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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 23 NUMBER 11
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(Includes adopted rules filed through May 10, 1991)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: MARCH 18, 1991
See the Register Index for Subsequent Rulemaking Activity.

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

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

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NEW JERSEY REGISTER

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EXECUTIVE ORDER

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio
Executive Order No. 31(1991)
Governor's Study Group on the Bicentennial of the Polish Constitution

Issued: May 6, 1991.
Effective: May 6, 1991.
Expiration: May 4, 1992.

WHEREAS, the Polish Constitution was the first European constitution providing for freedom of citizenry and is patterned after the United States Constitution; and

WHEREAS, it is desirous and beneficial to educate ourselves and our children regarding Poland's struggle for freedom and autonomy from its foreign aggressors which culminated in the drafting of the Polish Constitution; and

WHEREAS, a comprehensive study of the Polish Constitution is necessary to ensure that the historical significance of the Polish Constitution is understood and appreciated; and

WHEREAS, May 3, 1991, marks the official day of celebration of the Bicentennial of the Polish Constitution.

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

1. There is hereby created a Governor's Study Group on the Bicentennial of the Polish Constitution.

2. The Study Group shall consist of no more than thirty members. The members of the Study Group shall include the Secretary of State or her designee; the Director of the Office of Ethnic Affairs within the Department of State or his designee; and, twenty-eight public members to be appointed by the Governor. The public members to be appointed shall consist of representatives of the Polish leadership groups throughout the State as well as eminent historians and educators who have distinguished records of knowledge concerning the history of Poland and the Polish Constitution. The public members shall serve at the pleasure of the Governor. The members of the Study Group shall serve without compensation.

3. The Governor shall designate a Chairperson and Vice Chairperson from among the public members of the Study Group.

4. Study Group vacancies shall be filled by the Governor for the remainder of the unexpired term.

5. It shall be the duty of the Governor's Study Group on the Bicentennial of the Polish Constitution to conduct a thorough study of the Polish Constitution and to promote its historical significance.

6. The Study Group shall receive administrative staff support from the Office of the Secretary of State but shall not obligate any funds of that Office or of any other department, office, division or agency of the State.

7. The Study Group shall issue a report of its findings to the Governor on or before May 3, 1992, accompanying the report with any recommendations it deems appropriate. The Study Group may issue interim reports concerning its study as it shall determine.

8. This Order shall take effect immediately and shall terminate on May 4, 1992.

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REORGANIZATION PLAN

(a)

OFFICE OF THE GOVERNOR
Governor James J. Florio

Notice of a Plan for the Reorganization and Integration of Responsibility for Energy and Certain Public Utility Matters within the Department of Environmental Protection and the Redesignation of that Department as the Department of Environmental Protection and Energy

Take notice that on April 25, 1991, Governor James J. Florio hereby issues the following Reorganization Plan (No. 001-1991) to provide for the increased coordination and integration of the State's utility, environmental and energy policies by the transfer of functions from the Board of Public Utilities now allocated in but not of the Department of Treasury to in but not of the Department of Environmental Protection.

GENERAL STATEMENT OF PURPOSE

Pursuant to its present statutory authority, it is the duty of the Board of Public Utilities to regulate the public utilities of the State for the provision of safe, adequate and proper service including electric, gas, solid waste, water and sewers, telecommunications and cable television. In this role, the Board regularly considers environmental matters in consultation with the Department of Environmental Protection. Additionally, the Board is charged with evaluation of the State's energy needs to ensure the continued supply of energy at reasonable prices and to avoid the potential adverse effects of an insufficient energy supply on the economy and to the State's quality of life and its environment.

The purpose of this Reorganization Plan is to create a governmental structure that will promote the statutory aims of the Board and ensure that public utilities provide safe, adequate and proper service in conjunction with the complementary directives of doing so consistent with the statutory goals of environmental protection and energy management and conservation. In transferring existing functions of the board of Public Utilities to in but not of the Department of Environmental Protection, this Plan recognizes the interrelationship of energy management planning and environmental protection on the one hand and the provision of safe, adequate and proper utility service by the electric, gas, water, sewerage, and solid waste utilities on the other. This Plan will foster the efficient implementation of a coherent public policy which advances a coordinated and integrated energy conservation and planning policy.

The Plan proposes that the Commissioner and the DEP assume certain administrative responsibilities of the Board. Another significant aspect of this Plan is the merger of the solid waste regulation responsibilities of the DEP and the Board. These actions will promote the policy, regulatory and administrative integration of these two bodies, and thereby advance a coordinated approach to environmental and utility regulation and energy planning, and be more economical. This Plan also proposes that the DEP be renamed the Department of Environmental Protection and Energy to better reflect its new role, and that the Board be renamed the Board of Regulatory Commissioners.

THEREFORE, in accordance with the provisions of the "Executive Reorganization Act of 1969," L. 1969, c. 203 (C. 52:14C-1 et seq.), I find with respect to each reorganization included in this Plan that each is necessary to accomplish the purposes set forth in Section 2 of that Act and will do the following:

1. It will promote more effective management of the Executive Branch and its departments because it will group similar functions within already existing agencies;

2. It will promote the better and more efficient execution of the law by integrating the State's utility, environmental and energy public policies;

3. It will group, coordinate and consolidate functions in a more consistent and practical way according to major purposes;

4. It will reduce expenditures by more closely aligning similar functions; and

5. It will eliminate duplication and overlapping of effort by consolidating certain functions and result in a savings of State funds.

THE PROVISIONS OF THE REORGANIZATION PLAN ARE AS FOLLOWS:

1.a. The Board of Public Utilities, including the functions, powers and duties assigned to it pursuant to Reorganization Plan No. 002 (1989) (C. 21 N.J.R. 1937, July 17, 1989), created pursuant to L. 1911, c. 195 as amended (C. 48:2-1), and allocated in but not of the Department of Treasury pursuant to L. 1987, c. 365, §9 (C. 52:18A-2.1), together with all of its functions, powers and duties, is continued and is transferred to and constituted as the Board of Public Utilities in but not of the Department of Environmental Protection, except as hereinafter provided.

b. The Board of Public Utilities shall remain constituted as a three-member board as now provided by law (C. 48:2-1), whose final agency decisions, consistent with other applicable principles, continue to be appealed to the Appellate Division of the Superior Court, except that pursuant to the authority conferred by N.J.S.A. 52:14C-5(i) the President of the Board shall be redenominated as Chairperson; and (ii) in the case of a vacancy on the Board, the Governor may appoint an acting member from among the employees of the DEP or the Board by filing a letter evidencing the appointment with the Secretary of State, which appointment shall be effective for no more than 120 days and which shall then expire, or until such time as a member is nominated, confirmed, appointed and qualified to serve, whichever is sooner.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will promote a closer cooperation with the Department of Environmental Protection and further the important goals of coordinating and integrating the State's utility, environmental and energy policies to ensure the provision of safe, adequate and proper service from utilities consistent with the achievement of and energy conservation goals. Also, vesting the Governor with a limited authority to name an acting member to the Board of Public Utilities, a power which already exists with respect to the Commissioner of Environmental Protection, will ensure the Board's ability to carry out its important regulatory functions without delay.

2.a. The Division of Energy Planning and Conservation in the Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created pursuant to L. 1977, c. 146 as amended (C. 52:27F-7), together with all of its functions, powers and duties, is abolished and all of its functions, powers and duties are transferred to and vested in the Department of Environmental Protection and the Commissioner thereof.

b. There shall be created in the DEP an Office of Energy Planning which shall be assigned those responsibilities the DEP Commissioner deems appropriate, and which may include any functions, powers or duties formerly assigned to the Division of Energy Planning and Conservation.

c. Whenever in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Division of Energy Planning and Conservation in the Board of Public Utilities, the same shall mean and refer to the Department of Environmental Protection and the Commissioner thereof.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will confer on the Department of Environmental Protection and its Commissioner the necessary authority to implement the important goals of coordinating and integrating the State's environmental, utility and energy policies. This reorganization will also promote and assist the development and utilization of cogeneration of energy and programs of energy conservation for both residential and commercial users. This Plan will provide for the collection and dissemination of energy data for the benefit of promoting the economy.

3.a. The Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Board of Public Utilities, Reorganization Plan No. 002 (1989), ¶I(1)(a), created by L. 1977, c. 146, §10 (C. 52:27F-12), together with all its functions, powers and duties as set forth in L. 1977, c. 146, §11 (C. 52:27F-13), is continued and transferred to and constituted the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

b. Whenever, in any law, rule, regulation, order, contract, document, judicial or administrative proceeding or otherwise, reference is made to the Advisory Council on Energy Planning and Conservation in the Division of Energy Planning and Conservation in the Board of Public

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Utilities, the same shall mean and refer to the Advisory Council on Energy Planning and Conservation in the Department of Environmental Protection.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will provide the Commissioner of the Department of Environmental Protection with a body that can advise him regarding the relationship between the State's economic, environmental and energy policies.

4. The responsibility and authority vested in the President of the Board of Public Utilities to act as chairperson of the Energy Master Plan Committee, established by L. 1987, c. 365, §14 (C. 52:27F-14), pursuant to Reorganization Plan No. 002 (1989), ¶ III.1., is hereby vested in the Commissioner of the Department of Environmental Protection; the responsibility and authority of the President of the Board of Public Utilities to serve as a member of Energy Master Plan Committee is continued.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will help ensure the close coordination and integration of the State's environmental and energy policies.

5. The responsibility and authority for requiring the periodic reporting by energy industries of energy information, and the analysis and reporting of same, set forth in L. 1977, c. 146, §16 (C. 52:27F-18), is transferred to the Department of Environmental Protection and the Commissioner thereof.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this transfer is consistent with the centralization of energy data collection and dissemination responsibilities within the Department of Environmental Protection as an aid to integrating energy, environmental and economic policy.

6. All responsibility and authority now vested in the Board of Public Utilities for the regulation of solid waste under L. 1985, c. 38, (C. 13:1E-136 et seq.), as amended, or under any other law or regulation, including, but not limited to, ratesetting, is hereby continued and transferred to the Commissioner of the DEP.

I find that this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this reorganization will help ensure the close coordination and integration of the State's environmental and public utility policies.

7. All responsibility for budget, fiscal and personnel matters (including adoption of a Code of Ethics as required by the State Conflicts of Interest Law (C. 52:13D-23) and acting as appointing authority with all of the rights thereunder) and day-to-day administration, including contracting and rulemaking authority in these areas, including such authority specifically conferred on the Board by N.J.S.A. 48:2-2, 3 and 7, is hereby transferred from the Board of Public Utilities to the Commissioner of the Department of Environmental Protection; except (i) that the Board shall make annual budget recommendations to the DEP Commissioner for inclusion in the DEP's annual budget request to the Governor and Treasurer, subject to the review of the Commissioner, after due consideration by the DEP Commissioner of the resources needed by the Board to ensure its ability to carry out its assigned functions under law; and (ii) that the Board will adopt and recommend a Code of Ethics required by the Conflicts Law to the Commissioner for his consideration and approval and transmittal to the Executive Commission on Ethical Standards with such modifications, if any, as the Commissioner deems appropriate; (iii) that the Board will be responsible for the allocation of its budget and the assignment of Board personnel; and (iv) that BPU employees for payroll, administrative and other personnel related practices shall remain and continue to be categorized as BPU employees. Upon the request of the Board, the DEP Commissioner shall make available Department resources to the Board to carry out its responsibilities.

I find this reorganization is necessary to accomplish the purposes set forth in Section 2 of L. 1969, c. 203. Specifically, this consolidation of budget and administrative authority in the DEP Commissioner, to be exercised in consultation with the Board as set forth above, will result in increased and more effective management of the Board's operations in light of the transfer of the Board to the DEP. The shifting of administrative functions from the Board will also permit the Board to focus on its policy and regulatory responsibilities.

8.a. The Board of Public Utilities is denominated the Board of Regulatory Commissioners. I find that this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the responsibilities of the Board and its allocation within a renamed Department of Environmental Protection and Energy, infra, ¶9.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Board of Public Utilities and the President thereof, the same shall mean and refer to the Board of Regulatory Commissioners and the Chairperson thereof.

9.a. The name of the Department of Environmental Protection is denominated the Department of Environmental Protection and Energy. I find this name change, authorized by N.J.S.A. 52:14C-5, will better reflect the Department's responsibilities for energy and public utility matters and better inform the public of the Department's role.

b. Whenever in any law, rule, regulation, order, contract, tariff, document, judicial or administrative proceeding or otherwise, reference is made to the entities recited in paragraphs 1 to 7 above to the Department of Environmental Protection or the Commissioner thereof, the same shall mean and refer to the Department of Environmental Protection and Energy or the Commissioner thereof.

10. All transfers directed by this Plan shall be made in accordance with the "State Agency Transfer Act," L. 1971, c. 375 (C. 52:14D-1 et seq.).

11. All acts and parts of acts inconsistent with any of the provisions of this Reorganization Plan are superseded to the extent of such inconsistencies. A copy of this Reorganization Plan was filed on April 25, 1991 with the Secretary of State and the Office of Administrative Law (for publication in the New Jersey Register). This Plan shall become effective in 60 days on June 24, 1991 unless disapproved by each House of the Legislature by the passage of a concurrent resolution stating in substance that the Legislature does not favor this Reorganization Plan, or at a date later than June 24, 1991, should the Governor establish such a later date for the effective date of the Plan, or any part thereof, by Executive Order.

Take notice that this Reorganization Plan, if not disapproved, has the force and effect of law and will be printed and published in the annual edition of the public laws and in the New Jersey Register under a heading of "Reorganization Plans."

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RULE PROPOSALS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Return of Contested Cases
Proposed Amendment: N.J.A.C. 1:1-3.3

Authorized By: Jaynee LaVecchia, Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-5(e), (f) and (g).
Proposal Number: PRN 1991-325.

Submit comments by July 3, 1991 to:
Steven L. Lefelt, Deputy Director
Office of Administrative Law
Quakerbridge Plaza, Bldg. 9
CN 049
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment of N.J.A.C. 1:1-3.3 is being published simultaneously with the adoption of the amendments to the same rule, published elsewhere in this issue of the New Jersey Register. This rule and others related to the failure to appear process provide that if a party fails to appear at an OAL contested case hearing and the party does not offer an explanation to the judge within one day, the case may be returned to the agency which transmitted the case to the OAL. After a case is returned, the party may submit an explanation to the transmitting agency and the agency may, based on the explanation, decide to retransmit the case to the OAL for a hearing.

As explained in the adoption notice, two commenters suggested that a time frame be added to N.J.A.C. 1:1-3.3 so that explanations would have to be submitted to the transmitting agency within a specified period of time. The commenters were concerned that leaving the time for explanations undefined might result in matters remaining unresolved indefinitely. In addition, transmitting agencies might have to establish their own time frames, thus resulting in inconsistency and possible confusion. The OAL decided to adopt the failure to appear rules as proposed but to propose an amendment at the same time that would create a time limit for explanations. One commenter suggested a seven-day time period for explanations; the other commenter suggested 13 days. Both suggestions are reasonable. Rather than choose one or the other, the OAL has decided to propose a 10-day time frame. Because the time frame affects transmitting agencies much more directly than the OAL, the OAL hopes other agencies will comment on the proposed time frame for explanations. The OAL will consider these comments before adopting an amendment establishing the precise time period for explanations.

In addition to establishing a deadline for explanations, the proposed amendment also specifies that explanations must be submitted in writing. The proposed amendment also requires that the Clerk's notice returning the case to the transmitting agency advise parties of the time limits and requirements for explanations. These changes were recommended by agencies which commented on the failure to appear rules which have been adopted.

The proposed amendment also includes a provision allowing the transmitting agency head to extend the time for submitting explanations for good cause.

As explained in the adoption notice, the OAL will begin immediately to use a revised Clerk's notice which advises parties of a 10-day time frame for explanations. The notice will be changed if a different time frame results from this rulemaking.

Social Impact

The proposed amendment establishes a time frame for submission of explanations to transmitting agencies when parties have failed to appear at contested case hearings and the cases have been returned by the OAL to the agencies. A time frame for explanations was suggested by two agencies which commented on an earlier proposal related to the failure to appear process. By establishing a time frame, the proposed amendment eliminates the possibility that matters returned to a transmitting agency could remain unresolved indefinitely. In addition, the proposed amendment creates a uniform time frame for all agencies, thus avoiding inconsistency and confusion. The proposed amendment also insures that parties are aware of the time frame by requiring that Clerk's notices returning cases include information about the requirements for explanations. Furthermore, the proposed amendment clarifies that the agency head may extend the time frame for explanations for good cause.

Economic Impact

The proposed amendment is not expected to have any significant economic impact. It establishes a time frame for submission of explanations when a party fails to appear at a hearing. As such, the proposed amendment may result in some matters being concluded more quickly either by expediting explanations or permitting agencies to close files when an explanation is not submitted.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed amendment does not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment establishes a time frame for submission of explanations when a party fails to appear at a hearing and the case has been returned by the OAL to the transmitting agency.

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

1:1-3.3 Return of transmitted cases

(a) (No change.)

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear [may be addressed to] **must be in writing and received by** the transmitting agency head [after the case is returned] **within 10 days of the date of the Clerk's notice returning the case. A copy of the explanation shall be served on all other parties.** If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties **which shall advise the parties of the time limit and requirements for explanations as set forth in (b) above.**

(d) The agency head may extend the time limit for receiving explanations regarding the failure to appear when good cause is shown.

AGRICULTURE

(b)

DIVISION OF REGULATORY SERVICES

Plant Food Nutrient Values
Proposed Amendment: N.J.A.C. 2:69-1.11

Authorized By: State Board of Agriculture, Arthur R. Brown, Jr., Secretary.
Authority: N.J.S.A. 4:9-15.26.
Proposal Number: PRN 1991-313.

Submit comments by July 3, 1991 to:
Mark G. Robson, Acting Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

The purpose of this proposed amendment is to up-date the commercial values of primary plant nutrients. The assessed penalties for deficient

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fertilizers will be based on the values and charged to the manufacturer. The State Treasury will receive all unclaimed penalty fees.

Social Impact

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 fertilizer will be equitably compensated for their losses because these proposed values are accurately adjusted to current market prices.

Regulatory Flexibility Analysis

Both large and small businesses, as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., are affected by the proposed changes in the values of the fertilizers. However, differing standards are not deemed necessary because the changes are not burdensome and they reflect the current market value of the nutrients. Furthermore, the nutrient values are used in setting the penalties to manufacturers for compensation to farmers, all of whom are considered small businesses under the Act, when they purchase products that do not meet the analysis as advertised. The amendment in that way provides some measure of protection to small businesses.

Full text of the proposed amendment 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 values of primary plant nutrients to be:

1. Nitrogen: $4.00 per unit;
2. **Slowly released nitrogen:**
i. Water insoluble nitrogen: [$7.50] **$9.50** per unit;
ii. Coated available nitrogen: $6.00 per unit;
3. Available phosphoric acid: $3.00 per unit;
4. Soluble potash: $3.00 per unit.

(b) These values shall be effective from July 1, [1990] **1991** through June 30, [1991] **1992**.

(a)

DIVISION OF REGULATORY SERVICES

Eggs
Official State Seal
Proposed Repeal: N.J.A.C. 2:73-2

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

Authority: N.J.S.A. 4:10-18 et seq.

Proposal Number: PRN 1991-312.

Submit comments by July 3, 1991 to:
Mark G. Robson, Acting Director
Division of Regulatory Services
New Jersey Department of Agriculture
CN 330
Trenton, NJ 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

The Department of Agriculture is proposing the repeal of the New Jersey Seal of Quality for Eggs program.

Due to budget reductions, the Division of Regulatory Services, Department of Agriculture, is unable to maintain the field inspection staff necessary to protect the integrity of the Seal of Quality for Eggs program.

This repeal is deemed necessary, in that without the inspection staff required to insure that product bearing the Seal of Quality meets the applicable standard, the use of the Seal is meaningless. This results in a disservice to both the buyer and seller of that product.

Social Impact

At the present time, only one egg packing facility produces eggs under the Seal of Quality program in any significant volume. Of the approximately two million producing chickens in the State, more than one-half are owned by this facility. The Producer agrees that without inspections and certification the Seals are of little value.

The repeal of this subchapter will have no measureable impact on either the buyers or the sellers of New Jersey produced eggs. Producers still have the option of using the New Jersey map symbol (see: N.J.A.C. 2:71-1.39).

Economic Impact

Due to the fact that there is an insignificant volume of product packed under the Seal of Quality program as compared to the total volume of eggs sold in New Jersey, there should be no adverse economic impact to those parties involved in the marketing of eggs in New Jersey.

Regulatory Flexibility Statement

Regulatory flexibility analysis is not required because the proposed repeal does not impose reporting, recordkeeping or other compliance requirements on small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 2:73-2.

BANKING

(b)

OFFICE OF REGULATORY AFFAIRS
Pawnbroker Service Charges
Proposed Amendment: N.J.A.C. 3:16-2.1

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

Authority: N.J.S.A. 45:22-11 and 22.

Proposal Number: PRN 1991-297.

Submit comments by July 3, 1991 to:
Robert M. Jaworski
Assistant Commissioner
Department of Banking
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to amend its pawnbroker rules to increase the service charge which licensed pawnbrokers may impose. Current rules, which have not been changed since 1974, permit pawnbrokers to impose a service charge on articles other than rings, watches and jewelry items, equal to eight percent of the loan amount, but not more than $1.50. The costs of safekeeping and insuring the collateral have increased dramatically since that time. As a reflection of increasing costs, the Consumer Price Index has more than doubled since 1974, going up about 182 percent.

The pawnbroker is, for some citizens, the only lender available. During the period since 1974, the number of licensed pawnbrokers in this State has decreased. Because this period was, in general, one of economic expansion, the reduction in the number of licensees is cause for concern.

Accordingly, to account for inflation, the Department proposes to increase the maximum permissible service charge from $1.50 to $3.00. In addition, it is proposed that the rules be amended to allow licensees to impose the service charge on all items, including jewelry.

Social Impact

With the increase in the permissible service charge, the licensed pawnbroker will be permitted to recoup more of the costs of overhead, including insurance. These costs have increased rapidly since 1974 when the service charge was first authorized. This increase may have the positive social impact of stabilizing the industry, and of encouraging other persons to enter the field.

Economic Impact

The proposed amendment would have a positive economic impact on licensed pawnbrokers, and a corresponding negative economic impact on consumers borrowing money from these licensees. However, it is anticipated that this proposed amendment will, in the long run, increase the number of persons choosing to enter and remain in the industry. This

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will have a positive economic impact of making this credit more readily available.

Regulatory Flexibility Analysis

The proposed amendment will have no adverse impact on those licensees which are small businesses, as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed amendment does not impose any reporting or recordkeeping requirements. Rather, it will allow licensees to charge a greater service charge.

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

3:16-2.1 Service charges

(a) On loans secured by the pledge of articles, [other than rings, watches or other jewelry items,] a service charge may be levied to equal eight percent of the amount of the loan, but such service charge shall not exceed [$1.50] **$3.00**.

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

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Departmental Appeal
Proposed Amendment: N.J.A.C. 5:23-2.38

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

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

Proposal Number: PRN 1991-310.

Submit written comments by July 3, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The barrier-free recreation rules now provide for an administrative hearing whenever an allegation is made that a recreational facility subject to the rules is not in compliance. The proposed revision would treat such allegations in the same manner as any other allegation of noncompliance with a code enforced by the Department. The Department will investigate and, in the event of noncompliance, issue and enforce an order to make necessary corrections. The person to whom an order is directed will have the right to an administrative appeal. In the event that the Department finds the facility to be in compliance, any person who disagrees will still have the right to go to court.

Social Impact

The barrier-free recreation amendment will allow prompt resolution of complaints through review by Department staff with the appropriate technical expertise and administration of orders in the same manner as is followed with other orders issued by the Department.

Economic Impact

By bringing the Department into disputes concerning barrier-free recreational facilities from the outset, the likelihood is increased that determinations as to what work must be done will be technically well-founded.

Regulatory Flexibility Statement

The proposed amendments impose no requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., but allow any party in interest another step in the complaint process. The amendments would initially treat allegations of noncompliance with the barrier-free recreation rules in the same way as any other allegation of noncompliance. The opportunity for a contested case or other judicial review remains in the rules. While there is an effect on small businesses, as well as other facility owners or administering agencies, that effect is expected to be beneficial.

The amendments concerning appeals under the barrier-free recreational rules will benefit businesses, both large and small, that maintain recreational facilities by allowing them to know at an earlier point what it is that is required of them and to have greater assurance that they will be required to do what is specified in the code. They can still appeal any decision, but are not placed in an adversarial hearing from the outset. This may spare them some expense for legal services.

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

5:23-2.38 Departmental appeal

(a) (No change.)

(b) Any party in interest aggrieved by any decision made by a facility manager with respect to compliance with the Barrier Free Recreational Standards (N.J.A.C. 5:23-7.100 through 7.116) shall have the right to appeal the decision to the Department.

1. The Department shall forward a copy of the complaint to the facility manager and to the facility owner or agency responsible for administration of the facility and shall request a response from the facility manager.

2. The facility manager shall respond in writing within 45 days of receipt of the request.

3. The Department shall review the response and shall determine whether [a contested case exists] **the complaint is justified and what corrective measures shall be required to be taken by the facility owner or administering agency**. The Department shall make such determination **and issue any necessary orders** within 60 days.

4. In the event that **the owner or administering agency of a facility appeals any such order and** the Department determines that a contested case exists, it shall forward such case for adjudication in an administrative hearing before the Office of Administrative Law and the final decision shall be issued by the Commissioner. Hearings shall be conducted in accordance with the provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1[-1 et seq.]).

Recodify existing 1. as **5.** (No change in text).

(b)

DIVISION OF HOUSING AND DEVELOPMENT

Uniform Construction Code
Indoor Air Quality Subcode
Proposed New Rules: N.J.A.C. 5:23-11

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

Authority: N.J.S.A. 52:7D-119 et seq.

Proposal Number: PRN 1991-295.

Submit written comments by July 31, 1991 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, New Jersey 08625

A **public hearing** on this proposal will be held on Thursday, June 27, 1991 beginning at 10 A.M. at:
Department of Community Affairs
William Ashby Building
101 South Broad Street
Trenton, New Jersey

Those wishing to testify are asked to so notify Mr. Michael Ticktin at the above address.

The agency proposal follows:

Summary

The purpose of these proposed new rules is to establish an effective complaint process for public employees who work in buildings with indoor air quality problems. The rules reference the most recent technical standards of the American Society of Heating, Refrigerating, and Air Conditioning Engineers, ASHRAE 62-89, titled "Ventilation for Acceptable Indoor Air Quality," and ASHRAE 55-81, titled "Thermal Environmental Conditions for Human Occupancy." These standards will

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be used to assess alleged air quality deficiencies. These rules also establish a clear complaint resolution process based on the nature of the complaint. The Department of Community Affairs will respond to building-related complaints; the Department of Health will respond to health-related complaints. These rules give the Department of Community Affairs and the Department of Health the authority to order a technical study of an affected building and to require the building owner to comply with the results of that study. It is important, however, to emphasize that no action is taken unless a complaint is received. These rules have been reviewed and approved by the Department of Labor, the Department of Health, and the PEOSHA (Public Employees Occupational Safety and Health Act) Board.

These rules were published as a preproposal (see 22 N.J.R. 3209(a)), in the October 15, 1990 issue of the New Jersey Register, to gain the benefit of public comment. Comments were received from a broad spectrum of interested parties. These proposed rules embody several of the changes suggested by those who commented on the preproposal. Two definitions have been included: "lease management officer" and "designated smoking area." These rules make it clear that Department of Health investigations are enforced by the Department of Labor. Also, these rules allow employers to have qualified staff members perform initial indoor air quality evaluations. In addition, the section on renovation work and cleaning operations (N.J.A.C. 5:23-11.9) includes expanded requirements for the isolation of construction areas in occupied buildings and an additional request that employers ensure that offgassing takes place before employees reoccupy the building.

Social Impact

Public employees will benefit from the establishment of a clear complaint process that protects their health and resolves any indoor air quality problem.

Economic Impact

The economic effect of the proposed indoor air quality rules is expected to be minor. The complaint-driven resolution process established by these rules is not expected to require additional staff. The expense of any indoor air quality study or remediation will be borne by the building owner. It is recognized, however, that some indoor air quality problems may not be readily resolved and, in fact, may require extensive evaluation and remediation which could result in significant expense for the building owner.

Regulatory Flexibility Statement

Small businesses, as the term is defined under the New Jersey Regulatory Flexibility Act (N.J.S.A. 52:14B-16 et seq.) may be affected by these rules. The rules do not impose additional reporting or recordkeeping requirements on small businesses; however, performance requirements may be imposed upon building owners in that they may be required to bear the expense of any indoor air quality study or remediation, as determined by the Department. The Department does not believe it's appropriate to provide differential requirements based upon business size, since to do so may compromise the health of the public employees affected.

Full text of the proposal follows:

SUBCHAPTER 11. INDOOR AIR QUALITY

5:23-11.1 Title; scope; intent

(a) This subchapter, adopted pursuant to authority of the State Uniform Construction Code Act and the Public Employees Occupational Safety and Health Act (N.J.S.A. 34:6A-25 et seq.), and entitled "Indoor Air Quality," shall be known and may be cited throughout the rules as subchapter 11, and when referred to in subchapter 11 of this chapter, may be cited as this subchapter.

(b) Unless otherwise specifically provided, all references to article or section numbers or to provisions not specifically identified by number, shall be construed to refer to such article, section or provision of this subchapter.

(c) This subchapter shall control matters relating to indoor air quality in existing buildings occupied by public employees during their regular work hours, including procedures for reporting and responding to complaints of indoor air quality in accordance with the Public Employees Occupational Safety and Health Act (PEOSHA).

(d) This subchapter seeks to provide an efficient administrative framework for reporting and responding to complaints of indoor air quality, and for the enforcement of indoor air quality standards. Additionally, this subchapter provides a uniform standard through the adoption of nationally-recognized standards.

5:23-11.2 Definitions

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

"Building-related problems" means complaints regarding such conditions as temperature, humidity and ventilation.

"Department" means both the Department of Community Affairs and the Department of Health, unless the context clearly indicates otherwise.

"Designated smoking area" shall mean an area in a building where smoking is permitted and which is physically separated from non-smoking areas and which nonsmokers do not need to enter or pass through.

"Employee" means any public employee as defined in the Public Employees Occupational Safety and Health Act.

"Employer" means public employer and shall include any person acting directly on behalf of, or with the knowledge and ratification of the State, or any department, division, bureau, board, council, agency or authority of the State, except any bi-state agency; or any county, municipality, or any department, division, bureau, board, council, agency or authority of any county or municipality, or of any school district or special purposes district created pursuant to law.

"Facility manager" means the person employed by the building owner and charged with the care and maintenance of the building.

"Health-related problems" means any complaint that involves a symptom such as headaches, nausea, dizziness, etc.

"Lease management officer" shall mean the person or office who signs the lease on behalf of the employer or who is designated by the employer with responsibility for the lease.

"Retrofit" means to bring a building or portion thereof which exhibits indoor air quality deficiencies into compliance with the standards adopted in this subchapter.

5:23-11.3 Adoption of standards

(a) Pursuant to the authority granted under P.L. 1975, c.217, as amended, the Commissioner hereby adopts and incorporates herein by reference the nationally-recognized standards of the American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., known as ASHRAE 55-1981 (Thermal Environmental Conditions for Human Occupancy) and ASHRAE 62-1989 (Ventilation for Acceptable Indoor Air Quality), including all subsequent revisions and amendments thereto, as the standard for evaluating indoor air quality in all buildings or portions of buildings subject to this subchapter.

1. Copies of these standards may be obtained from the sponsor at: ASHRAE Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329.

2. In addition to the provisions of the standards adopted above, the air from designated smoking areas shall not be recirculated to non-smoking areas in buildings covered by this subchapter.

(b) Where the Department, upon investigation, has reason to believe that a building or a portion of a building does not provide for an adequate level of indoor air quality when measured against the nationally recognized standards adopted in this subchapter, then the Department may require the building owner or employer to perform a comprehensive ventilation and temperature evaluation in accordance with those standards. The Department may additionally require the building owner or employer to obtain and furnish to the Department, at the building owner's expense, a report from a licensed engineer or registered architect or certified industrial hygienist or other person with similar qualifications, education, or experience who can demonstrate the ability to perform indoor air quality evaluations. The report must outline appropriate corrective measures to the building or portions of the building under investigation. Where retrofit is found to be necessary it shall be performed in accordance with the standards adopted in this subchapter.

(c) Except as required by (b) above, nothing in this subchapter shall be interpreted as requiring the retrofit of all buildings subject to this chapter in conformity with the adopted standards. These

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standards are adopted in order to provide a nationally recognized objective measurement tool for the evaluation and retrofit of buildings or portions of buildings which exhibit indoor air quality deficiencies.

5:23-11.4 Enforcement

(a) The Department of Health shall be the sole agency for investigating complaints and initiating enforcement of standards for health-related problems.

(b) The Department of Community Affairs shall be the sole agency for investigating complaints and enforcing standards for building-related problems.

(c) The Department of Labor shall be the sole agency for the enforcement of orders resulting from investigations initiated by the Department of Health.

5:23-11.5 Initial complaint to employer

(a) The employee or employee's representative shall submit the complaint in writing to the employer or to the employee relations officer, unless otherwise specified in writing by the employer.

(b) Within five working days of receipt the employer shall acknowledge receipt of the complaint and shall outline the planned response action in writing to the employee. The response may include any combination of the following:

1. A description of any remedial action already taken;

2. An outline of any response action planned but not yet taken with a timetable for completion; and/or

3. An order for study of the problem with a timetable for completion.

(c) In a leased building, the employee shall submit the complaint to the employer. In such buildings managed and maintained by the building owner and not the employer, the complaint shall be forwarded by the employer to the lease management officer or to the person designated by the building owner to receive such complaints who, in turn, shall forward it to the building owner for corrective action pursuant to the terms of the lease and this subcode.

(d) Where a response action is planned or a study ordered, it shall be initiated as soon as possible. The employer shall report the results in writing to the employee within 10 working days of completion.

5:23-11.6 Formal complaint to State agency

(a) If the condition persists or if the employer fails to respond to the complaint, the employee may request further action by notifying the Department of Health or the Department of Community Affairs in writing.

(b) Health-related complaints shall be reported to the Department of Health.

(c) Building-related complaints shall be reported to the Department of Community Affairs.

(d) Within five working days following receipt of the complaint, the Department of Health or the Department of Community Affairs shall notify the employer that a complaint has been filed.

1. If the employer has had an opportunity to respond as outlined in N.J.A.C. 5:23-11.5(a), the enforcing agency shall proceed to its investigation.

2. If the employee files the complaint directly with the Department of Health or the Department of Community Affairs, the enforcing agency shall give the employer the opportunity to respond as outlined in N.J.A.C. 5:23-11.5.

5:23-11.7 Formal complaint procedure; health-related complaint

(a) Health-related complaints shall be reported to the Department of Health as follows:

1. The employee or employee's representative shall notify the Department of Health in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from receipt of the complaint, the Department of Health shall notify the employer that a complaint has been filed.

i. Upon request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Health shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Health shall determine the extent of the problem.

4. If the extent of the problem indicates, the Department of Health shall determine or shall order the employer to have a qualified expert determine whether at least one of the following three conditions exists. The investigation for contaminants shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

i. Known contaminants are clearly present;

ii. A definite point source of contamination exists; or

iii. Physical evidence indicates contaminants although exact identification has not been made.

5. If the study is contracted for by the building owner or employer, the building owner or employer shall report the results in writing to the Department of Health within five working days of its receipt.

6. If remedial action is indicated by the investigation, the Department of Health shall ensure that such remedial action is completed, provided this action relates to removal of identified source(s) of contamination or modification/abatement of workpractices which generate air contaminants. Any remedial action involving repairs or modifications to the general ventilation system shall be referred to the Department of Community Affairs for enforcement.

7. A complete record of this investigation shall be kept by both the Department of Health and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

8. If, in the course of the investigation, the Department of Health discovers that the complaint includes a building-related problem which will not be corrected by the remedial action undertaken, the Department of Health shall refer that problem to the Department of Community Affairs for investigation in accordance with N.J.A.C. 5:23-11.8. If health symptoms reported are determined to be due to building renovation or construction activities as outlined in Section 3019 of the BOCA National Building Code, 1990 edition, then the Department of Health shall refer the matter to the Department of Community Affairs for enforcement.

9. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.8 Formal complaint procedure; building-related complaints

(a) Building-related complaints shall be reported to the Department of Community Affairs as follows:

1. The employee or the employee's representative shall notify the Department of Community Affairs in writing of the grounds for the complaint. All relevant documents shall accompany the complaint.

2. Within five working days from the receipt of the complaint, the Department of Community Affairs shall notify the employer that a complaint has been filed.

i. Upon the request of the employee or the employee's representative filing the complaint, the employee's name shall be withheld from the notice to the employer.

ii. Where the employee exercises this right, the Department of Community Affairs shall notify the employer who, in turn, shall respond to the Department.

3. The Department of Community Affairs shall investigate and determine the nature and extent of the problem. The investigation shall be conducted in accordance with the standards adopted in N.J.A.C. 5:23-11.3.

4. Where the Department, in its sole discretion, determines that an engineering evaluation of the building or portion of a building and its mechanical systems is warranted, then the building owner or employer shall, at its expense, provide for such engineering evaluation as the Department determines is necessary and shall report the results in writing to the Department within five working days of receipt.

i. The comprehensive evaluation shall include, but not be limited to, monitoring of building air intake and exhaust flows, room

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temperatures, room air supply and return flows, and calculation of amount of outdoor air per occupant.

ii. Since the environmental parameters of temperature, radiation, humidity and air movement necessary for thermal comfort depend upon the occupant's clothing and activity level, the evaluation mentioned in (a)4i above shall take these items into consideration as recommended in the indoor air quality subcode. If humidity can be controlled by existing equipment in the building, it shall be evaluated in accordance with the indoor air quality subcode.

iii. The results of the ventilation and temperature evaluation, along with a plan for remediation of the indoor air quality, shall be submitted to the Department for review and approval. The remediation plan shall include target dates for the following:

(1) Evaluation of engineering control options;

(2) Selection of optimum control methods and completion of design;

(3) Procurements, installation and operation of selected control measures; and

(4) Testing and acceptance or modification or design of controls.

5. If remedial action is indicated by the investigation, the Department of Community Affairs shall ensure that such remedial action is undertaken and successfully completed.

6. A complete record of this investigation shall be kept by the Department of Community Affairs and the employer for five years. The employer shall provide the employee bringing the complaint with copies of studies undertaken, if any, and with written reports of work planned and completed to abate the problem.

7. If, in the course of the investigation, the Department of Community Affairs discovers that the complaint includes the existence of air contaminants which will not be corrected by any remedial action undertaken, the Department of Community Affairs shall refer the complaint to the Department of Health for investigation in accordance with N.J.A.C. 5:23-11.7.

8. If any corrective action requires a construction permit under the Uniform Construction Code, the permit shall be obtained from the enforcing agency having jurisdiction.

5:23-11.9 Renovation work/cleaning operations

(a) Renovation work, new construction, and/or cleaning operations shall be performed in accordance with Section 3019 of the BOCA National Building Code, 1990 edition, incorporated herein by reference. Renovation areas in occupied buildings shall be isolated and dust and debris shall be confined to the renovation or construction area. Following the completion of construction or renovation work, the employer should ensure that appropriate measures are taken to allow materials to offgas prior to employee occupancy.

(b) Before use of paints, adhesives, sealants, solvents, or installation of insulation, particle board, plywood, floor coverings, carpet backing, textiles, or other materials in the course of renovation or construction, the employer or the employer's hired contractor shall check product labels or seek and obtain information from the manufacturers of those products on whether or not they contain volatile organic compounds such as solvents, formaldehyde or isocyanates that could be emitted during regular use. This information shall be used to select products and to determine necessary measures to be taken to comply with this section.

5:23-11.10 Equipment maintenance

(a) The facility manager shall establish and follow a preventive maintenance schedule in accordance with the manufacturer's recommendations or with accepted practice for the following equipment and/or systems:

1. HVAC System. Scheduled maintenance of the HVAC system shall include checking and/or changing air filters, checking and/or changing belts, lubrication of equipment parts, checking the functioning of motors and confirming that all equipment is in operating order. Damaged or inoperable components shall be replaced or repaired as appropriate. Additionally, any reservoirs or parts of this system with standing water shall be checked for microbial growth.

2. Any other building systems equipment not listed above that requires routine maintenance in accordance with the manufacturer's instructions or, where there are no manufacturer's recommendations, with accepted maintenance practice.

(b) The maintenance schedule shall be updated to show all maintenance performed on equipment. The schedule shall include the date that such maintenance was performed and the name of the person or company performing the work.

(c) The maintenance schedule shall be made available upon request to any representative of an enforcing agency.

(d) Porous building materials contaminated with microbial growth shall be replaced or disinfected.

5:23-11.11 Penalties

(a) For noncompliance with the provisions of this subchapter with regard to building-related problems, orders shall be issued and penalties shall be assessed in accordance with N.J.A.C. 5:23, the Uniform Construction Code, of which this subchapter is a part, by the enforcing agency having jurisdiction.

(b) For noncompliance with the provisions of this subchapter with regard to health-related problems, orders shall be issued and penalties shall be assessed by the Department of Labor in accordance with the Public Employees Occupational Safety and Health Act.

5:23-11.12 Appeals of Department decisions

(a) Whenever the Department of Community Affairs shall act as the enforcing agency, appeals may be made to the Division of Housing and Development. Whenever the Department of Health shall act as the enforcing agency, orders shall be issued by and appeals may be made to the Department of Labor, Division of Workplace Standards. The case shall be adjudicated before the Office of Administrative Law and the final decision shall be issued by the Commissioner of the department involved. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

(b) Appeals may be made by either the employee or the employer as defined in this subchapter.

(c) The application for appeal shall be taken within 20 business days of the receipt of written notice of the decision of the department involved.

(d) The application for appeal shall be in writing, briefly setting forth the appellant's position. Such application shall state the name and address of the appellant, the address of the building or site in question and shall reference the specific sections of the rules in question, and the extent and nature of the appellant's reliance on them. The appellant may append to his written application any data or information that he may deem appropriate to his cause.

1. The department involved shall make available to the Office of Administrative Law the full record of the complaint which is the subject of the appeal.

EDUCATION

(a)

STATE BOARD OF EDUCATION

Business Services

Proposed Amendments: N.J.A.C. 6:20-2.13, 2.14, 2A.11, 2A.12, 4.1, 5.3, 5.6 and 8.3

Proposed Repeals: N.J.A.C. 6:20-2.12 and 2A.10

Proposed New Rules: N.J.A.C. 6:20-2.14 and 2A.12

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-14, 18A:4-14.1, 18A:4-15, 18A:7D-1, 18A:7D-3, 18A:7D-6, 18A:7D-28, 18A:21-2, 18A:21-3, 18A:21-4, 18A:21-5 and 18A:46-21.

Proposal Number: PRN 1991-316.

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Submit written comments by July 3, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Quality Education Act of 1990 (QEA), P.L. 1990, c.52, will dramatically alter the face of school funding in New Jersey. Beginning in the 1991-92 school year, every child in New Jersey will begin to have an opportunity to receive a world-class education, regardless of where he or she lives. The QEA will add an additional $758 million to the amount of State aid currently being spent on New Jersey's public schools.

The Department of Education will make sure that all public funds dedicated for education will be spent in an efficient and effective manner to provide equal educational opportunities for all of New Jersey's pupils. Last year the State Board of Education adopted rules for a new double entry accounting system consistent with generally accepted accounting principles (GAAP) to be used by all New Jersey public schools. Together QEA and GAAP will establish the necessary accountability for public education's financial resources so that New Jersey's pupils get the world-class education they deserve.

The QEA necessitates changes in N.J.A.C. 6:20, Business Services. The amendments and new rules contained in this proposal are intended to establish the requisite procedures and to bring N.J.A.C. 6:20 into conformity with the QEA.

A review of the amendments and new rules follows:

The present rules, N.J.A.C. 6:20-2.12 and 2A.10, Debt service State support, contained in both subchapter 2, Bookkeeping and Accounting in Local School Districts, and subchapter 2A, Double Entry Bookkeeping and GAAP Accounting in Local School Districts, require that the final payment of State aid for debt service which is paid in the year subsequent to the final payment of the associated principal and interest be recorded as capital outlay. Since under the QEA debt service State aid is paid on a current year basis, these rules should be deleted from both subchapters.

N.J.A.C. 6:20-2.12 and 2A.10 Overexpenditure of funds

These rules are contained in both subchapters 2 and 2A and have been recodified from N.J.A.C. 6:20-2.13 and 2A.11. In addition, the present procedure to calculate a penalty for incurring a deficit is not compatible with the QEA's foundation formula. Since all districts do not receive foundation aid, it is not practical to incorporate the penalty calculation into the foundation aid formula as it was with the equalization aid formula. The proposed amendments would establish a percentage of the deficit based on the proportional relationship of the deficit to the maximum foundation budget as a penalty which would be applied as necessary against all categories of QEA aid. The prior penalty was based on the State percentage of aid and penalized poorer districts at greater rates.

