Crossbill	Loxia curvirostra		S
White-winged Crossbill	Loxia leucoptera		S
Common Redpoll	Carduelis flammea		S
Pine Siskin	Carduelis pinus		S
American Goldfinch	Carduelis tristis	S	S
Evening Grosbeak	Hesperiphona vespertina		INC
House Sparrow	Passer domesticus	I	

(a)

**DIVISION OF FISH, GAME AND WILDLIFE**

**MARINE FISHERIES**

**Delaware Bay Gill Net Permits**

**Proposed Amendment: N.J.A.C. 7:25-18.5**

**Proposed New Rules: N.J.A.C. 7:25-18.6, 18.7, 18.8, 18.9, 18.10 and 18.11**

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

Authority: N.J.S.A. 23:2B-6 and 23:5-24.2.

DEP Docket Number: 015-90-04.

Proposal Number: PRN 1990-234.

A public hearing concerning this proposal will be held on:

Tuesday, June 19, 1990 at 7:00 P.M.

Cape May County Extension Office

Dennisville Road (Rte. 657)

Cape May Courthouse, N.J.

Submit written comments by July 6, 1990 to:

Donald J. Stout

Division of Regulatory Affairs

New Jersey Department of Environmental Protection

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The purpose of the proposed amendment of N.J.A.C. 7:25-18.5(g) is to provide that persons intending to take fish with a net in the marine waters of this State shall, as required, apply to the Commissioner for a

## ENVIRONMENTAL PROTECTION

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license and/or permit. N.J.A.C. 7:25-18.5(g) currently provides that such persons shall apply for a license as required. The addition of the "permit" language is due to the new rules proposed herein.

The proposed new rules limit the total number of gill nets allowed to be used in the Delaware Bay to that number issued within 60 days following the effective date of the adoption of the proposed new rules and establishes a maximum number of nets to be used by any individual. The new rules provide that during the 60 day period following the effective date of the adoption of the proposed new rules all applicants for a Delaware Bay commercial gill net permit will receive commercial permits based on whether the applicant sold a minimum of 10,000 pounds of fish in one of five years preceding the effective date of the adoption of the proposed new rules and whether the applicant held a valid New Jersey gill net license(s) in any one calendar year from January 1, 1985 through August 1, 1988. If the Department receives a complete application within the 60 day period and the applicant satisfies the sales and license requirements, the applicant will receive a Type A Delaware Bay commercial gill net permit allowing no more than the maximum number of gill nets of the same type for which the applicant held a valid New Jersey gill net license(s) in any one calendar year during the period of January 1, 1985 through August 1, 1988 but no more than four drifting gill net permits or 25 staked or anchored gill net permits. If the applicant satisfies the sales but not the license requirements, the applicant will receive a Type B Delaware Bay commercial gill net permit for no more than two drifting gill nets and/or up to six staked or anchored gill nets. Applicants who do not satisfy the sales and license requirements will receive a Delaware Bay non-commercial gill net permit that allows no more than one drifting gill net not to exceed 360 feet in length or two staked or anchored gill nets not to exceed 180 feet in length each.

The proposed new rules provide that after the 60 day period following the effective date of the adoption of the proposed new rules, no new gill nets will be licensed for use in the Delaware Bay until such time as the total number of gill nets in use in the Delaware Bay falls below either 800 for staked or anchored gill nets or 200 for drifting gill nets. In addition, the proposed new rules provide that individuals wishing to obtain commercial gill net permits for the Delaware Bay after the 60 day period following the effective date of the adoption of the proposed new rules shall be required to have at least three years of documented commercial fishery experience. The Department feels that this requirement would minimize spacial and social conflicts due to the belief that experienced fishermen are less likely to set their nets in a manner inconsistent with accepted fishing practices.

#### Social Impact

The purpose of the proposed amendment and new rules is to resolve the continuing special conflict problems that exist in the Delaware Bay between recreational anglers and gill net fishermen. In 1985 an attempt to address this spacial conflict problem was made with the establishment of the Brandywine Shoal Restricted Area (see N.J.A.C. 7:25-18.5(g)5v). Although this action resolved the problems in the Brandywine Area, conflicts have continued to escalate in other areas throughout the Delaware Bay.

The proposed amendment and new rules are designed to restrict the growth of the gill net fishery and allow natural attrition to slowly reduce the size of the fishery to the approximate level that existed in 1982—the time when the conflict problem was first brought to the Department's attention. This restriction should have a long term positive social impact on the sport and commercial fisheries in the Delaware Bay region by immediately limiting the potential for spacial conflict and subsequently by reducing that potential.

After the 60 day period following the effective date of the adoption of the proposed new rules, these rules will have the negative social impact of eliminating the opportunity for those persons in the Delaware Bay commercial gill net fishery to increase their number of nets and for new entrants into the fishery at least until the number of nets being fished is reduced to or below the 1982 levels. At that time, new entrants and those persons already in the commercial gill net fishery may be issued gill net permits. The permits will be issued off of waiting lists maintained by the Department based on the chronological date that each complete permit application is postmarked. An applicant who submits a complete application will be placed on either a Delaware Bay commercial or non-commercial gill net permit waiting list. If the Department determines that the applicant has established that the applicant has three years of documented commercial fishery experience, the applicant will be placed on the waiting list for a commercial gill net permit which will allow the possession of no more than four drifting gill net permits or 25 staked

or anchored gill net permits. Applicants that do not satisfy the commercial fishery experience requirement will be placed on the waiting list for a non-commercial gill net permit.

The Department proposes the requirement that new entrants into the commercial gill net fishery have at least three years of documented commercial gill net fishery experience because the Department feels that the requirement would minimize the spacial conflict on the Delaware Bay between recreational anglers and gill net fishermen due to the belief that experienced gill net fishermen are less likely to set their nets in a manner inconsistent with accepted fishing practices. This experience could, for example, be obtained by working as a mate on board a commercial gill net vessel.

The proposed new rules do not establish an experience requirement for a non-commercial gill net permit in order to allow persons who cannot demonstrate experience an opportunity to participate in the gill net fishery on a limited basis. In addition, the type, number and size of gill nets that can be used by the holder of a non-commercial gill net permit is so restricted that the Department does not anticipate that the non-commercial gill net fishery will contribute to the spacial conflict.

#### Economic Impact

The economic impact of the proposed amendment and new rules should be minimal. The amendment and rules would allow any commercial gill netter who was fishing legally in New Jersey's portion of the Delaware Bay in 1985, 1986, 1987 or through August 1 of 1988 to obtain the maximum number and type of gill nets licensed to him at any point in time during that time period up to a maximum of four drifting gill nets or 25 staked or anchored gill nets. By so doing, previously existing gill net activities should not be significantly affected.

New entry into this fishery would be permitted during a 60 day application period, but applicants would be limited to no more than two drifting gill nets and/or six staked or anchored gill nets per individual. This number approximates the average number of nets currently used in the fishery by an individual, and this restriction is necessary to prevent the "hoarding" of licenses.

Active gill net fishermen in Delaware Bay who would like to enter the fishery may be subject to a limited economic impact. The restrictions on entry to the Delaware Bay fishery may limit potential for the purchase of the fisherman's vessel and gear and, therefore, reduce the value of said vessel and gear. On the other hand, a reduction of spacial conflicts should have a positive economic impact on the Delaware Bay sportfishery.

#### Environmental Impact

Gill nets are a very efficient type of fishing gear. The proposed limitation and reduction in the number of gill nets will have a stabilizing effect on the harvest and potential harvest of fishery resources within the Delaware Bay. The reduction in the number of gill nets used in the Delaware Bay should have a long term positive impact on fishery resources, primarily weakfish, traditionally harvested by gill nets by eliminating increased opportunistic fishing pressure if market or resource conditions change.

#### Regulatory Flexibility Analysis

The proposed amendment and new rules apply to gill net fishermen wishing to fish in the Delaware Bay. It is estimated that of the total number of approximately 400 license holders impacted by the amendment and new rules, the majority are small businesses as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and will be impacted to some degree. Although these small businesses will have to comply with the requirements of the amendment and new rules, no additional record keeping is involved and it is unlikely that additional professional services or capital costs will be required for compliance.

In developing this rule, the Department has balanced the need to monitor and protect the environment against the economic impact to small businesses and has determined that to minimize the impact of the amendment and new rules would endanger the environment, public health and public safety and, therefore, no exemption from coverage is provided.

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

7:25-18.5 General net regulations

(a)-(f) (No change in text.)

(g) Persons intending to take fish with a net in the marine waters of this State pursuant to N.J.S.A. 23:5-24.2 shall, as required, apply to the Commissioner for a license **and/or permit**. Upon receipt of the application, and the prescribed license fee, the Commissioner

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## Interested Persons see Inside Front Cover

## ENVIRONMENTAL PROTECTION

may, in his or her discretion, issue single season licenses and/or permits as specified for each net type for the taking of fish with nets only as follows:

- 1.-12. (No change in text.)
- (h) (No change.)

#### 7:25-18.6 Delaware Bay commercial and non-commercial gill net permit

(a) Any person utilizing a drifting, staked or anchored gill net in that portion of Delaware Bay or its tributaries defined as the area east of the New Jersey-Delaware boundary enclosed by a line from Cape Henlopen, Delaware to Cape May Point Light, New Jersey and the "southwest line" as defined in N.J.S.A. 50:1-23 shall have a commercial or non-commercial gill net permit for each gill net license in their possession.

(b) For a period of 60 days following (the effective date of this new rule), Delaware Bay commercial and non-commercial gill net permits shall be issued in accordance with N.J.A.C. 7:25-18.5.

(c) No new Delaware Bay commercial or non-commercial gill net permits shall be issued after 60 days following (the effective date of this new rule) until the combined number of Delaware Bay commercial and non-commercial gill net permits falls below either 800 for staked or anchored gill nets or 200 for drifting gill nets.

#### 7:25-18.7 Eligibility for Delaware Bay commercial and non-commercial gill net permits during the 60-days following (the effective date of this new rule)

(a) To be eligible for a Type A Delaware Bay commercial gill net permit during the 60-day period following (the effective date of this new rule) allowing the use or possession on the waters of the Delaware Bay or its tributaries of no more than the maximum number of gill nets of the same type for which the applicant held valid New Jersey gill net licenses in any one calendar year during the period of January 1, 1985 through August 1, 1988 but no more than four drifting gill net permits or 25 staked or anchored gill net permits, the applicant shall, as part of the applicant's application for a commercial gill net permit:

1. Document that the applicant sold a minimum of 10,000 pounds of fish in one of five years preceding (the effective date of this new rule); and
2. Provide a copy of a valid New Jersey gill net license(s) held by the applicant in any one calendar year from January 1, 1985 through August 1, 1988 for each gill net permit requested.

(b) To be eligible for a Type B Delaware Bay commercial gill net permit during the 60-day period following (the effective date of this new rule) allowing the use or possession on the Delaware Bay or its tributaries of no more than two drifting gill nets and/or up to six staked or anchored gill nets, the applicant shall, as part of the applicant's application for a commercial gill net permit, document that the applicant sold a minimum of 10,000 pounds of fish in one of five years preceding (the effective date of this new rule).

(c) To comply with the requirement that to be eligible for a Delaware Bay commercial gill net permit under (a) or (b) above an applicant shall have sold a minimum of 10,000 pounds of fish in one of five years preceding (the effective date of this new rule), an applicant shall include as part of the applicant's application:

- i. Weigh-out slips issued to the applicant by wholesaler(s) that acquired fish from the applicant establishing that the applicant sold 10,000 pounds of fish in one of the five years;
- ii. Notarized statements of wholesaler(s) that the wholesaler(s) records establish that the applicant sold 10,000 pounds of fish in one of the five years and that such records are available for inspection by the Division; or
- iii. Notarized statements of wholesaler(s) that the wholesaler(s) records establish that the applicant sold 500 bushels of crabs in one of the five years and such records are available for inspection by the Division.

(d) A person who does not meet any of the requirements in (a) or (b) above may apply for a maximum of two Delaware Bay non-commercial gill net permits during the 60 day period following (the effective date of this new rule). The Delaware Bay non-commercial gill net permits shall allow the holder to use in or possess on the waters of

Delaware Bay or its tributaries no more than one drifting gill net not to exceed 360 feet in length or two staked or anchored gill nets not to exceed 180 feet in length each.

#### 7:25-18.8 Eligibility for Delaware Bay commercial and non-commercial gill net permits after the 60-day period following (the effective date of this new rule)

(a) To be eligible for a Delaware Bay commercial gill net permit issued after the 60-day period following (the effective date of this new rule), the applicant shall, at the time that the application is submitted to the Division, have three years of commercial fishery experience.

(b) If, at the time that an application for a Delaware Bay gill net permit is submitted to the Division, the applicant does not satisfy the eligibility requirement for a Delaware Bay commercial gill net permit set forth in (a) above, the applicant shall be eligible for a Delaware Bay non-commercial gill net permit.

#### 7:25-18.9 Application for Delaware Bay commercial and non-commercial gill net permits

(a) A person who wishes to enter the Delaware Bay gill net fishery shall submit an application for a Delaware Bay gill net permit to the Division of Fish, Game and Wildlife. All applications shall be submitted on forms available from the Division and shall be accepted year-round. All permit application forms shall be obtained from and mailed to the Division at:

Department of Environmental Protection  
Division of Fish, Game and Wildlife  
Marine Fisheries Permits  
CN 400  
501 East State Street  
Trenton, New Jersey 08625-0400

(b) A complete Delaware Bay gill net permit application shall consist of:

1. A completed application form signed by the applicant; and
2. For a Delaware Bay commercial gill net permit to be issued during the 60-day period following (the effective date of this new rule), full documentation establishing that the applicant satisfies the requirements for issuance of a commercial gill net permit set forth in N.J.A.C. 7:25-18.7(a) or (b), as appropriate; or
3. For a Delaware Bay commercial gill net permit to be issued after the 60-day period following (the effective date of this new rule) full documentation establishing that the applicant satisfies the requirements for issuance of a commercial gill net permit set forth in N.J.A.C. 7:25-18.8(a).

(c) The Division of Fish, Game and Wildlife shall review each application received to determine whether the application is complete as provided in (b) above. If the Division determines that an application is not complete, the application shall be returned to the applicant.

(d) If the Division determines that an application for a Delaware Bay gill net permit received by the Division at the address set forth in (a) above during the 60-day period following (the effective date of this new rule) is complete and that the applicant satisfies the eligibility requirements for issuance of a Delaware Bay commercial gill net permit set forth in N.J.A.C. 7:25-18.7(a) or (b), the applicant shall be issued Delaware Bay commercial gill net permits up to the limits set forth in N.J.A.C. 7:25-18.7(a) or (b) as appropriate. If the applicant does not satisfy the eligibility requirements for issuance of a Delaware Bay commercial gill net permit set forth in N.J.A.C. 7:25-18.7(a) or (b), the applicant shall be issued Delaware Bay non-commercial gill net permits up to the limits set forth in N.J.A.C. 7:25-18.7(c).

(e) If the Division determines that an application for a Delaware Bay gill net permit received by the Division at the address set forth in (a) above after the 60-day period following (the effective date of this new rule) is complete, the applicant shall be placed on the waiting list maintained by the Division under (f) below based on whether the Division determines that the applicant qualifies for a Delaware Bay commercial or non-commercial gill net permit. If the Division determines that an applicant for a Delaware Bay commercial gill net permit has not documented that the applicant satisfies the requirement for issuance of a commercial gill net permit set forth in N.J.A.C. 7:25-18.8(a), the applicant shall be placed on the non-commercial gill

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net permit waiting list. Delaware Bay commercial and non-commercial gill net permits shall be issued in accordance with the procedures set forth in N.J.A.C. 7:25-18.10.

(f) The Division of Fish, Game and Wildlife shall maintain separate waiting lists for Delaware Bay commercial and non-commercial gill net permits based on the chronological order of the date that each complete permit application is postmarked. Applications shall not be placed on both the commercial and the non-commercial gill net permit list.

(g) An applicant shall annually confirm that the applicant wants to remain on the permit waiting list. Confirmation shall be made by letter postmarked between January 1 and January 31 sent to the Division of Fish, Game and Wildlife at the address set forth in (a) above. Failure to send confirmation to the Division as above provided shall result in cancellation of the application and removal of the applicant from the permit waiting list without the Division of Fish, Game and Wildlife giving notice to the applicant.

**7:25-18.10 Issuance of Delaware Bay commercial and non-commercial gill net permits after 60 days following (the effective date of this new rule)**

(a) When, after 60 days following (the effective date of this new rule), the combined number of Delaware Bay commercial and non-commercial gill net permits for staked, anchored or drifting gill nets falls below 800 for staked or anchored gill nets or 200 drifting gill nets as set forth in N.J.A.C. 7:25-18.6(c), the Commissioner may issue new permits for the type of net allowed by the available permit.

(b) After 60 days following (the effective date of this new rule), the combined number of Delaware Bay commercial and non-commercial gill net permits for staked, anchored or drifting gill nets issued under (a) above shall be limited to no more than 800 for staked or anchored gill nets and 200 drifting gill nets.

(c) Delaware Bay commercial and non-commercial gill net permits shall be issued in the name of the applicant that appears at the top of the permit waiting lists maintained by the Division of Fish, Game, and Wildlife under N.J.A.C. 7:25-18.9(f).

(d) Applicants for commercial and non-commercial gill net permits shall remain at the top of the permit waiting list and shall be issued permits as they become available until the applicant has been offered the type and number of new gill net permits that the applicant applied for not to exceed the limits in (d)1 and 2 for each type of permit. Upon reaching the limits in (d)1 and 2 below, as appropriate, the applicant's name shall be removed from the permit waiting list.

1. Delaware Bay commercial gill net permits shall be issued for no more than four drifting gill net permits or 25 staked or anchored gill net permits.

2. Delaware Bay non-commercial gill net permits shall be issued for no more than one drifting gill net not to exceed 360 feet in length or two staked or anchored gill nets not to exceed 180 feet in length each.

(e) Delaware Bay non-commercial gill net permits shall not be issued to a person in possession of one or more Delaware Bay commercial gill net permits.

(f) Delaware Bay commercial gill net permits shall not be issued to a person in possession of one or more Delaware Bay non-commercial gill net permits.

**7:25-18.11 Transfer of Delaware Bay commercial and non-commercial gill net permits**

(a) Except as provided in (b) below, Delaware Bay commercial and non-commercial gill net permits are non-transferable.

(b) The Commissioner shall transfer a Delaware Bay commercial or non-commercial gill net permit to the son or daughter of the holder of the commercial or non-commercial permit provided that:

1. The Division of Fish, Game and Wildlife receives a written request at the address set forth in N.J.A.C. 7:25-18.9(a) signed by the holder of a Delaware Bay commercial or non-commercial gill net permit requesting transfer of the holder's permit to a designated son or daughter;

2. For the transfer of a Delaware Bay commercial gill net permit, the written request required under (b)1 above shall be accompanied by documentation that establishes that the designated son or daughter has three years of commercial fishing experience; and

3. The number and type of commercial or non-commercial permits transferred shall be the same number and type issued to the holder.

(a)

## DIVISION OF ENVIRONMENTAL QUALITY

## Pesticide Program Fees

## Proposed Amendments: N.J.A.C. 7:30-1.3, 3.3, 3.4, 3.5, 4.2, 5.4, 5.5, 6.4, 6.5, 6.6, 7.2, 8.3, and 9.3

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

Authority: N.J.S.A. 13:1D-9, 13:1F-1 et seq., particularly 13:1F-4, 13:1F-5 and 13:1F-9.

DEP Docket Number: 014-90-04.

Proposal Number: PRN 1990-226.

A public hearing concerning this proposal will be held on:

Thursday, June 7, 1990, at 6:00-8:00 P.M.

Cooke College Student Center

Upstairs Meeting Room

Biel Road

New Brunswick, New Jersey 08903

and

Friday, June 8, 1990 at 2:00-4:00 P.M.

Gloucester County College

Room 430 Instructional Center

Tanyard Road

Sewell, New Jersey 08080

Submit written comments by June 15, 1990 to:

John F. Dickinson Jr., Esq.

Department of Environmental Protection

Division of Regulatory Affairs

CN 402

Trenton, New Jersey 08625

The agency proposal follows:

## Summary

The Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq. granted the Department of Environmental Protection (the "Department") the authority to formulate and promulgate rules to cover the registration of pesticides, the licensing of pesticide dealers and applicators and the regulation of pesticide use in the State in order to prevent adverse effects on persons and the environment. Pursuant to this authority, the Pesticide Control Code, N.J.A.C. 7:30 (the "Code") was adopted in 1974 and had major revisions in 1976, 1982, 1985, 1987 and 1988.

The proposed amendments will increase the fees for the program. The fees must be increased because of increased demands being imposed on the Pesticide Control Program ("the Program") as a result of a concerned public becoming more aware of pesticide related problems. At the same time, no new fiscal resources can be expected from existing funding sources. In fact, erosion of existing resources is occurring. State funding from the General Fund has been severely reduced and Federal funding through United States Environmental Protection Agency ("EPA") grants has remained static. Revenue from current fees is projected to decline, especially due to product registration reductions caused by company mergers and high Federal fees. In addition, the Department is experiencing escalating administrative and overhead costs. Some of these costs are being charged against the Program funding sources.

The major revisions to the Code are as follows:

N.J.A.C. 7:30-1, Pesticide Product Registration and General Requirements, requires the registration of all pesticide products held, used, distributed, sold or offered for sale in New Jersey. The annual product registration fee in N.J.A.C. 7:30-1.3 will be increased from \$80.00 to \$200.00. The late registration fee will be increased from \$40.00 to \$100.00 per product.

N.J.A.C. 7:30-3, Pesticide Dealers, requires the certification and registration of persons who sell restricted use pesticides. The annual dealer registration fee will be increased from \$30.00 to \$75.00. An examination fee of \$10.00 will be charged for each examination.

N.J.A.C. 7:30-4, Pesticide Dealer Businesses, requires businesses that sell restricted use pesticides to register each outlet with the Department and to have a responsible certified and registered pesticide dealer at each outlet. The annual dealer business registration fee will be increased from \$75.00 to \$150.00.

N.J.A.C. 7:30-5, Pesticide Operators, requires the registration and training of persons who apply pesticides under the supervision of a

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certified registered applicator. The proposed amendment will increase the annual commercial operator registration fee from \$10.00 to \$30.00.

N.J.A.C. 7:30-6, Commercial Pesticide Applicators, requires the certification and registration of persons who use or supervise the use of pesticides commercially. The annual applicator registration fee will be increased from \$30.00 to \$75.00. An examination fee of \$10.00 will be charged for each examination.

N.J.A.C. 7:30-7, Pesticide Applicator Businesses, requires pesticide applicator businesses to register each location and name under which they operate, mandates record keeping requirements and requires businesses to employ registered commercial applicators certified in each category in which the business conducts applications. The annual business registration fee will be increased from \$75.00 to \$150.00.

N.J.A.C. 7:30-8, Private Pesticide Applicators, covers the certification and registration of private pesticide applicators who use restricted-use pesticides for raising an agricultural commodity. An examination fee of \$10.00 charged will be charged for each examination.

N.J.A.C. 7:30-9, Pesticide Exposure Management, deals with topics such as community or areawide applications, aquatic use permits, pesticide storage, container labeling, pesticide disposal, application and safety equipment, notification, farm worker safety and reporting of pesticide spills. The proposed amendment requires that a fee be charged for aquatic use permits and sets this fee at \$75.00.

**Social Impact**

The positive social impact of the Code has been significant. The Code and the Federal pesticide control regulations are the primary administrative instruments used to protect the public and the environment from the effects of misuse of pesticides. Prior to the enactment of Federal and State pesticide rules, the negative impact on public health and the environment from exposure to pesticides, including carcinogens, was much more severe. Numerous incidents of harm due to the misapplication of pesticides were documented. These incidents led to the passage of the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 et seq., (FIFRA), and the New Jersey Pesticide Control Act of 1971, N.J.S.A. 13:1F-1 et seq. The Pesticide Control Code was adopted in 1974 to implement the Pesticide Control Act. The amendments to the rules in 1976, 1982, 1985, 1987 and 1988 further defined the correct use of pesticides and brought the rules into conformance with current scientific knowledge and updated procedures.

The entire population of New Jersey has benefited from these regulatory initiatives to protect human health. In addition, wildlife and the environment have also been protected from improper pesticide use. Approximately 2,000 pesticide applicator and dealer businesses, 7,000 commercial applicators, 3,000 commercial operators, 3,000 private applicators, and 200 pesticide dealers are regulated and licensed under the Code.

The proposed fee increases will enable the Department to continue its services, resulting in greater protection from the negative aspects of pesticides while allowing their continued beneficial use in New Jersey. Such services include pesticide applicator certification, worker protection, training, environmental monitoring, and enforcement initiatives.

**Economic Impact**

If the proposed fee increases are adopted, the Department will be able to maintain its services, including essential enforcement activities. Increased fees are especially important because increased Federal mandates in areas such as pesticide product recall, endangered species, farm worker protection, and groundwater contamination require use of funds previously dedicated to the Program's enforcement activities. If the fee increases are not adopted, the Pesticide Control Program would lose 11 of its current 35 positions, in addition to operating funds, because of a projected shortfall of approximately \$1,000,000. This deficit exists because of budget cuts and salary shortfalls in the State appropriation account, cost of living increases, inflation, projected losses in product registrations and fees and increased administrative charges. The deficit makes it impossible for the program to meet even its most important commitments. This could result in an increase of pesticide misuse incidents causing negative health impacts on the citizens of the State and severe negative impacts on the environment.

The Code has had a positive economic impact by reducing health problems associated with improper pesticide use. There has been a marked decrease in the number of contamination cases requiring expensive cleanup procedures because of enforcement activities and education of the regulated community. Properly regulated use of pesticides enables farmers to protect their crops from damage due to agricultural

pests. Proper use of pesticides has protected the residents of New Jersey from harmful and destructive pests.

In a recent survey, it was determined that commercial pesticide applicators used 1,196,000 pounds of pesticides in 1986. This included 398,000 pounds of herbicides, 657,000 pounds of insecticides, 33,000 pounds of fungicides, 69,000 pounds of fumigants and 39,000 pounds of miscellaneous pesticides. In another survey, a total of 1,591,000 pounds of agricultural pesticides were applied by private applicators in 1985. Homeowners and other pesticide users account for an undetermined amount of pesticide use which may exceed the above totals. From these figures, it is obvious that pesticide use can have a major impact on the health and welfare of the citizens of New Jersey.

Overall, the fee generated income for the program will increase from \$1,240,000 to \$2,450,000. The fee increases will result in approximately \$1,210,000 per year in additional funds being available for the Pesticide Control Program when they are fully implemented by October 1991. These increases will enable the Department to maintain, at best, present services and allow continued research into areas of potential concern. These increases take into account rising administrative costs over the next few years, including costs of living adjustments and inflation. The Department has evaluated these expenses and has determined that by imposing registration and other fees as provided in the amendments, the costs will be borne fairly by all segments of the industry. Industry should bear the burden of the costs of ensuring their products and services are safe for the public and the environment.

The annual registration fee for pesticide products will increase from \$80.00 to \$200.00 when implemented in January 1991. Currently, approximately \$800,000 is generated by the present fees. It is estimated that there will be a 30 percent decrease in the number of products registered because of stringent and costly Federal reregistration requirements. The proposed fees will provide a total of \$1,400,000 in funds, an increase of \$600,000. Late registrations for pesticide products will be increased from \$40.00 to \$100.00 which will provide \$12,000 in additional funds.

Although this appears to be a large increase, it is relatively insignificant when compared to the total amount of potential sales per product in New Jersey. In addition, a large part of the pesticide sales are to homeowners and other unregistered persons who do not pay fees for the use of pesticides. Fees collected at the producer level will help pay for regulatory services to protect public health and the environment from the ill effects of pesticides. There is expected to be a decrease in the number of products registered in the near future because of extensive requirements by the EPA for the reregistration of pesticides. The increase in the State registration fees will compensate for reduced revenue from the decrease in product registrations.

The other fee increases are distributed as follows: the Applicator Business and Restricted Pesticide Dealer Business registration fees will be increased from \$75.00 to \$150.00. This is based on 2,000 business registrations, which is not expected to change in number. This would produce \$150,000 in additional funds above the \$150,000 currently collected. Commercial Pesticide Applicator and Pesticide Dealer registrations fees will be increased from \$30.00 to \$75.00. Based on the current number of 7,300 registrations, the amount received will increase from \$219,000 to \$548,000 for a net increase of \$329,000. The Applicator and Applicator Business registration fee increases will be implemented in October 1991 and the Pesticide Dealer and Dealer Business fee increases in July of 1991. The Pesticide Operator registration fee will increase from \$10.00 to \$30.00 which will increase the total of these fees received from \$30,000 to \$90,000 when implemented beginning in October 1991. Examination fees will be \$10.00, which will generate \$60,000, and will be implemented beginning in January 1991. The fee that will be charged for an aquatic use permit will be raised to \$75.00 which will generate an additional \$40,000 in revenue. No fees are currently collected for this aquatic permit service. These fees are reasonable when compared to income produced by doing business in the State.

Of the projected additional \$1,210,000 in fees, some (up to \$200,000) will be used to compensate for the effect of inflation in the following fiscal year. The Department intends to use the remaining \$1,010,000 to fund eleven current positions for which funding is unavailable due to State budget cuts. Additionally, the Department intends to create four new positions for clerical and data management in order to compensate for the loss of six temporary services employees lost because of State budget cuts. The positions and associated costs are as follows:

## ENVIRONMENTAL PROTECTION

## PROPOSALS

Enforcement Inspections/Investigations	6
Certifications/Registrations/Permits	3
Technical Evaluation and Monitoring	2
Data Management and Clerical	4
	<u>15</u>
Estimated Salaries	\$ 561,000
Employee Benefits	154,275
Indirect Costs	233,895
Non Salary Costs (i.e. supplies, equipment, travel, professional services)	60,830
	<u>\$1,010,000</u>

These resources will be used to maintain the current services by the Department.

**Environmental Impact**

The proposed amendments will have a positive environmental impact by reducing the risk to persons and the environment of unnecessary exposure to pesticides. This will be accomplished by providing the funding to continue enforcement, training, licensing, and pesticide research. The enforcement presence will ensure compliance with pesticide control rules. Training and licensing under the registration program will make the pest control industry better educated and aware of potential harm to the environment and thus prevent mishaps. Continuing research on the impact of pesticides to human health and the environment is necessary to ensure that pesticide use is not presenting a hazard to the public and the environment and to provide guidance for future regulatory development. The proposed amendments will facilitate the Department's research efforts on many important issues involving pesticides, including determining the impact of pesticides on groundwater quality, evaluating the effect of pesticide residue on crops and food and determining the impact of pesticides on indoor air quality.

**Regulatory Flexibility Statement**

At the present time, there are approximately 2,000 pesticide applicator and dealer businesses, 7,000 commercial pesticide applicators, 200 restricted pesticide dealers, 3,000 private applicators and 3,000 pesticide operators that are regulated by the Department. Virtually all of the regulated businesses come under the definition of small businesses with less than 100 employees as specified in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, there is no basis for two sets of compliance rules. In order to comply with these amendments, the small businesses will be required to pay a fee. Because the majority of businesses engaged in the pesticide industry are small businesses, exempting small businesses from the purview of these amendments would result in a substantial decrease in the fee revenues available to the Department. Such a decrease would substantially impair the Department's ability to implement and enforce the provisions of the Pesticide Control Code. The annual fee for private pesticide applicators and operators was previously eliminated to minimize the economic impact on small scale or family farming operations. In developing this rule, the Department has balanced the need to protect the environment against the economic impact of the proposed rule and has determined that to minimize the impact of the rule would endanger the environment, public health and public safety and therefore no exemption from coverage is provided.

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

## SUBCHAPTER 1. PESTICIDE PRODUCT REGISTRATION AND GENERAL REQUIREMENTS

## 7:30-1.3 Registration

(a)-(f) (No change.)

(g) Before holding, using, distributing, selling or offering for sale any pesticide in this State, the applicant or registrant shall pay an annual registration fee of [~~\$80.00~~] **\$200.00** to the Department or its authorized representative for each pesticide to be registered. All such registrations shall expire on December 31 of each calendar year.

(h) (No change.)

(i) If the renewal of a pesticide registration is not filed prior to January 1 of any one year, an additional fee of [~~\$40.00~~] **\$100.00** per product may be assessed and added to the total registration fee and must be paid by the registrant before the renewal registration for any pesticide(s) shall be issued. The payment of such additional fee shall not preclude any other actions deemed necessary by the Department.

(j)-(l) (No change.)

## SUBCHAPTER 3. PESTICIDE DEALERS

## 7:30-3.3 Certification

(a) (No change.)

(b) An examination fee [may] of **\$10.00** will be charged for each examination.

(c) (No change.)

## 7:30-3.4 Registration

(a) Within 12 months after a person has become certified and eligible to register as a pesticide dealer, the certified pesticide dealer shall complete and file with the Department an application to register and shall include as an integral part of the application an annual registration fee of [~~\$30.00~~] **\$75.00**. A fee not to exceed \$10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide dealer who fails to file within the 12 month period will lose certification status and must again become certified in accordance with provisions of this subchapter.

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

## 7:30-3.5 Reregistration

(a) A certified pesticide dealer shall reregister annually with the [department] **Department** and pay the reregistration fee of [~~\$30.00~~] **\$75.00**.

(b) (No change.)

## SUBCHAPTER 4. PESTICIDE DEALER BUSINESSES

## 7:30-4.2 Registration

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

(d) An annual registration fee of [~~\$75.00~~] **\$150.00** shall be paid to the Department at the time of registration for each separate registration. The registration period shall end on June 30 of each calendar year.

(e)-(i) (No change.)

## SUBCHAPTER 5. PESTICIDE OPERATORS

## 7:30-5.4 Registration

(a) At the completion of training, the pesticide operator shall file with the Department, on forms provided by the Department, an application to register. The [applicator] **application** shall be co-signed by a certified and registered responsible pesticide applicator who was responsible for the training and shall indicate that the co-signer will be the responsible pesticide applicator for pesticide applications performed by the pesticide operator. An annual registration fee of [~~\$10.00~~] **\$30.00** shall be included as an integral part of the application to register a commercial pesticide operator.

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

## 7:30-5.5 Reregistration

A pesticide operator shall reregister annually with the Department and, for commercial pesticide operators, pay the reregistration fee of [~~\$10.00~~] **\$30.00**.

## SUBCHAPTER 6. COMMERCIAL PESTICIDE APPLICATORS

## 7:30-6.4 Certification

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

(c) An examination fee [may] of **\$10.00** will be charged for each examination.

## 7:30-6.5 Registration

(a) Within 12 months after a person has become fully certified and eligible to register as a commercial pesticide applicator, the certified commercial pesticide applicator shall complete and file with the Department an application to register, and shall include as an integral part of the application an annual registration fee of [~~\$30.00~~] **\$75.00**. A fee not to exceed \$10.00 may be charged for each duplicate registration certificate issued. Any certified pesticide applicator who fails to file within the 12 month period will lose certification status and must again become certified in accordance with the provisions of this subchapter.

**PROPOSALS**

**Interested Persons see Inside Front Cover**

**ENVIRONMENTAL PROTECTION**

(b)-(h) (No change.)

**7:30-6.6 Reregistration**

(a) A certified commercial pesticide applicator shall reregister annually with the Department and pay the registration fee of [~~\$30.00~~] **\$75.00**.

(b) (No change.)

**SUBCHAPTER 7. PESTICIDE APPLICATOR BUSINESSES**

**7:30-7.2 Registration**

(a) (No change.)

(b) An annual registration fee of [~~\$75.00~~] **\$150.00** shall be paid to the Department at the time of registration. The registration period shall end on September 30 of each calendar year except that the Department may issue a registration for an additional year when an application is initially filed during the last three months of the registration year.

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

**SUBCHAPTER 8. PRIVATE PESTICIDE APPLICATORS**

**7:30-8.3 Certification**

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

(c) An examination fee [may] of **\$10.00** will be charged for each examination.

(d) (No change.)

**SUBCHAPTER 9. PESTICIDE EXPOSURE MANAGEMENT**

**7:30-9.3 Aquatic Use Permits**

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

(f) A [~~\$5.00~~] **\$75.00** fee [may] will be charged for each aquatic use permit.

(g)-(h) (No change.)

**(a)**

**DIVISION OF PARKS AND FORESTRY**

**Wild and Scenic Rivers System**

**Proposed Readoption: N.J.A.C. 7:38**

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

Authority: N.J.S.A. 13:1B-3, 13:1D-9, and 13:8-45 et seq., particularly 13:8-52.

DEP Docket Number: 010-90-03.

Proposal Number: PRN 1990-204.

A public hearing concerning this proposal will be held on:  
Monday, June 11, 1990 at 10:00 A.M.  
Division of Parks and Forestry  
Large Conference Room, 4th Floor  
501 East State Street  
Trenton, New Jersey 08625

Submit written comments by July 6, 1990 to:  
Donald Stout  
Regulatory Officer  
Division of Regulatory Affairs  
New Jersey Department of Environmental Protection  
CN 402  
Trenton, New Jersey 08625-0402

The agency proposal follows:

**Summary**

Pursuant to Executive Order No. 66 (1978), the rules concerning the New Jersey Wild and Scenic River System, N.J.A.C. 7:38, will expire on September 18, 1990. The Department has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose for which they were originally promulgated.

In the New Jersey Wild and Scenic Rivers Act (Act), N.J.S.A. 13:8-45, et seq., the Legislature found and declared at N.J.S.A. 13:8-46:

... that many of the rivers of New Jersey, or sections thereof, together with adjacent land areas, possess outstanding scenic, recreational, geologic, fish and wildlife, floral, historic, cultural, or similar values which

are of benefit and enjoyment to present and future generations of this State; that selected rivers, or sections thereof, are a public trust and should be preserved and protected so as to insure that this and succeeding generations have the opportunity to enjoy the aesthetic and recreational qualities of such rivers; and that it shall, therefore, be the policy of this State to preserve, protect, and enhance the natural and recreational values of such rivers through the establishment of a New Jersey Wild and Scenic Rivers System, and by prescribing the procedures and criteria for designating, protecting and administering the system and for adding new components to it from time to time.

The Department proposes to readopt N.J.A.C. 7:38 without change in order to assure that there is no interruption in the New Jersey Wild and Scenic Rivers System Program. The Department finds that the rules which implement the Act by providing for the designation, acquisition, preservation and protection of those rivers and adjacent land areas possessing outstanding scenic, recreational, geologic, fish and wildlife, floral, historic, cultural, or similar values continue to be necessary to ensure that such rivers and adjacent areas are available for enjoyment of their aesthetic and recreational qualities and to protect their public trust values. The rules establish standards for evaluating river corridors for classification, provide definitions of the types of land and water uses regulated within the designated river corridors and describe the administrative responsibilities of local river commissions.

A summary of the text of the single subchapter and the significant sections thereof in N.J.A.C. 7:38 follows:

N.J.A.C. 7:38-1.1 sets forth the scope and purpose of the rules.

N.J.A.C. 7:38-1.2 provides for severability.

N.J.A.C. 7:38-1.3 sets forth the definition of certain words and phrases used throughout the rule and, in addition, incorporates by reference the definitions set forth in the Municipal Land Use Law of 1975, N.J.S.A. 40:55D-1 et seq.

N.J.A.C. 7:38-1.4 provides that all lands and waters within a designated river area shall be administered by the Department in accordance with this N.J.A.C. 7:38. Non-State lands and waters within a designated river area shall be administered by the Department until the affected municipality(ies) creates a Wild and Scenic River Commission (Commission).

N.J.A.C. 7:38-1.5 authorizes affected municipalities to jointly or singly create a wild and scenic river commission.

N.J.A.C. 7:38-1.6 sets forth the authority and responsibilities of a wild and scenic river commission to regulate the development and use of the designated river area. The commission's rules shall not be less restrictive than the standards contained in N.J.A.C. 7:38.

N.J.A.C. 7:38-1.7 sets forth the requirement of a Wild and Scenic River Conservation Permit (Permit) for any regulated use in a designated river area. This section also establishes the procedure for applying for a Permit.

N.J.A.C. 7:38-1.8 provides that an application may be made to the Commissioner for approval of a prohibited use in a designated river area and establishes the application procedure.

N.J.A.C. 7:38-1.9 provides exceptions for pre-existing non-conforming and prohibited uses, buildings, structures and sanitary landfills in designated river areas. This section also establishes the procedure for obtaining a variance for a prohibited use.

N.J.A.C. 7:38-1.10 describes the uses that are not regulated under N.J.A.C. 7:38.

N.J.A.C. 7:38-1.11 sets forth the uses that are prohibited in all designated river areas under N.J.A.C. 7:38.

N.J.A.C. 7:38-1.12 sets forth the uses that are regulated in every designated river area under N.J.A.C. 7:38.

N.J.A.C. 7:38-1.13 sets forth prohibited uses in wild river areas.

N.J.A.C. 7:38-1.14 sets forth prohibited uses in scenic river areas.

N.J.A.C. 7:38-1.15 sets forth prohibited uses in recreational river areas.

N.J.A.C. 7:38-1.16 sets forth prohibited uses in developed recreational areas.

N.J.A.C. 7:38-1.17 designates the Lower Atsion segment of the Mullica River as a Wild River Component to the New Jersey Wild and Scenic Rivers System.

**Social Impact**

The readoption of N.J.A.C. 7:38 will allow the Department to continue in full force and effect the beneficial environmental programs resulting from the administration of these rules. The readoption will provide the Department with the standards necessary to implement the provisions of the Act and allow continuation of the New Jersey Wild and Scenic Rivers System thereby preserving the natural and recreational qualities of certain rivers throughout the State for public enjoyment.

**ENVIRONMENTAL PROTECTION**

**PROPOSALS**

**Economic Impact**

The readoption of N.J.A.C. 7:38 will result in a continuation of the existing New Jersey Wild and Scenic River System with the positive economic effect which results from the preservation of recreational land within the State. The positive economic effect is directly related to the quality of the environment in which the designated river area is located. It has been clearly established throughout New Jersey and elsewhere that the preservation of environmentally sensitive rivers and adjacent land areas so that this and succeeding generations have the opportunity to enjoy the aesthetic and recreational qualities of such rivers and adjacent land is an important contributing factor to the quality of life. The value of residential and non-residential property is decreased if there is no preserved land in the area. The potential for direct economic impact upon builders and property owners affected by these rules is discussed, in the context of small businesses, but applicable to other property owners and businesses as well, in the Regulatory Flexibility Analysis below.

**Environmental Impact**

The proposed readoption of N.J.A.C. 7:38 will have the positive environmental impact of continuing the regulatory framework necessary to implement the benefits of the New Jersey Wild and Scenic Rivers Act. It will enable the preservation of those sections of rivers and their floodplains within the State which possess outstanding scenic, recreational, geologic, wildlife, floral, historic and cultural values which are of benefit to the people of this State.

**Regulatory Flexibility Analysis**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that a significant portion of the builders and property owners affected by the readoption will be "small businesses" as defined in the Act. To comply with the readopted rules, affected small businesses may have to submit an application for a Wild and Scenic Rivers Permit for a regulated activity in a designated river area, which may require engineering support work, legal assistance, and assistance in evaluating the environmental impact of the project. These application preparation costs will vary widely depending on the complexity of the project. There are no application fees for the Wild and Scenic Rivers Permit under N.J.A.C. 7:38. The Department anticipates that most small businesses will not incur additional capital costs in complying with the readopted rules.

In determining to readopt N.J.A.C. 7:38, the Department has balanced the need to protect the public and the environment from the adverse impacts of unregulated development in a designated river area against the economic impact of the rules. The Department has determined that to minimize the impact of the Wild and Scenic Rivers Program rules on small businesses would endanger the general welfare of the public by undermining the coordination of development to such a degree as to make the program goals impossible to meet. The program goals further the general welfare of the public through the preservation, protection and enhancement of the natural, aesthetic and recreational values of designated river areas so that there is an opportunity for the public to enjoy the natural, aesthetic and recreational qualities of such areas. Therefore, no exemption from coverage was provided in the existing rules, and there is no basis for exempting small business in the proposed readoption.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at 7:38.

Submit comments by June 6, 1990 to:  
 Grey J. Dimenna, Esq.  
 Administrative Practice Officer  
 Department of Higher Education  
 20 West State Street  
 CN 542  
 Trenton, NJ 08625

The agency proposal follows:

**Summary**

The initial proposed amendment to N.J.A.C. 9:7-3.2 was published for comment in the February 5, 1990 New Jersey Register at 22 N.J.R. 309(a) prior to the release of the Governor's Budget Recommendation for Fiscal Year 1991. In light of the Governor's Fiscal Year 1991 Tuition Aid Grant (TAG) recommendation and the potential for extraordinary tuition increases, the previously proposed 1990-91 TAG Award Table has been revised. The repropoed amendment, which supersedes and replaces the previous proposal, eliminates the 1988-89 TAG Award Table since it no longer represents current award payments to eligible students and adds a new TAG Award Table for payment of grants for the upcoming 1990-91 academic year. The proposed TAG Award Table for 1990-91 continues to provide percentages of tuition instead of actual award amounts. This format permits the Student Assistance Board and the Board of Higher Education to align award amounts for all New Jersey college sectors to those percentages when actual tuition levels and the program appropriation have been determined.

**Social Impact**

The proposed TAG Award Table for 1990-91 continues to provide for awards equal to full tuition for the neediest students at New Jersey public colleges and universities. Pursuant to N.J.S.A. 18A:71-47, the maximum award for students attending independent institutions of higher education is up to 50 percent of the average tuition normally charged students attending those institutions, which has been recommended at \$4,200 for 1990-91 as a result of proposed reductions in the funding for independent colleges. For those students with a New Jersey Eligibility Index (NJEI) above 1500, the table proposes wider percentage ranges within each NJEI cell above 1500 because of the possibility of higher than anticipated tuition levels as a result of institutional budget shortfalls. The proposed TAG Award Table will allow the Student Assistance Board and the Board of Higher Education to assign award amounts in July immediately after the program appropriation and tuition levels for the various college sectors are known. This process will eliminate the necessity for emergency adoption of a revised TAG Award Table during the summer months. In addition, students will be notified promptly of the change in award values at a time when tuition payments are due.

**Economic Impact**

The proposed 1990-91 TAG Award Table continues to provide for the assignment of grant amounts in the various eligibility cells within the Governor's Budget Recommendation for Fiscal Year 1991 and continued estimated funding through the Federal State Student Incentive Grant Program.

**Regulatory Flexibility Statement**

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Department has determined that this proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment provides Tuition Aid Grant awards to eligible students attending New Jersey colleges and universities for the 1990-91 academic year.

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

**HIGHER EDUCATION**

**(a)**

**STUDENT ASSISTANCE BOARD**

**Tuition Aid Grant Program  
 1990-91 Award Table**

**Reproposed Amendment: N.J.A.C. 9:7-3.2**

Authorized By: Student Assistance Board, M. Wilma Harris,  
 Chairperson.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.  
 Proposal Number: PRN 1990-216.

## PROPOSALS

## Interested Persons see Inside Front Cover

## HIGHER EDUCATION

## 9:7-3.2 Tuition Aid Grant award table

(a) The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs.

[1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1988-89  
APPROXIMATE TUITION AID GRANT VALUES<sup>1</sup>  
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>2</sup>	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% <sup>3</sup>	100% of tuition	100% of tuition
1500-2499	80-99%	80-99%	80-99%	85-99%	80-99%
2500-3499	50-79%	60-79%	70-79%	70-84%	70-79%
3500-4499	Minimum	50-59%	60-69%	60-69%	60-69%
4500-5499	0	30-49%	50-59%	50-59%	50-59%
5500-6499	0	Minimum	35-49%	35-49%	35-49%
6500-7499	0	0	25-34%	30-34%	30-34%
7500-8499	0	0	20-24%	Minimum	Minimum
8500-9499	0	0	Minimum	0	0
Over 9499	0	0	0	0	0

<sup>1</sup>In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

<sup>2</sup>Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

<sup>3</sup>Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1989 Budget Request contains a recommended \$3,300.00 maximum award level in the independent sector for students with an NJEI under 1500. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award.]

[2.]1. TUITION AID GRANT (TAG) AWARD TABLE FOR 1989-90  
APPROXIMATE TUITION AID GRANT VALUES<sup>1</sup>  
NEW JERSEY COLLEGES AND UNIVERSITIES

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>2</sup>	NJ Inst. of Tech.
Under 1500	100% of tuition	100% of tuition	40-50% <sup>3</sup>	100% of tuition	100% of tuition
1500-2499	85-99%	80-99%	85-99%	85-99%	85-99%
2500-3499	70-84%	70-79%	75-84%	75-84%	75-84%
3500-4499	50-69%	60-69%	65-74%	65-74%	65-74%
4500-5499	Minimum	50-59%	55-64%	50-64%	50-64%
5500-6499	0	30-49%	45-54%	40-49%	40-49%
6500-7499	0	Minimum	35-44%	30-39%	30-39%
7500-8499	0	0	25-34%	20-29%	20-29%
8500-9499	0	0	15-24%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

<sup>1</sup>In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

<sup>2</sup>Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

<sup>3</sup>Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1990 Budget Request contains a recommended \$3,700.00 maximum award level in the independent sector for students with an NJEI under 1500[2].

**2. TUITION AID GRANT (TAG) AWARD TABLE FOR 1990-91  
APPROXIMATE TUITION AID GRANT VALUES<sup>1</sup>  
NEW JERSEY COLLEGES AND UNIVERSITIES**

NJ Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers Univ. & UMDNJ <sup>2</sup>	NJ Inst. & of Tech.
	100% of tuition	100% of tuition		100% of tuition	100% of tuition
Under 1500			40-50% <sup>3</sup>		
1500-2499	70-99%	70-99%	75-99%	75-99%	75-99%
2500-3499	50-75%	60-75%	65-74%	65-80%	65-80%
3500-4499	35-55%	50-60%	55-64%	55-70%	55-70%
4500-5499	Minimum	40-50%	45-54%	50-60%	50-60%
5500-6499	0	25-40%	35-44%	35-50%	35-50%
6500-7499	0	Minimum	30-34%	25-35%	30-40%
7500-8499	0	0	20-29%	20-30%	20-30%
8500-9499	0	0	10-19%	Minimum	Minimum
9500-10499	0	0	Minimum	0	0
Over 10499	0	0	0	0	0

<sup>1</sup>In accordance with State guidelines, the value of the student's grant may decrease dependent upon appropriated funds, the student's college budget and other financial aid. The student will be notified of any increase in his/her grant if additional funds become available. Percentages listed for NJEI categories 1500 and above represent percentages of the first cell award. The award in each subsequent NJEI category above 1500 will continue to decrease in value until the minimum grant is reached in each sector. For purposes of N.J.A.C. 9:7-3.2, Tuition Aid Grant Award Table, the minimum grant for all institutional sectors shall not exceed \$400.00.

<sup>2</sup>Students enrolled in eligible programs at UMDNJ should contact the university's financial aid office for details.

<sup>3</sup>Pursuant to N.J.S.A. 18A:71-47, the maximum award for a student attending an independent institution of higher education is 50 percent of the average tuition normally charged students attending those institutions. The FY1991 Budget Request contains a recommended \$4,200.00 maximum award level in the independent sector for students with an NJEI under 1500.

**CORRECTIONS**

**(a)**

**THE COMMISSIONER  
FISCAL MANAGEMENT**

**Inmate Reimbursement for Lost, Damaged or  
Destroyed Personal Property**

**Proposed New Rules: N.J.A.C. 10A:2-6**

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

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

Proposal Number: PRN 1990-210.

Submit comments by June 6, 1990 to:

Elaine W. Ballai, Esq.  
Chief, Standards Development Unit  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed new rules establish the policies and procedures to be used in processing inmate claims for lost, damaged or destroyed personal property. The proposed new rules define "inmate personal property", describe processes for filing claims at various types of institutions, set out factors to be considered in approving or denying claims and delineate time frames for filing claims.

**Social Impact**

The proposed new rules standardize the processing of inmate claims of lost, damaged or destroyed personal property. The proposed new rules should help decrease the processing time of claims and duplication of work to process such claims and result in more timely reimbursement to claimants.

**Economic Impact**

The proposed new rules establish a systematic approach for objectively reviewing inmate claims of lost, damaged or destroyed personal property and should result in a more accurate assessment of the Department of

Corrections' financial obligation. Those inmates whose claims are approved receive the economic benefit of reimbursement.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because this proposal does not impose reporting, record keeping or other compliance requirements on small business as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impact on inmates and the New Jersey Department of Corrections and have no significant affect on small businesses.

Full text of the proposed new rules follows:

**SUBCHAPTER 6. INMATE REIMBURSEMENT FOR LOST,  
DAMAGED OR DESTROYED PERSONAL  
PROPERTY**

**10A:2-6.1 Inmate personal property defined**

"Inmate personal property" means items owned by an inmate which have been approved for retention in his or her possession while incarcerated in a correctional facility.

**10A:2-6.2 Filing a claim at an adult or juvenile institution or satellite unit**

(a) When an inmate claims the loss, damage or destruction of personal property, other than personal property disposed of in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates, the inmate shall complete Form 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY and submit the Form to the Superintendent or his or her designee.

(b) The Superintendent or his or her designee shall submit the Form 943-I to the Internal Affairs Unit for investigation and preparation of a report. The investigation conducted by the Internal Affairs Unit shall consist of, but not be limited to:

1. Obtaining statements from the inmate, witnesses and correctional facility personnel; and

2. Verifying the inmate's legitimate possession of the lost, damaged or destroyed personal property.

(c) Verification of possession of lost, damaged or destroyed personal property may be made by reviewing documents such as the personal property inventory form maintained by the correctional facility (see N.J.A.C. 10A:1-11.6).

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(d) Upon completion of the investigation, the Form 943-I along with a copy of the investigative report shall be submitted to the Business Manager of the correctional facility for review.

(e) The Business Manager shall review the Form 943-I and the Internal Affairs Unit's investigative report and complete Form 943-II CERTIFICATION OF INMATE CLAIM indicating the Business Manager's recommendation to approve or deny the claim and the reasons therefor.

(f) Form 943-I, Form 943-II and the Internal Affairs Unit's investigative report shall be submitted, by the Business Manager, to the Superintendent to be denied or recommended for approval.

(g) Claims that are denied by the Superintendent shall not be processed any further. In all cases of denial, the inmate shall be notified in writing by the Superintendent with substantiating reasons.

(h) If the Superintendent recommends approving a claim, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and request that the Business Manager of the correctional facility complete Invoice Form AR 50/54, and have Form AR 50/54 presented to the inmate for signature.

(i) The signed Invoice Form AR 50/54 along with Forms 943-I, 943-II, 943-III and the Internal Affairs Unit's investigative report shall be submitted by the Superintendent to the appropriate Assistant Commissioner for review.

(j) The Assistant Commissioner shall review the claim and determine whether to approve or disapprove the claim.

(k) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section V on Form 943-III and return the entire packet of documents to the Superintendent.

(l) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents, listed in (i) above, to the Chief, Bureau of Accounts, to be reviewed for compliance with the requirements of this section.

(m) When a claim is not in compliance with the requirements of this section the Chief, Bureau of Accounts, shall return the entire packet to the appropriate Assistant Commissioner with the reasons therefor.

(n) When a claim is in compliance with technical requirements, the Chief, Bureau of Accounts, shall indicate "Compliance" and submit the entire packet to the Deputy Commissioner for approval and payment.

**10A:2-6.3 Filing a claim at a juvenile community residential center**

(a) When an inmate assigned to a juvenile community residential center claims the loss, damage or destruction of personal property, other than personal property disposed of in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates, the inmate shall complete Form 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY and submit the Form to the Superintendent or his or her designee.

(b) The Superintendent or his or her designee shall designate a staff member to investigate the claim and prepare a report.

(c) Upon completion of the investigation, the Form 943-I along with a copy of the investigative report shall be submitted to the Superintendent to be denied, or recommended for approval.

(d) Claims that are denied by the Superintendent shall not be processed any further. In all cases of denial, the inmate shall be notified in writing by the Superintendent with substantiating reasons.

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I and a copy of the investigative report to the Executive Assistant of the Assistant Commissioner, Division of Juvenile Services, to be denied or recommended for approval.

(f) If the Executive Assistant denies the inmate's claim, the substantiating reasons for denying the claim shall be entered on Form 943-II CERTIFICATION OF INMATE CLAIM and returned to the Superintendent along with Form 943-I and the investigative report.

(g) If the Executive Assistant approves the inmate's claim, Invoice Form AR 50/54 and Form 943-II CERTIFICATION OF INMATE CLAIM shall be completed and Form AR 50/54 shall be forwarded to correctional facility for the inmate's signature.

(h) Upon receipt of the signed Form AR 50/54, the Superintendent shall complete Form 943-III REVIEW OF INMATE CLAIM and submit Form AR 50/54 and Forms 943-III to the Executive Assistant. The Executive Assistant shall submit Form 943-I, 943-II, 943-III, Form AR 50/54 and the investigative report to the Assistant Commissioner, Division of Juvenile Services, for review.

(i) The Assistant Commissioner shall review the claim and determine whether to approve or disapprove the claim.

(j) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section V on Form 943-III and return the entire packet of documents to the Superintendent.

(k) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents, listed in (h) above, to the Chief, Bureau of Accounts, to be reviewed for a compliance with the requirements of this section.

(l) When a claim is not in compliance with technical requirements, the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of Juvenile Services, with the reasons therefor.

(m) When a claim is in compliance with the requirements of this section the Chief, Bureau of Accounts, shall indicate "Compliance" and submit the entire packet to the Deputy Commissioner for approval and payment.

**10A:2-6.4 Filing a claim at an adult community service center**

(a) When an inmate assigned to an adult community service center claims the loss, damage or destruction of personal property, other than personal property disposed of in accordance with N.J.A.C. 10A:1-11, Personal Property of Inmates, the inmate shall complete Form 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY and submit the Form to the Superintendent or his or her designee.

(b) The Superintendent or his or her designee shall designate a staff member to investigate the claim and prepare a report.

(c) Upon completion of the investigation, the Form 943-I along with a copy of the investigative report shall be submitted to the Superintendent to be denied or recommended for approval.

(d) Claims that are denied by the Superintendent shall not be processed any further. In all cases of denial, the inmate shall be notified in writing by the Superintendent with substantiating reasons.

(e) If the Superintendent recommends approving the claim, the Superintendent shall submit Form 943-I, Form 943-II, 943-III, Form AR 50/54 signed by the inmate and the investigative report to the Chief, Bureau of Community and Professional Services, within the Division of Adult Institutions for review.

(f) If the Chief, Bureau of Community and Professional Services, denies the inmate's claim, the substantiating reasons shall be documented on Form 943-II and returned to the facility Superintendent along with the entire package of documents.

(g) If the Chief, Bureau of Community and Professional Services recommends approving the claim, he or she shall submit the entire packet of documents to the Assistant Commissioner, Division of Adult Institutions, for review.

(h) The Assistant Commissioner shall review the claim and determine whether to approve or disapprove the claim.

(i) If the Assistant Commissioner disapproves the claim, he or she shall sign and date Section V on Form 943-III and return the entire packet of documents to the Chief, Bureau of Community and Professional Services, who will return these documents to the Superintendent.

(j) If the Assistant Commissioner approves the claim, he or she shall sign and date Section IV on Form 943-III and submit the entire packet of documents, listed in (e) above, to the Chief, Bureau of Accounts, to be reviewed for compliance with technical requirements.

(k) When a claim is not in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall return the entire packet to the Assistant Commissioner, Division of Adult Institutions, with the reasons therefor.

(l) When a claim is in compliance with the requirements of this section, the Chief, Bureau of Accounts, shall indicate "Compliance"

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and submit the entire packet to the Deputy Commissioner for approval and payment.

**10A:2-6.5 Decision making factors for approving or denying a claim**

(a) The following factors should be considered before recommending approval or disapproval of claims:

1. Whether the investigation disclosed any neglect by the correctional facility;
2. Whether care was exercised by facility personnel in preventing property loss, damage or destruction;
3. Whether the inmate exercised care in preventing property loss, damage or destruction;
4. Whether it has been proven that the inmate was authorized to have and did, in fact, possess the item(s) mentioned in the claim;
5. Whether sufficient information has been supplied by the inmate, including proper receipts, witnesses and investigative reports;
6. Whether the loss or damage exceeds authorized amounts of correctional facility personal property limits;
7. Whether the personal property is considered contraband; and
8. Whether other reviewers recommended denial of the claim and the reasons therefor.

**10A:2-6.6 Time limit for filing a claim**

(a) It shall be the inmate's responsibility to initiate the claim by completing Form 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY within 15 days of the incident or discovery of the incident.

(b) Unless there are exceptional circumstances which require extending the investigative process, the claim form and accompanying documents shall be submitted to the Deputy Commissioner within one month of the filing of the claim by the inmate.

**10A:2-6.7 Notification of inmates**

The written procedures contained in this subchapter shall be incorporated into the next revision of the correctional facility's inmate handbook.

**10A:2-6.8 Forms**

(a) The following forms related to inmate reimbursement for lost, damaged or destroyed personal property shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit, New Jersey Department of Corrections:

1. 943-I INMATE CLAIM FOR LOST, DAMAGED OR DESTROYED PERSONAL PROPERTY;
2. 943-II CERTIFICATE OF INMATE CLAIM; and
3. 943-III REVIEW OF INMATE CLAIM.

**(a)**

**THE COMMISSIONER**

**Medical and Health Services  
Informed Consent to Perform Medical, Dental or Surgical Treatment  
Refusal and Guardianship**

**Reproposed Amendment: N.J.A.C. 10A:16-5.2**

**Proposed Amendment: N.J.A.C. 10A:16-5.5**

**Reproposed New Rule: N.J.A.C. 10A:16-5.6**

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

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

Proposal Number: PRN 1990-213.

Submit comments by June 6, 1990 to:

Elaine W. Ballai, Esq.  
Chief, Standards Development Unit  
Department of Corrections  
CN 863  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

Proposed new rule N.J.A.C. 10A:16-5.6 and a proposed amendment to N.J.A.C. 10A:16-5.2 were submitted by the Department of Corrections to the Office of Administrative Law and published in the September 18, 1989, issue of the New Jersey Register at 21 N.J.R. 2851(a). As a result of comments received, the Department of Corrections is repropounding the amendment to N.J.A.C. 10A:16-5.2(a)2 to change the previously proposed cross reference from N.J.A.C. 10A:16-5.5 to N.J.A.C. 10A:16-5.6. The repropounded new rule, which provides the procedures to be followed when application for guardianship of an adult inmate is submitted to the Attorney General's Office, has been modified at N.J.A.C. 10A:16-5.6(a) in order to clarify the circumstances under which an application for guardianship of an inmate is submitted to the Attorney General's Office for consideration and legal action. The proposed amendment to N.J.A.C. 10A:16-5.5 deletes subsection (b) which requires the referral of the case of an inmate, who refuses medical treatment, to the Special Assistant for Legal Affairs for possible legal action when the medical staff believes that the inmate lacks the mental capacity to make a reasonably informed decision or the inmate's condition is such that it is life threatening. Application for guardianship will now be the appropriate process.

**Social Impact**

The proposed amendment, the repropounded amendment and the repropounded new rule will provide a process, by appointment of a guardian, for an inmate to receive medical, dental and surgical treatment necessary to preserve the inmate's health and well being.

**Economic Impact**

The proposed amendment, the repropounded amendment and the repropounded new rule will have no significant economic impact because additional funding is not necessary to implement or maintain these proposals.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments and new rule do not impose reporting, record keeping, or other compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment, the repropounded amendment and the repropounded new rule impact on inmates and the New Jersey Department of Corrections and have no significant effect on small businesses.

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

**10A:16-5.2 Exception to adult inmate written consent requirement**

(a) Written consent shall not be required in the case of adult inmates (18 years or older) in the following circumstances:

1. (No change.)
2. In any case in which a court of competent jurisdiction has determined that the inmate is incompetent to give informed consent on his or her own behalf, or is otherwise ordered to undergo treatment (see N.J.A.C. 10A:16-5.6).

**10A:16-5.5 Refusal by adult inmates**

[(a)] In every case in which the adult inmate, after having been informed of his or her condition and the treatment prescribed, refuses treatment, this refusal shall be recorded on Form 306-I CONSENT FOR MEDICAL, DENTAL OR SURGICAL TREATMENT in the space provided. Medical staff shall advise the inmate of the possible medical/dental consequences of such refusal.

[(b)] In the event the medical staff believes that the inmate lacks sufficient mental capacity to make a reasonably informed decision regarding his or her own well-being, or that the condition requiring treatment may become life threatening, the case shall be referred to the Special Assistant for Legal Affairs, Office of the Deputy Commissioner, for possible legal action.]

**10A:16-5.6 Guardianship of adult inmates**

(a) An application for guardianship of an inmate may be submitted to the Attorney General's Office for legal action under the following circumstances:

1. The inmate lacks sufficient mental capacity to make a reasonably informed decision regarding his or her well being; or

2. The inmate is refusing treatment and the medical staff determines that the inmate's condition is or may soon become life threatening; or  
 3. The inmate is engaging in a hunger strike and the medical staff determines that the inmate's condition is or may become life threatening.

(b) The following information shall be provided to the Attorney General's Office in memorandum form when application is made for guardianship:

1. The name, age, race, height, weight, offense, sentence and parent institution of the inmate;
2. The name and relationship of family member(s) contacted regarding guardianship;
3. The name, address and telephone number of family member(s) agreeing to be appointed guardian;
4. A request, when no family member is available, that the Health Services Unit Supervisor, Office of Institutional Support Services (O.I.S.S.) be appointed guardian when inmates are assigned to the Saint Francis Medical Center or a Special Medical Unit, or a request that the Superintendent of the parent institution be appointed guardian when inmates are assigned to other medical facilities;
5. A letter from the inmate's treating physician which details the history of the inmate's condition, the consequences of treatment refusal and that physician's opinion as to the inmate's competency; and
6. A letter from a psychiatrist which describes the inmate's mental condition and competency.

(c) An examination by the treating physician and the psychiatrist shall be conducted within 20 days prior to the application for guardianship. The date of the most recent examination shall be documented in the physicians' respective reports. The physicians shall indicate whether they are related, by either blood or marriage, to the inmate.

10A:16-[5.6]5.7 (No change in text.)

## HEALTH

### (a)

#### COMMUNITY HEALTH SERVICES

##### Local Health Development Services: Limited Purpose Laboratory

##### Proposed New Rules: N.J.A.C. 8:44-3

Authorized By: Milton Prystowsky, M.D., Chairman, Public Health Council.

Authority: N.J.S.A. 26:1A-7.

Proposal Number: PRN 1990-224.

A public hearing concerning the proposed new rules will be held on June 11, 1990 at 3:00 P.M. at:

Health-Agriculture Building  
 Auditorium, 1st Floor  
 John Fitch Plaza  
 Trenton, N.J. 08625

Submit written comments by June 11, 1990 to:  
 Andrew D. Miller, M.D., M.P.H.  
 Director, Local Health Development Services  
 New Jersey Department of Health  
 CN 360  
 Trenton, NJ 08625-0360

The agency proposal follows:

#### Summary

The Department of Health is proposing the creation of a separate clinical laboratory licensing category under which local health departments or other agencies funded by the Department of Health could perform specified simple non-diagnostic laboratory tests mandated or advocated by the Department of Health without having to meet all of the requirements for licensed full-service clinical laboratories. In recognition of the need to maintain a balance between assuring the provision of the highest quality clinical laboratory services on the one hand and broadening access to important public health screening and testing programs on the other, the Department proposes to continue to require

licensure of agencies performing these laboratory tests, but at a level commensurate with the less complex nature of such testing.

Local health departments are required by Department of Health regulation to provide certain simple laboratory tests to their clients and are encouraged to offer others. Similarly, some Department of Health funded agencies are required to provide certain simple laboratory tests to their clients as a condition of receiving their funding. These tests are simple to perform and in many cases are used only for screening purposes; that is, to identify persons who should undergo more definitive testing. The proposed new rules would regulate the provision of such testing, while recognizing that it is simple and limited in scope.

On November 22, 1989, the Public Health Council held a public hearing to seek input on a draft of this proposal. Based on the testimony presented at that hearing and on discussion within the Department of Health, the Department of Health has concluded that the potential benefit of allowing less regulated testing under limited circumstances outweighs the costs of requiring compliance with the requirements for full-service clinical laboratories and will not significantly compromise quality.

The proposed new rules contain the following major provisions:

N.J.A.C. 8:44-3.1 defines a limited purpose laboratory as "a laboratory operated by an agency funded through the Department of Health or operated by a local health department which is approved by the Department of Health to conduct" seven specified procedures for non-diagnostic purposes for the agency's own clients. These tests include capillary blood screening for cholesterol and blood sugar, capillary blood screening for hematocrit and hemoglobin levels, erythrocyte protoporphyrin tests, urine dipstick screening, immunoassay pregnancy tests, urine drug tests by licensed substance abuse facilities on enrolled patients or applicants for services, and fecal occult blood testing. Commercial testing firms are not authorized to operate under this rule. This rule also allows the Commissioner of Health to amend the list of approved procedures pending the approval of the Public Health Council, and it requires that a limited purpose laboratory must establish protocols for follow-up, review of testing results, and referral of individuals with abnormal results.

N.J.A.C. 8:44-3.2 exempts limited purpose laboratories from other clinical laboratory regulations and allows an agency to operate at multiple sites under a single license if the same personnel perform the procedure at each site.

N.J.A.C. 8:44-3.3 requires that each limited purpose laboratory be under the supervision of a medical director, supervising physician or licensed health officer of the licensing agency, a licensed registered nurse or the director of a clinical laboratory and defines the responsibilities of that individual.

N.J.A.C. 8:44-3.4 sets requirements for the supervision of a limited purpose laboratory and requires that persons performing procedures be trained.

N.J.A.C. 8:44-3.5 requires proficiency testing and limits marketing of products or services associated with the testing unless approved for specific program purposes by the Commissioner of Health, but allows promotion of the testing services. It also requires that cholesterol testing be done as part of a cardiovascular disease prevention program.

N.J.A.C. 8:44-3.6 sets requirements for administration of a limited purpose laboratory, including record keeping, procedure manuals, etc. It also allows an individual to request testing services without a physician's order and allows results to be presented directly to the individual while specifying the qualifications of the person presenting them.

N.J.A.C. 8:44-3.7 sets requirements for quality control procedures.

#### Social Impact

The proposed new rules would decrease the costs associated with the provision of the approved tests by local health departments and other approved agencies. Therefore, the limited resources of the agencies could be used to serve more clients or to provide more comprehensive services to those persons already served. Most of the services that would be affected are provided to medically indigent or other low income persons.

#### Economic Impact

The proposed new rules would reduce costs for local health departments and the other affected agencies. These savings would allow these agencies to serve more clients or direct resources elsewhere. Currently licensed clinical laboratories would not be expected to lose significant income as more individuals receive testing at agencies with limited purpose laboratories, because such testing would generate referrals for more definitive testing of persons with positive results by these laboratories.

**Regulatory Flexibility Analysis**

Approximately 75 voluntary health agencies, such as providers of women, infants, and children services, family planning agencies, and substance abuse treatment facilities, would be affected by the proposed new rules. Most of these agencies are small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16. Currently, these agencies cannot perform the simple non-diagnostic laboratory tests addressed by these rules without obtaining a clinical laboratory license or else arranging for these tests to be performed by a licensed clinical laboratory. The proposed rules would impose record keeping and personnel requirements in order to assure that the testing performed is of high quality; these requirements are felt to be necessary to protect the health of the clients of these agencies. However, it is assumed that the costs of meeting these requirements would be less than contracting with an outside laboratory to provide these services. The affected agencies will have the choice of providing the tests covered by these rules or arranging for them to be performed by an outside laboratory.

Full text of the proposal follows:

**SUBCHAPTER 3. LIMITED PURPOSE LABORATORY****8:44-3.1 Limited purpose laboratory; definition and minimum protocols**

(a) "Limited purpose laboratory" means a laboratory operated by an agency funded through the Department of Health or operated by a local health department which is approved by the Department of Health to conduct, in accordance with the protocols required in (b) below, any of the following procedures for non-diagnostic purposes for the agency's clients:

1. Capillary blood screening for cholesterol and blood sugar;
2. Capillary blood screening for hematocrit or hemoglobin levels in Department of Health approved clinics;
3. Erythrocyte protoporphyrin tests;
4. Urine dipstick screening in Department of Health approved clinics;
5. Immunoassay pregnancy tests;
6. Urine drug tests by licensed substance abuse facilities on enrolled patients or applicants for services for the purposes of making a preliminary determination of program eligibility or providing an adjunctive source of information for counseling, but not for the purposes of making a final determination of program eligibility or for performing count-ordered testing;
7. Fecal occult blood testing;
8. In response to technological developments in disease control, the Commissioner of Health is empowered to amend the above list of procedures consistent with the principle that limited purpose laboratories may perform simple screening tests, until such time as the proposed procedures can be considered by the regulatory process.

(b) A limited purpose laboratory shall establish the following protocols at a minimum:

1. Follow-up protocols for approved screening procedures which shall include a formal relationship with a licensed clinical laboratory;
2. A protocol for the review of test results by laboratory personnel; and
3. Protocols to ensure that individuals with abnormal results are referred to an appropriate source of medical care for confirmatory testing and to determine whether such individuals have in fact sought appropriate medical care within a reasonable period of time, depending on the result.

**8:44-3.2 Applicability of regulations**

(a) Notwithstanding any other regulations governing the operation of clinical laboratories, which include, but are not limited to, inspection visits, proficiency testing, licensure fees and penalties, a limited purpose laboratory shall be required to comply only with the provisions in this subchapter.

(b) If a limited purpose laboratory is operated at multiple sites by the same trained personnel in the employ of the licensed agency, a single agency license shall be required.

(c) If a limited purpose laboratory is operated at multiple sites by different personnel, each site shall require a separate license.

**8:44-3.3 Director**

(a) A limited purpose laboratory shall be under the direction of the medical director, supervising physician, or licensed health officer of the sponsoring agency, a licensed registered nurse, or the director of a licensed clinical laboratory.

(b) Commensurate with the workload of the limited purpose laboratory, the director shall, depending on the number and kinds of tests being performed, direct and supervise the technical performance of the staff and shall be readily available for personal or telephone consultation by staff.

(c) The director shall be responsible for the proper performance of all testing procedures.

(d) The director shall arrange for a qualified substitute director, prior to the director's absence.

**8:44-3.4 Supervision**

(a) A limited purpose laboratory shall be supervised by qualified personnel including, but not limited to, a physician, registered nurse, health educator, health officer or registered dietitian, approved by the laboratory director, who, under the general direction of the director, supervise technical personnel and the report of findings, and in the absence of the director, are held responsible for the proper performance of all laboratory procedures. Depending upon the size and functions of the limited purpose laboratory, the director may also serve as the supervisor.

(b) Screening procedures authorized to be performed by a limited purpose laboratory shall be performed by personnel, such as registered nurses, technicians or non-professionals, trained by experienced laboratory trainers and/or manufacturer representatives to follow protocols approved by the director.

**8:44-3.5 Screening tests performed**

(a) A limited purpose laboratory shall perform only those tests and procedures which are expressly approved by the State Department of Health pursuant to N.J.A.C. 8:44-3.1(a).

(b) A limited purpose laboratory shall submit to State Health Department approved proficiency testing procedures for services performed at all sites pursuant to N.J.A.C. 8:45.

(c) A limited purpose laboratory shall not promote or market any products or other services, including products such as foods or drugs purported to be beneficial for the condition being tested, unless approved for specific program purposes by the Commissioner of Health, such as in substance abuse treatment programs or in WIC agencies.

(d) A limited purpose laboratory or sponsoring organization may promote the testing services offered by the limited purpose laboratory by advertising, community outreach programs and any other means of public notice.

(e) Cholesterol screening shall be done as part of a cardiovascular disease prevention program.

**8:44-3.6 Management of a limited purpose laboratory**

(a) A limited purpose laboratory shall maintain records and facilities which are adequate and appropriate for the services offered. There will be documentation of appropriate training for staff involved in the implementation of these procedures and methods. The training shall include the latest published Centers for Disease Control universal precautions related to the handling of body fluids (available from the Centers for Disease Control, Atlanta, Georgia 30333).

**8:44-3.7 Workrecords**

Workrecords of quantitative tests shall be maintained and such records shall indicate final results together with all corresponding instrument readings and calculations. Where instrumentation produces tracings or print-outs of results, these tracings or print-outs shall be retained and may serve as the workrecord.

**8:44-3.8 Procedure manual**

A compilation shall be kept of all automated and manual methods for tests which are performed or offered by the limited purpose laboratory. Each procedure shall be reviewed and dated by the supervisor at least annually. For those tests which are normally performed on automated test equipment, provision shall be made and

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## LAW AND PUBLIC SAFETY

documented for performing such tests by alternate methods, or for storing the test specimens, in the event this equipment becomes inoperable.

### 8:44-3.9 Facilities

Space and facilities shall be adequate to properly perform the services which are offered by the limited purpose laboratory.

### 8:44-3.10 Collection of specimens

Qualified personnel of the limited purpose laboratory may collect blood or material for screening procedures from an individual patient, under the direction of the director.

### 8:44-3.11 Disposable equipment

Syringes, needles, lancets, or other bloodletting devices capable of transmitting infection from one person to another shall not be reused. Disposable syringes, needles and other disposable items shall be destroyed immediately after use as stipulated in N.J.S.A. 2A:170-25.17.

### 8:44-3.12 Records of specimens

(a) A limited purpose laboratory shall maintain a record indicating the daily accession of specimens, each of which is numbered or otherwise appropriately identified. Records shall contain the following information:

1. The number or other identification of the specimen;
2. The name and other identification of the person from whom the specimen was taken;
3. The date the specimen was collected;
4. The type of test performed;
5. The date that test was performed; and
6. The results of the test or cross-reference to results and the date of reporting.

### 8:44-3.13 Examinations and reports

(a) A limited purpose laboratory may examine specimens at the request of an individual patient or that person's guardian, except for urine drug testing, which may also be authorized by clinical staff of licensed substance abuse facilities.

(b) The results of screening procedures performed by a limited purpose laboratory shall be presented to the patient by a clinical laboratory technologist, a registered nurse, a registered dietician, or a health educator qualified pursuant to N.J.A.C. 8:52-1.8(a) and (b), nutritionist with a B.S. degree, substance abuse counselor employed by a licensed drug treatment program or other persons deemed appropriate by and under the direction of the director. Pertinent "reference" ranges as determined by the limited purpose laboratory shall be available. A basis for the listed "reference" range shall be maintained in the limited purpose laboratory.

(c) The original or true duplicate of the results shall be sent promptly to the physician, if any, who is designated by the individual patient to receive a report or to a designated source, if any, for medical review.

### 8:44-3.14 Report records

True duplicate copies or a suitable record of test reports shall be filed in the limited purpose laboratory in a manner which permits ready identification and accessibility. All reports shall be preserved for a period of at least two years after the date of submittal of the report.

### 8:44-3.15 Quality control

(a) Quality controls imposed and practiced by the limited purpose laboratory shall provide for and include written records to assure the following:

1. Preventive maintenance, periodic inspection, and testing for proper operation of equipment and instruments as may be appropriate based on the frequency of the testing sessions and on the number of tests performed; validation of methods; evaluation of reagents and volumetric equipment; surveillance of results; and remedial action to be taken in response to detected defects;

2. Adequacy of facilities, equipment, instruments and methods for performance of the procedures for which licensure is approved; proper lighting for accuracy and precision; convenient location of essential utilities; monitoring of temperature-controlled spaces and

equipment, including sterilizers and refrigerators, to assure proper performance; evaluation of analytical measuring devices with respect to all critical operating characteristics. Records shall reflect actual readings obtained both before and after any adjustments have been made;

3. Labeling of all reagents and solutions to indicate identity, and when significant, titer, strength or concentration, recommended storage requirements, preparation or expiration date, and other pertinent information. Materials of substandard reactivity and deteriorated materials shall not be used. All outdated material shall be discarded immediately;

4. The availability at all times, in the immediate bench area of personnel engaged in examining specimens and performing related procedures, of current laboratory manuals or other complete written descriptions and instructions relating to:

- i. The analytical methods used by those personnel, properly designated and dated to reflect the most recent supervisory reviews;
- ii. Reagents;
- iii. Control and calibration procedures; and
- iv. Pertinent current literature references;

5. Written approval by the director or supervisor of all changes in laboratory procedures;

6. Maintenance and availability to laboratory personnel and to the Department of Health records reflecting dates and, where appropriate, the nature of inspection, validation, remedial action, monitoring, evaluation and changes and dates of changes in laboratory procedures; and

7. Acceptance by the limited purpose laboratory of only specimens which have been properly collected, labeled, processed, stored and transported in such a manner as to assure identity and the stability of the specimen with respect to the requested tests; or, if a specimen's stability has not been assured, the report shall clearly state that the results may be invalid due to an unsatisfactory sample.

(b) Provision shall be made for an acceptable quality control program covering all the types of analyses performed by the limited purpose laboratory for verification and assessment of accuracy, measurement of precision, and detection of error.

## LAW AND PUBLIC SAFETY (a)

### DIVISION OF MOTOR VEHICLES

#### Licensing Service

#### Proposed Repeal: N.J.A.C. 13:21-16

Authorized By: Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Authority: N.J.S.A. 39:2-3.

Proposal Number: PRN 1990-217.

Submit comments by June 6, 1990 to:

Col. Clinton L. Pagano, Director  
Division of Motor Vehicles  
25 South Montgomery Street  
7th Floor  
Trenton, N.J. 08666

The agency proposal follows:

#### Summary

The Division of Motor Vehicles' counterpart fee regulations are proposed for repeal in light of *Private Truck Council of America, Inc., et al. v. State of New Jersey, et al.*, 221 N.J. Super. 89 (App. Div. 1987), affirmed 111 N.J. 214 (1988), which held the counterpart fees to be unconstitutional. Since the Division no longer collects counterpart fees in view of the foregoing judicial decisions, the rules contained in N.J.A.C. 13:21-16 are unnecessary and their repeal is therefore warranted.

#### Social Impact

The proposed repeal will have a beneficial social impact in that the repeal of the Division of Motor Vehicles' counterpart fee regulations will reduce the potential for misunderstanding by the public of Division procedures.

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**Economic Impact**

The proposed repeal has no economic impact on the State of New Jersey or its citizens. The Division of Motor Vehicles no longer collects counterpart fees in light of *Private Truck Council of America, Inc., et al. v. State of New Jersey, et al.*, 221 N.J. Super. 89 (App. Div. 1987), affirmed 111 N.J. 214 (1988), which held the counterpart fees to be unconstitutional.

**Regulatory Flexibility Statement**

The proposed repeal does not impose reporting, record keeping or other compliance requirements 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. The rules proposed for repeal govern counterpart fees which have been held unconstitutional and are not collected by the Division.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 13:21-16.

(a)

**BOARD OF ARCHITECTS**

**Education and Training Requirements for Architecture Examination**

**Proposed Repeal: N.J.A.C. 13:27-5.6**

**Proposed Repeal and New Rule: N.J.A.C. 13:27-5.5**

Authorized By: State Board of Architects, Barbara S. Hall,  
Executive Director.

Authority: N.J.S.A. 45:3-3.

Proposal Number: PRN 1990-212.

Submit comments by June 6, 1990 to:

Barbara S. Hall, Executive Director  
State Board of Architects, Room 511  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Board of Architects (Board) is proposing a new rule to replace N.J.A.C. 13:27-5.5 and 5.6 on pre-examination educational and experience requirements. The new rule is intended to update, clarify, and better organize the requirements to be fulfilled by all applicants for examination, and to comply with N.J.S.A. 45:3-5, as amended (P.L. 1987, c.16). The Board is in fact codifying its present policy, which is in accordance with both the amended statute and with national standards set by the National Council of Architectural Registration Boards (NCARB) in 1984.

The requirements are set forth under the new rule as follows: the candidate must hold a bachelor's or master's degree in architecture and, in addition, must present evidence of either three years of acceptable training or the successful completion of the Intern Development Program, which is the standard set by NCARB in 1984. Various alternatives are listed in the proposed new rule for satisfaction of the training credits requirement, and all applicants for examination must have at least one year of diversified experience in architecture as an employee in the architectural office and under the direct supervision of an architect subsequent to receiving his or her bachelor or master's degree in architecture. In general, educational credits must be earned in a program accredited by the National Architectural Accrediting Boards (NAAB), or one that is accepted for direct entry to a NAAB-accredited professional master's degree program. Foreign credits will be individually evaluated by Educational Credential Evaluators, Inc., a nationally-recognized agency.

The proposed requirements differ from those currently in place in that the educational standard to be met in order to be eligible for examination is now specifically stated to be a bachelor's or master's degree in architecture, or equivalent. This change brings the rule into conformance with the 1987 amendments to N.J.S.A. 45:3-5, mandating that an examination candidate possess either a baccalaureate or master's degree in architecture or education deemed by the Board to be equivalent to an accredited full course in architecture. Education credits are no longer granted for various other types of education currently listed in N.J.A.C. 13:27-5.5, Table I, or for training experience alone, regardless of duration, or for experience and partial schooling. Previously, training in the office of an architect

could be credited under N.J.A.C. 13:27-5.5, Table I, toward the education requirement, and could follow high school graduation; under N.J.S.A. 45:3-5 and this proposal, such training may not be so credited. A variety of possibilities for obtaining training credits continues to be detailed in the proposed rule, and percentages of credit allowances are assigned, as in the present N.J.A.C. 13:27-5.6, Table II. All training credits are now grouped in a single table, N.J.A.C. 13:27-5.5(b), and must follow a period in a prescribed post-secondary program. At least one year of the three years of acceptable training credits must be earned by gaining diversified experience in architecture in the architectural office and under the direct supervision of a licensed architect.

The Board believes that the new standards will result in applicants of the highest quality, who possess not only practical work experience and technical expertise but also full educational preparation for the professional practice of architecture.

**Social Impact**

The proposed repeals and new rule will have no added impact upon current or future applicants who as a part of the licensure process must sit for the written examination, since the new rule merely codifies present Board policy, which is based upon statutory changes made in 1987. Admission to the examination on the basis of years of experience alone, or experience and partial schooling, is no longer authorized under N.J.S.A. 45:3-5; a specific degree in architecture is now required. This mandatory educational status ensures that the Board's licensees will have met the highest levels of professional preparation, comporting with nationally-accepted standards. The proposed new rule reflects less flexibility as to educational preparation than the rule expressed in N.J.A.C. 13:27-5.5, Table I, which grants credit for certain other types of education. However, the impact upon the public of stricter educational standards for licensure as an architect is clearly beneficial because it ensures that only fully prepared individuals will supply architectural services to the public.

**Economic Impact**

No economic impact upon the public is anticipated as a result of the proposed repeals and new rule, which merely implements the requirements of N.J.S.A. 45:3-5 as amended (P.L. 1987, c.16), and codifies present Board policy. The greater standardization of requirements may effect some savings to the Board in the time needed, and, consequently, the cost for processing and evaluation of applications. As for prospective licensees, the possibility of substituting years of on-the-job experience for the educational requirement, which might have provided income prior to licensure, was eliminated by the 1987 statutory amendments. The new rule conforms to the present statute as well as Board policy, adding no further significant economic impact beyond that already created by law.

**Regulatory Flexibility Statement**

These proposed repeals and new rule impose no additional reporting, recordkeeping, or compliance requirements on small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The proposed repeals and new rule affect only applicants for licensure.

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

[13:27-5.5 Education and experience equivalents; Table I]

[(a) The table below sets out education and experience equivalents referred to in N.J.A.C. 13:27-5.2(c)2.

(b) Credits from a college or university which is located within the United States will not be accepted unless the institution is accredited by the regional association of colleges having jurisdiction, or is approved by the Board.

(c) Credits from a foreign college or university will be evaluated by the Board or by a NAAB accredited school of architecture on the same basis as they would be evaluated for credit toward graduation by that school, but the cost of translation and evaluation must be borne by the applicant.

(d) When credits are submitted from more than one college or university they will be evaluated on the same basis as by the school last attended.

(e) Periods of practical training will be measured in (12 month) calendar years.

(f) Under 1.5 the maximum of two years credit will be allowed only after full completion of any other Bachelor Degree program. No credit is allowed for partial completion of a Bachelor Degree program.]

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**Interested Persons see Inside Front Cover**

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[TABLE 1]

[Item Description	Percentage Credit Allowed for Each Year Completed	Maximum Allowable Credit in Education Years	Experience Equivalent to Education Years	Required Additional Experience Years	Total Experience Equivalent Years	
1.1 Architectural Program accredited by National Architectural Accrediting Board	75	100	5	10	3	13
1.2 Non-accredited approved by Board	75	75	3-1/2	7	6	13
1.3 Architectural Engineering School accredited	50	75	3-1/2	7	6	13
1.4 Non-accredited approved by Board	50	75	3-1/2	7	6	13
1.5 Any other Bachelor Degree	—	—	2	4	9	13
1.6 Practical training as an employee in the office of a registered architect as a principal. This training must be after graduation from high school.]	50	50	5	10	3	13

**13:27-5.5 Education and training requirements for architecture examination**

(a) The following standards must be met in order to be eligible to take the Architecture Registration Examination in New Jersey. An applicant shall:

1. Be of good character as verified by employers, architects and other references;
2. Hold a bachelor's or master's professional degree in architecture where the degree program has been accredited by the National Architectural Accrediting Board (NAAB) not later than two years after termination of enrollment. Degrees from foreign colleges or universities will be evaluated by the Education Credential Evaluators, Inc., an evaluation service recognized by NCARB and all other jurisdictions;
3. Present evidence of the following:
  - i. At least three years of training credits acceptable to the Board in accordance with N.J.A.C. 13:27-5.5(b) below; or
  - ii. Successful completion of the training requirements of the Intern-Architect Development Program (IDP). The Board must be in receipt of the "Green Cover" approving the candidate from the National Council of Architectural Registration Boards (NCARB).

(b) The following table sets forth the ways in which training credits can be acquired in order to satisfy the requirement in (a)3 above:

Item	Description of Training	Percent Credit Allowed	Maximum Credit Allowed
1.1	Diversified experience in architecture as an employee in the architectural office and under the direct supervision of a licensed architect.	100%	No limit
1.2	Diversified experience in architecture as an employee of an organization (other than offices of a licensed architect/s) when the experience is under the direct supervision of a licensed architect.	100%	2 years

- |     |  |      |          |
|-----|--|------|----------|
| 1.3 | Experience directly related to architecture, when under the direct supervision of a licensed architect but not qualifying as diversified experience or when under the direct supervision of a licensed professional engineer, landscape architect, planner or interior designer. | 50%  | 1 year   |
| 1.4 | Experience other than 1.1, 1.2 and 1.3, directly related to on-site building construction operations or experience involving physical analyses of existing buildings.  | 50%  | 6 months |
| 1.5 | A post-professional degree in architecture or teaching or research in an NAAB-accredited architectural program.  | 100% | 1 year   |

(c) No training credits may be earned prior to satisfactory completion of:

1. Three years in a professional degree in architecture program credited by NAAB;
2. The third year of a four-year pre-professional degree program in architecture accepted for direct entry to an NAAB-accredited professional master's degree program;
3. One year in an NAAB-accredited professional master's degree program; or
4. Ninety-six semester credit hours as evaluated by the Board in accordance with NCARB Circular of Information No. 3, of which no more than 60 hours can be in the general education category.
  - i. Thirty-two semester credit hours or 48 quarter credit hours shall equal one year in an academic program.

(d) The following requirements apply to training credits:

1. No experience used to meet education requirements may be used to earn training credits.
2. After satisfying (a)2 above, every applicant must earn at least one year of credit under item 1.1 in the table in (b) above.
3. To earn credits under table items 1.1 through 1.4 in (b) above, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under table item 1.1 or six consecutive months under table items 1.2, 1.3 or 1.4. An applicant may earn one-half of the credits specified under table item 1.1 for work of at least 20 hours per week in periods of six or more consecutive months. No credits will be given for part-time work in any category other than table item 1.1.
4. To earn credit under table item 1.5, an applicant's credit hours must be in subjects evaluated by NCARB as directly related to architecture. Twenty semester credit hours or 30 quarter credit hours of teaching or equivalent time in research will equal one year.
5. An organization will be considered to be "an office of a licensed architect" if:
  - i. The architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal;
  - ii. The applicant works under the direct supervision of a licensed architect; and
  - iii. The organization has no affiliate engaged in construction which has a substantial economic impact upon the person or persons in the organization practicing as a principal.
6. An organization (or an affiliate) is "engaged in construction" if it customarily engages in either of the following activities:
  - i. The organization (or an affiliate) undertakes to provide labor and/or material for all or any significant portion of a construction project, whether on lump sum, cost plus or other basis of compensation; or
  - ii. The organization (or an affiliate) agrees to guarantee to an owner the maximum construction cost for all or any significant portion of a construction project.
7. A person practices as a "principal" by being a licensed architect who:
  - i. Is responsible for signing and sealing plans; and
  - ii. Is the person in charge of the organization's architectural practice, either alone or with other licensed architects.
8. A "licensed architect" is a person licensed or registered to practice architecture in the jurisdiction in which (s)he practices.
9. In deciding whether training represents "diversified experience in architecture," the Board will compare the applicant's training with the

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**training requirements set forth in the Intern-Architect Development Program (IDP).**

**10. Applicants employed in settings described in table items 1.1 and 1.2 in (b) above whose experience is not diversified may obtain credit only under table item 1.3.**

13:27-5.6 [Training requirements; Table II] (**Reserved**)

[(a) To satisfy the three-year minimum experience requirement, an applicant must have at least three years of training credits or have completed an equivalent established training program recognized by the Board. The table below sets forth the ways in which training credits can be acquired.

(b) No training credits may be earned prior to satisfactory completion of:

1. Three years in an NAAB accredited bachelor degree program; or
2. The third year of a four year pre-professional degree program in architecture accepted for direct entry to an NAAB accredited master's degree program; or
3. One year in an NAAB accredited master's degree program or such education as, in the opinion of the Board, is substantially equivalent to the above.

(c) No experience used to meet education requirements may be used to earn training credits.

(d) Every applicant must earn at least one year of training credit under 2.1.

(e) To earn training credits, an applicant must work at least 35 hours per week for a minimum period of 10 consecutive weeks under 2.1 or six consecutive months under 2.2, 2.3, 2.4 or 2.5. An applicant may earn one-half of the credits specified under 2.1 for work of at least 20 hours per week in periods of six or more consecutive months. No credits will be given for part-time work in any category other than 2.1.

(f) To earn credit under 2.6 or 2.7, an applicant's credit hours must be in subjects evaluated by the State Board as directly related to architecture. Twenty semester hours or 30 quarter credit hours of teaching or equivalent time in research will equal one year.

(g) An organization will be considered to be "an office of a registered architect" if the architectural practice of the organization in which the applicant works is in the charge of a person practicing as a principal and the applicant works under the direct supervision of a registered architect.]

[TABLE II]

[Type of Experience]	Percent Credit Allowed	Maximum Credit Allowed
2.1 Diversified experience in architecture as an employee in the office of a registered architect.	100%	No Limit
2.2 Diversified experience in architecture as a principal practicing in the office of a registered architect with a verified record of substantial practice.	100%	No Limit
2.3 Diversified experience in architecture as an employee of an organization (other than offices of registered architects) when the experience is under the direct supervision of a registered architect.	100%	2 years
2.4 Experience directly related to architecture, when under the direct supervision of a registered architect but not qualifying as diversified experience or when under the direct supervision of a professional engineer, landscape architect, planner or interior designer.	50%	1 year

2.5 Experience, other than 2.1, 2.2, 2.3 and 2.4 above, experience directly related to on-site building construction operations or experience involving physical analyses of existing buildings.	50%	6 months
2.6 A master's or doctoral degree in architecture (except where the degree is the first professional degree).	100%	1 year
2.7 Teaching or research in an NAAB accredited architectural program.]	100%	1 year

(a)

**STATE BOARD OF MORTUARY SCIENCE  
License Revival Fees**

**Proposed Amendment: N.J.A.C. 13:36-1.6**

Authorized By: State Board of Mortuary Science,  
Maurice W. McQuade, Executive Director.

Authority: N.J.S.A. 45:7-38.

Proposal Number: PRN 1990-227.

Submit comments by June 6, 1990 to:

Maurice W. McQuade, Executive Director  
State Board of Mortuary Science, Room 513  
1100 Raymond Boulevard  
Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Board of Mortuary Science is proposing to amend its fee schedule, N.J.A.C. 13:36-1.6. The proposed amendment rescinds the fee charged upon reinstatement of \$25.00 for each biennial period that a licensee has not renewed his or her registration since its lapse. However, wording has been added to clarify that upon reinstatement the licensee must pay the current biennial license renewal fee as well as a revival fee of \$75.00.

The deletion results from the Board's desire not to create a burdensome situation for applicants who seek license reinstatement. Under the present schedule, former licensees who have not renewed their licenses for many years could be faced with a large total cost upon reinstatement, since they must pay \$25.00 for each biennial period that they have not renewed their registration in addition to the revival and current license renewal fees. It is hoped that rescission of the \$25.00 fee will reduce that impact.

**Social Impact**

No social impact will be felt as a result of the few words added for purposes of clarity. However, rescission of the \$25.00 fee for each year of non-renewal may have a beneficial effect on some former licensees who seek reinstatement and on the general public. Former licensees who have not sought reinstatement because of substantial reinstatement fees will now be able to renew their licenses at less cost, assuring the public of the availability of a larger field of licensed morticians.

**Economic Impact**

Rescission of the \$25.00 fee for each year of non-renewal will have a positive economic effect on former licensees who have not renewed their licenses for many years, since their costs upon reinstatement will be reduced. There will be no economic impact on the public as a result of the proposed deletion from the Board's fee schedule. The Board anticipates no significant loss of fee revenue from the proposed amendment.

**Regulatory Flexibility Statement**

Since the proposed amendment does not impose reporting, recordkeeping or other compliance requirements upon small businesses, the analysis mandated by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., is not required. The amendment merely deletes a fee charged applicants for reinstatement of licensure and adds clarifying words as to what fees are charged upon reinstatement.

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

13:36-1.6 Fees and charges

(a) There shall be paid to the State Board of Mortuary Science the following fees:

- 1.-10. (No change.)

**PROPOSALS**

Interested Persons see **Inside Front Cover**

**LAW AND PUBLIC SAFETY**

- 11. Biennial license renewal fees:
  - i. Practitioner ..... \$100.00;
  - ii. Embalmer ..... \$100.00;
  - iii. Funeral director ..... \$100.00;
  - iv. [License revival] **Revival fee for lapsed license** ..... \$75.00  
 [plus \$25.00 for each year said license was not renewed] **plus current biennial license renewal fee.**
  - v. **Mortuary** certificate of registration ..... \$220.00;
- 12.-15. (No change.)

(a)

**BOARD OF PHARMACY**  
**Restriction on Sale of Schedule V Over-the-Counter**  
**Controlled Substances**

**Proposed New Rule: N.J.A.C. 13:39-6.9**

Authorized By: State Board of Pharmacy, H. Lee Gladstein,  
Executive Director.

Authority: N.J.S.A. 45:14-26.2.

Proposal Number: PRN 1990-218.

Submit comments by June 6, 1990 to:  
 H. Lee Gladstein, Executive Director  
 Board of Pharmacy, Room 325  
 1100 Raymond Boulevard  
 Newark, New Jersey 07102

The agency proposal follows:

**Summary**

The Board of Pharmacy is proposing a new rule, N.J.A.C. 13:39-6.9, in order to formalize current Board policies concerning restrictions on the sale of Schedule V over-the-counter controlled substances. The proposed new rule enumerates information which is to be obtained, advice given and records kept upon successive sales of Schedule V substances within a short period of time. The proposed new rule also requires pharmacists to comply with certain Department of Health regulations when dispensing Schedule V substances; advises pharmacists that any doubts regarding the propriety of a sale are to be resolved against making the sale; requires that all sales of Schedule V substances be entered in the Over-the-Counter Schedule V Record Book; and requires that if any Schedule V substance is dispensed to one individual more than five times within a one-year period, the pharmacist must obtain written or oral confirmation from the purchaser's physician, to be documented in the Record Book, as to the continued need for the substance.

The proposed new rule is intended to assist pharmacists by providing clear guidelines as to the appropriate dispensing of Schedule V substances. The proposed new rule is also intended to assist the Board in carrying out its statutory responsibility to protect the public health and welfare; the Board believes this new rule will help ensure that proper procedures are followed in dispensing Schedule V over-the-counter substances, thereby diminishing the risk of unauthorized or illicit consumption or distribution. Finally, the new rule will provide the Board with a stronger legal basis for enforcing its policies in regard to dispensing Schedule V substances.

**Social Impact**

The proposed new rule will have a beneficial social impact on the public by reducing the risk of unauthorized or illicit consumption or distribution of Schedule V over-the-counter substances. The specificity of the proposed new rule will benefit licensees of the Board of Pharmacy by eliminating any uncertainty about the proper dispensing of Schedule V substances. The Board of Pharmacy will benefit from the proposed new rule in that it will be better able to fulfill its statutory duty to protect the public health and welfare; the precise language regarding licensee conduct in dispensing Schedule V substances will strengthen the Board's ability to enforce this rule.

**Economic Impact**

This proposed new rule will have no economic impact upon licensees or members of the public. The rule merely advises licensees of restrictions on the sale of Schedule V over-the-counter controlled substances and of the information required to be obtained from the purchaser and recorded in the Over-the-Counter Schedule V Record Book; licensees are already

required to maintain this Record Book under another Board rule (N.J.A.C. 13:39-7.7).

**Regulatory Flexibility Analysis**

The proposed new rule, which sets forth restrictions on the sale of Schedule V over-the-counter substances, will apply to all 9,052 licensees of the Board of Pharmacy and to all 1,886 currently licensed pharmacies, all of which qualify as small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule will entail no additional reporting requirements. Compliance requirements relating to when a pharmacist must elicit information from a customer or a customer's physician are imposed; however, no professional services will be needed for compliance and there are no initial capital costs. Pharmacists will be required to record specific information in the Over-the-Counter Schedule V Record Book upon sale of Schedule V substances. The cost to the Board's licensees to comply with this requirement and the administrative impact of this rule are expected to be minimal. In any event, no exemption based upon pharmacy size is possible since such an exemption would frustrate the intent of the rule.

Full text of the proposed new rule follows:

**13:39-6.9 Restriction on sale of Schedule V over-the-counter**  
**controlled substances**

(a) It shall be considered unprofessional conduct for a pharmacist to dispense a Schedule V over-the-counter controlled substance when:

1. The pharmacist, in his or her professional judgment, knows or reasonably should know that the requested substance will be used for unauthorized or illicit consumption or distribution; or

2. The pharmacist, in his or her professional judgment, knows or reasonably should know that the person requesting the substance previously used it for unauthorized or illicit consumption or distribution.

(b) The standard of professional judgment and care that attends the sale of a Schedule V over-the-counter controlled substance shall conform to the following:

1. All pharmacists shall comply with N.J.A.C. 8:65-7.19, which requires that the sale of specified controlled substances be limited in quantity during any 48-hour period, that the purchaser be at least 18 years of age, and that the pharmacist obtain suitable identification (including proof of age where appropriate) from every purchaser not known to the pharmacist.

2. In all instances, any doubts regarding the propriety of a sale of a Schedule V substance shall be resolved against making the sale.

3. The pharmacist shall enter every sale of a Schedule V substance in the Over-the-Counter Schedule V Record Book. The information to be recorded shall include the purchaser's first and last name, street address, city and state.

4. Upon an individual's second request for a Schedule V substance within a short period of time (two to four days), the pharmacist shall determine, through direct communication with the purchaser, whether the substance is being used correctly. In that regard, the pharmacist shall ascertain how many people are using the substance and whether the condition which the substance is being used to treat is improving.

5. Upon an individual's third request for a Schedule V substance within a short period of time relative to the number of persons using it (two to four days subsequent to the second purchase), the pharmacist shall advise the purchaser of the substance's abuse potential and shall caution the purchaser to consult a physician if the condition for which the substance is being used does not improve.

6. Upon an individual's fourth request for a Schedule V substance within a short period of time (two to four days subsequent to the third purchase), the pharmacist shall determine, through direct communication with the purchaser, how many people are using the substance, whether continued use will be therapeutic, whether the purchaser is treating a condition which requires a physician's consultation, whether the purchaser is exhibiting signs of drug abuse and whether the purchaser is making similar requests of other local pharmacies.

7. If a pharmacist determines that an individual's request for a Schedule V substance within a short period of time (two to four days) subsequent to his or her fourth purchase is warranted, the pharmacist

shall document in the Over-the-Counter Schedule V Record Book the justification for such sale. In addition, the pharmacist shall recommend that the purchaser consult with a physician for medical evaluation due to the substance's abuse potential as well as the potential hazard presented by the substance's continued use.

8. If any Schedule V substance is dispensed to one individual more than five times within any 12-month period, the pharmacist shall obtain oral or written confirmation from the purchaser's physician as to the continued need for the substance and shall document such confirmation in the Over-the-Counter Schedule V Record Book.

## PUBLIC UTILITIES

### (a)

#### BOARD OF PUBLIC UTILITIES

##### Notice of Public Hearing

##### N.J.A.C. 14:3, All Utilities, and N.J.A.C. 14:9, Water and Sewer

Take notice that the Board of Public Utilities will hold a public hearing to receive oral comment on the need to amend, supplement or repeal the rules at N.J.A.C. 14:3, All Utilities, and the rules at N.J.A.C. 14:9, Water and Sewer. Comments will be entertained on all the rules contained in those chapters except for the recently proposed amendments to N.J.A.C. 14:3-3.2, 3.6, 4.5, 4.7, 4.10, 7.5 and 7.13, and N.J.A.C. 14:9-3.3, which were published in the February 20, 1990 New Jersey Register and the subject of a public hearing on March 8, 1990.

If, as a result of comments received at the hearing, the Board finds that these rules need to be amended, supplemented or repealed, appropriate proposals to that effect will be published in a future edition of the New Jersey Register. The public hearing will be held at the following time and place:

Thursday, May 24, 1990 at 10:00 A.M.  
Board of Public Utilities' Hearing Room  
Two Gateway Center  
Newark, New Jersey 07102

Inquiries concerning the hearing should be directed to:

Eugene J. Byrne, Esq.  
Regulatory Officer  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102  
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### (b)

#### OFFICE OF CABLE TELEVISION

##### Regulations of Cable Television

##### Proposed Readoption with Amendments: N.J.A.C. 14:18

##### Proposed Repeals and New Rules: N.J.A.C. 14:18-3, 4 and 7

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

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

Proposal Number: PRN 1990-222.

A public hearing concerning the proposal will be held on:

May 15, 1990 at 10:00 A.M.  
Board of Public Utilities  
Hearing Room, 10th Floor  
Two Gateway Center  
Newark, New Jersey 07102

Submit written comments by June 6, 1990 to:

Celeste M. Fasone, Director  
Office of Cable Television  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

The agency proposal follows:

#### Summary

Pursuant to Executive Order No. 66 (1978), N.J.A.C. 14:18 expires on July 29, 1990. The Board of Public Utilities has reviewed the rules and determined them to be necessary, reasonable and proper for the purpose for which they were promulgated and amended.

Pursuant to the New Jersey Cable Television Act, specifically N.J.S.A. 48:5A-10, the Board of Public Utilities (Board) is empowered to promulgate rules governing cable television companies operating in the State of New Jersey. Chapter 18 of Title 14 of the New Jersey Administrative Code contains the substantive rules of the Board governing cable television. These rules are necessary to ensure the orderly regulation of the cable television industry in the State of New Jersey.

On February 20, 1990, a public hearing was held on a pre-proposal notice filed by the Board of Public Utilities. That notice was published in the New Jersey Register on February 5, 1990 at 22 N.J.R. 327(c). The present proposal is based on oral and written comments received in the pre-proposal. In a number of instances, the Board has recommended that proposed new rules be the subject of separate proceedings rather than this comprehensive rulemaking. These future rulemakings would consider issues such as the use of public, educational and governmental access channels, late charges on subscriber bills, the cost of replacement of lost or damaged converters and the setting of accounting procedures for utility pole attachments.

The Board notes that several substantive changes are proposed in this rulemaking as a result of the hearing and comments. These changes include proposals to provide for 24-hour telephone answering by a company representative, a scheduling for service calls at specific times such as morning or afternoon, itemized billing, and written subscriber information if equipment changes are made by the cable television company to explain the use of the subscribers' equipment with the cable company's equipment.

The franchising authority, which is the Board, is permitted by Federal law to require, under appropriate terms and conditions, parental lock devices, A-B switches and devices for the hearing impaired. The parental lock devices and the A-B switches are currently required under Federal statute or regulation. The Board proposes to extend the requirement to devices for the hearing impaired.

The Board proposes that Chapter 18 be readopted with certain amendments. These amendments fall into the categories of (1) technical changes to conform with rules of practice and procedure before the Board for utilities in general, N.J.A.C. 14:1 or 14:3, (2) substantive changes to conform to changes in State and Federal law since 1974, the original adoption of these rules, (3) additional substantive changes to more clearly delineate subscriber and operator rights and (4) new subscriber rights.

The Board proposes to make certain clarifying amendments to subchapter 2. N.J.A.C. 14:18-2.1 would be amended to make it clear that companies must construct and install their facilities and equipment in accordance with all safety codes and other applicable law and any amendments thereto. N.J.A.C. 14:18-2.10 would be amended to clearly indicate disputes over pole attachment rates which are within the Board's jurisdiction.

The Board proposes substantive amendments to expand certain rights of subscribers and to affirm or clarify existing rights in order to ensure proper delivery of cable services. The Board proposes to reorganize existing code sections and adopt a new subchapter 3, with the title of Customer Rights. In subchapter 3, the Board proposes to add the following requirements. At N.J.A.C. 14:18-3.2, the proposed rule would reduce the time in which a cable television operator must install residential subscribers under normal conditions from 30 days to 20 days or provide a cost estimate, if applicable, or notification that a landlord is refusing to permit the installation.

Proposed N.J.A.C. 14:18-3.3(c) requires cable television operators to provide a written description of all auxiliary equipment needed for the cable television service as it would be used with subscriber equipment.

N.J.A.C. 14:18-3.4 requires cable operators provide at no charge, upon request, a copy of their tariff and that the tariff be posted at the operator's local business office.

N.J.A.C. 14:18-3.5 requires each company to quarterly inform subscribers how they may obtain a credit; it does not specify how this is done and is a change from the current annual notification requirement.

N.J.A.C. 14:18-3.6 requires that a representative of the cable television company or its agent answer phone calls on a 24-hour basis.

N.J.A.C. 14:18-3.7 requires itemization of all billing charges.

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N.J.A.C. 14:18-3.9 provides a minimum 15 days for payment after the postmark of a bill, or from the time the cable television company can substantiate mailing of the bill to the subscriber, and provides 15 days written notice be given to the subscriber prior to disconnection for non-payment.

N.J.A.C. 14:18-3.12 requires cable television companies to schedule service calls in morning, afternoon or evening (if available) and to require rescheduling of a cancelled call within 24 hours.

N.J.A.C. 14:18-3.13 requires systems with more than 10,000 subscribers to have a technician on duty 24 hours a day to repair system problems and handle emergencies.

N.J.A.C. 14:18-3.14 requires cable television operators to provide special equipment including: A/B (input select) switches to allow subscribers to switch antenna channels; parental lock devices to block specified channels; and devices to assist the hearing impaired in receiving cable television services. The cable television company would be permitted to impose fees for this equipment.

N.J.A.C. 14:18-3.15 prohibits cable television companies from charging a fee for downgrade or disconnection of services marketed on a free or reduced rate for a specified time period if the subscriber notifies the company prior to the conclusion of the trial of his or her intention to discontinue the marketed service.

N.J.A.C. 14:18-3.18 requires annual notice to subscribers of rates, privacy information, availability of discounts or special devices, the designated complaint officer and the outage credit procedure.

N.J.A.C. 14:18-3.19 requires credit to subscribers with interest due to overpayments in the form of billing errors if uncorrected for two billing cycles after the subscriber informs the cable television company.

N.J.A.C. 14:18-3.20 provides for the disabled to be included in discounts offered to senior citizens and amends the current requirement to notify the OCTV of changes 45 days to 35 days in advance.

Additionally, the proposed amendments would move other existing code sections into subchapter 3 as proposed with either no change in text or minor textual changes. They are outlined as follows:

Existing N.J.A.C. 14:18-3.1(a) would remain with minor technical text changes.

Existing N.J.A.C. 14:18-3.1(b) would be recodified as N.J.A.C. 14:18-1.1(d).

Existing N.J.A.C. 14:18-3.3(a) and (b) would be readopted with no change in text. N.J.A.C. 14:18-3.3(c) would be recodified as N.J.A.C. 14:18-7.3(d).

Existing N.J.A.C. 14:18-3.4 concerning permits would be recodified as N.J.A.C. 14:18-4.1 with no change.

Existing N.J.A.C. 14:18-3.5, Refusal to connect, would be recodified as N.J.A.C. 14:18-4.2, with no change.

Existing N.J.A.C. 14:18-3.9(f) through (k) concerning outage credits would be recodified as N.J.A.C. 14:18-3.5, with minor changes in text.

Existing N.J.A.C. 14:18-3.6 would be recodified as N.J.A.C. 14:18-4.3, with no change.

Existing N.J.A.C. 14:18-7.5, Bills for service; information for subscriber, would be recodified as N.J.A.C. 14:18-3.7(b), with no change in text.

Existing N.J.A.C. 14:18-7.6, Bills for service, record of subscriber's account, would be recodified as N.J.A.C. 14:18-3.7(c) with no change in text.

Existing N.J.A.C. 14:18-3.8, Access to customer premises, would be recodified as N.J.A.C. 14:18-4.4 without change.

Existing N.J.A.C. 14:18-7.8, Method of billing, would be recodified as N.J.A.C. 14:18-3.8 with no change in text.

Existing N.J.A.C. 14:18-7.9(d) and (c), concerning notice of discontinuance, would be recodified as N.J.A.C. 14:18-3.9(c) and (d) respectively with no change in text.

Existing N.J.A.C. 14:18-3.6(b) and (c) would be recodified as N.J.A.C. 14:18-3.9(e) and (f) respectively. These recodifications would be without change and would move all existing subsections concerning disconnection notice to one section.

Existing N.J.A.C. 14:18-3.10, Compensation for taking, would be recodified as N.J.A.C. 14:18-4.5, without change.

Existing N.J.A.C. 14:18-3.7, Basis for restoration of discontinued services, would be recodified as N.J.A.C. 14:18-3.10, without change.

Existing N.J.A.C. 14:18-7.10, Disputes, would be recodified as N.J.A.C. 14:18-3.11, without change.

Existing N.J.A.C. 14:18-14.5, Notice of rate change, would be recodified as N.J.A.C. 14:18-3.16. It would be amended to provide for simultaneous filing with the Board of the notice of rate changes provided

to the subscriber and municipalities. The rule as recodified also includes an amendment to allow temporary changes for promotional purposes if records are kept for inspection.

Existing N.J.A.C. 14:18-14.6, Notice of alteration in channel allocation, would be recodified as N.J.A.C. 14:18-3.17. It would be amended to permit five days written notice for channel additions or reorganizations if there is no deletion or cutback in other services and 35 days written notice of all other changes in channel allocation. Subsection (c) would be amended to require an explanation to the Board as to why timely notice cannot be given prior to the change.

Existing N.J.A.C. 14:18-7.11, Senior citizen's discounts, would be recodified as N.J.A.C. 14:18-3.20, and would be amended to include references to disabled citizens and would increase the permitted income levels to reflect the current pharmaceutical assistance statute.

Existing N.J.A.C. 14:18-3.9(e), concerning notice of planned interruptions, would be recodified as N.J.A.C. 14:18-3.21, without change.

The Board also proposes to reorganize several existing sections into a new subchapter, subchapter 4, Operator Rights. The existing subchapter 4, Testing of Service, is proposed to be recodified as subchapter 9.

This subchapter would read as follows:

N.J.A.C. 14:18-4.1 would be existing N.J.A.C. 14:18-3.4, Permits, with no change in text.

N.J.A.C. 14:18-4.2 would be existing N.J.A.C. 14:18-3.5, Refusal to connect, with no change in text.

N.J.A.C. 14:18-4.3 would be existing N.J.A.C. 14:18-3.6, Basis for discontinuance, with no change in text.

N.J.A.C. 14:18-4.4 would be existing N.J.A.C. 14:18-3.8, Access to customer's premises, with no change in text.

N.J.A.C. 14:18-4.5 would be existing N.J.A.C. 14:18-3.10, Compensation for taking because of installation of cable television facilities, with no change in text.

N.J.A.C. 14:18-4.6 would be existing N.J.A.C. 14:18-7.1, Deposits to insure credit, with changes in the rate of interest to be paid to reflect market changes. The interest rate would be determined by the Board annually.

N.J.A.C. 14:18-4.7 would be existing N.J.A.C. 14:18-7.2, Deposits on auxiliary equipment, with no change in text.

N.J.A.C. 14:18-4.8 would be existing N.J.A.C. 14:18-7.3, Receipts and records, with no change in text.

N.J.A.C. 14:18-4.9 would be existing N.J.A.C. 14:18-7.4, Return of deposits, with no change in text.

N.J.A.C. 14:18-4.10 would be added and would specifically permit cable television operators to send all required subscriber notices in a single notice.

The Board proposes to add a requirement that local business offices may not be closed without prior Board approval and notice to subscribers and municipalities. This would be designated as N.J.A.C. 14:18-5.1(c).

The Board also proposes to add a requirement that local business offices maintain copies of all reports that must be kept pursuant to the rules and regulations of the Federal Communications Commission ("FCC"). This would be designated as N.J.A.C. 14:18-6.2(c).

The Board proposes to adopt as new subchapter 7, currently Bills and Payments for Service, as Reports and Filings. This would arrange all reporting requirements in a single subchapter. The current sections would be moved to subchapter 4. The filings and reports currently required by N.J.A.C. 14:18-6.3(a), 6.3(c), 3.9(a) through (d) and 3.3(c) would be placed in this subchapter and recodified. The proposed subchapter would require cable operators to complete the cable facts questionnaire no later than March 1 of each year. Cable television operators would also be required to file accident reports, pole attachment agreements and notification of system rebuilds or design changes.

Existing subchapter 4, Testing of Service, would be recodified as subchapter 9. The text would be amended to require cable television operators to conduct annual technical tests to ensure compliance with appropriate technical standards and to file those results with the Board. The cable television operator would have discretion to develop and use procedures and forms to meet its individual needs.

The proposed revisions made to subchapter 10, Technical Standards for System Operation, are designed to bring the Board's cable television technical standards into conformance with the FCC's rules and regulations, 47 C.F.R. 76.601 et seq. The FCC has adopted technical standards which can be adopted and enforced by State franchising authorities; however, State authorities are not permitted to establish more stringent technical standards. Therefore, the Board is revising and deleting those rules which are not consistent with the FCC's. N.J.A.C. 14:18-10.3, 10.4,

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10.5, 10.6, 10.7, 10.8, 10.10(b) and (e), 10.11, and 10.13 would be deleted. The remaining sections would be recodified.

The Board proposes to readopt N.J.A.C. 14:18-11.1 through 11.18 and 11.20 without change. These sections outline the process for obtaining municipal consent to operate a cable television system. The text of N.J.A.C. 14:18-11.19, concerning acceptance of the consent ordinance, is proposed for deletion and replacement with revised text to clarify the process.

Additionally, certain text changes are proposed to N.J.A.C. 14:18-12.1 and 12.2 to clarify certain aspects of filing for a certificate of approval.

Certain amendments are proposed to subchapter 13, Renewals. N.J.A.C. 14:18-13.1(b) is a transitional section clarifying the status of those franchises in the renewal process as of the adoption of subchapter 13. It is no longer necessary and is proposed to be deleted.