The overexpenditure of funds is a serious matter and recently the New Jersey Code of Criminal Justice was amended to make it a crime for a public official or employee to purposely and knowingly disburse moneys or incur obligations in excess of appropriations. The continuation of a financial penalty for overexpenditures is consistent with current public policy.

N.J.A.C. 6:20-2.13 and 2A.11 Appropriation of free balance

These rules are contained in both subchapters 2 and 2A and have been recodified from N.J.A.C. 6:20-2.14 and 2A.12. The present rules require that districts requesting a budget cap waiver appropriate all available current expense free balance in excess of three percent of the current expense budget because the present budget cap is only on the current expense portion of the budget. The proposed amendments reflect the new statutory citation for budget caps N.J.S.A. 18A:7D-28 and require that all districts requesting a cap waiver appropriate all available free balance in excess of three percent based on the general fund budget rather than the current expense budget. These amendments are needed because the new budget cap encompasses both current expense and capital outlay which comprise the general fund.

N.J.A.C. 6:20-2.14 and 2A.12 Capital reserve account procedures

These new rules are proposed pursuant to N.J.S.A. 18A:21-5 and would supplement statutory procedures to establish, administer and account for capital reserve accounts. Under the QEA, a district board of education or board of school estimate in a district having such a board may establish a capital reserve account for capital outlay appropriations in subsequent years subject to statutory provisions and procedures established by the Commissioner which are contained in this proposal.

N.J.A.C. 6:20-4.1 Tuition rate procedures

The amendment is proposed to revise the calculation of the estimated actual cost per pupil in N.J.A.C. 6:20-4.1(f)1 which is a component of the tentative tuition rate charged by private schools for the handicapped. The amendment establishes for application against prior period cost data an index which is consistent with one established for public schools by the QEA. This change is imperative as the data needed for the existing index will no longer be available.

N.J.A.C. 6:20-5.3 Method of determining the district of residence

The date for determining the district of residence will be changed from the last school day of September to the last school day prior to October 16 consistent with the enrollment count date established by the QEA.

Technical corrections are also proposed. Statutory citations contained in N.J.A.C. 6:20 are either changed or deleted to conform with amendments and repeals contained in the QEA.

Social Impact

The amendments, repeals and new rules will help ensure that the QEA is implemented in an efficient and effective manner. These amendments and new rules are intended to supplement and improve upon the existing rules for certain essential activities which support the educational process. They provide the foundation for a financial management system which will ensure accountability and the use of all financial resources in a manner that provides additional world-class educational opportunities for all of New Jersey's pupils.

These amendments and new rules along with existing rules help protect the public interest by assuring that educational support activities will be conducted prudently and in accordance with law. Experience gained through auditing and monitoring has shown that these rules resolve problems by providing accountability, have a positive impact on educational programs and on students and benefit taxpayers by clearly demonstrating the use of public education funds and providing the ability to detect and correct the inappropriate or inefficient use of such funds.

Economic Impact

These amendments and new rules along with existing rules provide an orderly and efficient method for the conduct of essential district board of education support activities. These rules provide a financial management system which will prevent waste and mismanagement and safeguard the assets of each district board of education. These amendments and new rules along with the existing rules will provide valuable financial information on school spending patterns and trends for local, State and Federal policymakers. The amendments and new rules will assure compliance with the provisions of the QEA and together with the existing rules protect the public investment in education which includes the additional $758 million in State aid provided by this Act.

There may be short-term costs for district boards of education which may have to modify existing computer software, hire consultants or send personnel for training. However, such costs are necessitated by the legislation itself and not by these proposed amendments and new rules.

Regulatory Flexibility Analysis

The adoption of the amendments, repeals and new rules will impose no reporting, recordkeeping or compliance requirements on small businesses, as that term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. With the exception of an amendment to N.J.A.C. 6:20-4.1, Tuition rate procedures, in the Tuition for Private Schools for the Handicapped subchapter, all the requirements of the amendments and new rules impact solely upon New Jersey public school districts and upon schools operated by the New Jersey Department of Education. Private schools are considered small businesses under the Regulatory Flexibility Act. Under the tuition law, N.J.S.A. 18A:46-21, public schools and private schools for the handicapped have tuition calculated on the same basis. The amendment to N.J.A.C. 6:20-4.1(f)1 is necessary because under the provisions of QEA at N.J.S.A. 18A:7D-3 and 6, the previous method for calculating the estimated actual cost per pupil was changed.

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

[6:20-2.12 Debt service State support

In the budget year following the final payment of all school debt service, if all or any part of the debt service funds which are to be made available to a district board of education for that budget year

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pursuant to N.J.S.A. 18A:7A-19 and 18A:7A-26 are not necessary for debt service purposes in that budget year, the district board of education shall record such funds as capital outlay revenue to the district board of education.]

6:20-[2.13]**2.12** Overexpenditure of funds

(a)-(g) (No change.)

(h) [In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating State aid entitlements for] **Beginning in** the second year following the year in which the deficit occurred **the State aid of a district board of education will be reduced by the product of the sum of the deficits in any major account or fund and the percentage of that sum to its maximum foundation budget defined in N.J.S.A. 18A:7D-6.**

1. Reductions will be made in the following descending order:

i. Foundation aid;

ii. Transition aid;

iii. Transportation aid;

iv. Aid for at-risk pupils;

v. Bilingual education aid; and

vi. Special education aid.

2. Deficits incurred for special schools, State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds will be applied to the balance or deficit of the major account, current expense of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that major account.

6:20-[2.14]**2.13** Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. [18A:7A-25]**18A:7D-28** shall appropriate all available [current expense] **general fund** free balance in excess of three percent of the [current expense] **general fund** budget for the budget year such request is made.

(b) (No change.)

[(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.]

6:20-2.14 Capital reserve account procedures

(a) A district board of education or board of school estimate in a district having such a board may establish by formal resolution a capital reserve account within the capital outlay major account/fund for the accumulation of funds for capital outlay appropriations/expenditures in subsequent fiscal years pursuant to N.J.S.A. 18A:21-2 and 3. The capital reserve account shall be established, administered and accounted for as follows:

1. A true copy of the establishing resolution shall be filed with the Division of Finance pursuant to N.J.S.A. 18A:21-3. Districts receiving funds from the State Treasurer which were previously on deposit in a school building aid capital reserve fund, pursuant to N.J.S.A. 18A:58-25, need not execute or file a new resolution.

2. A district board of education may establish or increase the balance in the capital reserve account by including in the original annual capital outlay budget which is certified for taxes an appropriation of foundation aid revenue not to exceed the amount of foundation aid for capital outlay pursuant to N.J.S.A. 18A:21-3.

3. The capital reserve account may also be established or increased in the original annual capital outlay budget which is certified for taxes by an amount expressly approved by the voters of the district or the board of school estimate pursuant to N.J.S.A. 18A:21-3.

4. The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3. Anticipated investment income shall be included in the original annual capital outlay budget which is certified for taxes as miscellaneous income.

5. Additions to the capital reserve account from foundation aid for capital outlay, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual capital outlay budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund shall be established in the capital outlay major account/fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the annual audit's balance sheet in the capital outlay major account/fund as follows:

i. Dr: Capital Reserve Account; and

ii. Cr: Reserved Fund Balance—Capital Reserve Account.

[6:20-2A.10 Debt service State support

In the budget year following the final payment of all school debt service if all or any part of the debt service funds which are to be made available to a district board of education for that budget year pursuant to N.J.S.A. 18A:7A-19 and 18A:7A-26 are not necessary for debt service purposes in that budget year, the district board of education shall record such funds as capital outlay revenue to the district board of education.]

6:20-[2A.11]**2A.10** Overexpenditure of funds

(a)-(g) (No change.)

(h) [In the year following the year in which a deficit occurs, the net current expense budget and the maximum support budget of a district board of education shall be reduced by an amount equal to the deficit in any major account when calculating State aid entitlements for] **Beginning in** the second year following the year in which the deficit occurred **the State aid of a district board of education will be reduced by the product of the sum of the deficits in any major account or fund and the percentage of that sum to its maximum foundation budget defined in N.J.S.A. 18A:7D-6.**

1. Reductions will be made in the following descending order:

i. Foundation aid;

ii. Transition aid;

iii. Transportation aid;

iv. Aid for at-risk pupils;

v. Bilingual education aid; and

vi. Special education aid.

2. Deficits incurred for special schools, State and Federal grant projects, enterprise funds such as the school lunch fund, trust and agency funds and student activity funds will be applied to the balance or deficit

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of the major account, current expense of the general fund when such overexpended projects and funds should have been balanced by expenditures from or transfers to that major account.

6:20-[2A.12]**2A.11** Appropriation of free balance

(a) A district board of education requesting to exceed the permissible rate of increase pursuant to N.J.S.A. [18A:7A-25]**18A:7D-28** shall appropriate all available [current expense] **general fund** free balance in excess of three percent of the [current expense] **general fund** budget for the budget year such request is made.

(b) (No change.)

[(c) Any balance allowed pursuant to (a) or (b) above shall be exempt from the Commissioner's determination that a reallocation of resources is insufficient to meet the district board of education goals, objectives and standards.]

6:20-2A.12 Capital reserve account procedures

(a) A district board of education or board of school estimate in a district having such a board may establish by formal resolution a capital reserve account within the capital outlay major account/fund for the accumulation of funds for capital outlay appropriations/expenditures in subsequent fiscal years pursuant to N.J.S.A. 18A:21-2 and 3. The capital reserve account shall be established, administered and accounted for as follows:

1. A true copy of the establishing resolution shall be filed with the Division of Finance pursuant to N.J.S.A. 18A:21-3.

2. A district board of education may establish or increase the balance in the capital reserve account by including in the original annual capital outlay budget, which is certified for taxes, an appropriation of foundation aid revenue not to exceed the amount of foundation aid for capital outlay pursuant to N.J.S.A. 18A:21-3.

3. The capital reserve account may also be established or increased in the original annual capital outlay budget which is certified for taxes by an amount expressly approved by the voters of the district or the board of school estimate pursuant to N.J.S.A. 18A:21-3.

4. The capital reserve account shall be increased by the earnings attributable to the investment of the account's assets pursuant to N.J.S.A. 18A:21-3. Anticipated investment income shall be included in the original annual capital outlay budget which is certified for taxes as miscellaneous income.

5. Additions to the capital reserve account from foundation aid for capital outlay, amounts approved by the voters or board of school estimate and investment income are included in the annual budget statement's appropriation section in the line item "Increase in Capital Reserve."

6. Funds placed in the capital reserve account are restricted to the capital outlay major account/fund and transfers of such funds to other major accounts/funds are prohibited pursuant to N.J.S.A. 18A:22-8.2.

7. Funds in the capital reserve account may be appropriated as revenue only in the annual budget which is certified for taxes pursuant to N.J.S.A. 18A:21-4 in the line item "Withdrawal from Capital Reserve" subject to the following restrictions:

i. Funds withdrawn from the capital reserve account and included in the annual budget shall not be transferred for current expenses or debt service payments pursuant to N.J.S.A. 18A:21-4. In any year that capital reserve account funds are appropriated in the annual budget along with unrestricted fund sources, no transfers from capital outlay to current expense which are permitted by N.J.S.A. 18A:22-8.2 shall be made which reduce the capital outlay appropriation to an amount less than the appropriated capital reserve account funds;

ii. Funds in the capital reserve account which are not appropriated in the original annual capital outlay budget which is certified for taxes shall not be appropriated during the year;

iii. In any year that capital reserve account funds are appropriated in the annual budget, unexpended capital outlay appropriations up to the amount of capital reserve account funds appropriated shall be restored to the capital reserve account. Expenditures are deemed as being charged first to unrestricted capital outlay fund sources with capital reserve account appropriations expended last; and

iv. In any year that capital reserve account funds are appropriated in the annual budget, earnings attributable to the investment of unexpended capital outlay funds up to the amount of capital reserve account funds appropriated (lesser of unexpended capital outlay funds or capital reserve account funds appropriated) shall be placed in the capital reserve account along with earnings attributable to the investment of funds remaining in the capital reserve account.

8. A separate fund shall be established in the capital outlay major account/fund for bookkeeping purposes only in order to account for increases to and withdrawals from the capital reserve account and its balance. The capital reserve account shall be reflected on the annual audit's balance sheet in the capital outlay major account/fund as follows:

i. Dr: Capital Reserve Account; and

ii. Cr: Reserved Fund Balance—Capital Reserve Account.

6:20-4.1 Tuition rate procedures

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

(f) The Commissioner shall determine the estimated actual cost per pupil for each approved private school for the handicapped for the ensuing school year and its tentative tuition rate no later than January 1 preceding the beginning of the ensuing school year. Upon request, the approved private school for the handicapped shall submit to the sending district board of education a copy of the Commissioner's calculation to determine the estimated actual cost per pupil for the ensuing school year.

1. The estimated actual cost per pupil [calculation] shall [be based upon] **equal the product of** the audited actual cost per pupil for the school year prior to the current school year **and the sum of 1.0 and twice the PCI as defined and calculated pursuant to N.J.S.A. 18A:7D-3**.

[2. The calculation shall increase the audited actual cost per pupil by an amount equal to twice the percentage increase represented by dividing the State average net current expense budget per pupil for the current school year by the State average net current expense budget per pupil for the school year prior to the current school year.]

[3.]**2.** The tentative tuition rate shall include:

i.-ii. (No change.)

(g)-(l) (No change.)

6:20-5.3 Method of determining the district of residence

(a) The district of residence for school funding purposes shall be determined according to the following criteria:

1. The "present district of residence" of a child in a residential State facility defined in N.J.S.A. [18A:7A-3]**18A:7D-3** and referred to in paragraph one of N.J.S.A. 18A:7B-12(b) shall mean the New Jersey district of residence of the child's parent(s) or guardian(s) as of the last school day [of September] **prior to October 16**.

2.-3. (No change.)

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

(g) As prescribed by [P.L. 1989, c.290 (]N.J.S.A. 18A:7B-12[)], the "district of residence" for a homeless child whose parent(s) or guardian(s) temporarily moves from one school district to another shall be the district in which the parent(s) or guardian(s) last resided prior to becoming homeless. This district shall be designated as the district of residence for as long as the parent(s) or guardian(s) remains homeless.

6:20-5.6 Teaching staff member minimum salary State aid

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

(g) For the purpose of (f) above, a district board of education shall determine the amount of funds replaced by State aid as follows:

1. (No change.)

2. For each newly employed teaching staff member, determine the amount of State aid which is anticipated on the budget form submitted pursuant to N.J.S.A. [18A:7A-28]**18A:7D-27** for the position in which the newly employed teaching staff member is employed;

3. (No change.)

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

6:20-8.3 Change orders and open-end contracts

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

(c) Professional and EUS contract change orders shall be governed by the following:

1. (No change.)

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2. If the change is not within the scope of activities of the original contract:

i. If the contract was awarded without competitive bidding being required by law or rule (as in the case for professional services and certain authorized extraordinary, unspecifiable services per N.J.S.A. [18A:5a(1)]**18A:18A-5a(1)** and (2), any change beyond the original scope of activities may be made by amendatory contract;

ii. (No change.)

3.-4. (No change.)

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

(a)

STATE BOARD OF EDUCATION

Pupil Transportation

Proposed Amendments: N.J.A.C. 6:21-7.2 and 19.1 through 19.5.

Proposed Repeals: N.J.A.C. 6:21-7.1, 7.3 through 7.6.

Authorized By: State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:39-21 and 18A:7D-18.

Proposal Number: PRN 1991-315.

Submit written comments by July 3, 1991 to:
Irene Nigro, Rules Analyst
New Jersey Department of Education
225 West State Street, CN 500
Trenton, New Jersey 08625-0500

The agency proposal follows:

Summary

The Quality Education Act of 1990 (QEA), P.L. 1990, c.52, established a new formula for distributing State aid to New Jersey school districts. Under the old transportation aid formula, districts were reimbursed 90 percent of approved transportation costs two years after expenditure. Transportation aid will now be provided based on a State-established dollar amount per pupil according to the funding formula contained in the QEA.

The following amendments are proposed:

N.J.A.C. 6:21-7.1 and 7.3 through 7.6 have been proposed for repeal because they are no longer applicable with the exception of the definition of "remote" which has been included under the new N.J.A.C. 6:21-7.1(b).

N.J.A.C. 6:21-7.2 is proposed as the new section N.J.A.C. 6:21-7.1 and is being amended to clarify that transportation aid is based on a State-established dollar amount per pupil calculated according to the formula contained in the QEA. It also includes the existing criteria for pupil eligibility. Pupils who are eligible for transportation include elementary (K-8) school pupils who live more than two miles from their school of attendance, secondary (9-12) school pupils who live more than two and one-half miles from their school of attendance. Special education students are eligible for transportation aid if they meet the eligiblity requirements of all students (beyond two miles for elementary and two-and-one-half miles for secondary), or if transportation is required by their Individual Education Plans in accordance with N.J.A.C. 6:28-3.8. A reference to the new funding formula which is contained in the QEA has been added. The word "educationally" has been deleted to clarify that all pupils determined to be handicapped in accordance with N.J.S.A. 18A:46 and require transportation services according to N.J.A.C. 6:28-3.8 are eligible for transportation. In addition, language which requires district boards of education to submit data through the county superintendent for the calculation of state transportation aid has also been added.

Subchapter 19 was rearranged and language was added to clarify responsibilities in the following manner:

N.J.A.C. 6:21-19.1 establishes the Commissioner's authority to provide for a thorough review of transportation contracts, operations and fiscal practices. It gives the Commissioner the authority to withhold or adjust State transportation aid. Language was added to give examples of situations in which aid might be adjusted.

N.J.A.C. 6:21-19.2 describes the district's procedures for submitting contracts and reports necessary for the calculation of State transportation aid. Language was added which clarifies the extent of the county superintendent's review of contracts and the submission of reports for the calculation of State aid through the county office.

N.J.A.C. 6:21-19.3 describes the regulatory review process. The new N.J.A.C. 6:21-19.3(a) was recodified from 19.2(c). New language in subsection (c) requires the Bureau of Pupil Transportation to notify district boards of education and county superintendents of their findings when conducting on-site annual reviews. New language in subsection (d) was added to require the Bureau of Pupil Transportation to verify data submitted by district boards of education for transportation aid in accordance with the QEA.

N.J.A.C. 6:21-19.4 requires districts to submit a corrective action plan when deficiencies are identified by the bureau. New language was added which states that a copy of the plan must be sent to the Bureau of Pupil Transportation.

N.J.A.C. 6:21-19.5 refers to the compliance investigation procedures. Repetitive language was deleted.

Social Impact

QEA will produce a positive social impact; these amendments codify the statutory changes. Districts that spend efficiently will have the option of using any excess transportation aid for additional education programs or property tax relief.

Economic Impact

The QEA bases State aid for transportation on a dollar per pupil measure and requires that funding be provided on a current year basis. If a district spends efficiently, it is expected that state aid should cover 100 percent of transportation costs for eligible pupils. The reports required for the calculation of State aid under the QEA reduces paperwork for local districts previously required for this calculation. These amendments codify this funding change.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not necessary. The proposed amendments do not affect small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These rules impact solely upon local boards of education.

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

[6:21-7.1 Limit of apportionment of State aid

(a) The Commissioner of Education shall establish by January 15 of each year the maximum State aid allowable for:

1. Salaries of district transportation personnel;

2. New vehicles purchased for the transportation of pupils.

(b) The Commissioner of Education shall issue a report of established rates to the State Board of Education in February of each year applicable to the fiscal year beginning July 1 next.]

6:21-[7.2]**7.1** [State aid] **General provisions**

(a) Each district board of education shall be paid State aid for [costs directly related to] the transportation of **eligible** pupils to and from school [when the necessity, cost, and method have been approved by the county superintendent of schools pursuant to N.J.S.A. 18A:58-7] **based on a State-established dollar amount per pupil calculated according to the funding formula contained in N.J.S.A. 18A:7D-18. District boards of education shall submit data through the county superintendent's office for the calculation of State transportation aid on forms prescribed by the Commissioner of Education.**

[(b) All other transportation costs for educational purposes, excluding less than remote transportation, shall be eligible for equalization aid and shall be included in the net current expense budget. This provision shall become effective on July 1, 1991.]

(b) For the purpose of State aid allocation, the words "remote from the school house" shall mean beyond 2½ miles for high school pupils (grades nine through 12) and beyond two miles for elementary pupils (grades kindergarten through eight), except for handicapped pupils. The "miles from home to school" shall be the shortest distance in miles and tenths from the entrance of the pupil's home to the nearest public entrance of the assigned school by a public roadway or public walkway.

(c) State aid for student transportation will be based on the following categories:

1. Public school students—Those resident students who live remote from their assigned school of attendance, as defined in (b) above;

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2. Nonpublic school students—Those resident students who live remote from their school of attendance, as defined in (b) above, and meet the requirements of N.J.S.A. 18A:39-1; and

3. Special education students—Those resident students who live remote from their assigned school, as defined in (b) above, or require transportation services in accordance with N.J.A.C. 6:28-3.8.

[6:21-7.3 State aid approval—route/contract

(a) State aid for approved transportation routes shall be 90 percent of the approved cost of the route.

(b) For the purpose of State aid reimbursement, the words "remote from the school house" shall mean beyond 2½ miles for high school pupils (grades nine through 12) and, beyond two miles for elementary pupils (grades kindergarten through eight), except for educationally handicapped pupils. The "miles from home to school" shall be the shortest distance in miles and tenths from the entrance of the pupil's home to the nearest public entrance of the assigned school by a public roadway or public walkway.

(c) State aid for transportation shall be limited to an approved regularly scheduled trip to school and a trip from school immediately following regularly scheduled sessions.

(d) State aid shall be approved for transporting handicapped children from a public school to an approved school or a center for special services or instruction.

(e) State aid shall be approved for transporting vocational students from a public school to a county vocational school for vocational instruction provided the students spend at least one-half of the school day at the vocational center.

6:21-7.4 State aid approval—vehicles

(a) State aid shall be approved for the purchase, lease and rental of vehicles used for the transportation of pupils to and from school. The district board of education shall request the prior approval of the county superintendent for the sale and or purchase of vehicles on the form prescribed by the Commissioner of Education.

(b) School vehicles shall be sold pursuant to N.J.S.A. 18A:18A-45. Any amount realized by a school district from the sale of a district owned vehicle for which State funds have been or shall hereafter be apportioned for such vehicle, shall be deducted on a prorated basis as established by the initial purchase. Such amount shall be deducted from the next ensuing application for State aid.

6:21-7.5 State aid approval—salaries

(a) Salaries of the following district transportation personnel shall be approved for State aid when the following criteria are met.

1. Supervisor—The position of supervisor requires the prior approval of the county superintendent of schools. It shall be a full-time position with a minimum of 35 working hours per week, 12 months a year in districts providing transportation to and from school for a minimum of 1,000 pupils.

2. Assistant Supervisor—The position of assistant supervisor requires the prior approval of the county superintendent of schools. It shall be a full-time position with a minimum of 35 working hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of 5,000 pupils to and from school.

3. Secretary—The position of secretary shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of 1,000 pupils to and from school.

4. Clerk Typist—The position of clerk typist shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts which have an approved full-time supervisor and transport a minimum of 5,000 pupils to and from school.

5. First Mechanic—The position of first mechanic shall be a full-time position with a minimum of 35 hours per week, 12 months a year in districts owning a minimum of 10 vehicles used for the transportation of pupils.

6. Second Mechanic—The position of second mechanic requires that a district own a minimum of 25 vehicles used for the transportation of pupils.

7. Helper—The position of helper requires that a district own a minimum of 15 vehicles used for the transportation of pupils.

8. Additional personnel for the maintenance of pupil transportation vehicles require the approval of the county superintendent of schools and the Bureau of Pupil Transportation.

9. A school bus/vehicle driver must meet all the requirements of this chapter.

10. Attendant/Aide—An attendant/aide is assigned to a school vehicle by the district board of education for the health, safety and welfare of handicapped students. This position requires the prior approval of the county superintendent of schools.

6:21-7.6 State aid approval—other eligible items

(a) In order to be eligible for State transportation aid, the following items shall be directly related to the transportation of pupils to and from school and are subject to documented justifications:

1. Fuel, oil, lubricants, repair parts, tires, and tubes;

2. Rent/lease and utilities (if metered/billed separately and used exclusively for pupil transportation operation) of a transportation garage. Districts must own a minimum of 10 vehicles used for the transportation of pupils;

3. School bus/vehicle insurance;

4. Only original purchase of approved pupil transportation routing, scheduling and vehicle maintenance, computer software programs and the maintenance of these approved computer software programs;

5. Printing and mailing costs related to pupil transportation;

6. School bus/vehicle driver's physical examination;

7. School bus/vehicle driver's fingerprints;

8. District map for routing and scheduling;

9. Advertising related to transportation;

10. First aid supplies and emergency equipment mandated on transportation vehicles;

11. Tolls paid for, to and from school transportation;

12. Two-way radios and cellular phones. Purchases require the prior approval of the county superintendent of schools;

13. Cost related to emergency exit drills;

14. Safety equipment: Stop arms, roof hatches, crossing gates;

15. Special education travel expense in conjunction with out-of-district placements for educational reasons pursuant to N.J.A.C. 6:28-3.8(a)5; and

16. Seat belts/child restraint systems as mandated for special needs students.]

6:21-19.1 General [Requirements] **authority**

(a) The Commissioner shall provide for a thorough [review of district boards of education transportation contracts and reports for form and accuracy and to determine compliance with this chapter and N.J.S.A. 18A:39-1 et seq.

(b) The Commissioner shall provide for an] evaluation of district boards of education pupil transportation operations and fiscal procedures to determine compliance with the provisions of this chapter **and N.J.S.A. 18A:39-1 et seq**.

[(c)]**(b)** The Commissioner may withhold **or adjust** transportation aid for [any] district [board] **boards** of education [who is] **which are** noncompliant with the provisions set forth in this chapter. **For example, transportation aid may be adjusted or withheld for the improper award of contracts, use of unauthorized vehicles or inaccurate data submitted for State aid.**

6:21-19.2 [Evaluation Procedures] **General district procedures**

(a) District boards of education shall annually submit pupil transportation [reports] **contracts** to the county superintendent of schools as required by law and regulation for review as to form and [accuracy including recommendations for approval of state transportation aid] **compliance with N.J.A.C. 6:21-13 through 17.**

(b) (No change.)

(c) [The county superintendent of schools shall conduct a review of district boards of education transportation costs every five years in accordance with N.J.A.C. 6:8-4.3(a)10vi.] **District boards of education shall submit reports, through the county superintendent's office, necessary for the calculation of State transportation aid and the analysis of the numerical values (cost factors) contained in the transportation aid formula in accordance with N.J.S.A. 18A:7D-18 and 19.**

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6:21-19.3 Regulatory review

(a) The county superintendent of schools shall conduct a review of district boards of education transportation operations in accordance with N.J.S.A. 6:8-4.3(a)10vi.

[(a)]**(b)** (No change in text.)

[(b)]**(c)** The Bureau of Pupil Transportation **field representative** shall conduct on site annual reviews of district boards of education pupil transportation procedures, operations and fiscal records as indicated by the Commissioner **and shall notify the district board of education and county superintendent of the findings.**

(d) The Bureau of Pupil Transportation shall verify data, required by the Quality Education Act, submitted by district boards of education for State transportation aid.

6:21-19.4 Corrective plan

Any district board of education found to be deficient as a result of the Bureau of Pupil Transportation review shall submit a corrective action plan addressing the specific recommendations to the county superintendent of schools **and the Bureau of Pupil Transportation.**

6:21-19.5 Compliance investigation

(a) The Division of Compliance shall conduct a complete inspection of pupil transportation procedures, operations, and costs for any district board of education identified as deficient in the administration of pupil transportation as a result of the Bureau of Pupil Transportation review or State Department of Education monitoring process[.]

[(b) The compliance investigation will be conducted under the supervision of the Director of the Division of Compliance] under any one of the following circumstances:

1.-3. (No change.)

HIGHER EDUCATION

(a)

BOARD OF DIRECTORS OF THE EDUCATIONAL OPPORTUNITY FUND

Financial Eligibility for Undergraduate Grants

Proposed Amendment: N.J.A.C. 9:11-1.5

Authorized By: Board of Directors of the Educational Opportunity Fund, Delbert Payne, Chairperson.

Authority: N.J.S.A. 18A:71-33.

Proposal Number: PRN 1990-311.

Submit comments by July 3, 1991 to:
Brett E. Lief
Administrative Practice Officer
Department of Higher Education
20 West State Street
CN 542
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Educational Opportunity Fund Program is open to students from educationally and economically disadvantaged backgrounds. Participants in the program are eligible to receive financial aid and other support services for attending institutions of higher education in New Jersey. The Board of Directors of the Educational Opportunity Fund determines the income levels for which eligibility to participate in the program is based. This proposed amendment increases the maximum income levels for participation in the program.

Social Impact

The proposed amendment, by increasing the maximum income levels for participation in the Educational Opportunity Fund Program, recognizes the changes in family income levels in the State. The amendment will enable the Educational Opportunity Fund Program to continue to offer higher educational opportunities to disadvantaged citizens of New Jersey consistent with the spirit and intent of the original legislation.

Economic Impact

The proposed amendment changes eligibility requirements for the Educational Opportunity Fund Program but does not change the amount of aid which each program participant receives. The increase in the income levels will serve to expand the potential pool of applicants to the program and increase the number of current program participants who will have continued eligibility. The proposed amendment does not have a direct economic impact on the total number of awards, and, thus, the total amount of costs, associated with the program. Program funding is dependent upon the amount of funding provided by the Legislature and the Governor. The proposed amendment expands the number of potential program participants but does not necessarily increase the number of actual program participants.

Regulatory Flexibility Statement

In accordance with the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., the Board of Directors has determined that the proposed amendment will not impose reporting, recordkeeping, or other compliance requirements on small businesses. The proposed amendment provides for increased eligibility requirements for Educational Opportunity Fund students attending New Jersey institutions of higher education.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial E.O.F. grant if the gross income of his or her parent(s) or guardian(s) does not exceed the applicable amount set forth below in the E.O.F. Income Eligibility Scale. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. E.O.F. Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2 persons	[$15,210] **$15,320**
3 persons	[17,430] **17,650**
4 persons	[19,650] **19,980**
5 persons	[21,870] **22,310**
6 persons	[24,090] **24,640**
7 persons	[26,310] **26,970**

2. For each additional member of the household, an allowance of $[2,220]**2,330** shall be added to this amount in order to determine eligibility for E.O.F. for the [1990-91] **1991-92** Academic Year. This allowance shall be adjusted annually to reflect changes in the Standard Maintenance Allowance as published by the College Scholarship Service. In addition, the gross income level for each household size also shall be adjusted to reflect the change in the annual Standard Maintenance Allowance.

3. (No change.)

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

(d) An independent student is financially eligible for an E.O.F. grant providing his or her gross annual income (including spouse) for the calendar year prior to the academic year for which aid is requested and the calendar year during which aid is received does not exceed the following schedule:

1. [$9,340] **$9,450** family size (including student) 1;
2. [$11,560] **$11,780** family size (including spouse) 2;
3. [$13,780] **$14,110** family size (including spouse) 3;
4. [$16,000] **$16,440** family size (including spouse) 4;
5. [$2,220] **$2,330** for each additional dependent. This amount should be adjusted annually to reflect changes in the Independent Student Allowance as published by the College Scholarship Service.
6. (No change.)

(e)-(g) (No change.)

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HUMAN SERVICES

(a)

DIVISION OF ECONOMIC ASSISTANCE

Program Administration

Programs Administered/Supervised by the Department of Human Services

Proposed New Rules: N.J.A.C. 10:84

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4B-2 and P.L. 1990, c.66, effective July 1, 1991.

Proposal Number: PRN 1991-321.

Submit comments by July 3, 1991 to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

P.L. 1990, c.66, in part, amends and supplements the statutory law concerning public assistance programs. The law authorizes the Commissioner of Human Services to establish rules and regulations to ensure that public assistance programs are administered appropriately and efficiently. The Commissioner is also authorized to take certain definitive actions when it is determined that those programs are not being administered in accordance with applicable State and Federal laws and regulations.

As a result of the legislation, the proposed new rules at N.J.A.C. 10:84-1 set forth in the New Jersey Administrative Code the obligation and authorities of the Commissioner in accordance with P.L. 1990, c.66. Those authorities include the establishment of rules, regulations and directives, including incentives and sanctions, pertaining to the administration of public assistance programs. In addition, the Commissioner has the power to assume direct administration of county welfare operations in situations in which a county agency has failed to follow applicable State and Federal laws and regulations; the proposed new rule at N.J.A.C. 10:84-1.2 sets forth the Commissioner's authority in this area.

Social Impact

Provided that county welfare agencies (CWAs) continue to administer public assistance programs in an accessible, efficient and cost-effective manner, neither families in receipt of public assistance benefits nor the general public will be impacted by the proposed new rules. In situations where public assistance families may be adversely affected because programs are not being administered in an efficient and effective manner, the Commissioner has the authority to assume operation of the programs to correct any such deficiencies.

Economic Impact

Provided that the CWAs continue to operate public assistance programs in accordance with State and Federal regulations, CWAs and the general public will not be impacted by this rule. In the event the Commissioner assumes direct administration of a CWA because of failure to properly administer a program, the county may be billed for expenses incurred by the Department for corrective measures taken, but a specific dollar amount cannot be projected.

Regulatory Flexibility Statement

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The new rules impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore, a regulatory flexibility analysis is not required. The proposed new rules govern public assistance programs designed to assist a low-income population by a governmental agency rather than a private business establishment.

Full text of the proposed new rules follows (deletion shown in brackets [thus]; additions shown in boldface **thus**).

CHAPTER 84
[(RESERVED)] **PROGRAM ADMINISTRATION**

SUBCHAPTER 1. EFFICIENCY AND EFFECTIVENESS OF PROGRAM OPERATIONS

10:84-1.1 Authority of the Commissioner

(a) Under the statutory authority of P.L. 1990, c.66, the Commissioner of the Department of Human Services (DHS) is obligated to ensure that programs that serve eligible low-income persons administered by counties throughout the State are provided to eligible persons in an accessible, efficient, and cost-effective manner.

(b) The Commissioner has the authority to establish rules, regulations, and directives, including incentives and sanctions, to ensure that county agencies provide benefits to eligible recipients in a manner consistent with State and Federal law.

(c) The Commissioner shall have the authority to review and approve CWA budgets.

(d) The Commissioner shall have the power to assume direct administration of all county welfare agency operations in situations in which the Commissioner determines that a county agency is failing to effectively administer or to substantially follow State and Federal law in its administration of those programs for which the Department of Human Services has responsibility.

10:84-1.2 State assumption of direct administration of county operations

(a) For each fiscal year, or portion thereof, in which a service or function associated with the provisions of P.L. 1990, c.66, is assumed by the State, the county shall deduct from its final appropriations upon which its permissible county tax levy is calculated the amount which the county expended for that service or function during the last full budget year, or portion thereof. If the Commissioner determines that any county welfare agency has failed to effectively administer or to substantially follow State and Federal law in its administration of those programs for which the Department of Human Services has responsibility, the Commissioner shall have the authority to take the following actions:

1. Make the administrative and programmatic changes necessary to ensure compliance with State and Federal law and regulation;

2. Bill the county for the reasonable expenses incurred by the Department in ensuring compliance;

3. Hire any consultant or undertake any studies of the agency's operations deemed appropriate:

4. Direct expenditures of the CWA in a reasonable and prudent manner to effectuate the purposes of any public assistance program, including reallocating funds within the CWA budget and determine additional amounts of revenue needed to ensure the efficient and effective administration of such programs within the agency's budget;

5. Operate the CWA; and

6. Do all acts necessary or appropriate to ensure that the needs of eligible public assistance recipients are met pursuant to State and Federal law.

(b) The CWA, county welfare board or other appropriate CWA governing body, and the county governing authority shall be notified, in writing, of an impending State assumption of direct administration of county welfare operations. The notice shall include:

1. The basis for the assumption action;

2. The date the assumption will commence; and

3. A statement advising the county that it shall be responsible for the payment of reasonable expenses incurred by the State to make administrative and/or programmatic changes necessary to ensure that the CWA's operations are provided in an effective and efficient manner and comply with State and Federal law and regulations.

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(a)

DIVISION OF ECONOMIC ASSISTANCE

General Assistance Manual

State Funding, Chargeback, Penalty Periods, LRRs Evaluation, Fiscal Procedures, Posting of a Sign, Recovery of Overpayments, Match Reports

Proposed Amendments: N.J.A.C. 10:85-1.1, 1.2, 2.1, 2.2, 2.6, 3.2, 3.3, 3.5, 3.6, 4.2, 4.3, 5.3, 6.1, 6.3 through 6.8, 7.2 and 9.4

Proposed New Rules: N.J.A.C. 10:85-6.9, 12.1 and 12.2

Proposed Repeal and New Rule: N.J.A.C. 10:85-1.3 and 6.2

Proposed Repeal: N.J.A.C. 10:85-2.5

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:8-111(d), P.L. 1990, c.66, effective July 1, 1991.

Proposal Number: PRN 1991-317.

Submit comments by July 3, 1991, to:
Marion E. Reitz, Director
Division of Economic Assistance
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Current text at N.J.A.C. 10:85 sets forth in rules the obligation for every municipality to provide public assistance in accordance with State laws to eligible persons while in New Jersey. In addition, N.J.A.C. 10:85 establishes a State aid program which provides 75 percent reimbursement to participating municipalities for non-administrative costs incurred in the administration of the General Assistance (GA) program.

P.L. 1990, c.66, in part, amends and supplements the statutory law concerning the GA program. The law institutes 100 percent State funding for non-administrative GA benefit payments and establishes that the State shall provide, through each municipality, public assistance to eligible persons. The law further authorizes the Commissioner of Human Services to establish rules and regulations to ensure that the GA program is administered appropriately and efficiently. The Commissioner is also authorized to take certain definitive actions when it is determined that the GA program is not being administered in accordance with applicable State laws and rules.

As a result of that legislation, the proposed amendments and new rules at N.J.A.C. 10:85 add text to establish 100 percent State funding of non-administrative costs in the GA program, revise text concerning the State aid program and set forth procedures related to modified State aid requirements. Text is also added to set forth in rules the authorities of the Commissioner in accordance with P.L. 1990, c.66.

As a result of P.L. 1990, c.66, certain text at N.J.A.C. 10:85 is being amended to ensure that GA is provided in an accessible, efficient and cost-effective manner. Chargeback, including municipal welfare department (MWD) servicing and payment responsibility, provisions are being deleted inasmuch as MWDs will no longer be required to share in direct assistance payment costs. MWDs, where a medical facility is located, will assume application processing and payment responsibilities for a case. Periods of client ineligibility are being proposed to address instances of receipt of assistance from more than one MWD in any one month or where voluntary cessation of employment, without good cause, has occurred prior to application. In an effort to establish equity in the evaluation of legally responsible relatives' (LRRs') capacity to support, Schedule IV, LRR Monthly Income Standards, at N.J.A.C. 10:85-9.4 is amended. The proposed amendment to Schedule IV establishes one Monthly Income Standard for all LRRs.

Text is also revised in areas governing fiscal procedures, such as: payment of State aid, expenditure reporting, establishment and maintenance of Public Assistance Trust Fund Accounts; and refunding of Supplemental Security Income Interim assistance and other recoveries.

Proposed amendments to N.J.A.C. 10:85 are summarized below:

N.J.A.C. 10:85-1.1(b)1 establishes 100 percent State funding for non-administrative costs.

N.J.A.C. 10:85-1.1(g)2 establishes a 90-day ineligibility penalty for individuals identified as having received GA from multiple MWDs during the same benefit period for the same items of need.

N.J.A.C. 10:85-1.2(e) amends text concerning State/municipal financial participation inasmuch as legislation provides for 100 percent funding of assistance and municipal option to participate is, therefore, no longer relevant.

N.J.A.C. 10:85-1.3 revises text concerning application for State aid and provides for 100 percent State funding for non-administrative costs.

N.J.A.C. 10:85-2.1, wherein 10:85-2.1(b) is being deleted, modifies language concerning municipal obligation to provide assistance due to 100 percent State funding.

N.J.A.C. 10:85-2.2(a) clarifies text with respect to the establishment of the local assistance board in Faulkner Act municipalities.

N.J.A.C. 10:85-2.2(c) and (d)1 delete language concerning need to make an annual application for State aid.

N.J.A.C. 10:85-2.2(f) requires the posting of a sign(s) identifying who is available to deal with emergencies beyond normal office hours.

N.J.A.C. 10:85-2.5 deletes outdated text as a result of the provision for 100 percent State funding.

N.J.A.C. 10:85-2.6(a)4 adds a reference concerning processing of recovery of overpayments due to willful withholding of information or fraud.

N.J.A.C. 10:85-3.2(b)3 provides for a 90-day disqualification period when an applicant voluntarily ceases employment within 90 days prior to the date of application, aligning GA program policy with that in the Aid to Families with Dependent Children N-segment.

N.J.A.C. 10:85-3.2(e)1i provides language to clarify that certain factors of eligibility must be verified and documented by the MWD.

N.J.A.C. 10:85-3.2(e)4i and ii, and 3.5(b)5, provide for an earned and unearned income verification clearance mechanism in the Department's Division of Economic Assistance Integrity Control Section.

N.J.A.C. 10:85-3.2(f) adds illustrative text to clarify the phrase "intention to remain" in the municipality. Text is deleted as to the client's abode prior to entering a medical facility, identification of servicing and responsible municipalities, and the process governing determination of municipal financial responsibility in municipal disputes.

N.J.A.C. 10:85-3.3(f)4iv deletes text concerning MWD financial (chargeback) responsibility.

N.J.A.C. 10:85-3.6(a)1ii is recodified and amended to establish text for certain actions to be undertaken by the MWDs in attempts to recover overpayments amounting to $500.00 or more from former GA recipients.

N.J.A.C. 10:85-4.2(a)2i provides examples of instances where weekly or biweekly assistance payments may be applicable.

N.J.A.C. 10:85-4.3(a)2 designates a time period of six months for submittal of bills for commodities and non-medical services to the MWD for payment.

N.J.A.C. 10:85-4.3(b) clarifies text due to 100 percent State funding.

N.J.A.C. 10:85-4.3(c) establishes that a client shall be provided with a portion of his or her benefit amount in the form of cash or check for incidental items, such as laundry and personal needs. In addition, text is added to require MWDs which use vouchers for payments of assistance to establish a Petty Cash Fund Account to facilitate the issuance of funds in the form of cash or check.

N.J.A.C. 10:85-5.3(a) provides that bills for medical care rendered after July 1, 1991 shall be submitted to the MWD within six months after the date of the service.

N.J.A.C. 10:85-5.3(g)3 deletes reference to the former Bureau of Medical Affairs and replaces it with the appropriate unit.

N.J.A.C. 10:85-5.3(i)1 provides clarification of procedure for submittal of laboratory charges.

N.J.A.C. 10:85-6.1(b) revises text concerning withholding of payments of State aid from municipalities inasmuch as the GA program is subject to 100 percent State funding.

N.J.A.C. 10:85-6.1(c) adds authority of the Commissioner to approve municipal welfare agency budgets, in accordance with the provisions of P.L. 1990, c.66, and stipulates that such approval will be contingent on MWD's submission and DEA's approval of Form GA-15.

N.J.A.C. 10:85-6.2(a) sets forth text as to 100 percent State funding for the GA program effective July 1, 1991 and stipulates that approved GA commitments prior to that date will be State matched at 75 percent.

N.J.A.C. 10:85-6.3 establishes appropriate fiscal procedures specific to the maintenance of Public Assistance Trust Fund Accounts as a result of 100 percent State funding of GA non-administrative costs.

N.J.A.C. 10:85-6.4 establishes fiscal and statistical procedures specific to GA expenditure reporting requirements.

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N.J.A.C. 10:85-6.5(e) establishes fiscal procedures specific to refunding to the State of Supplemental Income Interim Assistance and submittal of other recoveries as a result of 100 percent State funding.

N.J.A.C. 10:85-6.6 establishes appropriate fiscal procedures concerning establishment and maintenance of Petty Cash Fund Account as a result of 100 percent State funding.

N.J.A.C. 10:85-6.7(c) adds record retention periods for Form GA-12, Form GA-30 and Form GA-31.

N.J.A.C. 10:85-6.8(b) deletes language pertaining to fiscal procedures for intermunicipal cases.

N.J.A.C. 10:85-6.8(d) establishes appropriate fiscal procedures concerning the billing and MWD payment of administrative costs for the processing of MC-24 forms.