A new N.J.A.C. 14:18-13.2(e) is proposed, which would require municipalities which begin the ascertainment process but decide not to issue a report to notify the Board and the cable operator. N.J.A.C. 14:18-13.2(f) would be added to explicitly authorize a municipality to conduct the ascertainment proceeding.

N.J.A.C. 14:18-13.3(a)2 is proposed to be reworded in order to clarify the time in which a cable operator must file for a certificate of approval.

A new N.J.A.C. 14:18-13.7(b) is proposed to establish at least one public hearing shall be held in each municipality.

The remaining provisions of subchapter 13 are proposed to be re-adopted without change.

In subchapter 14, Miscellaneous Provisions:

N.J.A.C. 14:18-14.1, 14.2, 14.3 and 14.4 are proposed to be readopted without change. N.J.A.C. 14:18-14.5 and 14.6 are proposed to be recodified as N.J.A.C. 14:18-3.16 and 3.17, respectively, with no change in text. Existing N.J.A.C. 14:18-14.7 and 14.8 are proposed to be recodified as N.J.A.C. 14:18-14.5 and 14.6, respectively, with no change in text.

The readoption includes a new appendix to the Chapter, Appendix A, which is a list of the forms used in the administration of the OCTV programs.

**Social Impact**

The majority of the changes that are proposed concern the reorganization of Chapter 18 to list code sections under more appropriate headings. This will enable all parties using the code to more readily identify the rights and obligations affecting the party. Several of the proposed amendments clarify existing requirements or correct technical imperfections in the existing text. Those changes are intended to make the code more readable and more precise.

The chapter proposed for readoption governs the technical and substantive rules of cable television. The rules primarily impact cable television operators which must abide by the rules. Several of the rules govern the protection of the public safety and welfare by insuring that cable television facilities and equipment are installed and used in an appropriate manner. The function of the staff of the Office of Cable Television is to monitor compliance with these rules and to take enforcement action if necessary. The rules also provide for protection of cable television operators in some instances.

Subchapters 3, Customer Rights, would define the rights of subscribers to cable television service and the obligations of the cable television operator. Amendments and additions would set limits on the time in which installations take place and require the cable television operator to supply information to subscribers on equipment, rates, billing, deposits and credits. All subscriber bills would be itemized and specific notice would be required prior to disconnection for non-payment of a bill. The rules would also require cable television companies to provide A/B switches, parental locking devices and equipment to aid the hearing impaired. These changes impose technical burdens on the company but would give subscriber's access to information so they may make informed decisions. The subscriber would also have access to more equipment to maximize the use of the services.

Other proposed changes would require cable television companies to answer telephone calls on a 24-hour basis and require larger systems to have a technician on duty at all times. This requirement would apply to all systems with more than 10,000 subscribers. The Board believes that it is appropriate to have this requirement to ensure adequate emergency response. However, the Board recognizes that systems with less than 10,000 subscribers would not have the necessary manpower and resources to have a technician on duty 24 hours a day. Companies would also be required to schedule specific service calls. These amendments would im-

pose additional burdens on cable operators but are necessary to ensure adequate response from the company.

Proposed new subchapter 4, Operator Rights, is a reformatting and readoption of existing subsections. The text would specify the rights of the cable operator and obligations of the subscriber on issues of billing, disconnection, access to facilities, and deposits. These sections protect the rights of both cable operators and subscribers by clearly setting forth the respective obligations of each. The section on compensation to landlords due to cable installations on the premises sets forth the procedure by which cable operators obtain access to residential dwellings and a mechanism for compensating the landowner. It protects the statutory and constitutional rights of both parties.

Proposed subchapters 5, 6, 7 and 8 (Offices, Records, Reports and Filings Insurance) concern the non-technical operations of the cable television company. Local offices must be maintained and the OCTV proposes that those offices not be closed without prior Board approval and notice to the public. This may burden cable operators in certain situations, but on balance, this would ensure that cable companies operate in a responsive manner. The proposed records, reports, filing and insurance requirements impose administrative burdens on cable operators which must collect, file, and in some cases report, certain information. However, the proposed readoption and amendments are necessary to permit the OCTV to monitor compliance with all statutory and franchise requirements.

The subchapters on plant, testing of service and technical standards for system operation concern the technical aspects of cable television regulation. The proposed readoption and amendments ensure that cable television companies operate in a safe and reasonable manner. The rules are intended to assure the companies supply an adequate level of service. Many of the proposed amendments delete text which is no longer applicable and revise sections to conform with current FCC standards.

The readoption of the subchapters concerning the application for municipal consent, the application for a Certificate of Approval and renewals all govern the franchising process. They are intended to clearly articulate the procedures for obtaining and renewing a cable television franchise in accordance with State and Federal law. Subchapter 13, Renewals, provides municipalities with guidance on the procedures and standards for cable television renewals.

The proposed readoption of subchapter 14 would govern miscellaneous matters such as the non-retroactivity of the regulations, modifications, the requirements for tariff, rate discrimination, the Board's authority and prior regulations. These provisions are generally administrative and are proposed for readoption without change.

**Economic Impact**

This chapter imposes technical and operational requirements on cable television operators. Thus, it has some additional impact on operating costs which are to some extent passed on to the subscriber. The rules are necessary, however, to adequately protect the safety and interests of the general public and cable television subscribers. The intent of the rules is for cable television companies to provide safe, adequate and proper service. The existence and enforcement of the rules require the sufficient staffing of the Board and the corresponding administrative and overhead costs. The Board believes the benefits from the rules exceed the burdens of the costs.

It is anticipated that the highest level of costs would be associated with the requirements of proposed subchapter 3. The requirements that telephones be answered on a 24-hour basis, that larger systems maintain technicians on a 24-hour basis and that service calls be scheduled for definite time periods will increase personnel and overhead costs. These requirements are necessary, however, to ensure that system problems and service calls are handled in a prompt manner. The Board further anticipates that the requirement that bills for service be itemized will result in on-time costs to convert billing systems to comply with the rule for some systems. This rule is necessary to permit subscribers to fully understand the services that are received and the associated costs.

Cable operators would have to provide certain equipment under the rules as proposed. The operator would, however, be permitted to impose fees for the equipment.

The rules as proposed contain numerous requirements that cable operators supply information to the subscribers and the Board in the form of notices and reports. It is anticipated that administrative and mailing costs will be incurred to comply with the proposal. However, since many of the reports and notices can be consolidated, the Board does not believe the burden will be unreasonable. The information contained in the notices and reports is necessary to permit consumers to make informed decisions

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and to allow the Board to monitor cable television operators to ensure compliance with applicable law.

The subchapters governing plant, testing and technical standards will require ongoing efforts by cable television companies to comply with applicable standards. This will require that personnel and overhead expenses be borne by the cable operator. The proposed readoption and amendments are necessary to ensure cable television facilities and equipment are adequately maintained.

The subchapters concerning the cable television franchising process contain procedural requirements which will impose certain administrative costs on the cable television company and the municipality. The costs are not deemed to be excessive and the rules are necessary so that the franchising process is orderly.

The readoption also requires cable television companies to maintain local offices and receive Board approval prior to the closing of an office. This requires that the cost of maintaining the office be borne by the cable operator. However, local offices are necessary to permit adequate response from the company.

The operator rights subchapter requires subscribers to bear certain costs and fees in appropriate situations. The costs are necessary to protect cable television companies from experiencing undue financial burdens. The section concerning compensation for access to residential dwellings requires cable television companies to follow certain procedures with corresponding administrative costs. These procedures are necessary to protect the rights of the landowner.

It is not anticipated that the readoption of the miscellaneous provisions contained in subchapter 14 will impose appreciable economic costs on any parties covered by the rules since these regulations are administrative in nature.

#### Regulatory Flexibility Analysis

It is anticipated that the proposed readoption and proposed amendments will affect two cable television operators which are defined as small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As outlined in greater detail in the Summary of this notice, Chapter 18 as proposed for readoption imposes reporting, record keeping and other compliance requirements on cable television operators. These include the collection of information and the filing of reports to the Board as well as providing notice to subscribers of their rights and obligations. The compliance requirements are to ensure that the cable television operator supplies safe, adequate and proper service. The Board has reviewed the proposed rules and it is the Board's belief that they are necessary to protect the subscriber or to ensure the companies deliver a proper level of service. As such, it is not appropriate to waive the requirements of the proposed rule readoptions for small businesses.

The one exception is proposed N.J.A.C. 14:18-3.13. The businesses covered by this statement are not within the 10,000 subscriber threshold and therefore do not have to maintain a technician on duty 24 hours a day.

All of the requirements of the proposed rules could be performed by employees of the company. It is not anticipated that a small cable television company would necessarily need outside professional services. However, a company might determine it is more economical to use contracted professional services to prepare and distribute billings, mail out the required notices and/or to conduct the required technical tests.

It is not anticipated that the proposed readoption would require any additional initial capital costs other than those normally associated with the construction and operation of a cable television system. Annual administrative, personnel and overhead costs would be required to collect information, mail notices and maintain plant and equipment. These are not expected to be unreasonable.

**Full text** of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:18.

**Full text** of the subchapter proposed for repeal may be found in the New Jersey Administrative Code at N.J.A.C. 14:18-3, 4, 7 and 9.

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

#### 14:18-1.1 Scope of regulations

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

(d) **These regulations do not limit the duties now imposed upon these companies, but merely serve to define such duties and to establish standards for their performance.**

#### 14:18-1.2 Definitions

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

...  
 "Cable communications system" or "cable communications service" means any communications service other than cable television reception service delivered through the facilities of a [CATV] cable television system and for which charges in addition to or other than those made for cable television reception service are made or proposed to be made.

...  
 ["Certificate of compliance" means a certificate issued, or which may be issued, by the FCC pursuant to Subpart B, Section 76.11 et seq., as applicable, of the FCC rules and regulations adopted on February 2, 1972, together with any amendments which have been or may be adopted.]

"Class I, Class II, Class III, and Class IV cable television channels" means signaling paths as defined in Subpart A, Section 76.5[1], subsections [z](t), [aa](u), [bb](v), and [cc](w) respectively, of the FCC rules and regulations adopted on February 2, 1972, **as amended.**

#### 14:18-2.1 Plant construction

(a) Every cable television company shall construct and install its facilities with the applicable provisions of the National [Electric] Electrical Safety Code, and subsequent amendments thereto, the National [Electric] Electrical Safety Code, and subsequent amendments thereto, as well as all Federal, State, and local laws, and any pole, conduit, or trench licensing agreements with utilities.

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

(d) Every [CATV] cable television company shall file with the Board, in association with its application for approval of a municipal consent, a schedule for the construction of its facilities. This schedule shall require significant completion of construction within one year of receipt of [both] the certificate of approval [and the certificate of compliance].

#### 14:18-2.5 Identification of property; poles or structures supporting or connecting wires or cable

(a) Each [CATV] cable television company owning solely or jointly (with a utility) poles, pedestals or structures supporting or connecting wires or cables along, under or over public highways shall properly mark each such pole, pedestal, or structure with the initials of its name, abbreviation of its name, corporate symbol or other distinguishing mark or code by which ownership may be readily and definitely ascertained and with number or symbol or both by which the location of each such pole, pedestal or structure may be determined on office records:

1.-5. (No change.)

6. Each [CATV] cable television company should make reasonable efforts to prevent the placing upon its poles and pedestals of any marks, signs, placards, bulletins, notices or any foreign object other than as provided in N.J.S.A. 27:5-1.

#### 14:18-2.7 Inspection of property

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

(c) Each pole, post, tower, pedestal, or other structure owned by the [CATV] cable television company shall be inspected by the company owning it with sufficient frequency and comprehensiveness to disclose the necessity for replacement or repair in order to maintain service in accordance with established practice.

#### 14:18-2.8 Construction work near cable television facilities

(a) (No change.)

(b) Nothing herein shall affect the duties and obligations of persons working in the vicinity of high voltage lines as set forth in N.J.S.A. [34:4-47.1] 34:6-47.1 et seq.

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### 14:18-2.10 Rate changes and disputes

(a) A party to a pole attachment agreement under N.J.A.C. 14:18-2.9 may petition the Board for a change in pole attachment rates by filing a petition with supporting documentation in accordance with N.J.A.C. 14:17-6.1 through 6.5.

(b) In the event of a dispute over terms and conditions, any party to a cable television pole attachment agreement may petition the Board for resolution.

### SUBCHAPTER 3. CUSTOMER RIGHTS

#### 14:18-3.1 Scope

It shall be the duty of every cable television company to furnish and maintain safe, adequate, economical, and efficient service.

#### 14:18-3.2 Requests for service

(a) Applications by a customer for the establishment of service may be made at the CATV company office either in person, by mail or by telephone. If the CATV company requires a written application, the same may be subsequently submitted to the customer for signature.

(b) Within 20 days of ordering service, a subscriber is entitled to one of the following:

- i. Installation of service;
- ii. A cost estimate for line extension where applicable; or
- iii. If access has been denied by a landlord or property owner, a copy of a letter to the landlord or property owner requesting access.

#### 14:18-3.3 Customer information

(a) Each CATV company shall, upon request, furnish its subscribers with such information as is reasonable, in order that the customers may obtain adequate, efficient and economical service.

(b) Each CATV company shall inform its customers, where peculiar or unusual circumstances prevail, as to the conditions under which sufficient and satisfactory service may be secured from its system.

(c) The cable operator shall provide prospective customers, and existing customers upon any changeover to a new type of equipment, with a written description of any auxiliary equipment necessary to receive cable television service, such as converters or remote control units, required for service with an explanation of how such equipment interfaces with subscriber owned equipment such as VCR's, remote control units, "cable ready" sets, etc.

(d) Every new subscriber shall be provided with a complete copy of the cable company's tariff containing all rates, terms, and conditions.

#### 14:18-3.4 Tariff information

(a) Upon request, the cable television operator shall provide, at no charge, a complete copy of the cable television company's tariff showing all rates, charges, and services.

(b) The cable television company shall post a complete copy of its tariff showing all rates, charges, and services in a prominent location in its local business offices.

#### 14:18-3.5 Outage credit

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

1. In the event of an outage lasting six or more hours, the company shall make an appropriate credit on the subscriber's bill.
2. The amount of credit shall be in one-day units, prorated on the basis of the subscriber's monthly rate for each service not available.
3. For outages which extend more than 24 hours, subscribers shall receive a credit for each calendar day or part thereof if greater than six hours, during which service is out.
4. The cable television company shall not be liable to a subscriber for any indirect or consequential damages resulting from the outage unless the cable television company expressly agrees to such liability.
5. In order to obtain a credit, subscribers must notify the cable television company by phone or in writing within 30 days after any such outage, or else within 30 days notify the Office or other designated complaint officer.
6. A cable television company may, at its option, provide a subscriber with a rebate rather than a credit on the subscriber's bill to fulfill the requirements of this subsection.

(b) A cable television company shall not be required to provide a credit or rebate under (a) above if:

1. The cable television company can demonstrate that restoration of service was not possible within the six-hour period due to factors beyond the control of their company; and

2. If service is restored within six hours after the restoration of service becomes possible.

(c) Any cable television company may petition the Board for a waiver of providing credit required by (a) above in the event such credits would create an undue hardship on the cable television company.

(d) In instances where a subscriber is without cable television service for at least 24 hours, and the loss of the service is not the result of an outage, the company shall credit or rebate, at the company's option, the subscriber for one day unit for each 24-hour period in which the subscriber was without service. No cable company shall be required to provide a subscriber with a rebate or credit if the loss of service was caused by an act on the part of the subscriber requesting such a credit or rebate.

(e) Intermittent or cumulative service interruptions and other service related complaints are to be analyzed in accordance with the complaint procedure pursuant to N.J.A.C. 14:17-7.1.

(f) Each company shall quarterly inform its subscribers of the procedures by which a subscriber may obtain a credit.

#### 14:18-3.6 Access to company representatives

Subscriber phone calls shall be answered by a representative or agent of the cable company 24 hours a day. Such representative or agent shall be able to contact appropriate personnel of the company in the event an emergency situation exists.

#### 14:18-3.7 Bills for service; form of bill

(a) The bill for service shall show the following:

1. The name, address, and telephone number of the cable television company;
2. A description of each service for which a separate charge is imposed and the rate for each service;
3. The amount due during the current period;
4. The amount past due;
5. The date by which payment is due;
6. Any appropriate credits to the bill;
7. Any separate charges for equipment provided by the cable television company;
8. Any other separate fees;
9. The period of service covered by current charges on the bill;
10. The late charge rate, if any;
11. The amount of accumulated late charges; and
12. Periodic interest credits on deposits held by the cable television company pursuant to N.J.A.C. 14:18-4.6 and 4.7.

(b) Each CATV company shall adopt some method of informing its subscribers as to the address of an office where complaints, service inquiries and bill payments will be received.

(c) Each CATV company shall keep a record of each subscriber's account in such a manner as will permit computation of the bill for any billing period occurring within three years.

#### 14:18-3.8 Method of billing

(a) Bills for cable television service shall be rendered monthly, bi-monthly, quarterly, semi-annually or annually and shall be prorated upon establishment and termination of service. In unusual credit situations, bills may be rendered at shorter intervals.

(b) Cable television seasonal service may be billed in accordance with reasonable terms and conditions of service set forth in the filed tariff.

(c) A CATV company may, under uniform nondiscriminatory terms and conditions, require payment, in advance, for a period not to exceed that for which bills are regularly rendered, as specified in its applicable filed tariff. Such advance payment shall reflect an appropriate discount for the period involved. Unless otherwise provided for in the applicable filed tariff, initial and final bills shall be prorated as of the date of the initial establishment and final termination of service. Nothing herein shall preclude a CATV company from issuing "payment books" which conform to the above requirements.

#### 14:18-3.9 Due date of payment and notice of discontinuance

(a) The specified due date for payments shall be no less than 15 days from the postmark on the bill; if there is no postmark, the burden of proving the date of mailing shall be upon the cable company.

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(b) Prior to disconnection for non-payment, a subscriber must receive 15 days' written notice from the cable television company. Such notice must be mailed separately and not as part of the periodic bill. Such notice shall not be issued until 30 days beyond the due date on the previous bill.

(c) A new notice shall be served by the CATV company each time the company intends to discontinue service for nonpayment of a bill.

(d) In case of fraud, illegal use or when it is clearly indicated the subscriber is preparing to leave, immediate payment of accounts may be required.

(e) A subscriber wishing to discontinue service must give notice to that effect. Where such notice is not received by the CATV company, the subscriber shall be liable for service until such notice is received by the CATV company.

(f) Notice to discontinue service will not relieve a subscriber from any minimum or guaranteed payment under any contract of rate.

**14:18-3.10 Basis for restoration of discontinued services**

Service shall be restored upon proper application when the conditions under which such service was discontinued are corrected, and upon the payment of all proper charges due from the subscriber provided in the tariff of the CATV company if the Office so directed when a complaint involving such matter is pending before it.

**14:18-3.11 Disputes**

(a) A CATV company shall not discontinue service because of non-payment of bills in cases where a charge or service is in dispute, provided a request is made to the Office for an investigation of the disputed charge or service, and, in the case of a disputed bill, the undisputed charges are paid to the CATV company and a check in the amount of the disputed charges is placed with an escrow agent designated by the Office.

(b) In such cases, the CATV company shall notify the subscriber that unless steps are taken to invoke formal or informal action by the Office within five days, service will be discontinued for nonpayment.

**14:18-3.12 Service call scheduling**

(a) When a service call is scheduled to a subscriber's home, the cable operator shall inform the subscriber upon request whether the service call is scheduled for morning, afternoon, or, if provided, evening.

(b) If the cable operator is unable to keep the scheduled appointment, the cable operator shall inform the subscriber and the appointment shall be rescheduled within 24 hours, unless good cause is shown.

**14:18-3.13 Technician on duty**

For cable television systems having more than 10,000 subscribers, the cable television operator shall ensure that there be at least one technical person on duty 24 hours a day to provide emergency service and repairs to the plant affecting two or more subscribers and to provide any other emergency services, as necessary.

**14:18-3.14 Availability of special equipment**

(a) The cable television operator shall provide, upon the request of the subscriber, the following equipment:

1. A/B (input selector) switches to allow switchover to subscriber's antenna as required by 47 C.F.R. § 76.66;

2. A parental lock to allow subscriber blocking of a specified cable service or channel as required by 47 U.S.C. § 544(d)(2)(A); and

3. Devices to insure adequate access to cable television service for hearing-impaired persons pursuant to 47 U.S.C. § 543(f)(2).

(b) The cable television operator may impose fees to the subscriber for any equipment listed in (a)1 through 3 above, which shall not exceed the purchase cost.

**14:18-3.15 Trial services**

(a) Subscribers who take a service marketed by the cable television operator for a specified trial period on a free or reduced rate basis shall not be charged for the disconnection or downgrade of the service provided the subscriber notifies the operator prior to the end of the trial period that they no longer want the service.

(b) Cable television operators shall maintain records of all such trial services for public inspection.

**14:18-3.16 Notice of rate change**

(a) If the rates and charges of a cable operator are not subject to prior approval by the Board:

1. A cable TV company implementing a change in its rates shall file with the Office revised tariff sheets reflecting any rate changes at least 35 days prior to the effective date.

2. Each cable TV company shall individually notify, in writing, its subscribers and affected municipalities of a rate change at least 30 days prior to the effective date, with a simultaneous copy of the notice to the Office.

3. The notice requirements of (a)1 and 2 above are not applicable to limited time promotional activities provided the cable television company maintains a file for public inspection showing the nature of the promotional activity, the rates to be charged, and the time period of the promotional activity.

**14:18-3.17 Notice of alteration in channel allocation**

(a) Each cable TV company shall file with the Office written notice of an alteration in channel allocation, on a form prescribed by the Director, at least five days prior to the effective date for new additions which do not require deletions or cutbacks in other services. For all other changes the operator shall provide notice at least 35 days prior to the effective date.

(b) Each cable TV company shall notify its subscribers and affected municipalities of an alteration in channel allocation at least five days prior to the effective date for new additions which do not require deletions or cutbacks in other services. For all other changes the operator shall provide notice to the Office at least 35 days prior to the effective date and 30 days prior to the effective date to the subscribers in a manner reasonably calculated to provide such information.

(c) When timely notice pursuant to this section cannot be met because of factors beyond the cable operator's control, the operator shall provide the earliest possible notice along with the reasons for the change and an explanation of why notice required by (a) and (b) above could not be given.

**14:18-3.18 Periodic notices to subscribers**

(a) The cable operators shall provide annual notice to each subscriber of the following:

1. Notice of all monthly service packages and corresponding rates available according to the subscriber's billing classification (for example, residential, commercial, hotel/motel);

2. The privacy notice as required by 47 U.S.C. § 551(a) and N.J.S.A. 48:5A-56(b);

3. Notice of the advance payment discount if the cable television operator's filed tariff provides for payments more than 30 days in advance, as required by N.J.A.C. 14:18-3.8(c);

4. Notice of the availability senior citizens/disabled discounts in systems where offered, pursuant to N.J.A.C. 14:18-20;

5. Notice of the availability of devices for hearing impaired as required by N.J.A.C. 14:18-3.14(c);

6. Notice of the availability of A/B (input selector) switches as required by N.J.A.C. 14:18-3.14(a) and 47 C.F.R. § 76.66(a);

7. Notice of the availability of parental lock devices as required by N.J.A.C. 14:18-3.14(b) and 47 U.S.C. § 544(d)(2)(A); and

8. Notice of the complaint officer and the Office's toll free telephone number as required by N.J.S.A. 48:5A-26(c).

(b) Notice of the outage credit availability as outlined in N.J.A.C. 14:18-3.5 shall be provided to each subscriber quarterly.

(c) The form and content of such notices shall meet the requirements of the applicable State or Federal law specifying such; in all other instances, the notice shall reasonably convey enough information for consumers to make informed decisions.

**14:18-3.19 Interest on uncorrected billing errors**

(a) Subscribers are entitled to credit for simple interest for any overpayments due to a billing error which are not refunded or corrected within two billing cycles after the subscriber notifies the cable operator in writing.

(b) The interest rate shall be equal to the average yields on six month Treasury Bills for the 12 month period ending each September 30. Said rate, which shall be rounded up or down to the nearest half percent, shall become effective on January 2 of the following year.

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(c) The Board shall perform the annual calculation to determine the applicable interest rate and shall notify the cable companies of said rate.

### 14:18-3.20 Discounts for senior and disabled citizens

(a) Prior to offering, altering, or discontinuing a senior and disabled citizen discount, a cable company shall:

1. Specify the rates, terms, and conditions for the discount, and which services are included;

2. Provide at least 30 days advance notice to each subscriber and municipality served; and

3. Provide at least 35 days advance notice to the Office of Cable Television along with revised tariff sheets showing any such changes.

(b) New subscribers shall be informed in writing when a senior and disabled citizens discount program is available and the eligibility requirements for participation.

(c) Subscribers shall establish eligibility for this discount program by either:

1. Presenting a Pharmaceutical Assistance card and certifying that the subscriber is at least 62 years of age and that no more than one other person under the age of 62 resides in the same dwelling unit; or

2. Executing and notarizing a standard form of affidavit stating:

i. The subscriber's name and that he or she is at least 62 years of age;

ii. The subscriber's address and that he or she has been a permanent resident of this State for at least 30 days;

iii. That no more than one other person under the age of 62 resides in the same dwelling unit; and

iv. That the subscriber is:

(1) Single with an income less than \$13,650 per year, including social security income benefits;

(2) Married, with a combined income of less than \$16,750 per year including social security income benefits; or

(3) Such other limits as subsequently may be established for Pharmaceutical Assistance to the Aged and Disabled under N.J.S.A. 30:4D-21, as amended.

(d) Participation in a senior and disabled citizens discount plan shall not affect a subscriber's eligibility for other generally offered discounts and marketing promotions.

### 14:18-3.21 Avoidance of interruption; prompt restoration

Each CATV company shall exercise reasonable diligence to avoid interruptions, curtailments or deficiencies of service and, when such interruptions occur, service shall be restored as promptly as possible, consistent with safe practice.

### 14:18-3.22 Notice of planned interruptions

Planned interruptions for operating reasons shall always be preceded by reasonable notice, preferably on the local origination channel, to all affected subscribers, and the work shall be planned to minimize subscriber's inconvenience.

## SUBCHAPTER 4. CABLE OPERATOR RIGHTS

### 14:18-4.1 Permits

(a) The CATV company, where necessary, shall make application for any street opening permits for installing its cables and shall not be required to furnish service until after such permits are granted.

(b) The municipal charge, as set forth in N.J.S.A. 48:5A-1, for use of the streets shall be paid annually by the CATV company.

### 14:18-4.2 Refusal to connect

A CATV company may refuse to connect with any customer's installation when it is not in accordance with the standard terms and conditions of the tariff schedules of the CATV company furnishing the service which have been filed with the Office, and with the provisions of applicable governmental requirements.

### 14:18-4.3 Basis of discontinuance of service

(a) The CATV company shall, upon reasonable notice, when it can be reasonably given, have the right to suspend or curtail or discontinue service for the following reasons:

1. For the purpose of making permanent or temporary repairs, changes or improvements in any part of its system;

2. For compliance in good faith with any governmental order or directive, notwithstanding such order or directive subsequently may be held to be invalid;

3. For any of the following acts or omissions on the part of the subscriber:

i. Nonpayment of a valid bill due for service furnished at a present or previous location in accordance with the further requirements stipulated in N.J.A.C. 14:18-7.9. However, nonpayment for business service shall not be a reason for discontinuance of residence service without the prior approval of the Office;

ii. Tampering with any facility of the CATV company;

iii. Fraudulent representation in relation to the use of the service within the subscriber's premises;

iv. Subscriber moving from the premises, unless the subscriber requests that service be continued;

v. Providing cable television service to others through the "tapping" of the CATV company's system without approval of the company;

vi. Refusal to contract for service where such contract is required by the filed tariff;

vii. Failure to make or increase an advance payment or deposit as provided for in these regulations or the tariff;

viii. Connecting and operating in such manner as to produce disturbing effects on the service of the CATV company or other subscribers;

ix. Failure of the subscriber to comply with any reasonable standard terms and conditions contained in the CATV company's tariff;

x. Where the condition of the subscriber's installation presents a hazard to life or property;

xi. Failure of subscriber to repair any faulty television or FM receiver or other CATV receiving facility belonging to the subscriber.

4. For refusal of reasonable access to subscriber's premises for necessary purposes in connection with rendering of service, including the proper and legal maintenance or removal of the CATV company's property.

(b) A subscriber wishing to discontinue service must give notice to that effect. Where such notice is not received by the CATV company, the subscriber shall be liable for service until such notice is received by the CATV company.

### 14:18-4.4 Access to customer's premises

(a) The CATV company shall have the right of reasonable access to subscriber's premises, and to all property furnished the CATV company at all reasonable times for the purpose of inspection of premises incident to the installation of service, inspecting, testing or repairing its facilities used in connection with supplying the service or for the removal of its property.

(b) The subscriber shall obtain, or cause to be obtained, all permits needed by the CATV company for access to the company's facilities at the subscriber's terminal.

(c) Access to the CATV company's facilities shall not be given except to authorized employees of the company or duly authorized governmental officials, who shall present proper identification.

(d) In the case of defective service, the subscriber shall not interfere or tamper with the apparatus belonging to the CATV company but shall immediately notify the CATV company to have the defects remedied.

### 14:18-4.5 Compensation for taking because of installation of cable television facilities

(a) A cable television operator shall award \$1.00 to a fee owner, as defined by N.J.S.A. 48:5A-49(b)(1), in consideration of the access granted pursuant to the Cable Television Act, N.J.S.A. 48:5A-49.

(b) Unless cable television service is being currently provided to a certain multi-family property, a cable television operator shall serve written notice to the fee owner, landlord or agent of its intent to install cable television service or facilities upon the fee owner's property at least 30 days prior to commencing such installation. The Director of the Office of Cable Television has prescribed that notice be served by certified mail and that the form and content of such notice include at a minimum:

1. The name and address of the cable operator;

2. The name and address of the fee owner, manager or superintendent;

3. The approximate date of the installation;

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4. Citations from the Cable Television Act and New Jersey Administrative Code, specifically N.J.S.A. 48:5A-49 and N.J.S.A. 48:5A-51, and N.J.A.C. 14:18-4.5;

5. A general description of the proposed method of installation;

6. Notice that the amount of \$1.00 in consideration for the access granted pursuant to the Cable Television Act will be tendered when an agreement is signed.

(c) If no response to the notice is forthcoming within 30 days, the cable operator has a statutory right and a franchise obligation to provide cable television service. In order to enforce this right and satisfy said obligation, a company must apply for an administrative approval for access. To apply, said company must submit to the Board of Public Utilities, copies of its notice and a specific description of the proposed method of installation.

1. If a response is received pursuant to (b) above and an agreement for access is not reached within 45 days of said response, the cable operator may apply to the Director for approval to install its cable television facilities. At such time the Director will either recommend to the Board that such an administrative order issue or alternatively deem such matter contested. In the event of the latter, the matter shall be handled in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the rules of the Office of Administrative Law, N.J.A.C. 1:1-1.1 et seq.

(d) Upon notice served pursuant to (b) above, except when such notice does not apply to multi-family properties currently receiving cable television service, fee owners may apply to the Office of Cable Television for just compensation. The owner has the burden of proof to clearly demonstrate:

1. The value of the applicant's property before the installation of cable television facilities;

2. The value of the applicant's property subsequent to the installation of cable television facilities;

3. The criteria, data, method or methods used to determine such values;

4. Out of pocket costs directly attributed to the installation and presence of cable television facilities in the multi-unit dwelling;

5. Any extraordinary costs to be borne by the applicant associated with the installation and presence of cable television facilities.

(e) The Director may, upon good cause shown, permit the filing of additional information to supplement the application. Copies of the application filed with the Office of Cable Television shall be served upon the cable television company in compliance with N.J.A.C. 14:17-5.1 et seq. Answers, if any, shall be filed within 20 days in compliance with N.J.A.C. 14:17-8.1 et seq. If said filing is limited to an application for compensation, the Director may permit the installation of cable television facilities provided that all issues relating to indemnification and protection of property have been satisfied.

(f) The Director shall determine whether an application filed consistent with (d) above establishes a contested case for compensation pursuant to (d). In such an event the matter shall be handled in accordance with the Administrative Procedure Act, N.J.A.C. 52:14B-1 et seq., and the rules of the Office of Administrative Law, N.J.A.C. 1:1-1.1 et seq.

(g) All executed access agreements must be filed with the Office of Cable Television pursuant to N.J.S.A. 48:5A-9(b).

**14:18-4.6 Deposits to insure credit**

(a) Where the credit of a subscriber is not established or where a subscriber is in default in the payment of bills, the CATV company may require a reasonable deposit as a condition of supplying service or continuing service.

(b) The credit established, by whatever method, shall apply at any location within the area of the CATV company furnishing the service; that is, service is not to be regarded as restricted to a particular location.

(c) The amount of a deposit shall be reasonably related to the charge for service during a billing period, provided such period does not exceed two months.

(d) In all cases where bills are rendered quarterly, semi-annually or annually, the amount of deposit shall not exceed the estimated average charge for service during any two months of the billing period.

(e) In determining the amount of any deposit, there shall be excluded from the average bill such portion thereof, if any, for which payment is received in advance.

(f) Simple interest, at the prevailing rate determined pursuant to N.J.A.C. 14:18-3.19, shall be paid by the cable television company on all credit deposits held by it, provided the deposit has remained with the company for at least six months. Moneys collected as deposits, pursuant to this section, shall be held in a separate account and shall not be used for any purpose other than the maintenance of subscriber accounts.

(g) Where a subscriber is in default in the payment of bills, service shall not be discontinued for failure to make such deposit except after proper notice, in accordance with N.J.A.C. 14:18-3.9(b).

(h) If a subscriber who has made a deposit fails to pay a bill, the CATV company may apply such deposit insofar as is necessary to liquidate the bill and may require that the deposit be restored to its original amount.

**14:18-4.7 Deposits on auxiliary equipment**

(a) When a CATV company supplies auxiliary equipment, such as a converter or other modifying device, to a subscriber's CATV receiving facility, the company may require the payment of a reasonable deposit thereon, provided, however, that said deposit shall not exceed the replacement cost of the unit(s).

(b) The simple interest provision of N.J.A.C. 14:18-4.6 shall apply to auxiliary equipment deposits. However, moneys collected as deposits pursuant to this section may be used by the CATV company to defray the cost of and service to such unit(s).

(c) If the CATV company is required to replace or repair the unit(s) because of subscriber abuse, the company may apply such deposit insofar as is necessary and may require that the deposit be restored to its original amount.

**14:18-4.8 Receipts and records**

(a) The CATV company shall furnish a receipt to each subscriber who has made a deposit.

(b) Where return of the deposit is made in cash, surrender of the receipt or, in lieu thereof, proof of identity may be required.

**14:18-4.9 Return of deposits**

(a) Upon closing any account, the balance of any deposit remaining after the closing bill for service has been settled shall be returned promptly to the depositor with interest due.

(b) With reference to N.J.A.C. 14:18-4.6, deposits to insure credit, each CATV company shall review a subscriber's account at least once every two years, and if such review indicates that the subscriber has established credit satisfactory to the CATV company, then the outstanding deposit shall be refunded to the subscriber.

(c) With reference to N.J.A.C. 14:18-4.7, deposits on auxiliary equipment, the amount of deposit shall be refunded to the subscriber upon termination of service and return of the unit(s) in good condition, reasonable wear and tear excepted. If any portion of the deposit is required to offset the cost of replacement or repair necessitated by customer abuse to such unit(s), the difference between such cost and the amount of deposit shall be refunded to the subscriber.

**14:18-4.10 Consolidated notice**

All notices required by N.J.A.C. 14:18-3.18 may be provided to subscribers in a single notice to each subscriber as long as all required information for each item is included.

**14:18-5.1 Location**

(a) Each cable television company shall maintain, in or within reasonable proximity of its service area, a local business office, the current location of which shall be furnished to the Office where applications for service, complaints, service inquiries, bill payments, and so forth will be received.

(b) Each cable television company shall furnish the Office with the current location of its offices where maps and records showing the various services areas and facilities are available to supply, upon reasonable request, information to subscribers, governmental bodies, utilities, other CATV companies and contractors.

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

### 14:18-6.2 Plant and operating records

(a) Each [CATV] cable television company shall maintain adequate maps [or] and records reflecting the latest available information and data concerning the size, type, location, and date of construction and installation of its major units of property.

(b) (No change.)

(c) Each local business office shall maintain copies of filings required by the FCC related to the operation of that particular system.

### [14:18-6.3 Periodic reports

(a) Each CATV company shall file with the Office on or before March 31 of each year a summary of its finances and operations for the preceding calendar year on forms prescribed and furnished by the Office.]

[(b) In special instances CATV companies may be required to submit reports quarterly and monthly as directed by the Office.]

[(c) Other periodic reports shall be filed on or before the due date noted on the report form.]

Recodify existing 14:18-6.4 as 14:18-6.3 (No change in text.)

### 14:18-[6.5]6.4 Public records

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

[(c) This regulation shall take effect April 23, 1973, and shall remain in force and effect until amended, modified, repealed or terminated by action of the Director of the Office, the Board or Governor.]

### 14:18-6.5 Complaints records

Each CATV company shall keep for a period of one year, a record of complaints in regard to service received at its office or offices, which shall include the name and address of the subscriber, the date, the nature of complaint, the test conducted and corrective action taken if required, and the final disposition. The record shall be available for inspection by the Office staff.

### 14:18-6.6 Reporting and records of interruptions and outages

(a) All outages where service to subscribers is interrupted for at least two hours and which affect 50 or more subscribers shall be reported by each cable television company to the Office on a form prescribed by the Director.

1. Such reports shall be collected and forwarded to the Office monthly, and shall be sent to the Office within 15 days of the end of the month for which the report is filed.

2. Cable companies must report to the Office by telephone during the course of the outage all outages which exceed one hour in length and affect more than 500 subscribers.

(b) Records of outages shall be kept in a manner suitable for analysis for the purpose of minimizing possible future interruptions and shall include the time, cause and duration of the interruptions as well as the remedial action taken.

(c) Each CATV company shall keep a record of each outage for a period of one year.

## SUBCHAPTER 7. REPORTS AND FILINGS

### 14:18-7.1 Periodic Reports

(a) Each certified cable television company shall file with the Office a Cable Facts Questionnaire as listed in Appendix A of this Chapter, no later than March 1st of each year.

(b) Other periodic reports shall be filed on or before the due date noted on the report form.

### 14:18-7.2 Special reports

(a) In special instances, cable television companies may be required to submit reports quarterly, monthly or at any other interval as directed by the Board or Office.

(b) Cable television companies shall promptly report to the Office details of all accidents involving a death or serious injury.

### 14:18-7.3 Other filings

(a) All cable television companies shall file with the Office copies of any executed pole attachment agreements and amendments thereto.

(b) Each CATV company shall file with the Office and keep current a list of names, addresses and telephone numbers of responsible officials to be contacted in connection with routine matters during normal working hours.

(c) Each CATV company shall also furnish to the Office and keep current a list of names, addresses and telephone numbers of responsible officials who may be contacted in event of emergency during other than normal working hours.

(d) Each cable television company shall file with the Board, and keep open to public inspection, tariffs applicable to the services available, pursuant to the provisions of N.J.S.A. 48:5A-1 et seq., as applicable, with revised sheets to reflect any changes.

(e) Each cable television company shall file with the Office of Cable Television a copy of any FCC document required to be kept locally by N.J.A.C. 14:18-6.2(c).

### 14:18-7.4 Notification of system rebuilds, upgrades, hub and headend relocations

(a) A cable television company shall provide at least 30 days' written notification to the Office prior to any system rebuild, upgrade, headend or hub relocation, and/or significant changes in system design as described in the company's initial filing for certificate of approval or renewal thereof.

1. Notice of significant system design changes shall be accompanied by new theoretical system performance specifications.

2. Notice of headend or hub relocation shall include new signal surveys for off-air channels and other appropriate satellite or microwave surveys.

## SUBCHAPTER 9. TESTING OF SERVICE

### 14:18-9.1 Equipment for testing

(a) A list of testing equipment by which system performance tests may be conducted pursuant to the rules now promulgated or which may be promulgated by the FCC or the Office and the location of such equipment shall be kept on file at the local cable company office. Such equipment shall be available, upon reasonable request by the Office, for such additional or special tests as may be required.

### 14:18-9.2 Proof of performance

(a) Each cable television company shall be required to conduct annual tests to show compliance with FCC technical standards of 47 C.F.R. §76.605 (a)(1) through (a)(10).

(b) These tests shall be conducted and filed with the Office prior to the closing of each calendar year.

(c) The tests shall be submitted in a form suitable for analysis by the Office and shall reflect the actual operating condition of the system at not fewer than three locations at the extremities of the system.

### 14:18-10.2 FCC Standards

Every [CATV] cable television system providing [Class I and Class II] cable television [channel] service shall be required to do so in accordance with the technical standards specified in the FCC rules and regulations, Part 76, Subpart K[, Section 76.605].

### [14:18-10.3 Additional technical standards

In addition to the requirements set forth in Section 1 (Scope) of this Subchapter, the following shall apply to the carriage of Class I and Class II cable television channels or system operating in the State of New Jersey.

### 14:18-10.4 FM (Broadcasting) signal level

(a) FM (Broadcasting) signal level between 88 and 108 MHz shall be maintained between 100 microvolts and 500 microvolts across 75 ohms (-20 to -6 DB MV), except that if the system carries TV channel six.

(b) FM radio carriers transmitted between 88 MHz and 90 MHz shall be maintained at least ten decibels below the level of the Channel six visual carrier.

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## 14:18-10.5 System carrier to noise ratio

System carrier to noise ratio for each Class I channel on which a signal is delivered to subscribers within that signal's Grade B contour, or which was originally received within its Grade B contour, and for each Class II channel shall be not less than 40db.

## 14:18-10.6 Cross modulation

Section 76.605(a)(10) of the FCC rules shall be construed to mean that cross modulation as defined and measured in accordance with NCPA-002-0267 shall be at least 46 decibels below the desired visual carrier level in each Class I or Class II channel.

## 14:18-10.7 Converters

Section 76.605(a)(2) of the FCC rules shall be interpreted to require that in those systems that supply subscribers with a converter, the specified visual carrier frequency be maintained at the input to such converter.

## 14:18-10.8 Requirements for subscriber terminal interface channel conversion devices

(a) The following requirements apply to any subscriber terminal interface channel conversion device, including set-top converters or block converters, supplied to subscribers in order to facilitate delivery of cable television channels:

1. The difference between input and output frequency shall not change more than  $\pm 250$  KHz between 30 seconds and one hour after being first turned on in an ambient temperature environment of about 70 degrees, Fahrenheit.

2. No converter shall be used with cable television systems in the State of New Jersey which develop more than 25 microvolts (-32DBMV) signal level at the input terminal when properly matched, with the output terminated at any frequency between 50 MHz and 300 MHz due to local oscillator leakage.]

## 14:18-[10.9]10.3 Requirements for Class II, Class III and Class IV channels

[Pending further technological developments.] **Class II, Class III [or] and Class IV** cable television channels shall be transmitted without material degradation and without objectionable interference to reception of Class I [or Class II] channels [(within the limitation imposed by the technical state of the art)].

## 14:18-[10.10]10.4 Initial performance tests for new builds, extensions, and substantial reconstructions

(a) Within 60 days of the commencement of service to **new segments** of subscribers on any portion of a new cable television system or on any extension of such system or on any substantial reconstruction or extension of a cable television system on which operations commenced on or after April 15, 1973, technical performance tests shall be conducted by the system operator directed at determining the extent to which the system complies with the technical standards set forth in [Section 1, 2, and 3 of this Subchapter] N.J.A.C. **14:18-10.1, 10.2 and 10.3.**

[(b) The initial performance tests shall be conducted, as appropriate, in accordance with the following schedule of test location:

1. At 50 subscriber terminals or five percent of the total potential subscriber terminals, whichever is smaller, selected at random (Note: Subscriber tap ports may be tested in lieu of subscriber terminals, provided that appropriate data is included to relate such measurements to system performance as viewed from a subscriber terminal.).

2. When subscriber tapoff devices are not installed as part of the initial system construction, the following schedule shall apply to trunk and distribution test points provided it can be demonstrated that the specifications herein would be met at the tapoff ports for subscriber terminals when installed:

i. At or near the extremity of each main trunk cable and each branch trunk of equivalent cascade provided that these points substantially represent the section under test.

ii. At or near the extremity of a random sample of at least one feeder line for each 50 strand miles, but in no case fewer than five feeders in each system or hub distribution area.

3. At least one per cent of all converter interface devices of each particular make and model supplied to subscribers shall be tested in the laboratory before installation.

4. In the event the measure performance at ten per cent or more of the sample locations selected in accordance with N.J.A.C. 14:18-10.10(b)1, 2 or 3 fails to comply with the technical standards set forth herein, additional samples shall be selected at random, and after corrective steps have been taken throughout the system to assure compliance, shall be tested until the number of consecutive locations found to be in compliance equals the designated sample size.

5. In the event the measure performance at ten per cent or less of the sample locations in accordance with paragraphs 1. or 2. of this subsection fails to comply with the technical standards set forth herein, corrective measures upon the faulty portion of the sample shall be required with consecutive retesting until the entire sample is found to be in compliance with the technical standards set forth herein.

6. The tests specified in Section 9 (Requirements for Class III and Class IV channels) of this Subchapter at all monitor check points shall be made at the time of the initial performance tests to serve as reference guides for subsequent monitor point observations.]

[(c)](b) The engineer or technician responsible for conducting the tests shall determine the methods to be used and the specific characteristics to be measured at each location with respect to the relevant technical standards set forth or referenced herein and shall develop the forms to be used for reporting purposes.

[(d)](c) The report on initial performance measurements shall be [submitted to the Office of Cable Television, where it will be available for public inspection] **kept on file with the cable company for a period of two years in a manner suitable for inspection by the Office.**

[(e) In addition to the test in this Section to prove initial performance, the signal level on all active Class I and Class II channels shall be measured at subscriber's terminals at not fewer than 20 per cent of all new installations within 6 days of such installation. The data should be recorded and filed at the local office. These measurements may be made by any system employee trained in the proper use of the Signal Level Meter.]

## [14:18-10.11 Annual tests to determine the extent of compliance

(a) Annual tests required by Section 76.601(c) of FCC rules shall be extended to include the additional technical standards set forth in Section 4 through 7 of this Subchapter.

(b) The monitor check points shall be recorded by measurements of system carrier to noise ratio and the amplitude of coherent disturbances at the time of the annual tests required by FCC.

(c) The report on annual measurements shall be filed with the Office of Cable Television.]

## 14:18-[10.12]10.5 Monitor point tests

(a) (No change in text.)

(b) The following date shall be collected at each monitor point at least once each calendar month, at intervals not to exceed 40 days:

1. Signal levels of each [Class I or Class II] **visual and aural** carrier and all pilot carriers, if any.

2. Signal carrier to noise ratio at not fewer than three frequencies within the pass-band of the system. This measurement should be performed without interrupting service to subscriber [and may be made by tuning the meter away from the carrier to a nearby guard band or vacant channel, provided that the measurement must always be made in the same manner].

3. (No change.)

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

[14:18-10.13] [Special provisions for older systems and for small systems] **14:18-10.6 Additional tests to ensure compliance**

[(a) Cable television systems in the State of New Jersey which have been granted a certificate of approval based upon the fact that they were legally operating, constructing, or extending their system prior to December 15, 1972, shall be required to comply with the technical performance standards and measurement procedures set forth herein in accordance with the following schedule:

1. Compliance with all provisions of Section 4 through 7 of this Subchapter will be required within five years of the issuance date of the certificate of approval.

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2. Testing of initial performance set forth in Section 10 of (Initial performance tests) this Subchapter will be required within 60 days following completion of substantial rebuilding or extension of any existing system commenced after December 15, 1972.

3. The monitor check points shall be designated and monthly observations commenced before one year of the issuance date of the certificate of approval.]

[4] The Office of Cable Television may request certain specific tests at any time and, where necessary and feasible, [may order earlier compliance with specific technical performance standards] to show compliance with this subchapter.

### 14:18-11.19 Acceptance by company

[a] Any company receiving a municipal consent to operate a cable television system shall, within 10 days of final passage, accept in writing the terms and conditions of the consent.]

(a) The municipality shall serve the applicant with a copy of the consent ordinance within two working days after a final vote upon second reading of the ordinance.

(b) A cable television company must accept the consent ordinance, and its terms and conditions, within 10 days of service.

### 14:18-12.1 Filing for a certificate of approval

(a) (No change.)

(b) A petition for a certificate of approval filed pursuant to N.J.S.A. 48:5A-[11]17(d) (Arbitrary Refusal) shall:

1. [be] Be filed within 30 days of the date of [adoption] service of a final ordinance by a municipality[, or where] in accordance with N.J.A.C. 14:18-11.19; and

2. Be served upon the clerk of the respondent municipality; and

3. Where failure to act is alleged as arbitrary refusal, be filed within 30 days of the appropriate statutory deadline.

(c) A municipality contesting the petition shall then have 20 days in which to file an answer to the petition.

### 14:18-13.1 Initiation of renewal process

(a) (No change.)

[(b) Renewal of Certificates of Approval expiring prior to 31 months from January 20, 1987 for which no proceeding has commenced as of January 20, 1987 shall be initiated either by:

1. Filing a notice pursuant to (a)(1) above within 30 days of January 20, 1987; or

2. If no such notice is filed within 30 days of the date, by filing a municipal consent application.]

### 14:18-13.2 Optional pre-proposal phase

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

(e) A municipality which has begun the ascertainment process and determines not to issue a report shall promptly notify the Office in writing stating the reasons therefor.

(f) This subsection authorizes a municipality to conduct the ascertainment proceeding, consistent with these rules, the record and report for which may be used in lieu of one conducted by the Board.

### 14:18-13.3 Municipal consent

(a) The operator shall file for a municipal consent in the following manner:

1. (No change.)

[2. If consent is being sought under 14:18-13.1(a)(2), the cable operator shall file for a municipal consent within nine months prior to the expiration of the Certificate of Approval or within 90 days of the effective date of this regulation, whichever is later.]

[3.]2. If the municipality fails to issue a report at least 12 months prior to the expiration of the certificate of approval, the operator shall file for municipal consent [within] no later than nine months [of] prior to the expiration of the certificate of approval.

(b) (No change.)

### 14:18-13.7 Hearing before an Administrative Law Judge

(a) (No change.)

(b) At least one hearing for public comment shall be held in the affected municipality.

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### [14:18-14.5 Notice of rate change

(a) If the rates and charges of a cable operator are not subject to prior approval by the Board:

1. A cable TV company implementing a change in its rates shall file with the Office revised tariff sheets reflecting any rate changes at least 35 days prior to the effective date.

2. Each cable TV company shall individually notify, in writing, its subscribers and affected municipalities of a rate change at least 30 days prior to the effective date, with a copy of the notice to the Office.]

### [14:18-14.6 Notice of alteration in channel allocation

(a) Each cable TV company shall file with the Office written notice of an alteration in channel allocation, on a form prescribed by the Director, at least 35 days prior to the effective date.

(b) Each cable TV company shall notify its subscribers and affected municipalities of an alteration in channel allocation at least 30 days prior to the effective date in a manner reasonably calculated to provide such information.

(c) When timely notice pursuant to this section cannot be met because of factors beyond the cable operator's control, the operator shall provide the earliest possible notice.]

Recodify existing 14:18-14.7 and 14.8 as 14:18-14.5 and 14.6 (No change in text.)

## APPENDIX A

### LIST OF FORMS

Form CATV-1

Form CATV-2

Form F99

Form 100

Channel Allocation Form

Cable Facts Questionnaire

Line Extension Policy Form

## TRANSPORTATION

### (a)

### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

### BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

#### Speed Limits

**Routes U.S. 322 in Gloucester and Atlantic Counties; N.J. 182 in Warren County; N.J. 49 in Cumberland County, and N.J. 284 in Sussex County**

**Proposed Amendments: N.J.A.C. 16:28-1.20, 1.37, 1.81, and 1.105**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1990-228.

Submit comments by June 6, 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 revise "speed limit" zones along Routes U.S. 322 in the Borough of Glassboro, Townships of Logan, Woolwich, Harrison and Monroe, Gloucester County, and Folsom Borough, and Hamilton Township, Atlantic County; N.J. 182 in the Town of Hackensack, Warren County; N.J. 49 in the Borough of Shiloh, City of Millville, Townships of Stow Creek, Hopewell, Fairfield and Maurice River, Cumberland County; the City of Estell Manor, Atlantic County and Upper Township, Cape May County; N.J. 284 in Sussex Borough

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and Wantage Township, Sussex County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Some speed limits have been changed; however, the primary focus of the amendments is the clear specification of zones, using milepost markers, organized by municipality. These changes will make the requirements more clear to the regulated public and to those responsible for enforcing the rules.

As part of a review of current conditions and in the interest of safety, the Department's Bureau of Traffic Engineering and Safety Programs conducted traffic investigations. The investigations proved that the revisions of current "speed limit" zones along Routes U.S. 322 in Gloucester and Atlantic Counties; N.J. 182 in Warren County; N.J. 49 in Cumberland, Atlantic and Cape May Counties and N.J. 284 in Sussex County were warranted.

The Department therefore proposes amendments to N.J.A.C. 16:28-1.20, 1.37, 1.81, and 1.105, based upon the traffic investigations.

**Social Impact**

The proposed amendments will revise "speed limit" zones along Routes U.S. 322 in Gloucester and Atlantic Counties; N.J. 182 in Warren County; N.J. 49 in Cumberland, Atlantic and Cape May Counties; and N.J. 284 in Sussex County for the safe and efficient flow of traffic, the enhancement of safety, and the well-being of the populace. The amendments will primarily clarify the requirements imposed upon the regulated public. Reference to Route 84 has been changed for clarity, since the Department designation has been Route 284 for a number of years, and this change will prevent any confusion. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for installation of speed limit signs. Speed limit signs will each cost, approximately, \$117.00 for planning, engineering and installation, and approximately \$7.00 per square foot for the fabrication of the sign. Motorists who violate the rules will be assessed the appropriate fine, in accordance with the "Statewide Violations Bureau Schedule," issued pursuant to New Jersey Court Rule 7:7-3.

**Regulatory Flexibility Statement**

The proposed amendments do not place any reporting, record keeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendments primarily affect the motoring public and the governmental entities responsible for enforcement of the rules.

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

16:28-1.20 Route U.S. 322

(a) The rate of speed designated for the certain part of State highway Route [US] U.S. 322 described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed: [thereat:]

1. For both directions of traffic:

- i. Fifty mph from the westerly end of the route to the intersection of Route US 130 in Logan Township; thence
- ii. Thirty-five mph to a point 400 feet east of the center line of Mechanic Street; thence
- iii. Fifty mph to the westerly intersection of Route 45 in Harrison Township;
- iv. Thirty-five mph from the easterly intersection of Route 45 to a point 900 feet east of the bridge over Raccoon Creek; thence
- v. Fifty mph to the intersection of Barnsboro-Elmer Road; thence
- vi. Forty mph to the intersection of Richwood-Aura Road; thence
- vii. Forty-five mph to a point 250 feet west of the center line of Harvard Road in the Borough of Glassboro; thence
- viii. Thirty-five mph to a point 550 feet east of the center line of Reading Street; thence
- ix. Forty-five mph to the intersection of Curtis Avenue in Monroe Township; thence
- x. Thirty-five mph to the intersection of Route 42; thence
- xi. Fifty mph to a point 750 feet east of the center line of Walnut Street; thence
- xii. Fifty-five mph to the intersection of Route US 40 in Hamilton Township.

(b) The rate of speed designated for the certain part of State highway route number US 322 described in this section shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

- i. 50 miles per hour from the westerly end of the route to a point 400 feet east of the intersection of Route US 130 in Bridgeport; thence
- ii. 35 miles per hour to the overpass at the Penns Grove Branch of the Pennsylvania-Reading Seashore railroad crossing; thence
- iii. 50 miles per hour to the westerly intersection of Route 45 at Mullica Hill; thence
- iv. 35 miles per hour from the easterly intersection of Route 45 at Mullica Hill, to a point 400 feet east of the bridge over Raccoon Creek, a distance of approximately 1,600 feet; thence
- v. 50 miles per hour to the intersection of the Barnsboro-Elmer Road at Richwood; thence
- vi. 40 miles per hour to the intersection of the Richwood-Aura Road; thence
- vii. 45 miles per hour to a point 400 feet west of Whitney Avenue at Glassboro; thence
- viii. 35 miles per hour to a point 400 feet east of Reading Street; thence
- ix. 45 miles per hour to a point 800 feet west of the intersection of the Woods Corner-Williamstown Road at Williamstown; thence
- x. 35 miles per hour to the intersection of Route 42; thence
- xi. 50 miles per hour to a point 500 feet south of Walnut Street, Williamstown; thence
- xii. 55 miles per hour to the intersection of Route US 40 at McKee City;
- xiii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

**i. In Gloucester County:**

**(1) Logan Township:**

**(A) 50 miles per hour between the Delaware River Port Authority-New Jersey Department of Transportation jurisdiction line and the Woolwich Township-Logan Township Line (approximate mileposts 2.25 to 4.83); thence**

**(2) Woolwich Township:**

**(A) 50 miles per hour between the Logan Township-Woolwich Township line and the Woolwich Township-Harrison Township line (approximate mileposts 4.83 to 8.46); thence**

**(3) Harrison Township:**

**(A) Zone 1: 50 miles per hour between the Harrison Township-Woolwich Township line and the westernmost intersection of Route N.J. 45 (approximate mileposts 8.46 to 10.85); thence on Route N.J. 45 (between mileposts 10.85 to 11.24); thence**

**(B) Zone 2: 30 miles per hour between the easternmost intersection of Route N.J. 45 and the intersection of Mill Road-Mullica Hill Road (approximate mileposts 11.24 to 11.39); thence**

**(C) Zone 3: 35 miles per hour between the intersection of Mill Road-Mullica Hill Road and 250 feet west of Hazelton Terrace (approximate mileposts 11.39 to 11.67); thence**

**(D) Zone 4: 50 miles per hour between 250 feet west of Hazelton Terrace and 1,050 feet west of Barnsboro-Elmer Road—(Co. Rd. 609) (approximate mileposts 11.67 to 14.35); thence**

**(E) Zone 5: 40 miles per hour between 1,050 feet west of Barnsboro-Elmer Road (Co. Rd. 609) and Richwood-Aura Road (Co. Rd. 667) (approximate mileposts 14.35 to 14.86); thence**

**(F) Zone 6: 50 miles per hour between Richwood-Aura Road (Co. Rd. 667) and 2,750 feet east of Route N.J. 55 (approximate mileposts 14.86 to 15.93); thence**

**(G) Zone 7: 45 miles per hour between 2,750 feet east of Route N.J. 55 and the Harrison Township-Glassboro Borough line (approximate mileposts 15.93 to 16.10); thence**

**(4) Glassboro Borough:**

**(A) Zone 1: 45 miles per hour between the Glassboro Borough-Harrison Township line and 500 feet west of Lehigh Road (approximate mileposts 16.10 to 16.63); thence**

**(B) Zone 2: 35 miles per hour between 500 feet west of Lehigh Road and Cedar Avenue (approximate mileposts 16.63 to 17.57); thence**

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(C) **Zone 3: 30 miles per hour between Cedar Avenue and the westernmost intersection of Route N.J. 47 (approximate mileposts 17.57 to 17.85); thence, on Route 47 (between mileposts 17.85 to 18.22) thence**

(D) **Zone 4: 35 miles per hour between the easternmost intersection of Route N.J. 47 and 600 feet east of Reading Street (approximate mileposts 18.22 to 18.53); thence**

(E) **Zone 5: 45 miles per hour between 600 feet east of Reading Street and the Monroe Township-Glassboro Borough line (approximate mileposts 18.53 to 19.30); thence**

**(5) Monroe Township:**

(A) **Zone 1: 45 miles per hour between the Glassboro Borough-Monroe Township line and Debra Drive (approximate mileposts 19.30 to 23.92); thence**

(B) **Zone 2: 35 miles per hour between Debra Drive and Clayton Avenue (approximate mileposts 23.92 to 24.23); thence**

(C) **Zone 3: 30 miles per hour between Clayton Avenue and Route N.J. 42 (approximate mileposts 24.23 to 24.59); thence**

(D) **Zone 4: 50 miles per hour between Route N.J. 42 and 800 feet east of Main Street (Co. Rd. 536) (approximate mileposts 24.59 to 25.87); thence**

(E) **Zone 5: 55 miles per hour 800 feet east of Main Street (Co. Rd. 536) and the Folsom Borough-Monroe Township line (approximate mileposts 25.87 to 32.96); thence**

**ii. In Atlantic County:**

**(1) Folsom Borough:**

(A) **55 miles per hour between the Monroe Township-Folsom Borough line and the Folsom Borough-Hamilton Township line (approximate mileposts 32.96 to 37.22); thence**

**(2) Hamilton Township:**

(A) **55 miles per hour between the Folsom Borough-Hamilton Township line and Route U.S. 40 (approximate mileposts 37.22 to 50.10).**

**16:28-1.37 Route 182**

(a) The rate of speed designated for the certain part of State highway [route number] **Route 182** described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed: [thereat:]

**1. For both directions of traffic:**

[i. 40 miles per hour for the entire length of the route.]