N.J.A.C. 10:85-6.9 codifies current operational procedures governing the processing of computerized match reports provided to MWDs.

N.J.A.C. 10:85-7.2(b)2 provides for an additional instance as to when a time-limited notice is authorized for issuance to the applicant.

N.J.A.C. 10:85-9.4 amends Schedule IV to establish one monthly income standard schedule for all LRRs for use in calculating their capacity to support.

N.J.A.C. 10:85-12.1 sets forth in regulatory language additional authorities of the Commissioner of Human Services in accordance with P.L. 1990, c.66.

N.J.A.C. 10:85-12.2 sets forth the actions of the State in situations wherein it must assume direct administration of MWD GA operations.

Social Impact

The proposed amendments establishing 100 percent State funding of non-administrative costs for the program are anticipated to have a generally positive fiscal impact on municipal revenue sources. Availability of 100 percent State funding is not, however, expected to result in an impact on clients nor affect the level of services currently provided to them. In situations where recipients may experience an adverse effect because the GA program may not be administered in an efficient and effective manner, the Commissioner now has the reinforced authority to assume operation of the program and/or otherwise correct any administrative deficiencies. The proposed amendment concerning the securing of civil judgments against former GA recipients for the purpose of recovery of GA overpayments in amounts of $500.00 or more will provide for enhanced program integrity and establish the specific regulatory basis for such administrative activity by municipalities. The proposed amendment stipulating that a portion of the assistance grant amount be issued in the form of cash or check to recipients is expected to result in a direct benefit inasmuch as it will enable them to have disposable funds available for incidentals, such as laundry and personal needs items.

The proposed amendment to the LRR's evaluation schedule is not expected to impact on client couples living in the same home setting inasmuch as the income of such couples is already accounted for in the eligibility and level of benefit calculation regardless of LRR provisions. There may be a slightly positive social monetary impact in those situations where one spouse is residing in a medical institution, is in a long term care arrangement, or is otherwise living apart from his or her spouse since such spouse would retain a larger portion of income based on the proposed, more liberal, relative evaluation scheme.

Revisions of chargeback procedures, which established servicing and payment responsibilities for certain MWDs, are expected to minimize administrative burdens, since they will eliminate an ambiguous process that often resulted in intermunicipal payment responsibility disputes. The proposed amendments concerning chargebacks are in keeping with a recommendation made by a representative number of municipal welfare directors that the agency where a facility (such as, a nursing home or drug/alcohol treatment center) is located, assume both servicing as well as payment responsibilities for affected cases. The proposed amendments which initiate periods of ineligibility for voluntary cessation of employment, without good cause, and for a client's receipt of assistance benefits from more than one municipality during the same payment period are measures designed to ensure program integrity and are not expected to significantly impact the general caseload.

Economic Impact

It is anticipated that the proposed amendments providing for State funding for the GA program at 100 percent for non-administrative costs (in accordance with P.L. 1990, c. 66) will result in an increase in State costs approximating $30.962 million for Fiscal Year (FY) 1992. It is estimated that savings in an equal amount will be realized by the municipalities in GA expenditures in the same FY.

Fiscal procedures established as a result of the 100 percent direct program assistance cost assumption are expected to have a minimal impact on municipal administration since those procedures continue to be based on essentially the same fiscal accountability scheme currently in operation. Municipalities may, however, realize a temporary front-end administrative expense due to amended fiscal procedures concerning establishment and maintenance of two Public Assistance Trust Fund Accounts until the GA caseload is fully phased-in at 100 percent. The staffing standard requirement may, to some unknown degree, increase municipal administrative expenditures. Estimates for such expenditures, cannot, however, be projected at this juncture. The proposed amendments dealing with 90-day penalty periods, that is, for duplicate receipt of assistance and for voluntary cessation of employment prior to date of application, and the separately proposed process to recover overpayments from former GA recipients are expected to have a minimal fiscal impact. These proposed amendments will generally serve as measures to curtail program abuse and preserve program integrity.

Elimination of chargebacks is not expected to have a significant fiscal impact. It is observed that in light of the 100 percent State funding measure for direct assistance cost the chargeback provision is now an unnecessary policy and will have the tendency to eliminate intermunicipal disputes about respective payment responsibilities. The proposed amendments to LRR Schedule IV that establish an equally applicable standard of income against which the potential ability of all LRRs to support will be calculated is not expected to have a major fiscal impact on recipients living at home. The impact will be on those individuals whose spouses are in certain medical facilities and are seeking public general assistance inasmuch as such LRRs, living at home, will now retain more of their income for living expenses.

Regulatory Flexibility Statement

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

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

10:85-1.1 Purpose of the General Assistance program

(a) (No change.)

(b) Each municipality in New Jersey is required by law (Chapter I of Title 44, Revised Statutes) to provide financial assistance and medical care to all eligible persons [resident] **residing** in the community at the time of application and not otherwise provided for under the laws of this State and to such other persons who may be in the municipality and require emergency assistance. (See N.J.A.C. 10:85-3.2(f) for definition of resident and N.J.A.C. 10:85-4.6 for emergency assistance.)

1. The General Assistance Manual is a compilation of rules based on State law (Chapter 8 of Title 44, **Revised Statutes**) which govern the provision of assistance to needy persons by all municipalities and authorize **100 percent** State [aid to municipalities eligible for such reimbursement] **funding for non-administrative costs incurred by those municipalities in the administration of the General Assistance program**.

(c)-(f) (No change.)

(g) Financial assistance for maintenance requirements or other needs, including medical assistance, shall not be authorized through [general assistance] **General Assistance** when, during the same period, such needs are actually being provided by any other source.

1. (No change.)

2. Receipt of duplicate assistance from more than one MWD in any one month shall render the client ineligible for General Assistance benefits for a period of 90 days beginning with the month subsequent to the month in which the benefit infraction was identified.

i. Client payment records from the various MWDs shall provide the necessary documentation to initiate the 90 day penalty.

10:85-1.2 Administration of municipal welfare

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

(e) [Regardless of State financial participation, municipalities] **Municipalities** shall administer [general assistance] **General Assistance**

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in conformance with standards, policies, procedures[,] and rules developed by the Division of Economic Assistance. This requirement shall include adherence to additional policy directives as distributed by official letters signed by the Director of the Division of Economic Assistance, as well as to the rules set forth in this manual.

10:85-1.3 Funding of the program

[Municipalities may apply for State aid for nonadministrative costs paid out of municipal funds and incurred in the General Assistance program. Participating municipalities shall be entitled to 75% reimbursement of nonadministrative assistance costs to the extent that such costs are paid out of municipal funds and are expended in compliance with State standards. (See N.J.A.C. 10:85-2.1(b) and N.J.A.C. 10:85-6.2 for general conditions of participation.)] **Municipalities shall be provided 100 percent State funding for non-administrative costs expended in compliance with State standards in the administration of the General Assistance program.**

10:85-2.1 Statutory obligation to provide assistance [at municipal expense]

(a) It is the basic obligation of every municipality in the State to provide financial assistance and medical care to the extent established by State regulations for all persons living in that community who are in need. This essential obligation is embodied in N.J.S.A. chapter 1 of Title 44. [Commitments and obligations incurred by any municipality in carrying out responsibilities under this act are entirely at municipal expense, unless conditions for State financial participation are met.]

[(b) State aid, which is made available through provisions of N.J.S.A. chapter 8, Title 44, is not disbursed automatically to all municipalities, but is limited to those municipalities which apply annually for participation in the State program and which upon application are found to be eligible.

1. The amount of State aid which a municipality may receive is 75% of its current year's approved public assistance expenditures, exclusive of the cost of administration, but only to the extent that such expenditures are made from municipal funds not derived from any direct or indirect grant from the federal, State, or county government.]

10:85-2.2 Establishment of local assistance board

(a) Statutory requirements: The law stipulates that each municipality shall appoint a local assistance board (LAB); specifies the composition of the board and the terms of office; empowers the LAB to appoint a director of welfare; and authorizes the municipality to appoint any other necessary employees. These requirements are mandatory upon every municipality [regardless of whether or not State aid is requested for the administration of General Assistance]. **Where the establishment of a LAB is not a requirement under a Faulkner Act municipality, the entity or official designated to serve instead of the LAB shall be so recognized. Therefore, the designated alternate shall represent, in meaning, the LAB as set forth throughout this chapter except in LAB membership composition and/or other duties that are not appropriate under such structure.**

1. (No change.)

(b) (No change.)

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

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

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

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

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

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

2.-6. (No change.)

(e) (No change.)

(f) The LAB is responsible for establishment of the official municipal welfare agency office and designation of hours of operation.

1. (No change.)

2. Day and hours: The office of the municipal welfare department shall be open to the public during the five-day work week at hours specified by the LAB. Additional arrangements shall be instituted by the LAB to ensure that persons in need of assistance are served without delay at times other than normal office hours.

i. Each MWD office shall be required to post a sign(s), in a conspicuous place(s), which lists the telephone number(s) and person(s) who shall be available to handle emergencies beyond normal office hours.

(g)-(i) (No change.)

10:85-2.5 [Request for State Administration] **(Reserved)**

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

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

10:85-2.6 Fraudulent receipt of assistance

(a) To protect the local assistance agency and the public, it is essential to exercise appropriate controls against the commission of fraud. Likewise, the individual's rights must be protected on the basis that a person is presumed innocent until proven guilty.

1.-3. (No change.)

4. Recoupment of overpayments for willful withholding of information or when fraud has been proven through the courts shall be performed in accordance with N.J.A.C. 10:85-3.6(a)1.

10:85-3.2 Application process

(a) (No change.)

(b) Rules concerning responsibilities of the agency are:

1.-2. (No change.)

3. Immediate application: When the individual indicates [his/her] **his or her** decision to apply for [general assistance] **General Assistance**, an application shall be taken immediately.

i. When, upon review of the applicant's statements, it is determined that the applicant has voluntarily ceased employment without good cause, including cessation of employment due to inappropriate work habits, within 90 days prior to the date of application, the MWD shall determine the applicant ineligible for a period of 90 days beginning with the date of the termination of employment.

(1) The MWD shall take into consideration the applicant's mental and/or physical incapabilities as a reason for "good cause."

(2) Good cause reasons claimed by the applicant must be verified in accordance with (e) below.

(3) In an eligible unit of more than one, when one person incurs such a penalty of ineligibility, the grant shall be calculated in accordance with the eligible unit at time of application, then reduced by the penalized person's pro-rata share.

4. (No change.)

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

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

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1. Applicant's statements:

i. The client's statements regarding [his/her] **his or her** eligibility are evidence. For purposes of public assistance, the client's statements must be consistent, and certain facts must be verified and documented **, such as, but not limited to, client identity, residence, and ownership of resources**. The applicant will be informed that the municipal welfare department is required to document the facts regarding certain eligibility criteria and that this process will include contacting collateral sources as necessary.

ii. (No change.)

2.-3. (No change.)

4. Verification of income and resources:

i. Earned income: The worker will verify, either through examination of pay stubs or with the client's employer, the amounts of gross income received.

(1) MWD staff shall make telephone contact with DEA's Bureau of Integrity Control to elicit available wage match information for every new applicant within 30 days of the application date and shall document such information in the case file.

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

(1) **MWD staff shall make telephone contact with DEA's Bureau of Integrity Control to elicit available Unemployment Insurance Benefit (UIB) or Temporary Disability Insurance Benefit (TDI) information for every new applicant within 30 days of the application date and shall document such information received in the case file.** For situations of incomplete or inconsistent information about Unemployment/Disability Insurance benefits from the client himself or herself, or, where the agency experiences difficulty in securing verification, the MWD may send Form PA-24 (Verification of Unemployment/Disability Insurance) to the DEA, Att: **Bureau of** Integrity Control [Section].

iii.-v. (No change.)

5. (No change.)

(f) Resident defined: A resident of a municipality is a person who maintains a permanent customary home in the municipality, a person who is in the municipality with intention to remain **for such reasons as, but not limited to, a potential employment opportunity, or a friend or relative is living in the municipality**, [a person who did maintain such a home prior to entering a medical facility,] or a person who enters a New Jersey medical facility from out-of-[state] **State** and qualifies as a resident in accordance with (f)1[iii]**i** below. No time intervals are relevant so long as the home is not established for a temporary purpose such as for a visit or vacation. A resident may live in his or her own home, a rented home or apartment, the home of a friend or relative, in a boarding home or[, in accordance with (f)1iii below,] in a residential medical facility.

1. [Any facility which is licensed by the New Jersey Department of Health to provide residential therapeutic medical care shall, except as specified below, be considered as a temporary residence of any General Assistance applicant or recipient residing in the facility. An applicant or recipient shall, therefore, be considered a resident of the last municipality in which he or she was a resident prior to entering the facility. (Exception: A GA recipient who continues to reside in a municipality in which GA payment status was acquired prior to May 31, 1978 by reason of having achieved "legal settlement" there as a private patient in a medical institution will continue to be considered as living in that municipality.)] When the last municipality of residence[, other than a medical facility,] was not in New Jersey and the person qualifies in accordance with (f)1[iii]**i** below, that person shall be considered a resident of the municipality in which the medical facility is located. [See (f)5 below for determination of municipal responsibility.]

[i. For a person in such a facility who is a resident elsewhere in New Jersey, the MWD in the municipality in which the facility is located will process all parts of the application (to include authorization and "costing" of the provision of medical services) and all parts of subsequent case review and supervision except the making of payments. The local MWD will send the results of such processing, including all bills and documentation, to the MWD of the responsible municipality for payment and/or other appropriate action. (Exception: Municipalities to which N.J.A.C. 10:85-5.8 applies will be charged for prescriptions for all patients in residential medical facilities, except hospitals subject to a per diem rate, and will bill the municipality responsible for the charge when appropriate. See N.J.A.C. 10:85-6.8(b)2 regarding chargebacks.)

ii. Whenever State reimbursement of a payment is declined as having been improper or not in accord with regulations (see N.J.A.C. 10:85-1.3, 10:85-2.1(b) and 10:85-6.2) the declination will apply to the responsible (paying) municipality, errors by the servicing municipality notwithstanding. Any further adjustments are matters between or among the municipalities involved.]

[iii.]**ii.** (No change in text.)

[iv.]**iii.** If, after full consideration of the factors in (f)1[iii]**i** above, the MWD is satisfied that the individual has become a resident of this State, then the person shall[, for purpose of determination of General Assistance payment responsibility,] be considered a resident of the municipality in which the person is present.

2.-4. (No change.)

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

(g)-(i) (No change.)

10:85-3.3 Financial eligibility

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

(f) Assistance allowance standards are as follows.

1.-3. (No change.)

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

i.-iii. (No change.)

iv. Drug and alcohol treatment centers: When an individual is receiving room and board in a residential center for the treatment of drug or alcohol abuse, whether or not the center is licensed by the New Jersey Department of Health, the total allowance shall not exceed the amount to which the individual would be entitled as an eligible unit of one as given in Schedule I or Schedule II, as appropriate. Of that amount, $25.00 shall be considered as an allowance for personal incidentals and the remainder as the room and board payment to the center. (Note: Licensure of the center by the New Jersey Department of Health as a medical institution will not affect the payment rate [even though it may be a factor in determining which municipality is financially responsible].)

v. (No change.)

5. (No change.)

(g) (No change.)

10:85-3.5 Continuing eligibility

(a) (No change.)

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(b) Redetermination of eligibility: In order to continue granting assistance, the MWD shall make a complete redetermination for each case at least once every six months except that for the chronically ill, recertification by a physician via Form GA-18 shall be made at time intervals in accordance with N.J.A.C. 10:85-5.3(c)1i.

1.-4. (No change.)

5. MWD staff shall make telephone contact with DEA's Integrity Control Section to obtain available wage match, UIB, or TDI information.

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

10:85-3.6 Recoupment of overpayments

(a) Overpayments/underpayments: In all situations of overpayment or underpayments, the facts and circumstances in each case shall be evaluated, and where indicated, action taken as appropriate in accordance with the following manual regulations.

1. Overpayments:

i. The MWD may, at its discretion, recoup overpayments of assistance upon a determination that the overpayment occurred after the client signed Form GA-51 and resulted from the willful withholding of information which would, if revealed, have resulted in a smaller grant or in denial or termination of eligibility.

[ii.]**(1)** Recoupment shall be made from future assistance grants by reducing the payments in amounts of up to [ten] **10** percent [(10%)] of the monthly assistance allowance until the amount of the overpayment is thereby repaid. When earned income disregards are applicable, the MWD may deduct up to an additional [ten] **10** percent [(10%)] of the monthly assistance allowance but no more than the amount of the disregard ($60.00 plus 1/3).

(2) MWDs shall obtain, through a court of law, civil judgment(s) against former GA recipient(s) to recoup GA overpayment amounts of $500.00 or more.

(A) MWDs who cannot locate the delinquent recipient(s) to have such judgment(s) enforced shall submit Form PA-39 to DEA's Bureau of Integrity Control for assistance in such instances. Judgments submitted on Form PA-39 must be docketed in Superior Court.

[iii.]**ii.** Deductions for overpayments which resulted from agency error or for any reason other than willful withholding of information are not authorized.

[iv.]**iii.** Eligibility for medical payments shall not be influenced by grant reductions made on account of previous overpayments.

2. (No change.)

10:85-4.2 Periods for which assistance is granted

(a) General assistance is granted to meet needs of individuals in a variety of situations. The director of welfare shall determine which of the following is appropriate:

1. (No change.)

2. Weekly or biweekly period: When authorized, payment shall be issued on a weekly or biweekly basis, and will be determined by prorating the applicable monthly allowance standard. The total payments to the client in any calendar month shall not exceed the full monthly allowance less any countable income for that monthly period.

i. MWDs may use the weekly or biweekly period for the granting of assistance to persons who demonstrate patterns of noncompliance with the work requirement or in situations where the MWD is experiencing difficulty in reconciling questionable areas of eligibility.

3.-6. (No change.)

10:85-4.3 Methods of payment

(a) Acceptable forms of payment to or on behalf of an eligible unit include:

1. (No change.)

2. An order for a specific item or items or for a specific service (Form GA-11). A check is subsequently drawn to a vendor for the specified commodity or service. Neither the order nor any information provided about the order may limit the client's choice of vendor in any way except that the client may not, by [his/her] **his or her** choice of vendor, incur a charge against the municipality higher than the limits provided in this manual.

i. The MWD shall inform the vendor that all bills must be submitted to the MWD within six months after the date of the service, unless special circumstances are brought to the MWD's attention which warrant an alternate billing timeframe arrangement.

(b) Assistance orders shall be serially numbered when printed. Assistance orders submitted for payment shall bear the signatures of the director of welfare, the recipient and the vendor except that orders for residential services such as room and board or residential health care need not bear the signature of the recipient. Rubber stamp or typescript signatures are not valid unless countersigned by a duly authorized staff member.

[Reimbursement to municipalities will be contingent upon compliance with this regulation.]

(c) The MWD shall provide a sufficient portion of the grant amount in the form of cash or check directly to the client for incidentals such as laundry and personal needs.

1. MWDs that utilize a voucher method of payment for grants shall be required to establish a Petty Cash Fund Account in accordance with N.J.A.C. 10:85-6.6, to provide a portion of the grant amount to the client in the form of cash or check.

10:85-5.3 Other medical payments

(a) The director of welfare shall authorize payment for medical care and professional practitioner services if such care and services are deemed necessary and appropriate and, for services rendered after July 1, 1988, if the bill for each such service reaches the municipal welfare office within one year after the date of the service. **For services rendered after July 1, 1991, the bill for each such service must reach the municipal welfare office within six months after the date of the service.**

1. (No change.)

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

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

1.-2. (No change.)

3. Prosthetics and orthotics (for example, artificial limb, eye or brace): Clients who have a job handicap which may be reduced or diminished if provided with an appliance (that is, prosthesis or brace) should be referred to the Division of Vocational Rehabilitation Services (see N.J.A.C. 10:85-8.4(h)). If accepted for service by that agency, the cost of the appliance is the responsibility of DVRS. Only if the client is rejected as not feasible for the services furnished by DVRS should the municipal welfare agency consider authorizing payment for such an appliance, and then only after consulting with the [Bureau of Medical Affairs] **DEA/GAP Unit**.

(h) (No change.)

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

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

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

ii. For costs incident to admissions to residential drug treatment facilities, [servicing MWDs are to advise the facility to provide the laboratory with the GA recipient's case number and the name and address of the responsible MWD. Laboratories will then submit charges on the appropriate Medicaid form to the responsible MWD for forwarding to the DEA/GAP Unit for costing and processing in customary manner. Where the responsible municipality is also the servicing MWD, laboratory charges should be directed to that MWD] **laboratories will submit charges on the appropriate Medicaid form to the MWD for submittal to the DEA/GAP Unit for costing and processing in customary manner.**

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10:85-6.1 Statutory authority

(a) (No change.)

(b) Further, N.J.S.A. 44:8-112 provides that the Commissioner may require keeping of records and submission of reports, **and** investigate the administration of public assistance within each municipality[, and withhold payment of State aid from municipalities which neglect to keep such records, make such reports, or fail to comply with the standards and requirements prescribed by the Department of Human Services or applicable provisions of the law.]

1. (No change.)

(c) The Commissioner reserves the right to approve municipal welfare agency budgets.

1. Such budget approvals shall be contingent on the MWD's submission and DEA's approval of Form GA-15.

10:85-6.2 State financial participation

[(a) The amount of State aid for General Assistance which an approved municipality may receive shall equal 75 percent of the amount of municipal funds expended and approved for public assistance. The amount of such State aid shall be exclusive of any costs incurred in the administration of the program. Funds provided to the municipality through any other State financial assistance program, through any federal program or through the county government, either directly or indirectly, may not be used to make up the 25 percent local share of public assistance expenditures.] **Effective July 1, 1991, in accordance with P.L. 1990 c.66, the amount of State aid for General Assistance which an approved municipality may receive shall equal 100 percent of the amount of municipal funds approved for public assistance on or after that date. For commitments approved before that date or with date of service prior to July 1, 1991, the amount of State aid for General Assistance which an approved municipality may receive shall equal 75 percent of the amount of municipal funds expended and approved for public assistance. The amount of such State aid shall be exclusive of any costs incurred in the administration of the program.**

10:85-6.3 Public Assistance Trust Fund [Account] **Accounts**

(a) The law provides that every payment made to a municipality as State aid for General Assistance, including all moneys received as a refund or in restitution of any year's assistance expenditures, shall be made payable to the treasurer (but not by name) of the municipality and deposited by him or her in the Public Assistance Trust Fund Account. **Effective July 1, 1991, approved municipalities will have both a Public Assistance Trust Fund I and a Public Assistance Trust Fund II account.**

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

2. Non-transferability of funds: Under no circumstances shall payments made to a municipality as State aid for General Assistance in the current [year] or [in] prior years be deposited or transferred to the municipal current account or used for any purpose other than public assistance grants exclusive of administrative costs. [Likewise, no municipality which receives State aid shall transfer any part of its current year's municipal budget appropriation to any other account or appropriation or use it for any purpose other than public assistance grants exclusive of administrative costs.] **Transfers from Public Assistance Trust Fund I to Public Assistance Trust Fund II are not barred by this subsection.** Transfer of surpluses arising from municipal appropriations in prior years is not barred by this regulation.

3. With exception of those municipalities that have a Public Assistance Trust Fund II zero balance account, State aid advances at 100 percent shall be deposited to the Public Assistance Trust Fund II Account. State aid advances at 75 percent shall be deposited to the Public Assistance Trust Fund I Account.

[3.]**4.** Deposit of refunds and receipts: [All] **Except as noted in (a)3 above,** all payments received by a municipal welfare department or any other municipal department from or on behalf of current or former recipients shall be deposited in the "Public Assistance Trust Fund Account" **designated on Form GA-12** and duly accounted for on a monthly basis.

i. Preparation of statement of refunds and receipts: Each municipal welfare department is required to prepare Form GA-12, General Assistance Program-Statement of Refunds. Refunds are separated according to items eligible and ineligible for State participation **and completed in accordance with instructions provided on the reverse side of Form GA-12**. Form GA-12 shall be [prepared] **distributed** as follows:

(1) (No change.)

(2) A copy forwarded to the Bureau of Business Services/Division of Economic Assistance (BBS/DEA) as follows:

(A) With the exception of (B) below, a copy is due every December (**June for municipalities with such fiscal year end**) and is to be submitted with Form GA-6, observing the December (**June, if applicable**) deadline for receipt of Form GA-6 by the BBS/DEA.

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

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

ii. Adjustment of State reimbursement: [Following the DEA's receipt of Form GA-12 at the close of each calendar year, the appropriate adjustment is made to State reimbursement for committed refunds received during the year. Failure to submit reports will be deemed sufficient cause to withhold State aid in the future.] **In accordance with instructions on the reverse side of Form GA-12, a check in the amount of State aid recovered is to be drawn on Public Assistance Trust Fund I for deposit into Public Assistance Trust Fund II.**

(b) Disbursement may be made from the Public Assistance Trust Fund [Account] **Accounts** only for payment of public assistance costs, exclusive of administrative costs. Disbursements will be made on the authority of the municipal treasurer or other authorized official.

1. Types of disbursements authorized **from Public Assistance Trust Fund I Account**: Disbursements from [this account] **the Public Assistance Trust Fund I Account** are limited to:

i. [Direct payment to eligible clients] **Payment to GA clients or to vendors providing authorized services to GA clients of public assistance costs eligible for zero percent or 75 percent State aid;**

ii. [Direct payment to vendors for goods and/or services provided to or on behalf of eligible clients which are made after specific authorization by the municipal welfare director; and] **Replacement checks;**

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

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

Payment of Supplemental Security Income (SSI) proceeds to SSI recipients, the Social Security Administration or other municipal welfare departments from which the SSI recipient received Interim Assistance and completed a Form GA-30;

iv. The Transfer of GA State aid recovered into the municipality's Public Assistance Trust Fund II Account; and

v. Payment to replenish the petty cash account.

2. Disbursements from the Public Assistance Trust Fund II Account are limited to:

i. Payment to GA clients or to vendors providing authorized services to GA clients of public assistance costs eligible for 100 percent State aid;

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

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

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10:85-6.4 Fiscal and statistical reporting requirements

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

1. (No change.)

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

i. [The list will include all cases for which assistance was granted during the calendar month of the report and for which the reporting municipality is financially responsible. It will include cases for which payments were made to medical facilities whether or not serviced by another municipality in accordance with N.J.A.C. 10:85-3.2(f)1 but shall not include any cases being serviced for another municipality. Payment for medical goods and/or services are to be reported on the Form GA-6 for the month in which the payments are actually made, date of authorization or commitment notwithstanding. Column 1-C (Social Security number) must be completed in the months of January, April, July and October.] **Separate Forms GA-6 shall be submitted in order to separately identify assistance provided that is eligible for 100 percent State aid from the assistance provided that is eligible for 0 to 75 percent State aid.**

ii. Cases must be listed in sequential order according to case number and employability status. Case numbers for all employable cases must be identified with an "E" prefix and all unemployable cases must be identified with a "U" prefix. Cases that are classified as employable must be listed first, followed by the unemployable cases. At the end of each page, totals must be indicated for the number of cases opened, the number of cases closed, the number of single persons aided, family case persons aided, and the commitments reported for each category (Maintenance, Hospitalization, Nursing Home, and so forth). On the bottom section of any GA-6 page that lists both "E" prefixed and "U" prefixed cases and on the final page, totals must be segregated for employables and unemployables, and be followed by a combined page total (grand totals on final page).

iii. The list will include all cases for which assistance was granted during the calendar month of the report and for which the reporting municipality is financially responsible. It will include cases serviced for the municipalities for which payments were made to medical facilities. Payment for medical goods and/or services must be reported on the Form GA-6 for the month in which the payments are actually made, date of authorization or commitment notwithstanding. Column 1-C (Social Security Number) must be completed in the months of January, April, July and October.

3. Statistical summary (Form GA-6A):

i. Form GA-6A is a summary of data contained on Forms GA-6 and GA-7. [Items on all forms, (that is, GA-6, GA-6A, and GA-7) must correspond for use in computing other statistical data. Section VI of Form GA-6A must include information on the monthly total numbers and costs of salaried employees related solely to the administration of the General Assistance Program regardless of the source of funds:] **Separate Forms GA-6A must be submitted in order to identify assistance provided that is eligible for 100 percent State aid from assistance provided that is eligible for 0 or 75 percent State aid. Items on all forms (that is, GA-6, GA-6A and GA-7) must correspond for use in computing other statistical data. Section VI of the Form GA-6A that reports costs eligible for 100 percent State aid must include information on the monthly total numbers and costs of salaried employees related solely to the administration of the source of funds;**

ii. (No change.)

iii. The "Certification of Director of Welfare" section of Form(**s**) GA-6A shall be signed by the director of welfare before submittal to **the** State Division.

10:85-6.5 Reimbursement of assistance for cases pending SSI entitlement

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

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

1.-3. (No change.)

4. In accordance with instructions on Form GA-31 Supplement (Form GA-31 reverse side), a copy of the SSI check shall be attached to Form GA-31 and the GA-31 Supplement completed.

5. The deposit of State share of Interim Assistance recovered shall be as follows:

i. A check representing the State share of Interim Assistance recovered must be drawn on Public Assistance Trust Fund I for deposit into Public Assistance Trust Fund II.

(f) (No change.)

10:85-6.6 Establishment of Petty Cash Fund Account

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

1. (No change.)

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

i. Conditions for approval: Conditions under which the Director of Local Government Services may grant approval are as follows:

(1) (No change.)

(2) No deposits may be made to this account other than funds transferred from the Public Assistance Trust Fund [Account] **Accounts**. [(Note: SSI checks are deposited in the Trust Fund Account)];

(3) A schedule (**two schedules if disbursements were eligible for State aid at 100 percent and 75 percent**) listing all disbursements for a given period or, in the alternative, a schedule(**s**) together with actual vouchers must be submitted to the governing body for approval, after which a check(**s**) will be drawn to reimburse the fund(**s**);

(4) The fund shall be closed out to a zero balance on December 31 of each year (**June 30 if fiscal year end**) and reestablished after January 1 (**July 1 if fiscal year**) of the following year. (Also see [form] **Form** GA-32 for additional requirements.)[.]

3.-4. (No change.)

5. Identification of checks: General [assistance] **Assistance** petty cash fund checks and public assistance trust fund checks shall be of [two] **three** distinct colors for the purpose of readily distinguishing between the [two] **three** accounts.

10:85-6.7 Retention and destruction of case records

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

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

Record	Retention period
Inactive case records	6 years
Denied cases	10 years
Copies of relief orders or vouchers	6 years
General correspondence not relating to policy or active cases	3 years
Form GA-6, Report of Assistance Commitments	6 years
Form 100, Original Invoice for Expenses	6 years
Form GA-12, Statement of Refunds	**6 years**

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Form GA-30, Authorization for Reimbursement of Initial Supplemental Security Income or Initial SSI Post Eligibility	**6 years**
Form GA-31, Repayment of Interim Assistance Authorization	**6 years**

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

10:85-6.8 Pharmaceutical payments

(a) (No change.)

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

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

1. (No change.)

[2. For any charges shown on the MWD statement which are the payment responsibility of another municipality, as for certain medical institution patients, the MWD will bill the responsible municipality noting this action on the GA-20A.

i. A responsible municipality will, upon receipt of a bill for an item appearing on the monthly statement of a servicing municipality, make prompt payment. This transaction must be reported on Form GA-6 by the responsible municipality.

ii. A servicing municipality will, upon receipt of payment from a responsible municipality, deposit the funds in the Public Assistance Trust Fund Account and include the amount on Form GA-12, Statement of Refunds.]

[3.]**2.** Monthly statements shall be retained for the same periods applicable to Form GA-6.

(c) (No change.)

(d) [Periodically, the municipal share of costs up to that time will be deducted from payments of State aid to the respective municipalities.] **Periodically, the administrative costs of processing the MC-24 forms up to that time will either be billed to or deducted from payments of State aid to the respective municipalities.**

1. [Deductions for the State aid payments for prescription costs as listed on the monthly statements will represent the same municipal share (currently 25 percent) as is applicable to other assistance costs.] **For municipalities that maintain a zero balance Public Assistance Trust Fund II Account, a check shall be drawn from the municipal account used for administrative expenses and made payable to the Public Assistance Trust Fund II Account for the total amount billed the municipality for the processing of each Form MC-24, the prescription processing form. The amount of the check must be recorded on GA-12, Statement of Refunds, as administrative costs of the pharmaceutical (Rx) program (abbreviate as "Admin Rx Pgm").**

2. [In addition to the assistance costs deduction discussed above, a separately identified administrative cost will also be deducted. This will represent the cost of processing the MC-24 forms. Since this deduction will result in a reduction in available funds, a check must be drawn from the account used for administrative expenses payable to the Public Assistance Trust Fund Account for the total amount of the administrative cost of processing the forms.] **For municipalities that receive either monthly or quarterly advance payments of State aid for deposit into the municipality's Public Assistance Trust Fund II Account, the total amount of the administrative costs of processing the MC-24 forms will be deducted from one State aid advance payment. Therefore, a check shall be drawn on the municipal account used for the payment of administrative expenses, made payable and deposited to the Public Assistance Trust Fund II Account, and recorded as a refund on Form GA-12, Statement of Refunds, to the Public Assistance Trust Fund II Account for "Admin Rx Pgm."**

10:85-6.9 Computerized match reports

(a) MWDs shall complete investigation of the following computerized match reports and submit their findings, along with an indication as to the appropriate action undertaken, to the DEA's Bureau of Integrity Control within 60 days of receipt:

1. GA-Wage Match Report: A match of the GA files with the Department of Labor's wage files. The GA-Wage Match Reports are sent to all MWDs on a quarterly basis;

2. GA-SSI Match Report: A match of the GA files with the (SDX) State Data Exchange which lists all Supplemental Security Income (SSI) recipients.

i. The GA-SSI Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a quarterly basis;

3. GA-GA Match Report: A match of all municipalities matched against each other.

i. The GA-GA Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a yearly basis;

4. GA-FAMIS Match Report: A match of all GA cases matched against the FAMIS (county welfare) files.

i. The GA-FAMIS Match Report is sent to computerized MWDs on a monthly basis and to non-computerized MWDs on a yearly basis;

5. GA-UIB Match Report: A match of the GA cases with the Department of Labor's Unemployment Insurance Benefits files. The GA-UIB Match Reports are sent only to the computerized municipalities on a monthly basis.

10:85-7.2 Notices to applicants or recipients

(a) (No change.)

(b) Exceptions to timely notices are:

1. (No change.)

2. Time-limited assistance: When it is mutually understood between the applicant and the MWD that assistance is requested for and will be granted to cover only a limited period of time, or is limited to a specific purpose or an emergency grant (see N.J.A.C. 10:85-4.2(a)4 and 5) **or when other circumstances warrant the MWD to grant assistance to cover a limited period of time**, the MWD will send a time-limited notice promptly when such assistance is granted. No further notice will be required.

i. (No change.)

(c) (No change.)

10:85-9.4 Determining amount of support

(a) [Two sets of] **Monthly income** standards provide the basis for evaluation of an LRR's capacity to contribute to the support of the eligible unit:

1. [Spouse or parent: Schedule IV-A applies to a spouse or a parent of a child under age 18, regardless of where the spouse or parent is residing. The monthly income standard is derived from the applicable assistance standard plus average medical costs and the standard allowance for expenses of employment.] **Schedule IV applies to all legally responsible relatives.**

[2. Other LRRs: Schedule IV-B applies to all other legally responsible relatives and is based on the United States Bureau of Labor Statistics moderate standard of living.]

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

(b) Rules concerning the determination of LRR capacity to support are:

1.-2. (No change.)

3. Method for determining capacity:

i. The amount of the obligatory contribution is calculated as follows:

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

(3) Compare this adjusted income with the applicable Monthly Income Standard on Schedule IV [—PART A or Part B];

(4)-(5) (No change.)

ii. (No change.)

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Schedule IV
Monthly Income Standards

[Part A Spouse or Parent of Child Under Age 18]	Family Size	[Part B] All [Other] LRRs
[$ 430	1	$1189
574	2	1657
717	3	2135
789	4	2607
860	5	3000
932	6	3319
1004	7	3632
1076	8	3951
+$ 72]	Each Additional Person	+$ 319

SUBCHAPTER 12. EFFICIENCY AND EFFECTIVENESS OF PROGRAM OPERATIONS

10:85-12.1 Authority of the Commissioner

(a) Under P.L. 1990, c. 66, the Commissioner of the Department of Human Services is obligated to ensure that the benefits provided under the 100 percent State-funded GA program, administered by municipalities throughout the State, are issued to eligible persons in an accessible, efficient and cost-effective manner.

(b) The Commissioner has the authority to establish rules, regulations, and directives, including incentives and sanctions, to ensure that local agencies provide GA benefits to eligible recipients in an efficient, effective manner consistent with State law.

(c) The Commissioner shall have the authority to review and approve municipal welfare agency budgets.

(d) The Commissioner shall have the power to assume direct administration of and operate any municipal welfare operation when it is determined that the MWD substantially fails to administer the GA program in an efficient, effective manner in accordance with State law.

10:85-12.2 Action of the State to assume direct administration

(a) When it is determined that action of the State to assume direct administration of MWD GA operations is necessary due to ongoing MWD failure to substantially follow State law and rules in its administration of the GA program or an arising emergent situation that warrants such immediate State action, the Department shall:

1. Make any administrative and programmatic changes deemed necessary to provide services in an efficient, effective manner and ensure compliance with State law and regulation;

i. The municipality shall be billed for the reasonable expenses incurred by the State in ensuring compliance;

2. Hire any consultant or undertake any studies of the agency operations deemed necessary;

3. Direct expenditures of the municipal welfare agency in a reasonable and prudent manner to effectuate the purpose of the GA program, including reallocating funds within the municipal welfare agency budget and determine additional amounts of revenue needed to implement the program within the agency's budget;

4. Operate the municipal welfare agency; and/or

5. Do all acts necessary or appropriate to ensure that the needs of eligible GA recipients are met pursuant to State law.

(a)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Business Enterprise Program

Proposed New Rule: N.J.A.C. 10:97-5.4

Proposed Amendments: N.J.A.C. 10:97-1.3, 1.4, 2.1, 2.2, 2.3, 2.4, 2.5, 2.6, 3.1, 3.2, 3.4, 3.5, 4.1, 4.2, 4.6, 4.7, 4.8, 4.14, 4.15, 5.1, 5.3, 6.1, 6.3, 6.4, 6.5, 7.1, 7.2, 7.3, 7.4, 8.1, 8.2, 8.3 and 9.1

Authorized By: Alan J. Gibbs, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:1-12, 30:6-15.1 and 15.2; P.L. 74-732, as amended by P.L. 83-565; P.L. 93-516; and 34 CFR 395.

Proposal Number: PRN 1991-298.

Submit comments by July 3, 1991 to:
Michael E. Cassels
Administrative Practice Officer
Commission for the Blind and Visually Impaired
153 Halsey Street, P.O. Box 47017
Newark, New Jersey 07101

The agency proposal follows:

Summary

The New Jersey Administrative Code at N.J.A.C. 10:97 sets forth the Rules Governing the Business Enterprise Program of the New Jersey Commission for the Blind and Visually Impaired, designated as the State Licensing Agency by the United States Department of Education, Rehabilitation Services Administration. The Commission was so designated by the Federal government as provided for at 34 CFR 395 and is required to promulgate rules for the operation of the Business Enterprise Program under 34 CFR 395.4.

The Commission's policies governing the Business Enterprise Program has been under review and are being revised. In keeping with the proposed policy revisions, the Commission is proposing amendments and a new rule, as well as making grammatical changes to current rules. These rules continue to be reasonable, proper and necessary for the purposes for which they were originally promulgated.

In general, Subchapter 1 contains general provisions, including definitions.

Subchapter 2 sets forth program entry requirements.

The licensing of operators and operations rules are in subchapters 3 and 4, respectively.

Subchapter 5 contains the records and monitoring requirements.

The fiscal requirements for the program are in subchapter 6.

Transfer of a business enterprise from one operator to another is regulated under subchapter 7.

Rules governing suspensions and grievance procedures are in subchapter 8.

Subchapter 9 contains provisions concerning the Committee of Business Enterprise Operators.

Several general amendments are proposed for the chapter. The name of the "Vending Facility Program" has been changed to the "Business Enterprise Program." The former "Committee of Blind Vendors," now entitled the "Committee of Business Enterprise Operators," requested the change to better reflect the professional business image of the program. Consequently, amendments are proposed changing all references to vending facilities to business enterprises through the rules. Also, at the request of the Committee of Business Enterprise Operators, the terms "vendor" and "blind vendor" have been deleted in favor of "operator."

Specific amendments proposed for N.J.A.C. 10:97 are summarized below.

At N.J.A.C. 10:97-1.3, "active participation" and "certified for placement," which replaced "ready for employment," are being added to the section on definitions as part of the proposed amendments so as to clarify the participatory role of operators in the decision-making process of the Program and to state who is eligible for inclusion on the placement list. The terms "business enterprise" and "Business Enterprise Program Fund, non-Federal" are also defined so as to add clarity to the rules and replace the terms "vending facility" and "Vending Facility program fund, non-Federal." These terms have been inserted in the rule text where appropriate.

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At N.J.A.C. 10:97-1.4(b)1, the term "employment" is being deleted and replaced by "career opportunities" as it is more descriptive of the Program's objectives.

At N.J.A.C. 10:97-2.2, subsection (b) is amended to specify where evaluation and training may occur. Subsection (c) is being deleted as this statement does not apply to individuals undergoing evaluation and training at the Joseph Kohn Rehabilitation Center. (For individuals undergoing evaluation and training at other training facilities or sites, see N.J.A.C. 10:97-2.3.) N.J.A.C. 10:97-2.2(d) is recodified to N.J.A.C. 10:97-2.2(c).

N.J.A.C. 10:92-2.4 is amended to include a statement indicating that seniority shall be a consideration in the placement process.

N.J.A.C. 10:97-2.6 is amended to state that an individual who is unable to satisfactorily complete the probationary period will lose certification with the Business Enterprise Program as opposed to being terminated from the Program.

New subsections (d) and (e) are added to N.J.A.C. 10:97-3.1 stating the circumstances under which business enterprise licenses shall be terminated.

N.J.A.C. 10:97-3.2(a) has been amended to indicate that a signed copy of an agreement between the Commission and a business enterprise operator will be provided to the operator.

N.J.A.C. 10:97-3.5(b) has been amended to include business enterprise operator representatives as part of the inventory taking process when a facility is closed and states how the Commission may compute the value of the inventory. The second sentence in subsection (c) is amended by changing the word refuses to chooses, where an operator opts not to participate in the taking of a scheduled inventory. New subsection (d) states the responsibility of the previous operator for the cost of repairs of any defective equipment.

N.J.A.C. 10:97-4.2 new subsection (b) states the maximum amount of time a business enterprise operator may be absent from their business enterprise because of sickness or accident.

N.J.A.C. 10:97-4.7 has been amended so as to more specifically detail the parties responsible for repair and/or replacement of equipment.

N.J.A.C. 10:97-4.14 has been amended to indicate the sole responsibility for any damage or loss to equipment or fixtures owned by the Commission is the business enterprise operator's.

N.J.A.C. 10:97-5.1(a) and (b) have been amended so as to clearly specify the documentation required when business enterprise operators submit their weekly sales reports to the Commission, and new subsection (c) has been added requiring the use of cash registers at all business enterprises, whenever available.

N.J.A.C. 10:97-5.3(a) has been amended granting any duly authorized State representative, with official identification, the right to make unannounced business enterprise inspections, and subsection (b) clarifies the frequency of site visits which must occur at least once every three months.

N.J.A.C. 10:97-6.1(c) has been amended to more clearly define proper use of the Federal Set Aside Fund.

The following changes have been made in N.J.A.C. 10:97-7.3:

Subsection (a) has been amended to include the requirement that gross sales amounts be included in the promotions and transfer opportunity letter circulated to operators when announcing business enterprise vacancies; when to apply for a vacancy has been clarified in subsection (b); subsection (c) has been amended to include personal interviews as part of the process when an individual is being considered for a promotion or transfer; new subsections (d) through (f) discuss the evaluation and rating process utilized in selecting a candidate as operator of a vacant business enterprise as well as describe the composition of the panel of individuals who undertake to interview interested candidates; subsection (g) states the circumstances under which a candidate will be ineligible for a business enterprise when they fail to keep a scheduled interview; subsection (h) discusses how the results of prior interviews for promotion and transfer opportunities, that occurred within six months of the current interview, relate to the evaluation process when considering a candidate for a business enterprise vacancy; and subsection (i) states which candidate shall be selected for the available business enterprise. Former subsection (d) is now recodified as subsection (j).

N.J.A.C. 10:97-8.1 is amended to state that it is the operator's license that is subject to suspension based on criteria described in this section.

N.J.A.C. 10:97-8.2(b) is amended to reference the fact it is the operator's license that is terminated in instances where a violation or violations have occurred and to show the relationship between evidentiary and administrative hearings.

N.J.A.C. 10:97-8.3 has been amended, deleting subsection (d) and adding new language which has been developed to clarify the hearings process and the rights and responsibilities of business enterprise operators in situations that involve administrative reviews and/or hearings, which are also referred to as full evidentiary hearings.

N.J.A.C. 10:97-9.1(b) is amended to reflect that participants in the election of the Business Enterprise Program Committee shall be active licensed operators, and in subsection (d) the language dealing with bylaws is amended to clarify the intent of this rule.

Additionally, additional new rule text is being added at N.J.A.C. 10:97-3.1 (Completion of probation period and license), 3.5 (Inventory taking), 4.2 (Absences), 5.1 (Weekly sales report), 7.3 (Promotions and transfers) and 8.3 (Administrative Reviews and Hearings). The proposed amendments include the establishment of new training procedures and new conditions of licensure, as well as requiring new standards of operator personal and fiscal responsibility. A proposed new rule at N.J.A.C. 10:97-5.4 addresses the confidentiality of records.

Social Impact

The proposed amendments and new rule will allow the 66 operators in the Business Enterprise Program to achieve greater earnings and provide better service to the public by increasing efficiency. The improved system of promotions encourages eligible operators to participate in upward mobility. Another benefit is the provision of improved training for prospective new participants in the Business Enterprise Program. These proposed amendments and new rules were prompted by the desire of Business Enterprise Program operators to have operator representatives participate in the promotion process. Since business operators in the program sent selected representatives who were involved in the development of the proposed amendments and new rule, an overall favorable reaction is expected.

Economic Impact Statement

During the past Federal fiscal year, there were sales of over $6 million by operators in the program and the average income of the operators is $26,000 per year. The 66 operators in the Business Enterprise Program will be effected economically by the proposed amendments and new rule. The revisions to N.J.A.C. 10:97 will allow for more professional conduct of business operators in the program. Through an increased deductible of $150.00, formerly $50.00, for equipment repairs paid by the operator of the business in the program, the operator is more involved in actively running his or her business and participating in a responsible manner. By promoting greater self-sufficiency, the program encourages participants to rely more on their abilities rather than resorting to public assistance to sustain them. In addition, the new standards of entry and training will better prepare new operators for more remunerative careers within the program which offers self-employment and income opportunities for clients of the Commission. The program also furnishes assistance and continuing management services to operators, and makes it possible for New Jersey to receive Federal funding. Since the operators participated, through their elected representatives, in drafting the amendments and new rules no adverse reactions are expected.

Regulatory Flexibility Analysis

All businesses licensed under the program are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Currently the program consists of 66 businesses including cafeterias, snack bars, and newsstands located on Federal, State, county, municipal and private property throughout all areas of the State. The proposed amendments impose the reporting and compliance requirement that operators are responsible for submitting weekly sales reports (see N.J.A.C. 10:97-5.1) to the Commission on at least a monthly basis, due on or before the 15th day of the following month. This requirement imposes no new recordkeeping burden on the operators. Weekly reporting is necessary to comply with the Commission's Federal reporting requirements, (see USDE Office of Rehabilitation Services Program policy directive RSA-PPD-90-12 last revised 5/11/90). Additionally, it is recommended, but not required, that operators engage the services of an accountant to assist operators in complying with Federal and State tax and payroll record requirements. The average cost of an accountant is approximately $800.00 per year which is considered a valid business expense. Since the average earnings of a Business Enterprise Program operator are $26,000 per year, the $800.00 per year business-related expense is not excessive.

Because all of the businesses upon which these requirements are imposed are small businesses as defined under the Act, there is no basis for differentiation based upon business size.

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

10:97-1.3 Definitions

The following words and terms shall have the indicated meanings, unless the context clearly indicates otherwise.

"Active participation" means the activity in which the Committee of Business Enterprise Operators provides meaningful input into the decision making process in the formulation of policies and standards that affect the Program.

. . .

"Business enterprise" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters and such other appropriate equipment which may be operated by blind operators and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.

"Business Enterprise Program Fund, non-Federal" means funds which accrue to the Business Enterprise Program from all non-Federal sources.

"Certified for placement list" means a roster of blind persons who have successfully completed training for the Business Enterprise Program and are so certified by the Commission.

"Committee" means Committee of [Blind Vendors] **Business Enterprise Operators**.

. . .

"License" means a written certificate issued by the Commission to a qualified blind person permitting the operation of a [vending facility] **business enterprise**.

. . .

"Management services" means supervision, inspection, quality control, consultations, bookkeeping services, regulating, in-service training, and other related services provided on a systematic basis to support and improve [vending facilities operated by blind vendors] **business enterprises**.

"Net profit or net proceeds" means the amount remaining from the sale of articles or services of [vending facilities] **business enterprises** and any vending machine or other income accruing to [blind vendors] **operators** after deducting the cost of such sale and other expenses.

"Operator" means a qualified blind person assigned by the Commission to operate a [vending facility] **business enterprise** on Federal or other property. An operator is not an employee of the State of New Jersey.

"Operating agreement" means the agreement which shall be entered into between the Commission and each operator, covering the basic terms and conditions required of each party for the operation of a specific [vending facility] **business enterprise**.

"Permit" means the agreement between the Commission and a department or agency in the control of the maintenance, operation and protection of Federal and non-Federal property whereby the Commission is authorized to establish a [vending facility] **business enterprise**.

"Property manager" means the official responsible for the property where the [vending facility] **business enterprise** is located.

["Ready for employment list" means a roster blind persons who have successfully completed training for the vending facility operations and are certified by the Commission.]

. . .

["Vending facility" means automatic vending machines, cafeterias, snack bars, cart service, shelters, counters, and such other appropriate auxiliary equipment which may be operated by blind licensees and which is necessary for the sale of newspapers, periodicals, confections, tobacco products, foods, beverages, and other articles or services dispensed automatically or manually and prepared on or off the premises in accordance with all applicable health laws, and including the vending or exchange of chances for any lottery authorized by State law and conducted by an agency of the State.]

["Vending Facility Program Fund non-Federal" means funds which accrue to the Vending Facility Program from all non-Federal sources.]

10:97-1.4 Objectives

(a) The [regulations] **rules** of the New Jersey Commission for the Blind and Visually Impaired are intended to set forth the administrative requirements governing the operation of the [Vending Facility] **Business Enterprise** Program on Federal and non-Federal property.

(b) The [Vending Facility] **Business Enterprise** Program is designed to:

1. Provide blind persons with remunerative [employment] **career opportunities**;

2. Enlarge the economic opportunities for blind persons;

3. Stimulate blind persons to greater efforts in striving to make themselves self supporting[.]; **and**

4. Improve the public awareness of the business capabilities of blind and visually impaired persons.

10:97-2.1 Application and qualification to enter program

(a) Any blind person desiring to operate a [vending facility] **business enterprise**, under the supervision of the Commission, shall apply to the Commission and will be referred to the Vocational Rehabilitation Program in order to receive proper evaluation.

(b) The interested blind person must be certified as eligible by the Vocational Rehabilitation Program and be a citizen of the United States in order to participate in the [Vending Facility] **Business Enterprise** Program.

10:97-2.2 Selection and training

(a) A blind person who has been certified eligible by the Vocational Rehabilitation Program and [still] wishes to enter the [Vending Facility] **Business Enterprise** Program must meet the following minimum criteria:

1. Mobility skills[-], **that is, the** ability to move about and orient to environment, especially in small areas[.];

2. Self-communication skills[-], **that is,** the ability to keep information for oneself in some organized [form] **format** and the ability to retrieve such information [when] as needed[.]; **and**

3. (No change.)

(b) If selected for the program [he/she] **he or she** will undergo a course of [training which will include a period of on-the-job training at an actual vending facility] **evaluation and training at the Joseph Kohn Rehabilitation Center or other training facility, or site as appropriate**.

[(c) The vendor trainee will have the status of unpaid employee.]

[(d)](**c**) Upon satisfactory completion of this training, the person will be issued a certificate and placed on the "[ready for employment] **certified for placement** list."[.]

10:97-2.3 [Vending facilities] **Business enterprises** for training

(a) Any [vending facility] **business enterprise** may be used for evaluation or training under terms and conditions established in the operating agreement.

(b) The [vendor] trainee will be an unpaid employee **of the operator**.

10:97-2.4 Placement

When a [vending facility] **business enterprise** is available, the Commission will make every effort to match the individual needs and capabilities of persons on the [ready for employment] **certified for placement** list to the demands of the [vending facility] **business enterprise** offered to [him/her] **him or her**. **Seniority on the list shall be a consideration in the selection**.

10:97-2.5 Probation for a new operator

(a) When a person from the [ready for employment] **certified for placement** list is assigned to a [vending facility] **business enterprise**, [he/she] **he or she** will be subject to a probationary period of three [(3)] months.

1. Written reports will be prepared at the end of six [(6)] weeks and at the end of three [(3)] months[.]; **and**

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2. The three [(3)] month report will certify that the probationary period has or has not been successfully completed.

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

10:97-2.6 Failure to complete probation

Any person who is unable to satisfactorily complete the probation period, after a maximum of two [(2)] extensions, will [be terminated from] **lose certification with** the [Vending Facility] **Business Enterprise** Program and **at his or her option may be** referred for Vocational Rehabilitation reevaluation.

10:97-3.1 Completion of probation period and license

(a) When the probationary period has been successfully completed, a license [will] **shall** be issued to the [vending facility] **business enterprise** operator for an indefinite period but subject to suspension or revocation.

(b) (No change.)

(c) The granting of a license to an operator is not subject to transfer [and the license is immediately terminated by death, revocation or voluntary withdrawal from the business by the licensee].

(d) The license shall be immediately terminated by improvement of vision if the operator no longer meets the definition of a blind person. Also, the license shall be terminated by death, revocation or voluntary withdrawal from the business by the licensee.

(e) If a permit authorizing a business to be established in a specific location is terminated, the operator's license is terminated. However, if termination is through no fault of the operator, he or she will be eligible to apply for subsequent promotion and transfer opportunities, under conditions set forth in N.J.A.C. 10:97-7.3.

10:97-3.2 Operating agreement

(a) [An] **A written** agreement shall be entered into between the Commission and the operator, covering the basic terms and conditions required of each party each time an operator begins business at any [vending facility] **business enterprise**, including the probation period. **A signed copy will be provided to the operator.**

(b) No operator will be charged rental for the operation of a [vending facility] **business enterprise** on Federal, State, county or municipal property **pursuant to N.J.S.A. 30:6-15.2 and 34 C.F.R. 395.35**.

10:97-3.4 Commission loans to start business; [and] repayment of loans

(a) When [a blind vendor] **an operator** is assigned to a [facility] **business enterprise,** a non-interest bearing loan in the amount of $1,000 in cash and/or equivalent stock may be granted by the Commission, upon request of the operator, for the initial stock and supplies of [a vending facility] **the business enterprise**.

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

10:97-3.5 Inventory taking

(a) (No change.)

(b) The Commission shall schedule the taking of inventory on the effective date of transfer or closing of the facility. Both operators **and/or their representatives,** and a representative of the Commission, are to be present so that there can be agreement as to the amount and value of stock and supplies on hand. **The Commission may compute the value of the inventory using current average wholesale prices and document the procedure in the operators' records.**

(c) Either operator may waive, in writing, [his/her] **his or her** right to participate in the scheduled inventory. If either operator [refuses] **chooses not** to participate in the inventory taking or signs a waiver, the Commission shall determine the value of the inventory and document the procedure in [operator's record] **the operators' records**.

(d) At the time of the inventory taking, the Commission will conduct an inspection of all equipment in which the Commission has title to assure its working order. The previous operator shall be responsible for the cost of repairs of any defective equipment under conditions set forth in N.J.A.C. 10:97-4.7.

10:97-4.1 Personal operation[s] of [vending facility] **a business enterprise**

(a) The operator shall personally conduct the business assigned to [him/her] **him or her**.

(b) The operator shall devote [his/her] **his or her** full time to the conduct of the business.

10:97-4.2 Absences

(a) The operator bears full responsibility for the operation of the business during [his/her] **his or her** absence.

1.-2. (No change.)

(b) Absence by an operator from his or her business enterprise because of sickness or accident shall be limited to a period of no more than six consecutive months from the date of initial absence. If an operator is absent from the business enterprise for more than six consecutive months, his or her license shall be immediately terminated.

10:97-4.6 Equipment

(a) (No change.)

(b) Any request for purchase or lease of equipment by an operator must be made in writing to the Commission. The Commission will notify the operator of its decision regarding the request within [twenty(] 20[)] days.

(c) The granting of permission to purchase equipment does not imply agreement on the part of the Commission to maintain the equipment or purchase the item from the operator at the time [he/she] **he or she** leaves the program or from [his/her] **his or her** heirs or [assigns] **assignees** after [his/her] **his or her** death.

10:97-4.7 Maintenance and repair of equipment

(a) All [vending facility] **business enterprise** equipment in which the Commission has title shall be maintained in good repair **by the operator** to insure continued operation of the [facility] **business enterprise**.

[1]**(b)** The operator [will] **shall** pay the first [$50.00] **$150.00** for the repair of each [item:] **piece of equipment except when the cost of equipment repair is incurred during the first 45 calendar days of an operator's occupancy at a business enterprise. Full cost of repair of equipment during the first 45 calendar days shall be the responsibility of the Commission** [the Commission will pay for repair charges over and above the first $50.00].

(c) The Commission shall pay for repair charges over and above the first $150.00 except as stated in (b) above.

[(b)]**(d)** Worn and obsolete equipment shall be replaced **by the Commission,** as necessary, when the cost of repair of the equipment cannot be justified in relation to the value of the equipment.

10:97-4.8 Disposition of Commission owned property

The operator or [his/her] **his or her** employees shall not destroy, sell or in any way alter or dispose of any of the fixtures, equipment or other property to which the Commission holds title or permit anyone else to do so without the written authorization of the Commission.

10:97-4.14 Responsibility for damage

The operator [and his/her workers, if any] shall be liable to the Commission for any damage of the equipment or fixtures owned by the Commission or any losses resulting from the neglect or failure to observe the [regulations] **rules** of the Commission.

10:97-4.15 Operator owned or leased vending machines

(a) Operators must obtain written approval from the Commission and the property manager to have vending machines as part of the [facility] **business enterprise**.

(b) All income from these vending machines will be counted [in the gross sales] **as miscellaneous income** of the [facility] **business enterprise**.

10:97-5.1 Weekly sales report

(a) The operator [must] **shall** submit to the Commission the prescribed weekly sales report. [A daily report, invoices or photocopies and, when available, cash register tapes or photocopies must also be submitted.] **Cash register tapes, or daily reports where registers are not available, along with invoices or photocopies, shall also be submitted.**

(b) [The Weekly report must be submitted within seven (7) days of the close of business for the week.] **Weekly reports shall be submitted on at least a monthly basis, on or before the 15th day of the following month.** [This report does] **These reports do** not constitute

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complete financial reporting as set forth in N.J.A.C. 10:97-5.2 [below].

(c) Cash registers shall be used at all business enterprises, when available.

10:97-5.3 Right of inspection

(a) The operator shall recognize any representative directed by the Commissioner of Human Services or the Commission, **with official State identification,** to make unannounced inspections in order to monitor the appearance and conduct of the [vending facility] **business enterprise**.

(b) The Commission **representative** shall make site visits at a minimum of [four (4) times per year,] **one visit every three months;** however, more frequent visits may occur. Each time a Commission representative visits a [vending facility] **business enterprise**, a site visit report [will] **shall** be completed, read to the operator (who [will] **shall** have the right to include [his/her] **his or her** comments) and signed by both the operator and the Commission representative. The operator [will retain] **shall be given** a copy and the Commission [will] **shall** retain a copy. It [is] **shall be** the responsibility of the operator to implement the requirements set forth in the site visit report.

10:97-5.4 Confidentiality of records

No operator and/or client information shall be released except under the provisions of N.J.A.C. 10:91-5.7.

10:97-6.1 Federal Set Aside Fund

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

(c) [Uses] **A use set forth in** (b)1[.], 2[.], 3[.,] and 4[.] **above** can be authorized only by the Commission. [Use] **The use set forth in** (b)5[.] **above** can only be authorized by a majority vote of all the **licensed** operators in the [Vending Facility] **Business Enterprise** Program.

10:97-6.3 [Vending Facility] **Business Enterprise** Program Fund Non-Federal

The [Vending Facility] **Business Enterprise** Fund Non-Federal[,] consists of all monies accruing to the Program from non-Federal sources. These funds will be used to cover expenses which are necessary for the operation of the Program except for costs which can be paid from the Federal Set Aside Fund.

10:97-6.4 Vending machine income due [blind vendors] **to operators**

(No change in text.)

10:97-6.5 Access to program and financial information

(a) Each operator will be provided access, in braille, recorded tape, or print, to all financial data relevant to the operation of the [Vending Facility] **Business Enterprise** Program.

[1.]**(b)** [This] **Such access** will include quarterly and annual financial reports, provided that such disclosure does not violate Federal and State laws pertaining to the disclosure of confidential information.

10:97-7.1 Advance notice of termination

If an operator decides to terminate [his/her] **his or her** assignment as a [vending facility] **business enterprise** operator, [he/she] **he or she** shall notify the Commission by mail at least one [(1)] month in advance of the actual date of termination.

10:97-7.2 Procedure when an operator leaves a [facility] **business enterprise**

(a) Whenever an operator is transferred, terminated, or otherwise leaves a [facility] **business enterprise,** all equipment and other property belonging to the Commission shall be surrendered in good order and condition, except for reasonable wear and tear.

(b) All accounts and bills [must] **shall** be paid in full, and an inventory of stock taken as required under the provisions of "Inventory taking" at N.J.A.C. 10:97-[3.4]**3.5**.

10:97-7.3 Promotions and transfers

(a) The supervisor of the [Vending Facility] **Business Enterprise** Program [will] **shall** circulate a letter to all operators announcing [vending facility] **business enterprise** vacancies. [1.] The letter shall contain a description and the location of the [facility] **business enterprise**, the **gross sales and the** net profit for the previous year, scheduled hours of operation and other significant information about the vacancy.

(b) Any interested operator [must] **shall** apply, in writing, to the supervisor of the [Vending Facility] **Business Enterprise** Program within two [(2)] weeks **of the vacancy announcement**.

(c) The selection [will] **shall** be made by [evaluating] **the supervisor of the Business Enterprise Program based on an evaluation of** the operator's record of performance [with consideration to seniority] **and the results of a panel interview**.

(d) Performance evaluation shall account for 75 percent of the total promotion and transfer evaluation procedure. Evaluation shall be based on individual site visit reports, semi-annual evaluations and any other documented reports completed by field representatives assigned to work with the interested operators. The supervisor of the Business Enterprise Program shall give weight value to each factor, depending on the type and needs of the specific vending facility up for bid. Weight values for all factors shall total 25 points. Each weight value shall be multiplied by the respective performance value ranging from zero for "below average" to three for "outstanding." The factors on which all interested operators shall be rated are management ability, health and sanitation, public relations, compliance with Business Enterprise Program rules and participation in meetings and instructional conferences sponsored by the Commission.

(e) The prescribed interview shall account for 25 percent of the total promotion and evaluation procedure. The interview panel shall consist of the supervisor of the Business Enterprise Program (who shall serve as lead interviewer), the field representative assigned to the announced vacant business enterprise, a non-vocational rehabilitation employee of the Commission and a member of the Committee of Business Enterprise Operators (excluding Committee members who have expressed an interest in the vacant business enterprise) or a designee assigned by the Chairperson of the Committee.

(f) As a group the panel shall give each candidate a rating for the interview based on a scale of 1 to 25. Questions to be asked of all candidates, based on the requirements of the vacant business enterprise, and procedures for scoring shall be designated by the supervisor of the Business Enterprise Program when the panel convenes and before the interviews are held.

(g) If a candidate does not appear for his or her scheduled interview and has not given prior notice to or been excused by the supervisor of the Business Enterprise Program, he or she shall not be re-scheduled and shall be ineligible for the announced promotion or transfer opportunity.

(h) If a candidate has been interviewed for a promotion or transfer opportunity within the previous six months, the score from the previous interview shall be used for scoring the interview segment of the current evaluation process.

(i) The candidate with the highest overall rating shall be selected for appointment as operator of the business enterprise for which he or she has applied.

[(d)]**(j)** Once an operator accepts an assignment to a new location, the only way that [he/she] **he or she** can return to the previous location [is] **shall be** as a new applicant.

10:97-7.4 Interim operator

When a [vending facility] **business enterprise** becomes vacant, it is often necessary to keep that [facility] **business enterprise** operating in order that the location is not lost to the [Vending Facility] **Business Enterprise** Program. Such a vacancy [may] **shall** be filled by the appointment of an interim operator, pending the completion of the formal promotion process. The interim operator may be appointed from the [ready to employ] **"certified for placement"** list.

10:97-8.1 Immediate suspension

(a) In the event that an operator is in violation of the regulations and/or laws of a governmental agency, [he/she may] **his or her license shall** be subject to immediate suspension.

(b) Grounds for immediate suspension of [an operator] **a license** shall exist when any activity, policy or conduct of an operator presents a serious or imminent hazard to the health, safety, and well being of the public or otherwise demonstrates total unfitness or inability to operate a [vending facility] **business enterprise** in compliance with

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all of the requirements of these regulations and all applicable Federal and State law.

(c) The operator [will] **shall** be notified of the reason for suspension. In addition, the operator [will] **shall** be afforded an Administrative Review, **if so requested,** [as soon as possible after the suspension, but in no event later than ten (10) days after the suspension] **as set forth in N.J.A.C. 10:97-8.3(a) and (b).** The operator [is] **shall be** entitled to all the grievance procedures afforded by New Jersey and Federal Law, including an Administrative Hearing if the Administrative Review does not resolve the problem (see N.J.A.C. 10:97-8.3(c)).

10:97-8.2 Disciplinary probation

(a) In situations other than immediate suspension, the operator [must] **shall** comply with all of the requirements in these regulations and of State and Federal law. In the event that there is a violation, the operator [will] **shall** be placed on disciplinary probation. The operator [will] **shall** be given a written notice by the Commission stating the grounds at issue and shall have a period of [fifteen (]15[)] days to correct any violation cited in the notice.

(b) In the event that the violation is not corrected during the disciplinary probation period, the Commission [may] **shall** issue to the operator a notice of **license** termination, citing any unresolved [violations] **violation.** Termination shall be effective [fifteen (]15[)] days after such notice of termination, provided that the operator [be] **has been** given an opportunity for [a Full Evidentiary Hearing/] **an Administrative Review and/or an** Administrative Hearing prior to final termination.

10:97-8.3 Administrative Reviews and Hearings

(a) The Commission shall afford an opportunity for an Administrative Review to each operator who is dissatisfied with any action arising from the operation or administration of the [Vending Facility] **Business Enterprise** Program when a written request is submitted within [fifteen (]15[)] days of the [occurence] **occurrence** of the action. The operator has the option of transmitting the grievance through the Committee of [Blind Vendors] **Business Enterprise Operators.**

(b) (No change.)

(c) The Commission shall afford an opportunity for an Administrative Hearing, **also known as a Full Evidentiary Hearing,** to each operator [when the matter is a contested case as determined by the Executive Director] in accord with the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.), **subject to any superseding Federal or State law (see 34 C.F.R. 361.48 and 34 C.F.R. 395.13).** [A contested case is a matter:

1. Which requires a hearing by statute or constitutional provisions; and

2. Which is not susceptible of informal resolution; and

3. Which the required hearing is designed to result in an adjudication concerning the rights, duties, obligations, privileges, benefits or other legal relations of specific parties over which there exist disputed questions of fact, law or disposition.]

[(d) All Administrative Hearings shall contain the following procedural elements to assure due process to blind vendors:

1. Notice; of the time and date of the hearing and the issues in dispute must be given sufficiently in advance of the hearing so that reasonable opportunity shall be afforded.

2. Right to be represented by counsel.

3. Impartial presiding official.

4. Right to present witnesses and to cross-examine adverse witnesses.

5. Decision on the record.

6. Transcript of the proceedings.

7. Notice, conduct of the hearing and decision within prescribed and reasonable time limits.]

[(e) Additionally, all Administrative Hearings shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.) and the Uniform Administrative Procedure Rules (N.J.A.C. 1:1-1 et seq.) subject to any superseding Federal or State law (see N.J.A.C. 1:1-1(a) and 34 C.F.R. 395).]

(d) If an operator has participated in an Administrative Hearing and is dissatisfied with any action taken or decision rendered as a result of the hearing, he or she may file a complaint with the Secretary, United States Department of Education. Such complaint shall be accompanied by all supporting documents, including a statement of the decision which was rendered and the reasons in support thereof. Filing of the complaint by the operator shall indicate consent for the release of such information for the hearing of an ad hoc arbitration panel (see 34 C.F.R. 395.13).

SUBCHAPTER 9. COMMITTEE OF [BLIND VENDORS] **BUSINESS ENTERPRISE OPERATORS**

10:97-9.1 Committee of [Blind Vendors] **Business Enterprise Operators**

(a) The Commission shall provide for the biennial election of a [State] Committee of [Blind Vendors] **Business Enterprise Operators** which, to the extent possible, shall be representative of all [blind vendors] **operators** in the [Vending Facility] **Business Enterprise** Program on the basis of such factors as geography and [vending facility] type **of business enterprise,** with the goal of providing for proportional representation of [blind vendors] **operators** on Federal property and [blind vendors] **operators** on other property.

(b) The Committee shall be elected by the majority of all **active licensed** operators in the State Program.

[1.](c) Participation by any [blind vendor] **active licensed operator** in any election shall not be conditioned upon the payment of dues or any other fee.

[(c)](d) The Committee of [Blind Vendors] **Business Enterprise Operators** shall:

1. Actively participate with the Commission in major administrative decisions and policy and program development decisions affecting the overall administration of the [Vending Facility] **Business Enterprise** Program[.];

2. Receive and transmit to the Commission grievances at the request of [blind vendors] **operators** and serve as advocates for such [vendors] **operators** in connection with such grievances[.];

3. Actively participate with the Commission in the development and administration of the system for the transfer and promotion of [blind vendors] **operators**[.];

4. Actively participate with the Commission in the development of training and re-training programs for [blind vendors] **operators**[.]; **and**

5. Sponsor, with the assistance of the Commission, meetings and instructional conferences for [blind vendors] **operators** within the State.

[(d)](e) It is the responsibility of the Committee of [Blind Vendors] **Business Enterprise Operators** to establish **and maintain** bylaws under which they will operate and which are [accepted] **approved** by the Commission.

CORRECTIONS

(a)

THE COMMISSIONER

Fiscal Management

Gifts

Proposed New Rules: N.J.A.C. 10A:2-9

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

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

Proposal Number: PRN 1991-294.

Submit comments by July 3, 1991 to:
Elaine W. Ballai, Esq.
Special Assistant for Legal Affairs
Department of Corrections
CN 863
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

It has been a long-standing practice within the New Jersey Department of Corrections to accept gifts from various community sources. These have come from religious groups, civic organizations, individuals or their estates and even ex-inmates. Such gifts have included the land and buildings now known as the Albert Elias Juvenile Residential Center (formerly Highfields), dedicated to the Department of Corrections by the Lindburgh Estate, a considerable capital asset. Other contributions have included money, computers, motor vehicles, medical supplies, books, tools, recreational equipment and other items. The proposed new rules establish a process by which gifts may be donated and accepted for use by correctional facilities or programs within the New Jersey Department of Corrections.

Social Impact

The proposed new rules permit the acceptance of gifts which may be used to initiate, continue or expand a program(s) or service(s) within a correctional facility. The acceptance of gifts in accordance with these rules will expedite the processing and use of gifts which may provide a wider range of programs and services to inmates.

Economic Impact

Although gifts may have some economic benefit to the correctional facility to which the gifts are given, there is no measurable economic impact on the New Jersey Department of Corrections' budget as a whole. Of benefit is the fact that gifts of items or money may enable a correctional facility to offer programs or services not usually available within the Department of Corrections' budget. Gifts also enable a correctional facility to enhance existing programs, for example, in education or recreation.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new 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 proposed new rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposal follows:

SUBCHAPTER 9. GIFTS

10A:2-9.1 Definition

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

"Gift" means money or material donated to a correctional facility or administrative unit for a specified or unspecified purpose by a person(s) or organization(s) without an expectation of compensation.

10A:2-9.2 Forms

(a) The following forms related to gifts shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 947-I Monthly Report of Gifts Received; and
2. 947-II Annual Report of Gifts Received.

10A:2-9.3 Gifts of money with specifications as to use

Gifts of money with specifications as to their use shall be recorded as Special Revenue Dedicated Funds when received by the Superintendent in accordance with the State of New Jersey Chart of Appropriation/Revenue accounts, codes and titles. These gifts shall be used in accordance with the specification of the donor(s).

10A:2-9.4 Gifts of money without specifications as to use

(a) Gifts of money without specifications for their use shall be placed in the Inmate Welfare Fund Account and used for the welfare of inmates.

(b) Pursuant to N.J.S.A. 30:4-1.1k, the Inmate Welfare Fund Account is under the supervision of the Institutional Board of Trustees which shall authorize all expenditures of donations without specifications as to use.

10A:2-9.5 Gifts from inmates to inmate organizations

(a) Gifts, other than money, may be donated by inmates to inmate organizations.

(b) The Superintendent shall determine the inmate organization which will receive the gift(s) donated by inmates.

10A:2-9.6 Gifts of computers

(a) Inmate organizations are permitted to receive microcomputers and software as gifts if the microcomputers and software were purchased from and delivered directly by a vendor authorized by the correctional facility.

(b) Each inmate organization shall be permitted to possess one stand-alone microcomputer which may be attached to a single dot matrix printer.

(c) Each request to provide an inmate organization with a micrcomputer and/or software, as a gift, shall be reviewed by the Institutional Computer Security Manager to ensure that the request is consistent with the rules outlined in this subchapter and internal management procedures of the Department of Corrections and the correctional facility.

(d) Requests to provide inmate organizations with microcomputers and/or software which, in the opinion of the Institutional Security Manager, could be detrimental to the security of the correctional facility shall not be approved for purchase.

(e) The microcomputer shall include a surge protector in order to minimize the possibility of damage to the microcomputer or the electrical system and associated appliances within the correctional facility.

(f) The microcomputer shall not include an internal or external modem.

(g) The microcomputer shall not be connected to any other computer, computer system or network. No gift can be approved which includes:

1. Communication software;
2. Local area network software (L.A.N.);
3. Wide area network software (W.A.N.); or
4. Other software prohibited by the correctional facility to which an inmate organization is assigned.

(h) Gift microcomputers and/or software that have been purchased from an authorized vendor shall not, under any circumstances, be opened before the microcomputers and/or software have been inspected upon receipt at the correctional facility.

10A:2-9.7 Gifts of vehicles or vehicle parts

(a) Prior to accepting a gift of a vehicle or vehicle parts, the proposal should be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit. The vehicle and vehicle parts must benefit the Department of Corrections and funds must be designated for the costs associated with the operation and maintenance of the vehicle.

(b) The Assistant Commissioner shall submit the proposal of a gift of a vehicle or vehicle parts and justification for the vehicle to the Director, Office of Institutional Support Services for review.

(c) Upon review of the proposal of a gift of a vehicle or vehicle parts, by the Director, Office of Institutional Support Services, the Director shall approve or disapprove the proposal.

(d) The written approval or disapproval of the proposal of a gift of a vehicle or vehicle parts shall be returned to the Assistant Commissioner.

(e) The Director, Office of Institutional Support Services, shall be responsible for notifying the Superintendent or Administrative Unit Head of the approval or disapproval of the proposed gift.

10A:2-9.8 Gifts for capital construction

(a) Prior to accepting a gift for capital construction, the proposal of the gift shall be referred by the Superintendent or Administrative Unit Head to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(b) The Assistant Commissioner shall submit the proposal of a gift for capital construction to the Director, Office of Institutional Support Services (O.I.S.S.), for review.

(c) Upon review by the Director, Office of Institutional Support Services (O.I.S.S.), the proposal of a gift for capital construction shall be submitted to the Commissioner, Department of Corrections, with a recommendation for approval or disapproval.

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(d) The Commissioner's written approval or disapproval of the proposed gift for capital construction shall be returned to the Director, Office of Institutional Services (O.I.S.S.).

(e) The Director, Office of Institutional Support Services (O.I.S.S.), shall be responsible for notifying the Superintendent or Administrative Unit Head of the Commissioner's approval or disapproval of the proposed gift for capital construction.

10A:2-9.9 Gifts for research purposes

Gifts for research purposes shall not be accepted until the research project has been reviewed and approved by the Commissioner, Department of Corrections, in accordance with the established Department procedures for evaluating research projects.

10A:2-9.10 Gifts of medical supplies or medical equipment

(a) Prior to accepting gifts consisting of medical supplies or equipment, the Superintendent or Administrative Unit Head shall submit notification of the availability of these gifts to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(b) The Assistant Commissioner shall submit the notification regarding the gifts of medical supplies or equipment to the Supervisor, Health Services Unit, Office of Institutional Support Services (O.I.S.S.), for review.

(c) The Supervisor, Health Services Unit, shall submit to the Assistant Commissioner written approval or disapproval of the acceptance of gifts of medical supplies or equipment. If the Supervisor, Health Services Unit, approves acceptance of the gifts of medical supplies or equipment, he or she shall designate the appropriate placement of such supplies and equipment.

(d) The Assistant Commissioner shall be responsible for accepting the gifts of medical supplies or equipment and for notifying the Superintendent or Administrative Unit Head receiving the gifts in order that arrangements for the transportation of the gifts to the correctional facility or unit may be made.

10A:2-9.11 Gifts which may result in financial burdens or obligations

(a) Gifts which may impose a financial burden or obligation upon the State of New Jersey shall not be accepted by a Superintendent or Administrative Unit Head without receiving written approval from the Commissioner or his or her designee.

(b) Upon receiving the approved gift at the correctional facility, the Superintendent or Administrative Unit Head shall submit a written notification to the Assistant Commissioner who is responsible for the operation of the correctional facility or administrative unit.

(c) The Assistant Commissioner shall notify the Commissioner when the gift has been received.

10A:2-9.12 Use of gifts to purchase supplies or equipment

(a) If supplies or equipment are purchased with funds made available by gifts, such items shall be purchased from a vendor currently under contract to supply these items to the State of New Jersey, if a vendor is available.

(b) If supplies or equipment cannot be purchased from a vendor currently under State contract, the Superintendent or Administrative Unit Head shall secure competitive price quotations consistent with the current State of New Jersey procurement policy as delineated in the Department of the Treasury's Procurement Circulars.

10A:2-9.13 Reports of gifts of money or material

(a) The Superintendent and Administrative Unit Head or his or her designee shall ensure that all assets obtained as gifts be recorded in accordance with current Department of Treasury policy regarding Fixed Assets Inventory Records.

(b) The Superintendent or Administrative Unit Head or his or her designee shall implement and maintain an adequate control system to safeguard gifts of money and other assets from theft and misuse, and provide an appropriate accounting of all gifts received.

(c) Superintendent and Administrative Unit Heads shall complete and attach a FORM 947-I, MONTHLY REPORT OF GIFTS RECEIVED to their monthly reports which list all gifts of money or material received having a value in excess of $100.00 along with the conditions, limitations or restrictions placed by the donor(s) on the use of such gifts.

(d) If gifts of money in amounts that are less than $100.00 are received on several occasions during the calendar year from the same source, the total amount from the donor shall be reported when it exceeds $100.00.

(e) As a part of the Annual Report to the Assistant Commissioner, Superintendents and Administrative Unit Heads shall report on FORM 947-II, ANNUAL REPORT OF GIFTS RECEIVED all gifts received during the fiscal year and the progress of projects funded by these gifts.

(a)

THE COMMISSIONER
Medical and Health Services
Suicide
Proposed New Rules: N.J.A.C. 10A:16-12

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

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

Proposal Number: PRN 1991-314.

Submit comments by July 3, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department of Corrections proposes to adopt new rules to govern the identification, placement and monitoring of inmates who are deemed by qualified staff persons to be at risk for suicide. These proposed new rules contain procedures by which suicide-prone inmates may be identified, criteria for determining placement of an inmate on suicide watch, designation of staff persons responsible for placement, monitoring and release, as well as provision for regular psychological evaluation and periodic reporting on the inmate's condition. Forms are provided for use in effecting the procedures as set forth in these rules.

Social Impact

This subchapter is consistent with the Department of Corrections' responsibility to manage the inmate population safely, securely and humanely, while at the same time taking steps necessary to maintain the safety of staff. To achieve these objectives it is necessary to standardize procedures for identifying those inmates who exhibit characteristics which may identify them as potential suicide risks, and to specify the conditions under which these inmates can best be monitored and evaluated. It is hoped that implementation of these procedures will result in fewer suicide attempts and more efficient handling of situations in which a suicide attempt is made.

Economic Impact

Although there are relatively few suicide attempts in the State's prisons, such occurrences can result in extraordinary medical costs and litigation, especially in those cases in which the suicide attempt is successful. It is hoped these rules will result in improved administrative handling of this target group so as to avoid the monetary and social consequences associated with suicide. No additional staff will be required to implement these rules and no additional funds are needed beyond the previously budgeted staff salaries.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required because the proposed new 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 proposed new rules impact on inmates and the New Jersey Department of Corrections and have no effect on small businesses.

Full text of the proposal follows:

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SUBCHAPTER 12. SUICIDE

10A:16-12.1 Definition

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

"Close observation" means intermittent monitoring of an inmate on suicide watch, either in-person or by T.V. monitor, at 15 minute intervals.

"Constant observation" means uninterrupted surveillance of an inmate on suicide watch, usually in-person, but permitted by T.V. monitor when conditions allow for continuous unobstructed visual access.

"Suicide watch" means monitoring the activities, emotional status and behavior of inmates who are identified as emotionally troubled, mentally disturbed or otherwise deemed likely to inflict physical injury or death upon themselves.

10A:16-12.2 Reporting likely suicide attempts

A staff person(s) who, by reason of his or her experience, education and observation of an inmate, believes that an inmate is likely to attempt suicide, shall convey this information to the ranking custody supervisor and the Director of Professional Services or a designated professional person as soon as is reasonably practicable.

10A:16-12.3 Decision making criteria for placing or releasing an inmate on suicide watch

(a) In determining whether to place an inmate on suicide watch or to release an inmate from suicide watch, the factors to be considered include, but are not limited to:

1. Mood or attitude;
2. Behavior;
3. Participation in activities;
4. Personal hygiene;
5. Sleeping patterns;
6. Eating habits;
7. Previous suicide attempts, if known; and/or
8. Other information deemed relevant.

10A:16-12.4 Temporary placement on suicide watch

(a) The following correctional facility staff persons are authorized to order that an inmate be placed on temporary suicide watch:

1. The Medical Director;
2. The Director of Psychology;
3. The shift commander;
4. The Superintendent;
5. The psychiatrist;
6. The Director of Professional Services;
7. The Director of Custody Operations; or
8. Another staff person as designated by the Superintendent.

(b) The Medical Director, the Director of Psychology, the psychiatrist or another physician may order that the inmate be placed on close observation or constant observation depending on the inmate's condition.

(c) The shift commander, the Superintendent or his or her designee, the Director of Professional Services, or the Director of Custody Operations may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition and upon the advice of a psychiatrist or physician.

(d) If a psychiatrist, psychologist or physician is unavailable, a designated professional staff person may order that the inmate be placed on close observation or constant observation depending on the inmate's observable condition.

(e) A SUICIDE WATCH NOTICE (FORM 301-VII) shall be completed by the staff person who ordered the initial placement of the inmate on suicide watch, and this notice shall be submitted to the Superintendent or his or her designee for review and approval within two hours of placement on suicide watch.

10A:16-12.5 Psychological/psychiatric review

(a) The staff psychologist or psychiatrist shall interview the inmate as soon as possible, but in no event later than 72 hours after placement on suicide watch, and the inmate shall be interviewed daily thereafter by the staff psychologist or psychiatrist or a designated professional staff person in the event that a psychologist or psychiatrist is unavailable.

(b) A PSYCHOLOGICAL MONITORING REPORT (FORM 301-VIII) shall be completed by the psychologist or psychiatrist after each visit. FORM 301-VIII shall be placed in the classification folder and a copy in the inmate's medical file.

10A:16-12.6 Change in type of observation

(a) After the initial placement of an inmate on suicide watch, the psychiatrist, psychologist or physician may change the type of observation of an inmate from close observation to constant observation or from constant observation to close observation by filling out FORM 301-IX CHANGE IN TYPE OF OBSERVATION.

(b) If a psychiatrist, psychologist or physician is unavailable, a designated professional staff person may recommend a change in the type of observation of an inmate on suicide watch using FORM 301-IX.

(c) The recommendation for a change in the type of observation of an inmate on a suicide watch (FORM 301-IX) shall be reviewed and approved by the Superintendent before action is taken to change the type of observation of an inmate on suicide watch.

10A:16-12.7 Daily written report

(a) The correction officer on each shift, who is assigned to the suicide watch post, shall complete a FORM 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT. The report shall contain the following information:

1. The inmate's name;
2. The inmate's number;
3. The inmate's housing unit;
4. The time;
5. The date;
6. The inmate's behavior;
7. The inmate's mood or attitude;
8. The inmate's personal hygiene;
9. The inmate's sleeping/eating pattern;
10. The inmate's social adjustment; and
11. Other symptoms or actions which the correction officer thinks may be of significance.

(b) The completed FORM 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT, shall be submitted to the shift commander at the conclusion of the shift, and copies of FORM 301-X shall be forwarded by the shift commander to:

1. The Director of Custody Operations;
2. The Medical Director;
3. The Superintendent;
4. The Director of Psychology;
5. The Director of Professional Services; and
6. The Classification Department.

10A:16-12.8 Personal property

(a) The shift commander, after consultation with the Director of Professional Services or a designated professional person, shall determine the items of personal property which an inmate on suicide watch is permitted to possess in the inmate's cell. This decision shall depend on the inmate's:

1. Emotional status;
2. Behavior; and
3. General prognosis.

10A:16-12.9 Supervision

The Superintendent shall assign an Assistant Superintendent, the Medical Director, or the Director of Psychology to supervise the initiation and implementation of suicide watch procedures to ensure that the inmate is receiving appropriate care.

10A:16-12.10 Release from suicide watch

(a) The Medical Director or psychiatrist may order the inmate released from suicide watch by filling out FORM 301-XI RELEASE FROM SUICIDE WATCH.

(b) The order to release an inmate from suicide watch (FORM 301-XI) shall be reviewed and approved by the Superintendent before action is taken to release the inmate from suicide watch.

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(c) The shift commander shall be notified by the Superintendent or his or her designee of the approval of an inmate's release from suicide watch.

(d) If the inmate's release from suicide watch involves a transfer of the inmate and space is unavailable to accommodate an immediate transfer, the shift commander shall determine the time the transfer will take place.

(e) FORM 301-XI shall be forwarded to the Classification Department and a copy shall be sent to the Medical Department.

10A:16-12.11 Attempt to commit suicide

(a) A correction officer or staff person who becomes aware that an inmate is attempting to commit suicide, or apparently has already committed suicide, shall call Center Control immediately.

(b) Center Control shall advise the correction officer on actions to take and shall send additional staff as are deemed necessary; for example, emergency, medical and supervising staff.

(c) In circumstances where there is at least one correction officer located in a protected position, another correction officer may enter the cell to take the action that is necessary to:

1. Cut down a hanging inmate;
2. Extinguish a fire; or
3. Administer first aid.

(d) In circumstances where there is only one correction officer assigned to a secured housing unit, that correction officer must wait for a second correction officer to arrive and to be located in a protected position before action can be initiated.

(e) Factors which should be considered when an inmate is attempting or has committed suicide include, but are not limited to:

1. The availability and location of back-up staff;
2. The staff present at location of incident;
3. The availability of keys;
4. The potential for hostage situations; and
5. The emergent nature of present circumstances.

(f) When determining the action to take, security of the housing unit and correctional facility shall be of primary concern.

10A:16-12.12 Cutting tool

A special cutting tool known as a "911 rescue tool" shall be made available to each correction officer working on a housing unit to use in cutting down a hanging inmate.

10A:16-12.13 Post orders policies and procedures

(a) In order to implement this subchapter, each correctional facility shall develop written:

1. Post orders;
2. Policies; and
3. Procedures.

(b) When developing these post orders, policies and procedures, special attention shall be given to two primary objectives:

1. Maintaining security of the housing unit and the correctional facility at large; and
2. Providing the quickest and most effective means by which a suicide attempt is handled in order to save the victim's life under the circumstances presented.

(c) The post orders, policies and procedures shall be updated on a yearly basis and submitted to the appropriate Assistant Commissioner for review.