**i. In the Town of Hackettstown, Warren County:**

(1) **40 miles per hour between Route N.J. 57 and Route U.S. 46 (approximate mileposts 0.00 to 0.98).**

**16:28-1.81 Route 49**

(a) The rate of speed designated for the certain parts of State highway Route 49 described in this subsection shall be established and adopted as the maximum legal rate of speed:

**1. For both directions of traffic [:] in Salem County:**

i.-iii. (No change.)

[(b) The rate of speed designated for the certain parts of State highway Route 49 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

**1. For both directions of traffic:**

i. 50 miles per hour from the Salem County-Cumberland County corporate line, through Stow Creek Township to a point 1,200 feet south of the Stow Creek Township-Shiloh Borough Corporate line;

ii. 40 miles per hour from a point 1,200 feet south of the Stow Creek Township-Shiloh Borough corporate line to a point 410 feet east of the center of Academy Street in Shiloh Borough:

(1) Except 30 mph for the Shiloh Elementary School zone during recess or while children are going to or leaving school, during opening or closing hours.

iii. 50 miles per hour from a point 410 feet east of the center of Academy Street, through Hopewell Township and continuing to the City of Bridgeton-Hopewell Township corporate line;

iv. 40 miles per hour from the Hopewell Township-City of Bridgeton corporate line to a point 740 feet west of the center of West Avenue;

v. 30 miles per hour from a point 740 feet west of the center of West Avenue to a point 620 feet east of the center of Pearl Street;

vi. 40 miles per hour from a point 620 feet east of the center of Pearl Street to a point 670 feet east of the center of Coral Avenue;

vii. 45 miles per hour from a point 670 feet east of the center of Coral Avenue to the City of Bridgeton-Fairfield Township corporate line;

viii. 50 miles per hour from the City of Bridgeton-Fairfield Township corporate line to a point 1,110 feet west of the center of the Fairton-Woodruff Road;

ix. 45 miles per hour from a point 1,100 feet west of the center of the Fairton-Woodruff Road to a point 2,000 feet east of the center of the Joe Gould Road;

x. 50 miles per hour from a point 2,000 feet east of the center of the Joe Gould Road to a point 680 feet west of the center of Carmel Road, in the City of Millville;

xi. 40 miles per hour from a point 680 feet west of the center of Carmel Road to a point 530 feet east of the center of Brown Street;

xii. 35 miles per hour from a point 530 feet west of the center of Brown Street to a point 350 feet east of the center of Brandriff Avenue;

xiii. 25 miles per hour from a point 350 feet east of the center of Brandriff Avenue to a point 40 feet east of the center of Sixth Street;

xiv. 35 miles per hour from a point 40 feet east of the center of Sixth Street to a point 120 feet west of the center of Twelfth Street;

xv. 40 miles per hour from a point 120 feet west of the center of Twelfth Street to a point 400 feet east of the center of Leaming Mill Road;

xvi. 50 miles per hour from a point 400 feet east of the Leaming Mill Road to, and through, Maurice River Township to the Cumberland County-Cape May County-Atlantic County corporate line;

xvii. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

**2. For both directions of traffic in Cumberland County:**

**i. Stow Creek Township:**

(1) **50 miles per hour between Quinton Township (Salem County) line and Hopewell Township northwesterly line (approximate mileposts 18.78 to 20.56);**

**ii. Shiloh Borough:**

(1) **Zone 1: 50 miles per hour between Hopewell Township-Stow Creek Township easterly line and 609 feet east of Mill Road (approximate mileposts 20.94 to 21.029); thence**

(2) **Zone 2: 40 miles per hour between 609 feet east of Mill Road and Davis Avenue (approximate mileposts 21.029 to 21.258); thence**

(3) **Zone 3: 30 miles per hour between Davis Avenue and 265 feet east of Walnut Street except for 25 miles per hour when passing through the Shiloh Elementary School Zone (approximate milepost 21.60) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 21.258 to 21.685); thence**

(4) **Zone 4: 40 miles per hour between 265 feet east of Walnut Street and Maple Street (approximate mileposts 21.685 to 21.865); thence**

(5) **Zone 5: 50 miles per hour between Maple Avenue and Hopewell Township westerly line (approximate mileposts 21.865 to 22.038); thence**

**iii. In Hopewell Township:**

(1) **50 miles per hour between the Borough of Shiloh easterly line and Stell Road (approximate mileposts 22.03 to 24.03); thence**

(2) **40 miles per hour between Stell Road and City of Bridgeton westerly line (approximate mileposts 24.03 to 24.52); thence**

**iv. In the City of Bridgeton:**

(1) **Zone 1: 40 miles per hour between Hopewell Township easterly line and 830 feet west of West Avenue (approximate mileposts 24.52 to 24.71); thence**

(2) **Zone 2: 30 miles per hour between 830 feet west of West Avenue and Bank Street Extension except for 25 miles per hour when passing through the Bridgeton Middle School Zone (mileposts 24.868 to 25.057) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (approximate mileposts 24.71 to 25.75); thence**

(3) **Zone 3: 40 miles per hour between Bank Street Extension and Ramblewood Drive (approximate mileposts 25.75 to 26.63); thence**

(4) **Zone 4: 45 miles per hour between Ramblewood Drive and Fairfield Township westerly line (approximate mileposts 26.63 to 27.20); thence**

v. In Fairfield Township:

(1) Zone 1: 50 miles per hour between City of Bridgeton easterly line and Gouldtown-Woodruff Road (County Rd. 553) (approximate mileposts 27.20 to 28.31); thence

(2) Zone 2: 45 miles per hour between Gouldtown-Woodruff Road and 1,155 feet east of Gould Avenue except for 30 miles per hour when passing through the Gouldtown School Zone (mileposts 28.351 to 28.505) while "30 MPH when flashing" signs are operating while children are going to or leaving school, during opening or closing hours (approximate mileposts 28.31 to 29.00); thence

(3) Zone 3: 50 miles per hour between 1,155 feet east of Gould Avenue and the City of Millville easterly line (approximate mileposts 29.00 to 30.80); thence

vi. In the City of Millville:

(1) Zone 1: 50 miles per hour between the Township of Fairfield easterly line and Carol Drive (approximate mileposts 30.80 to 34.762); thence

(2) Zone 2: 40 miles per hour between Carol Drive and Sharp Street (Co. Rd. 667) (approximate mileposts 34.762 to 35.335); thence

(3) Zone 3: 35 miles per hour between Sharp Street and Brandriff Avenue (Co. Rd. 610) (approximate mileposts 35.335 to 36.022); thence

(4) Zone 4: 25 miles per hour between Brandriff Avenue and Seventh Street (approximate mileposts 36.022 to 36.784); thence

(5) Zone 5: 35 miles per hour between Seventh Street and Fifteenth Street (approximate mileposts 36.784 to 37.299); thence

(6) Zone 6: 50 miles per hour between Fifteenth Street and the City of Vineland-Township of Maurice River westerly line (approximate mileposts 37.299 to 40.89); thence

vii. In Maurice River Township:

(1) 50 miles per hour between the City of Millville-City of Vineland easterly line and the Township of Upper (Cape May County) south westerly line (approximate mileposts 40.89 to 47.18).

3. For both directions of traffic in Atlantic County:

i. In the City of Estell Manor:

(1) 50 miles per hour between the Township of Maurice River (Cumberland County)-Township of Upper (Cape May County) easterly line and the Township of Upper (Cape May County) westerly line (approximate mileposts 47.26 to 49.84); thence

4. For both directions of traffic in Cape May County:

i. In the Township of Upper:

(1) 50 miles per hour between the City of Estell Manor (Atlantic County) easterly line and Route N.J. 50 (approximate mileposts 49.84 to 53.78).

5. For the eastbound direction of traffic:

i. In Cumberland County:

(1) In Stow Creek Township:

(A) 50 miles per hour between the Hopewell Township northwesterly line and Shiloh Borough westerly line (Mill Road) (approximate mileposts 20.56 to 20.94).

ii. In Cape May County:

(1) In the Township of Upper:

(A) 50 miles per hour between the Township of Maurice River (Cumberland County) southeasterly line and the City of Estell Manor (Atlantic County) westerly line (approximate mileposts 47.18 to 47.26).

6. For the westbound direction of traffic:

i. In Cumberland County:

(1) In Hopewell Township:

(A) 50 miles per hour between the Township of Stow Creek north-easterly line and the Borough of Shiloh westerly line (approximate mileposts 20.56 to 20.94).

(2) In Maurice River Township:

(A) 50 miles per hour between the Township of Upper (Cape May County) southwesterly line and the City of Estell Manor (Atlantic County) westerly line (approximate mileposts 47.18 to 47.26).

16:28-1.105 Route [84] 284

(a) The rate of speed designated for the certain part of State highway [route number] **Route [84] 284** described in this [section] subsection shall be [and hereby is] established and adopted as the maximum legal rate of speed: [thereat:]

1. For both directions of traffic[:] in Sussex County:

[i. 30 miles per hour from Route 23 to the intersection of Liberty Street; thence

ii. 35 miles per hour to a point 450 feet north of the intersection of Burns Parkway; thence

iii. 50 miles per hour to the New York State line;

iv. The legal speed limits through school zones shall be subject to the provisions of Title 39:4-98(a) of the Revised Statutes.]

i. Sussex Borough:

(1) 30 miles per hour between Route N.J. 23 and the Wantage Township southerly line (approximate mileposts 0.00 to 0.54); thence

ii. Wantage Township:

(1) Zone 1: 35 miles per hour between the Sussex Borough northerly line and a point 1,180 feet north of Division Street (approximate mileposts 0.54 to 0.739); thence

(2) Zone 2: 50 miles per hour between a point 1,180 feet north of Division Street and the New York State line (approximate mileposts 0.739 to 7.05).

(a)

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits for State Highways  
Route U.S. 30 in Camden County**

**Proposed Amendment: N.J.A.C. 16:28-1.57**

Authorized By: John F. Dunn, Jr., Director Division of Traffic Engineering and Local Aid, Department of Transportation.  
Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.  
Proposal Number: PRN 1990-211.

Submit comments by June 6, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments will revise "speed limit" zones along Route U.S. 30 in the City of Camden; Townships of Pennsauken, Haddon, Waterford and Winslow; Boroughs of Collingswood; Oaklyn; Audubon; Haddon Heights; Barrington; Lawnsdale, Magnolia; Somerdale; Stratford; Laurel Springs; Lindenwold; Clementon; Berlin and Chesilhurst, Camden County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Some speed limits have been changed; however, the primary focus of the amendments is the clear specification of zones, using milepost markers, organized by municipality. These changes will make the requirements more clear to the regulated public and to those responsible for enforcing the rules.

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 "speed limit" zones along Route U.S. 30 in Camden County were warranted.

The Department therefore proposes to amend N.J.A.C. 16:28-1.5, concerning Route U.S. 30 in Camden County, based upon the requests from the local governments and the traffic investigations.

**Social Impact**

The proposed amendments will revise "speed limit" zones along Route U.S. 30 in the City of Camden; Townships of Pennsauken; Haddon; Waterford and Winslow; Boroughs of Collingswood; Oaklyn; Audubon; Haddon Heights; Barrington; Lawnsdale; Magnolia; Somerdale; Stratford; Laurel Springs; Lindenwold; Clementon; Berlin and Chesilhurst; Camden County for the safe and efficient flow of traffic, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department and local governments will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zones signs. Motorists who violate the rules will be assessed the appropriate fine, pursuant to law.

**Regulatory Flexibility Statement**

The proposed amendments do not place any bookkeeping, record keeping, or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public and the governmental entities responsible for the enforcement of these rules.

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

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this subsection shall be established and adopted as the maximum legal rate of speed.

1. For both directions of traffic:

i. (No change.)

ii. In Camden County:

[1] 45 miles per hour from the intersection of 7th Street in the City of Camden to the intersection of Routes U.S. 130-38, Pennsauken Township; thence

(2) 40 miles per hour from the intersection of Route U.S. 130 to the intersection of West Beechwood Avenue, Oaklyn Borough; thence

(3) 30 miles per hour to the intersection of Merchant Street, Audubon Borough; thence

(4) 40 miles per hour to a point 1,800 feet east of the center line of Route 295 overpass, Barrington Borough; thence

(5) 45 miles per hour to a point 330 feet east of the center line of Clementon Road, Berlin Borough; thence

(A) In Somerdale Borough:

(I) 30 miles per hour school speed limit within the Our Lady of Grace Church school zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours.

(6) 35 miles per hour to a point 200 feet east of the center line of Washington Street, Berlin Borough; thence

(7) 50 miles per hour to a point 100 feet east of the center line of Norris Street, Waterford Township; thence

(8) 55 miles per hour to the Camden-Atlantic County lines (milepost 30.72); thence

(9) In Lindenwold and Laurel Springs Boroughs:

(A) 30 miles per hour school speed zone within the Lindenwold School No. 1 zone, St. Lawrence Parochial School Zone and the Overbrook Junior High School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening and closing hours, between 125 feet east of Summit Avenue (approximate milepost 46.05) and 300 feet east of Whitehorse Avenue (approximate milepost 45.55).]

(1) In the City of Camden:

(A) 45 miles per hour between 7th Street and the Pennsauken Township westerly line (mileposts 0.96 to 2.77); thence

(B) 45 miles per hour between the Pennsauken Township easterly line and the Collingswood Borough westerly line (mileposts 3.63 to 3.81).

(2) In Pennsauken Township:

(A) 45 miles per hour between the City of Camden easterly line and the City of Camden westerly line (mileposts 2.77 to 3.63).

(3) In Collingswood Borough:

(A) Zone 1: 45 miles per hour between the City of Camden westerly line and Collingswood circle (mileposts 3.81 to 4.26); thence

(B) Zone 2: 40 miles per hour between the Collingswood circle and the Borough of Oaklyn westerly line (mileposts 4.26 to 5.13); thence

(4) In Oaklyn Borough:

(A) Zone 1: 40 miles per hour between the Borough of Collingswood easterly line and West Beechwood Avenue (mileposts 5.13 to 5.24); thence

(B) Zone 2: 30 miles per hour between West Beechwood Avenue and the Township of Haddon northwesterly line (mileposts 5.24 to 5.50); thence

(5) In Audubon Borough:

(A) 30 miles per hour between the Borough of Oaklyn southeasterly line and West Pine Street—East Pine Street (mileposts 6.06 to 6.55); thence

(B) Zone 2: 35 miles per hour between West Pine Street—East Pine Street and the Borough of Haddon Heights westerly line (mileposts 6.55 to 6.98); thence

(6) In Haddon Heights Borough:

(A) 35 miles per hour between the Borough of Audubon easterly line and the Borough of Barrington westerly line (mileposts 6.98 to 7.90); thence

(7) In Barrington Borough:

(A) 35 miles per hour between the Borough of Haddon Heights easterly line and the Borough of Lawnside northwesterly line (mileposts 7.90 to 8.26).

(8) In Lawnside Borough:

(A) 35 miles per hour between the Borough of Barrington southeasterly line and Mouldy Road (mileposts 8.35 to 8.46); thence

(B) Zone 2: 40 miles per hour between Mouldy Road and the Borough of Magnolia westerly line (mileposts 8.46 to 9.11); thence

(9) In Magnolia Borough:

(A) 40 miles per hour between the Borough of Lawnside easterly line and the Borough of Somerdale westerly line (mileposts 9.11 to 10.04); thence

(10) In Somerdale Borough:

(A) 40 miles per hour between the Borough of Magnolia easterly line and the Borough of Stratford southwesterly line, except for 30 miles per hour when passing through the Our Lady of Grace School zone (mileposts 10.50 to 10.57), during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 10.04 to 10.92).

(11) In Stratford Borough:

(A) 40 miles per hour between the Borough of Somerdale northwesterly line and the Borough of Lindenwold northwesterly line—Borough of Laurel Springs southwesterly line (mileposts 11.54 to 12.23).

(12) In Lindenwold Borough:

(A) 40 miles per hour between the Borough of Laurel Springs southeasterly line and the Borough of Clementon southwesterly line (Oak Lane), except for 30 miles per hour when passing through the Saint Lawrence Parochial School, Lindenwold #1 School and Overbrook Junior High School zones (mileposts 12.74 to 13.19) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 12.74 to 13.44).

(B) 45 miles per hour between the Borough of Clementon southeasterly line and the Borough of Berlin westerly line (mileposts 14.66 to 14.91).

(13) In Clementon Borough:

(A) 40 miles per hour between the Borough of Lindenwold northwesterly line and Trout Avenue (mileposts 13.53 to 13.85); thence

(B) Zone 2: 45 miles per hour between Trout Avenue and the Borough of Lindenwold northwesterly line (mileposts 13.85 to 14.29).

(14) In Berlin Borough:

(A) Zone 1: 45 miles per hour between the Borough of Lindenwold easterly line and Clementon-Berlin Road (Co. Rd. 534) (mileposts 14.94 to 16.29); thence

(B) Zone 2: 35 miles per hour between Clementon-Berlin Road (Co. Rd. 534) and Washington Avenue (mileposts 16.29 to 17.05); thence

(C) Zone 3: 45 miles per hour between Washington Avenue and Florence Avenue (mileposts 17.05 to 17.66); thence

(D) Zone 4: 50 miles per hour between Florence Avenue and the Township of Waterford westerly line (mileposts 17.66 to 18.25); thence

(15) In Waterford Township:

(A) 50 miles per hour between the Borough of Berlin easterly line and the Township of Winslow southwesterly line (mileposts 18.25 to 20.58).

**PROPOSALS**

Interested Persons see Inside Front Cover

**TRANSPORTATION**

- (16) In Chesilhurst Borough:
  - (A) 50 miles per hour between the Township of Waterford Township of Winslow easterly line and the Township of Winslow westerly line (mileposts 20.62 to 22.76); thence
- (17) In Winslow Township:
  - (A) 50 miles per hour between the Borough of Chesilhurst easterly line and the Town of Hammonton (Atlantic County) westerly line (mileposts 22.76 to 27.97).
- 2. For eastbound direction of traffic:
  - (i) In Camden County:
    - (1) In Oaklyn Borough:
      - (A) 30 miles per hour between the Township of Haddon north-westerly line and the Borough of Audubon westerly line (mileposts 5.50 to 6.06).
    - (2) In Barrington Borough:
      - (A) 35 miles per hour between the Borough of Lawnside north-westerly line and the Borough of Lawnside southwesterly line (mileposts 8.26 to 8.35).
    - (3) In Stratford Borough:
      - (A) 40 miles per hour between the Borough of Somerdale southeasterly line and the Borough of Somerdale northeasterly line (mileposts 10.92 to 11.54).
    - (4) In Laurel Springs Borough:
      - (A) 40 miles per hour between the Borough of Stratford easterly line and the Borough of Lindenwold southeasterly line except for 25 miles per hour when passing through the Saint Lawrence School zone (located in Lindenwold Borough) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 12.66 to 12.74), (mileposts 12.33 to 12.74).
    - (5) In Clementon Borough:
      - (A) Zone 1: 40 miles per hour between the Borough of Lindenwold southeasterly line and the Borough of Lindenwold northeasterly line (mileposts 13.44 to 13.53).
      - (B) 45 miles per hour between the Borough of Lindenwold north-westerly line and the Borough of Lindenwold southwesterly line (mileposts 14.29 to 14.66).
  - (6) In Winslow Township:
    - (A) 50 miles per hour between the Township of Waterford southeasterly line and the Borough of Chesilhurst westerly line (mileposts 20.58 to 20.62).
- 3. For westbound direction of traffic:
  - i. In Camden County:
    - (1) In Haddon Township:
      - (A) 30 miles per hour between the Borough of Collingswood north-easterly line and the Borough of Audubon northwesterly line (mileposts 5.50 to 5.92); thence
    - (2) In Audubon Borough:
      - (A) Zone 1: 30 miles per hour between the Township of Haddon north-easterly line and the Borough of Oaklyn southeasterly line (mileposts 5.92 to 6.06).
    - (3) In Lawnside Borough:
      - (A) Zone 1: 35 miles per hour between the Borough of Barrington north-easterly line and the Borough of Barrington southeasterly line (mileposts 8.26 to 8.35).
    - (4) In Somerdale Borough:
      - (B) 40 miles per hour between the Borough of Stratford south-westerly line and the Borough of Stratford northwesterly line (mileposts 10.92 to 11.54).
    - (5) In Lindenwold Borough:
      - (A) 40 miles per hour between the Borough of Stratford easterly line and the Borough of Laurel Springs southeasterly line except for 30 miles per hour when passing through the Saint Lawrence School Zone (mileposts 12.33 to 12.74) during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school, during opening or closing hours (mileposts 12.66 to 12.74).
      - (B) 40 miles per hour between the Borough of Clementon south-westerly line (Oak Lane) and the Borough of Clementon northwesterly line (Gibbsboro Road) (mileposts 13.44 to 13.53).

- (C) 45 miles per hour between the Borough of Clementon north-easterly line and the Borough of Clementon southeasterly line (mileposts 14.29 to 14.66).
- (6) In Waterford Township:
  - (A) 50 miles per hour between the Township of Winslow southeasterly line and the Borough of Chesilhurst westerly line (mileposts 20.58 to 20.62).

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Lane Usage  
Route U.S. 1 in Mercer County  
Proposed Amendment: N.J.A.C. 16:30-3.6**

Authorized By: John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-44, 27:7-21(i) and 39:4-6.

Proposal Number: PRN 1990-209.

Submit comments by June 6, 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 amendment will establish "cars only shoulder lanes" along Route U.S. 1 in the Townships of West Windsor and Plainsboro, Mercer County, for the safe and efficient flow of traffic, the reduction of traffic congestion and the well-being of the populace. Initiated by the Department of Transportation in the interest of reducing severe peak hour congestion and improving the overall operation and safety, the Department's Bureau of Traffic Engineering and Safety Programs analyzed traffic conditions and recommended the use of the shoulder lanes.

Effective September 22, 1989, the Department promulgated an emergency new rule concerning the use of the northbound shoulder on Route U.S. 1, which appeared at 21 N.J.R. 3317(a) and was permanently adopted at 22 N.J.R. 59(a). The implementation of this rule has proven to be very successful in the movement of morning rush hour traffic, by significantly reducing the average travel time and accidents in the area.

The Department therefore proposes to amend N.J.A.C. 16:30-3.6 extending use of the shoulder lane along Route U.S. 1 from Fisher Place to Scudders Mill Road.

**Social Impact**

The proposed amendment will establish increased shoulder lane usage along Route U.S. 1 in West Windsor and Plainsboro Townships, Mercer County, for the safe and efficient flow of traffic, the reduction of traffic congestion, the enhancement of safety and the well-being of the populace. Appropriate signs will be erected to advise the motoring public.

**Economic Impact**

The Department will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of signs advising the motoring public.

**Regulatory Flexibility Statement**

This proposed amendment does not place any bookkeeping, record keeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment primarily affects the motoring public.

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

## TRANSPORTATION

## PROPOSALS

### 16:30-3.6 Route U.S. 1

(a) The certain parts of State Highway Route U.S. 1 described in this subsection shall be designated and established as "cars only shoulder lanes" exclusively for the use of passenger vehicles only, except for the ingress and egress of vehicles to and from the various establishments in the area:

1. In the Township of West Windsor, Mercer County:

i. Northbound[-]:

(1) From a point 130 feet north of the curb line of the northbound jughandle (opposite the Nassau Park Driveway) to a point 290 feet north of the northerly curb line of Alexander Road; cars only may use shoulder from 7:00 A.M. to 9:00 A.M., Monday through Friday.

(2) From a point 180 feet north of the northerly curb line of Fisher Place to the Townships of West Windsor-Plainsboro corporate line; cars only may use shoulder from 7:00 A.M. to 9:00 A.M., Monday through Friday.

ii. (No change.)

2. In the Township of Plainsboro, Mercer County:

i. Northbound:

(a) From the Townships of West Windsor-Plainsboro corporate line to a point 1,400 feet north of the northerly curb line of Scudders Mill Road; cars only may use shoulder from 7:00 A.M. to 9:00 A.M., Monday through Friday.

## (a)

### DIVISION OF ROADWAY DESIGN BUREAU OF ROADWAY ENGINEERING SERVICES Newspaper Boxes on State Highway Right-of-Way Proposed New Rules: N.J.A.C. 16:41B

Authorized By: Robert A. Innocenzi, Acting Commissioner,  
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:1A-52, 27:7-21, and  
27:7-44.1.

Proposal Number: PRN 1990-208.

Submit comments by June 6, 1990 to:

Charles L. Meyers  
Administrative Practice Officer  
Department of Transportation  
CN 600  
Trenton, New Jersey 08625

The agency proposal follows:

#### Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:41B, Newspaper Boxes on State Highway Right-of-Way, expired on March 4, 1990; however, the rules are being proposed as new rules in their entirety as presently appearing in the New Jersey Administrative Code at N.J.A.C. 16:41B.

The rules have been reviewed by the staff of the Bureaus of Maintenance Support and Roadway Design and were found to be adequate, necessary and required for the purpose for which they were originally promulgated. Said rules were originally published at 16 N.J.R. 225(a) and adopted at 17 N.J.R. 608(c), and further amended at 20 N.J.R. 1178(a) and adopted at 20 N.J.R. 2087(a).

The chapter is summarized as follows:

N.J.A.C. 16:41B-1 provides definitions of words and terms used throughout the rules.

N.J.A.C. 16:41B-2 contains the permitting requirements for all news dispensers on the State highway rights-of-way.

N.J.A.C. 16:41B-3 provides for indemnification of the State by the news dispenser owners for all injuries and damage involving a news dispenser located on a State highway right-of-way.

N.J.A.C. 16:41B-4 sets forth the requirements for the location, installation and maintenance of news dispensers.

N.J.A.C. 16:41B-5 provides that continued placement, use and maintenance of a news dispenser is conditioned upon compliance with this chapter. The contents of a notice of non-compliance with this chapter are set forth along with a permittee's right to a post-notice meeting to discuss an alleged violation. The circumstances for revocation and the permittee's legal right of appeal therefrom are also delineated. Lastly, the

removal requirements for non-complying dispensers, either by the owner or, due to the owner's inaction, by the Department are set forth.

Unless the Department has an agreement with a local or county government transferring the authority to regulate news dispensers on the State's right-of-way to said local or county government, the regulation of news dispensers within the State's right-of-way shall be exclusively controlled by these rules.

The Department therefore proposes to adopt the expired text as new rules N.J.A.C. 16:41B, Newspaper Boxes on State Highway Right-of-Way.

#### Social Impact

The proposed new rules will continue in effect the prescribed standard guidelines and procedures for the placement of newspaper dispensers along the State highway right-of-way, resulting in the enhancement of traffic flow and safety along the highway system.

#### Economic Impact

The proposed new rules will continue to cause the Department to incur direct and indirect costs for personnel, for mileage and equipment requirements in the enforcement of the rules. The rules will also continue to affect local distributors who maintain newspaper dispensers along the State right-of-way, in that they may be required to relocate dispensers and pay permit fees and costs charged for the removal of dispensers by the Department personnel. Local businesses engaged in the sale of newspapers on premises will not be affected by the rules.

#### Regulatory Flexibility Analysis

The proposed new rules will continue the compliance requirements relating to permitting, location, installation and maintenance of news dispensers on newspaper and periodical publishers or other persons owning news dispensers on the State highway right-of-way. Some of these owners may be small businesses as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Beyond maintenance, these proposed new rules impose no capital cost on such owners for permitted news dispensers now in place in compliance with these rules. New news dispensers will require the permit application and fee will have to be submitted, and the location and installation permission followed. No need for owners to employ professional services for compliance is anticipated. Since the purpose of these rules is to set standards for news dispensers, their installation, maintenance and location, and, by so doing, enhance traffic flow and safety, any differentiation of the standards contained in these rules based upon the size of the owner would serve to defeat the standardization, traffic flow and safety purposes. No such differentiation is, therefore, provided by these rules.

Full text of the proposed new rules may be found in the New Jersey Administrative Code at N.J.A.C. 16:41B.

## (b)

### DIVISION OF SYSTEM PLANNING BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS

#### Notice of Public Hearings State Highway Access Management Code Proposed New Rules: N.J.A.C. 16:47

Take notice that on April 2, 1990, the Department of Transportation proposed new rules, N.J.A.C. 16:47, State Highway Access Management Code, which appeared at 22 N.J.R. 1061(b). In that proposal notice, two additional public hearings were to be scheduled in cooperation with the State Legislature and appropriate notice given.

The Department, in cooperation with the State Legislature, has scheduled two additional public hearings on the proposed new rules as follows:

Wednesday, May 9, 1990  
10:00 A.M.  
Assembly Transportation Committee  
Hearing Room #341  
State House Annex  
West State Street  
Trenton, New Jersey 08625

Note: Time and place is subject to final Committee Notice as may be issued by the Chairman of the Committee.

PROPOSALS

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TREASURY-GENERAL

Monday, May 14, 1990
9:30 A.M.
Senate Transportation & Public Utilities Committee
Hearing Room #407
4th Floor
State House Annex
West State Street
Trenton, New Jersey 08625

The purpose of these hearings is to afford the members of the public, and the Senate and Assembly Transportation Committees, an opportunity to provide comments and recommendations concerning the proposed new rules in compliance with the State Highway Access Management Act, P.L. 1989, c.32.

(a)

DIVISION OF SYSTEMS PLANNING
BUREAU OF ACCESS AND DEVELOPMENT IMPACT ANALYSIS

Notice of Extension of Comment Period
State Highway Access Management Code

Proposed New Rules: N.J.A.C. 16:47
Proposed Repeal: N.J.A.C. 16:41-2

Take notice that on April 2, 1990, the Department of Transportation proposed the repeal of N.J.A.C. 16:41-2 new rules at N.J.A.C. 16:47, entitled "State Highway Access Management Code," which appeared at 22 N.J.R. 1061(b).

The Department, having received a request for extension of comment period from the New Jersey Builders Association, 101 Morgan Lane, Plainsboro, New Jersey 08536, and upon further review, has concluded that an extension of the comment period should be granted.

The Department therefore proposes to extend the comment period from May 2, 1990 to June 6, 1990.

Submit comments by June 6, 1990 to:
Charles L. Meyers
Administrative Practice Officer
Department of Transportation
CN 600
Trenton, N.J. 08625

TREASURY-GENERAL

(b)

DIVISION OF PENSIONS

Administration

Retired Employees; Health Insurance Charges

Proposed Amendments: N.J.A.C. 17:1-1.19 and 1.21
Proposed Repeals: N.J.A.C. 17:1-1.22, 1.23 and 1.24

Authorized By: Nicholas Caprio, Acting Director, Division of Pensions.

Authority: N.J.S.A. 52:18A-96 et seq.
Proposal Number: PRN 1990-232.

Submit comments by June 6, 1990 to:
Peter J. Gorman, Esq.
Administrative Practice Officer
Division of Pensions
CN 295
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendments and repeals essentially delete references within certain administrative rules concerning the Pensioners' Group Health Insurance Plan, which is no longer being offered by the insurance carrier involved, and add provisions which allow participation in the State

Health Benefits Program for those covered by the Pensioners' Group Health Insurance Plan.

Social Impact

The proposed amendments reflect the current status of health insurance programs available to eligible retirants due to the unavailability of the Pensioners' Group Health Insurance Plan. The change in coverage will have a minimal effect on those covered, since there is no change in covered services.

Economic Impact

Any increase or decrease in the premiums paid by individual pensioners would be minimal. There would be no other economic effect on the regulated public.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendments and repeals do not impose reporting, recordkeeping or other compliance requirements upon 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 public employees, this rulemaking 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]):

17:1-1.19 Retired employees; health insurance charges

(a) If possible, whenever any beneficiary of the Public Employees' Retirement System, Teachers' Pension and Annuity Fund, Police and Firemen's Retirement System, State Police Retirement System, Judicial Retirement System, Consolidated Police and Firemen's Pension Fund, Prison Officer's Pension Fund or Central Pension Fund [shall, in writing, request the Division of Pensions to make deductions from his or her pension for the payment of charges for the Pensioners' Group Health Insurance Plan or the State Health Benefits Program, the division may make such deductions and transmit the sum so deducted to the companies carrying the policies] authorizes deductions from the retirement allowance checks for coverage under the State Health Benefits Program, the Division may make the deductions and transmit them to the State Health Benefits Program.

(b) [Any such] The authorization may be withdrawn by [any beneficiary upon filing notice of such withdrawal with the division] filing an application to terminate coverage and deductions.

17:1-1.21 Discontinuance of allowance[; Pensioners' Group Health Insurance Plan]

(a) (No change.)

[(b) A retirant's or beneficiary's coverage in the Pensioners' Group Health Insurance Plan may be terminated upon the discontinuance of his allowance as set forth in subsection (a) of this section or in cases of possible incompetency, change of guardian, or other arrangements which may temporarily cause the suspension of the payment. Upon the reinstatement of the individual's retirement allowance, his health insurance may be resumed and may be made retroactive.]

17:1-1.22 [Disability earnings; Pensioners' Group Health Insurance Plan] (Reserved)

[A retirant, whose disability retirement allowance has been suspended as his income subsequent to retirement exceeded the limits established by law, shall have his health insurance coverage terminated upon the suspension of his allowance. Upon the reinstatement of the individual's allowance, his coverage will resume on a prospective basis only.]

17:1-1.23 [Beneficiary or survivor; Pensioners' Group Health Insurance Plan] (Reserved)

[An eligible beneficiary or survivor will have his/her coverage discontinued upon the death of the retirant, but will be given the opportunity to continue coverage on a prospective basis only, once he/she has filed proper applications for pensions. Coverage may be made retroactive for as much as six months, provided the necessary premiums are paid. Any request for retroactive coverage in excess of six months shall be submitted to the Director.]

17:1-1.24 [Amount of coverage; termination; Pensioners' Group Health Insurance Plan] (**Reserved**)

[(a) For purposes of retired coverage or when coverage is provided to eligible beneficiaries or survivors, such coverage under the Pensioners' Group Health Insurance Plan cannot be increased but can be decreased.

(b) Only a pensioner, whose original retirement allowance or pension is equal to or greater than the premium to be deducted to pay for the cost of coverage available to such pensioner, will be permitted to continue coverage.

(c) An employee may elect voluntarily to terminate his coverage or coverage for his dependents at any time, but termination of the employees' own coverage shall automatically terminate the coverage of his dependents. Such voluntary termination shall be effected by written notice thereof to the Division of Pensions.

(d) If an individual voluntarily terminates coverage in the Pensioners' Group Health Insurance Plan at any time and for whatever reason, such individual cannot subsequently reinstate such participation or coverage in the plan.]

**(a)**

**DIVISION OF PENSIONS**

**Public Employees' Retirement System**

**Computation of Final Compensation**

**Proposed Amendments: N.J.A.C. 17:2-3.2 and 6.24**

Authorized By: Public Employees' Retirement System, Janice

Nelson, Secretary.

Authority: N.J.S.A. 43:15A-17.

Proposal Number: PRN 1990-205.

Submit comments by June 6, 1990 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendments attempt to clarify the procedures by which the Division of Pensions computes the final compensation figure that is utilized in developing the group term life insurance benefits that are payable to the beneficiaries of a deceased member of the Public Employees' Retirement System as well as the retirement benefits that will be paid to a member. The calculation of the final compensation amount will be based upon the base salary that is attributable to the last 12 months or 26 biweekly pay periods for life insurance purposes or the appropriate 36 months or 78 biweekly pay periods for retirement benefits purposes. If any retroactive wages are received during the applicable time frames mentioned above but are not attributable to that particular time period, such payments will not be utilized in the calculation of the member's final compensation. Conversely, if a salary adjustment is made subsequent to the retirement or death of the member but covers a period within the particular time period in question, those payments will be utilized in the computation of the life insurance or retirement benefits payable by the Division of Pensions.

**Social Impact**

The proposed amendments may affect present and future members of the Public Employees' Retirement System when they die or retire if they receive retroactive salary adjustments. The specific impact will vary according to the particulars of each case.

**Economic Impact**

The proposed amendments will not adversely affect the members who may be affected by the amendments since the amendments merely clarify the present procedures of the Division of Pensions in calculating the death benefits that are payable to the designated beneficiaries and retirement benefits payable to retirants from the State-administered retirement systems.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendments do not impose reporting, recordkeeping or other compliance requirements upon 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 public employees, these amendments 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]):

17:2-3.2 Computation of insurance benefits

(a) Any member who is reported on a [10-month] **10 months** basis and who has not resigned or been discharged, shall be covered by his **or her** insurance benefits for the month or months he **or she** is on his **or her** regular seasonal layoff.

1. The death benefit shall be based upon the base salary upon which contributions to the annuity savings fund were [actually] made [during] **that are attributable to** the 12 months or 26 biweekly pay periods immediately preceding his **or her** death.

2. (No change.)

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

(d) For a member dying after the first year following his **or her** date of compulsory enrollment, both the noncontributory and contributory insurance benefit shall be determined [on] **upon** the base salary [on] **upon** which contributions to the annuity savings fund were made [or would have been made during] **that are attributable to** the [12-month] **12 months** or 26 biweekly pay periods preceding death.

(e)-(k) (No change.)

17:2-6.24 Final compensation; biweekly salary computation for State employees reported by centralized payroll

(a) In computing "final compensation" upon which pension contributions were based, in the case of a [12-month] **12 months** State employee reported on a biweekly basis, a total of 78 biweekly pays will be used, including any retroactive salary payments [made within] **that are attributable to** the prescribed period.

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

**(b)**

**DIVISION OF PENSIONS**

**State Police Retirement System**

**Outstanding Loans at Retirement**

**Proposed Amendment: N.J.A.C. 17:5-5.5**

Authorized By: State Police Retirement System,

Anthony Ferrazza, Secretary.

Authority: N.J.S.A. 53:5A-30h.

Proposal Number: PRN 1990-219.

Submit comments by June 6, 1990 to:

Peter J. Gorman, Esq.

Administrative Practice Officer

Division of Pensions

CN 295

Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed amendment outlines the methods of repaying outstanding loans at the time a member retires from the State Police Retirement System. Essentially, such a retiring member may pay the outstanding loan balance in the member's account in one lump sum payment or, in the alternative, his or her monthly retirement allowance will be withheld until the full amount of the outstanding loan is paid via such withholdings, at which time the approved monthly retirement allowances will then be paid to the retirant. All of the other State-administered retirement systems have comparable rules concerning the payment of outstanding loan balances at the time of retirement. No other State-administered retirement systems permit actuarial reduction of outstanding loan balances.

**Social Impact**

This proposed amendment will affect present and future retirants of the State Police Retirement System who have or will have outstanding loan balances within their pension accounts at the time of their retirement. Payment of outstanding loan balances by actuarial reduction will no longer be permitted, in order to maintain parity of standards with the other State retirement systems.

**Economic Impact**

The proposed amendment will protect the financial integrity of the State Police Retirement System by insuring that it will have the reserves necessary to pay the retirant's monthly retirement allowances. Since the outstanding loan balance within the member's account is a legal obligation of the retirant, this amendment will not cause appreciable adverse economic effect to such member. It is merely a collection device to insure prompt payment of the debt before the retirant receives any retirement benefits.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, record keeping or other compliance requirements upon 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 public 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]):**

17:5-5.5 Outstanding loan

(a) [Any outstanding loan against the Annuity Savings Fund must be repaid before a member may qualify for any type of retirement other than disability retirement. The board may, however, consider cases of extreme hardship and permit an actuarial reduction of the retirement allowance to satisfy the loan.] **A member who has an outstanding loan balance at the time of retirement shall repay the loan balance, with interest, as follows:**

1. **In full as provided by N.J.S.A. 53:5A-29; or**
2. **By retention of retirement payments, excluding authorized deductions by the retirement system, until the loan balance, with interest, is repaid.**

(b) (No change.)

**(a)**

**STATE INVESTMENT COUNCIL**

**Certificates of Deposit  
Permissible Investments**

**Proposed Repeal and New Rule: N.J.A.C. 17:16-27.1**

Authorized By: State Investment Council, Roland M. Machold,

Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1990-214.

Submit comments by June 6, 1990 to:

Roland M. Machold  
Administrative Practice Officer  
Division of Investment  
349 West State Street  
CN 290  
Trenton, New Jersey 08625

The agency proposal follows:

**Summary**

The proposed repeal and new rule would broaden access by the Division to certificates of deposit (CD's) issued by banks located in the United States but which are controlled by foreign entities. The quality ratings of such banks are higher than U.S. banks in many cases and at times they will offer higher rates of return. All such CD's will be dollar denominated and the Division will undertake no currency risk. In accordance with P.L. 1985, c.308, no banks will be included which have loans outstanding to the Republic of South Africa.

**Social Impact**

The social impact, if any, will be minimal. Potentially better returns will help the State fund its budget.

**Economic Impact**

The broader access to short-term investments should provide slightly higher returns for the pension funds, State funds and local funds served by the Division.

**Regulatory Flexibility Statement**

A regulatory flexibility analysis is not required because the proposed new rule would not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rule governs State investments.

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

[17:16-27.1 Permissible investments

(a) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in certificates of deposit of banks provided that:

1. The investment in the certificate of deposit is limited to a term of one year or less;
2. The issuer of the certificate of deposit is a bank or trust company which:
  - i. Is headquartered in the United States;
  - ii. Is not controlled by a foreign entity;
  - iii. Is a member of the Federal Reserve System; and
  - iv. The Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;
3. The issuer, at the date of its last published balance sheet preceding the date of investment, had a primary capital ratio (as defined by the Federal Reserve Board) of at least 5.5 percent; and
4. The total investment in the certificates of deposit of any one issuer, combined with the total investment in the bankers acceptances of any one issuer, shall not exceed 10 percent of the issuer's primary capital.

(b) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in collateralized certificates of deposit provided that:

1. The investment in the certificate of deposit is limited to a term of one year or less;
2. The issuer is a bank or savings and loan association which is headquartered in the United States and is not controlled by a foreign entity;
3. The issuer demonstrates the capacity to wire collateral against payment through the Federal Reserve System to a designated custodian bank;
4. The issuer provides collateral against payment consisting of United States Treasury obligations or obligations of the following United States Government agencies:
  - i. Federal Farm Credit Banks Consolidated Systemwide Bonds;
  - ii. Federal Financing Bank;
  - iii. Federal Home Loan Banks;
  - iv. Federal Land Banks.
5. At the time of purchase the market value of the collateral provided under (b)4 above shall be equal to at least 120 percent of the purchase price of the certificate of deposit; and
6. The securities selected as collateral shall have a maturity not exceeding 10 years from the date of the purchase of the certificate of deposit.]

**17:16-27.1 Permissible investments**

(a) **The following pertains to uncollateralized certificates of deposit:**

**1. Subject to the limitations contained in this subsection, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in certificates of deposit of banks provided that:**

- i. **The investment in the certificate of deposit is limited to a term of one year or less;**

ii. The issuer of the certificate of deposit is a bank or trust company which:

(1) If headquartered in the United States or if a United States subsidiary of a foreign bank, is a member of the Federal Reserve System and the Federal Deposit Insurance Corporation; or

(2) If headquartered outside of the United States has Moody's ratings of at least Aa/P-1 on its long-term and short-term deposits, respectively and is headquartered in a country which is rated at least Aaa by Moody's and has agreed to adhere to the international capital standards as stipulated in the Basle accord; and

iii. The issuer, at the date of its last published balance sheet preceding the date of investment, was in conformance with all capital requirements as stipulated by the Federal Reserve Board, in the case of United States banks, and the appropriate national regulatory body, in the case of foreign-headquartered banks.

2. The total investment in the certificate of deposit of any one issuer, combined with the total investment in the bankers acceptances of any one issuer, shall not exceed 10 percent of the issuer's total capital.

(b) The following pertains to collateralized certificates of deposit:

1. Subject to the limitations contained in this subsection, the Director may invest and reinvest moneys of any pension and annuity, static, demand, temporary reserve or trust group fund in collateralized certificates of deposit provided that:

i. The investment in the certificate of deposit is limited to a term of one year or less;

ii. The issuer demonstrates the capacity to wire collateral against payment through the Federal Reserve System to a designated custodian bank;

iii. The issuer provides collateral against payment consisting of United States Government Treasury obligations or obligations of the following United States Government agencies:

(1) Federal Farm Credit Banks Consolidated Systemwide Bonds;

(2) Federal Financing Banks;

(3) Federal Home Loan Banks; and/or

(4) Federal Land Banks;

iv. At the time of purchase the market value of the collateral provided under (b)1iii above shall be equal to at least 120 percent of the purchase price of the certificate of deposit; and

v. The securities selected as collateral shall have a maturity not exceeding 10 years from the date of the purchase of the certificate of deposit.

## TREASURY-TAXATION

### (a)

#### DIVISION OF TAXATION

#### Local Property Tax

#### Revaluations; Reassessments

#### Proposed Amendment: N.J.A.C. 18:12A-1.14

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:3-14.

Proposal Number: PRN 1990-229.

Submit comments by June 6, 1990 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

#### Summary

This proposed amendment to N.J.A.C. 18:12A-1.14 is intended to improve property tax revaluation and reassessment reporting requirements. The assessor of a district undergoing a revaluation or reassessment program would be required to file a plan and schedule of work activities, and file monthly status reports on the progress of the program. In the case of an assessor who plans to undertake a reassessment, he or she

would be required to file a reassessment application with the county board of taxation. The application would be subject to the approval of the county board of taxation and the Director of the Division of Taxation.

#### Social Impact

Actions required under the proposed amendment are intended to improve the administration of revaluation and reassessment programs by local tax assessors. The schedules and reports required to be filed by the tax assessor will provide the county tax administrator and the county board of taxation with pertinent procedural and work status information to perform efficiently their administrative and supervisory roles.

#### Economic Impact

The adoption of this amendment will not require a significant expenditure, since a tax assessor is currently responsible for monitoring revaluation programs and performing administrative functions under the direct supervision of the county tax administrator and the county board of taxation.

#### Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because this proposed amendment will not impose mandatory reporting, record keeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Only county and municipal governments are affected by these rules.

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

18:12A-1.14 Revaluations; reassessments

(a) (No change.)

(b) Regarding revaluation orders by county board of taxation, when a board determines the need to order a taxing district to revalue its real property, it shall submit the proposed order to the Director, Division of Taxation, for his or her approval outlining the reasons that warrant such action. Upon approval of such order, the Board shall take appropriate action to implement same.

1. (No change.)

2. The assessor of a municipality directed to undertake a revaluation shall file with the county tax administrator a written plan detailing measures that are being taken or have been accomplished to comply with the terms and provisions of the approved revaluation order issued by the county board of taxation. The assessor shall submit the report on Form RCR (Revaluation Compliance Report), prescribed by the Director of the Division of Taxation, within 30 days of notice of the order and the first of each month thereafter, until approval of a contract for revaluation has been obtained from the Director of the Division of Taxation.

(c) [Regarding reassessment, when an assessor proposes to revise the assessment list, he shall submit the reassessment plan to the board setting forth the method to be used, the date of completion and the year in which such reassessment shall take effect. The board shall advise the assessor of its approval or disapproval of such reassessment proposal within 30 days from the date submitted. In case of disapproval, the reason, therefore, shall be made known to the assessor. The board shall notify the Director, Division of Taxation, of the assessor's reassessment plan.] **An assessor proposing to revise and update assessments shall submit an application to perform a reassessment with the county board of taxation.**

1. **The application shall be completed on Form AFR (Application for Reassessment) as prescribed by the Director of the Division of Taxation.**

2. **The county board shall review the application within 30 days of its submission and forward a copy to the Director of the Division of Taxation with a recommendation of approval or disapproval. In the case of a recommendation of disapproval, the Director shall be advised of the reason.**

3. **Within 30 days of receipt of the application and the board's recommendation, the Director shall advise the county tax administrator of his or her determination as to whether the assessor may proceed with the reassessment program. In the case of disapproval, the Director shall specify the reason for his or her determination.**

(d) [The board shall require a written monthly progress report from the assessor of each taxing district undergoing a revaluation under (a) and (b) above or reassessment under (c) above.] **The**

assessor of a district that has received approval of a contract for revaluation or an application to perform a reassessment shall submit a plan of work to the county tax administrator within 30 days of such approval. Thereafter, a report on the status of the revaluation or reassessment, as the case may be, shall be filed with the county tax administrator every 30 days until the program has been completed and the tax list has been filed with the county board of taxation.

1. The plan of work and revaluation progress report shall be completed on Form POW/RSR (Plans of Work/Revaluation Status Report) as prescribed by the Director of the Division of Taxation, and include the following information:

- i. A listing of all major activities and functions to be performed during the course of the revaluation or reassessment;
- ii. An indication, in the case of a revaluation, as to whether the assessor or the revaluation firm will be responsible for the performance of each listed activity or function;
- iii. The overall anticipated starting and completion date of each listed activity or function;
- iv. The breakdown of units, portion or percentage of work activities or functions that are targeted to be started and completed during each month of the revaluation or reassessment program;
- v. The breakdown of units, portion or percentage of work activities or functions that have been completed during the month for which the progress report is being submitted; and
- vi. Any revision or change in schedule from the previously submitted plan of work or progress report.

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

(g) Where a contract for a revaluation under (a) or (b) above has been entered into by a municipality with an appraisal company, the Director[,] of the Division of Taxation, before approving or disapproving said contract, shall forward a copy thereof to the [appropriate county board of taxation] county tax administrator for [its] his or her review and comment. The [board] county tax administrator shall[, within two weeks from a date specified in a notice to it,] submit [its] his or her comment respecting the contract to the Director within two weeks. In the event that the [board] county tax administrator fails to respond to said request within the prescribed period, the Director shall [assume that the board has no comment to make and the Director shall] proceed with his or her review and [indicate his approval or disapproval of] approve or disapprove the contract, as [approved] provided by law.

**(a)**

**DIVISION OF TAXATION**

**Insurance Premiums Surtax**

**Proposed New Rules: N.J.A.C. 18:21**

Authorized By: Benjamin J. Redmond, Acting Director, Division of Taxation.

Authority: N.J.S.A. 17:33B-49a, 54:18A-1.2, 54:50-1.

Proposal Number: PRN 1990-230.

Submit comments by June 6, 1990 to:

Nicholas Catalano  
Chief Tax Counselor  
Division of Taxation  
50 Barrack Street  
CN 269  
Trenton, NJ 08646

The agency proposal follows:

**Summary**

The proposed new rules are intended to supply guidance to taxpayers making payments of the insurance premiums surtax imposed pursuant to the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8. The surtax is found in the statute at N.J.S.A. 17:33B-49 to 54. The new rules describe the surtax, payment due dates, rate, and underpayment penalty.

**Social Impact**

The proposed new rules implement a portion of the Fair Automobile Insurance Reform Act of 1990. The social impact of the rules is that they

clarify and elaborate upon a portion of the enacted statute intended to finance New Jersey automobile insurance reform. The overall social impact of the statute was considered by the legislature in enacting the law. The intended social impact of the law is to reduce automobile insurance premiums for New Jersey motorists. The proposed new rules clarify an aspect of the financing of the reform with respect to certain insurance premium taxpayers.

**Economic Impact**

The proposed new rules themselves should have minimal economic impact. They merely interpret the statute that is designed to raise \$300,000,000. The rules may have the effect of diminishing the administrative costs of compliance for taxpayers and administrative costs of the Division.

**Regulatory Flexibility Analysis**

The proposed new rules impose reporting and compliance requirements on taxpayers under N.J.S.A. 54:18A-1 et seq, in the collection of a surtax on taxable private passenger automobile insurance premiums, as defined herein, in 1990, 1991 and thereafter. Some of these taxpayers 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 compliance requirements, to pay a surtax on private passenger insurance premiums, is imposed by N.J.S.A. 17:33B-1 et seq; the reporting requirement relates to the installation payment of the surtax. No exemption from, or differentiation in, these requirements is provided, since to do so would not be in compliance with the applicable statutes.

Full text of the proposed new rules follows:

**CHAPTER 21  
INSURANCE TAXES**

**SUBCHAPTER 1. PRIVATE PASSENGER AUTOMOBILE  
INSURANCE PREMIUM SURTAX**

**18:21-1.1 Insurance premium surtax**

(a) Taxpayers under N.J.S.A. 54:18A-1 et seq. shall pay a surtax on all taxable private passenger automobile insurance premiums collected in New Jersey during calendar years 1990, 1991, 1992.

(b) Taxable private passenger automobile insurance premiums do not include premiums collected by the New Jersey Automobile Full Insurance Underwriting Association, N.J.S.A. 17:30E-4 and premiums collected by the Market Transition Facility created pursuant to N.J.S.A. 17:33B-11.

**18:21-1.2 Installment payments**

(a) Installment payments in 1990 shall be made as follows:

1. On or before June 1, 1990, taxpayers shall make an installment payment of the surtax and file a report prescribed by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

2. On or before September 1, 1990, taxpayers shall make an installment payment of the surtax and file a report prepared by the Division of Taxation for that purpose. The payment shall be equal to one-half of the surtax estimated to be due for taxable premiums collected in New Jersey in 1990 calculated at a rate prescribed by the Director of the Division of Taxation for that payment.

(b) Installment payments in 1991 shall be made as follows:

1. On or before March 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany taxpayer's annual return for the preceding tax year or installment report, if any shall have been prescribed by the Director.

2. On or before June 1, 1991, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany an installment report prescribed by the Director.

(c) Installment payments in 1992 shall be made as follows:

1. On or before March 1, 1992, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done

during the preceding calendar year. Payment shall be shown on and accompany taxpayer's annual return for the preceding tax year or installment report, if any shall have been prescribed by the Director.

2. On or before June 1, 1992, taxpayers shall make a payment of surtax at a rate set by the Director in an amount of one-half of the surtax due and payable based on the taxpayer's business done during the preceding calendar year. Payment shall be shown on and accompany the installment report prescribed by the Director.

#### 18:21-1.3 Annual returns filed

A tax return showing the surtax due shall be filed on or before March 1, 1991 showing the surtax due for 1990, March 1, 1992 showing the surtax due for 1991, and March 1, 1993 showing the surtax due for 1992.

#### 18:21-1.4 Tax rate

The initial surtax rate for the installment payment due June 1, 1990 shall be five (5) percent. Thereafter, adjustments to the rate of the surtax may be made by the Director pursuant to N.J.S.A. 17:33B-50.

#### 18:21-1.5 Penalty for underpayment of installment payments due June 1, 1990 and September 1, 1990 and thereafter

(a) The amount of an underpayment shall be the excess of the amount of the installment payment which would be required to be paid if the installment payment were equal to 45 percent of the surtax which would be shown on the return for the year if the surtax rate at the time of the payment were imposed for the entire year or, if no return was filed, 45 percent of the surtax for that year over the amount, if any, of the installment payment paid on or before the last date prescribed for payment.

(b) Interest and penalty on underpayments are calculated pursuant to the terms of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., including without limitation thereto N.J.S.A. 54:49-3 and 4.

(c) For subsequent installment payments, reports, and annual returns and payments, the penalty and interest provisions in the State Tax Uniform Procedure Law shall apply.

## ENVIRONMENTAL PROTECTION

(a)

### GREEN ACRES PROGRAM

#### Notice of Public Hearing and Extension of Public Comment Period

#### Green Acres Grant Program

#### Proposed New Rules: N.J.A.C. 7:36-8

#### Notice of Public Hearing

#### Proposed Exchange of Land at Allamuchy State Park for Land Owned by the Mt. Olive Foreign Trade Zone Center

#### Procedures for Requesting State House

#### Commission Approval of Transactions Concerning Green Acres Properties of the State

Take notice that the Department of Environmental Protection will hold a public hearing to seek public comment on:

(1) The proposed new rules at N.J.A.C. 7:36-8 requiring that a public hearing be held prior to the sale of, exchange for other lands or property, grant of an easement on or any lease for a term of 25 years or more of any areas of land (including improvements thereon), water, or land and water acquired by the State with Green Acres assistance or that was not acquired with Green Acres assistance but is held by the Department. In addition, the comment period is hereby extended to June 20, 1990. The proposed new rules were published on February 20, 1990 in the New Jersey Register at 22 N.J.R. 593(b). Please refer to the proposal for further information; and

(2) The proposed exchange of approximately 58 acres of State-owned land acquired with Green Acres assistance and comprising part of Allamuchy State Park for approximately 66 acres of adjacent lands now held by the Mt. Olive Foreign Trade Zone Center; and

(3) Methods for improving the procedures with respect to requesting approval from the State House Commission for transactions concerning Green Acres properties of the State.

The public hearing will be held on:

Wednesday, June 13, 1990 from 10 A.M. to 3:00 P.M.  
New Jersey State Museum Auditorium  
205 West State Street  
Trenton, New Jersey

The following information dealing with the proposed exchange of land will be available for public inspection on and after May 30, 1990:

(1) An independent financial appraisal by a qualified appraiser (who has not previously been involved in this transaction) concerning the economic value of the parcels subject to the exchange; and

(2) This Department's report on the environmental values associated with the parcels subject to the exchange.

Persons interested in reviewing these reports prior to the public hearing should contact the Department at (609) 292-9197 for information regarding locations where the reports will be available for public review.

Interested persons may submit written comments until June 20, 1990 to:

Donald J. Stout  
Regulatory Officer  
Division of Regulatory Affairs  
Department of Environmental Protection  
CN 402  
Trenton, NJ 08625

# RULE ADOPTIONS

## ADMINISTRATIVE LAW

### (a)

#### OFFICE OF ADMINISTRATIVE LAW Uniform Administrative Procedure Rules Interlocutory Review

##### Adopted Amendment: N.J.A.C. 1:1-14.10

Proposed: February 20, 1990 at 22 N.J.R. 590(a).  
Adopted: March 26, 1990 by Jaynee LaVecchia, Director, Office  
of Administrative Law.

Filed: March 27, 1990 as R.1990 d.219, **without change.**

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

Effective Date: May 7, 1990.

Expiration Date: May 4, 1992.

#### Summary of Public Comments and Agency Responses:

Only one comment was received. The Department of Personnel concurred with the proposed amendment.

Full text of the adoption follows.

1:1-14.10 Interlocutory review

(a)-(h) (No change.)

(i) An agency head's determination to review interlocutorily an order or ruling shall not delay the scheduling or conduct of hearings, unless a postponement is necessary due to special requirements of the case, because of probable prejudice, or for other good cause. Either the presiding judge or the agency head may order a stay of the proceedings, either on their own or upon application. Applications for stays should be made in the first instance to the presiding judge. If denied, the application may be resubmitted to the agency head. Pending review by the agency head, a judge may conditionally proceed on an order or ruling in order to complete the evidential record in a case or to avoid disruption or delay in any ongoing or scheduled hearing.

(j)-(m) (No change.)