10A:16-12.14 Forms

(a) The following forms related to suicide watch shall be reproduced by each correctional facility from originals that are available by contacting the Standards Development Unit:

1. 301-VII SUICIDE WATCH NOTICE;
2. 301-VIII DAILY PSYCHOLOGICAL SUICIDE MONTIORING REPORT;
3. 301-IX CHANGE IN TYPE OF OBSERVATION;
4. 301-X DAILY CORRECTION OFFICER SUICIDE WATCH REPORT; and
5. 301-XI RELEASE FROM SUICIDE WATCH.

(a)

THE COMMISSIONER

Mail, Visits and Telephone Inspection of Outgoing Correspondence

Proposed Amendments: N.J.A.C. 10A:18-1.3 and 2.7

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

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

Proposal Number: PRN 1991-293.

Submit comments by July 3, 1991 to:
Elaine W. Ballai, Esq.
Regulatory Officer, Standards Development Unit
Department of Corrections
CN 863
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In order to comply with a *Matter of Inmate Mail to Attorneys,* 232 N.J. Super. 478 (App. Div. 1989), the proposed amendments define the terms "legitimate public official" and "news media representative" in N.J.A.C. 10A:18-1.2. A proposed amendment modifies N.J.A.C. 10A:18-2.7(c) to delete "long enough" and add "for a maximum of 72 hours, in order . . .". This amendment is being proposed because "long enough" is vague and indefinite in terms of the amount of time that mail may be held in order to verify that inmate outgoing mail is addressed to legitimate public officials, governmental agency officials or news media representatives. The proposed addition of "for a maximum of 72 hours" establishes a limit on the amount of time that inmate outgoing mail to public officials, government agency officials and news media representatives may be held to verify the legitimacy of these persons.

Social Impact

The proposed amendments will expedite the forwarding of inmate outgoing mail addressed to public officials, governmental agency officials and news media representatives, and ensure that these persons receive correspondence from inmates in a timely fashion.

Economic Impact

The proposed amendments will have no economic impact because additional financial resources of the Department are not required to implement or maintain the proposed amendments and no impact on other parties is foreseen.

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 proposed amendments impact on inmates and the New Jersey Department of Corrections, and have no effect on small businesses.

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

10A:18-1.3 Definitions

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

. . .

"Legitimate public official" means the following:

1. An elected or appointed national, state or municipal government official; or

2. A director of a national, state or municipal government agency.

"News media representative" means a person whose principal employment is to gather or report news for:

1. A newspaper which qualifies as a general circulation newspaper in the community in which it is published. A newspaper is one of "general circulation" if it circulates among the general public and if it publishes news of a general character of general interest to the public such as news of political, religious, commercial or social affairs. A key test to determine whether a newspaper qualifies as a "general circulation" newspaper is to determine whether the paper qualifies for the

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purpose of publishing legal notices in the community in which it is located or the area to which it distributes;

2. A news magazine which has a national circulation and is sold by news-stands and by mail subscription to the general public;

3. A national or international news service; or

4. A radio or television news program, whose primary purpose is to report the news, of a station holding a Federal Communications Commission license.

. . .

10A:18-2.7 Inspection of outgoing correspondence

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

(c) Outgoing mail from inmates to public officials, governmental agency officials and news media representatives may be held [long enough], **for a maximum of 72 hours, in order** to verify that the addressee is a legitimate public official, governmental agency official or news media representative.

(d)-(f) (No change.)

LABOR

(a)

DIVISION OF WORKERS' COMPENSATION

Rules of the Division of Workers' Compensation

Reproposed Amendments: N.J.A.C. 12:235

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

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12(b) and (c), and 34:15-64.

Proposal Number: PRN 1991-322.

Submit comments by August 9, 1991 to:
Mark E. Litowitz
Director and Chief Judge
CN 381
Trenton, New Jersey 08625-0381
Linda Flores
Special Assistant for External and Regulatory Affairs
CN 110
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 12:235, the Rules of the Division of Workers' Compensation, was scheduled to expire on May 5, 1991. The Department proposed these rules, with amendments, for readoption in the March 18, 1991 New Jersey Register at 23 N.J.R. 834(a). As a result of numerous public comments received on the amendments to the rules, the Department readopted the existing rules, without change, effective May 3, 1991, in order to avoid a regulatory hiatus (see notice of readoption published elsewhere in this issue of the New Jersey Register).

The Department is now reproposing amendments to these newly readopted rules. These amendments are somewhat similar to those proposed at the time of readoption, but have been changed to reflect suggestions received in the public comments. Additionally, the Department is providing an extended comment period, as requested by several commenters.

The rules have been amended throughout to capitalize Judge of Compensation, Director and Division. Additionally, the entire chapter has been amended to be gender-neutral.

N.J.A.C. 12:235.1, General Provisions, sets forth the purpose and scope of the chapter; specifically, to establish rules to carry out the responsibilities of the Division of Workers' Compensation ("Division") under the Act, N.J.S.A. 34:15-1 et seq. The subchapter has been amended to delete superfluous sections, but no substantive changes have been made.

N.J.A.C. 12:235-1.6, Maximum workers' compensation benefits rates, has been deleted as these rates are statutorily set every year, and the Division did not feel it would be necessary to repeat the rates in the rules.

N.J.A.C. 12:235-2 is a definitions subchapter. The subchapter has been amended to add the definition of Chief Judge.

N.J.A.C. 12:235-3 addresses the conduct of Judges of Compensation. There have been minor changes suggested in N.J.A.C. 12:235-3.1 through 3.10. At N.J.A.C. 12:235-3.3(a), the Department has referenced the Rules of Professional Conduct as the standard by which attorney conduct should be regulated, as suggested in a public comment received during the comment period for the readoption.

N.J.A.C. 12:235-3.11, concerning the Commission of Judicial Performance ("Commission"), was declared invalid in a recent court case as a result of improper secondary notice of its proposal (see 23 N.J.R. 207(a)). The Department now intends to repropose the section in its entirety as a new rule to allow the regulated public ample opportunity to make comments on the content of the rule. The text of N.J.A.C. 12:235-11 is taken directly from Pressler, N.J. Court Rules—Rules Governing Appellate Practice, Rule 2:15-1 et seq., which establishes an Advisory Committee on Judicial Conduct for Superior Court Judges.

Generally, N.J.A.C. 12:235-3.11 provides for a Commission to be established to review complaints made against Judges of Compensation. The Commission is empowered to investigate these claims and make recommendations to the Commissioner of Labor concerning its findings.

At the suggestion of two public commenters, the term of the members is to be for two years and they may be reappointed for additional term(s) as the Director shall determine (see N.J.A.C. 12:235-3.11(a)1). In response to another commenter's concern, N.J.A.C. 12:235-3.11(c), which refers to the conduct of a "preliminary investigation," is now being deleted in the reproposed amendments. The deletion is to clarify that the authority of a three-member panel established and designated by the Chairman or the Commission shall be limited only to the conduct of hearings and not investigations. Additionally, at N.J.A.C. 12:235-3.11(h)1, the language has been changed to make the Commissioner the individual to take necessary action as a result of Commission recommendations, as opposed to the Director.

N.J.A.C. 12:235-3.12, Removal from office, has been reproposed to read that Judges of Compensation may be removed from office if it is found beyond a reasonable doubt that they have been convicted of an indictable offense, have been found to be incapable of executing the duties of their office, or have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2.

N.J.A.C. 12:235-3.15 has been reproposed to reflect the fact that Judges shall not be suspended without pay during the resolution of removal proceedings, as the Department believes that a Judge should be entitled to pay pending removal proceedings.

N.J.A.C. 12:235-3.16, Right to counsel, is being reproposed to allow the accused in a formal hearing for removal, suspension or censure time to prepare a defense and be represented by counsel. Additionally, subsection (b) has been proposed to provide subpoena power to both parties.

N.J.A.C. 12:235-3.17 addresses formal proceedings for removal, suspension or censure. Such proceedings shall be scheduled by the Director before the Commissioner or a representative designated by the Commissioner. The hearing shall commence within 30 days of the receipt of the Commission's recommendation by the Director, and tried on a continuous basis to conclusion.

N.J.A.C. 12:235-3.18 concerns informal hearings. If the Commission does not recommend formal proceedings, the Director shall schedule an informal hearing before the Commissioner or a representative within 30 days of the receipt of the recommendation. The informal hearing shall be conducted in a summary manner after the Judge has been advised of the charges in writing and has been afforded a reasonable time to prepare a defense. The section also allows the Director, on his or her own motion, to require a Judge to respond to a charge that a provision of the subchapter or a directive of the Director has been violated. The response may be in person, in writing or by telephone. This type of proceeding is to be considered an informal hearing.

N.J.A.C. 12:235-3.19 concerns forms of discipline. It provides the disciplines that the Commissioner may dispense after any formal hearing or an informal hearing, and those disciplines which can be dispensed by the Director after an informal hearing.

N.J.A.C. 12:235-3.20, Confidentiality, has been reproposed to use the word "disciplinary" for "personnel" with regard to disclosure of information. The Department felt Judges would be better protected by specifying that all disciplinary matters should be confidential, as opposed to personnel matters, because personnel matters may not be considered to include disciplinary actions. Furthermore, the Department did not feel that all personnel proceedings had to be confidential; for example, the designation of a Judge as a Supervising Judge should not have to be a confidential matter.

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N.J.A.C. 12:235-4 concerns the supervision of Judges of Compensation. No substantive changes have been proposed.

N.J.A.C. 12:235-5 sets forth the provisions for formal claims. Several changes have been made to the existing text as summarized below.

Specifically, N.J.A.C. 12:235-5.1, Initial pleadings, has been amended at subsection (a) to increase the amount by which a fee can be reduced for knowingly filing an incomplete or inaccurate claim petition. Currently, the rule requires a 15 percent reduction of the fee; the amendment changes the mandatory requirement to a discretionary reduction of 15 percent or $200.00, whichever is greater.

At N.J.A.C 12:235-5.2, concerning motions for temporary disability and/or medical benefits, the amount of the penalty which may be assessed against an attorney for knowingly filing an incomplete, inaccurate or misleading notice of motion for benefits has been increased from $50.00 to $200.00. This increase has been proposed because of the excessive number of motions which are being filed incorrectly. However, while the amount of the penalty has been increased substantially, it is still within the discretion of the presiding Judge to penalize the attorney at all. Additionally, N.J.A.C. 12:235-5.2 has been amended to allow physician's reports to be introduced in place of a physician's affidavit in support of the motion for medical and/or temporary benefits.

N.J.A.C. 12:235-5.3(b), which requires a checklist to be appended at the foot of an order relating to the filing of answers, has been deleted. This has not been the practice within the Division for some time, as the filing of answers is accompanied by a specific form and is noted in the computer system.

N.J.A.C. 12:235-5.4(c) as been amended to remove the standard of "substantial likelihood" concerning third party joinder. Additionally, N.J.A.C. 12:235-5.4(f) has been amended to institute a discretionary penalty in the amount of $200.00 to be awarded to each opposing counsel of each party sought to be joined.

As part of the reproposed amendments, N.J.A.C. 12:235-5.7(e) has been added to provide that a deposition of an injured or ill petitioner may be taken with the consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

N.J.A.C. 12:235-5.9, Pre-trial conference, subsection (a) has been amended to further clarify the procedures to be followed at a pre-trial conference. Specifically, the Judge and the attorneys are to agree upon the type of medical examinations required, and the issues to be tried shall be limited, where possible.

N.J.A.C. 12:235-5.9(b) has been added to require all attorneys requesting an adjournment for medical examinations to provide the name of the examining physician and the date of the examination before an adjournment is granted.

N.J.A.C. 12:235-5.10(b) has been amended to remove the restriction that no person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity. The Department is of the opinion that if an attorney is licensed to practice law in the State of New Jersey, no further qualifications should be imposed.

N.J.A.C. 12:235-5.10(e) has been reproposed in the amended text to allow accelerated scheduling of cases by the Director, Supervising Judge, or the Judge of Compensation before whom the case is listed.

N.J.A.C. 12:235-5.10(f)1, regarding bifurcation of trials by the Judge of Compensation, has been re-included in the reproposed rules. It had been deleted, as a result of an administrative oversight, in the original proposal.

N.J.A.C. 12:235-5.10(j) has been amended to specify that briefs filed shall be in the form of post-trial briefs. In Workers' Compensation court, tiral briefs are not submitted as a matter of practice. The only time briefs may be needed is at the close of the case, in an effort to clarify one's position or to endeavor to bring a novel issue of law to the Judge's attention prior to the decision being rendered.

N.J.A.C. 12:235-5.10(m) has been deleted and replaced with language requiring physicians who regularly examine petitioners to adhere to the vacation schedule established by the Director. If a medical expert is not available, the Judge may direct the party for whom the witness is to appear to arrange for an alternate medical expert. Additionally, a definition of medical expert has been added to define what is meant by a physician who regularly examines petitioners to determine the extent of disability.

N.J.A.C. 12:235-5.10(n) has been changed to more accurately specify the procedures to be followed with regard to the retention of exhibits. The Division felt that this section need clarification to ensure that important documents and exhibits would be properly retained and/or microfilmed pursuant to N.J.S.A. 34:15-121.

Finally, N.J.A.C. 12:235-5.10(s) has been amended to give Judges 30, rather than 15, days to complete their reserved decisions. Subsection (t) has been amended to refer to the word processing center and other methods of opinion production. A new subsection (u) has been added, which subsection clarifies the date of entry for a final judgement.

N.J.A.C. 12:235-6 addresses informal hearings. N.J.A.C. 12:235-6.10, concerning the appearance by persons convicted of a crime, has been deleted as the Department did not believe this would necessarily affect a person's representative ability in Workers' Compensation Court. No other substantive changes have been made.

N.J.A.C. 12:235-7 concerns Second Injury Fund Cases. Specifically, the subchapter sets forth the procedures to be followed when filing a claim for benefits payable from the Second Injury Fund pursuant to N.J.S.A. 34:15-95. The subchapter discusses hearings, payment of benefits, and the filing of petition for benefits.

N.J.A.C. 12:235-7.1(a) has been deleted, and combined with more explicit language at subsection (b). This subsection has been amended to establish the procedure to be followed when a settlement cannot be effected. Specifically, the rule outlines the manner in which a trial should be listed and how to deal with a Second Injury Fund application.

N.J.A.C. 12:235-7.3(b)1 has been added to require the Fund to reimburse an employer who has paid excess benefits.

N.J.A.C. 12:235-7.3(e), requiring the employer to continue to pay benefits when the application for Fund benefits has been denied, has been deleted because it is not proper to require the employer to continue to indefinitely make payments.

N.J.A.C. 12:235-8 concerns the commutation of an award, and sets forth what must be contained in an application form for commutation and the procedure for approval or disapproval of the application. The subchapter has been amended to require the Judge who initially entered the award sought to be commuted to hear the application. Currently, it is the responsibility of the Division to review such an application.

N.J.A.C. 12:235-9 concerns discrimination complaints. The subchapter provides information concerning the procedures to be followed when filing a discrimination complaint, the Department's duty to investigate complaints, and action by the Commissioner. The only changes proposed to the subchapter are at N.J.A.C. 12:235-9.4, which involve extending, from 30 to 90 days, the time given to Departmental investigators to complete an investigation, and forward the results to the Director. The Department realizes that this time extension lengthens the complaint resolution period, but believes this extra time is required to enable a more thorough investigation and more extensive internal review procedure.

N.J.A.C. 12:235-10 addresses accident reports; specifically, the employers' first report of accidental injury or occupational disease, the insurers' initial notice of accident, insurers' final report of accident and report of death. Amendments to the subchapter include deleting repetitive language and eliminating the form numbers of the forms required.

N.J.A.C. 12:235-13.2 has been amended to change the definition of Director.

N.J.A.C. 12:235-14 addresses the Uninsured Employers' Fund. Several changes have been made to the subchapter. Specifically, the rules have been amended at N.J.A.C. 12:235-14.1 to add subsection (c), which provides that no judgment or order for the payment of benefits shall be entered against the Fund. This statement clarifies the statute, which provides that judgments shall be entered specifically against uninsured employers. N.J.A.C. 12:235-14.2 has been amended to detail the steps involved in joining the Fund. Subsection (a) has been amended to allow an extension of the 45 days period in which to file a notice against the Fund, upon good cause shown. Subsection (d) has been deleted, as the Fund, not petitioner's attorney, will subpoena respondents when necessary.

N.J.A.C. 12:235-14.3 addresses the certification, and has been amended to require petitioner's attorney to advise the Fund who has paid medical expenses to date and whether the petitioner is receiving Social Security benefits. Subsections (b) and (c), concerning additional information and sanctions for failure to disclose pertinent information, have been deleted as the Division feels that subsection (b) is superfluous and subsection (c) is not, in practice, followed.

N.J.A.C. 12:235-14.4 has been amended to delete reference to the Bureau of Risk Management's medical fee schedule. The Judge of Compensation makes a preliminary determination of reasonableness. If costs seem excessive, the bills are sent to an outside consultant for review, at the direction of the Judge of Compensation. The Risk Management fee schedule is not used by the Fund in any event. Under subsection (b), changes have been made concerning the type of information requested of a physician in an independent medical examination, as it is often

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desirable to know the anticipated date for return to work and whether the petitioner needs further treatment. Subsection (e) has been deleted because it is superfluous as any party retains the right to produce expert testimony.

N.J.A.C. 12:235-14.6, which had been proposed as "Attorney Fees," is reproposed as, "Payments from the Fund." The reproposed section states that payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.

As part of this reproposal, "Attorney Fees" is reproposed as a new rule at N.J.A.C. 12:235-14.7. The section provides that attorney fees may be payable from the Fund when the petitioner is found eligible for Fund benefits by the Commissioner, and addresses the procedures to be followed by the petitioner's attorney when applying for payment of the attorney fee by the Fund. Such application is to be accompanied by an affidavit of provider services.

Social Impact

The reproposed amendments will have a significant positive impact on both employers and employees, as they clarify the procedures used in the court system which resolves workers' compensation disputes. The Department will benefit by these amendments and it will be assured of having a more efficient Workers' Compensation system which is capable of determining benefit eligibility, which, in turn, benefits the working people in the State of New Jersey. The reproposed amendments will require those appearing in Workers' Compensation Court to follow somewhat more specific rules concerning filings, formal hearings, Second Injury Fund procedures, and Uninsured Employers' Fund procedures, and the overall impact will result in a more orderly system which delivers benefits in a more efficient manner.

Economic Impact

The reproposed amendments to the rules are not expected to have any real economic impact on employers, employees or the Department. As written, the reproposed amendments to the rules are designed only to help govern the orderly functioning of the Workers' Compensation Court system. They do not provide for any new programs or methodologies which would result in the expenditure of money. The reproposed amendments affect attorneys economically only with regard to those penalties outlined at N.J.A.C. 12:235-5.1(a), 5.2(c) and 5.3(f). Claimants are positively affected economically in the sense that these amendments improve a system designed to provide them benefits.

Regulatory Flexibility Analysis

The reproposed amendments do impose reporting, recordkeeping and compliance requirements on attorneys, some of which can be considered as small businesses pursuant to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Small businesses must file claim petitions, motions for medical and/or temporary benefits, Second Injury Fund applications and Uninsured Employers' Fund certifications in order to obtain benefits for their clients. The filing of these papers is a precedent to the collection of benefits, and no exception can be made for small businesses. It is necessary for all adversary parties, regardless of size, to file all required forms and pleadings in an effort to ensure the orderly, efficient functions of the Workers' Compensation system. Additionally, small businesses must retain records in accordance with the record retention laws of the State of New Jersey. The Department does not anticipate the need for any individuals to require outside professional assistance or consultants to be able to comply with these proposed amendments.

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

[12:235-1.1 Title and citation

This chapter shall be known and may be cited as N.J.A.C. 12:235, Workers' Compensation Procedures.

12:235-1.2 Authority

These rules are promulgated pursuant to the authority of Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.]

12:235-[1.3]**1.1** Purpose; **scope**

(a) The purpose of this chapter is to establish rules to carry out the responsibilities of the Division of Workers' Compensation under the Act.

[12:235-1.4 Scope]

(b) This chapter shall apply to all persons subject to the Workers' Compensation Law, N.J.S.A. 34:15-1 et seq.

12:235-[1.5]**1.2** (No change in text.)

[12:235-1.6 Workers' compensation benefit rates

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

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

12:235-1.7 Documents referred to by references

The availability of documents referred to in this chapter is explained in N.J.A.C. 12:235-11.

12:235-1.8 Validity

Should any section, paragraph, sentence or word of this chapter be declared invalid, it shall not affect the remaining portions of this chapter.]

12:235-2.1 Definitions

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

. . .

"Chief Judge" means the Chief Judge of the Division.

"Commissioner" means **the** Commissioner of Labor **or his or her designee.**

. . .

["Shall" means a mandatory requirement.]

12:235-3.1 Promptness

(a) [A judge] **Judges** of [compensation] **Compensation** shall be prompt in the performance of all [his] duties, including[:], **but not limited to:**

1. Convening hearings at the time [scheduled] **and in the manner established** by the [director] **Director**.

2. (No change.)

3. Completing and forwarding to the [director] **Director** at regular intervals [a] performance record**s and other data relating to judicial performance** in a manner established by the [director] **Director**.

12:235-3.2 Courtesy and civility

(a) [A judge] **Judges** of [compensation] **Compensation** shall be impartial and courteous to parties, counsel, and all others appearing or concerned with the administration of justice in the court.

(b) [The judge] **Judges** of [compensation] **Compensation** shall require, so far as [his] **their** power extends, that those individuals assisting [him] **the Judge** in the administration of the function of the court extend the same civility and courtesy to counsel and all others having business in the court.

(c) The conduct of a [judge] **Judge** of [compensation] **Compensation** shall be free from impropriety and the appearance of impropriety. [His] **Their** personal demeanor, not only on the bench and in the performance of [his] **their** judicial duties, but also in [his] **their** everyday life, shall be beyond reproach. [He] **Judges** shall be temperate, attentive, patient, and impartial.

12:235-3.3 Conduct of attorneys

(a) [A judge of compensation shall require professional conduct by attorneys.] **Attorneys shall conduct themselves in a professional manner at all times, as defined by the Rules of Professional Conduct.**

(b) [A judge] **Judges** of [compensation] **Compensation** shall report **to the Supervising Judge and Director** all instances of [unethical or illegal practices by attorneys to the supervising judge and the director] **attorney conduct in contravention of the Rules of Professional Conduct**.

12:235-3.4 Conduct of witnesses and others having business [with] **before** the court

(a) Witnesses and others having business before the court shall conduct themselves in a proper manner.

(b) [A judge] **Judges** of [compensation] **Compensation** shall [have the duty to] report **to the Supervising Judge and Director** all instances of **improper,** unethical or illegal practices by any [lay, professional or] expert witness, interpreter, court reporter, or party before [him] **the Judge** [to the supervising judge and the director].

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12:235-3.5 Kinship or influence: disqualification

(a) [A judge] **Judges** of [compensation] **Compensation** shall not act upon or hear a controversy, or a portion thereof where a relative of [himself] **the Judge** or [his] **the Judge's** spouse within the third degree of relationship to either is a party before [him] **the Judge.**

(b) If a relative of [himself] **the Judge** or [his] **the Judge's** spouse within the third degree of relationship to either, former partner, business associate, or personal friend is scheduled to appear before a [judge] **Judge** of [compensation] **Compensation**, the [judge] **Judge** shall [conditionally] disqualify himself **or herself** [to] **from** hearing the matter and promptly notify the [supervising judge] **Supervising Judge** and the [director] **Director** for rescheduling of the matter.

(c) [A judge] **Judges** of [compensation] **Compensation** shall disqualify [himself] **themselves** from all other matters in which [he is] **they are** unable to conduct a fair and unbiased hearing.

12:235-3.6 Conflict of interest

(a) [A judge] **Judges** of [compensation] **Compensation** shall not:

1. Engage in any activity which requires the performance of duties inconsistent with [his] **their** position of authority; or

2. Incur any obligation, pecuniary or otherwise, which would in any way interfere or appear to interfere with [his] **their** duty to effectuate the proper administration of [his] **their** official functions.

12:235-3.7 Partisan politics

(a) [A judge] **Judges** of [compensation] **Compensation** shall be entitled to entertain [his] personal views of political questions, and while [he is] **they are** not required to surrender [his] **their** rights or opinions as [a] citizens, it is inevitable that suspicions of being influenced by political bias will attach to an individual who becomes an active promoter of the interests of a political party.

(b) [A judge] **Judges** of [compensation] **Compensation** shall not:

1.-7. (No change.)

12:235-3.8 Self-interest

[A judge] **Judges** of [compensation] **Compensation** shall abstain from performing or taking part in an official act by which [his] **their** personal interests would be affected.

12:235-3.9 Gifts and favors

(a) [A judge] **Judges** of [compensation] **Compensation** shall not solicit or accept any gifts, favors, or gratuities of any form or pecuniary value from:

1. Litigants, attorneys, physicians, or witnesses regularly appearing before the [division] **Division**; or

2. (No change.)

12:235-3.10 Medical reports

Any [judge] **Judge** of [compensation] **Compensation** who has reason to believe that a medical report, medical bill for services, or medical finding has been altered, falsified, or withheld by a licensed physician, dentist, chiropractor, osteopath, optometrist, physical therapist, medical technician, attorney, or a representative of an insurance carrier or self-insured shall notify the [director] **Director**.

12:235-3.11 Commission on Judicial Performance

(a) Pursuant to this subchapter, a Commission of Judicial Performance (Commission) is established.

1. The Commission shall consist of nine members. The Director shall designate one member to serve as Chairman and another member to serve as Vice Chairman. At least two members shall be retired Judges of Compensation, not less than three members shall be members of the Bar, and not more than four members shall be laymen who do not hold public office of any nature. The members shall be appointed by the Director for terms of two years and may be reappointed for such additional term or terms as the Director shall determine. Membership on the Commission shall terminate if a member is appointed or elected to public office or to any position considered by the Director to be incompatible with such service.

2. A quorum shall consist of five members of the Commission. No action of the Commission shall be valid unless concurred in by a majority of its membership; provided, however, that if the Commission finds sufficient cause therefor, and recommends to the Director the institution of formal proceedings which may lead to censure, suspension, or removal of the Judge of Compensation, such recommendation shall be made only on the affirmative vote of five members of the Commission who have considered the record and at least three of whom were present at any hearing at which oral testimony was produced.

3. Whenever in the judgment of the Commission it shall appear necessary or expedient to do so, the Chairman of the Commission may establish and designate three-member panels to conduct any investigation or any hearing contemplated by this subchapter. At the conclusion thereof, the panel shall make a report or recommendation to the Commission, which shall review the report or recommendation in accordance with (a)2 above.

4. The function of the Commission shall be to give advisory opinions, recommendations and reports to the Director.

(b) The Commission shall make a preliminary investigation to determine what, if any, action should be taken, upon receiving a written statement or criticism or complaint, not obviously unfounded or frivolous, or relating to a matter solely subject to an appeal from the criticized conduct or action, alleging facts indicating that a Judge of Compensation is guilty of:

1. Misconduct in office;

2. Willful failure to perform judicial duties;

3. Incompetence;

4. Habitual intemperance;

5. Engagement in partisan politics;

6. Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or

7. May be suffering from a mental or physical disability which is disabling the Judge and may continue to disable the Judge indefinitely or permanently from the performance of judicial duties.

(c) If the preliminary investigation does not disclose sufficient cause to warrant further proceedings, the person submitting the statement, criticism or complaint shall be so notified.

1. If the Judge of Compensation involved is aware of the statement, criticism or complaint, he or she should be notified of the Commission's findings and action;

2. If the Judge has not been made aware of the statement, criticism or complaint, the Commission, in the exercise of its discretion in the particular circumstances, may furnish information to the Judge or withhold information from the Judge as to the action taken.

(d) If the preliminary investigation indicates that further inquiry into the matter is necessary, the Commission shall:

1. Require the complainant to file a verified complaint against the Judge unless the circumstances render it unnecessary;

2. Notify the Judge of the nature of the charge, the name of the person making it, and that the Judge has the opportunity to present within such reasonable time as the Commission shall fix, such matters as he or she may choose with respect to it, including, on his or her request, the right to appear before the Commission, on notice to the complaining party, and to make such statement under oath as he or she deems appropriate. If the Judge does make a statement before the Commission, on request, the complainant shall be permitted to make further statement as he or she deems material. Such statements may be taken stenographically or by a sound recording device.

i. The notice to the Judge referred to in (e)2 above shall specify in ordinary and concise language the charges against the Judge and the alleged facts upon which they are based.

(e) All Department personnel shall cooperate fully with the investigation and shall provide all such information to the Commission as may be deemed necessary by the Director.

(f) Upon completion of the preliminary investigation, the Commission may:

1. Dismiss the charges and notify the parties of the action taken if it finds that the charges are without merit. If the matter has been made public, the Commission may, at the request of the Judge involved, issue a short statement of clarification and correction;

2. Issue a short explanatory statement, if a Judge is publicly charged with having engaged in grievous reprehensible conduct or having committed a serious offense, and if after the preliminary investigation it is decided that there is no basis for further proceedings or recommendation respecting the issuance of a formal complaint;

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3. Request a Judge to appear at a time and place designated for an informal discussion of the matter if the investigation reveals some departures by the Judge from common standards of judicial propriety, such as discourtesy, rudeness, disparagement of witnesses or attorneys and the like, or other conduct or demeanor which would reflect unfavorably upon the functions of the Division and administration of justice if persisted in or were to become habitual or more substantial in character. After making the Judge aware of the objectionable conduct, and becoming satisfied that it was temporary in nature and not likely to become habitual, the Commission may dismiss the complaint, and advise the parties of the action taken, and the reasons for the dismissal of the complaint.

i. Conferences shall be recorded by a qualified reporter or by a sound recording device and a transcribed record and all papers in the proceeding shall be filed with the Commission.

(g) Whenever the Commission concludes from the preliminary investigation that the circumstances may call for censure, suspension or removal of the Judge, and that formal proceedings to that end should be instituted, the Commission shall promptly file a copy of the recommendation and the record of the Commission with the Director. The Commission shall issue also without delay and serve upon the Judge a notice advising him or her that it has filed such a recommendation with the Director.

1. After the Director has received reports and recommendations from the Commission, the Director shall recommend such action as is deemed appropriate to the Commissioner, who shall render a final agency determination.

12:235-3.12 Removal from office

(a) Judges of Compensation may be removed from office if it is found beyond a reasonable doubt that:

1. They have been convicted of an indictable offense;

2. They have been found to be incapable of executing the duties of their office; or

3. They have committed an enumerated offense pursuant to N.J.S.A. 2C:51-2, which details the circumstances for forfeiture of public office.

12:235-3.13 Institution of removal proceedings

A proceeding for removal for cause may be instituted by the filing of a misconduct complaint with the Commissioner by the Director.

12:235-3.14 Prosecution of removal proceedings

The Attorney General or a designated representative shall prosecute the removal proceedings unless the Commissioner, with the express consent of the Attorney General, designates an attorney for that purpose.

12:235-3.15 Suspension pending resolution of the proceeding

The Commissioner may suspend Judges of Compensation from office or from performing their regular duties, with pay, prior to the resolution of the proceeding.

12:235-3.16 Right to counsel

(a) The accused in a formal hearing for removal, suspension or censure shall be given a reasonable time to prepare a defense and shall be entitled to counsel retained and paid for by the accused.

(b) The prosecuting attorney and the accused shall have the right to compulsory process to compel the attendance of witnesses and the production of evidence deemed necessary for the hearing.

12:235-3.17 Formal proceedings for removal, suspension or censure

(a) Upon receipt of a recommendation from the Commission that formal proceedings for removal, suspension or censure should be instituted, the Director shall schedule such proceedings before the Commissioner or a representative designated by the Commissioner.

(b) The hearing shall commence within 30 days of the receipt of the Commission's recommendation by the Director and shall be tried on a continuous basis to a conclusion.

12:235-3.18 Informal hearings

(a) Upon receipt of a recommendation from the Commission that the circumstances may call for censure, but that formal proceedings to that end should not be instituted, the Director shall schedule an informal hearing before the Commissioner or a designated representative within 30 days of receipt of the recommendation.

(b) The informal hearing shall be conducted in a summary manner after the Judge has been advised of the charges in writing and has been afforded a reasonable time to prepare a defense.

(c) The Director, on his or her own motion, may require a Judge to respond to a charge that a provision of this subchapter or a directive of the Director has been violated. This response may be in person, in writing or by telephone. Such a proceeding shall be considered an informal hearing.

(d) The decision of the Commissioner, his or her designated representative or the Director, following an informal hearing, shall be final.

12:235-3.19 Forms of discipline

(a) The Commissioner may dispense the following discipline after any formal hearing:

1. Removal from office;

2. Suspension;

3. Written reprimand; or

4. Oral reprimand.

(b) The Commissioner or a designated representative may dispense the following discipline after any informal hearing conducted by the Commissioner or his or her designee:

1. Written reprimand; or

2. Oral reprimand.

(c) The Director may dispense the following discipline after any informal hearing conducted by the Director:

1. Written reprimand; or

2. Oral reprimand.

12:235-3.20 Confidentiality

All disciplinary proceedings concerning Judges of Compensation shall be conducted in a confidential manner. The Director shall have the sole responsibility for releasing information concerning disciplinary matters.

12:235-4.1 Assignment to supervisory positions

(a) It shall be within the power of the [director] **Director** to ascertain the need to assign [judges] **Judges** to supervisory positions and exercise the administrative duties as set forth in this chapter for the districts [he] **the Director** may designate.

(b) [The director in his discretion may:] **In the discretion of the Director, the Director may:**

1. Determine the number of [judges] **Judges** needed to provide the necessary supervision; and

2. Appoint [judges] **Judges** of [compensation] **Compensation** to supervisory positions in which the [judges] **Judges** shall serve at the pleasure of the [director] **Director**.

12:235-4.2 Personnel functions

(a) The [supervising judge] **Supervising Judge** of a particular district shall be directly responsible for the general conduct and performance of each [judge] **Judge** of [compensation] **Compensation** in [his] **that** district. The [supervising judge] **Supervising Judge** shall be prepared to give a periodic performance evaluation of each [judge] **Judge** at the request of the [director] **Director**.

(b) The [supervising judge] **Supervising Judge** of a particular district shall be responsible for the orderly and prompt flow of work in [his] **that** district.

(c) Subject to the approval of the [director] **Director**, the [supervising judge] **Supervising Judge** shall determine the composition of the daily calendar and shall designate the [judge] **Judge** of [compensation] **Compensation** to be responsible for each calendar list. The [supervising judge] **Supervising Judge** shall be responsible for all daily changes of scheduling for all hearing personnel within [his] **each** district and be available to discuss particular scheduling problems with attorneys.

(d) Each [supervising judge] **Supervising Judge** shall furnish statistical reports as required by the [director] **Director**.

12:235-5.1 Initial pleadings

(a) Claim petitions shall be subject to the following:

1. The formal hearing process shall be initiated by the filing of a **verified** claim petition in duplicate with the central office of the

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[division] **Division** within the time frame prescribed by law on a form prescribed by the [division] **Division**.

2. If an attorney for the petitioner knowingly files an incomplete or inaccurate petition, [there shall be a reduction of 15 percent of] any fee that may be awarded[, except as provided in N.J.A.C. 12:235-5.2(c)] **may be reduced by 15 percent or $200.00, whichever is greater**.

[3. If the petition is returned to the attorney more than once for additional information, there shall be a reduction of 25 percent of any fee that may be awarded.]

(b) Answers to a claim petition shall be subject to the following:

1. The answer of the respondent to a claim petition shall be on a form prescribed by the [division] **Division**. It shall be filed with the assignment clerk at the office to which the claim is assigned within 30 days of the date of service of the petition. A copy of the answer shall be served on the petitioner's attorney simultaneously. The filing and service of the answer may be made by first-class mail or its equivalent. The answer may be prepared by the attorney for the respondent based upon knowledge, information or belief and shall be regarded as his **or her** certification of its contents without the necessity of an affidavit.

2. If the answer is not filed as specified in (b)1 above, the [judge] **Judge** of [compensation] **Compensation** to whom the case is assigned may, on motion, either suppress the defenses and permit the petitioner to prove his **or her** case, or permit the filing of the answer on such terms as may be fixed in the discretion of the [judge] **Judge** of [compensation] **Compensation**.

3. (No change.)

12:235-5.2 Motions for temporary disability **and**/or medical benefits

(a) (No change.)

(b) The notice of motion for temporary disability or medical benefits shall be on a form prescribed by the [division] **Division** and shall contain:

1. (No change.)

2. Affidavits or certifications [as] made in personal knowledge by the petitioner, [his] **petitioner's** attorney **and**/or **reports of** the treating physicians [describing] **stating** the medical diagnosis and the specific type of treatment [for which payment is] **being** sought, and, if available, an itemized bill and report of the treating physicians, or institutions or both for which services past, present and future, petitioner is seeking payment and such other evidence as shall relate to the petitioner's claim for temporary disability **and**/or medical treatment.

(c) If an attorney for the petitioner knowingly files an incomplete, inaccurate or misleading notice of motion for temporary disability **and**/or medical benefits, [he shall] **the attorney may** be assessed a penalty [of $50.00] **not to exceed $200.00** which shall be deducted from any fee [he] **which** may be awarded for [his] services.

(d) When the [division] **Division** has received a notice of motion for temporary disability **and**/or medical benefits filed in accordance with (a), (b) and (c) above, it shall list the motion for a hearing before a [judge] **Judge** of [compensation] **Compensation** peremptorily within 30 days. **Motions for medical and/or temporary benefits shall commence and continue in a timely manner subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage, or the Judge of Compensation to whom the case is assigned.**

(e) Affidavits, certifications and/**or** medical reports in support of the motion shall constitute a prima facie case, and unless rebutted by reports or testimony or affidavits or certifications by the respondent or [his] **respondent's** attorney setting forth the factual or legal basis of the denial, shall be sufficient basis for the issuance of an order compelling the respondent to provide the relief sought.

(f) (No change.)

(g) On conclusion of the hearing on the motion for temporary **and**/or medical benefits, the [judge] **Judge** of [compensation] **Compensation** shall, within 15 days, render [his] **a** final decision on the motion and notify the respective counsel of [this] **the** decision via first-class mail. In computing the 15 days' time, the 15 days shall be from the last day of hearing or from the date of filing of briefs as ordered by the [judge] **Judge**, whichever is later. Under no circumstances shall briefs be filed later than 15 days after the hearing.

12:235-5.3 Other motions

(a) (No change.)

[(b) The form of order shall have appended to the foot of the order, a check list, to be completed by the judge of compensation, indicating whether, and by what party, answering or reply papers have been filed.]

[(c)]**(b)** If the notice **of motion** or [response] **responsive pleading** relies on facts not of record, it shall be supported by affidavit made on personal knowledge setting forth facts which are admissible in evidence to which the affiant is competent to testify. The notice of motion shall be considered uncontested unless responsive papers are filed and served within 14 days of the service of the notice of motion.

[(d)]**(c)** Motions to dismiss for lack of prosecution pursuant to N.J.S.A. 34:15-54 shall be listed for hearing. All other motions shall be disposed of on the papers, unless a [judge] **Judge** of [compensation] **Compensation** directs oral argument or further proceedings, in which event a hearing shall be scheduled within 30 days from the filing of the last papers contemplated by this section. At the conclusion of any such hearing the [judge] **Judge** of [compensation] **Compensation** shall render [his] **a** decision and enter an appropriate order **within 30 days**.

12:235-5.4 Third party joinder by respondent

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

(c) Such motion shall be granted only where the moving party has satisfied the [judge] **Judge** of [compensation] **Compensation** that there exists a substantial likelihood that the party to be joined **is or** may be liable for compensation benefits **to the petitioner**.

(d) (No change.)

(e) In cases where it appears that the only issue involved is which carrier or employer is liable to the petitioner for the benefits sought, the [judge] **Judge** of [compensation] **Compensation** may order the moving party to pay the benefits in whole or in part as a condition of joinder subject to an order for reimbursement, if another party is held to be liable for such benefits.

(f) If a respondent knowingly files an incomplete, inaccurate or frivolous motion for third party joinder, such circumstances [shall] **may** be considered in the apportionment of any counsel fee awarded, in addition to a counsel fee not to exceed [$100.00]**$200.00** to **each** opposing counsel **of each party sought to be joined**.

12:235-5.6 [Interrogatories] **Discovery**

(a) (No change.)

(b) Interrogatories shall be allowed without motion where the injured worker is treated by the employer's physician and where medical information is not available to the worker. The employer shall be required to furnish or make available for inspection and copying of all records of medical treatment, examinations and diagnostic studies [in its possession] **authorized by the respondent**. The respondent shall have the same right when the worker is treated by his or her own physician.

(c) Interrogatories shall be allowed without motion in cases of review or modification of a prior award on the grounds of increase or decrease of disability. The party seeking such review or modification shall furnish [his] **the** adversary **party** with a chronology of the pertinent events from the date of the last award or judgment to the filing of the petition for the increase or decrease of disability indicating the essential facts upon which the petition is grounded.

(d) (No change.)

(e) Interrogatories in those cases allowed without motion shall be served by the petitioner not later than 30 days after service of the answer to the petition and by the respondent not later than 15 days after the service of its answer. Answers to the interrogatories shall be served within 45 days after service of the interrogatories. A [judge] **Judge** of [compensation] **Compensation** upon motion for good cause may enlarge the time provided for service of answers. Supplemental interrogatories may be allowed on motion for good cause shown.

(f) Interrogatories may be allowed in other cases, upon motion, [in extraordinary circumstances] **for good cause shown**.

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(g) Depositions of witnesses may be allowed, upon motion, for good cause shown.

12:235-5.7 Testimony of injured or ill [employee] **petitioner** by depositions

(a) [An employee] **A petitioner** seeking compensation who is in such a physical condition that it is imperative that his or her testimony be taken by deposition, in order to preserve the person's rights or those of his or her estate or dependents, may give a deposition.

(b) The deposition may be ordered by a [judge] **Judge** of [compensation] **Compensation** upon notice to the adverse party and taken before a certified shorthand reporter.

(c) The appearance by an attorney for the respondent shall not constitute a waiver of any of the rights of the respondent or its insurance carrier. [A deposition for this purpose may also be taken by consent of all parties.]

(d) (No change.)

(e) A deposition for this purpose may also be taken by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

12:235-5.8 Certification of pre-existing conditions

(a) In all cases in which the petitioner claims total and permanent disability, the petitioner or [his] **petitioner's** attorney shall, prior to the first hearing date, furnish to all other parties a written certification as to the existence [or nonexistence] of any condition pre-existing the last claimed compensable episode.

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

(d) Copies of all records and reports so obtained by the respondent shall be furnished to the petitioner or [his] **petitioner's** attorney within 10 days of receipt.

12:235-5.9 Pre-trial conference

(a) In any formal proceeding[s], the [division] **Division** shall [where practicable, direct the parties or their attorneys to appear at a specific time and place for] **schedule** a pre-trial conference where the following [must] **shall** be accomplished:

[1. Disposition by judgment, order approving settlement or discontinuance; dismissal, order approving settlement and dismissal under N.J.S.A. 34:15-20.]

[2.]**1.** All medical reports shall be exchanged; [a decision before a hearing official shall be held to limit issues]

2. The Judge and the attorneys shall agree upon the type of examination(s) required by each party;

3. The Judge and the attorneys shall make a sincere effort to limit issues; and

4. [a]**A** pre-trial memorandum on a form prescribed by the Division shall be executed[,]; or

[3.]**5.** [Adjournment] **There shall be an adjournment upon** [a] good cause shown.

(b) **Incomplete medical examinations by either party shall be considered good cause for the adjournment of a pre-trial conference; provided, however, that no such adjournment shall be granted unless each party requesting the adjournment shall supply to the Judge the name(s) of the examining physician(s) and the date(s) of the examination(s).**

[(b)]**(c)** (No change in text.)

[(c)]**(d)** Any case listed pre-emptorily, in which no appearance is made on behalf of the petitioner and which is not adjourned for good cause, shall be marked "not moved" and administratively discontinued. The case shall not be restored to the calendar except on notice of motion, provided however, the [judge] **Judge** of [compensation] **Compensation** may for good cause and on [his] **the Judge's** own motion restore a case marked "not moved" to the trial or pre-trial calendar. The counsel fee normally allowed shall be reduced within the discretion of the official presiding for each time a case has been marked "not moved" when the attorney for the petitioner is responsible for such marking. When a case has been marked "not moved" because of the petitioner's failure without good cause to submit [himself for] **to** a physical examination at the request of the respondent, the petitioner may be penalized in the apportionment of fees at the discretion of the official presiding.

12:235-5.10 Conduct of formal hearings

(a) (No change.)

(b) Only an attorney at law licensed to practice in the State of New Jersey shall act as attorney of record, or appear and prosecute or defend any action in any formal hearing. [No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity.]

(c) Hearings shall be scheduled by the [director] **Director** or [his] **a** designated representative **of the Director**.

(d) The [judge] **Judge** of [compensation] **Compensation** shall, at the commencement of the day, call the list of cases in open court. No adjournment shall be granted unless there is found to be good cause. No adjournment shall be granted for medical examination unless the name of the examining physician and date of examination are supplied.