### (b)

#### OFFICE OF ADMINISTRATIVE LAW Division of Motor Vehicles Cases Involving Excessive Points, Surcharges and Certain Failures to Appear

##### Adopted Amendment: N.J.A.C. 1:13-1.1 and 1.10

##### Adopted New Rule: N.J.A.C. 1:13-14.4

Proposed: January 16, 1990 at 22 N.J.R. 91(a).  
Adopted: March 26, 1990 by Jaynee LaVecchia, Director, Office  
of Administrative Law.

Filed: March 27, 1990 as R.1990 d.220, **without change as proposed, but with a technical change to N.J.A.C. 1:13-1.10.**

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

Effective Date: May 7, 1990.

Expiration Date: May 4, 1992.

#### Summary of Public Comments and Agency Responses:

No comments under N.J.S.A. 52:14B-4 were received.

Upon further review, the Office of Administrative Law decided that the words "in excessive points and surcharge cases" should be added to the title and subsection (a) of N.J.A.C. 1:13-10.1 to clarify that the discovery section of these special hearing rules was not intended to apply to the failure to appear cases that are now covered by this chapter, as a result of the adoption of N.J.A.C. 1:13-1.1 and 14.4. The proposed amendment to N.J.A.C. 1:13-1.1 and new rule N.J.A.C. 1:13-14.4 are adopted without change.

Full text of the adoption follows (additions indicated in boldface with asterisks \*thus\*).

### CHAPTER 13

#### DIVISION OF MOTOR VEHICLES CASES INVOLVING EXCESSIVE POINTS, SURCHARGES AND CERTAIN FAILURES TO APPEAR

1:13-1.1 Applicability

(a) The rules in this chapter shall apply to hearings transmitted by the Division of Motor Vehicles (DMV) involving:

1. Disciplinary actions, other than license revocations, for accumulating excessive points;
2. Proposed license suspensions for failure to pay surcharge under the New Jersey Merit Rating Plan; and
3. Licensees who fail to participate in evidentiary hearings after attending an agency settlement conference.

(b) (No change.)

1:13-10.1 Discovery **\*in excessive points and surcharge cases\***

(a) Discovery **\*in excessive points and surcharge cases\*** shall be limited to the records of DMV with respect to the case. The records shall include a certified copy of the licensee's driving record abstract, relevant notices and orders of suspension, and certified proof of relevant mailings to the licensee. In surcharge cases, when the licensee is contesting the validity of any conviction or administrative suspension entered on the surcharge bill, the records shall also include any documentary evidence in the possession of DMV which supports the contested entry.

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

1:13-14.4 Failure to appear

If the licensee fails to appear at the hearing and fails to submit the certification required by N.J.A.C. 1:13-14.2, the judge shall hold the matter 10 days before taking any action. If the judge does not receive an explanation for the nonappearance within 10 days, the judge shall impose the full penalty proposed by DMV in the notice of proposed suspension.

## BANKING

### (c)

#### DIVISION OF SUPERVISION Advertising

##### Readoption with Amendments: N.J.A.C. 3:2

Proposed: March 5, 1990 at 22 N.J.R. 690(b).  
Adopted: April 10, 1990 by Jeff Connor, Commissioner,  
Department of Banking.

Filed: April 12, 1990 as R.1990 d.236, **with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).**

Authority: N.J.S.A. 17:16H-1 et seq.

Effective Date: April 12, 1990, Readoption;  
May 7, 1990, Amendments.

Expiration Date: April 12, 1995.

#### Summary of Public Comments and Agency Responses:

The Department received two comments from trade associations regarding the proposed amendment, which would require depositories to disclose the assumptions underlying the yield advertised on short-term certificates of deposit. Both comments indicated that many institutions already provide this disclosure, and the amendment may help to provide fairer competition for all financial institutions advertising rates on certificates of deposit. One comment also suggested that the reference in N.J.A.C. 3:2-1.3 to the Federal Home Loan Bank Board be amended to the Office of Thrift Supervision to reflect the change in this Federal agency. The Department agrees and has made the appropriate change.

**BANKING**

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Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:2.

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

3:2-1.3 Disclosure of interest rates

(a) The advertising by a financial institution of maximum interest rates and yield on time and savings deposits must comply with the advertising rules established by either the \*[Federal Home Loan Bank Board]\* **\*Office of Thrift Supervision\***, the Federal Deposit Insurance Corporation or the Board of Governors of the Federal Reserve System, whichever is applicable.

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

3:2-1.4 Violations of the Act

(a) (No change.)

(b) Without limiting (a) above, the following conduct shall be deemed deceptive or misleading:

1.-4. (No change.)

5. The advertisement of a mortgage loan by a mortgage broker (or a mortgage banker that acts merely as a mortgage broker with regard to the advertised loan) which does not specifically and conspicuously state that the advertiser will not make any mortgage loan commitments or fund any mortgage loans under the advertised program;

6. The advertisement of a mortgage loan by a mortgage banker or mortgage broker without including in the advertisement or broadcast announcement the words "licensed mortgage banker—N.J. Department of Banking" or "licensed mortgage broker—N.J. Department of Banking," whichever the case may be; and

7. The advertisement of a yield on a deposit account for a term of less than one year without reference to the basis of the compounding. If the yield is based upon the assumption that principal and interest will be redeposited upon maturity at the same interest rate, the advertisement shall indicate that fact, along with a statement indicating whether the same interest rate is guaranteed to be available on the renewal date.

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

**COMMUNITY AFFAIRS**

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT**

**Hotels and Multiple Dwellings**

**Certificate of Registration; Certificate of Inspection**

**Adopted Amendments: N.J.A.C. 5:10-1.6, 1.11, 1.12 and 2.2**

Proposed: February 5, 1990 at 22 N.J.R. 275(b).

Adopted: April 3, 1990 by Melvin R. Primas, Jr., Commissioner, Department of Community Affairs.

Filed: April 6, 1990 as R.1990 d.230, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 55:13A-6(e).

Effective Date: May 7, 1990.

Expiration Date: November 17, 1993.

**Summary of Public Comments and Agency Responses:**

COMMENT: The New Jersey Catholic Conference and the Archdiocese of Newark expressed concern that the proposed text of N.J.A.C. 5:10-1.6(f)2 might be construed as having a meaning at variance with N.J.S.A. 55:13A-7.5, which specifies the types of rules that are not to be applicable to retreat lodging facilities.

RESPONSE: It was not the intention of the Department that there be any variance, since it is axiomatic that a statute cannot be varied by rule. However, to avoid any future misunderstanding, the language has been changed to conform more closely to the statute. The Conference

and the Archdiocese have indicated that they are satisfied that the text, as amended, will not cause the misunderstandings that they feared might develop.

The Department wishes to note that the text of N.J.A.C. 5:10-1.11(g) published herein reflects a change in the time period for filing of a new certificate of registration, from 30 days to 20 days. This change was made administratively in the March 19, 1990 New Jersey Register at 22 N.J.R. 921(a).

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

5:10-1.6 Maintenance requirements

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

(f) Where not otherwise indicated, all rules in this chapter that are applicable to hotels shall be applicable to retreat lodging facilities except as follows:

1. N.J.A.C. 5:10-19.1(a)1 and 2; and

2. Any regulation \*[for which a waiver pursuant to N.J.A.C. 5:10-1.2 is found by the Bureau to be appropriate]\* **\*that is not substantially related to the protection of the health, safety or welfare of the occupants of the facility or of the public generally\***.

5:10-1.11 Certificate of registration

(a) The owner of each hotel, retreat lodging facility or multiple dwelling shall file with the Bureau of Housing Inspection, upon forms provided by the Bureau, a certificate of registration.

(b) Each such certificate shall be accompanied by a fee of \$10.00.

(c) Each certificate shall state:

1. (No change.)

2. Such description of each hotel, retreat lodging facility or multiple dwelling, by street number or otherwise, as will enable the Bureau easily to locate the same:

3. (No change.)

4. The name, address and telephone number of the person, association or corporation, if any, which manages or operates such hotel, retreat lodging facility or multiple dwelling for or on behalf of said owner;

5.-7. (No change.)

8. Whether the building is a hotel, a retreat lodging facility or a multiple dwelling;

9.-19. (No change.)

20. The name and address of the fuel oil supplier, if any, and the grade of fuel oil used.

(d) Upon the receipt of said certificate and fee, the Bureau shall forthwith issue to the owner of such hotel, retreat lodging facility or multiple dwelling a validated copy of the certificate of registration, which validated copy of the certificate of registration shall be kept posted by the owner of such hotel, retreat lodging facility or multiple dwelling in a conspicuous location therein.

(e) (No change.)

(f) The owner of each hotel, retreat lodging facility or multiple dwelling shall appoint an agent for the purpose of receiving service of process and such orders or notices as may be issued by the Bureau of Housing Inspection pursuant to the Act. Each such agent so appointed shall be a resident of this State or a corporation licensed to do business in this State.

(g) In the case of any transfer of the ownership of any hotel, retreat lodging facility 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 20 days of said transfer, a certificate of registration pursuant to (a) above and to appoint an agent for the service of process pursuant to (f) above. The transferrer shall, within 30 days of such transfer, return to the Bureau of Housing Inspection his validated copy of the certificate of registration, indicating thereon the name and address of the new owner.

(h) In the event that the number of dwelling units in a registered hotel, retreat lodging facility or multiple dwelling, or any other information required to be set forth in a certificate of registration, is changed, the owner of such hotel, retreat lodging facility or multiple

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dwelling shall file an amended certificate of registration within 30 days of such change. No fee shall be charged for the filing of such amended certificate.

(i) Within 30 days of the issuance of a certificate of occupancy for any newly constructed hotel, retreat lodging facility or multiple dwelling subject to the Act, the owner thereof shall file with the commissioner, upon forms provided by the commissioner a certificate of registration pursuant to N.J.S.A. 55:13A-12.

(j)-(k) (No change.)

**5:10-1.12 Certificate of inspection**

(a) Within 90 days of the most recent inspection by the Bureau of Housing Inspection of any hotel, retreat lodging facility or multiple dwelling, the owner thereof shall file with the Bureau of Housing Inspection, upon forms which shall have been provided by the Bureau, an application for a certificate of inspection.

(b) Said application shall state:

1. The name of the owner;
2. Such description of the hotel, retreat lodging facility or multiple dwelling, by street number or otherwise, as will enable the Bureau easily to locate the same.

(c) Such application shall be accompanied by a fee as required by N.J.S.A. 55:13A-13(b), except that no fee shall be required for a retreat lodging facility.

(d) (No change.)

(e) The following relate to Uniform Fire Code inspections:

1. No certificate of inspection shall be issued for any hotel, retreat lodging facility or multiple dwelling subject to inspection, pursuant to the Uniform Fire Safety Act, by a local enforcing agency or by the Bureau of Fire Safety, either as a life hazard use or pursuant to a notice given by the local enforcing agency to the Bureau of Fire Safety, unless and until the Bureau shall have received from the local enforcing agency or from the Bureau of Fire Safety a certification that the building does not have any outstanding violations of the Uniform Fire Code, N.J.A.C. 5:18 or the Bureau's representative has, while at the premises, examined a current certificate of inspection issued pursuant to the Fire Safety Act.

2. The owner of a building subject to the Act, that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, shall have a copy of the current certificate of inspection issued pursuant to the Uniform Fire Safety Act posted in a conspicuous location on the premises at all times.

3. No certificate of inspection shall be issued pursuant to N.J.S.A. 55:13A-13 for any building that is deemed a life hazard use pursuant to N.J.A.C. 5:18-2.4 through 2.4D, unless the owner of the building has a current certificate of inspection issued pursuant to the Uniform Fire Safety Act on the premises.

**5:10-2.2 Definitions**

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

...  
"Retreat lodging facility", see N.J.S.A. 55:13A-3(s).  
...

**(a)**

**DIVISION OF HOUSING AND DEVELOPMENT  
Exemptions from Taxation  
New Construction, Improvement and Conversion in  
Urban Enterprise Zone Municipalities**

**Adopted New Rules: N.J.A.C. 5:22-3**

Proposed: February 20, 1990 at 22 N.J.R. 591(a).  
Adopted: March 29, 1990 by Melvin R. Primas, Jr.,  
Commissioner, Department of Community Affairs.  
Filed: April 2, 1990 as R.1990 d.227, **without change**.  
Authority: P.L. 1989, c.207, Section 3.  
Effective Date: May 7, 1990.  
Expiration Date: February 5, 1995.

**COMMUNITY AFFAIRS**

**Summary of Public Comments and Agency Responses:**

**No comments received.**

**Full text of the adoption follows.**

**SUBCHAPTER 3. RESIDENTIAL NEW CONSTRUCTION,  
IMPROVEMENT AND CONVERSION IN  
URBAN ENTERPRISE ZONE  
MUNICIPALITIES**

**5:22-3.1 Purpose**

This subchapter is adopted pursuant to section 3 of P.L. 1989, c.207 for the purpose of setting forth standards by which municipalities that are deemed to be "qualified municipalities" under the statute may determine that one or more areas within the municipality are in need of rehabilitation and that one or more buildings in any such area could be advantageously converted to "qualified residential property," as defined in section 2 of the statute, or that vacant land in any such area could be advantageously used for the construction of such "qualified residential property."

**5:22-3.2 Standards for municipal determinations**

(a) In any municipality that is a "qualified municipality" as defined in Section 2 of P.L. 1989, c.207, a determination may be made by the municipal governing body that an area within the municipality is in need of rehabilitation only if at least one of the following criteria is satisfied:

1. The area has been previously declared, pursuant to N.J.S.A. 40:55-21.1 et seq., to be blighted;
2. There is evidence of substantial housing or health code violations in at least 25 percent of the dwelling units in the area;
3. At least 25 percent of the dwelling units in the area are in buildings at least 40 years old;
4. At least 25 percent of the dwelling units in the area in buildings having real property tax arrearages in at least the amount of one year's taxes; or
5. At least 10 percent of the land within the area, including both privately-owned property and property that is municipally-owned as a result of tax foreclosure but excluding other public property, is vacant or has only unoccupied buildings on it.

(b) No area shall be deemed to be in need of rehabilitation unless the demand for housing in the municipality exceeds the supply and the improvement or conversion of one or more existing buildings in the area, or new residential construction in the area on one or more vacant lots, or lots that might be made vacant through demolition of existing substandard structures, is determined by the governing body to be likely to increase the overall supply of safe, sanitary and decent housing affordable to those in need of it.

**5:22-3.3 Relocation assistance**

The improvement, conversion or demolition of any building in conjunction with any tax abatement granted under P.L. 1989, c.207 shall be deemed to be part of a "program of voluntary rehabilitation of buildings or other improvements conducted pursuant to governmental supervision" within the meaning of N.J.S.A. 20:4-2.

**(b)**

**DIVISION OF HOUSING AND DEVELOPMENT  
Notice of Administrative Correction  
Barrier Free Subcode  
Exemptions; Toilet and Bathing Facilities;  
Recreation: Equestrian Facilities  
N.J.A.C. 5:23-7.3, 7.50 and 7.116**

**Take notice** that the Department of Community Affairs has discovered errors in the text of N.J.A.C. 5:23-7, Barrier Free Subcode. In N.J.A.C. 5:23-7.3(a)1, the phrase, "having common or separate entrances," should read, "having common or separate entrances" (see 18 N.J.R. 757(a) and 2194(a)). In N.J.A.C. 5:23-7.50(a)2iii, the phrase "in units" was deleted from the rule (see 18 N.J.R. 757(a) and 2194(a)). In N.J.A.C. 5:23-7.116, the height requirement of 42 inches should be 32

## COMMUNITY AFFAIRS

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inches (see 20 N.J.R. 1764(b) and 2754(a)). This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

Full text of the corrected rules follows (addition indicated in boldface **thus**; deletions indicated in brackets [thus]):

## 5:23-7.3 Exemptions

(a) The following are exempt from the provisions of this subchapter:

1. Buildings or projects of Use Group R-2 or R-3 with four or fewer dwelling units, having common [entrances] or separate entrances directly from the exterior, whether for rental or arranged for sale shall be exempt. A dwelling unit shall be deemed to be "arranged for sale" if it is located on a separate lot or is part of a condominium project for which a Master Deed has been filed and which has been approved for registration as a planned real estate development by the Department at the time that the building permit is issued.

i. (No change.)

2.-8. (No change.)

## 5:23-7.50 Toilet and bathing facilities

(a) Toilet and bathing facilities shall be made accessible to handicapped persons as follows:

1. (No change.)

2. In Use Groups R-1 and R-2/R-3:

i.-ii. (No change.)

iii. Those toilets and bathing facilities [in units] which are required to be adaptable as delineated at N.J.A.C. 5:23-7.94 shall meet the requirements of N.J.A.C. 5:23-7.96.

3. (No change.)

## 5:23-7.116 Recreation: equestrian facilities

At the area normally used for mounting at each recreational equestrian facility, a mounting platform for the disabled shall be provided. The top of the platform shall be at a height [42] **32** inches above the surface upon which the horse stands. The mounting platform shall have a minimum dimension of five feet long and three feet wide. Any ramp necessary to provide access to the mounting platform shall meet the criteria of N.J.A.C. 5:23-7.24 except that a maximum slope of 1:9 shall be allowable.

(a)

## DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code  
Radon Hazard Subcode

## Adopted New Rules: N.J.A.C. 5:23-10

## Adopted Amendments: N.J.A.C. 5:23-1.1, 3.4 and 4.5

Proposed: December 4, 1989 at 21 N.J.R. 3696(a).

Adopted: March 29, 1990 by Melvin R. Primas, Jr.,

Commissioner, Department of Community Affairs.

Filed: April 2, 1990 as R.1990 d.226, with substantive and technical changes not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 52:27D-123, P.L.1989, c.186.

Effective Date: May 7, 1990.

Expiration Date: March 1, 1993.

## Summary of Public Comments and Agency Responses:

Comments were received from two radon remediation firms, OBAR Systems, Inc. and Radon Engineering, the New Jersey Builders Association, and the Department of Environmental Protection.

COMMENT: OBAR Systems Inc. recommends that the venting system be required to terminate above the roof line or the highest eave.

RESPONSE: The Department has modified N.J.A.C. 5:23-10.4(b)12 by referencing N.J.A.C. 5:23-12.4, of the plumbing subcode, which requires this.

COMMENT: Radon Engineering claims that the Department is disregarding the safety of persons living in municipalities that are not designated as within tier one.

RESPONSE: The enabling legislation N.J.S.A. 52:27B-123a (P.L.1989, c.186) specifically limits the mandatory applicability of the subcode to

tier one municipalities, and the rules cannot go beyond the scope of that legislation.

COMMENT: Radon Engineering also questions the use of the 4 pCi/l "fenceline" for defining unacceptable concentrations of radon. RESPONSE: The legislation requires use of that standard or such other standard as the Department of Environmental Protection may establish.

COMMENT: Radon Engineering further criticizes the use of PVC or polyethylene vapor barriers in unimproved crawl space areas, the use of sub-slab vent systems that incorporate the sump pit and exit through the sump cover, the lack of a requirement that the venting system be completed, and the lack of requirements prohibiting the interconnection of interior drains with gravity fed drainage paths that do not include a trap design to block gas flow, prohibiting the interconnection of interior and exterior drainage systems, prohibiting the use of HVAC systems that induce substantial vacuums in the lowest level of the structure or whose distribution systems carry air below the slab on grade, and prohibiting the use of sealants and gas barrier materials with useful life expectancies of less than 30 years.

RESPONSE: In response, the Department points out that the techniques included in the proposed subcode are in general agreement with known mitigation practices and that, though they are not all-inclusive, they have proven to be cost effective, to have high success rates, and to offer practical solutions for new construction and to facilitate such further post-construction measures as may be necessary if there is indeed found to be a radon problem. Radon Engineering also pointed out adverse effects of having exterior foundation pipe drains include vent pipe sections to grade level. The Department agrees and language in N.J.A.C. 5:23-10.4(b)3 that would have required this has been deleted.

COMMENT: The New Jersey Builders Association (NJBA) wants language included which would grant builders immunity from liability if they comply with the rules.

RESPONSE: This provision is included in the statutes at N.J.S.A. 52:27D-123a and is not within the scope of the rulemaking authority given to the Department.

COMMENT: NJBA would also like the rules to exempt builders from DEP certification requirements.

RESPONSE: The Department does not have authority to exempt anyone from a certification requirement of another department.

COMMENT: NJBA wants it made clear that the rules are not intended to prevent anyone from providing more extensive radon mitigation construction features.

RESPONSE: Language has been added to N.J.A.C. 5:23-10.4 to make this clear.

COMMENT: NJBA is concerned that some code officials may construe the 4 pCi/i standard as something that must be shown to have been met before a certificate of occupancy can be issued, even though there is no established way of testing for this in new construction.

RESPONSE: The Department points out that the standard is a statutory requirement and that code officials will receive training that will make clear to them what they can and cannot require under this subcode.

COMMENT: NJBA recommends that N.J.A.C. 5:23-10.3(a) be amended to remove the limitation to municipal code officials, since some municipalities are served by county or State enforcing agencies.

RESPONSE: This change has been made.

COMMENT: NJBA would like references in various places to vent stack pipes terminating at approved locations to be deleted as redundant.

RESPONSE: The Department does not find these references to be unnecessary or redundant; therefore, no change has been made.

COMMENT: NJBA believes the caulking requirement for foundation wall and floor intersections to be unnecessary.

RESPONSE: The Department believes that it may be of some value and does not impose significant costs and should, therefore, be kept.

COMMENT: NJBA is concerned that the 10-foot separation requirement for discharge vent pipes may be impossible for some types of buildings.

RESPONSE: The Department has substituted for this section a reference to the applicable provision of the plumbing subcode. Stylistic changes in language were made in response to other concerns of the NJBA as well, in the interest of clarity.

COMMENT: The Department of Environmental Protection (DEP) recommends that the subcode include a requirement that any work beyond "stub-up" be conducted by a person certified by DEP.

RESPONSE: In response, the Department points out that it does not have authority to impose requirements as to who can do the work required by the subcode.

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COMMENT: DEP is also concerned that the work required by the subcode not be construed or marketed as a passive mitigation system.

RESPONSE: The Department agrees that the subcode does not prescribe a mitigation system, and has therefore changed the name from "radon mitigation subcode" to "radon hazard subcode," the term used in N.J.S.A. 52:27D-123a (P.L.1989, c.186). The purpose of the subcode is to require construction techniques that are cost effective and that will facilitate the later introduction of a mitigation system should it prove necessary.

COMMENT: DEP recommends that the stack pipes be required to have airtight joints.

RESPONSE: The proposal has been amended at N.J.A.C. 5:23-10.4(b)12 to include this requirement.

COMMENT: DEP also recommends a minimum four-inch diameter vent pipe be used, since that is the minimum that appears to be needed for a passive system.

RESPONSE: The Department's response is that three-inch diameter vent pipes are sufficient for a system utilizing fans, and the intention of this subcode is to provide minimum acceptable standards to accommodate some sort of mitigation system, should that be necessary.

At DEP's request, the Department is changing N.J.A.C. 5:23-10.1(a)1 to more accurately describe the scope of DEP certification under N.J.A.C. 7:28-27. DEP has also advised the Department that Stanhope is no longer classified as a tier one municipality and Appendix 10-A has been revised accordingly.

Additionally, the Department has amended N.J.A.C. 5:23-10.4(b)4 and 12 to allow venting from the sump pit and to conform more closely to the requirements of the Plumbing Subcode.

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

#### 5:23-1.1 Title; division into subchapters

(a) (No change.)

(b) The regulations consist of the following subchapters:

1.-8. (No change.)

9. "Code Interpretations" which may be cited throughout the regulations as N.J.A.C. 5:23-9 and when referred to in subchapter 9 of this chapter may be cited as this subchapter.

10. "Radon **\*[Mitigation]\* \*Hazard\*** Subcode" which may be cited throughout the regulations as N.J.A.C. 5:23-10 and when referred to in subchapter 10 of this chapter may be cited as this subchapter.

#### 5:23-3.4 Responsibility

(a)-(f) (No change.)

(g) Responsibility for enforcement of specific provisions of the radon **\*[mitigation]\* \*hazard\*** subcode shall be as set forth at N.J.A.C. 5:23-10.3.

#### 5:23-4.5 Municipal enforcing agencies—administration and enforcement

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

(f) Duties of construction officials:

1. The construction official shall enforce the regulations and: i.-xvii. (No change.)

xviii. Coordinate the activities of the subcode officials in enforcement of the energy, radon **\*[mitigation]\* \*hazard\*** and mechanical subcodes;

xix.-xx. (No change.)

2. (No change.)

(g)-(h) (No change.)

### SUBCHAPTER 10. RADON **\*[MITIGATION]\* \*HAZARD\*** SUBCODE

#### 5:23-10.1 Title, scope; intent

(a) This part of the regulations, adopted pursuant to the State Uniform Construction Code Act, P.L. 1975, c. 217, as amended and as supplemented by P.L. 1989, c. 186 (N.J.S.A. 52:27D-119 et seq.), and entitled Radon **\*[Mitigation]\* \*Hazard\*** Subcode, shall be known<sup>\*</sup>,<sup>\*</sup> and may be cited throughout the regulations as<sup>\*</sup>,<sup>\*</sup> N.J.A.C. 5:23-10 and, when referred to in this subchapter, may be cited as "this subchapter".

1. This subchapter is intended to complement rules adopted by the New Jersey Department of Environmental Protection at N.J.A.C. 7:28-27 which provide for certification of persons who **\*[test for the presence of radon gas and radon progeny contamination in buildings and the reporting of this test data]\* \*sell radon or radon progeny devices, test for radon or radon progeny, or mitigate radon in buildings\***.

i. Copies of N.J.S.A. 26:2D-70 et seq. and N.J.A.C. 7:28-27 may be obtained from the New Jersey Department of Environmental Protection, CN 411, Trenton, NJ 08625.

(b) This subchapter pertains to the construction of all buildings in Use Groups E and R, as defined in the building subcode, within recognized radon prone areas defined as tier one by the New Jersey Department of Environmental Protection and shall control matters relating to construction techniques **\*[for radon mitigation]\* \*to minimize radon gas and radon progeny entry and facilitate any subsequent remediation that might prove necessary\***.

(c) This subchapter seeks to protect and ensure public safety, health and welfare insofar as it is affected by radon entry into schools and residential buildings.

1. It is the purpose of this subchapter to establish standards and procedures to ensure that construction techniques that minimize radon entry and that facilitate any post-construction radon removal that is required shall be incorporated in the construction of all buildings in Use Groups E and R in tier one areas and are permitted to be incorporated elsewhere in New Jersey.

2. Radon is a colorless, odorless, tasteless, radioactive gas that occurs naturally in soil gas, underground water, and outdoor air. Prolonged exposure to elevated concentrations of radon and its progeny (that is, substances formed as a result of the radioactive decay of radon) has been associated with increases in the risk of lung cancer. An elevated concentration is defined as being at or above the guideline of 4 pCi/L or 0.02 WL average annual exposure.

3. Inasmuch as it is deemed to be more cost effective to build schools and residential buildings that resist radon entry than to remedy a radon problem after construction, design and construction techniques shall be employed, in tier one areas, to minimize pathways for soil gas to enter and features shall be incorporated during construction in tier one areas that will facilitate radon removal after completion of the structure if prevention techniques prove to be inadequate.

#### 5:23-10.2 Definitions

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

"Foundation pipe drain" means a drain placed around the perimeter of a foundation that utilizes a perforated pipe. An "interior foundation pipe drain" is one placed around the internal perimeter of a foundation. An "exterior foundation pipe drain" is one placed around the external perimeter of a foundation.

"French drain" or "channel drain" means a path used to assist with water drainage which is installed in basements of some structures during initial construction, which consists of a gap (typically one-half to one and one-half inch in width) between the basement block wall and the concrete floor slab around the entire inside perimeter of the basement.

**\*[ "Mitigate" means to apply materials and/or install systems and materials to reduce radon and radon decay product concentrations in the indoor atmosphere or prevent entry of radon and radon decay products into the indoor atmosphere.]\***

"Picocurie per Liter (pCi/L)" means 2.2 disintegrations per minute of radioactive material per liter. It may be used as a measure of the concentration of radon gas in air. One picocurie is equivalent to 10<sup>-12</sup> Curies.

"Radon" means the radioactive noble gas radon-222.

"Radon progeny" means the short-lived radionuclides formed as a result of the decay of radon-222, including polonium-218, lead-214, bismuth-214 and polonium-214.

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"Sump" means a pit or hole in or through a basement floor slab designed to collect water, and from which such water is drained by means of a vertical-lift or sump pump.

"Sump pump" means a pump used to move collected water out of the sump to an above grade discharge remote from the structure.

"Working level (WL)" means that concentration of short-lived radon decay products that will result in 130,000 million electron volts of potential alpha-particle energy per liter of air. Working level is a measure of radon decay product concentration in air.

5:23-10.3 Enforcement

(a) The provisions of this subchapter shall be enforced by the \*[local]\* enforcing agencies having responsibility for the enforcement of this chapter.

(b) Enforcement responsibility shall be divided among subcode officials in the following manner:

1. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)1, 2, 10 and 11 shall be the responsibility of the building subcode official;

2. Plan review and inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)3, 4, 5, 7 and 8 shall be the responsibility of the plumbing subcode official;

3. Plan review with regard to compliance with N.J.A.C. 5:23-10.4(b)6, 9 and 12 shall be the joint responsibility of the building and fire protection subcode officials; and

4. Inspection with regard to compliance with N.J.A.C. 5:23-10.4(b)6, 9 and 12 shall be the responsibility of the building subcode official.

5:23-10.4 Construction techniques

(a) Tier one radon hazard areas shall be identified in accordance with the county/municipal radon listing established by the Department of Environmental Protection. The current list of municipalities in tier one areas is set forth in Appendix 10-A of this subcode.

(b) The construction techniques set forth in this subsection shall be **\*the minimum radon hazard protective features required to\*** be incorporated into construction of buildings in Use Groups E and R in tier one areas, and may be incorporated elsewhere, in order to minimize radon **\*and radon progeny\*** entry and facilitate any post-construction radon removal that may be required. **\*Enumeration of these construction techniques is not intended to preclude voluntary use of additional or more extensive techniques.\***

1. A continuous vapor barrier not less than six-mil (.006 inch; .152 mm) polyvinyl chloride or polyethylene with any seams overlapped not less than 12 inches (305 mm), or other approved materials, shall be installed under the slab in basement and slab-on-grade construction and on the soil in crawl space construction.

2. Floors of basements and slab on grade construction shall be placed over a base course, not less than four inches (102 mm) in thickness, consisting of gravel or crushed stone containing not more than 10 percent of material that passes through a No. 4 sieve.

3. Basement slabs with interior foundation pipe drains installed shall have a solid three-inch minimum diameter vent pipe section installed in conjunction with this drainage system with termination between six and 12 inches above the slab and appropriately capped or connected to an independent vent stack pipe terminating at an approved location on the exterior of the building. **\*[Basement slabs with exterior foundation pipe drains installed shall have a three-inch minimum diameter solid vent pipe section installed in conjunction with this drainage system that terminates at grade level and is appropriately capped]\*.**

4. Basement slabs which do not have **\*[a piped drainage system shall not be permitted unless]\*** **\*an interior foundation pipe drain shall be provided with\*** one three-inch minimum solid vent pipe section with a "T" pipe fitting for every 1,500 square feet, or portion thereof, of slab area **\*[is]\*\***, **this vent pipe section to be\*** installed into the sub-slab aggregate. The horizontal openings of the "T" pipe fitting shall be placed in the sub-slab aggregate**\*[**, which**]\*\***. **The vertical portion of the "T" pipe fitting\*** shall terminate between six and 12 inches above the slab **\*[and]\*\***. **These fittings\*** shall be **\*clearly labeled and\*** appropriately capped or connected to an independent vent stack pipe

terminating to an approved location on the exterior of the building. **\*[These fittings shall be clearly labeled.]\***

5. Basement slabs with French drains or channel drains shall not be allowed unless interior foundation pipe drains as described in this section are installed.

6. Joints in foundation walls and floors, including, without limitation, control joints between slab sections poured separately, and between foundation wall and floor (except for French drains or channel drains), as well as penetrations of the foundation walls and floor including, but not limited to, utility penetrations, shall be substantially sealed by utilizing a non-cracking polyurethane or similar caulk, or equivalent, in order to close off the soil gas entry routes. Any openings or penetrations of the floor over the crawl space shall be substantially sealed in order to close off the soil gas entry routes.

7. Untrapped floor drains shall be provided with removable stoppers which substantially close off the soil gas entry routes.

8. A sump cover which substantially closes off the soil gas entry routes shall be provided for all sump installations. If foundation pipe drains terminate at a sump installation and provisions are made for venting from the sump installation, the three-inch diameter solid vent pipe section requirement of (b)3 above need not be provided.

9. Any ductwork that is routed through a crawl space or beneath a slab shall be properly taped or sealed.

10. Sealant materials that substantially close off the soil gas entry routes shall be installed on any doors or other openings between basements and adjoining crawl spaces that are vented to the exterior.

11. The tops of foundation walls, including, without limitation, interior ledges, that are constructed of hollow masonry units shall be capped or the voids shall be completely filled.

12. When capped interior vent pipe sections are provided\*, **or venting from the sump installation is provided,\*** in accordance with (b)3 **\*[or]\*\***, **\* 4 \*or 8\*** above, an adequately supported three-inch minimum diameter solid vent pipe shall be installed from a point that is within 10 feet of the capped interior vent pipe section **\*or sump installation\***, through any enclosed portions of the building, terminating at an approved location on the exterior of the building. **\*[The termination point shall be at least 10 feet from the lot line or any adjacent building and shall be at least 10 feet above average grade, thereby allowing any future discharge to be directed away from the building.]\*** **\*This vent pipe shall be clearly labeled and shall meet the termination requirements of section 12.4 of the plumbing subcode. Joints and connections in the vent pipe shall be gas tight.\*** Unused openings shall be closed or capped.

APPENDIX 10-A

New Jersey Municipalities in Tier 1

County	Municipality
Hunterdon	All Municipalities
Mercer	Ewing Hopewell Borough Hopewell Township Lawrence Pennington Princeton Borough Princeton Township
Middlesex	Highland Park New Brunswick North Brunswick Piscataway Plainsboro South Brunswick
Monmouth	Colts Neck Freehold Borough Freehold Township Holmdel Little Silver Marlboro Tinton Falls Upper Freehold

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Morris	Boonton Town Chester Borough Chester Township Denville Dover Harding Jefferson Kinnelon Mendham Borough Mendham Township Montville Morris Plains Morris Morristown Mount Arlington Mount Olive Passaic Randolph Roxbury Victory Gardens Washington Wharton
Passaic	Pompton Lakes West Milford
Somerset	Bedminster Bernardsville Bernards Branchburg Bridgewater Far Hills Franklin Hillsborough Millstone Montgomery Peapack & Gladstone Raritan Rocky Hill Somerville South Bound Brook Warren
Sussex	All Municipalities except Hardyston <b>*and Stanhope*</b>
Warren	All Municipalities

**COMMENT:** Retrospective square footage standards are required for private schools for handicapped differently than public schools. The new code amendment seems to exempt public schools from prior approval but requires retrospective approval for private schools.

**RESPONSE:** The Department of Education disagrees with this comment. For approval, public schools were previously required to comply with design guidelines including square footage requirements. School space sizes and capacities were determined based on the previous standards established in the School Capacity Bulletin. Private schools for the handicapped can choose between the previous guidelines or comply with existing design provisions in N.J.A.C. 6:22-2.5(b).

**COMMENT:** The previous 40-square-foot guideline was not codified and never uniformly applied. This capacity guideline should not be used as a measure of compliance.

**RESPONSE:** The Department of Education disagrees. The 40-square-foot guideline was used to calculate public school capacities and is identical to the standard required for private schools for the handicapped.

**COMMENT:** N.J.A.C. 6:22-2.5 as proposed for amendment also proposes retrospective application to other spaces (non-classroom). The standard is applied unequally and offers unequal protection to the private schools. "Other spaces" in public schools are grandfathered but the code offers no grandfathering to private schools.

**RESPONSE:** The Department of Education disagrees with this comment. Non-classroom spaces in public schools were required to comply with the guidelines established by the School Capacity Bulletin. Therefore, public schools are not grandfathered as the commenter indicated. As stated above, private schools for the handicapped will have a choice to comply with existing design provisions in N.J.A.C. 6:22-2.5(b) or the design guidelines previously required for the public schools. In order to ensure that children are provided with educationally adequate facilities, they must meet one of these sets of standards.

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

6:22-2.5 School space sizes and capacity  
(a)-(e) (No change.)

(f) Spaces occupied but not previously approved prior to **\*[(the effective date of this amendment)]\* \*May 7, 1990\***, in order to be approved for capacity, must meet the following requirements:

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

**EDUCATION**

**(a)**

**STATE BOARD OF EDUCATION**

**School Space Sizes and Capacity**

**Adopted Amendment: N.J.A.C. 6:22-2.5**

Proposed: February 5, 1990 at 22 N.J.R. 277(c).  
Adopted: April 4, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: April 16, 1990 as R.1990, d.237, with a technical change not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:7A-5, 18A:18A-16, 18A:18A-18, 18A:18A-39, 18A:20-36, 18A:35-1 et seq., 18A:46-13, 18A:46-15, 52:27D-121, 52:27D-123, 52:27D-130, and 20 U.S.C. 1401 et seq.

Effective Date: May 7, 1990.

Expiration Date: September 30, 1990.

**Summary of Public Comments and Agency Responses:**

The Department received written commentary regarding the proposed amendment to N.J.A.C. 6:22-2.5 from one interested organization.

**(b)**

**STATE BOARD OF EDUCATION**

**Vocational School Ownership, Financial Responsibility, Conduct and Violation of Rules**

**Adopted Amendments: N.J.A.C. 6:46-4.5, 4.12 and 4.16**

Proposed: January 16, 1990 at 22 N.J.R. 91(b).  
Adopted: April 14, 1990 by Saul Cooperman, Commissioner, Department of Education; Secretary, State Board of Education.

Filed: April 11, 1990 as R.1990 d.235, without change.

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:7A-1 et seq., 18A:54-6, 18A:54-10, 18A:69-1 et seq., 34:1A-38 and Public Law 98-524.

Effective Date: May 7, 1990.

Expiration Date: October 5, 1992.

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**Summary of Public Comments and Agency Responses:**

Four individuals submitted written comments in response to the proposed amendments to N.J.A.C. 6:46-4.5, 4.12 and 4.16 published in the January 16, 1990 issue of the New Jersey Register.

**COMMENT:** A commenter suggested that legislation supported by the Private Career School Association of New Jersey to establish a private vocational school student tuition protection fund be adopted.

**RESPONSE:** The bills, prefiled in the New Jersey Assembly and Senate, are being reviewed by the Department.

**COMMENT:** The same commenter stated that eight companies contacted regarding tuition performance bonds required certificates of deposit as collateral for each dollar bonded and the school would have to place a \$920,000 certificate of deposit to secure adequate bonding required by N.J.A.C. 6:46-4.5.

**RESPONSE:** The Department contacted two surety companies that indicated that a school with a history of financial stability and with adequate school financial assets, proven through standard accounting procedures, should be able to obtain bonding at a \$10 rate per \$1,000 bonded. If the school's financial picture was not strong, collateral would have to be posted to obtain the bond. If a school cannot demonstrate financial soundness for advance tuition held it should reduce the advance tuition collected to an amount for which it can obtain bonding coverage. The \$920,000 figure stated would not seem to reflect tuition collected by the school 30 or more calendar days in advance of instruction. The total stated is significantly higher than the total tuition reported as received by the school for the '88-'89 school year and a lesser bond than stated would probably be required.

**COMMENT:** The same commenter stated that degree granting institutions close without recompense to students affected.

**RESPONSE:** The legislative authority of the Department applies only to private vocational schools defined by appropriate rules and not to degree granting institutions.

**COMMENT:** The same commenter stated that the proposed formula for bonding required by N.J.A.C. 6:46-4.5 will protect those schools, who through unscrupulous methods, have attained substantial wealth and can post a bond.

**RESPONSE:** The Department disagrees because schools that invest tuition money back into the schools should be able to demonstrate assets and financial stability looked for by bonding companies.

**COMMENT:** Two commenters stated that bonds are difficult for small schools to get.

**RESPONSE:** Schools that can demonstrate adequate financial stability and financial assets to a surety, regardless of size, should not have difficulty obtaining a bond.

**COMMENT:** The same two commenters stated that obtaining tuition performance bonds increases school operating costs that would be passed along to students.

**RESPONSE:** The increased cost, even if passed along to students, is offset by the ensuring of the return to the students of unearned tuition if the school closes and an adequate bond is available.

**COMMENT:** The same two commenters stated that the acceptance of a letter of credit in lieu of a performance bond to protect advance tuition collected by a school should not be ended.

**RESPONSE:** The Department disagrees because information received from the New Jersey Department of Insurance indicates that letters of credit are difficult to manage. The Department does not have the resources to oversee letters of credit. The letter of credit can be used as collateral for the bond.

**COMMENT:** The same two commenters indicated that dealing with out-of-State bonding companies will take dollars out of New Jersey.

**RESPONSE:** It would seem that the collateral required for a bond could remain on deposit in local banks. If a New Jersey surety company is not available, the majority of the bond premium would probably go out-of-State.

**COMMENT:** A commenter stated that private vocational schools pay a substantial licensing fee and procedures required to track letters of credit should not be too much of a burden on New Jersey personnel.

**RESPONSE:** The Department does not have the resources to adequately manage letters of credit. The letters of credit can be used for collateral if required by the surety company.

**COMMENT:** A commenter asked for clarification of bonding required pursuant to N.J.A.C. 6:46-4.5.

**RESPONSE:** Basically, if a school requires prepayment of all tuition for a six-month program, the first month, minus the registration fee paid, would not have to be covered by a tuition performance bond.

**COMMENT:** A commenter suggested that GED test materials be used to establish a passing score on the ability to benefit test. Another commenter recommended that the amendments regarding ability to benefit testing be rejected for the following reasons:

1. Tests currently used sometimes test for such areas as mechanical aptitude and dexterity, in addition to reading and math;

2. Certain schools have graduated students who would not have met the amended requirements;

3. The proposed standards do not address the needs of all students and occupations for which they are trained;

4. The proposed regulations do not address the ability of private vocational schools to provide remedial education; and

5. The proposed regulations are too restrictive.

**RESPONSE:** Programs in private vocational schools are usually considered postsecondary in nature. Enrollment of students is predicated on the student having a high school diploma or GED. Students without the diploma or GED should be able to demonstrate, through the ability to benefit test, that they have the basic academic skills to handle post-secondary programs of instruction. Tests are available that will permit students to demonstrate basic academic proficiency at the ninth grade level. Schools that can justify admitting a student based on mechanical aptitude or nonacademic measures are given the option to submit and have approved an alternative ability to benefit test procedure.

**COMMENT:** A commenter stated that the proposed amendment to N.J.A.C. 6:46-4.16 is accepted.

**RESPONSE:** The Department agrees.

**COMMENT:** A commenter objected to the amendment at N.J.A.C. 6:46-4.16(b) because a school should not be told to cease recruitment, new enrollments, and class starts without prior notice.

**RESPONSE:** The amendment identified deals with the withholding of approval of the request for annual renewal of approval. Routinely, the application is reviewed for compliance with regulations and the school director is notified, in writing, of noncompliance. The proposed action would not be invoked by the Department unless corrective action was not taken by the school before the current certificate of approval expired. Notice on noncompliance is given and time to correct is currently provided.

**COMMENT:** The same commenter asked for a description of what constituted chronic and systemic noncompliance.

**RESPONSE:** Chronic noncompliance is the repeated or continuing operation of the school in violation of the rules of the State Board of Education. The term "systemic" was removed from the amendment prior to the formal proposal and publication in the New Jersey Register.

**COMMENT:** The same commenter said that the Department should respond to the submission of corrective action sent by a school within five days if the school had been ordered to cease recruitment, new enrollments and class starts.

**RESPONSE:** The five-day response time was included in the proposed amendments published prior in the January 16, 1990 issue of the New Jersey Register and is being adopted.

**Full text** of the adopted amendments follows.

6:46-4.5 School ownership and financial responsibility

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

(f) Any school approved under this section that collects tuition 30 or more calendar days in advance of instruction, except for a non-refundable registration fee described in N.J.A.C. 6:46-4.7(d), shall post a tuition performance bond payable to the Commissioner and in a format designated by the Commissioner in the amount of the advance tuition accepted by the school.

(g) (No change.)

6:46-4.12 Conduct of the school

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

(c) A prospective pupil not meeting the minimum educational requirement prescribed in (b) above may be admitted by the school on the determination that the individual has the ability to benefit from the education or training offered by the school as determined by the director. Prior to admission, a prospective pupil being considered under the ability-to-benefit provision shall be administered a nationally recognized standardized or industry developed test designed to measure grade level in reading and mathematics. A copy of the test(s) to be used and the score(s) required by the school shall be forwarded to the Assistant Commissioner, Division of Vocational Education for review and approval prior to its use by the school.

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(d) A demonstrated ability at the ninth grade level for reading and mathematics will qualify a prospective student to be enrolled under the ability-to-benefit provision of (c) above. The reading portion of the test shall measure the prospective student's skill in the primary language of instruction. In those courses where the preponderance of instruction is performance based rather than academic, the school may request that the Department approve an alternative ability-to-benefit standard under which a student may be admitted to the specific course/program.

(e) Applicants unable to satisfy the admissions testing requirements specified in (c) and (d) above shall not be admitted to the private vocational school. The director of the school shall provide the pupil with information regarding the availability of remedial education programs at adult learning centers. Locations of the centers are contained in the "Adult Education Program Directory" available from the Division of Adult Education, New Jersey Department of Education. Following the remedial or developmental education program, the pupil may be re-evaluated by the director for compliance with admission requirements or ability to benefit criteria.

(f) A pupil shall not be retained by the school when the pupil fails to meet the school's minimum standards of academic progress or exceeds the maximum number of absences as stated in the school bulletin. The maximum number of unexcused absences shall not exceed 20 percent of the total instructional hours of the course or program.

(g) (No change in text.)

**6:46-4.16 Violations of rules and enforcement procedures**

(a) (No change.)

(b) Prior to the revocation of a certificate of approval the Commissioner shall direct the owner of the school to show cause why such a sanction shall not be imposed in accordance with the procedure established under N.J.A.C. 6:24-3.1. When the annual renewal of an approval is withheld due to chronic non-compliance with the requirements of this subchapter, the following actions shall be taken by the Department:

1. The school director shall be notified in writing of the deficiencies for which the approval has been withheld;

2. The school director shall be directed to cease student recruitment activities, new enrollments and new course/program starts, effective immediately upon receipt of the notification;

3. The school director shall be given 90 days from the receipt of notification to correct the deficiencies or to submit and implement a plan of corrective action deemed acceptable to the Department of Education;

4. Upon correction of the deficiencies or implementation of an approved plan of corrective action, the school's annual approval will be issued;

5. Failure to correct the deficiencies or implement an approved plan of corrective action within 90 days will result in a notice to the school director that its approval will not be renewed. The Commissioner shall issue a temporary approval of the school to permit the school to complete the instructional program of students enrolled or arrange the transfer of students to other schools to complete their instructional programs. The order to cease the activities as per (b)2 above shall remain in effect under the temporary approval.

(c) An appeal of the actions of the Department of Education under (b)5 above may be made to the Commissioner of Education as per N.J.A.C. 6:24. During the appeal process, the school may continue to conduct classes under the conditions described in (b)2 above.

(d) Any person, firm, corporation or association that operates a private vocational school without obtaining or maintaining the approval required by this chapter shall be referred by the Commissioner to the Office of the Attorney General with a request that the Attorney General obtain a court order to enjoin the offending school from continuing to operate through an action in the Superior Court, Law Division. The Commissioner shall request that the court sign an order to show cause why the school should not be enjoined from continuing to operate in violation of the law.

(e) The Commissioner shall notify all relevant agencies, including but not limited to, accrediting agencies, the Department of Higher Education, New Jersey Higher Education Assistance Authority and

other student loan guarantors when the approval of an approved private vocational school is revoked or withheld by the Commissioner.

(f) Schools found in non-compliance with this subchapter shall be subject to a three level enforcement process designed to permit a school to comply with these rules or have its approval to operate revoked by the Commissioner in accordance with (b) above. Nothing in this subsection shall preclude the Commissioner from initiating the enforcement procedure at any level if non-compliance with the rules of this subchapter is deemed serious enough to endanger the safety, health or welfare of students or staff of the school or the general public.

(g) Level 1 Enforcement: When a non-compliance with the rules of this subchapter has been identified, Department staff designated by the Assistant Commissioner, Division of Vocational Education, shall notify the school director in writing of the violation(s) and grant the school director 30 days from receipt of notification to submit actions taken to correct the violation(s) and to identify procedures to be established to preclude a recurrence of the violation(s) in the continued operation of the school. Failure to respond to the notification of violation will result in the moving of the action to Level 2 Enforcement.

1. Upon review of the corrective action(s) taken, the Department staff shall notify the school director in writing of the acceptability of the action(s).

2. If the action(s) taken do not correct the violation(s) and preclude recurrence, the Department staff shall notify the school director in writing and grant the school director 15 days from receipt of the notice of non-correction to submit evidence of correction.

3. If there is a failure to respond or if the corrective action submitted does not adequately address correction of the violation(s), the matter will be moved to Level 2 Enforcement.

(h) Level 2 Enforcement: The Department staff shall notify the Assistant Commissioner, Division of Vocational Education, when a violation of this subchapter has not been corrected through the Level 1 Enforcement process.

1. The Assistant Commissioner shall notify the school director in writing that the violation(s) has not been corrected and notify the school director that he or she, upon receipt of the notification, shall cease the recruitment and enrollment of additional students and refrain from initiating any new class starts after the date of receipt of the notice.

2. The school director will be granted 30 days from the date of notification from the Assistant Commissioner to submit actions taken to correct the violation(s) and to establish procedures to preclude a recurrence of the violation(s) in the continued operation of the school.

i. The notification letter will also contain the requirement that the school director return a certified statement to the Assistant Commissioner that recruitment, enrollment and new class start activities have ceased and will remain so unless the sanction is removed by the Assistant Commissioner.

ii. The notification letter will also require that the school director submit to the Assistant Commissioner appropriate information, as a minimum, to identify students actively enrolled and attending the school, course/program completion status for each student enrolled and attending and the title of the course or program in which each student is enrolled. The certification statement and student status information will be submitted to the Assistant Commissioner by the school director within five days of receipt of the notification from the Assistant Commissioner.

3. Until the sanction is removed by the Assistant Commissioner, the school will be periodically visited by a representative designated by the Assistant Commissioner. The representative will verify that the school is abiding by the sanction imposed and receive a written certification from the school director that the sanction is being abided by.

4. If the school does not submit a response within the 30 day period or the response does not adequately address the correction of the violation(s), the matter will be moved to Level 3 Enforcement.

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5. If the violation(s) is corrected, the sanctions will be removed by the Assistant Commissioner.

(i) Level 3 Enforcement: The Assistant Commissioner shall notify the Commissioner when a violation of these rules has not been corrected through the Level 2 Enforcement process.

1. The Commissioner will issue an order to the school director to show cause why the Commissioner should not remove the school's approval to operate or why another corrective action should not be taken by the Department because of the violation of these rules.

2. The notification from the Commissioner will also specify the continuation or initiation of the procedures to cease recruitment, enrollment and new class start activities and to verify that the school abides by the sanction as described in (h) above.

(j) Whenever a school director submits written corrective actions or plans in response to a notice to cease recruitment, enrollment of additional students and refrain initiating new class starts, the corrective actions or plans will be reviewed by the Department. The school will be notified of the acceptability of the corrective actions or plans within five working days of receipt of the information by the Department.

**ENVIRONMENTAL PROTECTION**

**(a)**

**DIVISION OF HAZARDOUS WASTE MANAGEMENT**

**Exclusion for Treatability Studies**

**Adopted Amendments: N.J.A.C. 7:26-1.4, 7.4 and 8.2**

Proposed: December 4, 1989 at 21 N.J.R. 3705(a).

Adopted: March 28, 1990 by Judith A. Yaskin, Commissioner,

Department of Environmental Protection.

Filed: April 2, 1990 as R.1990 d.228, **without change.**

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

DEP Docket Number: 050-89-10.

Effective Date: May 7, 1990.

Expiration Date: November 4, 1990.

**Summary of Public Comments and Agency Responses:**

These amendments were proposed on December 4, 1989. The comment period closed February 2, 1990. **No comments were received.** The amendments are being adopted without change.

**Full text of the adoption follows.**

**7:26-1.4 Definitions**

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

...  
 "Treatability study" means a study in which a hazardous waste is subjected to a treatment process to determine:

1. Whether the waste is amenable to the treatment process;
2. What pretreatment (if any) is required;
3. The optimal process conditions needed to achieve the desired treatment;
4. The efficiency of a treatment process for a specific waste or wastes; or
5. The characterization and volumes of residuals from a particular treatment process.

Also included in this definition for the purpose of N.J.A.C. 7:26-8.2(a)22 and 23 exclusions are liner compatibility, corrosion, other material compatibility studies, and toxicological and health effects studies. A "treatability study" is not a means to commercially treat or dispose of hazardous waste and does not involve the placement of hazardous waste on land or open burning of hazardous waste.

**7:26-7.4 Hazardous waste generator responsibilities**

(a)-(f) (No change.)

(g) Annual reporting requirements are as follows:

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1. The hazardous waste generator shall submit to the Department by March 1 of each year a report of manifest activities during the previous calendar year. The report shall be on forms approved by the Department and shall include the following information:

- i. Generator's name, address, and EPA identification number; and
- ii. Each designated facility's name, address, and EPA identification number and the following information for each designated facility:

(1) For each hazardous waste sent, a description of the waste, DOT hazardous class, EPA or State hazardous waste number, total annual amount, and unit of measure; and

iii. Each transporter's name, address, and EPA identification number; and

iv.-ix. (No change in text.)

x. The New Jersey Department of Environmental Protection Hazardous Waste Generator Annual Report certification signed by the generator or authorized representative; and

xi. In accordance with N.J.A.C. 7:26-8.2(a)22v, information on waste sent for treatability studies.

2.-4. (No change.)

(h)-(j) (No change.)

**7:26-8.2 Exclusions**

(a) The following materials are not regulated as hazardous waste for the purposes of this subchapter:

1.-21. (No change.)

22. Subject to the following conditions, samples collected for the purpose of conducting a treatability study, defined at N.J.A.C. 7:26-1.4, or treatability study residues returned to the sample originator are not subject to the requirements of N.J.A.C. 7:26-7.1 through 7.5 and N.J.A.C. 7:26-8. Samples collected for the purpose of conducting a treatability study are not included in quantity determinations under N.J.A.C. 7:26-8.3 (small quantity generator). However, treatability study residues or unused samples once returned to the generator or sample collector are specifically not excluded and are subject to the requirements of N.J.A.C. 7:26-7.1 through 7.5 and N.J.A.C. 7:26-8.

i. The samples are accumulated, stored, and prepared for transport by the generator or sample collector; the samples are not stored longer than 90 days prior to transport; and the samples are transported to a testing facility which conducts treatability studies;

ii. The exclusion in this paragraph is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting a treatability study provided that:

(1) The generator or sample collector uses (in "treatability studies") no more than 1,000 kg of any non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(2) The mass of each sample shipment does not exceed 1,000 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste; and

(3) The sample is packaged so that it does not leak, spill, or vaporize from its package during shipment;

(A) The transportation of each sample shipment shall comply with United States Department of Transportation (DOT), United States Postal Service (USPS), or any other applicable shipping requirements; or

(B) If the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

I. The name, mailing address, and telephone number of the originator of the sample;

II. The name, address, EPA identification number and telephone number of the testing facility that will perform the treatability study;

III. The quantity of the sample;

IV. The date of shipment; and

V. A description of the sample, including its EPA Hazardous Waste Number;

iii. The sample is shipped to a testing facility meeting the requirements of N.J.A.C. 7:26-8.2(a)23 or to a hazardous waste treatment,

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storage, or disposal facility which is either permitted under N.J.A.C. 7:26-12 or has existing status under N.J.A.C. 7:26-12.3, or to an out-of-State facility meeting the equivalent regulations in the receiving state;

iv. The generator or sample collector maintains the following records for a period of at least three years after completion of the treatability study:

- (1) Copies of the shipping documents;
- (2) A copy of the contract with the facility conducting the treatability study; and
- (3) Documentation showing:
  - (A) The amount of waste shipped under this exemption;
  - (B) The name, address, and EPA identification number of the facility to which the shipment was sent;
  - (C) The date the shipment was made; and
  - (D) The amount of unused samples and residues returned to the generator;

v. The generator reports the information required under (a)22iv(3) above as part of its annual report; and

vi. The Department may grant variances for samples collected in New Jersey, on a case-by-case basis, for quantity limits in excess of those specified at (a)22ii above. A variance may be granted for up to an additional 500 kg of non-acute hazardous waste, one kg of acute hazardous waste, or 250 kg of soils, water, or debris contaminated with acute hazardous waste, except the variance may exceed these quantity limits where the material is not considered a hazardous waste under the Federal regulations at 40 C.F.R. Pts. 260 and 261, but is considered a hazardous waste under the New Jersey rules. Additional quantities granted by a variance are subject to the provisions of N.J.A.C. 7:26-8.2(a)22. The following limitations shall also apply:

- (1) The Department may grant a variance only:
  - (A) Where an equipment or mechanical failure has occurred during the conduct of a treatability study;
  - (B) To verify results of a previously conducted treatability study;
  - (C) To study and analyze alternative techniques within a previously evaluated treatment process; or
  - (D) Where further evaluation of an ongoing treatability study is necessary to determine final specifications for treatment; and

(2) The generator or sample collector requesting a variance under this paragraph shall submit the following written information to the Department:

- (A) The reason the generator or sample collector requires an additional quantity of sample for the treatability study evaluation;
- (B) The additional quantity needed;
- (C) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including, for each previous sample from the waste stream, the date and quantity of shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results of each treatability study;

(D) A description of the technical modifications or changes in specifications which will be evaluated and the expected results;

(E) If additional quantities are being requested due to equipment or mechanical failure, specific information regarding the reason for the failure and a description of what procedures or equipment improvements have been made to protect against further failures; and

(F) Such additional information as the Department deems necessary. The Department may return, reject, or refrain from acting on, a variance request for which it deems additional information necessary until such information is submitted.

23. Samples undergoing treatability studies and the testing facility conducting such treatability studies (to the extent such facilities are not otherwise subject to RCRA requirements) are not subject to the requirements of N.J.A.C. 7:26-7 through 12, provided the following conditions are met:

i. No less than 45 days prior to conducting treatability studies, the testing facility notifies the Department, in writing, that it intends to conduct treatability studies under N.J.A.C. 7:26-8.2(a)23;

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ii. A testing facility conducting treatability studies has an EPA identification number;

iii. No more than a total of 250 kg of "as received" hazardous waste, that is, the waste as it is received in the shipment from the generator or sample collector, shall be subjected to initiation of treatment in all treatability studies in any 24 hour period;

iv. The quantity of "as received" hazardous waste stored at the testing facility for the purpose of evaluation in treatability studies, from all sources, shall not exceed 1,000 kg, the total of which can include not greater than 500 kg of soils, water, or debris contaminated with acute hazardous waste or one kg of acute hazardous waste. This quantity limitation does not include:

- (1) Treatability study residues; and
- (2) Treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste;

v. No more than 90 days have elapsed since the treatability study for the sample was completed or no more than one year has elapsed since the generator or sample collector shipped the sample to the testing facility, whichever date occurs first, without the hazardous waste and residues being either manifested to a designated hazardous waste facility or returned to the originator of the sample;

vi. The treatability study does not involve the placement of hazardous waste on land or open burning or hazardous waste;

vii. The testing facility retains records, on the premises for three years following completion of each study, that show compliance with the limitations for treatment rate, storage time, and quantity, including the following specific information for each treatability study conducted:

- (1) The name, address and EPA identification number of the generator or sample collector of each waste sample;
- (2) The date the shipment was received;
- (3) The quantity of waste received, including a description of the waste;
- (4) The quantity of "as received" waste in storage each day;
- (5) The date the treatment study was initiated and the amount of "as received" waste introduced into treatment each day;
- (6) The date the treatability study was concluded;
- (7) The shipping papers including information for date, amount, and description for any unused sample or residues generated from the treatability study returned to the generator or sample collector or, if sent to a designated facility, the date, the name of the facility, its EPA identification number, and a copy of the manifest; and
- (8) A copy of the treatability study contract;

viii. The facility prepares and submits a report to the Department by March 1 of each year that estimates the number of studies and amount of waste expected to be used in treatability studies during the current calendar year and through March 1 of the following year, and includes the following information for the previous calendar year:

- (1) The name, address, and EPA identification number of the testing facility conducting the treatability studies;
- (2) The types, by process, of treatability studies conducted;
- (3) The name, address, and EPA identification number of each person for whom studies have been conducted;
- (4) The total quantity of waste in storage each day;
- (5) The quantity and types of waste subjected to treatability studies;
- (6) The date each treatability study was started and completed or expected to be completed; and
- (7) The final disposition of residues and unused sample from each treatability study;

ix. The testing facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under N.J.A.C. 7:26-8. If so, then such hazardous wastes are fully regulated under N.J.A.C. 7:26, unless the residues and unused samples are returned to the sample originator, in accordance with the shipping standards at (a)22ii(3) above, under the exclusion at (a)22 above;

x. The testing facility notifies the Department in writing when it is no longer planning to conduct treatability studies at the site; and

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xi. The Department, initially or upon review, after considering the competency, reliability and integrity of the owner or operator, has determined that the facility or operation thereof does not pose a threat to the environment.