(e) [Trials shall continue, without interruption or adjournment, except where the judge of compensation, upon his own motion, or upon application or either party, shall for good cause continue the hearing to an adjourned date.] **Trials shall commence and continue in a timely manner subject to scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case has been assigned.**

(f) All formal hearings or applications shall be conducted in open court, except when the [supervising judge] **Supervising Judge** of the district deems the matter to be so delicate that the hearing of a party or witness in camera is warranted. When this occurs, a [full] stenographic record shall be made.

1. Bifurcation of any trial may be permitted by the [judge] **Judge** of [compensation] **Compensation**. The order of proof shall be determined by the [judge] **Judge** of [compensation] **Compensation** to whom the case is assigned.

[(f)]**(g)** All formal hearings including motions where a record is required shall be recorded stenographically by a certified shorthand reporter subject to such limitation as may be provided by statute.

1. Upon a determination reached at the conclusion of all hearings, including motions, the cost for the attendance of the certified shorthand reporter [may] **shall** be assessed [at the discretion of] **by** the [judge] **Judge** of [compensation] **Compensation**. Transcripts of the testimony may be obtained from the certified shorthand reporter at the official scheduled rates.

[(g)]**(h)** When **there are pending in the Division** two or more formal proceedings[,] involving a common question of law or fact arising out of employment by the same employer or different employers, or out of the same accident or series of accidents, or out of the same exposure or series of exposures, to causes of occupational disease, [are pending in the Division,] the [judge] **Judge** of [compensation] **Compensation** or the [director] **Director** may, on motion, or on [his] **the Judge's** own initiative, order a joint hearing of any or all matters in issue [in the proceedings]. [He] **The Director** may order all such proceedings consolidated, and [he may] have such orders concerning proceedings [as may tend] **designed** to avoid unnecessary costs or delay. The order shall state the county in which the consolidated proceedings are to be heard.

[(h)]**(i)** Upon the commencement of a formal hearing, counsel [for the parties] may make opening statements on behalf of their respective clients. All matters agreed upon shall be stipulated upon the record. However, this shall not bar the parties from making further stipulations as the trial proceeds, until the close of the formal hearing[s].

[(i)]**(j)** Counsel may make [both] closing statements or file **post-**trial briefs. [Trial] **Post-trial** briefs, if [required] **ordered** or volunteered, shall be submitted within 15 days after the conclusion of the hearing. Each party thereafter may have seven days to file a reply brief, if so desired or [directed] **ordered**.

[(j)]**(k)** Prior to the testimony of an expert witness, the producing party shall provide the [judge] **Judge** of [compensation] **Compensation** [with] and opposing counsel **with** a written curriculum vitae[,] of the witness.

[(k)]**(l)** Questions calling for the opinion of an expert witness need not be hypothetical in form, unless the [judge] **Judge** of [compensa-

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tion] **Compensation** in [his] **the Judge's** discretion so requires. If the hypothetical question is submitted in written form, counsel shall provide sufficient copies for the [judge] **Judge** of [compensation] **Compensation**, opposing counsel, the witness and the stenographer, and **the hypothetical question** may be marked as an exhibit in the proceedings in lieu of reading it to the witness.

[(l)]**(m)** [When a medical expert is on vacation or extended absence for more than 30 days during a period other than when the Division is closed for the trial or former cases, it shall be the duty of the party for which such medical expert witness is to appear to arrange for the examination of the petitioner by another medical expert and the appearance of such medical expert at the trial of the case.] **All medical experts for both parties who regularly examine petitioners to determine the nature and extent of their disability shall adhere to the vacation schedules established annually by the Director. If such medical expert is not available to testify because of an unexcused absence at any other time, the Judge of Compensation may require the party for whom such medical witness is to appear, to arrange for an examination and appearance at trial by another medical expert.**

1. [The absence of the original examining physician shall not constitute a good and valid reason for adjournment.] **A medical expert who regularly examines petitioners means a medical expert who performs a minimum of 25 workers' compensation examinations per year.**

[(m)]**(n)** All exhibits shall be marked with an identifying number, the date of submission and initials of the [stenographer] **court reporter**. [Exhibits other than medical reports may be returned to the respective counsel at the close of the hearing for retention during passage of time for appeal.

1. All medical reports submitted into evidence are to be forwarded to the Division for microfilming and storage. All other exhibits not claimed by the respective counsel within thirty days following the expiration of the appeal period shall be destroyed.]

1. An exhibit list shall be prepared by the Judge to be retained in the file and forwarded to the Division for microfilming and storage.

2. At the conclusion of the hearing, the Judge shall determine which exhibits are to be retained in the file and forwarded to the Division for microfilming and storage.

3. All other exhibits shall be returned to respective counsel for retention until the expiration of time for appeal or 20 years as determined by the Judge.

[(n)]**(o)** (No change in text.)

[(o)]**(p)** Judges of [compensation] **Compensation** may refer the petitioner to the Division of Vocational Rehabilitation when warranted.

[(p)]**(q)** Prior to testifying, **a** witness[es] shall be administered an oath by the [judge] **Judge** of [compensation] **Compensation** or by a certified shorthand reporter qualified to administer oaths. Because of religious beliefs, a witness may affirm in place of an oath.

[(q)]**(r)** Forms of subpoena, bearing the seal of the Department, shall be made available at all district offices. An attorney-at-law of New Jersey may prepare a subpoena and authorize its service, in accordance with the Rules of Civil Practice of New Jersey, in the name of the [judge] **Judge** of [compensation] **Compensation** assigned to the case, to compel the attendance of witnesses and the production of books and papers and such other items as shall be subject to production.

[(r)]**(s)** All reserved decisions shall be rendered by the [judge] **Judge** of [compensation] **Compensation** within [15] **30** days from completion of the last day of hearing, or within [15] **30** days from the date of filing of briefs. Additional time to render reserved decision may be allowed only on approval of a written application to the [director] **Director**.

[(s)]**(t)** The [judge] **Judge** of [compensation] **Compensation** shall notify all parties by letter of [his] **the** decision, detailing its terms and the name of: the reporter and the certified shorthand reporting firm to which it has been dictated[.]; **centralized word processing center; or other method by which the opinion is produced.**

(u) A final judgment shall be deemed entered as of the date the judgment is signed by the Judge.

12:235-6.1 Purpose of informal hearings

(a) The informal hearing process is a service provided by the [division] **Division** to effectuate the amicable adjustment of controversies between injured [or disabled] workers and their employers involving their respective rights under the Act.

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

12:235-6.2 Filing of an application for an informal hearing

(a) The informal process is initiated by the filing of an application in duplicate with the [division] **Division**.

(b) The filing for informal hearing may be made by any party of interest including the injured [or disabled] worker, [his] **petitioner's** attorney, the employer, the employer's representative or insurance carrier, or the [division] **Division**.

(c) (No change.)

12:235-6.4 Scheduling of informal hearings

(a) Upon receipt of the completed application, the [division] **Division** shall schedule the matter as soon as practicable.

(b) The [division] **Division** shall give written notice of the time, place and name of the assigned [judge] **Judge** of [compensation] **Compensation** to all parties involved in the controversy.

12:235-6.6 Representative of employer or carrier

An employer or carrier shall be represented by an individual expressly empowered with authority to act on its behalf to agree or disagree with the recommendations made by the [judge] **Judge** of [compensation] **Compensation** at the time of the hearing.

12:235-6.7 Registration of representatives for employers or carriers

(a) Each employer, carrier, or self-insured shall submit to the [director] **Director** for distribution to all [judge] **Judges** of [compensation] **Compensation** a list of each individual who will represent them at informal hearings.

(b) (No change.)

12:235-6.8 Representation of claimant

(a) (No change.)

(b) Deviation from (a) above shall only be permitted by consent of the [director] **Director**.

12:235-6.9 Solicitation of compensation claims

No attorney nor any other person at the instance of an attorney shall solicit or cause to be solicited any compensation claim, nor shall [he pay] any referral fee **be paid** to anyone not an attorney.

[12:235-6.10 Appearance by persons convicted of crime

No person convicted of a crime involving moral turpitude shall be permitted to appear in a representative capacity at any informal hearing.]

12:235-[6.11]**6.10** Procedure where employer has no insurance

Where it is brought to the attention of the [judge] **Judge** of [compensation] **Compensation** that the employer has failed to comply with N.J.S.A. 34:15-71, written notice of such violation shall be given to the [director] **Director** for appropriate action.

12:235-[6.12]**6.11** Allowance of attorney fees

(a) [A judge] **Judge** of [compensation] **Compensation** conducting informal hearings may allow **a** counsel fee, where warranted, for services rendered on behalf of the worker, in an amount not to exceed 10 percent of the worker's award.

(b) (No change.)

12:235-[6.13]**6.12** Commencement of informal hearings

(a) Hearings shall be conducted by a [judge] **Judge** of [compensation] **Compensation** designated by the [director] **Director**.

(b) (No change.)

(c) Upon completion of the daily call, the [judge] **Judge** of [compensation] **Compensation** shall inform all parties present of the order for hearing the ready cases and commence hearings, excusing those persons whose presence will not be required and granting those adjournments [he] **the Judge** feels are warranted.

12:235-[6.14]**6.13** Determination of issues

(a) Upon a review of the application for the informal hearing and any supporting documents, the [judge] **Judge** of [compensation] **Compensation** shall ascertain the areas of dispute and make recommendations to the parties to resolve any controversy as to unpaid temporary disability benefits **and**/or medical expenses.

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(b) After a review of medical records or evaluation reports or both submitted by the parties and having personally inquired of the worker as to [his] **all** present complaints, the [judge] **Judge** of [compensation] **Compensation** shall make recommendations regarding permanent disability.

(c) In cases where there is insufficient factual or medical information upon which a recommendation can be made, the [judge] **Judge** of [compensation] **Compensation** shall require either to provide such information and shall adjourn the hearing until such time as the information is available.

12:235-[6.15]**6.14** Acceptance of settlement recommendations and entry of informal award

(a) When agreement has been reached by all parties and approved by the [judge] **Judge** of [compensation] **Compensation**, the terms of such settlement shall be entered in the "Statement of Award," on a form prescribed by the [division] **Division**.

(b) The claimant shall be fully advised of [his] **all** rights under the Act.

(c) The "Statement of Award" shall be signed by the claimant, the employer or [his] **the employer's** representative, and by the [judge] **Judge** of [compensation] **Compensation**.

12:235-[6.16]**6.15** Fee for service of physician

A [judge] **Judge** of [compensation] **Compensation** conducting an informal hearing may allow a fee to a physician for medical services rendered to a claimant for the term of a compensable injury, unless such treatment was not ordered or authorized by the employer or carrier.

12:235-[6.17]**6.16** Denial of compensability or refusal to accept findings of informal hearings

In cases where the employer or the representative denies compensability under the Act or where either party refuses to accept the recommendations made by the [judge] **Judge** of [compensation] **Compensation**, the claimant shall be made aware of [his] **all** statutory rights, including [his] **the** right to obtain counsel, to file a formal claim petition, and the applicable time period within which [he must file] **a claim petition must be filed**.

12:235-[6.18]**6.17** Failure of employer or carrier to appear

(a) If a worker is present and the employer or its carrier fails to appear, the [judge] **Judge** of [compensation] **Compensation** shall inform the worker of:

1.-2. (No change.)

3. The worker's statutory rights as stated [above] **at N.J.A.C. 12:235-6.16**.

12:235-[6.19]**6.18** Adjournment

When it appears that certain cases cannot be resolved at the first hearing, due to lack of notice or knowledge of any injury, incomplete reports, or for any good cause, the [judge] **Judge** of [compensation] **Compensation** shall be promptly informed so that [he] **the Judge** may have an opportunity to notify the parties and arrange for rescheduling.

12:235-7.1 General procedure

[(a) No hearing upon an application for benefits payable from the Second Injury Fund pursuant to N.J.S.A. 34:15-95 shall be conducted until the claim petitions for benefits under this chapter from the previous employers have been adjudicated and the petitioner is determined to be totally disabled and the judge of compensation making such determination shall be satisfied that there is a reasonable basis to believe that the disabled worker is a person who has suffered from a prior existing disability permanent in quality and partial in character and is now totally disabled as a result of experiencing a subsequent permanent injury under conditions entitling such person to compensation therefor each of which, severally, causes permanent partial disability, but which in conjunction result in permanent total disability.]

[(b) Where] **(a) Upon the filing of** a verified petition for **Second Injury Fund (Fund)** benefits [has been filed prior to the commencement of the hearing for workers' compensation benefits there shall be one] **a** settlement conference **shall be scheduled** before a [judge] **Judge** of [compensation] **Compensation** where representatives of the employee, employer(s) and the [fund] **Fund** are noticed to attend.

1. The settlement conference may be adjourned by a Judge of Compensation for good cause.

(b) If a settlement cannot be effectuated at the settlement conference, the matter shall be listed for trial on a day when the probable responsible respondent is regularly scheduled to appear.

i. The Judge of Compensation, when determining the probable responsible respondent, shall be guided by the principles stated in *Bond v. Rose Ribbon*, 78 N.J. Super. 505 (App. Div. 1963) *aff'd* 42 N.J. 308 (1964).

(c) If the Judge of Compensation finds that the petitioner is not totally and permanently disabled, the Fund petition shall be dismissed.

(d) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident, the Fund application shall be dismissed.

(e) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the effects of the last compensable accident and subsequent conditions, the Fund application shall be dismissed.

(f) If the Judge of Compensation finds that the petitioner is totally and permanently disabled and the total and permanent disability is the result of the last compensable accident together with pre-existing conditions, the Judge of Compensation shall schedule a hearing upon the application for Fund benefits on a day when the Deputy Attorney General representing the Fund regularly appears.

12:235-7.2 Hearing

(a) The hearing [upon the application for second injury fund] **to determine whether the petitioner is entitled to Fund** benefits shall be upon the transcript of the hearing for benefits [from the previous employers] **previously heard,** supplemented by oral and documentary evidence [and by such cross-examinations] as may be required in the discretion of the [judge] **Judge** of [compensation] **Compensation** for a full and true disclosure of the facts as to [second injury fund] **Fund** responsibility and where applicable, as to an apportionment of **the** responsibility [between employers and the second injury fund] **of the Fund**.

12:235-7.3 Payment of benefits

(a) Pending determination of the application for [second injury fund] **Fund** benefits, the [previous] employer **previously found liable** shall [continue to make] **commence** payments at the applicable rate for permanent total disability [for such period as set forth in an interim order which shall be entered at the time the claim petition against the previous employers are adjudicated].

(b) Upon approval of an application for benefits **from the Fund,** the [judge] **Judge** of [compensation] **Compensation** shall enter an order [compelling] **requiring** payment from the [fund] **Fund** from the date when the final payment of compensation by the employer is or was payable for the **last compensable** injury [or injuries sustained in the employment wherein] **following which** the employee became totally and permanently disabled. No payment from [such fund] **the Fund** shall be made for any period prior to the date of filing [of application for benefits] **the verified petition for Fund benefits.**

1. If the employer has paid in excess of the amount for which it is responsible, the employer shall be reimbursed by the Fund.

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

[(e) When the application for benefits from the fund is denied by a judge of compensation, the employer shall continue to make payments as provided in N.J.S.A. 34:15-12.]

12:235-7.4 Filing

(a) The verified petition for benefits shall be filed in accordance with N.J.S.A. 34:15-95.1 and shall include a succinct and accurate description of all medical, legal and factual basis upon which the petitioner alleges [his] eligibility for [second injury fund] **Fund** benefits pursuant to N.J.S.A. 34:15-95. The verified petition shall be under oath or affirmation and be accompanied by all physician's reports in possession of the applicant or [his] **the applicant's** attorney.

(b) (No change.)

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12:235-8.1 Application for commutation

(a) All applications for commutation of compensation payments pursuant to N.J.S.A. 34:15-25 shall be filed with the [director] **Director**.

(b) (No change.)

12:235-8.2 Application form for commutation

(a) The application for commutation shall be made on a form prescribed by the [division] **Division** which shall include:

1.-4. (No change.)

5. The [judge] **Judge** of [compensation] **Compensation** and the place wherein the award was rendered;

6.-8. (No change.)

9. Such other information as prescribed by the [director] **Director.**

(b) (No change.)

(c) The application for commutation shall include, or have attached thereto, all documents upon which the applicant is relying in [his] **the** application.

12:235-8.3 Approval or disapproval of application for commutation

(a) Upon receipt of the application for commutation, the [division shall conduct an investigation and, if it is determined by the director that commutation is advisable and for the best interest of the petitioner, the director shall enter an order approving the commutation] **matter shall be forwarded for hearing to the Judge of Compensation who entered the award which is sought to be commuted.**

1. If that Judge is not available, then any Judge in the vicinage may hear the application.

(b) After hearing the application, the Judge of Compensation shall enter an order either granting or denying the application and shall state the reasons therefor, pursuant to N.J.S.A. 34:15-25.

[(b)]**(c)** The disbursement of all funds commuted shall be under the supervision of the [director] **Director**.

12:235-9.1 Filing discrimination complaints

All complaints alleging discrimination pursuant to N.J.S.A. 34:15-39.1 shall be filed with the [director] **Director**.

12:235-9.2 Contents of discrimination complaints

(a) The complaint alleging discrimination shall be under the oath or affirmation of the [complaint] **complainant**, and shall be on a form prescribed by the [division] **Division**.

(b) The complaint alleging discrimination shall include the following:

1. Complainant's name, address, [social security] **Social Security** number, and claim petition number, if [he has filed] a claim for formal hearing **has been filed**;

2.-8. (No change.)

9. Such other information as requested by the [director] **Director.**

12:235-9.3 Attachments to discrimination complaints

The complaint for discrimination shall include, or have attached thereto, all documents upon which the complainant is relying on in [his] **the** application.

12:235-9.4 Investigation of discrimination complaints

Upon receipt of a complaint for discrimination, the [division] **Division** shall conduct an investigation and forward the complaint and results of investigation to the [Commissioner] **Director** within [30] **90** days.

12:235-9.5 Action by the [commissioner] **Commissioner**

Upon receipt of the complaint and results of investigation from the [division] **Division**, the [commissioner] **Commissioner** may take such action pursuant to N.J.S.A. 34:15-39.1 as [he] **the Commissioner** deems appropriate.

12:235-10.1 Employer's first report of accidental injury or occupational disease

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

(c) The first report of accident or occupational disease shall be filed with the [division] **Division** [of Workers' Compensation of the Department of Labor], with the first copy being forwarded to the insurance carrier and the second copy being retained by the employer.

(d) (No change.)

12:235-10.2 Employer's first report of accidental injury or occupational disease

(a) The employer shall report to the [division] **Division** all accidental injuries causing disability beyond seven days or permanent injury or occupational disease. The form for this report shall be [contained in the Form WC-1, Employer's First Report of Accidental Injury or Occupational Disease] **as prescribed by the Division**.

(b) The employer's report to the [division] **Division** of an accidental injury or occupational disease shall be filed with the [division] **Division**, with a copy being forwarded to the insurance carrier and a copy retained by the employer, as soon as it is reasonably known or expected that such disability, permanent injury, or occupational disease has occurred.

12:235-10.3 Insurer's initial notice of accident

(a) (No change.)

(b) The notice shall be as [contained in Form WC-2, Insurer's Initial Report of Accident and Insurer's and Self-Insurer's Statement of Wages and Agreement to Care for Case] **as prescribed by the Division**. The original of the insurer's initial notice of accident shall be filed via first-class mail with the [division] **Division**, with a copy retained by the carrier.

12:235-10.4 Insurer's final report of accident

(a) (No change).

[(b) The final report of accident shall be as in:

(1) Form WC-3, Final Report of Accident;

(2) Form WC-4, Final Report of Accident;

(3) Form WC-5, Final Report of Accident;

(4) Form WC-6, Final Report of Accident.]

[(c)]**(b)** The final report of accident shall be filed with the [division] **Division**, with a copy to be sent to the employer, employee, and a copy retained by the insurance carrier or self-insured.

12:235-10.5 Report of death

In the event that death results due to an accidental injury subsequent to the filing of a final report of accident, a report of death [as contained in the Form WC-3A, Report of Death,] shall be filed with the [divison] **Division** and a copy sent to those recipients as named in N.J.A.C. 12:235-10.4.

12:235-13.2 Definitions

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

. . .

"Director" means the Director of the Division of Workers' Compensation[, for the Department of Labor].

. . .

12:235-14.1 Purpose; scope

(a) The uninsured employers' fund ("Fund") has been established pursuant to N.J.S.A. 34:15-120.1 to provide for the payment of certain awards **of medical and temporary benefits entered** against uninsured defaulting employers. This subchapter sets forth the procedures by which the Fund will be operated.

(b) [The fund shall be authorized to pay benefits] **Benefits** for temporary disability and medical costs **shall be provided** in accordance with N.J.S.A. 34:15-120.1 **et seq**. [The Judge of Compensation shall also enter an award for the payment of permanent benefits at the end of the hearing, if appropriate; however, this shall not be payable out of the Fund.]

(c) No judgment or order for the payment of benefits shall be entered against the Fund.

12:235-14.2 Filing notice of an uninsured claim; personal service; subpoena duces tecum; third-party joinder

(a) The petitioner's attorney shall notify the Fund [by the filing of a claim against it] **that benefits will be sought from the Fund** within 45 days of the date **either** petitioner or his or her attorney [is aware] **knows or should have known** that the employer is uninsured. **This time period may be extended for good cause shown.**

1. Petitioner's attorney shall notify the Fund by the filing of a motion [with the Division] to join the Fund.

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2. The motion to join the Fund shall be filed in the vicinage in which the case is assigned.

3. A copy of the motion to join the Fund shall be served upon the Fund in the Office of Special Compensation Funds, CN-399, Trenton, New Jersey 08625-0399.

(b) Petitioner's attorney shall contact[, in writing,] the Compensation Rating and Inspection Bureau **in writing** to receive confirmation that the employer is uninsured. A copy of the Rating Bureau's response shall be included in the motion **to join the Fund**.

(c) Petitioner's attorney may make personal service of the claim petition and the motion to join the Fund on respondent.

1. Proof of service [is to] **shall be** filed with the Division and with the attorney representing the Fund.

2. If respondent is unable to be served, petitioner's attorney shall make a motion with the Director for substituted service pursuant to Civil Practice Rule [4:4(e)] **4:4-4(e)**. The motion shall be supported by convincing evidence that the petitioner has made all reasonable attempts to serve respondent.

[(d) Petitioner's attorney shall also serve the respondent with a subpoena duces tecum requiring the respondent to appear and to produce all records pertaining to petitioner, on a date determined by the Court.]

[(e)]**(d)** The Fund shall have the authority to join a third-party and the third-party's insurance carrier when it appears that such party is or may be [involved in the cause of the action] **liable for the benefits sought**.

12:235-14.3 Certification

(a) Petitioner's attorney shall submit a certification when filing a motion for an uninsured claim. The certification shall be specific, and shall contain the following information:

1.-7. (No change in text.)

8.[Complete and detailed] **A statement of** facts which establish the employer-employee relationship;

9.-15. (No change in text.)

16. Medical insurance coverage for employee and/or spouse, and, if available, the name and address of the company and the policy number; [and]

17. [How] **If** medical expenses have been paid[.];

18. Who paid the medical expenses; and

19. Whether the petitioner is receiving Social Security benefits.

[(b) Any other information that the Director may deem necessary to assess the factual situation surrounding the accident may be requested at any time prior to the entering of a judgment.

(c) Failure to disclose pertinent information will result in the certification being returned to the petitioner's attorney for resubmission and the case will not be listed for hearing until the certification is returned.]

12:235-14.4 Medical bills; physician's examination

(a) The [fund] **Fund** shall have the opportunity to review all medical bills and charges to determine if the costs incurred were reasonable and necessary.

[1. The Fund shall consider a medical fee schedule employed by the New Jersey Department of the Treasury, Bureau of Risk Management when making a determination on the reasonableness of the medical costs.

2. Any medical bills that are found to be in excess of the charges prescribed in the medical fee schedule shall be presumed to be unreasonable.]

(b) The Fund may order an independent medical examination of a petitioner by [an authorized] **a** physician at any time when the Fund is involved or when it appears the Fund may become involved in a case. The [authorized] examining physician will be asked to offer an opinion on:

1. The appropriateness of petitioner's current medical treatment;

2. The prognosis for the petitioner[.];

3. Whether petitioner is able to return to work; and

4. Whether petitioner requires further treatment.

(c) Fees for the independent medical evaluation shall be paid by the Fund.

(d) If it [is determined] **appears** that the petitioner [is] **may be** entitled to benefits from the Fund, then the Fund may direct the petitioner to the appropriate authorized treating physician for treatment.

1. Treatment obtained by petitioner from any physician other than the one authorized by the Fund shall be deemed to be unauthorized treatment, and costs for such treatment shall not be chargeable to the Fund.

[(e) When necessary, the evaluating physician shall be required to appear in court to testify concerning his or her evaluation.]

12:235-14.5 Assignment of cases; schedules

(a) The Director shall assign the Fund cases [to specific judges who shall handle all cases] **for hearing**.

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

12:235-14.6 [Attorney fees] **Payments from the Fund**

[All fee requests shall be supported by an affidavit from petitioner's attorney justifying the amount of the fee.] **Payments from the Fund shall be made only in accordance with N.J.S.A. 34:15-120.4.**

12:235-14.7 Attorney fees

(a) An attorney fee may be payable from the Fund to the petitioner's attorney when the petitioner is found eligible for Fund benefits by the Commissioner.

(b) An attorney shall make an application to the Commissioner for payment of the attorney fee awarded by the Judge of Compensation for obtaining the medical and/or temporary benefits assessed against the respondent.

1. The application shall be supported by an affidavit of services in a form and manner as prescribed by the Director.

COMMERCE AND ECONOMIC DEVELOPMENT

(a)

NEW JERSEY DEVELOPMENT AUTHORITY FOR SMALL BUSINESSES, MINORITIES' AND WOMEN'S ENTERPRISES

Notice of Comment Period Extension

Micro-Loan Program; Loan Guarantee Program; and Direct Loans

Proposed Amendments: N.J.A.C. 12A:31-1, 2 and 3

Take notice that the New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises is extending the deadline for public comment on the proposed amendments to N.J.A.C. 12A:31-1, 2 and 3, published in the March 18, 1991 New Jersey Register at 23 N.J.R. 828(a), 830(a) and 832(a), respectively, to June 15, 1991.

Submit comments by June 15, 1991 to:

Mark L. Quinn
New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprises
20 West State Street
CN 836
Trenton, New Jersey 08625

LAW AND PUBLIC SAFETY

(b)

NEW JERSEY RACING COMMISSION

Thoroughbred Rules

Pick-Seven

Proposed New Rules: N.J.A.C. 13:70-29.57

Authorized By: New Jersey Racing Commission, Charles K. Bradley, Deputy Director.

Authority: N.J.S.A. 5:5-30.

Proposal Number: PRN 1991-318.

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Submit written comments by July 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would allow New Jersey to participate in a nationwide common pool on a Pick-Seven wager on the Breeders' Cup. These races have been and are expected to be conducted at an out-of-State facility every year. These races are among the premiere racing events in the world and are akin to the World Series of baseball.

Patrons in the host states and other jurisdictions where the races are simulcast will be able to select the winners in all races. The wagering pools from the various jurisdictions will be merged from the host track in a net pool concept, that is, each jurisdiction will withhold its takeout and that net pool will be added to the other net pools from other jurisdictions to form a common pool. To insure that everyone is playing by the same rules, it is necessary for each jurisdiction to adopt identical rules concerning the payout of the wager. Various states are in agreement that the states should adopt the rules where the races are being run in 1991, that is, Kentucky for the Breeders' Cup. The rules that constitute this proposed new rule are those that are being considered in Kentucky. The Commission intends to make any amendments to this rule that may be added by those various jurisdictions.

Social Impact

To the extent that the wager generates additional interest in racing in general, and interest in New Jersey racing in particular, there will be a positive social impact since the entire industry will benefit. Horse racing is a major industry in New Jersey providing many direct, and indirect benefits to the state and its citizens.

Economic Impact

The proposed new rule will have a positive economic impact for the State of New Jersey, the track associations, the horsemen in the form of purses, and the breeder organizations. It would also offer the opportunity to New Jersey patrons of participating in a potential, multi-million dollar payoff. There will be no increased costs to any aspect of the industry in New Jersey. The fact that the New Jersey takeout is removed before the pools are merged insures that all interests receive their proper statutory percentage.

Regulatory Flexibility Analysis

There are no reporting, recordkeeping or compliance requirements imposed by this proposed new rule on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule codifies procedures for a nationwide common pool on major racing events.

Full text of the proposed new rule follows:

13:70-29.57 Pick-Seven

(a) This section codifies procedures to allow New Jersey to participate in a nation-wide common pool in a Pick-Seven Wager in the Breeders' Cup.

(b) The payoff is calculated as follows:

1. Wagers select first-place finishers for seven Breeders' Cup races. The net pool is divided into major (75 percent) and minor (25 percent) shares. The major share is distributed to the ticket(s) correctly selecting the first-place finishers in all seven races and calculated using the net pool pricing method. The minor share is distributed to tickets correctly selecting the first-place finishers in the most (but not all) of the seven races and calculated using the net pool pricing method.

2. To determine the net pool, there shall be a deduction from gross wagers in each jurisdiction in an amount equal to the applicable takeout for that jurisdiction. The remaining amount of the wagers from all jurisdictions is combined to form the total net pool, on the basis of which a base payout price is determined. Each jurisdiction's winning payout price is determined by applying that jurisdiction's takeout rate to the base price. Each jurisdiction's individual rules relating to breakage and uncashed winning tickets shall also apply. Any other questions that arise not specifically covered in this section shall be covered by the rules of racing of the New Jersey Racing Commission.

(c) Dead heat procedures are as follows:

1. If there is a dead heat for first in any race, the winning combinations shall include all wagers selecting any dead heat finishes.

(d) No ticket sold procedures are as follows:

1. If no ticket is sold correctly selecting the seven first-place finishers, then the entire net pool will be distributed to the wagers selecting the most official winners of the seven Breeders' Cup races.

(e) Refund procedures are as follows:

1. If three or more races are cancelled, then the entire Pick-Seven pool shall be refunded.

(f) The effect of a cancelled race on the pool is as follows:

1. In the event that one or more of the races, comprising the Pick-Seven, is cancelled for any reason, the distribution of the net amount subject to distribution in the Pick-Seven pool shall be among the holders of the pari-mutuel tickets which currently designate the most official winners in all remaining races comprising the Pick-Seven.

(g) The number of entries (or starters) required is as follows:

1. As long as at least one horse remains within an entry or the field, that betting interest will not be deemed a scratch. If a betting interest is scratched or declared a non-starter, the actual favorite as evidenced by Breeders' Cup host track win pool at the start of the race will be substituted. If the win pool amounts are equal, the substitute will be the lowest program numbered betting interest.

(a)

NEW JERSEY RACING COMMISSION

Harness Rules
Pick-Eight
Proposed New Rules: N.J.A.C. 13:71-27.55

Authorized By: New Jersey Racing Commission,
Charles K. Bradley, Deputy Director.
Authority: N.J.S.A. 5:5-30.
Proposal Number: PRN 1991-319.

Submit written comments by July 3, 1991 to:
Charles K. Bradley, Deputy Director
New Jersey Racing Commission
200 Woolverton Street, CN 088
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rule would allow New Jersey to participate in a nationwide common pool on a Pick-Eight wager on the Breeders' Crown. These races have been and are expected to be conducted at an out-of-State facility every year. These races are among the premiere racing events in the world and are akin to the World Series of baseball.

Patrons in the host state and other jurisdictions where the races are simulcast will be able to select the winners in all races. The wagering pools from the various jurisdictions will be merged from the host track in a net pool concept, that is, each jurisdiction will withhold its takeout and that net pool will be added to the other net pools from other jurisdictions to form a common pool. To insure that everyone is playing by the same rules, it is necessary for each jurisdiction to adopt identical rules concerning the payout of the wager. Various states are in agreement that the states should adopt the rules where the races are being run in 1991, that is, Florida for the Breeders' Crown. The rules that constitute this proposed new rule are those that are being considered in Florida. The Commission intends to make any amendments to this rule that may be added by those various jurisdictions.

Social Impact

To the extent that the wager generates additional interest in racing in general, and interest in New Jersey racing in particular, there will be a positive social impact since the entire industry will benefit. Horse racing is a major industry in New Jersey providing many direct, and indirect benefits to the state and its citizens.

Economic Impact

The proposed new rule will have a positive economic impact for the State of New Jersey, the track associations, the horsemen in the form of purses, and the breeder organizations. It would also offer the op-

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portunity to New Jersey patrons of participating in a potential, multi-million dollar payoff. There will be no increased costs to any aspect of the industry in New Jersey. The fact that the New Jersey takeout is removed before the pools are merged insures that all interests receive their proper statutory percentage.

Regulatory Flexibility Analysis

There are no reporting, recordkeeping or compliance requirements imposed by this proposed new rule on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule codifies procedures for a nationwide common pool on major racing events.

Full text of the proposed new rule follows:

13:71-27.55 Pick-Eight

(a) This section codifies procedures to allow New Jersey to participate in a nationwide common pool on a Pick-Eight wager on the Breeders' Crown.

(b) The payoff is calculated as follows:

1. Wagers select first-place finishers for eight Breeders' Crown races. The net pool is divided into major (75 percent) and minor (25 percent) shares. The major share is distributed to the ticket(s) correctly selecting the first-place finishers in all eight races and calculated using the net pool pricing method. The minor share is distributed to tickets correctly selecting the first-place finishers in the most (but not all) of the eight races and calculated using the net pool pricing method.

2. To determine the net pool, there shall be a deduction from gross wagers in each jurisdiction in an amount equal to the applicable takeout for that jurisdiction. The remaining amount of the wagers from all jurisdictions is combined to form the total net pool, on the basis of which a base payout price is determined. Each jurisdiction's winning payout price is determined by applying that jurisdiction's takeout rate to the base price. Each jurisdiction's individual rules relating to breakage and uncashed winning tickets shall also apply. Any other questions that arise not specifically covered in this section shall be covered by the rules of racing of the New Jersey Racing Commission.

(c) Dead heat procedures are as follows:

1. If there is a dead heat for first in any race, the winning combinations shall include all wages selecting any dead heat finishers.

(d) No ticket sold procedures are as follows:

1. If no ticket is sold correctly selecting the eight first-place finishers, then the entire net pool will be distributed to the wagers selecting the most official winners of the eight Breeders' Crown races.

(e) Refund procedures are as follows:

1. If three or more races are cancelled, then the entire Pick-Eight pool shall be refunded.

(f) The effect of a cancelled race in the pool is as follows:

1. In the event that one or more of the races, comprising the Pick-Eight, is cancelled for any reason, the distribution of the net amount subject to distribution in the Pick-Eight pool shall be among the holders of the pari-mutuel tickets which currently designate the most official winners in all remaining races comprising the Pick-Eight.

(g) The number of entries (or starters) required is as follows:

1. As long as at least one horse remains within an entry or the field, that betting interest will not be deemed a scratch. If a betting interest is scratched or declared a non-starter, the actual favorite as evidenced by Breeders' Crown host track win pool at the start of the race will be substituted. If the win pool amounts are equal, the substitute will be the lowest program numbered betting interest.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits

Cuthbert Boulevard, Camden County (Portion under State Jurisdiction)

Proposed New Rule: N.J.A.C. 16:28-1.46

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, and 39:4-98.

Proposal Number: PRN 1991-309.

Submit oral or written comments by June 19, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
609-530-2041

The agency proposal follows:

Summary

The proposed new rule will establish a "speed limit" zone along the portion of Cuthbert Boulevard in Cherry Hill Township, Camden County, which is under State jurisdiction, for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs as part of a review of current conditions, conducted a traffic investigation. The investigation proved that the establishment of the "speed limit" zone along the portion of Cuthbert Boulevard in Cherry Hill Township, Camden County, under State jurisdiction was warranted.

The Department therefore proposes new rule N.J.A.C. 16:28-1.46 based upon the traffic investigation and survey.

Social Impact

The proposed new rule will establish a "speed limit" zone along the portion of Cuthbert Boulevard in Cherry Hill Township, Camden County, under State jurisdiction for the 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The costs involved in the installation and procurement of signs vary, depending upon the material used, size, and method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with N.J.S.A. 39 and the "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rule primarily affects the motoring public and the governmental entities responsible for the enforcement of the rules.

Full text of the new rule follows:

16:28-1.46 Cuthbert Boulevard; State jurisdiction

(a) The rate of speed designated for the certain part of Cuthbert Boulevard under State jurisdiction described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. Camden County:

(1) Cherry Hill Township:

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(A) 40 miles per hour between Park Boulevard (County Road 628) and Hampton Road (County Road 623) (approximate Station numbers 29+000± to 75+000±).

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

Speed Limits
Route N.J. 45 in Salem and Gloucester Counties
Proposed Repeal and New Rule: N.J.A.C. 16:28-1.96

Authorized By: Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Proposal Number: PRN 1991-296.

Submit oral or written comments by July 3, 1991 to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625
609-530-2041

The agency proposal follows:

Summary

The proposed new rule will establish revised "speed limit" zones along Route N.J. 45 in the City of Salem, the Townships of Mannington and Pilesgrove and the Borough of Woodstown, in Salem County, and the Townships of South Harrison, Harrison, Mantua, West Deptford and Deptford, and the Boroughs of Woodbury Heights and Westville, and the City of Woodbury in Gloucester County for the efficient flow of traffic, the enhancement of safety, and the well-being of the populace.

The Department's Bureau of Traffic Engineering and Safety Programs as part of a review of current conditions and in the interest of safety conducted traffic investigations and resurveys. The investigations and resurveys proved that the revisions to current "speed limit" zones along Route N.J. 45 in Salem and Gloucester Counties were warranted.

The Department therefore proposes to repeal the present rule as it appears in the New Jersey Administrative Code at N.J.A.C. 16:28-1.96, based upon the traffic investigations and resurveys. Additionally, the speed zones have been revised by changing their locations and designating them by mileposts, in addition to other landmarks within the respective counties, by municipality.

Social Impact

The proposed new rule will revise and establish "speed limit" zones along Route N.J. 45 in the City of Salem, the Townships of Mannington and Pilesgrove and the Borough of Woodstown in Salem County, and the Townships of South Harrison, Harrison, Mantua, West Deptford and Deptford and the Boroughs of Woodbury Heights and Westville, and the City of Woodbury in Gloucester County for the 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 will incur direct and indirect costs for mileage, personnel and equipment requirements. The Department will bear the costs for the installation of "speed limit" zone signs. The cost factors for the installation and procurement of signs are variable, depending upon size, materials used, and the method of procurement. Motorists who violate the rules will be assessed the appropriate fine in accordance with N.J.S.A. 39 and the State of New Jersey "Statewide Violations Bureau Schedule," issued under New Jersey Court Rule 7:7-3.

Regulatory Flexibility Statement

The proposed new rule does not place any reporting, recordkeeping or compliance requirements on small businesses as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rule primarily affects the motoring public and governmental entities responsible for enforcement of the rules.

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

16:28-1.96 Route 45

[(a) The rate of speed designated for the certain part of State highway Route 45 described herein below shall be and hereby is established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. Zone one: 30 mph beginning in the City of Salem at Route 49 (milepost 0.0) extending into Mannington Township to the northernmost end of the Fenwick Creek Bridge (milepost 0.4); thence

ii. Zone two: 40 mph in Mannington Township to 250 feet north of First Avenue (milepost 0.85); thence

iii. Zone three: 45 mph in Mannington Township to Whitney Avenue (milepost 2.3); thence

iv. Zone four: 50 mph in Mannington Township extending into Pilesgrove Township to Route US 40 (milepost 8.8); thence

v. Zone five: 45 mph in Pilesgrove Township extending into Woodstown Borough to 100 feet south of Green Street (milepost 9.2); thence

vi. Zone six: 30 mph in Woodstown Borough to East Grant Street (milepost 9.7); thence

vii. Zone seven; 35 mph in Woodstown Borough to 600 feet north of the Penn-Reading Seashore Lines railroad overpass (milepost 10.2); thence

viii. Zone eight: 50 mph in Woodstown Borough extending through Pilesgrove Township, South Harrison Township and into Harrison Township to 800 feet south of Route 77 (milepost 17.2); thence

ix. Zone nine: 35 mph in Harrison Township to 400 feet north of Earlington Avenue (milepost 18.2); thence

x. Zone ten: 50 mph in Harrison Township extending into Mantua Township to 100 feet south of Valley View Drive (milepost 20.85); thence

xi. Zone 11: 45 mph in Mantua Township to 200 feet north of Harrison Avenue-Mount Royal Road (milepost 21.65); thence

xii. Zone 12: 50 mph in Mantua Township to Chestnut Street (milepost 22.4); thence

xiii. Zone 13: 35 mph in Mantua Township to Main Street (milepost 22.6); thence

xiv. Zone 14: 50 mph in Mantua Township extending through West Deptford Township, Deptford Township and into Woodbury Heights Borough to Elm Avenue (milepost 24.3); thence

xv. Zone 15: 45 mph in West Deptford Township extending into Woodbury Heights Borough to South Evergreen Avenue (milepost 24.8); thence

xvi. Zone 16: 40 mph in Woodbury Heights Borough extending into the City of Woodbury to Carpenter Street (milepost 25.4); thence

xvii. Zone 17: 25 mph in the City of Woodbury to Hunter Street (milepost 25.95); thence

xviii. Zone 18: 30 mph in the City of Woodbury extending into West Deptford Township to Hessian Avenue (milepost 26.95); thence

xix. Zone 19: 45 mph in West Deptford Township extending into Westville Borough to Route US 130 (milepost 28.5).]

(a) The rate of speed designated for the certain parts of State highway Route N.J. 45 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. For both directions of traffic:

i. In Salem County:

(1) In the City of Salem:

(A) 30 miles per hour between Broadway and the Fenwick Creek Bridge (Salem City-Mannington Township line) (approximate mileposts 0.00 to 0.42); thence

(2) Mannington Township:

(A) Zone 1: 40 miles per hour between the Fenwick Creek Bridge (Salem City-Mannington Township line) and First Avenue (approximate mileposts 0.42 to 0.80); thence

(B) Zone 2: 45 miles per hour between First Avenue and Whitney Avenue (approximate mileposts 0.80 to 2.32); thence

(C) Zone 3: 50 miles per hour between Whitney Avenue and the Mannington Township-Pilesgrove Township line (approximate mileposts 2.32 to 7.05); thence

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(3) Pilesgrove Township:

(A) Zone 1: 50 miles per hour between the Mannington Township-Pilesgrove Township line and Bailey Street (County Road 616) (approximate mileposts 7.05 to 8.79); thence

(B) 45 miles per hour between Bailey Street (County Road 616) and the Pilesgrove Township-Woodstown Borough line (approximate mileposts 8.79 to 8.97); thence

(4) Woodstown Borough:

(A) Zone 1: 45 miles per hour between the Pilesgrove Township-Woodstown Borough line and 100 feet south of Green Street (approximate mileposts 8.97 to 9.23); thence

(B) Zone 2: 30 miles per hour between 100 feet south of Green Street and East Grant Street (approximate mileposts 9.23 to 9.70); thence

(C) Zone 3: 35 miles per hour between East Grant Street and 300 feet south of High Bridge By-Pass Road (County Road 660) (approximate mileposts 9.70 to 10.33); thence

(D) Zone 4: 50 miles per hour between 300 feet south of High Bridge By-Pass Road (County Road 660) and Woodstown Borough-Pilesgrove Township line (approximate mileposts 10.33 to 10.45); thence

(5) Pilesgrove Township:

(A) Zone 3: 50 miles per hour between Woodstown Borough-Pilesgrove Township line and Pilesgrove Township-South Harrison Township line (approximate mileposts 10.45 to 12.44); thence

ii. In Gloucester County:

(1) South Harrison Township:

(A) Zone 1: 50 miles per hour between the Pilesgrove Township-South Harrison Township line and South Harrison Township-Harrison Township line (approximate mileposts 12.44 to 15.96); thence

(2) Harrison Township:

(A) Zone 1: 50 miles per hour between the South Harrison Township-Harrison Township line and 350 feet south of New Street (approximate mileposts 15.96 to 16.98); thence

(B) Zone 2: 35 miles per hour between 350 feet south of New Street and 350 feet south of Colson Road (approximate mileposts 16.98 to 18.35); thence

(C) Zone 3: 50 miles per hour between 350 feet south of Colson Road and the Harrison Township-Mantua Township line (approximate mileposts 18.35 to 19.35); thence

(3) Mantua Township:

(A) Zone 1: 50 miles per hour between the Harrison Township-Mantua Township line and 100 feet south of Valley View Drive (approximate mileposts 19.35 to 20.88); thence

(B) Zone 2: 45 miles per hour between 100 feet south of Valley View Drive and Barry Drive (approximate mileposts 20.88 to 22.13); thence

(C) Zone 3: 40 miles per hour between Barry Drive and Chestnut Street (approximate mileposts 22.13 to 22.38); thence

(D) Zone 4: 35 miles per hour between Chestnut Street and Main Street (County Road 553) (approximate mileposts 22.38 to 22.59); thence

(E) Zone 5: 50 miles per hour between Main Street (County Road 553) and the Mantua Township-West Deptford-Deptford Township line (approximate mileposts 22.59 to 22.75); thence

(4) West Deptford and Deptford Townships; Woodbury Heights Borough and the City of Woodbury:

(A) Zone 1: 50 miles per hour between the Mantua Township-West Deptford Township-Deptford Township line and Elm Avenue (County Road 652) in West Deptford Township, Deptford Township and Woodbury Heights Borough (approximate mileposts 22.75 to 24.33); thence

(B) Zone 2: 45 miles per hour between Elm Avenue (County Road 652) and Evergreen Avenue (County Road 650) in West Deptford Township and Woodbury Heights Borough (approximate mileposts 24.33 to 24.82); thence

(C) Zone 3: 40 miles per hour between Evergreen Avenue (County Road 650) and Carpenter Street in Woodbury City and Woodbury Heights Borough (approximate mileposts 24.82 to 25.40); thence

(D) Zone 4: 25 miles per hour between Carpenter Street and Hunter Street in Woodbury City (approximate mileposts 25.40 to 25.95); thence

(E) Zone 5: 30 miles per hour between Hunter Street and Hessian Avenue in Woodbury City and West Deptford Township (approximate mileposts 25.95 to 26.94); thence

(F) Zone 6: 45 miles per hour between Hessian Avenue and the West Deptford Township-Westville Borough line in West Deptford Township (approximate mileposts 26.94 to 27.78); thence

(5) Westville Borough:

(A) 45 miles per hour between the West Deptford Township-Westville borough line and Route U.S. 130 (approximate mileposts 27.78 to 28.51).

(a)

NEW JERSEY TRANSIT CORPORATION

Destructive Competition Procedure for Claims Proposed Readoption with Amendments: N.J.A.C. 16:74

Authorized By: New Jersey Transit Corporation, Shirley A. DeLibero, Executive Director.

Authority: N.J.S.A. 27:25-2(a), (h), (k) and 27:25-7(b).

Proposal Number: PRN 1991-320.

Submit comments by July 3, 1991 to:

Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Market Street and McCarter Highway
Newark, New Jersey 07101

The agency proposal follows:

Summary

Effective October 20, 1986, the New Jersey Transit Corporation (NJ TRANSIT) adopted rules establishing procedures for private regular route bus carriers to file claims of destructive competition against NJ TRANSIT. Pursuant to Executive Order No. 66 (1978), N.J.A.C. 16:74 expires on October 20, 1991. NJ TRANSIT has reviewed the rules and feels it is appropriate to amend the existing rules in order to meet NJ TRANSIT's statutory obligations to provide for an efficient, coordinated, safe, and responsive public transportation system.

Subchapter 1, General Provisions, delineates the purpose of the rules and contains definitions of words and terms used in the chapter. Subchapter 2 contains rules on procedures, including filing of claims, conferences, transmittal to the Office of Administrative Law, factors to be considered in determining whether destructive competition has taken place, and rules on the allowable remedy and action of the Board after receipt of the Administrative Law Judge decision.

The proposed amendments provide for a procedure for NJ TRANSIT and private regular route carriers to file claims of destructive competition against private regular route bus carriers. The amendments are necessary to assure that the public interest is protected in the circumstance when a private carrier engages in destructive competition with NJ TRANSIT or another private carrier. No claims have been filed over the last five years.

Social Impact

It is not anticipated that the rules proposed for readoption will have significant social impact. However, if unchecked, destructive competition could lead to the ultimate loss of service to the public as the costs of providing such service become prohibitive. The rules continue to provide for a procedure for the resolution of claims of destructive competition, and will now expand the scope to the results of a proceeding in a particular case could have an impact on NJ TRANSIT or a carrier, their employees or users.

Economic Impact

It is not anticipated that these rules will have significant economic impact because they merely provide for a procedure required by law. The results of a proceeding in a particular case could have an economic impact upon a carrier or NJ TRANSIT, their employees or users. The existence of the rule serves as a deterrent to destructive competition. Such competition would otherwise waste scarce public resources.

Regulatory Flexibility Analysis

The proposed amendments impose no additional reporting, recordkeeping or other compliance requirements on small businesses. These businesses are bus companies engaged in the provision of regular route

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service. NJ TRANSIT presently contracts under its numerous private sector support programs with over 100 separate small businesses, as such businesses are defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. As set forth above, the proposed amendments will have no impact on these businesses as the amendments are designed to maintain a procedure for resolving claims of destructive competition. The proposed rules will not result in any expenditures for capital equipment or professional services. There will be no initial compliance costs.

The rules were designed to minimize any adverse economic impact on small businesses. Accordingly, the rules do not establish differing compliance or reporting requirements. The only reporting requirements relate to the filing of the claim itself, a simple procedure calling for the submission of specified data.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:74.

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

16:74-1.1 Purpose

The New Jersey Transit Corporation (NJ TRANSIT) was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State Government responsible to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the legislative findings set forth in the Act is that, in the provision of public transportation services, it is desirable to encourage to the maximum extent feasible the participation of private enterprise and to avoid destructive competition. To insure the accomplishment of this goal, N.J.S.A. 27:25-7(b) requires NJ TRANSIT to establish procedures for the handling of claims of destructive competition which are brought by carriers providing motor bus regular route service. **In order to ensure that NJ TRANSIT has the ability to provide a coherent public transportation system in the most efficient and effective manner, it is also necessary to provide procedures for handling of destructive competiton claims made by NJ TRANSIT against a private carrier or by one private carrier against another.**

16:74-1.2 Definitions

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

. . .

"Actions by a carrier" means the operation of equipment or facilities by a carrier, its subsidiaries or affilates."

. . .

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where by reason of the relationship of such entity with the carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means) there is a reason to believe that the affairs of the carrier may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.

. . .

"Carrier" means any individual, co-partnership, association, corporation, joint stock company, **affiliate or affiliates**, trustee or receiver [or any] operating or controlling regular route motor bus service on established routes within the State or between points in this State and points in adjacent states.

. . .

"Executive Director" means the Executive Director of NJ TRANSIT or his **or her** designee.

. . .

16:74-2.1 Filing of [Claims] **claims**

(a) All claims **against NJ TRANSIT** must be filed in writing with NJ TRANSIT's Department of [Compliance] **Corporate Affairs**, Market Street and McCarter Highway, P.O. Box 10009, Newark, New Jersey 07101. **All claims against a carrier must be filed in writing with the carrier's owner or its registered agent with a copy to NJ TRANSIT's Department of Corporate Affairs.**

(b) Claims may be filed only by properly certified carriers providing regular route motor bus services **or NJ TRANSIT.**

(c) The claim must contain the following information or it will not be cognizable under this chapter or N.J.S.A. 27:25-7(b):

1.-2. (No change.)

3. A description of the actions of NJ TRANSIT **or a carrier** alleged to be destructively competitive including but not limited to the date of such actions and the actions taken by the carrier **or NJ TRANSIT** in response thereto. This statement must contain the facts upon which the carrier **or NJ TRANSIT** relies to support its claim of destructive competition;

4. The economic and operational impact of the alleged acts of destructive competition on **NJ TRANSIT or** the carrier or its employees and users;

5. A statement setting forth the carrier's **or NJ TRANSIT's** reasons why particular competitive actions of NJ TRANSIT **or the carrier** are alleged to be "destructively competitive"; **and**

6. A statement of the relief sought, including alternatives deemed appropriate by the carrier **or NJ TRANSIT.**

(d) Nothing in this section shall be construed to prevent the carrier **or NJ TRANSIT** from presenting additional facts to the Administrative Law Judge (ALJ) for his or her consideration.

16:74-2.3 Transmittal to Office of Administrative Law (OAL)

When **NJ TRANSIT or** the carrier has satisfied all of the above requirements, the matter shall be considered a contested case and the Executive Director or his **or her** designeee shall, within [60] **30** days of receipt of the completed claim, refer the complaint to the OAL to be processed in accordance with **the Administrative Procedure Act,** N.J.S.A. **52:14B-1 et seq. and** 52:14F-1 et seq. and the [applicable rules and regulations of the OAL] **Uniform Administrative Procedure Rules, N.J.A.C. 1:1.**

16:74-2.4 Factors to be considered

(a) The following factors may be considered by the Board in determining whether NJ TRANSIT **or the carrier** has engaged in destructive competition:

1. Which carrier was the first to provide the service;

2. Whether the action of NJ TRANSIT **or the carrier** was a significant cause of the adverse impact on the carrier **or NJ TRANSIT**;

3. Whether NJ TRANSIT **or the carrier** is complying with all applicable [federal] **Federal** and State laws, its Certificates of Public Convenience and Necessity and applicable tariffs, in providing the service alleged to be destructively competitive;

4. The inherent benefits of the services to the rider, including, but not limited to, destination, door to door travel time, frequency of service, comfort, cost transfer frequencies or proximity to the riders' residence;

5. Whether the NJ TRANSIT **or the carrier's** service alleged to be destructively competitive is in the public interest; and

6. Whether the level of service and/or fares of NJ TRANSIT **or the carrier** is destructively competitive.

(b) Nothing in this section should be construed to prevent the Board from considering factors other than those set forth in this section in determining whether NJ TRANSIT **or the carrier** has engaged in destructive competition.

16:74-2.5 Remedy and [Order] **order**

(a) [The] **Except as provided in (c) below, the** sole remedy that may be considered by the Board pursuant to this chapter and N.J.S.A. 27:25-7(b)[,] is to direct NJ TRANSIT **or the carrier** to cease and desist in whole or part from using its equipment or facilities in a destructively competitive manner.

(b) Upon receipt of the Initial Decision of the ALJ, the Executive Director shall present the matter to the Board and the Board shall adopt an order or final decision accepting, rejecting, or modifying the Initial Decision by the ALJ or remanding the decision to the OAL all in accordance with N.J.A.C. 1:1-16.5 and 1:1-16.6.

(c) With regard to claims brought by a carrier or NJ TRANSIT against a carrier, failure of such carrier to comply with a final order or decision of the Board within 30 days of receipt thereof shall, unless stayed by a court of competent jurisdiction, constitute just cause for NJ TRANSIT to disqualify the carrier from any future participation

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in NJ TRANSIT's programs, including, but not limited to, the bus leasing, capital improvement, subsidy, contracting out, bus card and transfer programs and the senior citizen and handicapped half fare programs.

(a)

NEW JERSEY TRANSIT CORPORATION
Background Checks for Non-Criminal Matters
Proposed Readoption: N.J.A.C. 16:79

Authorized By: New Jersey Transit Corporation,
Shirley A. DeLibero, Executive Director.
Authority: N.J.S.A. 27:25-5(e) and 5(f); 27:25-15.
Proposal Number: PRN 1991-307.

Submit comments by July 3, 1991 to:
Albert R. Hasbrouck, III
Assistant Executive Director
New Jersey Transit Corporation (NJ TRANSIT)
P.O. Box 10009
Newark, New Jersey 07101

The agency proposal follows:

Summary

Pursuant to Executive Order No. 66(1978), N.J.A.C. 16:79, Background Checks for Non-Criminal Matters, expires on October 20, 1991. The New Jersey Transit Corporation (NJ TRANSIT) has reviewed these rules, which were first adopted effective October 20, 1986, and has determined the rules to be necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. NJ TRANSIT and its subsidiaries are responsible for the provision of rail and bus services in the State of New Jersey. In providing these services, it is necessary to employ personnel in positions of trust, such as bus drivers, conductors, ticket sellers and numerous other financial positions, which are financial in nature or require contact with the riding public. In order to ensure that only the appropriate persons are hired for these positions, NJ TRANSIT feels it may be appropriate to request from the State of New Jersey's Bureau of Identification a criminal history name search ID check prior to hiring such individuals. NJ TRANSIT therefore proposes to readopt without change N.J.A.C. 16:79, which shall govern the use of criminal history name searches by the State Police on behalf of NJ TRANSIT.

Social Impact

Prospective NJ TRANSIT employees may be required to complete an employment application in which they are asked to state whether they have ever been convicted of a criminal offense. The readoption of these rules will allow management to ensure that an employee's response to this request is accurate prior to hiring the individual. This is especially important where the individual is being considered for a financial position or one which requires contact with the public.

Economic Impact

The readoption of these rules will allow NJ TRANSIT to ensure that employees in sensitive positions have not been convicted of a crime or if they have such a conviction, have been truthful on their employment application. The readoption of these rules, of course, will have a negative economic impact on a prospective employee who fails to complete his or her employment application truthfully as it is expected that such an applicant will not be hired. Employees who were hired and were not truthful on the employee application will also experience a negative economic impact when they are terminated from their job.

Regulatory Flexibility Statement

The proposed readoption of these rules does not impose any recordkeeping, reporting or compliance requirements on small businesses. The proposed readoption of these rules impacts on prospective employees and NJ TRANSIT and has no effect on small businesses.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:79.

TREASURY-GENERAL

(b)

STATE INVESTMENT COUNCIL
International Government and Agency Obligations
Proposed Amendments: N.J.A.C. 17:16-20.1, 20.2 and 20.4

Authorized By: State Investment Council,
Roland M. Machold, Director, Division of Investment.
Authority: N.J.S.A. 52:18A-91.
Proposal Number: PRN 1991-284.

Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, which is published elsewhere in this issue.

The proposed amendments to N.J.A.C. 17:16-20.1 and 20.2 would clarify existing language by specifying the eligibility of Common Pension Fund D for investment in international government and agency obligations. In addition, the minimum rating requirement was reduced from Triple-A to Double-A, which still maintains high quality standards and adds a measure of potential diversification. Furthermore, the five percent maximum limitation on holdings by the pension funds of international bonds is eliminated, and the new limitation of 15 percent is incorporated in N.J.A.C. 17:16-67. Finally, the proposed changes in N.J.A.C. 17:16-20.4 would delete the approved list of eligible countries, so that the Division could react more quickly to ratings changes.

Social Impact

The proposed amendments add clarity to the language of the rules and provide for potential further diversification of the portfolio.

Economic Impact

Potential diversification of the portfolio to Double-A rated credits under this subchapter provides the potential for slightly higher returns commensurate with slightly decreased ratings standards.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments impose no reporting, recordkeeping or compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

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

17:16-20.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund, except the Consolidated Police and Firemen's Pension Fund, in obligations which are the direct obligations of sovereign governments or the sovereign's agencies whose obligations are unconditionally guaranteed as to principal and interest by the sovereign's full faith and credit or international agencies whose obligations are directly backed by the collective credit of regional countries.

1. (No change.)

2. The Director shall only select issues of international government and agency obligations from the "Approved List" to be recommended for purchase by the pension and annuity group, **including Common Pension Fund D**.

17:16-20.2 Limitations

[(a) Not more than five percent of the book value of the assets of any pension and annuity group fund shall be invested in international government and agency obligations.]

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[(b)](**a**) Not more than one percent of the assets of any pension and annuity group fund shall be invested in **any one issuer of** international government and agency obligations, whether direct or guaranteed [of any one issuer].

[(c)](**b**) All international government and agency obligations must be rated **at least** [Aaa/AAA] **Aa/AA** by Moody's Investor's Service Inc. and [/or] Standard & Poor's Corporation [and/] or have equivalent ratings.

Recodify (d) as (**c**) (No change in text.)

17:16-20.4 [Approved list of international government and agency obligations bonds] (**Reserved**)

[(a) The following sovereign governments and their respective agencies, backed by the full faith and credit of the sovereign, are approved for investment by Common Fund D subject to maintaining the credit standards set forth in this subchapter:

Australia	Japan
Austria	Netherlands
Belgium	Norway
Canada	Spain
Denmark	Sweden
Finland	Switzerland
France	United Kingdom
Italy	West Germany

(b) The following international agencies which are backed by the direct credit support of the collective regional countries are approved for investment by Common Fund D subject to maintaining the credit standards set forth in this subchapter:

International Agency	Moody's S&P
African Development Bank	Aaa/AA+
Asian Development Bank	Aaa/AAA
Eurofina	Aaa/AAA
European Coal & Steel Community	Aaa/AAA
European Economic Community	Aaa/AAA
European Investment Bank	Aaa/AAA
Inter-American Development Bank	Aaa/AAA
International Bank for Reconstruction & Development (World Bank)	Aaa/AAA
Nordic Investment Bank	Aaa/AAA]

(a)

STATE INVESTMENT COUNCIL

Guaranteed Income Contracts

Proposed New Rules: N.J.A.C. 17:16-36

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-283.

Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, which is published elsewhere in this issue.

The proposed new rules would permit the Division of Investment to invest in guaranteed income contracts backed by eligible insurance companies and banks. Such contracts provide high quality fixed income investments which can provide fair market returns with limited risk.

Social Impact

The use of guaranteed income contracts by the Division will have limited social impact, if any. Any incremental return realized on such contracts could ultimately benefit the taxpayers of New Jersey.

Economic Impact

Guaranteed income contracts can provide attractive rates of return to the pension funds, which in turn could increase pension fund assets and thereby benefit New Jersey taxpayers.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed new rules would not impose reporting, recordkeeping or other compliance requirements on small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules govern State investments.

Full text of the proposal follows:

SUBCHAPTER 36. GUARANTEED INCOME CONTRACTS

17:16-36.1 Permissible investments

(a) Subject to the limitations contained in this subchapter, the Director may invest the assets of any fund in guaranteed income contracts, provided that:

1. The issuer of the guaranteed income contract is incorporated in the United States;

2. The issuer is not in default as to the payment of any of its outstanding obligations;

3. The issuer, in the case of an insurance company, had a total combined capital stock and surplus reserve for contingencies equal to at least $200,000,000 at the date of its last published financial statement and a credit rating of at least A+ from A.M. Best Company; or

4. The issuer, in the case of a commercial bank, meets all capital requirements as defined by the Federal Reserve Board at the date of its last published financial statement and has a short term debt rating of at least P1 from Moody's Investor Service.

17:16-36.2 Other limitations

The investment in a guaranteed income contract is limited to a term of 10 years or less.

17:16-36.3 Legal papers

Prior to any commitment to purchase a guaranteed income contract, the Division of Investment shall ascertain that the issuer is included on a list of companies which has been certified by the Director as having met the requirements of this subchapter.

(b)

STATE INVESTMENT COUNCIL

U.S. Common and Preferred Stocks and Issues Convertible into Common Stock

Proposed Amendment: N.J.A.C. 17:16-41.3

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-285.

Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, which is published elsewhere in this issue. The proposed changes to N.J.A.C. 17:16-41.3 would add clarifying language and would increase the percentage of the pension funds which may be invested in stocks from 40 percent at book value to 60 percent at market value. The percentage has been modified also to include both domestic and international stocks, the latter having been previously limited in a separate subchapter. The proposed changes would also reduce the amount of any one company that could be owned by the pension funds from 10 percent to five percent, the maximum level permitted by the SEC, before an SEC filing is required.

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Social Impact

The proposed increase in access to stock investments will help provide broader diversification for the pension funds and potentially higher returns for the pension funds, which, if realized, could over the long term reduce taxpayer support for the funds to the benefit of all State programs.

Economic Impact

The expected economic impact on the pension funds of an increased commitment to stocks would be incremental annual returns over the long term of about 0.5 percent, which would represent over $150 million a year, based upon current asset levels. However, the volatility of returns is also expected to increase slightly.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment.

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

SUBCHAPTER 41. U.S. COMMON AND PREFERRED STOCKS AND ISSUES CONVERTIBLE INTO COMMON STOCKS

17:16-41.3 Limitations

(a) The [book] **market** value of total investments in common and preferred stock **and issues convertible into common stock, both domestic, as permitted herein, and international, as permitted in N.J.A.C. 17:16-44,** for any one of the **pension** funds listed in N.J.A.C. 17:16-41.2 shall not exceed [40] **60** percent of the [book] **market** value of such fund, with the exception of Common Pension Funds A **and D. When the combined market value of the common and preferred stock and issues convertible into common stock, held by a pension fund, either directly or in Common Pension Funds A and D, reaches or exceeds 58 percent of the total market value of the pension fund as of the end of a period used for evaluating unit values of participation, then the Council shall be notified at a regularly scheduled meeting of the Council or its Executive Committee. When the combined market value of the common and preferred stock and issues convertible into common stock, held by a pension fund, either directly or in Common Pension Funds A and D, exceeds 60 percent of the total market value of the respective fund, then the Division may have a six-month period of grace to reduce the level of participation of the fund below the 60 percent level, except that the period of grace may be extended for additional four month periods with the approval of the Council.**

(b) (No change.)

(c) The total amount of stock purchased or acquired of any one corporation shall not exceed [10] **five** percent of the common stock, or of any other class of stock which entitles the holder thereof to vote at all elections of directors, of such corporation.

(a)

STATE INVESTMENT COUNCIL

Common and Preferred Stocks and Issues Convertible into Common Stock of International Corporations

Proposed Amendment: N.J.A.C. 17:16-44.3

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investments.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-286.

Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, which is published elsewhere in this issue.

The proposed amendment to N.J.A.C. 17:16-44.3 would increase the permitted level of investment by the pension funds in international stocks from two percent of the fund at book value to 15 percent of the fund at market value. International bonds would also be included in the 15 percent limitation by reference. The amendments would also conform to proposed changes in N.J.A.C. 17:16-41.3, published elsewhere in this issue of the New Jersey Register, which would permit an increase in total stockholdings of the pension funds from 40 percent at book value to 60 percent at market value for purposes of greater returns and diversification.

Social Impact

The proposed amendment would permit increased portfolio diversification, potentially higher returns and reduced volatility of returns over the long term. Such higher returns could reduce the required level of taxpayer support for the pension funds and thus help support other State programs.

Economic Impact

An increased investment program in international stocks and bonds could provide incremental earnings increases of about 0.2 percent annually, or about $50 million a year, based on current asset levels.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment.

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

17:16-44.3 Limitations

[(a) The book value of the total investment in common and preferred stock of international corporations for any one pension fund shall not exceed two percent of the book value of such fund.]

[(b)]**(a)** Not more than one percent of the book value of any **pension** fund shall be invested in the common and preferred stock of any one corporation.

Recodify [(c)] as **(b)** (No change in text.)

(c) The market value of international common and preferred stock and issues convertible into common stock that can be held by a pension fund directly or through Common Pension Fund D, when combined with the market value of common and preferred domestic stock, and issues convertible into such common stocks, permitted under N.J.A.C. 17:16-41, cannot exceed 60 percent of the market value of a pension fund, subject to such further provisos as are contained in N.J.A.C. 17:16-41.

(d) The market value of international preferred and common stocks and issues convertible into common stocks, when combined with the market value of international government and agency obligations permitted under N.J.A.C. 17:16-20, cannot exceed 15 percent of the market value of a pension fund, subject to such further provisos as are contained in N.J.A.C. 17:16-67.

(b)

STATE INVESTMENT COUNCIL

Common Pension Fund D

Proposed Amendment: N.J.A.C. 17:16-67.7, 67.8 and 67.12.

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-287.

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Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, published elsewhere in this issue.

Common Pension Fund D provides the vehicle for the State pension funds to invest in international stocks and bonds. The proposed amendments to this subchapter would permit an alternative source for pricing the funds' holdings and would increase the permitted level of investment by the funds in international stocks and bonds from two percent of the portfolio at book value to 15 percent at market value.

Social Impact

The proposed increase in the level of permitted investment in international securities could increase portfolio diversification, reduce volatility of returns and increase returns. Increased returns could help reduce the required level of taxpayer support for the funds.

Economic Impact

The proposed changes could increase pension fund returns over the long term by 0.5 percent, which would represent about $150 million annually.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendments impose no reporting, recordkeeping or compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulate only the Director of the Division of Investment.

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

17:16-67.7 Method of valuation

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

(g) For the purposes of valuing securities, all values determined under this section shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date**, or those established by a recognized pricing service**.

17:16-67.8 Valuation of units

(a) (No change.)

(b) All valuations established for items (a)1i through iv above shall be converted into United States dollars at rates shown in the Wall Street Journal on the valuation date**, or those established by a recognized pricing service**.

17:16-67.12 Limitations

(a) (No change.)

(b) In the event that any rule contains a limitation of the assets of any pension and annuity group fund which may be invested either in one issue or a class of issues, that limitation shall be construed to apply to the combined assets of all of the pension funds and shall not restrict the total common pension fund investment in such asset or assets to those limitations for any individual pension fund. Not more than [five] **15** percent of the [book] **market** value of the assets of any pension and annuity group fund shall be [invested in units of] **represented by the market value of international common and preferred stocks and securities convertible into common stock as permitted by N.J.A.C. 17:16-41, together with the market value of international government and agency obligations, as permitted by N.J.A.C. 17:16-20, whether held directly by such pension fund or through Common Pension Fund D.**

(a)

STATE INVESTMENT COUNCIL

Purchase and Sale of International Currency

Proposed Amendment: N.J.A.C. 17:16-81.2

Authorized By: State Investment Council, Roland M. Machold, Director, Division of Investment.

Authority: N.J.S.A. 52:18A-91.

Proposal Number: PRN 1991-288.

Submit comments by July 3, 1991 to:
Roland M. Machold
Administrative Practice Officer
Division of Investment
CN 290
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The following proposal is based on the readoption with amendments of N.J.A.C. 17:16, which is published elsewhere in this issue.

The proposed amendment to N.J.A.C. 17:16-81.2 would eliminate the requirement that at least 75 percent of all international investments be hedged to U.S. dollars.

Social Impact

The proposed change will provide flexibility to further diversify the pension funds' currency exposure. Further diversification could reduce the volatility of pension fund returns and provide slightly increased returns, which in turn could reduce the required level of taxpayer support.

Economic Impact

An economic impact should be minimal; greater exposure to foreign currencies on occasion could provide a small increment to pension fund returns.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required, since the proposed amendment imposes no reporting, recordkeeping or compliance requirements on small businesses as the term is defined in N.J.S.A. 52:14B-16 et seq., but regulates only the Director of the Division of Investment.

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

17:16-81.2 Limitations

(a) The following limitation[s apply] **applies** to those investments permitted under N.J.A.C. 17:16-81.1:

1. The foreign exchange contract must be for the purpose of hedging the international portfolio.[; and]

[2. A minimum of 75 percent of the total portfolio's book value will at all times be hedged.]

(b)

STATE PLANNING COMMISSION

Municipal and County Cross-Acceptance of State Development and Redevelopment Plan

Proposed Amendment: N.J.A.C. 17:32-4.7

Proposed New Rules: N.J.A.C. 17:32-5

Authorized By: State Planning Commission, John W. Epling, Secretary and Principal Executive Officer.

Authority: N.J.S.A. 52:18A-203.

Proposal Number: PRN 1991-308.

Submit comments by July 3, 1991 to:
John W. Epling, Secretary and Principal Executive Officer
State Planning Commission
New Jersey Department of the Treasury
150 West State Street
CN 204
Trenton, New Jersey 08625

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The agency proposal follows:

Summary

The State Planning Act of 1985 (N.J.S.A. 52:18A-196 et seq.) creates a State Planning Commission and an Office of State Planning in the Department of the Treasury for the purposes of establishing a cooperative planning process that involves the full participation of State, county and local governments. According to the Act, New Jersey needs integrated and coordinated planning in order to conserve its natural resources, to revitalize its urban centers, to provide affordable housing and adequate public facilities at a reasonable cost, to promote equal social and economic opportunity for New Jersey's citizens, and to prevent sprawl and promote the suitable use of land.

The centerpiece of the Act's program for promoting vertical coordination and integration of State, county and local plans is the "cross-acceptance" process. The cross-acceptance process consists of three phases: comparison, negotiation and issue resolution. The present rules for conducting cross-acceptance establish procedures for conducting the first two phases. The proposed amendment extends the negotiation phase. The proposed new rules establish procedures for conducting the third and final phase, issue resolution.

Social Impact

The proposed amendment pertains to the negotiation stage in the overall process of developing and adopting a State Development and Redevelopment Plan, which at this time, is anticipated to occur sometime in 1992. It is anticipated that the proposed new rules, by more specifically describing the third phase of the cross-acceptance process, issue resolution, will have a positive social impact by ensuring that the parties to the process will participate in full and thorough discussion of the Plan. To the extent that the Plan itself will have social impacts, such impacts are beyond the scope of the proposed rules. However, the overall impact on the economy, environment, fiscal capacity of governments, community life and intergovernmental relations will be assessed upon the completion of an Interim State Development and Redevelopment Plan. These assessments will be prepared and made available to the general public well in advance of the adoption of a final State Plan, as required by P.L. 1989, c.332.

Economic Impact

The proposed amendment and new rules will have a fiscal impact on municipalities and the counties, in that commitment of staff and/or consultant resources to the cross-acceptance process may be necessary. The level of effort and expenditures will vary from county to county and from municipality to municipality. Variables such as size (county sizes range from 12 to 70 municipalities), basic interest in the overall planning process, available staff/expertise (either in-house or consultant), and complexity of local issues as they relate to the State Plan will all affect the level of effort in a particular jurisdiction. However, it is expected that any fiscal impact experienced by counties and municipalities as a result of their participation in the cross-acceptance process is warranted in view of the positive fiscal consequences which will result from the development and adoption of a State Development and Redevelopment Plan at the conclusion of the process.

The overall economic impact, as well as the impact on the environment, fiscal capacity of governments, community life and intergovernmental relations will be assessed upon the completion of an Interim State Development and Redevelopment Plan. These assessments will be prepared and made available to the general public well in advance of the adoption of a final State Plan. P.L. 1989, c.332 appropriated $200,000 to the State Planning Commission for the costs of an economic assessment and monitoring and evaluation studies.

Regulatory Flexibility Statement

The proposed amendment and new rules affect the planning activities of State, county and local governments and their planning agencies and boards and will not impose recording, recordkeeping, or other compliance requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. A regulatory flexibility analysis is, therefore, not required.

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

17:32-4.7 Completion of the negotiation phase of cross-acceptance

(a) When the State Planning Commission's negotiating committee believes that the county and municipal negotiations have produced the highest degree of agreement among the negotiating parties, the [committee] **Committee** shall submit a summary of its findings, including a list of agreements and disagreements resulting from each negotiation session, to the State Planning Commission, the subject county and each county's respective municipalities.

(b) The Committee shall forward to the State Planning Commission, for its consideration and approval, an Interim State Development and Redevelopment Plan reflecting recommended changes to the Preliminary State Development and Redevelopment Plan resulting from the comparison [and negotiation phases] **phase, any negotiations conducted to that point,** and any other relevant information and materials. **The Committee shall also forward to the Commission for its consideration and approval, an Implementation Report, Infrastructure Needs Assessment, and an Interim List of Agreements and Disagreements.**

(c) [Approval of the Interim State Development and Redevelopment Plan by the State Planning Commission shall complete the negotiation phase of cross-acceptance.] **Subsequent to the approval of the Interim State Development and Redevelopment Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, and Interim Statement of Agreements and Disagreements by the State Planning Commission, the Commission shall provide counties and municipalities an opportunity to negotiate any issues that were deferred in that county or municipality. For the purposes of negotiating any such deferred issues, the Commission may be represented by one member of the Commission's negotiating committee and an appropriate member of the Office of State Planning.**

(d) [Pursuant to N.J.S.A. 52:18A-202(c), there shall be no fewer than six public hearings on the Interim State Development and Redevelopment Plan. Upon approval of the Interim Plan, the State Planning Commission shall establish the total number of hearings it intends to hold.] **The negotiation phase of cross-acceptance shall end 150 days after the approval of the Interim State Development and Redevelopment Plan.**

SUBCHAPTER 5. PROCEDURES FOR CONDUCTING THE ISSUE RESOLUTION PHASE OF CROSS-ACCEPTANCE

17:32-5.1 Commencement of the issue resolution phase of cross-acceptance

(a) The purpose of the issue resolution phase is to allow review of, and accept comment on, the amended Interim Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, Interim Statement of Agreements and Disagreements, and the Impact Assessment of the Interim Plan, with the goal of formulating a final State Development and Redevelopment Plan.

(b) The issue resolution phase shall commence with the State Planning Commission's approval of any amendments to the Interim State Development and Redevelopment Plan reflecting the resolution of the deferred issues that were negotiated in accordance with N.J.A.C. 17:32-4.7(c). The amended Interim Plan may also reflect changes made by the Commission based on their consideration of the Impact Assessment of the Interim Plan prepared pursuant to N.J.S.A. 52:18A-196 et seq., and as amended January 12, 1990 by P.L. 1989, c.332. Concurrent with the release of the amended Interim Plan, the Commission shall also release, with appropriate amendments, the Interim Implementation Report, Interim Infrastructure Needs Assessment, and the Interim Statement of Agreements and Disagreements.

17:32-5.2 Required public hearings

(a) Pursuant to N.J.S.A. 52:18A-196 et seq., and as amended January 12, 1990 by P.L. 1989, c.332, there shall be six public hearings on the amended Interim State Development and Redevelopment Plan, to be held no sooner than 45 days after the release of the Impact Assessment of the Interim Plan.

(b) Pursuant to N.J.S.A. 52:18A-202c, the State Planning Commission shall give at least 30 days public notice of each hearing in advertisements in at least two newspapers which circulate in the area served by the hearing and at least 30 days notice to the governing body

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and planning board of each county and municipality in the area served by the hearing.

(c) The amended Interim State Development and Redevelopment Plan, Interim Implementation Report, Interim Infrastructure Needs Assessment, Interim Statement of Agreements and Disagreements, and the Impact Assessment of the Interim Plan, shall be distributed to county and municipal planning boards and other interested parties prior to the public hearings.

(d) The public hearings shall be convened by the State Planning Commission, or by a committee of the Commission designated for that purpose, whereupon comments will be taken on the amended Interim State Development and Redevelopment Plan and the accompanying documents cited in (c) above.

17:32-5.3 County and municipal review and comment during the issue resolution phase of cross-acceptance

(a) Counties and municipalities may submit written comments to the State Planning Commission regarding the effect of the amended Interim State Development and Redevelopment Plan, Interim Implementation Report, or Interim Infrastructure Needs Assessment on the agreements and disagreements reached during the negotiation phase of cross-acceptance, at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

(b) Counties and municipalities may submit written comments to the State Planning Commission regarding the Impact Assessment of the Interim State Development and Redevelopment Plan at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

17:32-5.4 Public participation during the issue resolution phase of cross-acceptance

(a) The public may participate in the issue resolution phase of cross-acceptance through the following means:

1. Comments presented at public hearings conducted pursuant to N.J.A.C. 17:32-5.2;

2. Written or verbal communication with municipal and/or county officials involved in cross-acceptance;

3. Submission of written comments to the State Planning Commission at any time up to 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2;

4. Comments presented during the public comment period at monthly meetings of the State Planning Commission;

5. Comments presented at meetings of the various committees of the State Planning Commission as they relate to the work of that committee; and

6. Recommendations of State Planning Advisory Committees.

17:32-5.5 Completion of the issue resolution phase of cross-acceptance

(a) The issue resolution phase shall end 30 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

(b) Pursuant to N.J.S.A. 52:18A-196 et seq., and as amended on January 12, 1990 by P.L. 1989, c.332, the State Planning Commission shall adopt a final State Development and Redevelopment Plan no sooner than 30 days and no later than 60 days after the last public hearing conducted pursuant to N.J.A.C. 17:32-5.2.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Destruction of Chips, Tokens and Plaques

Reproposed Amendment: N.J.A.C. 19:46-1.6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(i), 99(a)(9).

Proposal Number: PRN 1991-299.

Submit comments by July 3, 1991 to:

Barbara A. Mattie
Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

On September 17, 1990, a proposed amendment to N.J.A.C. 19:46-1.6(g) was published for comment (see 22 N.J.R. 2914(a)). That proposed amendment maintained the existing requirement that four persons observe the destruction of gaming chips, tokens and plaques, and it added the requirement that one of the four must be a member of the casino licensee's security department. The Commission has since reconsidered the proposed amendment, made substantive changes to it, and is soliciting public comments concerning this revised amendment. Comments submitted concerning the prior proposal will not be considered with regard to the new proposal.

This revised proposed amendment to the chip destruction regulation reduces the minimum number of people now required to be present during the destruction process. The requirement that a Commission inspector be present has been eliminated. The amendment continues the existing requirement that one of the individuals observing the destruction be from the accounting or auditing department of the casino licensee, and adds the previously proposed requirement that a member of the casino licensee's security department also be present. As a result of these changes, the proposed destruction process would require the presence of at least two people, rather than four, as is now the case.

In addition, this amendment requires each casino licensee to maintain a log which includes the name and license number of all casino personnel and the name and address of all non-casino personnel involved with the chip, token and plaque destruction.

Social Impact

By requiring the presence of a member of the casino licensee's security department at any destruction of chips, tokens or plaques, the integrity of the destruction process is preserved. This furthers the goal of integrity in casino operations, and public confidence and trust in casino operations. See N.J.S.A. 5:12-1(b)(6).

Economic Impact

The proposed amendment should have a favorable economic impact upon licensees, because the streamlined destruction procedure should be more economical. Additionally, the elimination of the requirement that a Commission inspector be present to observe the destruction should free these inspectors to devote more time to their statutory responsibilities.

Regulatory Flexibility Statement

This proposed amendment will not affect any "small business" as that term is defined in N.J.S.A. 52:14B-16 et seq. since no casino licensees are "small businesses" for purposes of that statutory provision.

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

19:46-1.6 Receipt of gaming chips, tokens or plaques from manufacturer or distributor; inventory, storage and destruction of chips, tokens and plaques

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

(g) Prior to the destruction of gaming chips and plaques, the casino licensee shall notify the [commission] **Commission** and the [division] **Division**, in writing, of the date and the location at which the destruction will be performed, the denomination, number and amount of value chips and plaques to be destroyed, the description and number of non-value chips to be destroyed and a detailed explanation of the method of destruction. Unless otherwise authorized by the [commission] **Commission**, the destruction of gaming chips and plaques shall be carried out in the presence of at least [four] **two** people, one of whom shall be from the accounting or auditing department of the casino **licensee** and one of whom shall be [an agent of the commission] **from the security department of the casino licensee**. The denomination, number and amount of value chips and plaques or, in the case of non-value chips, the description and number so destroyed shall be recorded in the chip inventory ledger together with the signatures of the individuals carrying out such destruc-

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tion, and the date on which said destruction took place. **The casino licensee shall also maintain a written log of the names and license numbers of all casino personnel involved in each such destruction, as well as the names and addresses of all non-casino personnel involved.**

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

(a)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Wagers
Proposed Amendment: N.J.A.C. 19:47-2.3

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69, 70f, and 100e.

Proposal Number: PRN 1991-302.

Interested persons are invited to participate in a **public hearing** concerning this proposal, which will be held on June 20, 1991 at 10:30 A.M., at the offices of the Casino Control Commission, Joseph P. Lordi room, Arcade Building, second floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey.

Submit written comments by July 3, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules currently require that all winning wagers in blackjack be paid at odds of 1 to 1, except for blackjack, which is paid at odds of 3 to 2. The proposed amendment would permit a casino licensee, at its option, to offer patrons 2 to 1 odds on winning card combinations consisting of a 6, 7 and 8 of the same suit, 3 to 2 odds on winning card combinations of three 7's of any suit, and 2 to 1 odds on a blackjack consisting of a designated ace and face card combination.

Casino licensees offering the proposed optional payout odds would be required to notify patrons at each designated table at least one-half hour in advance, both by announcement and by posting approved signage. The Commission must also be given at least one-half hour prior notice of the casino licensee's intent to offer such an option. These notice requirements have been codified in proposed new rule N.J.A.C. 19:47-8.3, which is published elsewhere in this Register.

Social Impact

The proposed amendments, by allowing casino licensees to offer some variation in the payout odds for blackjack, may promote greater interest among certain gaming patrons, and thus benefit both the casino industry and the gaming public.

Economic Impact

The proposed optional payout odds in blackjack will enable casino licensees to introduce some degree of innovation in the table games, which may increase patron participation and gaming revenues. To the extent that these optional odds reduce the house advantage, however, there may be a corresponding decrease in gaming revenue.

Regulatory Flexibility Statement

The proposed amendment affects only the operation of casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.3 Wagers

(a) (No change.)

(b) Except as provided in [paragraph] (a)3 [of this section] **above**, a wager made in accordance with this [sub]section shall be void when the score of the player is the same as the dealer, provided, however, that a player's wager shall be lost when the dealer has a blackjack and the player has a simple 21 which is not a blackjack.

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

(f) All winning wagers made in accordance with [subsection] (a) [of this section] **above** shall be paid at odds of 1 to 1, with the exception of **standard** blackjack, which shall be paid at odds of 3 to 2. **Notwithstanding any other provision of this subsection, a casino licensee may, in its discretion, offer one or more of the following payout odds for winning wagers made in accordance with (a) above, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3:**

1. Three cards consisting of the 6, 7 and 8 of the same suit shall be paid at odds of 2 to 1;

2. Three cards consisting of three 7's of any suit shall be paid at odds of 3 to 2; and/or

3. A single blackjack combination consisting of a specific ace and face card designated by the casino licensee in accordance with N.J.A.C. 19:47-8.3 shall be paid at odds of 2 to 1.

(g)-(l) (No change in text.)

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Wagers
Payment of Blackjack
Proposed Amendments: N.J.A.C. 19:47-2.3 and 2.7

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:21-69, 70f and 100e.

Proposal Number: PRN 1991-303.

Interested persons are invited to participate in a **public hearing** concerning this proposal, which will be held on June 20, 1991 at 10:30 A.M., at the offices of the Casino Control Commission, Joseph P. Lordi Room, Arcade Building, second floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey.

Submit written comments by July 3, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules currently require that all winning wagers in blackjack be paid at odds of 1 to 1, except for blackjack, which is paid at odds of 3 to 2. The proposed amendments would permit a casino licensee to vary its payout odds for blackjack, at designated locations and times. The casino licensee would, at its option, be authorized to offer higher payout odds of 3 to 1 or 2 to 1 for winning hands consisting of blackjack.

Casino licensees offering the proposed optional payout odds would be required to notify patrons at each designated table at least one-half hour in advance, both by announcement and by posting approved signage. The Commission must also be given at least one-half hour prior notice of the casino licensee's intent to offer such option. These notice requirements have been codified in proposed new rule N.J.A.C. 19:47-8.3, published elsewhere in this Register.

Social Impact

The proposed amendments would allow casino licensees to offer some variation in the payout odds for blackjack, which may generate renewed interest and greater participation by the gaming public.

Economic Impact

The proposed amendments permit a casino licensee to offer higher payout odds as a means of increasing its market share. However, the higher payout odds reduce house advantage, which might result in a corresponding decrease in gaming revenue. Gaming patrons will, of course, benefit from any such reduction in house advantage.

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Regulatory Flexibility Statement

The proposed amendments affect only the operation of casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.3 Wagers

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

(f) All winning wagers made in accordance with [subsection] (a) [of this section] **above** shall be paid at odds of 1 to **1,** with the exception of blackjack, which shall be paid at odds of 3 to 2. **Notwithstanding any other provision of this section, a casino licensee may offer payout odds of 3 to 1 or 2 to 1 for winning wagers consisting of blackjack, provided that notice is given to the Commission and to gaming patrons in accordance with N.J.A.C. 19:47-8.3.**

(g)-(l) (No change.)

19:47-2.7 Payment of blackjack

(a) If the first face up card dealt to the dealer is 2, 3, 4, 5, 6, 7, 8 or 9 and a player has blackjack, the dealer shall announce and pay the blackjack [at odds of 3 to 2] **in accordance with N.J.A.C. 19:47-2.3** and shall remove the player's cards before any player receives a third card.

(b) If the first face up card dealt to the dealer is an Ace, King, Queen, Jack or Ten and a player has blackjack, the dealer shall announce the blackjack but shall make no payment nor remove any cards until all other cards are dealt to the players and the dealer receives his second card. If, in such circumstances, the dealer's second card does not give him blackjack, the player having blackjack shall be paid [at odds of 3 to 2] **in accordance with N.J.A.C. 19:47-2.3**. If, however, the dealer's second card gives him blackjack, the wager of the player having blackjack shall be void and constitute a stand off.

(a)

CASINO CONTROL COMMISSION

Rules of the Game

Procedure for Dealing Cards in Blackjack

Proposed Amendment: N.J.A.C. 19:47-2.6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-69, 70f and 100e.

Proposal Number: PRN 1991-301.

Interested persons are invited to participate in a **public hearing** concerning this proposal, which will be held on June 20, 1991 at 10:30 A.M., at the offices of the Casino Control Commission, Joseph P. Lordi Room, Arcade Building, second floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey.