## HEALTH (a)

### DIVISION OF COMMUNITY HEALTH SERVICES

#### Invalid Coaches and Ambulances Manual of Standards for Licensure of Invalid Coach and Ambulance Services

##### Adopted New Rules: N.J.A.C. 8:40

Proposed: February 20, 1990 at 22 N.J.R. 595(a).  
Adopted: April 12, 1990 by Frances J. Dunston, M.D., M.P.H.,  
Commissioner, Department of Health (with approval of the  
Health Care Administration Board).  
Filed: April 16, 1990 as R.1990 d.239, **without change**.  
Authority: N.J.S.A. 26:2H-1 et seq. and N.J.S.A. 30:4D-6.2 et  
seq., specifically 30:4D-6.3 and 4.  
Effective Date: May 7, 1990.  
Expiration Date: May 7, 1991.

**Summary of Public Comments and Agency Responses:**  
N.J.A.C. 8:40 expired April 15, 1990, pursuant to Executive Order No. 66(1978). In accordance with N.J.A.C. 1:30-4.4(f), these rules proposed for readoption are adopted as new rules.

**COMMENT:** Saul M. Kilstein, Director, Division of Medical Assistance and Health Services, Department of Human Services, supports the proposal to readopt the requirements for licensure of non-volunteer invalid coaches and ambulances.

**RESPONSE:** Accepted.

**COMMENT:** Ewan C. MacQueen, Jr., Christian Science Committee on Publication for the State of New Jersey, asks for a modification of the rules in order to clarify the issue that transportation of the sick or injured to Christian Science facilities and practitioners is allowed. Mr. MacQueen enclosed a copy of N.J.S.A. 30:4D-6 and highlighted the portions of the act which allow Medicaid reimbursement to other facilities and practitioners, such as those affiliated with the Christian Science faith.

**RESPONSE:** The Department will take this commenter's concerns into consideration when the rules are revised later this year. Since his request is one for clarification, and transporting patients to Christian Science facilities or under the care of Christian Science practitioners is not prohibited under the current rules, making changes which could be considered substantive will not be done now. To avoid the necessity of republishing the proposal in the New Jersey Register due to substantive changes contrary to N.J.A.C. 1:30-4.3, the Department has adopted as new rules N.J.A.C. 8:40 as it was originally proposed for readoption. Changes necessitating republication would delay the readoption of the rules, conceivably leaving the public with no regulatory protection after expiration of the rules, until a new proposal could be adopted.

**Full text** of the adopted new rules proposed for readoption appears in the New Jersey Administrative Code at N.J.A.C. 8:40.

## HIGHER EDUCATION (b)

### BOARD OF HIGHER EDUCATION

#### Implementation of the Independent College and University Assistance Act General Provisions

##### Readoption: N.J.A.C. 9:14

Proposed: January 16, 1990 at 22 N.J.R. 116(a).  
Adopted: April 9, 1990 by State Board of Higher Education,  
T. Edward Hollander, Chancellor and Secretary.  
Filed: April 11, 1990 as R.1990 d.234, **without change**.

(CITE 22 N.J.R. 1364)

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Authority: N.J.S.A. 18A:72B-22.  
Effective Date: April 11, 1990.  
Expiration Date: April 11, 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. 9:14.

## HUMAN SERVICES (c)

### DIVISION OF MENTAL HEALTH AND HOSPITALS Community Residence Licensure Standards Policies and Procedures

##### Adopted Repeal and New Rules: N.J.A.C. 10:39

Proposed: July 17, 1989 at 21 N.J.R. 1995(b).  
Adopted: March 23, 1990 by William Waldman, Acting  
Commissioner, Department of Human Services.  
Filed: March 26, 1990, as R.1990 d.218, **with substantive and  
technical changes** not requiring additional public notice and  
comment (see N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 30:11B-1 et seq., specifically 30:11B-4.  
Effective Date: May 7, 1990.  
Expiration Date: May 7, 1995.

**Summary of Public Comments and Agency Responses:**  
The Division received comments from the Community Health Law Project, the Monmouth County Department of Human Services, Project Hope Inc., Easter Seals of Hunterdon County, the Mental Health Association of Morris County, the New Jersey Association of Children's Residential Facilities, the State Board of Nursing of the Division of Consumer Affairs and from the Department of the Public Advocate, Division of Mental Health Advocacy.

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### N.J.A.C. 10:39-1.1 Scope

**COMMENT:** One commenter suggested that the scope section clearly specify non-applicability to children's programs.

**RESPONSE:** The Department agrees and has clarified this section as follows: "the standards shall apply to all community residences for adults aged 18 years and above."

##### N.J.A.C. 10:39-1.2 Definitions

**COMMENT:** One commenter suggested that a group home be defined by level of staffing, and programmatic and contract specifications rather than by physical structure.

**RESPONSE:** The Department disagrees. A definition based on physical structure has always been standard practice. Defining group homes by such criteria would lend too much confusion on the part of local communities as well as other State agencies.

**COMMENT:** One commenter requested that the term "behavior management techniques" within the definition of "crisis intervention services" and "staff support services" be clarified so that it excludes physical and chemical restraint, aversive conditioning, and punishment and so that it complies with all legal requirements.

**RESPONSE:** The Department accepts this comment and has clarified these definitions on adoption to clearly protect client's rights. The above exclusionary criteria shall be incorporated within the definitions of "crisis intervention services" and "staff support services" to read "... behavioral management techniques shall exclude physical and chemical restraint, aversive conditioning and punishment and must comply with all legal requirements."

**COMMENT:** One commenter requested that within the definition of daily living skills, the term "medication management" be changed to "self-administration of medication" since the administration and management of medications is the practice of licensed nursing personnel.

**RESPONSE:** The Department agrees with this comment and has made the requested change.

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**COMMENT:** One commenter believed that the term "provider agency apartment" should be changed to "supervised apartment living arrangement" in order to bring the regulations in line with the language of the statute.

**RESPONSE:** The term "provider agency apartment" has been used to distinguish apartments leased by agencies for use by clients (which will be licensed) from apartments leased directly by clients where services may be provided by a mental health provider (which do not fall within the Department's licensing jurisdiction).

### SUBCHAPTER 2. LICENSING PROCESS

#### N.J.A.C. 10:39-2.1 Initial licensing process

**COMMENT:** One commenter believed that the concept of "substantial compliance" permits the Division of Mental Health and Hospitals to exercise standardless discretion in permitting providers to avoid the minimum qualifications of the proposed rules. At least with regard to life-style, the commenter stated that a substantial compliance standard violates N.J.S.A. 30:17-4.1 which requires compliance with specified safety standards.

**RESPONSE:** Although it is clearly the Department's goal that all provider agencies shall be in complete compliance with all the requirements of the proposed rules, the Department recognizes that there may unavoidably be circumstances sometimes when this is not possible. For this reason, N.J.A.C. 10:39-2.7 outlines those areas where waivers of specific standards shall be considered. With reference to life-safety issues, however, the Department recognizes that such waivers are not possible as these standards are derived from the Uniform Fire Code of New Jersey and not within this Department's regulatory authority.

**COMMENT:** One commenter stated that background information on the skills, education and history of the operator, financial reserves of the agency, and projected operating costs should be included with the initial application for licensure.

**RESPONSE:** The Department agrees that such information is critical to the well-being of clients and the successful operation of a community residence for the mentally ill. As part of the Department's contracting process (Policy Circular P1-01), prospective providers must make available a detailed personal financial history as well as program information. N.J.A.C. 10:39-2.5(b) further requires that the Division assess the fiscal, programmatic and administrative capabilities of the new applicants.

**COMMENT:** One commenter suggested that residents of community residences for the mentally ill and organizations exhibiting a concern with the well-being of residents should be given the right to contest the issuance of a license to a provider agency which has been a substantial violation of laws and regulations designed to protect such residents.

**RESPONSE:** A provider agency in substantial violation of the regulations would not be re-issued a license. The Department, however, is most receptive to the input of interested parties and will formalize a mechanism to channel this input as the process for conducting reviews is developed.

**COMMENT:** One commenter stated that the language "documents indicating habitability" was too vague.

**RESPONSE:** It is not possible to be more specific since there is a wide variation in municipal involvement in inspection or approval prior to occupancy.

**COMMENT:** Two commenters requested clarification of whether the specific facilities or the provider agency itself will be licensed.

**RESPONSE:** The provider agency will be licensed to operate a range of community residences for the mentally ill. The license shall specify the specific location of only group homes and shall indicate the number of apartment spaces and number of family care homes but will not specify specific sites for apartment spaces and family care homes.

#### N.J.A.C. 10:39-2.2 Licensing of group homes

**COMMENT:** One commenter requested that in addition to requiring that the license be available on the premises for inspection by the public, the entire application and affiliation agreement should be made available to residents of the facility so that they are aware of provider responsibilities.

**RESPONSE:** The Department strongly agrees that information regarding the responsibilities of the provider agency should be provided to residents. The application for licensure and/or the affiliation agreement, however, is not the most ideal mechanism to accomplish this goal since these documents contain very technical language. It has always been the procedure of the Division as well as provider agencies to provide clients a residential program with a client service agreement which specifies services to be provided. In addition, all interested parties do have the

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right to review all Division contracts with the provider agency as well as affiliation agreements under the New Jersey Right to Know Act.

**COMMENT:** One commenter did not believe that the public has the right to review the license.

**RESPONSE:** The Department believes that interested members of the public do have the right to review the license on the agency's premises during normal business hours.

#### N.J.A.C. 10:39-2.3 Licensing PA apartments

**COMMENT:** One commenter stated that unlike the provision for group homes and family care homes, there is no provision requiring documents to be made available for inspection.

**RESPONSE:** It was intended that N.J.A.C. 10:39-2.2(g), which requires that the license be made available for inspection by the public would be included under each separate facility category. This was an oversight and will be included upon adoption.

**COMMENT:** One commenter requested that it be made clear that, given the provider agency's ability to relocate apartments, new apartments must meet all standards contained in these rules.

**RESPONSE:** The Department agrees that such compliance is necessary and believes that this was made clear throughout this section. The Department has, however, clarified N.J.A.C. 10:39-2.3(f) to read, "the Provider Agency shall have the right to relocate apartment spaces within the defined geographic area, as needed. The new facilities shall comply with all requirements of this chapter."

**COMMENT:** One commenter suggested that the Division inspect all proposed residential sites prior to occupancy.

**RESPONSE:** Whereas the Department retains the right to such an inspection, it is neither necessary nor appropriate for this to be mandatory. It would severely limit the ability of provider agencies to relocate apartment spaces as needed.

#### N.J.A.C. 10:39-2.4 Licensing family care homes

**COMMENT:** One commenter stated that inspection of family care homes is limited to physical and fire safety standards. This section should be revised to require review for compliance with program standards.

**RESPONSE:** The Division will conduct on-site inspections for family care homes for compliance with physical and fire-safety standards. Since the provider agency will be responsible for the program, review of compliance with program standards will be accomplished by means of a review of the affiliation agreement (N.J.A.C. 10:39-2.4(b)), which describes the services provided, as well as through monitoring and review by the provider agency.

The Department agrees, however, that N.J.A.C. 10:39-2.4(c) requires clarification and has amended this subsection to read, "The Division may inspect any proposed family care home based on the physical and fire safety standards of N.J.A.C. 5:18, and review all program operations for substantial compliance with the provisions of this chapter."

#### N.J.A.C. 10:39-2.5 Provisional license

**COMMENT:** One commenter suggested that a new provider agency be granted a formal license rather than a provisional license as soon as an assessment of fiscal, programmatic and administrative capabilities of the provider agency has been completed.

**RESPONSE:** The Department believes that a provisional license is appropriate until such time as a site is located and inspected, and that services are ready to be initiated. At that time, the agency would make application for an annual renewable license.

### SUBCHAPTER 3. MONITORING COMPLIANCE

#### N.J.A.C. 10:39-3.1 Evaluation

**COMMENT:** One commenter suggested that "health, safety and welfare" should be substituted for "life safety" since it incorporates all of the proposed regulations and standards dealing with the physical safety of the residents.

**RESPONSE:** The Department agrees and has amended N.J.A.C. 10:39-3.1(h) and (i) by substituting "health and/or safety" for "life safety" when describing violations. It is felt the term welfare is too broad of a term in this context when the Division is requiring "immediate" corrective action to be taken. However, the Department has amended N.J.A.C. 10:39-3.1(a) by substituting "health, and/or safety and welfare" for "physical life safety" to ensure that the residents' welfare is maintained through a quality assurance program.

**COMMENT:** Two commenters stated that DMHH should set forth a reasonable and explicit timeframe within which it must issue its report. Without such a timeframe, they believed serious deficiencies could go uncorrected for an indefinite period of time.

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**RESPONSE:** These rules apply to Provider Agency obligations. Internal Division policies and procedures do address timeliness of reports.

**COMMENT:** N.J.A.C. 10:39-3.1(h) requires immediate correction of "life threatening" deficiencies. This provision should require immediate correction of any deficiency which threatens the safety, health and life of residents.

**RESPONSE:** The Department agrees that this section requires clarification as any deficiency which threatens the safety, health, or life of a resident is clearly "life-threatening." In order to be consistent with the language used throughout these rules, especially as outlined in N.J.A.C. 10:39-3.6, Emergency situation, N.J.A.C. 10:39-3.1(h) and (i) have been revised as follows: "For any violations cited by the Division as presenting an imminent threat to the health and/or safety, of residents, the PA shall correct them and/or remove the threat cited by such deficiencies immediately . . ." and, "If the Division report identifies violations other than those presenting an imminent threat to the health and/or safety of residents . . .", respectively.

N.J.A.C. 10:39-3.2 Appeal of the Division's findings

**COMMENT:** One commenter questioned the lack of an appeal process for life-threatening deficiencies.

**RESPONSE:** The Department must retain the right to take immediate action when the health or safety of the residents is threatened. Although this is not intended to eliminate the right of appeal, the normal process which calls for an appeal of Division findings within 20 days has the potential for allowing clients to remain in life-threatening situations. N.J.A.C. 10:39-3.6 does specify, however, that a hearing provided in such cases shall be on an expedited basis.

**COMMENT:** One commenter believed that there should be an outer limit placed on this process so that standard violations do not continue indefinitely.

**RESPONSE:** The Department feels that the limit on unabated violations is satisfactorily addressed through the annual timeframe established for license renewal (N.J.A.C. 10:39-2.5) as well as through such safeguards as established in N.J.A.C. 10:39-3.6.

**COMMENT:** One commenter suggested that the provider agency inform both the building owner and his or her agent of the need to correct any deficiencies.

**RESPONSE:** The Department agrees that both parties should receive notice of deficiencies and has provided for this on adoption at N.J.A.C. 10:39-3.1(i)1.

**COMMENT:** Two commenters expressed concern that these rules should designate the party responsible for assuming the financial obligation for correcting violations and other support services.

**RESPONSE:** The party responsible for assuming the financial obligation will vary depending upon the nature of the violation, the financial resources of the agency and such issues as ownership of the property and lease agreements between the provider agency and property owner. Therefore, these rules are not the appropriate place to make that determination.

**SUBCHAPTER 4. RESIDENTIAL CARE PROGRAM**

N.J.A.C. 10:39-4.1 Scope and purpose

**COMMENT:** One commenter suggested that this section fails to make clear that it is neither necessary nor appropriate for providers to exert pressure on residents to accept services.

**RESPONSE:** The Department does not believe that N.J.A.C. 10:39-4.1 is the appropriate forum in which to include statements regarding "providers to exert pressure on residents to accept services." There are residents' rights protection and quality assurance measures included in this chapter, specifically at N.J.A.C. 10:39-4.8, 10:39-7 and 10:39-8.

N.J.A.C. 10:39-4.7 provides that clients entering a community residence receive, in writing, a list of services to be provided, expected duration of services as well as additional information. Clients indicate their consent, by signature, with this agreement. Residence in a community program is totally voluntary.

N.J.A.C. 10:39-4.2 Written policies and procedures

**COMMENT:** One commenter suggested that this section should require that all policies and procedures be made available to residents on request.

**RESPONSE:** Policies and procedures focus on internal agency administration and are designed to outline appropriate protocols for staff. Mandating that providers develop written service agreements with clients (see N.J.A.C. 10:39-4.7) is a more appropriate mechanism to ensure that the health, safety and welfare of clients is ensured.

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N.J.A.C. 10:39-4.3 Confidentiality

**COMMENT:** One commenter stated that this section and its statutory references were confusing, requiring clarification and revision.

**RESPONSE:** The Department agrees that rewording this section would help to make its intent clearer and clarify the relationship between the statutory reference and these rules. Accordingly, the section has been revised and the statute is now quoted directly in the rule.

**COMMENT:** One commenter requested that the rule clarify that the refusal of a client to accept treatment from a potential receiving agency nullifies the sending agency's authority to disclose information related to that client to that agency.

**RESPONSE:** The Department has not added this clarification because it is not clear that the Legislature intended no disclosures of information about clients to ever occur unless the client has first accepted treatment from a potential receiving agency.

N.J.A.C. 10:39-4.4 Population priorities

**COMMENT:** One commenter suggested that this section should be revised to restore the target population criteria as outlined in N.J.A.C. 10:38-5.2 and to establish clinical criteria for admission into programs.

**RESPONSE:** The target population criteria which prioritize admission into residential programs remains in effect in N.J.A.C. 10:38-5.2. The Community Residence Licensure Standards use the term severe and persistent mental illness in recognition of the various program models used for community residences for the mentally ill. Whereas one program may focus on clients being discharged from State psychiatric facilities, another may focus on clients who require a structured setting to avoid unnecessary hospitalization. These individual differences are outlined in contractual obligations. Clinical criteria for admission into residential programs should be developed by the agency based on the program model, level of staffing and other issues, and more appropriately be the subject of purchase of service contracts and/or affiliation agreements.

**COMMENT:** One commenter suggested that these rules should make clear that admission and discharge procedures should comply with existing legal safeguards.

**RESPONSE:** The Department agrees and has clarified this requirement on adoption to read, "Pursuant to Titles VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination on the basis of race, sex, religion, national origin, age or physical handicap in the provision of services is prohibited."

N.J.A.C. 10:39-4.5 Services to be provided

**COMMENT:** One commenter suggested that the list of services should be expanded to include emergency medical response and training in medication side effects and their treatment.

**RESPONSE:** These rules do provide for such services under N.J.A.C. 10:39-4.5(a).

N.J.A.C. 10:39-4.6 Settings to provide residential services

**COMMENT:** One commenter suggested that these rules be revised to include measurable standards for determining saturation of local communities.

**RESPONSE:** Saturation of local communities is defined in N.J.S.A. 30:11B.

N.J.A.C. 10:39-4.7 Client service agreements

**COMMENT:** Two commenters expressed concern that the phrase, "Rules which may apply to service provision" (N.J.A.C. 10:39-4.7(a)5) could be interpreted to permit various rules concerning potential eviction of the client. Any such rules should require a proper promulgation and posting before they can be used as a predicate for eviction.

**RESPONSE:** It is the intent of the client service agreement to outline responsibilities of both the provider agency and the client. Both parties enter into this agreement voluntarily. Such an agreement may indeed specify certain expectations for the client for continued residence. Although the eviction of boarding home residents must comply with the provisions of the Anti-Eviction Act (N.J.S.A. 2A:18-61.1), section 8 of P.L. 1987, c.112 amended the definition of a boarding home in the Rooming and Boarding House Act of 1979 to exclude community residences for the mentally ill (CRMI) explicitly. The commenter cited no legal authority for the proposition that CRMI residents were intended to receive the protections within the Anti-Eviction Act nor could any be located. It is not the Department's intent, however, to allow services to be terminated without procedural protection for residents. Such protection already exists in N.J.A.C. 10:37-4.6, which outlines in detail the Client Complaint Agency Ombuds Procedures which includes procedural protection for clients.

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### N.J.A.C. 10:39-4.8 Record maintenance

COMMENT: One commenter suggested that these rules should set forth standards on the content of client records.

RESPONSE: The proposed rule does contain standards on the content of clients' records under N.J.A.C. 10:39-4.8 through 4.11. The Department has clarified this requirement in N.J.A.C. 10:39-4.8(c) and has added the following statement to the subsection: ". . . which shall include: intake and assessment information, comprehensive service plan, and progress notes."

COMMENT: One commenter questioned the omission of the current requirements for financial records under N.J.A.C. 10:39-4.8 and suggested that the financial record keeping requirements of the Department of Community Affairs (for boarding homes) and the Department of Health (for residential health care facilities) be incorporated.

RESPONSE: The Department never intended to eliminate the financial record keeping requirement of N.J.A.C. 10:39-4.8 from these rules. These record keeping requirements are clearly mandated under the Department's contracting process for all residential providers; however, these requirements have been explicitly added to the rules upon adoption for purpose of clarity. The Department does not agree, however, that boarding home and residential health care facility record keeping requirements are applicable, in total, to community residences for the mentally ill.

### N.J.A.C. 10:39-4.12 Staffing requirements

COMMENT: One commenter stated that the Division is mandated to establish criteria for educational and professional standards of employees as well as staffing ratios.

RESPONSE: The Department believes that the rules do establish minimum criteria for education and qualifications of staff. As outlined in the rules, however, staffing patterns are dependent upon the physical arrangement of the setting, and level of functioning of the residents. Due to the heterogeneity and complexity of group homes throughout the State, and the highly individualized and fluctuating needs of those suffering from mental illness, it is not possible to specify staffing ratios through these rules. These issues are addressed through purchase of service contracts with individual agencies, and/or approved affiliation agreements. Staffing requirements have been clarified to reflect purchase of service contract and approved affiliation agreements.

### N.J.A.C. 10:39-4.13 Residential counselors, requirements, qualifications, and duties

COMMENT: One commenter stated that a licensed practical nurse must be under the supervision of a registered nurse or physician and requested that the appropriate rule be clarified.

RESPONSE: A licensed practical nurse needs only to be under the supervision of a registered nurse or physician when executing the duties of a licensed practical nurse. As a residential counselor, the duties would not be that of a licensed practical nurse; therefore, supervision of a RN or physician would not be required for someone employed as a residential counselor, who meets the licensed practical nurse requirements.

### N.J.A.C. 10:39-4.17 Waiver of staff requirements, qualifications, and duties

COMMENT: One commenter suggested that a provision should be made for mandatory training and evaluation of staff.

RESPONSE: Residential staff are employees of private, non-profit agencies and, as such, fall within the scope of their specific agency's personnel practices. The Department believes that competence of individual employees can be assessed and assured through the site review and evaluation process; the renewal process for purchase of service contracts and/or affiliation agreements; and the approval process for license renewal.

## SUBCHAPTER 5. PHYSICAL PLANT

### N.J.A.C. 10:39-5.11 Occupancy and use of space

COMMENT: One commenter suggested that the specification that rooms below ground level be "habitable" be clarified.

RESPONSE: The Department has clarified this requirement as follows: "All requirements of this subchapter and N.J.A.C. 10:39-6 applicable to habitable rooms shall be satisfied."

## SUBCHAPTER 6. FIRE SAFETY

### N.J.A.C. 10:39-6.1 Uniform fire code

COMMENT: One commenter questioned the Department's intent with reference to the provisions of the Uniform Fire Code.

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RESPONSE: The Department only intended the CRMI to comply with the Uniform Fire Code Provisions at the time of construction and additional regulatory requirements as appropriate.

COMMENT: One commenter believed these rules should be revised to require special safety equipment for handicapped individuals.

RESPONSE: Community residences designed to serve special handicapped populations, such as the deaf, are required to comply with special safety equipment requirements which are specified in the contract agreement.

### N.J.A.C. 10:39-6.3 Group homes with six to fifteen residents

COMMENT: One commenter questioned the classification of group homes with six to fifteen residents as an R-2 use group.

RESPONSE: This classification is a provision of N.J.A.C. 4:18, the Uniform Construction Code.

## SUBCHAPTER 7. RESIDENT COMPLAINT PROCEDURES

### N.J.A.C. 10:39-7.1 Development of resident complaint procedures

COMMENT: One commenter suggested that grievances should be able to be pursued by either the client or his or her chosen representative.

RESPONSE: The Department agrees that clients clearly have the right to designate a third party to act on their behalf and has amended this as follows: "Complaint procedures shall allow for the client of the PA or his or her designee to make known a grievance . . ."

COMMENT: One commenter suggested that this section should include notice to residents of the availability of the designated Protection and Advocacy System and should require all complaints to be referred routinely to this system.

RESPONSE: The Department believes that subchapter 7 adequately addresses a complaint procedure for residents of community residences for the mentally ill. In addition, these rules are intended to supplement N.J.A.C. 10:37, which incorporates additional program requirements such as rights of residents.

### GENERAL COMMENT

COMMENT: One comment felt that the proposed rules seem to supercede the Department of Community Affairs rules for rooming and boarding homes and incorporate some of those provisions, yet certain portions of these rules are deleted.

RESPONSE: The proposed rules have been developed in response to N.J.S.A. 30:11B-1 et seq., which gives the licensing authority for group homes for the mentally ill to the Department of Human Services, a responsibility which previously had been that of the Department of Community Affairs. In the development of the proposed rules, the Department of Human Services has incorporated the facility standards used by the Department of Community Affairs owing to their expertise in that area. Department of Community Affairs' programmatic requirements under N.J.A.C. 5:27 have not been included in the Department of Human Services proposed rules as their applicability is to boarding homes.

### Summary of Agency initiated changes

The Department felt the "community residence for the mentally ill" definition needed further clarification with regards to description and type of clients excluded from a "community residence for the mentally ill" based on N.J.S.A. 30:11B-1 et seq. The Department, therefore, included the following in the definition of a community residence for the mentally ill:

Community residences for the mentally ill will have an approved purchase of service contract or an affiliation agreement pursuant to procedures developed by the Division of Mental Health and Hospitals in the Department of Human Services. Community residences will not admit any person residing in a State Psychiatric Hospital who has been found not guilty of a crime by reason of insanity, or unfit to be tried on a criminal charge. Community residences will not be considered a health care facility within the meaning of the "Health Care Facilities Planning Act," P.L. 1971 c.136 (N.J.S.A. 26:2H-1 et seq.) and will include, but not be limited to, group homes, supervised apartments, family care homes and hostels.

The Department has changed N.J.A.C. 10:39-4.4(a), ". . . admissions into group homes . . ." to "community residences for the mentally ill," which is a more appropriate term for the purpose of these licensure standards.

The Department had added the following sentence to 10:39-6.1 Uniform Fire Code: "For purposes of fire safety only, "Group Homes" shall be defined in accordance with N.J.A.C. 5:18 and not as shown at 10:39-1.2." The Department feels that further clarification is needed

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regarding the fire safety regulations which govern group homes and how a group home is defined.

Full text of the adopted new rules follows (additions to proposal shown in boldface with asterisks **\*thus\***; deletions from proposal shown in brackets with asterisks **\*[thus]\***).

### CHAPTER 39 COMMUNITY RESIDENCE STANDARDS POLICIES AND PROCEDURES

#### SUBCHAPTER 1. GENERAL PROVISIONS

##### 10:39-1.1 Scope

(a) The Division of Mental Health and Hospitals' Provider Agencies (PA) shall comply with the physical and program standards contained within. The standards shall apply to all community residences **\*for adults aged 18 years and above\***. This includes group homes serving a maximum of 15 persons, provider agency apartments, and family care homes serving five or fewer persons with an affiliation agreement with the provider agency. These residences shall be approved for a purchase of service contract or an affiliation agreement pursuant to procedures established by the Department, and shall not be considered health care facilities within the meaning of N.J.S.A. 26:2H-1 et seq.

(b) The standards set forth in this chapter are minimum operating standards for community residences located in New Jersey serving persons suffering from mental illness.

##### 10:39-1.2 Definitions

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

"Affiliation agreement" means a description of a program or service provided with or by a mental health agency in the community residence that includes responsibilities for both the PA and the provider of the program or service. Only the governing body (or its official designee) of the PA is authorized to make such agreements with service or program providers.

"Assessment and evaluation" means activities that analyze an individual client's functioning, requests, strengths, needs and environment to determine appropriate interventions.

"Bureau of Licensing and Inspections (BLI)" means the Bureau of Licensing and Inspections within the Division of Mental Health and Hospitals, Department of Human Services.

"Client" means a person suffering from mental illness who is served by a community residence program.

"Client service agreement" means a written agreement between the Provider Agency and client which includes responsibilities of both the PA and the client.

"Community integration and membership services" means services intended to foster a sense of belonging for clients. It is primarily designed to provide emotional support and comfort to clients in group environments and is intended to increase client motivation and participation. Activities may include: community meetings, community trips, newsletters, socials, and various awareness activities, etc.

"Community residence for the mentally ill" means any community residential facility approved by the Division which provides food, shelter, and personal guidance under such supervision as required, to not more than 15 mentally ill persons who require assistance, temporarily or permanently, in order to live independently in the community. **\*Community residences for the mentally ill will have an approved purchase of service contract or an affiliation agreement pursuant to procedures developed by the Division of Mental Health and Hospitals in the Department of Human Services. Community residences will not admit any person residing in a State Psychiatric Hospital who has been found not guilty of a crime by reason of insanity or unfit to be tried on a criminal charge. Community residences will not be considered a health care facility, within the meaning of the "Health Care Facilities Planning Act", P.L. 1971 c. 136 (N.J.S.A. 26:2H-1 et seq.) will include, but not be limited to, group homes, supervised apartment living arrangements, family care homes, and hostels.\***

"Comprehensive service plan" means the periodic formulation of goals, objectives, and interventions for residential services based on a functional assessment which may include: psychological, medical, developmental, family, educational, social, cultural, environmental, recreational and vocational components. Treatment recommendations are included.

"Crisis intervention counseling" means an attempt to facilitate crisis stabilization through the use of specific, time-limited counseling techniques. Crisis intervention counseling focuses on the present, providing pragmatic solutions to identified problems.

"Crisis intervention services" means implementing the agency's written emergency policy and procedures focusing primarily on client and staff safety. This may include provision of residential counseling, crisis intervention counseling, behavioral management techniques, and/or request for outside assistance. **\*Behavioral management techniques shall exclude physical and chemical restraint, aversive conditioning and punishment and must comply with all legal requirements.\***

"Daily living skills" means the activities or competencies which enable a person to perform functions for everyday living, that is, basic housekeeping, grooming, dressing, nutrition management, money management, maintaining schedules, social/recreational activities and **\*[medication management]\* \*self-administration of medication\***.

"Department" means the Department of Human Services.

"Division" means the Division of Mental Health and Hospitals, within the Department of Human Services.

"Education" means instruction for clients in basic skills, including academics; and increasing learning capabilities, in the areas of psycho-education and health.

"Family care homes" means a private home or apartment in which the operator resides and provides services to as many as five clients who reside in the home. The PA provides mental health services to the client and consultation to the operator, based on the affiliation agreement.

"Group home" means any leased or owned single family residence or any structure containing two or more dwelling units, all of which are utilized for the provision of residential care services; wherein staff reside or are stationed either on-site or in immediate close proximity; and for which a contract or formal affiliation agreement exists with the Division of Mental Health and Hospitals. Group homes shall not include family care homes nor apartment facilities where individuals may receive regular or periodic staff supervision and/or training visits, except where such apartment facilities include those contained in a structure of two or more units and all units are operated under contract or affiliation agreement with the Division.

"Individual services coordination" means services aimed at linking the client to the service system and coordinating the various services to achieve a successful outcome. Activities include: coordinating the provision of appropriate services, intake and referral, admission and acceptance, placement, termination and follow-up, individual services planning and treatment reviews, advocacy with non-mental health systems and documenting of services provided.

"Initial service plan" means the initial formulation of goal(s), objectives, and interventions based on initial assessments which serve as a focus for staff and client activities.

"Life experience" means functioning in non-employment roles (e.g. homemaker) whose requirements are comparable to those of a residential counselor.

"Life support services" means activities that provide basic personal care to clients. These are generic human services provided by mental health providers to clients in need of these services to maintain community living. Activities may include:

Providing a safe, clean living environment that facilitates the client's treatment, providing transportation to clients, providing prepared meals and performing household tasks for clients or relocating client's belongings and providing direct assistance in securing household furnishings, utilities and other needed building services.

"Provider agency" (PA) means a public or private organization which has a mental health contract with the Division and has been licensed to provide residential services.

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“PA apartment” means an apartment owned or leased by the PA in which clients reside and receive the services described in this chapter.

“Recreation” means a program of organized individual or group activities of a relaxing or entertaining nature designed to promote a person’s ability to socialize and manage his or her leisure time. Activities and/or services may include social and/or recreational activities, ensuring appropriate space and equipment to facilitate client interaction without staff participation, assisting the client to plan recreational activities and encouraging leisure time planning and related monitoring.

“Staff support services” means on-site staff availability to provide needed interventions, which may include verbal support or **\*[behavior]\* \*behavioral\*** management in accordance with the needs of the client(s). **\*Behavioral management techniques shall exclude physical and chemical restraint, aversive conditioning and punishment and must comply with all legal requirements.\***

“Residential counseling” means verbal interventions provided to clients and/or families to assist the client in accessing and utilizing all planned or assigned services. It may include problem solving, advice, encouragement and emotional comfort.

“Therapeutic training” means activities designed to develop behaviors, skills and attitudes to improve or maintain client functioning.

**SUBCHAPTER 2. LICENSING PROCESS**

**10:39-2.1 Initial licensing process**

(a) All inquiries related to licensure of community residences shall be made to:

New Jersey Division of Mental Health and Hospitals  
CN 700  
Trenton, NJ 08625

(b) To become a licensed provider agency, an agency must:

1. Demonstrate intent and capability to operate a community residence within the provisions of this chapter; and
2. Be a mental health services provider with a service contract with the Division of Mental Health and Hospitals. Such a service contract must include provisions for the operation of community residences.

(c) The provider agency shall be in substantial compliance with this chapter.

(d) The provider agency shall apply for licensure to the Division. Applications shall indicate the type or types of community residences intended, the specific geographical location in which residences would be located, and the number of residents to be served. Such application shall be made to the Division at the address in (a) above. There shall be no fee charged to the Provider Agency regarding licensing or application for licensing.

**10:39-2.2 Licensing of group homes**

(a) The Division shall inspect any proposed group home site, utilizing the physical and fire safety standards of N.J.A.C. 5:18 and shall review all program operations or descriptions for substantial compliance with the provisions of this chapter.

(b) The Division shall notify the Provider Agency (PA) in writing of any violations.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections are satisfactory and there is reasonable assurance that the residence shall be operated in the manner required by this chapter.

(e) The license shall be issued by the Department of Human Services, through the Division of Mental Health and Hospitals.

(f) The license shall be limited to a specifically identified facility, issued for a period of one year, and shall indicate the maximum number of persons to be served within that facility.

(g) The license shall be available on the agencies’ premises, for review by the Division, or any interested members of the public, during normal business hours.

**10:39-2.3 Licensing PA apartments**

(a) The Division may inspect any proposed apartment site(s) based on the physical and fire safety standards contained in N.J.A.C. 5:18 and review all program operations or descriptions for substantial compliance with the provisions of this chapter.

(b) The Division shall notify the PA in writing of all violations, if any.

(c) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(d) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the apartment(s) shall be operated in a manner required by this chapter.

(e) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(f) The license shall be issued to the PA for a specific number of apartment spaces within a defined geographic area for a period of one year. The Provider Agency shall have the right to relocate apartment spaces within the defined geographic area, as needed. **\*The new facilities shall comply with all requirements of this chapter.\***

**\* (g) The license shall be available on the agency’s premises for review by the Division, and any members of the public, during normal business hours.\***

**10:39-2.4 Licensing family care homes**

(a) The PA shall develop a formal affiliation agreement with the family care home operator.

(b) The content of the affiliation agreement between the PA and family care home operator shall have been approved by the Division.

(c) The Division may inspect any proposed family care home based on physical and fire safety standards of N.J.A.C. 5:18\*, **and review all program operations for substantial compliance with the provisions of this chapter\*.**

(d) The Division shall notify the provider agency in writing of any violations.

(e) Once the PA has corrected all violations, the PA shall request a final site inspection and shall submit documents indicating habitability.

(f) A license shall be issued once intent to comply with all program requirements is demonstrated, inspections, if any, are satisfactory and there is reasonable assurance that the family care home(s) shall be operated in a manner required by this chapter.

(g) The license shall be issued by the Department of Human Services through the Division of Mental Health and Hospitals.

(h) The license shall be issued to the PA for a period of one year and shall be limited to a defined number of family care homes within a defined geographic area and shall indicate the maximum number of persons to be served. No family care home shall serve more than five clients at any one time.

(i) The license shall be available on the PA’s premises for review by the Division, and any members of the public, during normal business hours.

**10:39-2.5 Provisional license**

(a) A provisional license may be issued by the Department to a prospective provider agency which expresses interest in operating a community residence, indicates in writing an intent to comply with the guidelines contained in this chapter, and who applies to the Division for such Provisional Licensing. The application shall indicate the type or types of community residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The Division shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA, and determine whether a provisional license shall be issued. There shall be no fee charged for the issuance of a provisional license.

(c) The provisional license shall authorize a provider agency to secure a facility or facilities in which to provide services.

(d) A provisional license shall not authorize a provider agency to provide services to residents.

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(e) The provisional license shall be issued for a time period not to exceed six months, and may be renewed in six months intervals by the Division if, in its judgement, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) A Provider Agency issued a provisional license shall immediately make application for an annual renewable license under provisions of \*N.J.A.C.\* 10:39-2.1 when facility(s) have been secured and services to residents are ready to be initiated.

## 10:39-2.6 Applicability of standards

All PAs which have contracts with the Division of Mental Health and Hospitals prior to the date this chapter is adopted and all community residences in operation prior to the date this chapter is adopted shall be considered approved for licensing and shall not be subject to the initial or provisional licensing process. From the adoption date on, licensure shall depend on the annual inspection. Those PAs which do not have contracts with the Division on or before the date this chapter is adopted and those residences established subsequent to adoption of this chapter shall follow the initial licensing process and shall be subject to annual inspections.

## 10:39-2.7 Waiver of standards

(a) Requests for waivers shall be made to the Division, in writing, with supporting information justifying the request.

(b) Waivers of specific standards shall be considered, at the discretion of the Division, provided that one or more of the following conditions have been met:

1. Where strict enforcement of the standard would result in unreasonable hardship on the clients; and/or
2. The waiver is in accordance with the particular need of a client(s) but does not adversely affect the health, safety, welfare, or rights of the client; and/or
3. There is a clear clinical and/or programmatic justification for such a waiver that will enhance a PA's effectiveness or efficiency without an adverse effect on any client's health, safety, welfare or rights.

## 10:39-2.5 License renewal

- (a) The license shall be subject to an annual renewal.
- (b) Determination of license renewal shall be based on the annual evaluation conducted by the Division's Bureau of Licensing and Inspections.
- (c) The Division Director (or designee) shall make the determination of renewal.
- (d) In the event that a license expires prior to the determination of renewal, the license shall remain in effect until such a determination is made.
- (e) There shall be no fee charged to the PA for license renewal.

## SUBCHAPTER 3. MONITORING COMPLIANCE

## 10:39-3.1 Evaluation

(a) The PA shall ensure, through its quality assurance program, that group homes, PA apartments, and family care homes meet the program and \*[facilities]\* **\*facility's\*** requirements for licensure under N.J.S.A. 30:11B-4. QA visits to ensure **\*[physical life safety]\* **\*health, and/or safety, and welfare\***** standards shall be conducted quarterly, at a minimum. The Division will audit the process annually.

(b) All PA and community residences shall be evaluated for program requirements annually by the BLI.

(c) All group homes shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(d) All PA apartments shall be evaluated on site annually by the BLI, and at the discretion of the Division, as needed.

(e) All PA family care homes shall be evaluated annually by the BLI, and at the discretion of the Division, as needed.

(f) A formal report of program and facility evaluations, including all deficiencies and violations, shall be provided to the PA by the Division.

(g) No later than 40 days after receipt of the report, the PA shall provide written notice to the Division that specific violations have been corrected, and/or that actions have been taken to abate specific

violations noted and that full correction is anticipated within the time frames noted in the report.

(h) For any violations cited by the Division as **\*[life-threatening]\* **\*presenting an imminent threat to the health and/or safety of residents\*****, the PA shall correct them and/or remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the BLI that such action has been taken.

(i) If the Division report identifies violations other than **\*[life-threatening]\* **\*those presenting an imminent threat to the health and/or safety of residents\*****, representatives from the Division, as part of their ongoing monitoring responsibilities, shall visit the specified facility and/or program and provide a report to the Division on progress toward remediation of deficiencies every 60 days until substantial compliance is achieved.

1. When the PA is cited for a physical violation and the maintenance is the responsibility of another party, there must be documented evidence that the PA has informed the building owner **\*and his or her agent\*** of the need to correct any deficiencies. If such deficiencies are not corrected, the provider agency shall take further action as appropriate.

## 10:39-3.2 Appeal of the Division's findings

(a) The agency may appeal findings of the Division, with the exception of life-threatening violations.

(b) The appeal of findings shall be directed to the Division Director or designee within 20 days of receipt of the written report of findings.

(c) A response to the appeal shall be provided within 20 days of its receipt.

## 10:39-3.3 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:39-3.1(c) by the required date, or if violations have not been abated within time frames specified in the report, the Division shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the facility, revocation of the current license to operate the facility, or non-renewal of the license to operate the facility.

(b) In the event that the Division requires the revocation or non-renewal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA's executive director or designee and to the President of the Board of Directors of the agency.

(c) Under the supervision of the Division, the PA shall be responsible for placement of residents when an order to vacate the premises and the revocation of a license has been issued by the Division.

## 10:39-3.4 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the Division Director or designee for a review, which shall be afforded and a decision rendered by the Division Director or designee within five working days of the receipt of the written request for a review.

## 10:39-3.5 Administrative hearing of appeal

If the PA chooses to appeal a decision made pursuant to the provisions of N.J.A.C. 10:39-3.4, the PA may request an administrative hearing, which shall be conducted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1, and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

## 10:39-3.6 Emergency situation

The Division, when it determines that the health, safety and/or welfare of the residents warrant it, may immediately suspend the license, and take the necessary action to ensure the well-being of residents. Any hearing provided in such cases shall be on an expedited basis.

## SUBCHAPTER 4. RESIDENTIAL CARE PROGRAM

## 10:39-4.1 Scope and purpose

(a) The Provider Agency shall provide a residential care program to all enrolled clients. Such a program shall consist of the services

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herein described and be provided in facilities owned or leased by the provider agency, or through affiliation agreements with private operators.

(b) Major goals shall be to develop the life skills required to maximize individual functioning and reduce reliance on institutional supports. Programming shall focus on increasing the clients' use of generic community supports to meet physical, psychological and social needs as a means to enhance their quality of life and emotional well being. Residents shall live in the most normalized and least restrictive environment possible to promote growth and assure safety.

(c) The residential care program and provided housing shall provide a therapeutic environment with a rehabilitation focus designed to improve or preserve current functioning.

(d) Residential housing and services shall be organized around the principles of client responsibility and participation.

## 10:39-4.2 Written policies and procedures

(a) The PA shall develop and implement written policies and procedures to ensure that the service delivery system complies with State law and rules governing community residences for the mentally ill as follows:

1. The policy and procedures manual shall be reviewed and revised as necessary, but at least annually.
2. Each policy and/or procedure shall be designed in accordance with the principles of normalization, age-appropriateness, and least restriction and shall be consistent with the PA's organizational structure and management philosophy.

## 10:39-4.3 Confidentiality

\*(a) In compliance with N.J.S.A. 30:4-24.3, the PA shall assure that all certificates, applications, records, and reports made pursuant to the provisions of this chapter which directly or indirectly identify any individual currently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this chapter shall be kept confidential and shall not be disclosed by any person, except insofar as:

1. The individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or
2. Disclosure may be necessary to carry out any of the provisions of N.J.S.A. 30:4-24.3 or of N.J.S.A. 2A:82-9; or
3. A court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

(b) Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney, if it appears that the information is to be used directly or indirectly for the benefit of the patient.

(c) Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in N.J.S.A. 30:4-27.1 et seq., from disclosing information that is relevant to a patient's current treatment to the staff of another such agency.]\*

\*(a) N.J.S.A. 30:4-24.3 states:

**All certificates, applications, records, and reports made pursuant to the provisions of this Title and directly or indirectly identifying any individual presently or formerly receiving services in a noncorrectional institution under this Title, or for whom services in a noncorrectional institution shall be sought under this act shall be kept confidential and shall not be disclosed by any person, except insofar as:**

- (1) the individual identified or his legal guardian, if any, or, if he is a minor, his parent or legal guardian, shall consent; or
- (2) disclosure may be necessary to carry out any of the provisions of this act or of article 9 of chapter 82 of Title 2A of the New Jersey Statutes;<sup>1</sup> or
- (3) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it and that failure to make such disclosure would be contrary to the public interest.

**Nothing in this section shall preclude disclosure, upon proper inquiry, of information as to a patient's current medical condition to any relative or friend or to the patient's personal physician or attorney if it appears that the information is to be used directly or indirectly for the benefit of the patient.**

**Nothing in this section shall preclude the professional staff of a community agency under contract with the Division of Mental Health and Hospitals in the Department of Human Services, or of a screening service, short-term care or psychiatric facility as those facilities are defined in section 2 of P.L. 1987, c. 116 (C. 30:4-27.2) from disclosing information that is relevant to a patient's current treatment to the staff of another such agency.**

<sup>1</sup>Section 2A:82-41.\*

\*[(d)]\*(b)\* The PA shall maintain \*[confidentiality]\* \*compliance with the provisions of N.J.S.A. 30:4-24.3 cited above and the provisions\* regarding information in client records \*[as outlined]\* in N.J.A.C. 10:37-6.79.

## 10:39-4.4 Population priorities

(a) First priority for admissions into \*[group homes]\* \*community residences for the mentally ill\* shall be given to persons with severe and persistent mental illness. These residences shall not house persons who have been assigned to a State psychiatric hospital after having been found not guilty of a criminal offense by reason of insanity or unfit to be tried on a criminal charge.

(b) The PA shall develop written policies and procedures for admission focusing on this priority group, taking into account the level of supervision required and service needs of clients.

(c) The PA shall have written admission and discharge criteria specific to the various types of residences provided. Such criteria shall reflect the priorities stated in 10:39-4.4(a).

**\*(d) Pursuant to Titles VI and VII of the Civil Rights Act of 1964 as amended and Section 504 of the Rehabilitation Act of 1973, discrimination on the basis of race, sex, religion, national origin, age, or physical handicap in the provision of services is prohibited.\***

## 10:39-4.5 Services to be provided

(a) The following services as defined herein shall be provided by the PA to all enrolled clients:

1. Assessment and/or evaluation;
2. Individual services coordination;
3. Therapeutic training in activities of daily living;
4. Residential counseling; and
5. Life support services to include, at a minimum, providing a safe, clean living environment.

(b) Services provided or arranged, based on individual client need, shall include, but not be limited to, the following services:

1. Other life support services;
2. Staff support services;
3. Crisis intervention services;
4. Community integration and membership services;
5. Recreation; and
6. Education.

(c) The PA shall monitor access and utilization of the services in (b) above, and all other needed treatment and generic human services. The monitoring shall be documented in the Initial and Comprehensive Service Plans, reflect service coordination and be ongoing. Services monitored shall include but are not limited to:

1. Partial care and/or hospitalization;
2. Outpatient treatment;
3. Vocational services;
4. Medical services;
5. Education programs;
6. Community activities participation, for example, YMCA, church;
7. Substance abuse counseling; and
8. Clinical case management.

(d) The services listed in section 10:39-4.5(c) may be offered by the PA directly when such services are unavailable in the community, when the current level of functioning of the clients temporarily precludes their participation in more normalized activities, or when

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the client's clinical needs are best served by such services being directly provided by the PA.

### 10:39-4.6 Settings to provide residential services

(a) Residential services may be provided in a variety of settings which may include but are not limited to:

1. Group homes;
2. PA apartments; and
3. Family care homes.

### 10:39-4.7 Client service agreements

(a) All clients enrolled in a community residence shall have a written client service agreement which shall include but not be limited to the following:

1. Services to be provided;
2. Expected duration of services;
3. Fees for services provided;
4. Clients rights and responsibilities;
5. Rules which may apply to service provision;
6. Signature of client and PA representative, and in family care homes, the home owner or operator; and
7. Service termination procedures.

### 10:39-4.8 Record maintenance

(a) The provider agency shall maintain a record for each client enrolled in the program, marked with the individual's name.

(b) The PA shall maintain the confidentiality of all records and shall store records in such manner as to provide access only to authorized persons.

(c) Each client record shall be maintained in an up-to-date, organized fashion to enable communication of all relevant information about the client, **"which shall include: intake and assessment information, comprehensive service plan, and progress notes."**

**\*(d) In addition to standard reporting of the Division, cited in N.J.A.C. 10:37-6.73-6.79, residential providers who charge fees to clients shall keep appropriate financial records.**

**(e) Financial records shall include, for each resident, specific charges for all housing related items, including rent, food, utilities, telephone, etc., and payments for those expenses, including balances due.**

**(f) Fees received from residents should be recorded separately for each housing facility for which the residential provider collects such fees.\***

### 10:39-4.9 Intake and assessment information

(a) An intake assessment shall be completed for each client. This assessment shall include identifying information; social, family, medical, and psychiatric history; presenting problem(s), and diagnosis, if available.

(b) An Initial Service Plan based on intake information shall be completed by the tenth day of the client's enrollment in the program. The Initial Service Plan shall be sufficiently specific to guide services until the Comprehensive Treatment Plan is completed.

(c) A comprehensive functional assessment shall be completed by the client's 45th day in the program. This assessment shall address the client's strength and needs in community living skills.

### 10:39-4.10 Comprehensive service plan

(a) A Comprehensive Service Plan (CSP) shall be formulated for each client by the client's 45th day in the program. The CSP shall be based on the intake assessment, the functional assessment, and all other relevant information.

(b) The CSP shall include goals for the client's continued participation in the PA services, measurable objectives (short-term steps) to reach the goals, and specific interventions that PA staff will make to assist the client to achieve the goals and objectives.

(c) The CSP shall be developed with the client's active participation and input, and shall contain his or her signature.

(d) The CSP shall be discharge-oriented, and shall specify functional levels to be achieved for reduction and/or termination of services, where possible.

(e) The CSP shall be reviewed and revised as necessary, by the 90th day of treatment and then no less frequently than every 90 days thereafter during the first year of treatment and every six months thereafter.

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### 10:39-4.11 Progress notes

(a) The PA staff shall document in progress notes writing the client's clinical course of treatment while enrolled in a residential program.

(b) The progress note shall:

1. Describe clinical interventions and services provided;
2. Describe monthly progress towards goals and objectives;
3. Record all significant clinical events;
4. Reflect a discharge orientation as clinically appropriate;
5. Document reviews and revisions to the treatment plan;
6. Provide justification for continued provision of service; and
7. Be authenticated by staff signatures, title and date.

(c) A progress note shall be written whenever services are provided, except that services provided more frequently than once a week may be documented by a weekly summary.

### 10:39-4.12 Staffing requirements

(a) The PA shall employ a sufficient number of residential counselors and senior residential counselors to provide all needed residential services to all enrolled clients, based upon the numbers of clients served, the types of community residences utilized, and the geographical distribution of residential facilities. The staffing pattern approved by the Division shall be reflected in the **\*[annual contract]\* \*purchase of service contracts with individual agencies, and/or approved affiliation agreements\*.**

(b) The PA shall employ at least one Residential Clinical Specialist.

(c) The PA shall employ one Residential Program Coordinator.

### 10:39-4.13 Residential counselor requirements, qualifications and duties

(a) Residential counselors shall have one of the following:

1. A baccalaureate degree from an accredited college or university in a mental health related discipline or;
2. A license as a Registered Nurse; or
3. Two years of college plus two years of related work and/or life experience; or
4. A license as a practical nurse plus two years of related work and/or life experience; or
5. A high school diploma or the equivalent, plus four years of related work and/or life experience.

(b) The duties of the residential counselor shall, at a minimum, include the following:

1. On-site client supervision;
2. Therapeutic training;
3. Functional assessment;
4. Supervising and organizing recreation and/or socialization activities;
5. Transportation;
6. Residential counseling; and
7. Crisis Intervention Services (but not including Crisis Intervention Counseling).

### 10:39-4.14 Senior residential counselor requirements, qualifications and duties

(a) Senior residential counselor shall have the qualifications as cited in N.J.A.C. 10:39-4.10(a) plus one year of experience in a residential mental health setting.

(b) The duties of the senior residential counselor shall, at a minimum, include the following:

1. Any duty listed in 10:39-4.10(b);
2. Development of initial and comprehensive service plans; and
3. Individual service coordination activities as defined in N.J.A.C. 10:39-1.2.

### 10:39-4.15 Residential clinical specialist requirements, qualifications and duties

(a) Residential clinical specialist shall have one of the following qualifications:

1. A Master's degree from an accredited college or university in a mental health related discipline; or
2. A bachelor's degree, or be licensed as a registered nurse, plus two years of relevant experience in a mental health setting.

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(b) The duties of the residential clinical specialist shall minimally include the following:

1. Any function cited in N.J.A.C. 10:39-4.10(b) and 10:39-4.11(b); and
2. Clinical assessment;
3. Individual group and family counseling;
4. Clinical supervision of staff;
5. Staff training; and
6. Crisis intervention counseling.

### 10:39-4.16 Residential program coordinator requirements, qualifications and duties

(a) Residential program coordinator shall have the following:

1. Master's degree from an accredited college or university in a mental health related discipline;
2. Three years relevant experience in a mental health setting;
3. Previous supervisory and residential experience is desirable but not required.

(b) The duties of the residential program coordinator shall minimally include:

1. Program administration, supervision and direction;
2. Inter-agency coordination;
3. Program development and implementation;
4. Staff development and/or training and supervision;
5. Facility management; and
6. Quality assurance.

### 10:39-4.17 Waiver of staff requirements, qualifications and duties

All employees of a PA which has a contract with the DMH&H prior to the date this chapter is adopted shall be approved for employment and shall not be subject to the requirements cited in N.J.S.A. 10:39-4.10 through 4.13. PA residential employees hired after the adoption date shall be subject to the requirements of N.J.A.C. 10:39-4.10 through 4.13.

## SUBCHAPTER 5. PHYSICAL PLANT

### 10:39-5.1 Scope

(a) The following physical plant standards shall apply to the following:

1. Group homes housing up to 15 clients;
2. Family care homes housing up to three clients; and
3. PA apartments.

### 10:39-5.2 Water supply

(a) Every residence shall be provided with a safe supply of potable water meeting the standards as set forth in the Safe Drinking Water Act rules, N.J.A.C. 7:10.

(b) The source of such water supply shall be approved by the New Jersey Department of Environmental Protection and/or the local health agency.

(c) The minimum rate of flow of hot or cold water issuing from a faucet or fixture shall not be less than one gallon per minute.

### 10:39-5.3 Facilities

(a) Every residence shall contain a kitchen sink of nonabsorbent impervious material.

(b) Every residence shall be provided with a minimum of one flush type water toilet, bathroom sink and a bathtub or shower.

(c) There shall be at least one toilet, sink and one bath or shower for each six residents.

(d) The bathroom sink shall be located in or adjoining the toilet area.

(e) Every toilet, bathroom sink and bathtub or shower shall be:  
1. Accessible from within the building without passing through any part of any other rooming unit; and

2. Contained in a room or rooms which are separated from all other rooms by walls, doors or partitions that afford privacy.

(f) No one shall be required to go farther than one floor above or below his or her rooming unit to the bathroom.

(g) No resident shall be without ready access to a bathroom, bathtub or shower by reason of physical disability.

(h) Every plumbing fixture shall be connected to water and sewer/septic systems approved by the New Jersey Department of En-

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vironmental Protection and/or the local health agency, and shall be maintained in good working condition. Plumbing systems shall be well maintained.

(i) Every kitchen sink, bathroom sink and bathtub or shower required by this section shall be connected to both hot and cold water lines.

(j) Every residence shall have water heating facilities which are installed and connected with the hot water lines.

(k) The water heating system must be capable of delivering water at a minimum temperature of not less than 120 degrees Fahrenheit and at a maximum temperature of not more than 140 degrees Fahrenheit at all times in accordance with anticipated needs.

### 10:39-5.4 Garbage and rubbish storage

Garbage, rubbish or other organic waste shall be stored in water-tight receptacles. A sufficient number of garbage or rubbish receptacles shall be available, and shall conform to all applicable State regulations and local ordinances.

### 10:39-5.5 Lighting

(a) The lighting system must be in working order and sufficient for the appliances and/or equipment used.

(b) Every habitable room shall have at least one window or skylight facing directly to the outdoors.

(c) The minimum glazed area of the total windows or skylights shall be eight percent of the floor area of each room.

### 10:39-5.6 Electrical services

(a) Every residence shall be provided with electric service, which shall be adequately maintained.

(b) Every habitable room shall contain sufficient wall-type electric outlets and lamps or light fixtures to enable occupants to use the room for its intended function. Lighting in habitable rooms must be sufficient to read by.

(c) Every outlet and lamp shall be maintained in a good and safe condition and shall be connected to the source of electric power.

(d) No temporary wiring shall be used except extension cords which:

1. Run directly from portable electrical fixtures to convenient outlets;
2. Do not lie under rugs or other floor coverings; and
3. Do not extend through doorways, transoms, or other openings through structural elements.

(e) Every portion of each staircase, hall, cellar, basement, landing, furnace room, utility room, and all similar non-habitable space shall have either natural or artificial light available at all times, with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portions, and sufficient for safe use of the area for its intended purpose.

(f) Every portion of any interior or exterior passageway or staircase shall be illuminated naturally or artificially at all times with an illumination of at least two lumens per square foot (two foot-candles) in the darkest portion of the normally traveled stairs and passageways. Lighting must be sufficient to prevent accidents.

(g) Every bathroom and water closet compartment shall have either natural or artificial light available at all times, with an illumination of at least three lumens per square foot (three foot-candles). The light shall be measured 36 inches from the floor at the center of the room. Artificial lighting shall be controlled by a wall switch so located as to avoid danger of electrical hazard. There must be sufficient light to use the room and/or area for its intended purpose.

### 10:39-5.7 Ventilation

(a) Means of ventilation shall be provided for every habitable room. The ventilation may be provided either by an easily operable window or skylight having an openable area of at least 50 percent of the minimum window area, or by other means acceptable to the Division, which will provide at least two air changes per hour.

(b) Means of ventilation shall be provided for every bathroom or water closet compartment. The ventilation may be provided either by an easily operable window or skylight having an operable area of at least 50 percent of the minimum window or by other means acceptable to the Division which will provide at least six air changes per hour.

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(c) Ventilation shall be sufficient to remove odors.

### 10:39-5.8 Heating

(a) Every residence shall have heating facilities which are:

1. Properly installed;
2. Maintained in good and safe working condition; and
3. Capable of safely and adequately heating all habitable rooms and bathrooms located therein to a temperature of at least 68 degrees Fahrenheit when the outside temperature is zero degrees Fahrenheit.

(b) The temperature shall be read at a height of three feet above floor level at the center of the room.

(c) There shall be heat adequate to maintain a minimum inside temperature of 68 degrees Fahrenheit in all habitable rooms and bathrooms from October 1 of each year to the next May 1, and when the outside temperature is 57 degrees or less.

(d) Every space heater, except electrical, shall be properly vented to a chimney or duct leading to outdoors.

(e) Unvented portable space heaters, burning solid, liquid, or gaseous fuels shall be prohibited.

### 10:39-5.9 Structural safety and maintenance

(a) Every foundation, floor, wall, ceiling, door, window, roof, or other part of a residence shall be kept in good repair and capable of the use intended by its design, and any exterior part or parts thereof subject to corrosion or deterioration shall be kept well painted.

(b) Every inside and outside stairway, every porch, and every appurtenance thereto shall be so constructed as to be safe to use and capable of supporting the load that normal use may cause to be placed thereon, and shall be kept in sound condition and good repair.

(c) Every stairway having three or more steps shall be properly banistered and safely balustraded.

(d) Every porch, balcony, roof, and or similar place higher than 30 inches above the ground, used for egress or for use by occupants, shall be provided with adequate railings or parapets which are properly balustraded and be not less than three feet in height.

(e) Every roof, wall, window, exterior door and hatchway shall be free from holes or leaks that would permit the entrance of water within or be a cause of dampness.

(f) Every foundation, floor, and wall of each residence shall be free from chronic dampness.

(g) Every residence shall be free from rodents, vermin and insects. A provider agency of a residence located in an area found by the Division to be infested by rats, insects, or other vermin shall carry out such rodent and insect control, or other means of preventing infestations of said dwellings as may be required by the Division.

(h) Every openable window, exterior door, skylight, and other opening to the outdoors shall be supplied with properly fitting screens in good repair from May 1st until October 1st of each year. Screens shall have a mesh of not less than No. 16.

(i) Every residence, including all exterior areas of the premises, shall be clean and free from garbage or rubbish and hazards to safety.

(j) Lawns, hedges and bushes shall be kept trimmed and shall not be permitted to become overgrown and unsightly.

(k) Fences shall be kept in good repair.

(l) The ground maintenance shall be consistent with that of the neighborhood, unless the condition of the neighborhood does not generally meet the minimum standards for maintenance set forth in this manual.

(m) The Division may require that the provider agency clean, repair, paint, whitewash, or paper such walls or ceiling, when a wall or ceiling within a dwelling has deteriorated so as to provide a harborage for rodents or vermin, or when such a wall or ceiling has become stained or soiled, or the plaster, wallboard, or other covering has become loose or badly cracked or missing.

(n) Every water closet compartment floor and bathroom floor shall be so constructed and maintained as to be reasonably impervious to water and shall be kept in a clean condition.

(o) No provider agency shall cause or permit any services facilities, equipment, or utilities which are required under this subchapter to be removed from, shut off, or discontinued in any residence or part thereof, except for such temporary interruption as may be necessary

while actual repairs or alterations are in process, or during temporary emergencies, when discontinuance of service is authorized by the Division.

(p) In the event that any service or utility is discontinued, the provider agency shall take immediate steps to cause the restoration of such service or utility.

(q) All residences must be clean and sanitary prior to occupation by any resident, and shall be maintained in a clean and sanitary condition.

(r) The provider agency shall ensure the orderly maintenance of the premises. The storage of objects or materials shall be done in an orderly manner so as to not constitute a health, safety, or fire hazard.

### 10:39-5.10 Kitchen facilities

(a) Kitchen storage space shall be clean and well ventilated.

(b) Major kitchen appliances shall minimally include a refrigerator with freezer compartment and a permanently installed stove with oven and cooktop.

(c) Containers of food shall be covered and appropriately stored at least 12 inches above the floor on shelves or other clean surfaces.

(d) Refrigeration and storage of food shall be provided at not more than 45 degrees Fahrenheit. Freezer compartments shall operate at no more than 0 degrees Fahrenheit and must be maintained in good condition and without excessive ice build-up.

(e) All food and drink shall be safe for human consumption, clean, wholesome, and free of spoilage; and prepared and served in a sanitary manner. There shall be at least a two-day supply of food and drink at all times.

(f) All equipment and utensils used for eating, drinking, preparation and keep shall be:

1. Kept clean and in good condition;
2. Thoroughly washed after each use; and
3. In sufficient quantity for the number of occupants.

(g) Floors, walls and work surfaces of food preparation and food serving areas shall be kept clean and in good condition at all times.

### 10:39-5.11 Occupancy and use of space

(a) Every rooming unit occupied for sleeping purposes by one occupant shall contain at least 80 square feet of floor space. Every room occupied for sleeping purposes by more than one occupant shall contain at least 60 square feet of floor space for each occupant. Doors for privacy shall be provided and maintained. Means of egress to the rest of the home shall be direct and not through any other bedroom.

(b) At least one-half of the floor area of every habitable room shall have a ceiling height of at least seven feet. The floor area of that part of any room where the ceiling is less than five feet shall not be considered as part of the floor area in computing the total floor area of the room for the purpose of determining the maximum permissible occupancy thereof.

(c) Sufficient closet space for storage shall be provided. The storage space shall be uncluttered and sufficient for clothing and supplies.

(d) Rooms shall be of adequate size for the number of people, types of activities and storage.

(e) A room located in whole or in part below the level of the ground may be used for sleeping, provided that the following requirements are met:

1. The walls and floor which are in contact with the earth shall be dampproofed, in accordance with a method approved by the Division; and

2. All requirements **\*[generally]\* \*of this subchapter and N.J.A.C. 10:39-6\*** applicable to habitable rooms **\*[are]\* \*shall be\*** satisfied.

(f) No person unable to walk without assistance shall occupy a rooming unit on other than the ground floor at any residence, unless provisions have been made to assure evacuation of the premises within two minutes.

(g) In family care homes, clients shall be allowed to share sleeping rooms/accommodations only with other clients.

(h) Any matter or requirement essential for the structural safety of a residence or essential for the safety or health of the residents

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therein or of the public, and which is not covered by the provisions of these rules shall be the subject of determination by the Division Director (or designee) in specific cases.

### SUBCHAPTER 6. FIRE SAFETY

#### 10:39-6.1 Uniform Fire Code

The provisions of N.J.A.C. 5:18, the Uniform Fire Code, are hereby incorporated by reference.

#### 10:39-6.2 Group homes with five or less residents not in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to group homes with five or less residents.

#### 10:39-6.3 Group homes with six to fifteen residents not in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes with six to fifteen residents.

#### 10:39-6.4 Group homes in multiple unit dwellings

The provisions of N.J.A.C. 5:18 which apply to the R-2 use group shall apply to group homes in multiple unit dwellings.

#### 10:39-6.5 Family Care Homes

The provisions of N.J.A.C. 5:18 which apply to the R-3 use group shall apply to family care homes.

#### 10:39-6.6 Apartments

The provisions of N.J.A.C. 5:18 which apply to apartments shall apply to PA apartments.

#### 10:39-6.7 Smoke detectors

(a) Single station smoke detectors shall be installed at locations as follows:

1. Living room and bedroom;
2. Designated smoking areas;
3. Highest ceiling area in each stairwell; and
4. Basements and cellars located in the highest ceiling area of the first floor stair landing or other approved location where the earliest detection of fire would activate the alarm.

#### 10:39-6.8 Fire drills in group homes

(a) A minimum of one unscheduled fire drill shall be conducted per month.

(b) Fire drills shall be conducted at night or in the evening hours at least 50 percent of the time.

(c) Evacuation should be completed in less than two minutes.

(d) For each fire drill the time, date, participants, problem areas, resolution of problems and timeliness of egress must be documented.

(e) The Division's Bureau of Licensing and Inspections shall review agency compliance with this procedure annually during the on-site inspection.

#### 10:39-6.9 Kerosene heaters

The use of kerosene heaters is prohibited.

#### 10:39-6.10 Fireplaces

All operable fireplaces shall be cleaned and inspected annually.

#### 10:39-6.11 Variances

(a) Variances from N.J.A.C. 5:18 shall be permitted, in accordance with N.J.S.A. 52:27D-200.

(b) The PA shall provide the Division with a copy of all applications for variances and the action taken on them.

#### 10:39-6.12 Administrative hearing

Administrative hearings will be conducted in accordance with the Administrative Procedure Act, N.J.S.A. 14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

### SUBCHAPTER 7. RESIDENT COMPLAINT PROCEDURES

#### 10:39-7.1 Development of resident complaint procedures

All PAs shall establish internal complaint procedures which will be subject to the Division's review and approval at the time of the initial licensing and annual license renewal. Complaint procedures shall allow for a client of the PA **\*or his or her designee\*** to make

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known a grievance regarding services provided or which failed to be provided; to seek appropriate redress related thereto; and to have corrective action taken, as might be warranted.

#### 10:39-7.2 Appeal process; ombudsman

The provisions of N.J.A.C. 10:37-4.6 regarding client complaint agency ombuds and review procedures are incorporated by reference.

#### 10:39-7.3 Client protection

No resident shall be subject to retaliation of any form by the PA because of the filing of any complaint.

### SUBCHAPTER 8. QUALITY ASSURANCE

#### 10:39-8.1 Quality assurance

(a) PA shall develop and implement policies and procedures for an ongoing quality assurance (QA) program designed to objectively and systematically monitor and evaluate the quality and appropriateness of care, pursue opportunities to improve care and resolve identified problems.

(b) Areas to be monitored and evaluated through the program shall include, but are not limited to, the following:

1. Appropriateness of admissions;
2. Accuracy and completeness of assessments;
3. Effectiveness of treatment, to include, at a minimum:
  - i. Individual service planning;
  - ii. Coordination and integration of all service providers;
  - iii. Duration and timeliness of services provided; and
  - iv. Appropriateness and outcome of services provided;
4. Treatment complications including unusual incidents;
5. Therapeutic environment and life safety;
6. Adequacy of planning for termination and/or reduction of service intensity;
7. Clinical documentation;
8. Staff performance; and
9. Adherence to and adequacy of all agency policies and procedures.

(c) The QA program shall coordinate the following activities:

1. Review of clinical documentation;
2. Provision of on-site staff training;
3. On-going clinical supervision of all direct care staff;
4. Participation of all direct care staff in routine staff meetings;
5. Routine performance appraisal of all staff;
6. Documentation and tracking of identified problems and efforts to resolve problems;
7. On-going review and revision of all policies and procedures;
8. On-going review and analysis of program data; and
9. Quarterly documentation of physical and fire safety inspections of facilities.

(d) The activities in (c) above shall be fully integrated into the day-to-day operation of the program. The quality assurance program shall provide regular reports to the agency's executive director and governing board, which reports shall also be available for review by the Division.

(a)

## DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

### Notice of Administrative Correction

#### Administration: General Provisions

#### Who Is Eligible for Medicaid

#### Manual for Dental Services: HCFA Common

#### Procedure Coding System (HCPCS) Introduction;

#### 07000-07999 IX. ORAL SURGERY; 09000-09999 XI.

#### ADJUNCTIVE GENERAL SERVICES

#### N.J.A.C. 10:49-1.1, 10:56-3.1, 3.10 and 3.12

Take notice that the Department of Human Services has discovered errors in the current text of N.J.A.C. 10:49-1.1, and 10:56-3.1, 3.10 and 3.12.

**HUMAN SERVICES**

**ADOPTIONS**

N.J.A.C. 10:49-1.1(f) and (g) were proposed and adopted for deletion at 21 N.J.R. 417(b) and 3000(a), respectively, but were not removed from the New Jersey Administrative Code.

At N.J.A.C. 10:56-3.1(f)iv, the reference to HCPCS is erroneously spelled "HCPS."

At N.J.A.C. 10:56-3.10(c), the maximum fee allowance for HCPCS Code 07110, Single Tooth, should be changed from \$10.50/9.00 to \$17.00/15.00 pursuant to a notice of Medicaid fee increase published at 20 N.J.R. 2107(a).

The dollar amount "242.00" for HCPCS Code 07630 at N.J.A.C. 10:56-3.10(l) is erroneously represented as "242.000."

At N.J.A.C. 10:56-3.10(q), the indicators for HCPCS Codes 07940 and 07955 are erroneously depicted in the Code as "\*\*\*." While the published proposal and adoption of this subsection at 19 N.J.R. 15(b) and 519(c), respectively, contained this representation, the original proposal and adoption documents filed with the Office of Administrative Law provide "\*\*\*" as the indicators (see PRN 1987-33 and R.1987 d.166).

In Note 1 to N.J.A.C. 10:56-3.12(c), the word "those" beginning the second sentence should be "these" as intended by the Department in the original documents filed with the Office of Administrative Law (see PRN 1987-33 and R.1987 d.166).

This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7.

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

10:49-1.1 Who is eligible for Medicaid

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

[(f) Medicaid Retroactive Eligibility: Persons applying for Medicaid benefits will be asked if they have unpaid medical bills incurred within the three month period immediately prior to the month of application for Medicaid. Except for Medically Needy applicants, persons indicating that they do have such bills may complete an "Application for Retroactive Medicaid Eligibility" (FD-74) and forward the application with all outstanding unpaid bills to the Medicaid Retroactive Eligibility Unit. An application for retroactive eligibility may be obtained by the applicant or his/her authorized agent from the county welfare agency, the Medicaid district office, the Social Security Administration district office or the Retroactive Eligibility Unit (Division of Medical Assistance and Health Services, CN 712-10, Trenton, New Jersey 08625). The application must be submitted within six months from the date of application for public assistance.

1. If the New Jersey Medicaid Program determines that the person was eligible for Medicaid at the time the service was rendered or item supplied, providers will be notified directly that the unpaid bills for any service/item covered by the New Jersey Medicaid Program may be reimbursable in accordance with standard Medicaid reimbursement procedures. The provider will then complete the appropriate Medicaid claim form and must submit it to the Retroactive Eligibility Unit for consideration and authorization of payment.

2. For Medically Needy persons, retroactive eligibility determinations will be completed by the county welfare agency or board of social services (see (c)4 above).

(g) It is in the best interest of the provider to review on each visit the eligibility of patients receiving continuing services. It is especially important to review the validation form on each visit when an extended plan of treatment has been authorized. There is no reimbursement for services performed after termination of eligibility other than by exceptional circumstances.]

10:56-3.1 Introduction

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

(f) Policies and procedures regarding use of HCPCS: Listed below and throughout subchapter 3 are both some general and specific policies of New Jersey Medicaid Program relevant to HCPCS. These are not necessarily complete but may have been paraphrased from the complete policies as outlined in Subchapter 1 (Chapter II, 3/78) and Subchapter 2 (Chapter III, 3/78). This has been done so that the provider will have pertinent information available in conjunction with the procedures to be requested and/or delivered. For complete and specific policies in addition to those outlined herein, the practitioner must consult Subchapter 1 and/or 2.

1. General requirements:

i.-iii. (No change.)

iv. When billing, the provider must enter into the procedure code column (Item 15B) of the Dental Services Claim form (MC-10), a [HCPS] HCPCS code as listed in this subchapter. If an appropriate code cannot be found, leave the procedure code column blank and submit a narrative description of the service for authorization and fee assignment.

v.-vi. (No change.)

10:56-3.10 07000-07999 IX. ORAL SURGERY

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

(c) Extractions—includes local anesthesia and routine post-operative care:

Ind	HCPCS Code	Mod	Procedure Description	Maximum Fee Allowance	
				Effective Date	8/1/88
	07110		Single Tooth	\$ [10.50]	\$ NS [17.00] [9.00] [15.00]

... (d)-(k) (No change.)

(l) Treatment of fractures—simple:

1. Open reduction involves the dissection of tissues and/or the visual inspection of the fracture site.

**	07630		Mandible—Open Reduction (Teeth Immobilized if Present)	242.00[0]	210.00
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... (m)-(p) (No change.)

(q) Other repair procedures:

[**]	* 07940		Osteoplasty—For Orthognathic Deformities	BR	BR
[**]	* 07955		Repair of Maxillofacial Soft and Hard Tissue Defects	BR	BR

10:56-3.12 09000-09999 XI. ADJUNCTIVE GENERAL SERVICES

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

(c) Special general anesthesia:

1. (Basic units—See American College of Anesthesiologists Relative Value Guide—1967).

*	09220	22	Maximum 4 units	22.00	22.00
*	09220	52	Time units: Each additional 15 minute period or major portion thereof. (Limited to "table" or "chair" time only.) Maximum reimbursable two hours	5.50	5.50

NOTE 1: The general anesthesia codes above are limited to use in restorative dentistry alone or restorative dentistry in conjunction with other dental services requiring anesthetic management, and must receive prior authorization from the Office of the Chief, Bureau of Dental Services. [Those] These codes apply to those dentists appropriately qualified in general anesthesia and are reimbursable only to the dentist whose sole function is to administer general anesthesia.

... (d)-(g) (No change.)

**ADOPTIONS**

**HUMAN SERVICES**

**(a)**

**DIVISION OF YOUTH AND FAMILY SERVICES  
Financial Eligibility for Social Services Program for  
Individuals and Families; Income Schedule**

**Adopted New Rule: N.J.A.C. 10:123-1**

Proposed: August 21, 1989 at 21 N.J.R. 2438(a).  
Adopted: March 30, 1990 by William Waldman, Acting  
Commissioner, Department of Human Services.  
Filed: April 3, 1990 as R.1990 d.229, **without change**.  
Authority: N.J.S.A. 44:7-87.  
Effective Date: May 7, 1990.  
Expiration Date: July 29, 1990.

**Summary of Public Comments and Agency Responses:**  
**No comments received.**

Full text of the adoption follows.

**SUBCHAPTER 1. FINANCIAL ELIGIBILITY**

10:123-1.1 Financial eligibility; income schedule  
(a) Financial eligibility for services provided by the county welfare agencies and funded through the Social Services Block Grant program of the Social Security Act shall be determined using the following income schedule:

**INCOME SCHEDULE**

Family Size	Maximum Allowable Gross Income	
	Per Month	Per Year
1	\$1,264	\$15,162
2	1,652	19,827
3	2,041	24,493
4	2,430	29,158
5	2,819	33,823
6	3,207	38,489
7	3,280	39,362
8	3,353	40,238
9	3,426	41,112
10	3,499	41,987
11	3,572	42,862
12	3,645	43,737

For each family member over 12, add \$73.00 to the maximum allowable gross income per month.

(b) Persons whose gross monthly or annual family income does not exceed the maximums established in (a) above shall be eligible for services provided by the county welfare agency and funded by the Social Services Block Grant program.

(c) Persons who wish to appeal a determination of ineligibility for services based upon the income guidelines in (a) above shall proceed in accordance with N.J.A.C. 10:120-3.

**(b)**

**DIVISION OF YOUTH AND FAMILY SERVICES  
Family Day Care Standards**

**Adopted New Rules: N.J.A.C. 10:126A**

Proposed: January 2, 1990 at 22 N.J.R. 13(a).  
Adopted: March 23, 1990 by William Waldman, Acting  
Commissioner, Department of Human Services.  
Filed: March 29, 1990 as R.1990 d.223, **with a technical change**  
not requiring additional public notice and comment (see  
N.J.A.C. 1:30-4.3).  
Authority: N.J.S.A. 30:4C-4.  
Effective Date: May 7, 1990.  
Expiration Date: May 7, 1995.

**Summary of Public Comments and Agency Responses:**

The Division received one written comment from a family day care provider sponsoring organization.

COMMENT: The commenter asked that family day care providers be allowed to care for five fee-paying children and one non-fee-paying child, all under the age of five. The proposed rules (and existing DYFS policy) allow for five or fewer children except for the provider's own children six years or older. The commenter said that including the provider's own children under the age of five in the total of five children allowed would greatly reduce the provider's income.

RESPONSE: While the Division realizes the economic benefit which would be realized by providers if the limit were increased, the Division cannot agree to make the adjustment to the limit as requested. The Division places children in family day care provider homes to assist children or families experiencing serious problems. The Division wishes to ensure that these children receive adequate care and stimulation while in day care.

The Division has eliminated upon adoption an extraneous comma in N.J.A.C. 10:126A-2.3(a)3.

Full text of the adoption follows (deletion from proposal indicated in brackets with asterisks \*[thus]\*).

**CHAPTER 126A**

**DYFS UTILIZATION OF FAMILY DAY CARE PROVIDERS**

**SUBCHAPTER 1. GENERAL PROVISIONS**

10:126A-1.1 Purpose and scope

This chapter outlines the standards under which the Division of Youth and Family Services will purchase family day care services, either directly or under a contract with a family day care provider. This chapter requires that any Division-purchased family day care services be provided by a family day care provider who meets and is registered in accordance with N.J.A.C. 10:126, Manual of Requirements for Family Day Care Registration. The standards set by this chapter are more stringent than those set by N.J.A.C. 10:126 for registered family day care providers in general because family day care is often utilized by the Division to relieve the effects of and prevent child abuse and neglect or to provide supervision or relief needed by the child's family.

10:126A-1.2 Definitions

The words and terms used in this chapter shall have the same meanings as defined in N.J.A.C. 126:1-2, Definitions, which definitions are hereby incorporated into this chapter by reference.

**SUBCHAPTER 2. DYFS FUNDED FAMILY DAY CARE SERVICES PROGRAM REQUIREMENTS**

10:126A-2.1 Eligible providers of DYFS funded family day care services

The Division shall utilize the services of only those family day care providers who meet the requirements of and are registered in accordance with the provisions of N.J.A.C. 10:126, Manual of Requirements for Family Day Care Registration.

10:126A-2.2 Maximum number of children

In any family day care home which receives payment from the Division, either directly or through contract, for family day care services for one or more children, the maximum number of children in the family day care home shall not exceed five children at a time, regardless of fee-paying or non-fee-paying status. The total of five children shall include the provider's foster children and own children, only if the foster children or own children are age five or younger. No more than two of the total number of children in the family day care home shall be age 23 months or younger.

10:126A-2.3 Exception to maximum number of children

(a) The regional administrator may approve, in writing, the presence of additional children in a family day care home which receives payment from the Division, provided all of the following conditions are met:

1. A provider assistant, as defined in N.J.A.C. 10:126-1.2, is present in the home;

2. The limits set by N.J.A.C. 10:126-6.1, Maximum number of children, have not been exceeded; and
3. The approval, in writing, of the regional administrator\*[,]\* has been obtained prior to the expansion of any Division-funded family day care home beyond the limits set by this chapter.

## CORRECTIONS

### (a)

#### THE COMMISSIONER

#### Notice of Administrative Correction

#### Classification Process

#### Eligibility Criteria for Reduced Custody Consideration

#### Criteria for Consideration for Gang Minimum

#### Custody Status and Full Minimum Custody Status

#### N.J.A.C. 10A:9-4.6

Take notice that the Department of Corrections has requested an administrative correction to the adopted text of N.J.A.C. 10A:9-4.6(f) as published in the April 2, 1990 New Jersey Register at 22 N.J.R. 1143(a). The introductory phrase in subsection (f), "[a]fter April 2, 1990," read in conjunction with the preceding subsection (e), beginning, "[p]rior to April 2, 1990," was intended by the Department to be implicitly inclusive of April 2, 1990 itself. This intention is expressed in the proposal summary for the amendment (see 21 N.J.R. 3050(a)). To clarify this intention, the Department has requested, and the Office of Administrative Law has agreed to permit, an administrative correction to the introductory phrase of N.J.A.C. 10A:9-4.6(f) to read, "[o]n or after April 2, 1990, . . ." This notice of administrative correction is published in accordance with N.J.A.C. 1:30-2.7(a)3.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status

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

(f) [After] **On or after** April 2, 1990, inmates sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum. Any New Jersey county credit awarded on the instant offense shall be counted. No credit toward this requirement is to be given on any prior sentence which an inmate may currently be serving.

(g)-(m) (No change.)

## LAW AND PUBLIC SAFETY

### (b)

#### DIVISION OF MOTOR VEHICLES

#### Executive and Administrative Service

#### Readoption with Amendments: N.J.A.C. 13:18

#### Adopted Repeals: N.J.A.C. 13:18-3 and 13:18-7

Proposed: February 20, 1990 at 22 N.J.R. 614(a).

Readopted: March 29, 1990 by Col. Clinton L. Pagano, Director, Division of Motor Vehicles.

Filed: March 30, 1990 as R.1990 d.225, **without change**.

Authority: N.J.S.A. 39:2-3, 39:3-4e, 39:3-43, 39:3-84, 39:4-54, 52:14B-3(1), 54:39A-8 and 54:39A-24.

Effective Date: March 30, 1990, Readoption; May 7, 1990, Repeals and Amendments.

Expiration Date: March 30, 1995.

#### Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposed readoption with amendments was invited via notice published in the February 20, 1990 issue of the New Jersey Register at 22 N.J.R. 614(a). A media advisory was also prepared by the Division of Motor Vehicles with regard to the proposal. The period for public comment was extended by the February 23, 1990 media advisory until March 25, 1990.

The New Jersey Division of Motor Vehicles received one comment with regard to the proposal. The comment is available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666. The comment was reviewed and considered by the Division, and is summarized below, along with the Division's response.

COMMENT: The Division's proposed amendment of N.J.A.C. 13:18-1.10 to allow the utilization of special permits on Saturdays until 12:00 noon will enhance highway safety for both the motoring public and permit users. The movement of overdimensional loads at such times will afford permit users the option to transport their load when the highway system is least used, thus resulting in greater safety to all highway users while decreasing such load movements on Fridays and Mondays. Traffic delays on Mondays and Fridays created by these movements will also be lessened. Other benefits that will result from enactment of the proposed amendment include less vehicle pollution, a decrease in motor fuel consumption, less driver stress, greater efficiency and a decrease in costs for businesses and, ultimately, the public. The Division's proposed amendment should be adopted.

RESPONSE: The Division concurs with the commenter that the amendment of N.J.A.C. 13:18-1.10 is appropriate, and has therefore adopted the proposed amendment.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:18.

Full text of the adopted repeals may be found in the New Jersey Administrative Code at N.J.A.C. 13:18-3 and 13:18-7.

Full text of the adopted amendments follows.

13:18-1.10 Invalidity of oversize permits

(a) (No change.)

(b) An oversize permit shall not be valid for the operation of a vehicle or combination of vehicles after 12:00 noon on Saturdays, or at any time on Sundays and the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Veterans' Day, Thanksgiving Day and Christmas Day. If the holiday falls on a Sunday, the operation shall not be permitted on the next Monday. If the holiday falls on a Saturday, the operation shall not be permitted on the preceding Friday.

(c) (No change.)

## TRANSPORTATION

### (c)

#### DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

#### BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

#### Speed Limits

#### Routes U.S. 46 and N.J. 57 in Warren County and

#### N.J. 152 in Atlantic County

#### Adopted Amendments: N.J.S.A. 16:28-1.10, 1.38 and 1.42

Proposed: March 5, 1990 at 22 N.J.R. 787(a).

Adopted: April 5, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: April 6, 1990 as R.1990 d.231, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: May 7, 1990.

Expiration Date: June 1, 1993.

**ADOPTIONS**

**TRANSPORTATION**

**Summary of Public Comments and Agency Responses:**

No comments received.

**Full text** of the adoption follows.

16:28-1.10 Route U.S. 46 including Route U.S. 1, 9 and 46

(a) The rate of speed designated for the certain parts of State highway Route U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-ii. (No change in text.)

iii. In Independence Township, Warren County:

(1) Zone three: 50 mph between the Liberty Township-Independence Township Corporate Line and 700 feet east of corporate line (mileposts 15.70 to 15.83); thence

(2) Zone four: 40 mph between 700 feet east of the Liberty Township-Independence Township Corporate line and 650 feet east of Baker Mill Road, except for 25 mph when passing through the Central School zone while "25 MPH WHEN FLASHING" signs are operating during recess or while children are going to or leaving school during opening or closing hours (mileposts 15.83 to 17.75);

(3) Zone five: 45 mph between 650 feet east of Baker Mill Road and the Town of Hackettstown-Independence Township Corporate line (Morris County) (mileposts 17.75 to 20.60); thence

Recodify existing vi.-viii as iv.-vi. (No change in text.)

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

(b) (No change in text.)

16:28-1.38 Route 57

(a) The rate of speed designated for the certain part of State highway Route 57 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i.-xi. (No change in text.)

xii. In Mansfield Township, Warren County:

(1) Zone 12: 50 miles per hour between the Washington Township-Mansfield Township line and 300 feet west of Komar Road (mileposts 12.60 to 13.80); thence

(2) Zone 12A: 45 miles per hour between 300 feet west of Komar Road and 1200 feet west of Water Street (mileposts 13.80 to 15.53); thence

(3) Zone 12B: 50 miles per hour between 1200 feet west of Water Street and Brantwood Terrace (mileposts 15.53 to 18.93); thence

(4) 40 miles per hour to a point 1,100 feet east of the center line of Airport Road; thence

(5) 50 miles per hour to the intersection of Route 182 in the Town of Hackettstown.

16:28-1.42 Route 152

(a) The rate of speed designated for the certain part of State highway Route 152 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Atlantic County:

(1) City of Somers Point:

(A) Zone 1: 40 miles per hour between Bay Avenue in the City of Somers Point and 1300 feet east of Bay Avenue in the Township of Egg Harbor (mileposts 0.00 to 0.245); thence

(2) Township of Egg Harbor:

(A) Zone 2: 50 miles per hour between 1,300 feet east of Bay Avenue and the westerly abutment line of the John F. Kennedy Memorial Bridge over Risley Channel (mileposts 0.245 to 3.17).

**(a)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits**

**Route N.J. 23 in Morris County**

**Adopted Amendment: N.J.S.A. 16:28-1.25**

Proposed: March 5, 1990 at 22 N.J.R. 788(a).

Adopted: April 5, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: April 6, 1990 as R.1990 d.232, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: May 7, 1990.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

No comments received.

**Full text** of the adoption follows.

16:28-1.25 Route 23

(a) The rate of speed designated for the certain parts of State highway Route 23 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-2. (No change.)

3. For southbound traffic:

i.-iii. (No change.)

iv. Zone four: 50 mph in Kinnelon Borough, West Milford Township, Butler Borough, Pequannock Township, Wayne Township to the intersection of Laguna Drive (milepost 7.4).

(1) In Riverdale Borough, Morris County

(A) 45 miles per hour between the southerly intersection of Cutlas Road (milepost 13.65) and Wind Beam Road (milepost 12.47).

v.-vi. (No change.)

4. (No change.)

**(b)**

**DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID  
BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS**

**Speed Limits**

**Route U.S. 30 in Atlantic County**

**Adopted Amendment: N.J.A.C. 16:28-1.57**

Proposed: March 5, 1990 at 22 N.J.R. 788(b).

Adopted: April 5, 1990, by John F. Dunn, Jr., Director, Division of Traffic Engineering and Local Aid.

Filed: April 6, 1990 as R.1990 d.233, **without change**.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: May 7, 1990.

Expiration Date: June 1, 1993.

**Summary of Public Comments and Agency Responses:**

No comments received.

**Full text** of the adoption follows.

16:28-1.57 Route U.S. 30

(a) The rate of speed designated for the certain parts of State highway Route U.S. 30 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Atlantic County:

(1) Town of Hammonton:

(A) Zone 1: 50 mph between Winslow Township and Fairview Avenue (Co. Rd. 678) (mileposts 27.97 to 29.13); thence

**TRANSPORTATION**

- (B) Zone 2: 40 mph between Fairview Avenue and Central Avenue (Co. Rd. 680) (mileposts 29.13 to 31.02); thence
- (C) Zone 3: 50 mph between Central Avenue and the Mullica Township Line (mileposts 31.02 to 32.60).
- (2) Mullica Township:
  - (A) Zone 1: 50 mph between the Township of Hammonton Line and 950 feet east of Union Avenue (Co. Rd. 623) (mileposts 32.60 to 36.45); thence
  - (B) Zone 2: 55 mph between 950 feet east of Union Avenue and Heidelberg Avenue (mileposts 36.45 to 40.23); thence
  - (C) Zone 3: 45 mph between Heidelberg Avenue and the Egg Harbor Township Line (mileposts 40.23 to 40.68).
- (3) Egg Harbor City:
  - (A) Zone 1: 45 mph between Mullica Township Line and Second Street (mileposts 40.68 to 40.95); thence
  - (B) Zone 2: 35 mph between Second Street and Boston Avenue (mileposts 40.95 to 41.60); thence
  - (C) Zone 3: 45 mph between Boston Avenue and Galloway Township Line (mileposts 41.60 to 42.12).
- (4) Galloway Township:
  - (A) Zone 1: 50 mph between Egg Harbor Township Line and Taylor Avenue except for 35 mph when passing through the Church of Assumption School zone during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening or closing hours (milepost 46.4) (approximate mileposts 42.12 to 49.00); thence
  - (B) Zone 2: 45 mph between Taylor Avenue and Absecon City Line (mileposts 49.00 to 50.52).
- (5) Absecon City:
  - (A) Zone 1: 45 mph between Galloway Township Line and Mill Road (mileposts 50.52 to 51.16); thence
  - (B) Zone 2: 40 mph between Mill Road and Shore Road (mileposts 51.16 to 52.01); thence
  - (C) Zone 3: 45 mph between Shore Road and Reeds Ditch Bridge (#159) (mileposts 52.01 to 52.81); thence
  - (D) Zone 4: 50 mph between Reeds Ditch Bridge (#159) and Atlantic City Line (mileposts 52.81 to 54.42).
- (6) City of Atlantic City:
  - (A) Zone 1: 50 mph between Absecon City Line and Beach Thorofare Bridge (mileposts 54.42 to 56.76); thence
  - (B) Zone 2: 40 mph between Beach Thorofare Bridge and Illinois Avenue (mileposts 56.76 to 57.46); thence
  - (C) Zone 3: 35 mph between Illinois Avenue and Adriatic Avenue (mileposts 57.46 to 58.23).
- ii. In Camden County:
  - Recodify existing i.-viii. as (1)-(8) (No change in text.)
  - (9) In Lindenwold and Laurel Springs Boroughs:
    - (1) 30 mph school speed zone within the Lindenwold School No. 1 zone, St. Lawrence Parochial School zone and the Overbrook Junior High School zone, during recess when the presence of children is clearly visible from the roadway or while children are going to or leaving school during opening and closing hours, between 125 feet east of Summit Avenue (approximate milepost 46.05) and 300 feet east of Whitehorse Avenue (approximate milepost 45.55).

**OTHER AGENCIES**

(a)

**PUBLIC EMPLOYMENT RELATIONS COMMISSION**

**Interest Arbitration**

**Adopted Amendment: N.J.A.C. 19:16-5.7**

Proposed: February 5, 1990 at 22 N.J.R. 330(a).  
 Adopted: March 26, 1990 by the Public Employment Relations Commission, James W. Mastriani, Chairman.  
 Filed: March 27, 1990 as R.1990 d.221, **without change**.  
 Authority: N.J.S.A. 34:13A-11.  
 Effective Date: May 7, 1990.  
 Expiration Date: August 7, 1991.

(CITE 22 N.J.R. 1380)

**ADOPTIONS**

**Summary of Public Comments and Agency Responses:**

**COMMENT:** The Township of Wayne submitted a written statement praising the amendment for eliminating the arbitrator's consent, but asking for a hearing on its proposal that interest arbitration proceedings be made public at the request of either the employer or majority representative.

**RESPONSE:** Since the Commission had already heard oral argument on the Township's earlier petition to adopt such a regulation (see 21 N.J.R. 3567(a) and 22 N.J.R. 259(c)), the Commission denied the request.

**COMMENT:** The City of Vineland submitted a written consent praising the amendment as helpful to the negotiations process and asking that the amendment be adopted without change.

**RESPONSE:** The Commission agrees.

Full text of the adoption follows.

19:16-5.7 Conduct of the arbitration proceeding

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

(d) The arbitrator may administer oaths, conduct hearings, require the attendance of witnesses and the production of such books, papers, contracts, agreements, and documents as the arbitrator may deem material to a just determination of the issues in dispute, and for such purpose may issue subpoenas. Any hearings conducted shall not be public unless all parties agree to have them public.

(e)-(k) (No change.)

(b)

**CASINO CONTROL COMMISSION**

**Accounting and Internal Controls  
 Casino Licensee's Organization**

**Adopted Amendment: N.J.A.C. 19:45-1.11**

Proposed: November 6, 1989 at 21 N.J.R. 3446(a).  
 Adopted: March 28, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.  
 Filed: March 29, 1990 as R.1990 d.222, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3(c)).  
 Authority: N.J.S.A. 5:12-63(c), 69(a), 70(j) and 99.  
 Effective Date: May 7, 1990.  
 Expiration Date: March 24, 1993.

**Summary of Public Comments and Agency Responses:**

**COMMENT:** Five casino licensees (Sands Hotel Casino, Trump Plaza, Bally's Park Place, Harrah's Marina and Showboat), and one applicant for a casino license (Taj Mahal) submitted comments fully supporting the proposed amendment.

**RESPONSE:** The Commission agrees with these comments as evidenced by its adoption of the proposed amendment.

**COMMENT:** The Division of Gaming Enforcement (Division) submitted a comment in opposition to the proposed amendment. The Division argues that the duties and responsibilities of the security department are of such magnitude that the requirement that the director of security report directly to the chief executive officer must be maintained. Without such a reporting requirement, according to the Division, there is a risk that the chief executive officer will be misinformed or uninformed about the important operations of the security department.

In addition, the Division implies that the successful operation of the security department requires that it be independent of the other casino departments. It argues that such independence would be compromised if the director of security reported to someone other than the chief executive officer.

Finally, the Division contends that the chief executive officer must be held strictly accountable for the policies of the security department and the procedures used to effectuate such policies, and that if the director of security is not required to report directly to the chief executive officer, such accountability will be lost.

**RESPONSE:** The Commission acknowledges the importance of the duties and responsibilities of the security department. However, it notes that the heads of the casino, slot, credit, accounting and cage departments are not required to report directly to the chief executive officer. The Commission is not convinced that the functions of the security depart-

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ment are sufficiently more important than those of these other departments so as to justify this special reporting requirement.

All departments involved in the casino's operation must ensure that there is strict adherence to the Commission's rules and to the licensee's approved system of internal controls. Many have responsibility over the casino's assets and the procedures necessary to protect or account for those assets. In addition, the Commission's rules are written so that the personnel in all of these departments serve, to some extent, as a counter-check on the activities of the personnel in the other departments. Nevertheless, N.J.A.C. 19:45-1.11 presently acknowledges that senior executives other than the chief executive officer are capable of directing the operations of the casino departments other than the security department. The Commission has concluded that a similar arrangement is sufficient for the security department, as well.

Moreover, the duties and responsibilities of the security department do not appear to require more independence than those of the other departments involved in a casino's operation as the Division's comment implies. If these other departments are capable of maintaining the necessary independence while reporting to someone other than the chief executive officer, then there is no reason to believe that such flexibility would jeopardize the independence and successful functioning of the security department.

Finally, the Commission does not agree that if the director of security does not report to the chief executive officer, then the chief executive officer cannot be held accountable for the department's actions. The chief executive officer is ultimately responsible for a casino licensee's entire casino operation, and accountable to the regulatory authorities for any deficiencies in that operation. The accountability of the chief executive officer for the actions of a particular department is not excused because there is not a direct reporting relationship between the department head and the chief executive officer. This is true for a casino licensee's security department, as well.

#### Summary of Agency-Initiated Changes:

The adopted amendment includes technical and minor substantive changes from the proposed amendment which do not require republication. Two of these changes clarify that the rule applies to casino licensees which are not organized in corporate form. Thus, the adopted amendment retains the existing reference to the "equivalent" of a chief executive officer, and permits direct reporting to a "senior executive" instead of a "senior corporate officer."

In addition, the adopted amendment does not include the unnecessary reporting alternative which permitted the director of security to report indirectly to the chief executive officer and directly to a senior executive. Such an arrangement is already permitted under the alternative which allows the director of security to report directly to a senior executive other than the chief executive officer. The director of security would always be free to also report to the chief executive officer where he or she is reporting directly to another senior executive.

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

#### 19:45-1.11 Casino licensee's organization

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

(c) Each casino licensee shall, at a minimum, establish the following departments with respect to the casino operation:

1.-6. (No change.)

7. A security department supervised by a director of security who shall cooperate with, yet perform independently of, all other departments and shall report directly to the Chief Executive Officer or **\*his equivalent or\*** **\*[directly]\*** to a senior **\*[corporate officer]\*** **\*executive\*** having no incompatible functions<sup>\*</sup>, or indirectly to the chief executive officer and directly to a senior corporate officer having no incompatible functions<sup>\*</sup>. The director of security shall be responsible for the overall security of the establishment including, but not limited to, the following:

i.-ix. (No change.)

8.-9. (No change.)

(d)-(g) (No change.)

(a)

### CASINO CONTROL COMMISSION

#### Accounting and Internal Controls

#### Multi-Casino Progressive Slot Systems; Annuity Jackpots

**Adopted Amendment: N.J.A.C. 19:45-1.40A**

**Adopted New Rules: N.J.A.C. 19:45-1.39A, 1.40B and 1.40C**

Proposed: February 20, 1990 at 22 N.J.R. 624(a).

Adopted: April 11, 1990 by the Casino Control Commission, Valerie H. Armstrong, Acting Chair.

Filed: April 16, 1990 as R.1990 d.238, **without change**.

Authority: N.J.S.A. 5:12-63(c), 5:12-69, and 5:12-70(f), (l) and (m).

Effective Date: May 7, 1990.

Expiration Date: March 24, 1993.

#### Summary of Public Comments and Agency Responses:

**COMMENT:** The Division of Gaming Enforcement ("Division") submitted a comment in support of the adoption of the proposed amendment and new rules. However, the Division also recommended that the Commission give consideration to making several changes in the future. The Division suggested that proposed N.J.A.C. 19:45-1.40B(b)2 should require the trustees to purchase the annuity contract within a specified period of time and that proposed N.J.A.C. 19:45-1.40B(b)5 should require the trustees to file with the regulatory agencies a copy of the annual audit which must be obtained under this paragraph.

**RESPONSE:** The Casino Control Commission ("Commission") agrees that these recommendations of the Division have merit and warrant further consideration. Nevertheless, as recognized by the Division, the proposed amendment and new rules are viable without such changes. The adoption of the proposed amendment and new rules need not be delayed while such additional changes are being prepared.

**COMMENT:** A joint comment was received from Bally's Park Place and Bally's Grand (jointly "Bally's"), two casino licensees which are under common ownership. The Atlantic City Megabucks Trust ("Megabucks Trust"), comprised of casino licensees participating in a system which offers annuity jackpots through progressive slot machines linked at more than one casino, also submitted a comment. In addition, The Casino Association of New Jersey ("Casino Association") commented on the proposal.

All of these commenters objected to the amendment and rules because they require that annuity contracts be purchased to secure the payment of deferred jackpot payments to annuity jackpot winners. The Megabucks Trust and the Casino Association argue that the Commission's rules should permit annuity jackpot payments to be secured through other methods, such as the purchase of guaranteed investment contracts or United States Treasury Bonds. Bally's contends that a casino licensee or licensees should be allowed to purchase a letter of credit to ensure that a winner of an annuity jackpot receives the deferred payments as promised.

Although the Division did not object to the adoption of the amendment and rules on these grounds, it did recommend that the Commission should consider amendments which address the use of surety bonds or letters of credit to ensure that the deferred payments promised under annuity jackpots are made.

**RESPONSE:** The requirement that an annuity contract be purchased from a qualified insurance company is based upon the methods and standards employed by the New Jersey Lottery Commission to fund deferred payments to winners of its lottery games. The annuity contract requirement, and the trust mechanism of which it is a part, are designed to assure, to the greatest extent possible, that funds will be available to make future payments to annuity jackpot winners regardless of the future viability of any casino licensee participating in the awarding of the jackpot. As a secondary objective, these requirements are intended to minimize the need for the Commission to review the qualifications or monitor the investment activities of the financial institution being used to secure the funding of future jackpot payments. In the absence of a detailed proposal which establishes the ability of the other investment vehicles mentioned by the commenters to achieve these objectives, the Com-

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mission believes it is prudent to rely upon the established practice of the State Lottery Commission to ensure that deferred payments are adequately funded.

The Commission has been, and remains, prepared to entertain alternative regulatory proposals pursuant to N.J.S.A. 52:14B-4 and N.J.A.C. 19:40-3.6 which would authorize other means of ensuring that winners of annuity jackpots receive the deferred payments as promised. None of the comments which were submitted, however, contained sufficient detail to enable the Commission to initiate rulemaking action on alternative funding mechanisms at this time.

COMMENT: Bally's objects to the proposed amendment and new rules because they require a trust fund to be established to make the deferred payments promised to winners of annuity jackpots. Bally's argues that the trust requirement was only imposed because it was part of the particular system of interconnected slot machines presently in operation in Atlantic City, and that the trust fund is not necessary where a multi-progressive slot system links casinos which are under common ownership and where the gaming equipment is owned by these related casinos.

Bally's also argues that the establishment of a trust fund in connection with annuity jackpots could result in the winner of such a jackpot having to pay income taxes on the entire amount of the jackpot in the year won, notwithstanding that the jackpot will be paid out over time. Bally's states that it has received preliminary tax advice suggesting that the use of a letter of credit, without the trust, will not result in such tax liability.

RESPONSE: As noted above, the trust fund requirement is intended to maintain public confidence in the integrity of casino gaming in New Jersey by assuring, with minimal supervision by the regulatory authorities, that an annuity jackpot winner receives all promised payments in the event that a casino licensee ceases operations in the State or becomes insolvent. Such concerns are no less relevant when an annuity jackpot is offered by a system which links slot machines at casinos which are under common ownership and where all equipment is owned by these related casinos. Moreover, the trust fund mechanism must be utilized by any casino licensee wishing to offer an annuity jackpot. As further noted above, it is the only comprehensive proposal addressing the Commission's concerns and objectives which has been presented for Commission consideration to date. It was not proposed because it is part of the particular system now in operation in Atlantic City, as claimed by Bally's.

As to the potential tax consequences of the proposed regulatory scheme, neither Bally's nor any other entity can state with assurance what these consequences will be. The entity which proposed the system that is presently in operation in Atlantic City has also received preliminary tax advice that the trust and annuity requirements included in the proposed amendment and rules would not result in the winner of an annuity jackpot being taxed upon the total amount of the jackpot in the year won. Moreover, as Bally's notes, the rules as proposed include a provision which requires any casino licensee or group of casino licensees offering an annuity jackpot to establish that the winner of the jackpot will be able to satisfy any tax liability which may result from an adverse tax ruling in this area. Given that the tax advice which has been received by interested parties here is inconsistent, and that the winners of annuity jackpots will be protected in any event, the Commission does not believe that Bally's comment regarding this tax question warrants changing the proposed amendment and new rules.

COMMENT: The Megabucks Trust and the Casino Association also object to the proposed amendment and new rules because they require that the annuity jackpot be treated as a payout of a "thing of value" under N.J.S.A. 5:12-45. As a thing of value, such a payout is not deductible by casino licensees from gross revenue in calculating the amount of gross revenue tax owed the State.

The Megabucks Trust argues that the deferred payments made to winners of annuity jackpots are payouts of cash which must be treated as "sums paid out as winnings to patrons" under N.J.S.A. 5:12-24, and thus deductible from gross revenue. The Casino Association goes so far as to claim that the purchase price of the annuity contract should be deductible in the year it is purchased, and that the deferred payments should also be deductible, up to the total sum of the jackpot which is won.

RESPONSE: The Commission has already addressed this issue and ruled that an annuity jackpot is a payout of a "thing of value" under N.J.S.A. 5:12-45, and therefore not deductible from gross revenue in calculating the gross revenue tax in accordance with the terms of that provision. *In the Matter of the Petition of International Game Technology for Approval of a System Linking the Top Jackpot of Licensed Progressive*

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*Slot Machines at More Than One Casino*, Petition Ref. No. 085602, Order dated May 21, 1987. The proposed amendment and new rules merely reflect the Commission's prior ruling on this issue.

When a patron wins an annuity jackpot, that patron wins the right to receive cash payments at specified times in the future. This right to receive the future payments is not cash, but a "thing of value," and thus not deductible from gross revenue in accordance with N.J.S.A. 5:12-45. The actual payment of cash which occurs in the future, pursuant to the right which was previously won, does not convert the jackpot or any portion thereof into a cash jackpot for the purposes of N.J.S.A. 5:12-45. The determination whether a jackpot is either a payout of cash or a thing of value must occur at the time the jackpot is won. It is clear that when an annuity jackpot is won, the patron is winning the right to receive future payments at fixed intervals, which right cannot be considered a payout of cash. The commenters have not raised any new argument which warrants the reconsideration of the Commission's prior ruling on this issue.

COMMENT: The Megabucks Trust argues that the proposed amendment and new rules are too restrictive in requiring the trust to deposit checks received on the annuity contracts into "bank" accounts at proposed N.J.A.C. 19:45-1.40B(d). The Megabucks Trust suggests that the proposed amendment and new rules should make it clear that the trust can establish its accounts in institutions other than "banks."

RESPONSE: The Casino Control Act requires that a casino licensee's operating accounts must be maintained "in a bank in New Jersey" (see N.J.S.A. 5:12-82(d)(5)). The trust fund which is required by the proposed new rule must be deemed an operating account of the casino licensee or group of casino licensees offering the annuity jackpot. The use of the term "bank" simply reflects the statutory requirement.

COMMENT: The Megabucks Trust states that the proposed amendment and new rules improperly require the continuation of the "trust fund" until all payments have been made, instead of simply requiring the continuation of the "trust" (see proposed N.J.A.C. 19:45-1.40B(c)(4)).

RESPONSE: Under the proposed amendment and new rules, the "trust fund" refers to those monies over which the trustees must exercise trust responsibilities. If future payments are to be made to a winning patron by the trustees, the rules as proposed require the trustees to continue to control the funds out of which or through which these payments will be made. This is all that the rules require.

COMMENT: The Megabucks Trust suggests that the proposed amendment and new rules should define the term "winner" which appears therein as a "bona fide winner as ascertained by the rules of the Commission" (see proposed N.J.A.C. 19:45-1.40B(c)).

RESPONSE: The Commission does not believe that such a definition is necessary. The use of the word "winner" implicitly contemplates that such a person is a legitimate, bona fide winner, unless otherwise qualified. No such qualifications appear in the cited subsection.

COMMENT: The Megabucks Trust objects to the proposed amendment and new rules' limitation on the encumbrance of an annuity jackpot by the winner in certain cases. The Megabucks Trust has proposed to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot incurred in the year won, as required by proposed N.J.A.C. 19:45-1.40B(h)2, by loaning the patron the money necessary to pay such liability. In connection with such a loan, the Megabucks Trust proposes to receive a security interest in the future payments to secure the repayment of the loan.

RESPONSE: The Commission acknowledges that the comment has merit and warrants further consideration. Nevertheless, the viability of the proposed amendment and new rules is not threatened by the noted deficiency. They may therefore be adopted as proposed while this recommended change is considered.

COMMENT: The Megabucks Trust claims that the proposed amendment and new rules are unclear about where the notices required by proposed N.J.A.C. 19:45-1.40B(g) must appear. It states that the provision could be read broadly to apply to media advertising and billboards.

RESPONSE: The Commission rejects this comment. Proposed N.J.A.C. 19:45-1.40B(g) provides that the relevant notices must appear on all signs and displays required by N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)(5). These provisions clearly apply only to displays on the front of the slot machines or approved signs located near the slot machines containing required information about payouts of merchandise or things of value. The information requirements applicable to media advertising and billboards are found in N.J.A.C. 19:45-1.40A(n), as amended herein, and Chapter 51 of the Commission's rules (N.J.A.C. 19:51).

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Full text of the adoption follows:

19:45-1.39A Progressive slot machines interconnected in more than one casino

(a) Two or more casino licensees may, with the prior approval of the Commission, operate a multi-casino progressive slot system in which certain progressive slot machines are interconnected in the participating casinos.

(b) Any multi-casino progressive slot system approved by the Commission shall be operated in accordance with all relevant requirements of the Act and the Commission's regulations governing casino licensees and the conduct of gaming. Any casino licensee seeking approval to participate in a multi-casino progressive slot system shall submit for Commission approval a system of accounting and internal controls specifying the manner in which participating casino licensees will satisfy the requirements of the Act and the Commission's regulations concerning the operation of slot machines.

(c) A casino licensee may, with the prior approval of the Commission, designate one or more casino key employees to represent the interests of the casino licensee in the operation and control of a multi-casino progressive slot system. Any designated representative shall only be permitted to exercise the duties and responsibilities he or she is authorized to perform for the casino licensee pursuant to N.J.A.C. 19:45-1.11; provided, however, a designated representative may also communicate information and directions concerning the operation and control of the system to or from other employees of the casino licensee who are authorized to exercise responsibility for such matters.

19:45-1.40A Jackpot payouts of merchandise or other things of value

(a) This section shall apply to all jackpot payouts of merchandise or other things of value, including annuity jackpots as defined in N.J.A.C. 19:45-1.40B, except where such annuity jackpots are specifically exempted herein.

(b) Whenever a casino licensee offers any merchandise or thing of value as part of a slot machine payout, such merchandise or thing of value shall have a cash equivalent of at least \$5,000 and shall not be included in the total of all sums paid out as winnings to patrons for purposes of determining gross revenue or be included in determining the payout percentage of any slot machine. The cash equivalent value of such merchandise or thing of value shall be determined in accordance with the following requirements:

1.-4. (No change.)

(c) The casino licensee shall retain and make available to the Commission and Division upon request supporting documentation relating to the acquisition and valuation of any merchandise or thing of value to be offered as a payout and shall accumulate the total cash equivalent value and number of such payouts. The supporting documentation shall include a detailed description of the merchandise or thing of value and shall specifically identify which slot machines offer which merchandise or things of value as payouts. If the payout is in the form of an annuity jackpot, the documentation shall include all annuity contracts purchased pursuant to N.J.A.C. 19:45-1.40B. In addition, a quarterly report shall be filed with the Commission, on a form prescribed by the Commission, which shall, at a minimum, provide the current quarter and year-to-date total cash equivalent value and number of payouts of merchandise or things of value.

(d) Whenever a patron wins a jackpot which includes any merchandise or thing of value, an accounting representative, with no incompatible functions, shall prepare a Payout Slip ("Slip"). Such Slips shall be serially prenumbered forms, each series of Slips shall be used in sequential order, and the series of numbers of all Slips received by a casino shall be accounted for by employees independent of the cashiers' cage and the slot department. All original and duplicate void Slips shall be marked "Void" and shall require the signature of the preparer.

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

(g) On the original and all copies of the Slip, or in stored data, the preparer shall record, at a minimum, the following information:

1. The casino number of the slot machine on which the jackpot was registered;

2. The winning combination of characters constituting the jackpot;

3. The date, shift and time when the jackpot occurred;

4. A description of the merchandise or thing of value won and, unless the jackpot is an annuity jackpot, its cash equivalent value;

5. The selection of merchandise or its cash equivalent value as made by the patron;

6. The time of the Slip's preparation; and

7. The signature or, if computer prepared, identification code of the preparer.

(h)-(k) (No change.)

(l) (Reserved.)

(m) Except when the payout is an annuity jackpot, the casino licensee may permit a winning patron to request and receive the exact cash equivalent value of the merchandise or thing of value as determined in (b)1-4 above in lieu of the merchandise or thing of value. However, any cash so provided shall not be included in determining gross revenue or in determining the minimum 83 percent payout of any slot machine as required by N.J.A.C. 19:45-1.37(f) and 19:46-1.26(e). If a licensee chooses to offer a patron this option, the licensee shall advise the patron in advance of actual play pursuant to N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5.

(n) Any advertising involving slot machine payouts of any merchandise or thing of value by the casino licensee shall include an accurate description of the merchandise or thing of value offered and, except for annuity jackpots, the cash equivalent value of the merchandise or thing of value offered and the dates the merchandise or thing of value will be offered if the casino licensee establishes a time limit upon initially offering the merchandise or thing of value. Any advertising concerning annuity jackpots shall also provide clear notice of the following:

1. That the jackpot will be paid over time and not in one lump sum; and

2. The number of payments and the time interval between payments.

(o) Until the expiration of any time limit established in accordance with (n) above or, if no such time limit is initially established by the casino licensee, or the payout is an annuity jackpot, until the merchandise or thing of value offered as a slot machine payout is won by a patron, a casino licensee shall not change the odds of winning the merchandise or thing of value, the denomination of the machine, nor in any other way vary the terms upon which the merchandise or thing of value is offered to the public until it is won by a patron. Repair or replacement of a slot machine offering any merchandise or thing of value shall be governed by the restrictions applicable to progressive jackpot machines pursuant to N.J.A.C. 19:45-1.39, whether or not the merchandise or thing of value is offered in conjunction with a progressive jackpot payout.

19:45-1.40B Jackpot payouts in the form of an annuity

(a) For purposes of this section, the phrase "annuity jackpot" refers to any slot machine jackpot offered by a casino licensee or group of casino licensees pursuant to which a patron wins the right to receive cash payments at specified intervals in the future. No annuity jackpot shall be permitted unless it provides for the payment of fixed amounts at fixed intervals. In addition, no annuity jackpot shall be permitted unless it expressly prohibits the winner from encumbering, assigning or otherwise transferring in any way his or her right to receive the future cash payments, except for transfer of the payments to the estate of the winner upon his or her death. A casino licensee or group of casino licensees may, with the prior approval of the Commission, terminate all future payments to a winner who attempts to encumber, assign or otherwise transfer the right to receive future payments in violation of this prohibition.

(b) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall establish a trust fund which shall be used to make the future cash payments. The trust fund shall be administered in accordance with a written trust agreement which shall be reviewed and approved by the Commission prior to the offering of the jackpot. The trust agreement shall, at a minimum, require that:

1. Any casino licensee participating in offering the annuity jackpot serve as trustee for the trust fund;

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2. The monies in the trust fund be used to purchase annuity contracts, naming the trust fund as beneficiary, to assure that there will be sufficient funds to make all payments required under the terms of the annuity jackpots won. An annuity contract shall be purchased for each annuity jackpot won prior to the time the first annuity payment is scheduled to be made to the winner of the jackpot. All annuity contracts shall be issued by an insurance company which:

- i. Has fidelity and fiduciary insurance or bonding coverage for 100 percent of the value of the annuity contract;
- ii. Has a combined capital and surplus of at least 100 million dollars, assets of at least one billion dollars, and an A.M. Best Company rating of A plus (superior); and
- iii. Is authorized to issue annuities in New Jersey by the State's Commissioner of Insurance and is either licensed to sell annuities in this State, or represented by an entity so licensed;

3. A reserve be established and maintained within the trust fund which is sufficient to purchase the annuity contracts required under (b)2 above as annuity jackpots are won;

4. The trust fund continue to be maintained until all payments owed to winners of the annuity jackpots have been made; and

5. The trustees obtain an annual audit by an independent certified public accountant licensed to practice in the State of New Jersey attesting to:

- i. The financial position of the trust fund, including whether the trust will be able to pay all of its obligations when due; and
- ii. Disclosing whether the records and control procedures examined are maintained in accordance with the Act, the Commission's regulations, and generally accepted accounting principles.

(c) Any casino licensee or group of casino licensees which offers an annuity jackpot shall be strictly and immediately liable for any payment which is owed to the winner of such a jackpot in the event that the payment is not made by the trustees when due. Where the annuity jackpot is offered as part of a multi-casino progressive slot system, each casino licensee participating in the system when the jackpot is won shall be jointly and severally liable for each jackpot payment required to be made under this subsection.

(d) All annuity payments received by the trustees under the annuity contracts shall be restrictively endorsed "for deposit only" to the bank account of the trust and immediately recorded on an Annuity Deposit Log. The Annuity Deposit Log shall contain, at a minimum, the following:

1. The date the payment is received;
2. The amount of the payment;
3. The name of the insurance company issuing the payment; and
4. The signature of the person making the entry.

(e) The trustees shall make all payments owed to a patron as the result of that patron winning an annuity jackpot by check made payable to the winning patron. Such payments shall be recorded on an Annuity Payment Log which shall contain, at a minimum, the following:

1. The patron's name and address;
2. The check number and the date the check was mailed or presented to the patron;
3. The amount of the check;
4. The date the payment was due;
5. The names of the persons signing the check; and
6. The signature of the person making the entry.

(f) The trustees shall also maintain an Annuity Jackpot Summary Log for each patron who wins an annuity jackpot to summarize the payments owed and made to the winning patron. The Annuity Jackpot Summary Log shall be prepared when a patron wins an annuity jackpot.

1. At the time of preparation, the Log shall contain, at a minimum, the following information:

- i. The patron's name and address;
- ii. The date the annuity jackpot was won;
- iii. The total amount of the annuity jackpot;
- iv. The amount of each annuity payment;
- v. The date each annuity payment is due; and
- vi. The signature of the preparer.

2. As annuity payments are made to the patron, the following information, at a minimum, shall be entered in the Log:

- i. The date of the payment;
- ii. The amount of the check;
- iii. The check number; and
- iv. The signature of the person making such an entry.

(g) Any casino licensee or group of casino licensees which offers an annuity jackpot shall comply with the display and sign requirements established in N.J.A.C. 19:45-1.37(a)4 and 19:46-1.26(a)5, except that the display or sign need not include the cash equivalent value. In addition, each such display or sign shall provide clear notice of the following:

1. That the displayed jackpot will be paid over time and not in one lump sum;
2. The number of payments and the time interval between payments; and

3. That the right to receive the jackpot payments may not be encumbered, assigned, or otherwise transferred in any way except to the estate of the winner upon his or her death, and that any attempt to make a prohibited transfer may result in the winner forfeiting the right to receive future payments.

(h) Any casino licensee or group of casino licensees planning to offer an annuity jackpot shall first be required to establish to the satisfaction of the Commission either that:

1. A winning patron will not be liable for income tax on the deferred portion of the annuity jackpot in the tax year in which the jackpot is won; or
2. Reasonable accommodations have been made to enable a winning patron to satisfy any income tax liability attributable to the deferred portion of the annuity jackpot which is incurred in the tax year in which the jackpot is won.

19:45-1.40C Multi-casino slot system jackpot payouts of cash

(a) Any slot machine jackpot payout of cash or tokens which will be included in the calculation of gross revenue by two or more casino licensees as part of a multi-casino progressive slot system shall be subject, except as otherwise provided in this section, to any procedural or documentation requirement established in N.J.A.C. 19:45-1.40. All forms utilized in the preparation or payment of a multi-casino progressive slot system jackpot shall be clearly identified as forms used for such purpose.

(b) For establishments in which Jackpot Payout Slips ("Payouts") are manually prepared, a separate series of Multi-Casino Jackpot Payout Slips ("Multi-Casino Payouts") shall be used in lieu thereof and shall be subject to the following additional procedures and requirements:

1. Each series of Multi-Casino Payouts shall be a four-part form, at a minimum, and shall be inserted in a locked dispenser that will:

- i. Permit an individual Multi-Casino Payout in the series and its copies to be written upon simultaneously while still locked in the dispenser; and
- ii. Discharge the original, duplicate and triplicate while the quadruplicate remains in a continuous, unbroken form in the dispenser;

2. The duplicate and triplicate Multi-Casino Payouts shall be treated like a duplicate Payout under N.J.A.C. 19:45-1.40, except that:

- i. The amount of the Multi-Casino Payout shall not be included in the daily calculation of the Slot Win Sheet but shall be reported as a periodic adjustment in a manner approved by the Commission; and
- ii. At the end of each gaming day, at a minimum, the triplicate Multi-Casino Payout shall be forwarded by the accounting department to the casino licensee or group of casino licensees approved to operate the slot system ("slot system operator") for comparison and agreement with the combined system readings and reports, and for calculation of tax deductions and cash reimbursements, if applicable; and

3. The quadruplicate Multi-Casino Payout shall be treated like a triplicate Payout under N.J.A.C. 19:45-1.40.

(c) For establishments in which Payouts are computer prepared, a separate series of Multi-Casino Payouts shall be used in lieu thereof and shall be subject to the following additional procedures and requirements:

**ADOPTIONS**

**OTHER AGENCIES**

1. Each series of Multi-Casino Payouts shall be a three-part form, at a minimum, and shall be inserted in a printer which shall:

i. Simultaneously print an original, duplicate and triplicate Multi-Casino Payout while the computer stores, in machine-readable form, all information printed on the Multi-Casino Payout; and

ii. Discharge the original, duplicate and triplicate;

2. Stored data shall not be susceptible to change or removal by any personnel after preparation of a Multi-Casino Payout; and

3. The duplicate and triplicate Multi-Casino Payout shall be treated like a duplicate Payout under N.J.A.C. 19:45-1.40, except that:

i. The amount of the Multi-Casino Payout shall not be included in the daily calculation of the Slot Win Sheet but shall be reported as a periodic adjustment in a manner approved by the Commission; and

ii. At the end of each gaming day, at a minimum, the triplicate Multi-Casino Payout shall be forwarded by the accounting department to the slot system operator for comparison and agreement with the combined system readings and reports, and for calculation of tax deductions and cash reimbursements, if applicable.

(d) If a multi-casino slot machine system will not permit slot department personnel employed by the casino licensee where the jackpot is won to determine from the slot machine or the progressive display the actual amount of the jackpot payout of cash or tokens won by the patron, the following additional requirements shall apply:

1. The slot cashier who is responsible for preparing the Multi-Casino Payout shall request the slot system operator to provide documentation of the actual amount of the jackpot payout of cash or tokens won by the patron;

2. The slot system operator shall provide, in a form and manner approved by the Commission, documentation of the actual amount of the jackpot payout to the slot cashier, who shall use the documentation in the preparation of the Multi-Casino Payout and attach the documentation to the original Multi-Casino Payout; and

3. The documentation required by (d)1 above shall include the winning jackpot amounts which should be displayed on the slot machine or the progressive meter on the floor of the casino.

19:45-1.40D (No change in text.)

# PUBLIC NOTICES

## ENVIRONMENTAL PROTECTION

(a)

### DIVISION OF WATER RESOURCES

#### Amendment to the Upper Delaware Water Quality Management Plan Public Notice

Take notice that on January 9, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Upper Delaware Water Quality Management Plan was adopted by the Department. This amendment allows for an on-site groundwater disposal facility to replace and expand the existing Delaware Elementary School wastewater treatment facility in Knowlton Township, Warren County. The facility will be sized to accommodate 600 persons.

(b)

### DIVISION OF WATER RESOURCES

#### Amendment to the Ocean County Water Quality Management Plan Public Notice

Take notice that on January 25, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. This amendment adopts the Stafford Township Wastewater Management Plan (WMP). The WMP delineates existing sewer service areas and an expanded proposed service area for the Stafford Township Municipal Utilities Authority with treatment at the Ocean County Utilities Authority's Southern Water Pollution Control Facility. The remaining portion of the township is shown as served by individual subsurface sewage disposal systems.

(c)

### DIVISION OF WATER RESOURCES

#### Amendment to the Ocean County Water Quality Management Plan Public Notice

Take notice that on March 23, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Ocean County Water Quality Management Plan was adopted by the Department. This amendment is for the proposed Pinelands Middle School located at Lot 21A, Block 78 on the north side of Nugentown Road in Little Egg Harbor Township which will be added to the existing sewer service area. The projected flow for the Middle School is 32,000 gallons per day (GPD) based on 1300 people times 25 GPD. The wastewater will be treated at the Ocean County Utilities Authority's Southern Water Pollution Control Facility.

(d)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that on January 24, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment adopts the Camden County

Municipal Utilities Authority (CCMUA) Atlantic Basin Wastewater Management Plan (WMP) and also amends the Mullica River Basin portion of the existing Winslow Township WMP. The Atlantic Basin WMP proposes the expansion of CCMUA's sewer service area to include all of Chesilhurst Borough. In addition, the WMP proposes the transfer of 1.2 million gallons of wastewater out of the Mullica River Basin (from Winslow Township, Waterford Township, and Chesilhurst Borough) to be treated at the CCMUA Delaware #1 wastewater treatment facility. This WMP does not supersede the service areas delineated for the Berlin Borough and Berlin Township WMP adopted August 20, 1986.

(e)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that on March 29, 1990, pursuant to the provisions of the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. This amendment approves the Shamong Township Wastewater Management Plan (WMP) in Burlington County. The Shamong WMP proposes an advanced secondary treatment plant with subsurface disposal for the proposed Shamong Upper Elementary School.

(f)

### DIVISION OF WATER RESOURCES

#### Amendment to the Tri-County Water Quality Management Plan Public Notice

Take notice that an amendment to the Tri-County Water Quality Management (WQM) Plan has been submitted for approval. This amendment would expand the Gloucester County Utility Authority's (GCUA) sewer service area to include two East Greenwich Township Elementary Schools which are located on a 24 acre site in East Greenwich Township on Block 901, Lot 3 and Block 1001, Lots 5.1 and 7.

This notice is being given to inform the public that a plan amendment has been developed for the Tri-County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 working days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

PUBLIC NOTICES

ENVIRONMENTAL PROTECTION

(a)

**DIVISION OF WATER RESOURCES**

**Amendment to the Ocean County Water Quality Management Plan  
Public Notice**

Take notice that an amendment to the Ocean County Water Quality Management (WQM) Plan has been submitted for approval. This amendment proposes to provide a method of handling wastewater generated by two public facilities proposed in Jackson Township. The first is the Jackson Township Board of Education Middle School. The site of the Middle School is being added to the Jackson Township Municipal Utilities Authority (MUA) system in Ocean County Utilities Authority's (OCUA) northern service area. The projected volume flow is 16,000 gallons per day (GPD). No additional connections to the force main will be permitted. In exchange, approximately 20 acres in Jackson Township is deleted from the designated sewer service area of the OCUA's northern service area. Additionally, Ocean County is proposing to design and operate an on-site wastewater treatment facility with groundwater discharge to treat the wastewater generated from the proposed Minimum Security Work Annex located in Jackson Township. The Wastewater Management Plan map is revised to designate this site as a groundwater discharge service area, less than 40,000 GPD. Ocean County is required to abandon the on-site treatment facility and connect to the Jackson Township MUA system when such a connection is available. At that time, treatment of the wastewater will be provided at the OCUA Northern Water Pollution Control Facility.

This notice is being given to inform the public that a plan amendment has been proposed for the Ocean County WQM Plan. All information dealing with the aforesaid WQM Plan, and the proposed amendment, is located at the Ocean County Planning Board, Court House Square, CN 2191, Toms River, New Jersey 08754; and the NJDEP, Division of Water Resources, Bureau of Water Quality Planning, 3rd Floor, 401 East State Street, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday.

Interested persons may submit written comments on the amendment to Barry Chalofsky, Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 working days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall be considered by NJDEP with respect to the amendment request.

Any interested persons may request in writing that NJDEP hold a nonadversarial public hearing on the amendment or extend the public comment period in this notice up to 30 additional days. These requests must state the nature of the issues to be raised at the proposed hearing or state the reasons why the proposed extension is necessary. These requests must be submitted within 10 working days of this public notice to Mr. Chalofsky at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(b)

**DIVISION OF WATER RESOURCES**

**Notice of Availability of Loans  
Water Supply Rehabilitation and Interconnection  
Loan Program**

Take notice that the Department of Environmental Protection announces the availability of the following State loan funds:

**A. Name of Program:** Water Supply Rehabilitation and Interconnection Loan Program. Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, and Consolidated Water Supply Loan Rules, N.J.A.C. 7:1A.

**B. Purpose:** The purpose of the Water Supply Rehabilitation and Interconnection Loan Program is to provide financial assistance in the form of loans to State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply transmission facilities, and for the interconnection of unconnected or inadequately connected water supply systems.

**C. Amount of money in the program:** The Department has requested that the Legislature appropriate \$25 million from the Water Supply Fund to fund water supply rehabilitation and interconnection loan projects

during calendar year 1990. Any loans issued by the Department under this program are subject to this appropriation and the availability of funds.

**D. Individuals or organizations who may apply for funding under this program:** Any political subdivision of the State or agency thereof may apply for a loan under this program.

**E. Qualifications needed by an applicant to be considered for the program:** Loans awarded under the Water Supply Rehabilitation and Interconnection Loan Program are governed by the Consolidated Water Supply Loan Rules at N.J.A.C. 7:1A. These rules define eligible projects and prescribe procedures, minimum standards of conduct for borrowers, and standards for obtaining loans from this program.

**F. Procedure for potential applicants:** Applications for water supply rehabilitation and interconnection loans may be requested from:

Philip Royer  
Division of Water Resources  
Water Supply Element  
401 E. State Street  
CN 029  
Trenton, New Jersey 08625  
(609) 633-7486

Pursuant to N.J.A.C. 7:1A-2.3(a), applicants must schedule an informal pre-application conference with the Division of Water Resources prior to submitting a formal application for a water supply rehabilitation and interconnection loan.

**G. Deadline by which applications must be submitted:** Applications for funding during calendar year 1991 must be submitted by **June 30, 1990.**

**H. Date by which applicant shall be notified of preliminary approval or disapproval:** Within one month of submission, the Division of Water Resources will send applicants for water supply rehabilitation and interconnection loans a status letter regarding their application.

(c)

**DIVISION OF COASTAL RESOURCES**

**Notice of Opportunity for Public Comment on  
Department Recommendations to EPA Regarding  
the EPA Priority Wetlands List**

Take notice that the Department is providing the opportunity for public comment on planned Department recommendations to the United States Environmental Protection Agency (EPA) regarding the EPA list of priority wetlands for the State of New Jersey.

The Freshwater Wetlands Protection Act (Act), N.J.S.A. 13:9B-1 et seq., enacted on July 1, 1987, mandates at N.J.S.A. 13:9B-23b that the Department issue two general permits allowing limited disturbances in certain types of freshwater wetlands. General permits are permits incorporated in rules and issued by the Department after public notice and comment, which provide for expedited review and approval of certain limited classes of activities. The Act also provides that these two general permits "shall not apply to any wetlands designated as priority wetlands by the United States Environmental Protection Agency." N.J.S.A. 13:9B-23b. On May 16, 1988, the Department adopted rules at N.J.A.C. 7:7A-9 resulting in the issuance of the two statutory general permits and reflecting the above-quoted statutory limitation on their use.

On December 17, 1987, the EPA sent the Department a draft of EPA's priority wetlands list for New Jersey, and requested recommendations from the Department regarding possible additions or changes to the list.

The Department returned the list to EPA with various modifications based on an evaluation of wetlands in New Jersey. By letter of January 19, 1989, EPA directed the Department to use the augmented list for regulatory purposes. EPA then issued a final list in May of 1989, which is presently being used by the Department's freshwater wetlands staff. The criteria used by the EPA in selecting priority wetlands included the following:

1. Unique habitat for fauna or flora;
2. Unusual or regionally rare wetland types;
3. Ecologically important and under threat of development;
4. Important to surface water systems;
5. Critical to protect water supplies; and
6. Valuable for providing flood storage capacity.

The Department is currently considering recommending to EPA that amendments be made in order to clarify and improve the list. In order to provide thorough and well-informed recommendations to EPA, the

**ENVIRONMENTAL PROTECTION**

**PUBLIC NOTICES**

Department seeks public comment regarding the inclusion or exclusion of specific wetlands and any means by which the list might be made clearer and easier to use.

Department responses to comments received will be published in the New Jersey Register. These comments will be considered by the Department for inclusion in the Department's recommendations to EPA. Because the EPA alone has the power to amend the EPA priority wetlands list, the current list, dated May, 1989, remains in effect unless and until EPA chooses to modify it.

Because of the large volume of material on the list, the document cannot be published here. A copy of the list has been filed with the Office of Administrative Law, Building 9, Quakerbridge Plaza, Mercerville, New Jersey and can be viewed there during business hours. The list, including illustrative maps, may be purchased for \$12.00 through the State Map Sales Office, Maps and Publications, Bureau of Revenue, CN 402, Trenton, New Jersey 08625, (609) 777-1038. In addition, a copy of the list has been sent to all county clerks' offices in the State for public inspection, and a copy may be viewed during business hours at:

Division of Coastal Resources  
 New Jersey Department of Environmental Protection  
 5 Station Plaza  
 501 East State Street  
 Trenton, New Jersey  
 (609) 633-6755

Submit written comments by July 6, 1990 to:  
 Suzanne Dice-Goldberg, Esq.  
 Division of Regulatory Affairs  
 New Jersey Department of Environmental Protection  
 401 East State Street, CN 402  
 Trenton, New Jersey 08625

**(a)**

**DIVISION OF COASTAL RESOURCES  
 Notice of Action on Petition for Rulemaking  
 N.J.A.C. 7:7A**

Petitioners: Association of New Jersey Environmental Commissions (ANJEC), the American Littoral Society, the Delaware Riverkeeper, the Great Swamp Watershed Association, the New Jersey Audubon Society, the New Jersey Conservation Foundation, the New Jersey Environmental Lobby, the Passaic River Coalition, the Upper Raritan Watershed Association, the Upper Rockaway River Watershed Association, and the Watershed Association of the Delaware River.

**Take notice** that, on July 5, 1989, the Department of Environmental Protection (the Department) received a petition for rulemaking concerning N.J.A.C. 7:7A, the Department's rules regulating activities in freshwater wetlands. Petitioners requested that several exemptions from freshwater wetlands permit requirements be tightened and made more difficult to obtain. On August 21, 1989, the Department published a notice of receipt of the petition in the New Jersey Register at 21 N.J.R. 2675(b).

After due consideration pursuant to the Freshwater Wetlands Protection Act, N.J.S.A. 13:9B-1 et seq., and in accordance with N.J.A.C. 7:1-1.2, the Department gives notice that the petition will be referred for further deliberation.

Due to recent court decisions, the Department is currently developing amendments to the provisions of N.J.A.C. 7:7A which deal with exemptions and which are the subject of the petition. Until these amendments have been drafted by the Department and are ready for proposal, it would be premature to respond to the specifics of the rulemaking petition.

The rule amendments are scheduled for proposal by September 1, 1990. When the amendments are proposed, they will be published in the New Jersey Register, copies will be mailed to petitioners, and public comment period of at least 30 days and one or more public hearings will be provided before the amendments are finalized.

**(b)**

**DIVISION OF PARKS AND FORESTRY  
 Notice of Public Hearing  
 Proposed Deer Hunt at Monmouth Battlefield State Park**

**Take notice** that the New Jersey Department of Environmental Protection (NJDEP) has proposed a three-day controlled deer hunt for Monmouth Battlefield State Park. The purpose of the hunt is to control the deer population in the park. The hunt is proposed to be conducted on January 18, 19, and 26, 1991.

**This notice** is being given to advise the public that a nonadversarial public hearing will be held by NJDEP to solicit comments on the proposed hunt. The hearing will be held on Wednesday, May 30, 1990 from 6:00 P.M. to 9:00 P.M. at the Monmouth County Library Headquarters, 125 Symmes Road, Manalapan, New Jersey 07726.

**Persons wishing to make oral presentations** are asked to reserve a three to five minute time period by telephoning the State Park Service Region 2 Office located on Monmouth Battlefield State Park (201) 462-5868 by 12:00 noon Tuesday, May 29, 1990. Presenters should bring a copy of their remarks to the hearing for use by NJDEP. The hearing record will be kept open for two days, following the date of the public hearing so that additional written testimony can be received. **Submit written comments** by Friday, June 1, 1990 to:

Frank F. Guidotti, Assistant Director  
 State Park Service  
 CN 404  
 Trenton, NJ 08625

**LAW AND PUBLIC SAFETY**

**(c)**

**DIVISION OF MOTOR VEHICLES  
 Notice of Common Carrier Applicant**

**Take notice** that Col. Clinton L. Pagano, Director, Division of Motor Vehicles, pursuant to the authority of N.J.S.A. 39:5E-11, hereby lists the name and address of an applicant who has filed an application for common carrier's Certificate of Public Convenience Permit.

**COMMON CARRIER (NON-GRANDFATHER)**  
 North Carolina Central Transport, Inc.  
 Uwharrie Road  
 P.O. Box 7007  
 High Point, NC 27264

**Protests** in writing and verified under oath may be presented by interested parties to the Director, Division of Motor Vehicles, 25 South Montgomery St., Trenton, N.J. 08666, within 20 days (May 27, 1990) following the publication of an application.

**OTHER AGENCIES**

**(d)**

**HACKENSACK MEADOWLANDS DEVELOPMENT  
 COMMISSION**

**Notice of Receipt of Petition for Rulemaking  
 Official Zoning Map  
 N.J.A.C. 19:4-6.28**

Petitioners: CSX/Sea-Land Intermodal, Inc.  
 Authority: N.J.S.A. 13:17-1 et seq.

**Take notice** that on March 12, 1990, petitioners filed a petition with the Hackensack Meadowlands Development Commission requesting an amendment to N.J.A.C. 19:4-6.28, the Official Zoning Map.

Specifically, petitioners are requesting the following zoning changes within the Borough of Ridgefield:  
 Portion of Block 4004, Lot 4, from Marshland Preservation to Heavy Industrial;  
 Portion of Block 4010, Lot 3, from Waterway to Heavy Industrial;

## PUBLIC NOTICES

Portion of Block 4010, Lot 2, from Light Industrial "B" to Heavy Industrial;

Portion of Block 4007, Lot 1, from Light Industrial "B" to Heavy Industrial;

Portion of Block 4008, Lot 1, from Light Industrial "B" to Heavy Industrial.

The petitioner states that since the turn of the century the property has been used for railroad purposes and uses consistent with the Heavy Industrial zoning designation. In addition, the entire area of the Marshland Preservation parcel sought to be rezoned to Heavy Industrial is uplands and not wetlands. The entire portion of the property which actually is wetlands will, subsequent to the proposed rezoning, continue to be zoned Marshland Preservation. Furthermore, CSX's Rezoning and Site Plan applications, if approved, would not result in new development within an environmentally sensitive area or an area in a natural state. To the contrary, it would result in the upgrading and redevelopment of an existing rail yard (on the Marshland Preservation parcel) which pres-

## OTHER AGENCIES

ently contains a refueling facility, bulk transfer operation and maintenance facility, into a modern, paved, fenced and lighted, containerized intermodal operation, similar to that which is presently on the Light Industrial "B" parcel.

The area currently zoned Marshland Preservation is not in a natural state, does not contain any marshland vegetation or marshland wildlife and is not wetlands or marshlands. It is a currently developed railroad yard with a Heavy Industrial use.

The uses in the portion of the property zoned Light Industrial "B" do not conform to the permitted uses of the zone. The Heavy Industrial Zone expressly permits such uses. For purposes of consistency and to avoid any possible issues of nonconformance in the future, CSX requests that the Light Industrial "B" parcel be rezoned to Heavy Industrial.

After due notice, this petition will be considered by the Hackensack Meadowlands Development Commission in accordance with the provisions of N.J.S.A. 13:17-1 et seq.

## EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to N.J.A.C. 1:30-4.4, all expiration dates are now affixed at the chapter level. The following table is a complete listing of all current New Jersey Administrative Code expiration dates by Title and Chapter. If a chapter is not cited, then it does not have an expiration date. In some instances, however, exceptions occur to the chapter-level assignment. These variations do appear in the listing along with the appropriate chapter citation, and are noted either as an exemption from Executive Order No. 66(1978) or as a subchapter-level date differing from the chapter date.

Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code under the Title Table of Contents for each executive department or agency and on the Subtitle page for each group of chapters in a Title. Please disregard all expiration dates appearing elsewhere in a Title volume.

This listing is revised monthly and appears in the first issue of each month.

<b>OFFICE OF ADMINISTRATIVE LAW—TITLE 1</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
1:1	5/4/92	3:18	1/19/93
1:5	10/20/91	3:19	3/17/91
1:6	5/4/92	3:21	2/2/92
1:6A	3/19/95	3:22	5/12/94
1:7	5/4/92	3:23	7/6/92
1:10	5/4/92	3:24	8/18/94
1:10A	5/4/92	3:25	8/17/92
1:10B	10/6/91	3:26	12/31/90
1:11	5/4/92	3:27	9/16/90
1:13	5/4/92	3:28	12/12/94
1:13A	4/3/94	3:32	10/3/93
1:20	5/4/92	3:33	9/18/94
1:21	5/4/92	3:38	10/5/92
1:30	2/14/91	3:41	10/16/90
1:31	6/17/92	3:42	4/4/93

  

<b>AGRICULTURE—TITLE 2</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
2:1	9/3/90	4:1	1/28/90
2:2	1/17/94	4:2	1/28/90
2:3	8/21/94	4:3	6/20/94
2:5	8/21/94	4:6	5/5/91
2:6	9/3/90	4A:1	10/5/92
2:9	7/7/91	4A:2	10/5/92
2:16	5/7/90	4A:3	9/6/93
2:22	7/6/92	4A:4	6/6/93
2:23	7/18/93	4A:5	10/5/92
2:24	4/2/95	4A:6	1/4/93
2:32	6/1/92	4A:7	10/5/92
2:33	3/6/94	4A:8	1/16/95
2:34	1/2/95	4A:9	10/5/92
2:48	11/27/90	4A:10	11/2/92
2:50	5/1/92		
2:52	6/7/90		
2:53	3/3/91		
2:54	Exempt (7 U.S.C. 601 et seq. 7 C.F.R. 1004)		
2:68	11/7/93		
2:69	11/7/93		
2:70	5/7/90		
2:71	7/8/93		
2:72	7/8/93		
2:73	7/8/93		
2:74	7/8/93		
2:76	7/31/94		
2:90	6/24/90		

  

<b>PERSONNEL (CIVIL SERVICE)—TITLE 4/4A</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
4:1	1/28/90		
4:2	1/28/90		
4:3	6/20/94		
4:6	5/5/91		
4A:1	10/5/92		
4A:2	10/5/92		
4A:3	9/6/93		
4A:4	6/6/93		
4A:5	10/5/92		
4A:6	1/4/93		
4A:7	10/5/92		
4A:8	1/16/95		
4A:9	10/5/92		
4A:10	11/2/92		

  

<b>COMMUNITY AFFAIRS—TITLE 5</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
5:1	2/5/95		
5:2	4/10/94		
5:3	9/1/93		
5:4	10/5/92		
5:10	11/17/93		
5:11	3/10/94		
5:12	12/27/94		
5:13	12/24/92		
5:14	12/1/90		
5:15	5/1/94		
5:18	1/4/95		
5:18A	1/4/95		
5:18B	1/4/95		
5:18C	2/5/95		
5:19	2/1/93		
5:22	2/5/95		
5:23	3/1/93		
5:24	9/1/90		
5:25	3/1/91		
5:26	3/1/91		
5:27	6/1/90		
5:28	12/20/90		
5:29	6/18/91		
5:30	6/29/93		
5:31	12/1/94		

  

<b>BANKING—TITLE 3</b>		<b>N.J.A.C.</b>	<b>Expiration Date</b>
<b>N.J.A.C.</b>	<b>Expiration Date</b>		
3:1	1/6/91		
3:2	4/12/95		
3:3	1/11/95		
3:6	3/3/91		
3:7	9/16/90		
3:11	5/1/94		
3:13	11/17/91		
3:17	6/18/91		

N.J.A.C.	Expiration Date
5:37	11/18/90
5:38	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	3/1/90
5:80	5/20/90
5:91	6/16/91
5:92	6/16/91
5:100	5/5/94

**DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A**

N.J.A.C.	Expiration Date
5A:1	5/12/95
5A:2	5/20/90

**EDUCATION—TITLE 6**

N.J.A.C.	Expiration Date
6:2	2/6/94
6:3	7/8/93
6:7	1/2/95
6:8	1/5/92
6:11	12/12/90
6:12	4/2/91
6:20	8/9/90
6:21	11/22/94
6:22	9/30/90
6:22A	12/19/93
6:24	4/2/91
6:28	4/10/94
6:29	2/8/95
6:30	7/5/93
6:31	11/16/94
6:39	8/14/94
6:43	4/7/91
6:46	10/5/92
6:53	7/7/92
6:64	1/11/93
6:68	2/26/95
6:69	6/4/91
6:70	10/17/94
6:78	11/7/93
6:79	11/25/92

**ENVIRONMENTAL PROTECTION—TITLE 7**

N.J.A.C.	Expiration Date
7:1	9/16/90
7:1A	6/5/92
7:1C	6/17/90
7:1D	11/28/93
7:1E	7/15/90
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/24/90
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/90
7:7F	1/19/93
7:8	2/5/93
7:9	1/21/91
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93

N.J.A.C.	Expiration Date
7:13	7/14/94
7:14	4/27/94
7:14A	6/2/94
7:14B	12/21/92
7:15	10/2/94
7:17	4/7/91
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/6/90
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	5/19/91
7:25	2/18/91
7:25A	5/6/90
7:26	11/4/90
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	10/7/90
7:29	3/18/90
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/90
7:45	2/6/94

**HEALTH—TITLE 8**

N.J.A.C.	Expiration Date
8:7	9/16/90
8:8	4/12/94
8:9	2/18/91
8:13	9/8/92
8:18	11/6/94
8:19	6/28/90
8:20	3/2/95
8:21	11/18/90
8:21A	4/1/90
8:22	8/4/91
8:23	12/13/94
8:24	5/2/93
8:25	5/19/93
8:26	8/4/91
8:31	1/16/95
8:31A	2/20/95
8:31B	10/15/90
8:31C	1/20/92
8:33	10/7/90
8:33A	2/20/92
8:33B	10/7/90
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	7/19/90
8:33I	9/15/91
8:33J	4/24/94
8:33K	3/27/94
8:33L	11/16/92
8:33M	7/17/94
8:33N	5/15/94
8:33P	3/19/95
8:34	11/15/93
8:39	6/20/93
8:40	5/7/91
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	1/21/91

<b>N.J.A.C.</b>	<b>Expiration Date</b>	<b>N.J.A.C.</b>	<b>Expiration Date</b>
8:43A	9/3/90	10:58	3/3/91
8:43E	12/11/92	10:59	3/3/91
8:43F	2/20/95	10:60	8/27/90
8:43G	2/5/95	10:61	3/3/91
8:43H	8/21/94	10:62	3/3/91
8:43I	3/21/93	10:63	11/28/94
8:44	11/2/93	10:64	3/3/91
8:45	2/7/95	10:65	8/25/94
8:48	8/20/89	10:66	12/15/93
8:51	9/16/90	10:67	3/3/91
8:52	12/15/91	10:68	7/7/91
8:53	8/4/91	10:69	6/6/93
8:57	6/18/90	10:69A	4/20/93
8:59	9/29/94	10:69B	11/21/93
8:60	5/3/90	10:70	6/16/91
8:61	10/6/91	10:71	1/6/91
8:65	12/2/90	10:72	8/27/92
8:66	3/5/95	10:80	5/19/94
8:66A	3/5/95	10:81	8/24/94
8:70	8/19/93	10:82	8/24/94
8:71	2/17/94	10:83	1/19/94
		10:85	12/20/94
		10:87	1/27/94
		10:89	9/11/90
		10:90	10/14/92
		10:95	8/23/89
		10:97	5/15/94
		10:99	2/19/90
		10:109	3/17/91
		10:120	8/21/91
		10:121	3/13/89
		10:121A	12/7/92
		10:122	5/15/94
		10:122A	Exempt
		10:122B	9/10/89
		10:123	7/29/90
		10:124	12/7/92
		10:125	7/16/89
		10:126	11/7/93
		10:126A	5/7/95
		10:127	8/26/93
		10:129	7/5/90
		10:130	9/19/88
		10:131	12/7/92
		10:132	1/5/92
		10:141	2/7/94

**HIGHER EDUCATION—TITLE 9**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
9:1	2/21/94
9:2	6/17/90
9:3	9/27/93
9:4	10/30/91
9:5	1/21/91
9:6	5/20/90
9:6A	1/4/93
9:7	2/28/93
9:8	11/4/90
9:9	10/3/93
9:11	4/17/94
9:12	4/17/94
9:14	4/11/95
9:15	8/21/94

**HUMAN SERVICES—TITLE 10**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:4	1/3/88
10:11	1/16/95
10:12	1/5/92
10:13	7/18/93
10:14	5/16/93
10:31	6/5/94
10:36	8/18/91
10:37	11/4/90
10:38	5/28/91
10:39	5/7/95
10:40	5/11/94
10:41	3/20/94
10:42	8/18/91
10:43	8/21/94
10:44	10/3/88
10:44A	11/21/93
10:44B	4/15/90
10:45	2/20/95
10:47	11/4/90
10:48	1/21/91
10:49	8/12/90
10:50	3/3/91
10:51	10/28/90
10:52	2/8/95
10:53	4/29/90
10:54	3/3/91
10:55	3/8/95
10:56	8/26/91
10:57	3/3/91

**CORRECTIONS—TITLE 10A**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	7/21/91
10A:5	10/6/91
10A:6	11/2/92
10A:8	11/16/92
10A:9	1/20/92
10A:10-6	8/17/92
10A:16	4/6/92
10A:17	12/15/91
10A:18	7/6/92
10A:19	8/21/94
10A:22	7/5/93
10A:31	3/5/95
10A:32	4/16/95
10A:33	5/2/94
10A:34	4/6/92
10A:70	Exempt
10A:71	2/5/95

**INSURANCE—TITLE 11**

<b>N.J.A.C.</b>	<b>Expiration Date</b>
11:1	2/3/91

**LAW AND PUBLIC SAFETY—TITLE 13**

N.J.A.C.	Expiration Date
11:1-20	6/24/90
11:1-22	6/24/90
11:2	12/2/90
11:3	1/6/91
11:4	12/2/90
11:5	10/28/93
11:7	10/19/92
11:10	7/15/90
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	2/3/91
11:17	4/18/93
11:17A	1/2/95
11:17B	1/2/95
11:17C	1/2/95
11:17D	1/2/95
11:18	12/18/94

N.J.A.C.	Expiration Date
13:1	7/5/93
13:2	8/5/90
13:3	4/25/93
13:4	1/21/91
13:10	3/27/94
13:13	6/17/90
13:18	3/30/95
13:19	8/18/94
13:20	12/18/90
13:21	12/16/90
13:22	1/7/90
13:23	5/26/94
13:24	9/27/94
13:25	3/16/95
13:26	9/26/93
13:27	2/20/95
13:28	5/16/93
13:29	6/3/90
13:30	3/12/95
13:31	12/12/91
13:32	10/23/92
13:33	3/12/95
13:34	10/26/93
13:35	9/21/94
13:36	9/27/94
13:37	1/23/95
13:38	10/7/90
13:39	6/19/94
13:39A	7/7/91
13:40	9/3/90
13:41	9/3/90
13:42	10/31/93
13:43	9/1/93
13:44	8/7/94
13:44B	11/2/92
13:44C	7/18/93
13:44D	8/7/94
13:45A	12/16/90
13:45B	4/17/94
13:46	6/3/90
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:48	1/21/91
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:58	9/7/89
13:59	9/16/90
13:60	1/20/92
13:61	3/5/95
13:62	3/19/95
13:70	1/25/95
13:71	1/25/95
13:75	6/5/94
13:76	6/27/93
13:77	2/1/93
13:78	3/20/94

**LABOR—TITLE 12**

N.J.A.C.	Expiration Date
12:3	12/19/93
12:5	9/19/93
12:6	10/17/93
12:15	8/19/90
12:16	3/23/95
12:17	1/6/91
12:18	3/7/93
12:20	8/14/94
12:35	8/5/90
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:46	5/2/93
12:47	5/2/93
12:48	5/2/93
12:49	5/2/93
12:51	6/30/91
12:56	9/26/90
12:57	9/26/90
12:58	9/26/90
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:105	1/21/91
12:110	1/19/93
12:112	9/6/93
12:120	5/3/90
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:200	8/5/90
12:210	9/6/93
12:235	5/5/91

**COMMERCE, ENERGY, AND ECONOMIC DEVELOPMENT—TITLE 12A**

N.J.A.C.	Expiration Date
12A:9	3/7/93
12A:10-1	10/13/94
12A:11	9/21/92
12A:12	9/21/92
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	2/6/94
12A:81	2/6/94
12A:82	2/6/94
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

**PUBLIC UTILITIES—TITLE 14**

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/90
14:5	12/16/90
14:6	3/3/91
14:9	4/15/90
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/29/90
14:25	3/5/95

**ENERGY—TITLE 14A**

N.J.A.C.	Expiration Date
14A:2	4/17/89
14A:3	10/7/90
14A:5	10/19/88
14A:6	1/16/95
14A:7	9/16/90
14A:8	1/16/95
14A:11	1/16/95
14A:13	2/2/92
14A:14	1/30/94
14A:20	2/3/91
14A:21	11/21/90
14A:22	6/4/89

**STATE—TITLE 15**

N.J.A.C.	Expiration Date
15:2	5/2/93
15:3	7/7/91
15:5	2/17/92
15:10	2/18/91

**PUBLIC ADVOCATE—TITLE 15A**

N.J.A.C.	Expiration Date
15A:2	12/27/94

**TRANSPORTATION—TITLE 16**

N.J.A.C.	Expiration Date
16:1	8/5/90
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:20A	2/20/95
16:20B	2/20/95
16:21	9/3/90
16:21A	11/20/94
16:22	2/3/91
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	9/8/91
16:28	6/1/93
16:28A	6/1/93
16:29	6/1/93
16:30	6/1/93
16:31	6/1/93
16:31A	6/1/93
16:32	2/8/95
16:41	7/28/92
16:41A	1/23/95
16:41B	3/4/90
16:43	9/3/90
16:44	5/25/93
16:45	9/18/94
16:46	11/6/94
16:49	2/8/95
16:51	4/6/92
16:53	7/17/94
16:53B	7/3/94
16:53C	6/16/93
16:53D	5/3/94
16:54	4/7/91
16:55	6/14/93
16:56	8/7/94
16:60	6/14/93
16:61	6/14/93
16:62	2/26/95
16:72	3/31/91
16:73	1/30/92
16:75	5/13/93

**N.J.A.C.**

16:76
16:77
16:78
16:79
16:80
16:81
16:82

**Expiration Date**

2/6/94
3/5/95
10/7/90
10/20/91
11/7/93
11/7/93
9/5/94

**TREASURY-GENERAL—TITLE 17**

**N.J.A.C.**

17:1
17:2
17:3
17:4
17:5
17:6
17:7
17:8
17:9
17:10
17:12
17:13
17:14
17:16
17:19
17:20
17:25
17:27
17:28
17:29
17:30
17:32
17:33

**Expiration Date**

5/6/93
11/8/94
8/15/93
7/1/90
12/2/90
11/22/93
12/19/93
6/27/90
10/3/93
5/6/93
10/13/94
10/13/94
10/13/94
12/2/90
3/8/95
9/26/93
5/26/94
10/7/93
9/13/90
10/18/90
5/4/92
3/21/93
4/17/94

**TREASURY-TAXATION—TITLE 18**

**N.J.A.C.**

18:1
18:2
18:3
18:5
18:6
18:7
18:8
18:9
18:12
18:12A
18:14
18:15
18:16
18:17
18:18
18:19
18:22
18:23
18:23A
18:24
18:25
18:26
18:30
18:35
18:36
18:37
18:38
18:39

**Expiration Date**

7/21/94
9/6/93
3/14/94
3/14/94
3/14/94
3/14/94
2/24/94
6/7/93
7/29/93
7/29/93
7/29/93
7/29/93
7/29/93
7/29/93
3/14/94
3/14/94
2/24/94
2/24/94
8/5/90
6/7/93
1/6/91
6/7/93
4/2/89
6/7/93
3/19/95
8/5/90
2/16/93
9/8/92

**OTHER AGENCIES—TITLE 19**

**N.J.A.C.**

19:3
19:3B
19:4
19:4A

**Expiration Date**

5/26/93
Exempt (N.J.S.A. 13:17-1)
5/26/93
6/20/93

<b>N.J.A.C.</b>	<b>Expiration Date</b>	<b>N.J.A.C.</b>	<b>Expiration Date</b>
19:8	7/5/93	19:45	3/24/93
19:9	10/17/93	19:46	4/28/93
19:10	9/5/94	19:47	4/28/93
19:12	8/7/91	19:48	10/13/93
19:16	8/7/91	19:49	3/24/93
19:17	6/8/93	19:50	5/12/93
19:20	2/5/95	19:51	8/14/91
19:25	1/9/91	19:52	9/25/91
19:30	10/7/90	19:53	4/28/93
19:40	8/24/94	19:54	3/24/93
19:41	5/12/93	19:61	7/7/91
19:42	5/12/93	19:65	7/7/91
19:43	4/27/94	19:75	1/13/94
19:44	9/29/93		

# 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 March 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.

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**MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT FEBRUARY 20, 1990**

**NEXT UPDATE: SUPPLEMENT MARCH 19, 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. 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	22 N.J.R. 1011 and 1182	April 2, 1990
21 N.J.R. 3043 and 3204	October 2, 1989	22 N.J.R. 1183 and 1290	April 16, 1990
21 N.J.R. 3205 and 3330	October 16, 1989	22 N.J.R. 1291 and 1408	May 7, 1990
21 N.J.R. 3331 and 3584	November 6, 1989		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
<b>ADMINISTRATIVE LAW—TITLE 1</b>				
1:1-5.4	Nonlawyer representation	21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
1:1-12.5	Partial summary decisions	22 N.J.R. 3(a)		
1:1-14.10	Interlocutory review of ALJ ruling	22 N.J.R. 590(a)	R.1990 d.219	22 N.J.R. 1353(a)
1:6A	Special education hearings	21 N.J.R. 2693(a)	R.1990 d.169	22 N.J.R. 916(a)
1:6A	Special education hearings: public hearings	21 N.J.R. 3045(a)		
1:11-10.1	Discovery in private passenger automobile insurance rate hearings	21 N.J.R. 3815(a)		
1:13-1.1, 14.4	DMV cases involving excessive points, surcharges, and certain failures to appear	22 N.J.R. 91(a)	R.1990 d.220	22 N.J.R. 1353(b)

**Most recent update to Title 1: TRANSMITTAL 1990-1 (supplement February 20, 1990)**

<b>AGRICULTURE—TITLE 2</b>				
2:2-3.3	Tuberculin testing of cattle	21 N.J.R. 3333(a)	R.1990 d.201	22 N.J.R. 1116(a)
2:24	Registration and transportation of bees	21 N.J.R. 3045(b)	R.1990 d.202	22 N.J.R. 1116(b)
2:32-2.22	Sire Stakes qualifying times at pari-mutuel tracks	22 N.J.R. 3(b)	R.1990 d.203	22 N.J.R. 1116(c)
2:52	Milk processors, dealers and subdealers	22 N.J.R. 888(a)		
2:71-2.28, 2.29, 2.31	Fruits and vegetables: fees for inspection and grading	22 N.J.R. 1242(c)		
2:76-6.2, 6.5, 6.6, 6.9-6.12, 6.15-6.17	Farmland preservation program	22 N.J.R. 1244(a)		

**Most recent update to Title 2: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

<b>BANKING—TITLE 3</b>				
3:0	Compensation to mortgage bankers, brokers and real estate licensees for placing mortgage loans: preproposal	22 N.J.R. 275(a)		
3:1-14	Revolving credit equity loans	21 N.J.R. 3333(b)		
3:1-17	Senior citizen homeowner's reverse mortgage loans	21 N.J.R. 3207(b)		
3:2	Advertising by financial institutions	22 N.J.R. 690(b)	R.1990 d.236	22 N.J.R. 1353(c)
3:16-2.3	Pawnbrokers' sales of unredeemed pledges at public auction	22 N.J.R. 1015(a)		
3:18-3.5	Repeal (see 3:1-14)	21 N.J.R. 3333(b)		
3:41-7.4	Temporary storage of human remains by cemetery company	22 N.J.R. 1185(a)		

**Most recent update to Title 3: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

## CIVIL SERVICE—TITLE 4

**Most recent update to Title 4: TRANSMITTAL 1990-1 (supplement January 16, 1990)**

<b>PERSONNEL—TITLE 4A</b>				
4A:2-2.3	Misuse of State property	22 N.J.R. 1015(b)		

**Most recent update to Title 4A: TRANSMITTAL 1990-1 (supplement January 16, 1990)**

<b>COMMUNITY AFFAIRS—TITLE 5</b>				
5:2-1.1	Department organization	Exempt	R.1990 d.159	22 N.J.R. 920(a)
5:2-1.1	Department organization	Exempt	R.1990 d.199	22 N.J.R. 1117(a)
5:10-1.5, 1.8, 1.10, 1.11, 16.3	Hotels and multiple dwellings: administrative corrections			22 N.J.R. 921(a)

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:10-1.6, 1.11, 1.12, 2.2	Hotels and multiple dwellings: retreat lodging facility registration and inspection certificates	22 N.J.R. 275(b)	R.1990 d.230	22 N.J.R. 1354(a)
5:18-2.7	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:19-4.3	Continuing care retirement communities: administrative correction	_____	_____	22 N.J.R. 1117(b)
5:22-3	Urban enterprise zone municipalities: tax abatements for residential construction	22 N.J.R. 591(a)	R.1990 d.227	22 N.J.R. 1355(a)
5:23	Uniform Construction Code: annual public hearing on change proposals	22 N.J.R. 1016(a)		
5:23-1.1, 1.4, 3.11, 4.1, 4.12-4.15, 4.21, 4.22, 4.24-4.39, 4A	Uniform Construction Code: industrialized and modular buildings	22 N.J.R. 691(a)		
5:23-1.1, 3.4, 4.5, 10	Uniform Construction Code: Radon Hazard Subcode	21 N.J.R. 3696(a)	R.1990 d.226	22 N.J.R. 1356(a)
5:23-3.14	Uniform Fire Code and Building Subcode: tents and tensioned membrane structures requiring permits	21 N.J.R. 1654(a)		
5:23-3.14-3.17, 3.20, 3.21	Uniform Construction Code subcodes	22 N.J.R. 909(a)		
5:23-4.24A	Uniform Construction Code: alternative plan review program for large projects	21 N.J.R. 1770(a)		
5:23-7.2-7.6, 7.8, 7.9, 7.11, 7.12, 7.17, 7.18, 7.30, 7.37, 7.41, 7.55-7.57, 7.61, 7.67, 7.68, 7.71-7.73, 7.75, 7.76, 7.80-7.82, 7.87, 7.94-7.97	Barrier Free Subcode	21 N.J.R. 2774(a)		
5:23-7.3, 7.50, 7.116	Barrier Free Subcode: administrative corrections	_____	_____	22 N.J.R. 1355(b)
5:23-9.3	Uniform Construction Code: FRT plywood as roof sheathing	21 N.J.R. 3870(a)		
5:23-9.3	Uniform Construction Code: public meeting regarding FRT plywood use as roof sheathing	22 N.J.R. 706(a)		
5:23-9.4	Uniform Construction Code: earthquake zones and seismic design requirements	22 N.J.R. 592(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	21 N.J.R. 3698(a)		
5:25-5.4	New Home Warranty Security Plan: builder premium rates	22 N.J.R. 277(a)		
5:27	Rooming and boarding houses	21 N.J.R. 3871(a)		
5:27-1.6, 1.9, 2.1, 8.1	Rooming and boarding house licensure: alcohol and drug rehabilitation facilities	22 N.J.R. 912(a)		
5:27-11.2	Rooming and boarding houses: administrative correction	_____	_____	22 N.J.R. 921(b)
5:29-1.2	Landlord registration form for one and two-unit rental dwellings: administrative correction	21 N.J.R. 3699(a)		
5:30	Local Finance Board rules	22 N.J.R. 706(b)		
5:30-14, 17	Repeal; recodify (see 5:34)	22 N.J.R. 724(a)		
5:33	Tax collection administration	22 N.J.R. 706(b)		
5:34	Local public contracts	22 N.J.R. 724(a)		
5:71	County offices on aging	22 N.J.R. 1016(b)		
5:80	New Jersey Housing and Mortgage Finance Agency	22 N.J.R. 277(b)		
5:80-18.1, 18.2, 18.3, 18.8	Housing and Mortgage Finance Agency: debarment from agency contracting	21 N.J.R. 3350(a)		
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)		
5:100	Ombudsman for institutionalized elderly: practice and procedure	22 N.J.R. 1016(c)		

Most recent update to Title 5: TRANSMITTAL 1990-2 (supplement February 20, 1990)

**MILITARY AND VETERANS' AFFAIRS (formerly DEFENSE)—TITLE 5A**

5A:1	Department organization	Exempt	R.1990 d.200	22 N.J.R. 1117(c)
5A:2	Military leave for public employee members of National Guard	22 N.J.R. 1185(b)		

Most recent update to Title 5A: TRANSMITTAL 1989-1 (supplement July 17, 1989)

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<b>EDUCATION—TITLE 6</b>				
6:20	School business services	22 N.J.R. 1246(a)		
6:22	School facility planning service	22 N.J.R. 1253(a)		
6:22-2.5	Schools for handicapped pupils: school space sizes and capacity	22 N.J.R. 277(c)	R.1990 d.237	22 N.J.R. 1359(a)
6:29	Health, safety and physical education	21 N.J.R. 3815(b)	R.1990 d.154	22 N.J.R. 793(a)
6:46-1.1, 4.6, 4.10, 4.12	Private vocational schools: instructional hours	21 N.J.R. 3700(a)	R.1990 d.150	22 N.J.R. 799(a)
6:46-4.5, 4.12, 4.16	Vocational schools and education	22 N.J.R. 91(b)	R.1990 d.235	22 N.J.R. 1359(b)
6:68	State Library Assistance Programs	21 N.J.R. 3822(a)	R.1990 d.179	22 N.J.R. 921(c)
<b>Most recent update to Title 6: TRANSMITTAL 1990-2 (supplement February 20, 1990)</b>				
<b>ENVIRONMENTAL PROTECTION—TITLE 7</b>				
7:1C	Ninety-day construction permits	22 N.J.R. 731(a)		
7:1H	Administration of county environmental health services	22 N.J.R. 732(a)		
7:3-3	Advertising by tree experts	21 N.J.R. 3212(a)	R.1990 d.188	22 N.J.R. 1122(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)		
7:7E	Coastal zone management	22 N.J.R. 1188(a)		
7:7E-5.3	Coastal growth ratings: preproposal regarding Western Ocean County	22 N.J.R. 1214(a)		
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)	R.1990 d.197	22 N.J.R. 1124(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)
7:19-2.2, 6.10	Water supply allocation permits: administrative corrections	_____	_____	22 N.J.R. 1265(a)
7:19-3.8	Fees for water allocation permits: administrative correction	_____	_____	22 N.J.R. 1134(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)		
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)		
7:26-1.4, 7.4, 8.2	Hazardous waste management: testing facility exemptions for treatability studies	21 N.J.R. 3705(a)	R.1990 d.228	22 N.J.R. 1362(a)
7:26-2, 2A, 2B, 8	Management of resource recovery facility combustion residual ash: preproposal	22 N.J.R. 108(b)		
7:26-6.5	Interdistrict and intradistrict solid waste flow: 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)		

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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)		
7:27-8	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	Volatile organic substances in consumer products: notice of rule invalidation	_____	_____	22 N.J.R. 1134(b)
7:27-23.2-23.7	Volatile organic substances in architectural coatings and air fresheners	21 N.J.R. 3360(a)		
7:28	Radiation protection	22 N.J.R. 890(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	21 N.J.R. 3364(a)		
7:28-16	Dental radiographic installations	22 N.J.R. 894(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)		
7:29	Noise control: extension of comment period	22 N.J.R. 1045(b)		
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)		
7:50-2.11, 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)

**Most recent update to Title 7: TRANSMITTAL 1990-2 (supplement February 20, 1990)**

**HEALTH—TITLE 8**

8:13-2	Depuration of hard shell and soft shell clams	22 N.J.R. 109(a)		
8:19	Newborn Screening Program	22 N.J.R. 733(a)		
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)	R.1990 d.187	22 N.J.R. 1134(c)
8:31A	Standard Hospital Accounting and Rate Evaluation (SHARE)	21 N.J.R. 3872(a)	R.1990 d.167	22 N.J.R. 1135(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)
8:33H	Long-term care facilities and services	22 N.J.R. 897(a)		
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)
8:39-25.2	Long-term care facilities: enforcement of nurse staffing requirements	_____	_____	22 N.J.R. 1161(e)
8:40	Invalid coach and ambulance services	22 N.J.R. 595(a)	R.1990 d.239	22 N.J.R. 1364(a)
8:43F-23, 24	Adult day health care facilities: physical plant and functional requirements	21 N.J.R. 3403(a)		
8:43G-3	Hospital licensure: compliance with mandatory rules and advisory standards	21 N.J.R. 1608(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-7.4, 7.6, 7.11, 7.13, 7.27, 7.36	Cardiac services (advisory)	21 N.J.R. 2162(a)		
8:43G-8.3, 8.5, 8.8	Central supply (advisory)	21 N.J.R. 1609(a)		
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8:43G-10.2, 10.5, 10.7, 10.9	Dietary standards (advisory)	21 N.J.R. 1611(a)		
8:43G-11.2	Discharge planning (advisory)	21 N.J.R. 1612(a)		
8:43G-12.4, 12.6, 12.8	Emergency department (advisory)	21 N.J.R. 1613(a)		

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8:43G-13.3, 13.6	Housekeeping and laundry (advisory)	21 N.J.R. 1616(a)		
8:43G-14.2, 14.4	Infection control and sanitation (advisory)	21 N.J.R. 1618(a)		
8:43G-15.6	Medical records (advisory)	21 N.J.R. 2171(a)		
8:43G-16.4	Medical staff standard (advisory)	21 N.J.R. 1621(a)		
8:43G-17.2	Nurse staffing (advisory)	21 N.J.R. 1623(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-20.3, 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-23.5, 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-26.4, 26.6, 26.8, 26.10, 26.13	Psychiatry (advisory)	21 N.J.R. 2926(a)		
8:43G-27.4, 27.6	Quality assurance (advisory)	21 N.J.R. 1630(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)		
8:43G-32.6, 32.8, 32.15, 32.17, 32.19	Same-day stay (advisory)	21 N.J.R. 2177(a)		
8:43G-33.4, 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-35.3	Postanesthesia care: administrative correction	_____		22 N.J.R. 1265(b)
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8:57	Reportable communicable diseases and immunization requirements	21 N.J.R. 3897(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)		
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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), 22 N.J.R. 214(b))	21 N.J.R. 1790(a)	R.1990 d.192	22 N.J.R. 1137(a)
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8:71	Interchangeable drug products	21 N.J.R. 3710(a)	R.1990 d.190	22 N.J.R. 1136(a)
8:71	Interchangeable drug products	21 N.J.R. 3711(a)		
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8:71	Interchangeable drug products	22 N.J.R. 1214(b)		

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9:2	Board administrative policies and programs	22 N.J.R. 749(a)		
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9:4-2.4	County community colleges: code of ethics	22 N.J.R. 755(a)		
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9:7-3.2	Tuition Aid Grant 1990-91 Award Table	22 N.J.R. 309(a)		
9:14	Independent College and University Assistance Act rules	22 N.J.R. 116(a)	R.1990 d.234	22 N.J.R. 1364(b)

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10:38	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)	R.1990 d.218	22 N.J.R. 1364(c)
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10:46	Developmental disability services: determination of eligibility	21 N.J.R. 3712(a)		
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10:49-1.10	Medicaid/Medicare claims processing	22 N.J.R. 117(a)		
10:51-1, App. B, C, D, E	Pharmaceutical Services Manual: non-legend drugs and products	22 N.J.R. 1217(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)	R.1990 d.194	22 N.J.R. 1140(a)
10:56-3.1, 3.10, 3.12	Dental services: administrative corrections	_____	_____	22 N.J.R. 1375(a)
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)
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10:81-14.18, 14.18A, 14.18B	REACH post-AFDC sliding fee scales	22 N.J.R. 1054(a)		
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10:126A	Family day care standards	22 N.J.R. 13(a)	R.1990 d.223	22 N.J.R. 1377(b)
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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)	R.1990 d.208	22 N.J.R. 1265(c)
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11:2-27	Personal lines policy form standards	21 N.J.R. 3421(a)		
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12:45-1	Vocational Rehabilitation Services: correction to proposal	22 N.J.R. 1230(a)		
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12:56-16	Payroll deductions for mass transit commutation tickets	22 N.J.R. 148(a)	R.1990 d.215	22 N.J.R. 1270(a)
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13:27	State Board of Architects rules	22 N.J.R. 18(a)	R.1990 d.165	22 N.J.R. 974(a)
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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)		
13:35-6.3	Podiatric trainee: countersigning of orders and prescriptions	22 N.J.R. 905(a)		
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13:39A-5.1	Licensure of foreign-trained physical therapists: extension of comment period	22 N.J.R. 326(a)		
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13:71-1.25	Harness racing: "horseman" defined	22 N.J.R. 1233(b)		
13:71-23.8	Harness racing: certification of respiratory bleeders from other jurisdictions	22 N.J.R. 1233(c)		
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14A:2	Energy emergencies (expired rules to be adopted as new at 12A:61)	21 N.J.R. 1272(a)		
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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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<b>PUBLIC ADVOCATE—TITLE 15A</b>				
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15A:2-1.2	Petitions for rulemaking	22 N.J.R. 620(a)		
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<b>TRANSPORTATION—TITLE 16</b>				
16:27-1.1, 1.2, 2.1-2.4, 4.1-4.3, 4.5-4.7, 5.1	Traffic engineering and safety programs	21 N.J.R. 3866(a)	R.1990 d.138	22 N.J.R. 834(a)
16:28-1.10, 1.38, 1.42	Speed limit zones along U.S. 46 in Independence Township, Route 57 in Mansfield Township, and Route 152 in Somers Point and Egg Harbor	22 N.J.R. 787(a)	R.1990 d.231	22 N.J.R. 1378(c)
16:28-1.14, 1.57, 1.66, 1.76, 1.103, 1.116, 1.118	Speed limit zones along Route 33, U.S. 30, Routes 175, 15, 91, 53, and 50	21 N.J.R. 3717(a)	R.1990 d.144	22 N.J.R. 835(a)
16:28-1.25	Speed limit zone along Route 23 in Riverdale Borough	22 N.J.R. 788(a)	R.1990 d.232	22 N.J.R. 1379(a)
16:28-1.55, 1.104, 1.119	Speed limit zones along Routes 54 in Atlantic County, 26 in Middlesex County, and 83 in Cape May County	22 N.J.R. 1060(a)		
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16:28-1.99, 1.108	Speed limit zones along Route 157 in Absecon and Route 82 in Union County	22 N.J.R. 328(a)	R.1990 d.207	22 N.J.R. 1270(d)
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16:28A-1.25, 1.28, 1.34, 1.41, 1.46, 1.51, 1.62	Restricted parking and stopping along Routes 35 in Red Bank, U.S. 40 in Franklin Township, 49 in Salem, 77 in Harrison Township, U.S. 130 in Pennsauken and Delran, 168 in Gloucester Township, and 12 in Flemington and Kingwood	22 N.J.R. 913(a)		
16:28A-1.61	Bus stop zones along U.S. 9W in Alpine	22 N.J.R. 1241(a)		
16:30-10.11	Midblock crosswalk along Route 49 in Fairfield Township	22 N.J.R. 1242(a)		
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16:41-2	Repeal (see 16:47)	22 N.J.R. 1061(b)		
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16:41-8	Outdoor advertising along Federal Aid Primary System: public meeting on preproposal	22 N.J.R. 621(a)		
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16:48	Route location approval (repeal)	22 N.J.R. 621(b)	R.1990 d.212	22 N.J.R. 1271(a)
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17:27-2.1, 5.2, 7.3	Affirmative action in public contracts: extension of comment period	21 N.J.R. 3869(a)		
17:32-3, 4	Municipal and county cross-acceptance of State Development and Redevelopment Plan	22 N.J.R. 621(c)		

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