Submit written comments by July 3, 1991 to:

Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules, at N.J.A.C. 19:47-2.6, set forth procedures for the dealing of cards in the game of blackjack. N.J.A.C. 19:47-2.6(h) provides that the dealer's second ("hole") card is dealt face upward, after all additional cards have been dealt to the players. Alternatively, under N.J.A.C. 19:47-2.6(j), a casino licensee may permit a blackjack dealer to deal his or her hole card face downward, after a second card and before additional cards are dealt to the players. The proposed amendment, N.J.A.C. 19:47-2.6(k), would add a third option, which would permit the dealer's hole card to be dealt face upward after a second card and before additional cards are dealt to the players.

Any casino licensee which chooses to offer this option would be required to provide notice to the Commission, and to its gaming patrons, in accordance with proposed new rule N.J.A.C. 19:47-8.3, which is published elsewhere in this Register. In addition, certain rules of blackjack would be modified. Currently, pursuant to N.J.A.C. 19:47-2.3, a wager is void when the player's and dealer's scores are the same, except that the player loses when the dealer has blackjack and the player has a simple 21. Whenever blackjack is dealt in accordance with the proposed amendment, however, the player will lose in the event of a tie, except that the player will win if both the player and dealer have blackjack. Neither the surrender option nor insurance wager would be available, and players would be allowed to double down only on a point count of nine, 10 or 11. Players would be permitted to split pairs only once. Winning blackjack hands would be paid at odds of 1 to 1, rather than 3 to 2.

Social Impact

The proposed amendment is not anticipated to have any significant social impact. The proposed amendment will allow a casino licensee to offer some variation in the rules of blackjack, which may increase interest and participation among gaming patrons.

Economic Impact

The proposed amendment would provide blackjack players with the advantage of viewing the dealer's hole card before additional cards are dealt. However, the player will now lose all ties except for blackjack ties, and a winning blackjack hand will be paid at odds of 1 to 1. The proposed option is not anticipated to have any significant impact on the casino licensee's house advantage in the game of blackjack.

Regulatory Flexibility Statement

The proposed amendments affect only the operation of casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.6 Procedure for dealing cards

(a)-(g) (No change.)

(h) After the decisions of each player have been implemented and all additional cards have been dealt, the dealer shall deal a second card face upward to himself provided, however, that such card shall not be removed from the dealing shoe until the dealer has first announced "Dealer's Card" which shall be stated by the dealer in a tone of voice calculated to be heard by each person at the table. Any additional cards authorized to be dealt to the hand of the dealer by N.J.A.C. 19:47-2.12(b) shall be dealt face upwards at this time after which the dealer shall announce his total point count. In lieu of the requirements of this paragraph, the [procedure] **procedures** set forth in [subsection] (j) **or (k) below** may be implemented.

(i)-(j) (No change.)

(k) In lieu of the procedure set forth in (h) above, a casino licensee may permit a blackjack dealer to deal his or her hole card face upward after a second card and before additional cards are dealt to the players, provided that the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3. Notwithstanding any other provisions of this subchapter, the following rules shall apply whenever cards used to game at blackjack are dealt in accordance with this subsection:

1. Winning wagers shall be determined in accordance with N.J.A.C. 19:47-2.3(a) and (b), provided, however, that a player's wager shall be lost if the score of the player is the same as the dealer, except that a player's wager shall win if both the player and dealer have blackjack;

2. Winning wagers shall be paid in accordance with N.J.A.C. 19:47-2.3(f), except that standard blackjack shall be paid at odds of 1 to 1;

3. Surrender, pursuant to N.J.A.C. 19:47-2.8, and insurance wagers, pursuant to N.J.A.C. 19:47-2.9, shall not be available;

4. A player may double down, pursuant to N.J.A.C. 19:47-2.10, only on a point count of 9, 10 or 11; and

5. Any player who elects to split cards of identical value, pursuant to N.J.A.C. 19:47-2.11, may not split pairs again if the second card so dealt is identical in value to a card of the split pair.

Recodify existing (k)-(n) as **(l)-(o)** (No change in text.)

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(a)

CASINO CONTROL COMMISSION

Rules of the Games
Surrender Option in Blackjack
Proposed Amendment: N.J.A.C. 19:47-2.8

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-70(f) and 100(e).
Proposal Number: PRN 1991-304.

Submit comments by July 3, 1991 to:
David C. Missimer
Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed amendment would eliminate the current requirement that a casino licensee which offers the surrender option must do so at all blackjack tables in its casino. Instead, a casino licensee would be permitted to offer the option on a table-by-table basis.

The proposed amendment also establishes notice requirements for the initiation or termination of the option at a given blackjack table. As indicated in the notice provisions of proposed new rule N.J.A.C. 19:47-8.3 (published elsewhere in this issue of the New Jersey Register), which is incorporated by reference, the notice must be announced and posted at a table at least one-half hour in advance of a change, and the casino licensee must advise the Commission of the change.

Social Impact

The proposed amendment is not anticipated to have a significant social impact. It will permit a casino licensee to offer more variety in the game of blackjack, which may result in additional patron interest and participation.

Economic Impact

The proposed amendment would permit casino licensees to make use of new strategies in marketing their table games, which may help them to increase participation and gaming revenues. However, because the availability of the surrender option reduces the house advantage in blackjack, increased use of the option by additional casino licensees may have a detrimental effect on gaming revenues. Any reduction in the house advantage would, of course, benefit those who patronize blackjack tables.

Regulatory Flexibility Statement

A regulatory flexibility analysis is not required for this proposal. The proposed amendment only affects licensed casinos in Atlantic City, none of which are small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.8 Surrender
(a)-(b) (No change.)
(c) Each casino licensee may at its discretion, offer its patrons the surrender option authorized in this section. [If a casino licensee elects to offer the surrender option, it shall be made available to all players at all blackjack tables.] A casino licensee [may, upon prior written notice to the Commission and the Division, initiate the use of the surrender option at the start of any gaming day or terminate its use at the end of any gaming day. Any casino licensee offering the surrender option shall post a sign, as approved by the Commission, on each blackjack table in its casino] **shall not initiate or terminate the use of the surrender option at a table unless the casino licensee complies with the notice requirements set forth in N.J.A.C. 19:47-8.3.**

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Blackjack; Splitting Pairs
Proposed Amendment: N.J.A.C. 19:47-2.11

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63, 5:12-69, 5:12-70(f) and 5:12-100(e).
Proposal Number: PRN 1991-305.

Interested persons are invited to participate in a **public hearing** concerning the proposal, which will be held on June 20, 1991 at 10:30 A.M., at the offices of the Casino Control Commission, Joseph P. Lordi Room, Arcade Building, second floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey.

Submit written comments by July 3, 1991 to:
David C. Missimer
Senior Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Under the current provisions of N.J.A.C. 19:47-2.11, whenever the initial two cards dealt to a player are of identical value, the player may elect to split the pair of cards into two separate hands. The player is not permitted, however, to split pairs again if the next card dealt to either hand is identical in value to a card of the original split pair.

The proposed amendment would give a casino licensee the discretion to permit the player to continue to split a pair of cards of identical value. On a blackjack table with six or less player boxes, a player could be permitted to split pairs three times so as to result in four separate hands. On a blackjack table with seven player boxes, a player could be permitted to split pairs twice so as to result in three separate hands. In either situation, the dealer would be required to complete the dealing of the hands in order from the dealer's left to right.

Any casino licensee choosing to make use of this option would have to provide notice of the availability of the option in accordance with proposed new rule N.J.A.C. 19:47-8.3, published elsewhere in this issue of the New Jersey Register.

Social Impact

The proposed amendment is not expected to have any significant social impact. To the extent that the rule change stimulates additional patron interest in the game of blackjack, it may provide some benefit to casino licensees and the gaming public.

Economic Impact

It is possible that the availability of the resplitting option will permit skilled blackjack to reduce the casino's advantage in the game, as well as the amount of money won by the casino from blackjack. Any attempt to quantify the effect of the rule on gross revenue would be speculative at best. The proposed rule amendment is not expected to have any effect on the costs of the regulatory agencies.

Regulatory Flexibility Statement

The proposed amendment would only affect the operations of casino licensees, none of which qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.11 Splitting pairs
(a) (No change.)
(b) When a player splits pairs, the dealer shall deal a [second] card to [the first of the hands so formed] and [shall] complete the player's decisions with respect to [that] **the first incomplete** hand **on the dealer's left** before proceeding to deal any cards to [the second] **any other** hand.
(c)-(d) (No change.)

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(e) Notwithstanding the provisions of (c)1 above, a casino licensee may, at its discretion, permit a player to split pairs up to three times (a total of four hands) at a blackjack table with up to six player boxes or twice (a total of three hands) at a blackjack table with seven player boxes if notice of the option is provided as set forth in N.J.A.C. 19:47-8.3. All other requirements of this section shall apply to each hand which is formed as a result of splitting pairs more than once.

(a)

CASINO CONTROL COMMISSION

Rules of the Games
A Player Wagering on More Than One Box
Proposed Amendment: N.J.A.C. 19:47-2.14

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c).
Proposal Number: PRN 1991-300.

Submit comments by July 3, 1991 to:
Barbara A. Mattie
Chief Analyst
Casino Control Commission
Arcade Building
Tennessee Avenue and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

Casino Control Commission rules at N.J.A.C. 19:47-2.14 currently provide that the Commission may prohibit a patron from wagering on more than one box at a blackjack table, whenever there is insufficient seating available to accommodate patron demand. The Commission has determined that such decision should be left to the discretion of the individual casino licensee, and proposes to amend N.J.A.C. 19:47-2.14 accordingly.

Social Impact

The proposed amendment of N.J.A.C. 19:47-2.14 is not anticipated to have any significant social impact. Since the adoption of the rule, the number of casino licensees has increased, and the current availability of Blackjack tables should be sufficient to accommodate patron demand.

Economic Impact

The proposed amendment to N.J.A.C. 19:47-2.14 is not anticipated to have any significant economic impact. Theoretically, an increase in casino revenue and corresponding table win could occur, primarily because a casino licensee would have the discretion to permit a player to wager on more than one box, if it were advantageous to the licensee. However, as stated above, the probability of this situation occurring is negligible due to the availability of a large number of Blackjack tables industry wide.

Regulatory Flexibility Statement

This proposed amendment will only affect the operations of the New Jersey casino licensees and, therefore, will not impact on any business protected under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-2.14 A player wagering on more than one box

A casino licensee may permit a player to wager on more than one box at a Blackjack table. [provided however that the Commission and its agents shall have the authority and discretion to prohibit this during hours when there are insufficient seats in a casino to accommodate patron demand.]

(b)

CASINO CONTROL COMMISSION

Rules of the Games
Optional Variations in the Rules of the Games; Notice
Supplemental Wagers in Craps
Minimum and Maximum Wagers
Proposed New Rule: N.J.A.C. 19:47-8.3
Proposed Amendments: N.J.A.C. 19:47-1.3, 1.6, 2.3, 3.2, 4.2, 5.1, 5.6, 7.2 and 8.2

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.
Authority: N.J.S.A. 5:12-69, 5:12-70(f) and 5:12-100(e).
Proposal Number: PRN 1991-306.

Interested persons are invited to participate in a **public hearing** concerning this proposal, which will be held on June 20, 1991 at 10:30 A.M., at the offices of the Casino Control Commission, Joseph P. Lordi Room, Arcade Building, second floor, Tennessee Avenue and the Boardwalk, Atlantic City, New Jersey.

Submit written comments by July 3, 1991 to:
Mary S. LaMantia, Assistant Counsel
Casino Control Commission
Arcade Building
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The Casino Control Commission has recently considered a number of optional variations in the rules of the table games which, at the discretion of the individual casino licensee, may be offered at designated tables throughout the casino. For example, the Commission recently adopted amendments to N.J.A.C. 19:47-1.6 which allow casino licensees to offer additional supplemental wagers in craps (see 23 N.J.R. 620(a)). The proposed new rule establishes a uniform notice provision for casino licensees which intend to offer any of the optional variations in the rules of the games which are otherwise authorized by the Commission.

The amendments require that gaming patrons at each of the designated tables be given at least one-half hour prior notice of any such optional variation, both by announcement at the table and by the posting of approved signage. In addition, the casino licensee would be required to notify the Commission at least one-half hour in advance of such offer.

The proposed amendments to N.J.A.C. 19:47-1.6 (Supplemental wagers in craps), N.J.A.C. 19:47-8.2, Minimum and maximum wagers, and N.J.A.C. 19:47-1.3, 2.3, 3.2, 4.2, 5.1, 5.6 and 7.2, rules concerning wagers in each of the authorized table games, would delete the separate notice requirements set forth in these provisions, and substitute a cross-reference to the general notice standards in N.J.A.C. 19:47-8.3. The proposal makes no substantive changes to the notice required by these sections.

Social Impact

By ensuring that the Commission and gaming patrons are given adequate notice of any optional variation in the rules of the games, the proposed new rule protects the gaming public and promotes public trust and confidence in the integrity of casino gaming and the regulatory process, in accordance with the goals of the Casino Control Act, N.J.S.A. 5:12-1 et seq.

The proposed amendments are merely technical modifications, which are thus not expected to have any significant social impact.

Economic Impact

The proposed new rule is not anticipated to have any significant economic impact, since it affects only the notice requirements for rules of the games otherwise authorized by the Commission. The proposed amendments are technical modifications which are not expected to have any significant economic impact.

Regulatory Flexibility Statement

The proposed new rule and amendments affect only the operations of casino licensees, none of whom qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

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

19:47-1.3 Making and removal of wagers; approval of minimum wagers

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

(f) Each casino licensee shall submit to the Commission for its review and approval **in accordance with N.J.A.C. 19:47-8.2** the proposed minimum wagers to be permitted at each craps table in the casino. [The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each craps table.**

19:47-1.6 Supplemental wagers made after the come out roll in support of pass, don't pass, come and don't come bets (making and laying odds)

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

(f) Any casino offering additional wagers greater than the additional wagers authorized under (a) through (d) above shall [post signs at the appropriate tables advising the] **advise** patrons of the maximum additional wager being offered [provided that the location, size and language contained on such signs are submitted to and approved by the Commission. A casino licensee shall not change the maximum additional wager being offered at a table unless, at least one-half hour in advance of such change, it announces the change to patrons at the table and posts notice of such change on the table, and so advises the principal inspector or his or her designee] **by complying with the notice requirements set forth in N.J.A.C. 19:47-8.3.**

19:47-2.3 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each blackjack table in the casino. [The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each blackjack table.**

(f)-(l) (No change.)

19:47-3.2 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval[,] **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each Baccarat-Punto Banco table. [The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each Baccarat-Punto Banco table.**

19:47-4.2 Minimum and maximum wagers

Each casino licensee shall submit to the Commission for review and approval[,] **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each Baccarat-Chemin de Fer table. [The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers at each Baccarat-Chemin de Fer table.**

19:47-5.1 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each roulette table in the casino. [The minimum wagers as approved by the Commission and the maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each roulette table.**

19:47-5.6 Big Six Wheel; wagers and rotation of the wheel

(a) Each casino licensee shall submit to the Commission for review and approval **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each Big Six wheel in the casino. [The minimum wagers as approved by the Commission and the Maximums as established by the casino licensee shall be and remain conspicuously posted on a sign at each Big Six Table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each Big Six table.**

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

19:47-7.2 Wagers

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

(e) Each casino licensee shall submit to the Commission for review and approval[,] **in accordance with N.J.A.C. 19:47-8.2** the minimum wagers permitted at each minibaccarat table. [The minimum wagers as approved by the Commission, and the maximums as established by the casino licensee, shall be and remain conspicuously posted on a sign at each table.] **Each casino licensee shall provide notice in accordance with N.J.A.C. 19:47-8.3 of the minimum and maximum wagers in effect at each minibaccarat table.**

(f) (No change.)

19:47-8.2 Minimum and maximum wagers

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

(c) A casino licensee shall **not change** [give adequate notice of changes in the permissible minimum wagers at table games to patrons. Such adequate notice shall include the posting and announcing of such change to casino patrons. In no event shall a casino licensee raise] the permissible minimum wager at a table game unless the casino licensee [has first given the casino patrons at that table game at least one-half hour advance notice of such change] **complies with the notice requirements set forth in N.J.A.C. 19:47-8.3.**

19:47-8.3 Rules of the games; notice

(a) Whenever a casino licensee is required by rule to provide notice of the rules pursuant to which a particular table game will be operated, the casino licensee shall post a sign at the gaming table advising patrons of the rules in effect at that table.

(b) No casino licensee shall change the rules pursuant to which a particular table game is being operated unless, at least one-half hour in advance of such change, the casino licensee:

1. Posts a sign at the gaming table advising patrons of the rule change and the time that it will go into effect;

2. Announces the rule change to patrons who are at the table; and

3. Notifies the Commission of the rule change, the gaming table where it will be implemented and the time that it will go into effect.

(c) The location, size and language of each sign required by this section shall be submitted to and approved by the Commission prior to its use.

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RULE ADOPTIONS

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules
Special Hearing Rules
Return of Cases; Failure to Appear; Sanctions
Adopted Amendments: N.J.A.C. 1:1-3.2, 3.3, 5.5, 9.6, 10.5, 14.4, 14.8, 14.10 and 20.1; 1:13-14.4; 1:13A-14.1
Adopted New Rule: N.J.A.C. 1:1-14.14

Proposed: March 4, 1991 at 23 N.J.R. 639(a).

Adopted: May 8, 1991 by Jaynee LaVecchia, Director, Office of Administrative Law.

Filed: May 8, 1991 as R.1991 d.279, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

Effective Date: June 3, 1991.

Operative Date: July 1, 1991.

Expiration Date: May 4, 1992, N.J.A.C. 1:1 and 1:13
April 3, 1994, N.J.A.C. 1:13A.

Summary of Public Comments and Agency Responses:

The proposed amendments and new rule are being adopted without change. However, based on comments received, the Office of Administrative Law (OAL) is simultaneously proposing an amendment of N.J.A.C. 1:1-3.3, as discussed below.

The OAL received five comments from Middlesex Water Company, the Council on Affordable Housing (COAH), the Department of Personnel (DOP), the Department of Human Services, Division of Economic Assistance (DEA) and the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS).

COMMENT: DOP and DMAHS both suggested setting a time limit for when parties who failed to appear at a hearing could submit explanations to the transmitting agency after a case is sent back to the transmitting agency. Otherwise, noted both commenters, a returned case could remain at the transmitting agency indefinitely. In addition, without a uniform time frame, each agency would have to establish its own procedure for returned cases. This would result in inconsistency and confusion. DMAHS suggested a seven-day limit on explanations for failures to appear. DOP suggested a 13-day time frame. Both commenters also suggested that the Clerk's notice of the return of the case also include information about the time frame for explanations.

RESPONSE: The OAL believes there is merit to the suggestion of DOP and DMAHS and, accordingly, has proposed an amendment to N.J.A.C. 1:1-3.3 which would set a 10-day time limit on explanations and require the Clerk's notice to include information about the time limit (see notice of proposal published elsewhere in this issue of the Register). Pending the outcome of this proposal, the OAL will return cases to transmitting agencies when parties fail to appear, as provided in N.J.A.C. 1:1-3.3 and 1:1-14.4 as adopted. The OAL prefers not to delay beginning this procedure until a time frame is formally established. In the interim, until a final time frame is promulgated, the OAL Clerk's notice will inform parties whose cases were returned due to a failure to appear that they have 10 days to submit an explanation for the failure to appear to the transmitting agency. If a longer or shorter time frame is established during the rulemaking the OAL notice will be so conformed.

COMMENT: COAH suggested that the OAL consult with the transmitting agency before returning a particular case.

RESPONSE: This is impracticable for the OAL. The OAL prefers to return cases administratively when a party fails to appear, without contact with the transmitting agency. If an agency believes a particular case should not have been returned, it can retransmit the case to the OAL for hearing.

COMMENT: DEA was concerned about permitting ex parte proofs in their hearings because some parties fail to appear in DEA cases because of lack of notice; if ex parte proofs are permitted and an initial decision rendered, the client will not have an opportunity to present his or her case.

RESPONSE: The OAL appreciates this concern, but based on experience in DEA cases, believes there will not be a significant increase in the number of cases returned to DEA for failure to appear. If ex parte proofs are taken and a decision is rendered in a matter where there was lack of notice, DEA can reject the initial decision on review and retransmit the matter for hearing.

COMMENT: Middlesex Water Company approved of the reproposed amendments and new rule.

Several technical changes to rules are necessitated by this adoption because of the creation of a separate new rule for sanctions. In N.J.A.C. 1:1-3.2(c)4, 1:1-5.5(c), 1:1-9.6(j), 1:1-10.5, 1:1-14.8(e), 1:1-14.10(k)4 and 1:1-20.1(a)5, references to N.J.A.C. 1:1-14.4 (the previous sanctions rule) have been changed to N.J.A.C. 1:1-14.14.

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

1:1-3.2 Jurisdiction of the Office of Administrative Law

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

(c) Matters involving the administration of the Office of Administrative Law as a State agency are subject to the authority of the Director. In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-*[14.4]****14.14*** consisting of the assessment of costs or expenses:

5.-6. (No change.)

1:1-3.3 Return of transmitted cases

(a) A case that has been transmitted to the Office of Administrative Law shall be returned to the transmitting agency if the transmitting agency so requests in written notice to the Office of Administrative Law and all parties. The notice shall state the reason for returning the case. Upon receipt of the notice, the Office of Administrative Law shall return the case.

(b) A case shall be returned to the transmitting agency by the Clerk of the Office of Administrative Law if, after appropriate notice, neither a party nor a representative of the party appears at a proceeding scheduled by the Clerk or a judge (see N.J.A.C. 1:1-14.4). Any explanations regarding the failure to appear may be addressed to the transmitting agency head after the case is returned. If, based on such explanations, the agency head believes the matter should be rescheduled for hearing, the agency head may re-transmit the case to the Office of Administrative Law, pursuant to N.J.A.C. 1:1-8.2.

(c) Upon returning any matter to the transmitting agency, the Clerk shall issue an appropriate notice to the parties.

1:1-5.5 Conduct of non-lawyer representatives; limitations on practice

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

(c) Non-lawyer representatives shall be subject to the Uniform Administrative Procedure Rules, including the sanctions provided in N.J.A.C. 1:1-*[14.4]* ***14.14***. If the judge determines that an incorrect statement in an oral application or Notice of Appearance/Application was an intentional misstatement, or that the non-lawyer representative has unreasonably failed to comply with any order of a judge or with any requirement of this chapter, the judge may impose the sanctions provided under N.J.A.C. 1:1-*[14.4]* ***14.14***, which may include:

1.-3. (No change.)

(d)-(f) (No change.)

1:1-9.6 Adjournments

(a)-(i) (No change.)

(j) When granting an adjournment after an untimely application, a judge may order any of the sanctions contained in N.J.A.C. 1:1-*[14.4 and 5]* **14.14***.

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1:1-10.5 Sanctions

By motion of a party or on his or her own motion, a judge may impose sanctions pursuant to N.J.A.C. 1:1-*[14.4]* ***14.14*** for failure to comply with the requirements of this subchapter. Before imposing sanctions, the judge shall provide an opportunity to be heard.

1:1-14.4 Failure to appear; sanctions for failure to appear

(a) If, after appropriate notice, neither a party nor a representative appears at any proceeding scheduled by the Clerk or judge, the judge shall hold the matter for one day before taking any action. If the judge does not receive an explanation for the nonappearance within one day, the judge may, pursuant to N.J.A.C. 1:1-3.3(b) and (c), direct the Clerk to return the matter to the transmitting agency for appropriate disposition.

(b) If the nonappearing party submits an explanation in writing, a copy must be served on all other parties and the other parties shall be given an opportunity to respond.

1. If the judge receives an explanation, the judge shall reschedule the matter and may, at his or her discretion, order any of the following:

i. The payment by the delinquent representative or party of costs in such amount as the judge shall fix, to the State of New Jersey or the aggrieved person;

ii. The payment by the delinquent representative or party of reasonable expenses, including attorney's fees, to an aggrieved representative or party; or

iii. Such other case-related action as the judge deems appropriate.

2. If the judge concludes from the explanation received that the nonappearing party or representative is intentionally attempting to delay the proceeding, the judge may refuse to reschedule the matter and shall issue an initial decision explaining the basis for the conclusion that there has been an intentional delay.

(c) If the appearing party requires an initial decision on the merits because of the failure to appear, the party shall ask the judge for permission to present ex parte proofs. If no explanation for the failure to appear is received, and the circumstances require a decision on the merits, the judge may enter an initial decision on the merits based on the ex parte proofs, provided the failure to appear is memorialized in the decision.

1:1-14.8 Conduct of proceedings on the papers

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

(e) If the party requesting the hearing does not appear at the scheduled in-person or telephone hearing and no certification is received, the matter shall be handled pursuant to N.J.A.C. 1:1-*[14.4]* ***14.14***.

1:1-14.10 Interlocutory review

(a)-(j) (No change.)

(k) In the following matters as they relate to proceedings before the Office of Administrative Law, the Director is the agency head for purposes of interlocutory review:

1.-3. (No change.)

4. Sanctions under N.J.A.C. 1:1-*[14.4]***14.14*** consisting of the assessment of costs or expenses;

5.-6. (No change.)

(l)-(m) (No change.)

1:1-14.14 Sanctions; failure to comply with orders or requirements of this chapter

(a) For unreasonable failure to comply with any order of a judge or with any requirements of this chapter, the judge may:

1. Dismiss or grant the motion or application;

2. Suppress a defense or claim;

3. Exclude evidence;

4. Order costs or reasonable expenses, including attorney's fees, to be paid to the State of New Jersey or an aggrieved representative or party; or

5. Take other appropriate case-related action.

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 provisions of N.J.A.C. 1:1-14.4 shall apply.

1:13A-14.1 Failure to appear

If a party fails to appear at any proceeding scheduled by the Clerk or judge, the provisions of N.J.A.C. 1:1-14.4 shall apply.

1:1-20.1 Conduct of mediation

(a) Mediation shall be conducted in accordance with the following procedures:

1.-4. (No change.)

5. If any party fails to appear at the mediation, without explanation being provided for the nonappearance, the mediator shall return the matter to the Clerk for scheduling a hearing and, where appropriate, may consider sanctions under N.J.A.C. 1:1-*[14.4]* ***14.14***.

6.-7. (No change.)

(b) (No change.)

COMMUNITY AFFAIRS

(a)

DIVISION OF LOCAL GOVERNMENT SERVICES

Local Government Financial Regulation
Cooperative Pricing and Joint Purchasing Systems
Adopted Amendments: N.J.A.C. 5:34-7.1 through 7.4, and 7.7

Proposed: April 1, 1991 at 23 N.J.R. 933(a).

Adopted: May 9, 1991 by Barry Skokowski, Sr., Director, Division of Local Government Services.

Filed: May 10, 1991 as R.1991 d.284, **without change**.

Authority: N.J.S.A. 40A:11-11.

Effective Date: June 3, 1991.

Expiration Date: December 3, 1995.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

5:34-7.1 Applicability

This subchapter is adopted under the authority of N.J.S.A. 40A:11-11, as amended. The subchapter applies to contracting units as defined in the Local Public Contracts Law (N.J.S.A. 40A:11-1 et seq.) and boards of education (hereinafter also referred to as contracting units), as authorized by N.J.A.C. 6:20-8.7 by the Commissioner of Education.

5:34-7.2 Definition

As used in this subchapter, "cooperative purchasing" refers to all forms of joint, cooperative or interlocal purchasing or pricing agreements or systems by whatever name known and regardless of statutory authorization, participated in by contracting units. This definition shall not include joint purchasing systems comprised only of boards of education, as authorized under N.J.S.A. 18A:18A-11.

5:34-7.3 Basis for cooperative purchasing

(a) All cooperative purchasing shall be based on a formal agreement entered into between the participating contracting units, authorized by resolution or ordinance, as described in (a)1 through 4 below.

1.-3. (No change.)

4. All other participating contracting units, including, but not limited to, boards of education, county colleges, authorities, boards, and commissions, shall first adopt resolutions to authorize creation and/or participation in a system and execution of a formal agreement among participating contracting units. Motions made and carried at business meetings cannot be substituted for resolutions, except that a certified copy of a motion made, carried and recorded in the written minutes of a business meeting of a board of education may be substituted for a resolution.

(b) The formal agreement shall include, at a minimum, the following:

1.-7. (No change.)

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8. A provision stating that the identification code assigned to the system by the Director of the Division of Local Government Services must appear on all documentation related to purchases made through the system, including bidding documents, purchase orders, vouchers and contracts.

(c) (No change.)

5:34-7.4 Approval and registration

(a) All cooperative purchasing agreements or systems hereafter entered into or participated in by any contracting units regardless of statutory authorization, shall be subject to registration with and approval by the Director, Division of Local Government Services, Department of Community Affairs. This provision shall not extend to local participation in the cooperative purchasing program administered by the Division of Purchase and Property pursuant to N.J.S.A. 40A:11-12, except as may be specifically set forth in N.J.A.C. 5:34-7.8, nor shall this provision extend to joint purchasing systems comprised only of boards of education as authorized under N.J.S.A. 18A:18A-11.

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

5:34-7.7 Local administrative responsibilities

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

(e) The Lead Agency, in seeking bids shall:

1. (No change.)

2. If obtaining prices for items to be ordered by the Lead Agency for its own needs and directly by other participating contracting units (a Cooperative Pricing Service), include in the specifications:

i. Two categories upon which bids are sought:

(1) (No change.)

(2) Other Participating Contracting Units, stated as an estimated total quantity of the needs of all other participating agencies. Total contract purchase for each participating agency must be in conformance with the change order requirements of N.J.A.C. 5:34-4. The specifications for this category shall list the other Participating Contracting Units, their delivery address, their estimated maximum quantities and other relevant information to permit the bidder to understand what is potentially involved.

ii.-iv. (No change.)

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

(h) Financing and contractual details for cooperative pricing systems are as follows:

1. (No change.)

2. The Lead Agency shall supply the other participating contracting units of the cooperative pricing system copies of the specifications, name of the successful bidder, prices awarded and the contract identification number. Each participating contracting unit may then order directly from the vendor. If the cost of the order is under the bid threshold, and if the contracting agent is authorized to do so, then the contracting agent may issue a purchase order, pursuant to N.J.S.A. 40A:11-3. If the cost of the order exceeds the bid threshold, then the contract must be awarded by resolution of the governing body. The identification number assigned by the Director shall be affixed to each purchase order or contract and shown on all forms pertaining thereto.

3.-5. (No change.)

(i)-(j) (No change.)

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Endangered and Nongame Species

Adopted Amendment: N.J.A.C. 7:25-4.13

Adopted Repeal and New Rule: N.J.A.C. 7:25-4.17

Proposed: May 7, 1990 at 22 N.J.R. 1308(a).

Adopted: May 6, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection.

Filed: May 7, 1991 as R.1991 d.277, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEP Docket Number: 012-90-04.

Effective Date: June 3, 1991.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

Secondary notice was achieved by sending press releases to approximately 200 newspapers of general circulation and 100 conservation organizations within the State. Nine commenters submitted written comments during the comment period which closed June 6, 1990. The commenters, and their affiliations, if any, are:

Anonymous (2)

Christine Danihel, Pet Industry Joint Advisory Council

Amy S. Greene, President, Amy S. Greene Environmental Consultants, Inc.

Stephen Hilles (2)

Wayne Karnell, President, New Jersey Builders Association

Susan L. Lupow, President, Norwood Nature Association

Gordon K. Schultze, Director of Lorrimer Sanctuary, New Jersey Audubon Society

Margaret Thompson

GENERAL

COMMENT: The list should be adopted. The sacrifices you make today will not make you poor, they will make you rich. Just say no to the deprivation of our land. We should do everything possible to protect any threatened species. The designation of endangered should protect a species from the threat of habitat destruction or other harm and help the species to flourish. At least two of the species proposed for the endangered list—the wood rat and the red-shouldered hawk—have been seen on the tract on the western slope of the Palisades which is targeted for luxury housing. The overall biological diversity of New Jersey in general should be preserved. Since undomesticated plants and animals are coming under increasing pressure from climate change, ozone depletion, loss of habitat, and contamination from the environment, we need to do more to help protect rare, sensitive and endangered species. The first step is to protect all the parts of the biological community. We should be true to our laws and care about our earth.

RESPONSE: The Department hereby acknowledges the support of these commenters.

COMMENT: The Department should clarify the existing criteria or establish a new set of objective and scientific criteria to be used when determining if an animal species warrants listing as either endangered or threatened. These criteria should address in detail the number of stations known for a listed species and should explain the various environmental factors that may threaten the species' survival in this State.

RESPONSE: Whether or not an animal species warrants listing as endangered or threatened depends on the minimum number of individual animals needed to maintain a population, as well as the effects that may be projected based on current known environmental factors. The criteria set forth in N.J.S.A. 23:2A-3(c) depend on a number of variables that affect the population of a given species including its reproductive biology, habitat requirements, competitors, predators, commercial value, susceptibility to diseases and parasites, geographical distribution and sensitivity to contaminants and to disturbance, among other factors. The number of sightings alone is not a reliable criterion, both because different species have different population thresholds and because of the differences in the proportions of sightings to projected population from species to species.

COMMENT: The Department should work toward eliminating inconsistent classifications of animal species that occur between the Endangered Nongame and Species Program (ENSP) and the New Jersey Natural Heritage Program. The wood turtle (Clemmys insculpta) is formally listed as threatened by the ENSP and ranked as apparently secure in the State, with many occurrences, by the New Jersey Natural Heritage Program.

RESPONSE: What appear to be inconsistencies between the Endangered and Nongame Species Program and the New Jersey Natural Heritage Program result from the fact that the Natural Heritage Program is charged by statute (N.J.S.A. 13:1B-15.146) with making an inventory of rare species of animals, plants and habitats. As an inventory in the form of a database, it must rely heavily on the number of locations attributable to the species rather than those factors listed in N.J.S.A.

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23:2A-3(c). Only by taking into account all the known factors which may affect a given population can an assessment that conforms to the statute at N.J.S.A. 23:2A-1 et seq. be reached. The wood turtle, for example, is dependent on a dwindling habitat—that is, freshwater wetlands and clean streams in which to hibernate. The difference in assessment reached by the Natural Heritage Program is not due to inconsistency of terms, but rather to a different conclusion based on different set of statutory criteria. The terms used by the Natural Heritage Program are clarified as part of the Natural Heritage Program database.

COMMENT: The Endangered and Nongame Species Conservation Act, N.J.S.A. 23:2A-1 et seq. (Act), specifically states that the Department may by regulation promulgate a list of those species and subspecies of wildlife indigenous to the State which are determined to be endangered. Nowhere in this enabling legislation does the Legislature give the Department the authority to promulgate lists of threatened animal species.

RESPONSE: The Department does not promulgate a list of threatened animal species, but rather a list of nongame species. The preparation of such a list is mandated by N.J.S.A. 23:2A-6, which prohibits the taking, possession, transport, export, processing, selling, offering for sale or shipping of any subspecies or species of wildlife appearing on the list of nongame species regulated pursuant to the Act. In addition, N.J.S.A. 23:2A-4(a) requires the Commissioner to develop management programs which shall be designed to ensure the continued ability of wildlife to perpetuate themselves successfully. N.J.S.A. 23:2A-5(a) gives the Commissioner the power to formulate and promulgate rules controlling the taking, possession, transportation, exportation, sale or offer for sale or shipment of any nongame species. N.J.S.A. 23:2A-7(a) requires the Commissioner to establish such programs as deemed necessary for the conservation and management of nongame and endangered species of wildlife. It would be impossible to establish and to run these programs effectively without knowing the status of any particular species.

N.J.A.C. 7:25-4.13

COMMENT: The eastern woodrat should be added to the endangered list as listed in the proposal in order to help save this little animal.

RESPONSE: The Department hereby acknowledges the support of this commenter and is adding this species to the list through this adoption notice.

N.J.A.C. 7:25-4.13 and 4.17

COMMENT: Will all future listings of invertebrates be limited to the endangered list or will they be listed as nongame?

RESPONSE: Inclusion of invertebrates in the nongame status list was not proposed and is therefore the scope of this adoption. This practice is currently under consideration by the Department. Inclusion of certain invertebrate species in the list is dependent on the availability of research funding. Because there is no mechanism for listing species without assigning them to a category, long term research projects must be initiated in order to determine that status of these species and to track their progress.

N.J.A.C. 7:25-4.17

COMMENT: Must a species be listed as a nongame species in order for it to be listed as threatened species?

RESPONSE: This rule is not comprised of an endangered list and a threatened list, but rather a list of endangered species and a listing of the indigenous nongame species, of which threatened is one of nine categories. Thus, although certain specific game animals may be classified as threatened from a zoological standpoint, they would not appear on this list. Only those indigenous nongame species that are also threatened would be so categorized at N.J.A.C. 7:25-4.17.

COMMENT: Fish are not listed as nongame, but Department publications list the Atlantic sturgeon, American shad, brook trout and Atlantic tomcod as threatened.

RESPONSE: Fish are not included in the list of nongame species at N.J.A.C. 7:25-4.17 because all fish are considered game animals. Assessment of the status of these species as threatened nonetheless constitutes a biological evaluation based on scientific criteria.

COMMENT: The Department is to be commended for the proposed inclusion of terrestrial mammals and the invertebrate species. All proposed changes regarding avian species should be adopted, including that of the status of the long-eared owl, which would be more appropriately listed as endangered, rather than threatened.

RESPONSE: The Department hereby acknowledges the support of this commenter. However, it is the position of the Department that, although inclusion of the long-eared owl in the list of endangered species may be appropriate in the future, it is premature to consider the species as likely to disappear from the State without immediate intervention.

COMMENT: The Department should clarify in the rules that the list of threatened species cannot be used as the basis for reviewing and issuing permits and determining wetlands buffer distances under the Freshwater Wetlands, CAFRA and Pinelands programs.

RESPONSE: The Department cannot legally preclude the use of either of these lists as basis for permit decisions. The Freshwater Wetlands Act specifically requires the consideration of habitats for threatened and endangered species at N.J.S.A. 13:9B-7, 13:9B-9(b), 13:9B-10 and 13:9B-11. Moreover, the Coastal Area Facilities Review Act (CAFRA) requires the consideration of the effect of any permit on animal life at the site and within the surrounding region at N.J.S.A. 13:19-10 and 13:19-11, which incorporates N.J.S.A. 13:19-2 by reference. The Pinelands Protection Act requires the Pinelands Commission to consider ecologically sensitive issues when drafting a land use capability map at N.J.S.A. 13:18A-8(d)(1) and states, as a goal of the comprehensive management plan, the protection and preservation of indigenous animals at N.J.S.A. 13:18A-9b(1). If promulgation of these lists would aid the CAFRA and Pinelands programs in discharging these statutory responsibilities, it is beyond the power of the Department to prevent their use.

Summary of Agency-Initiated Changes:

Several changes are made to N.J.A.C. 7:25-4.13 to correct typographical errors in the scientific names of the listed species.

Full text of the adoption follows (additions shown in boldface with asterisks ***thus***; deletions shown in brackets with asterisks *[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)

15.-17. (No change in text.)

18.-35. (No change.)

36. Bobcat, Lynx rufus

37. Eastern Woodrat, Neotoma floridana

38. Mitchell's Satyr, Neonympha *[mitchelli mitchelli]* ***mitchellii mitchellii***

39. Northeastern Beach Tiger Beetle, *[Cicindella]* ***Cicindela*** dorsalis dorsalis

40. American Burying Beetle, *[Nicrophrous]* ***Nicrophorus*** americanus

41. Dwarf Wedge Mussel, Alasmidonta heteredon

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:

Species	Scientific Name	Species Status
REPTILES		
Common Snapping Turtle	Chelydra s. serpentina	S
Common Musk Turtle	Kinosternon odoratum	S
Eastern Mud Turtle	Kinosternon s. subrubrum	U
Spotted Turtle	Clemmys guttata	U
Wood Turtle	Clemmys insculpta	T
Eastern Box Turtle	Terrapene c. carolina	S
Map Turtle	Graptemys geographica	U
Red-bellied Turtle	Pseudemys rubriventris	U
Red-eared Turtle	Chrysemys scripta elegans	I
Eastern Painted Turtle	Chrysemys p. picta	S
Midland Painted Turtle	Chrysemys picta marginata	U
Atlantic Green Turtle	Chelonia mydas	T
Eastern Spiny Softshell	Trionyx spiniferus	I
Northern Fence Lizard	Sceloporus undulatus hyacinthinus	S
Five-lined Skink	Eumeces fasciatus	U
Ground Skink	Scincella lateralis	U
Northern Water Snake	Nerodia s. sipedon	S
Queen Snake	Regina septemvittata	U
Northern Brown Snake	Storeria d. dekayi	S
Northern Red-bellied Snake	Storeria o. occipitomaculata	S
Eastern Garter Snake	Thamnophis s. sirtalis	S

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Eastern Ribbon Snake	Thamnophis s. sauritus	S
Eastern Smooth Earth Snake	Virginia v. valeriae	U
Eastern Hognose Snake	Heterodon Platyrhinos	D
Northern Ringneck Snake	Diadophis punctatus edwardsi	S
Southern Ringneck Snake	Diadophis p. punctatus	S
Eastern Worm Snake	Carphophis a. amoenus	U
Northern Black Racer	Coluber c. constrictor	U
Rough Green Snake	Opheodrys aestivus	S
Eastern Smooth Green Snake	Opheodrys v. vernalis	U
Black Rat Snake	Elaphe o. obsoleta	U
Northern Pine Snake	Pituophis m. melanoleucus	T
Eastern King Snake	Lampropeltis g. getulus	U
Eastern Milk Snake	Lampropeltis t. triangulum	S
Northern Scarlet Snake	Cemophora coccinea copei	U
Northern Copperhead	Agkistrodon contortrix mokasen	U
AMPHIBIANS		
Marbled Salamander	Ambystoma opacum	D
Jefferson Salamander	Ambystoma jeffersonianum	D
Silvery Salamander	Ambystoma platineum	D
Spotted Salamander	Ambystoma maculatum	D
Red-spotted Newt	Notophthalmus v. viridescens	S
Northern Dusky Salamander	Desmognathus f. fuscus	S
Mountain Dusky Salamander	Desmognathus ochrophaeus	U
Red-backed Salamander	Plethodon c. cinereus	S
Slimy Salamander	Plethodon g. glutinosus	S
Four-toed Salamander	Hemidactylium scutatum	D
Northern Spring Salamander	Gyrinophilus p. porphyriticus	D
Northern Red Salamander	Psuedotriton r. ruber	D
Eastern Mud Salamander	Pseudotriton m. montanus	T
Northern Two-lined Salamander	Eurycea b. bislineata	S
Long-tailed Salamander	Eurycea l. longicauda	T
Eastern Spadefoot Toad	Scaphiopus h. holbrookii	D
American Toad	Bufo americanus	S
Fowler's Toad	Bufo woodhouseii fowleri	S
Northern Cricket Frog	Acris c. crepitans	U
Northern Spring Peeper	Hyla c. crucifer	S
Barking Treefrog	Hyla gratiosa	U
Northern Gray Treefrog	Hyla versicolor	S
New Jersey Chorus Frog	Pseudacris triseriata kalmi	S
Upland Chorus Frog	Pseudacris triseriata feriarum	U
Bullfrog	Rana catesbeiana	S
Carpenter Frog	Rana varigatipes	U
Green Frog	Rana clamitans melanota	S
Wood Frog	Rana sylvatica	S
Southern Leopard Frog	Rana spenocephala	S
Pickerel Frog	Rana palustris	S
MAMMALS		
Masked Shrew	Sorex cinereus	S
Tuckahoe Masked Shrew	Sorex cinereus nigriculus	U
Water Shrew	Sorex palustris	U
Smokey Shrew	Sorex fumeus	U
Long-tailed Shrew	Sorex dispar	U
Short-tailed Shrew	Blarina brevicauda	S
Least Shrew	Crytotis parva	U
Hairy-tailed Mole	Parascalops breweri	U
Eastern Mole	Scalopus aquaticus	S
Star-nosed Mole	Condylura cristata	U
Little Brown Bat	Myotis Lucifugus	S
Keen Myotis	Myotis keenii	U
Small-footed Myotis	Myotis subulatus	U
Silver-haired Bat	Lasionycteris noctivagans	U
Eastern Pipistrel	Pipistrellus subflavus	U
Big Brown Bat	Eptesicus fuscus	S
Red Bat	Lasiurus borealis	S
Northern Yellow Bat	Lasiurus intermedius	P
Hoary Bat	Lasiurus cinereus	U
New England Cottontail	Sylvilagus transitionalis	U
European Hare	Lepus capensis	I
Black-tailed Jackrabbit	Lepus californicus	I
Eastern Chipmunk	Tamias striatus	S
Red Squirrel	Tamiasciurus hudsonicus	S
Southern Flying Squirrel	Glaucomys volans	U
Northern Flying Squirrel	Glaucomys sabrinus	U
Marsh Rice Rat	Oryzomys palustris	S
White-footed Mouse	Peromyscus leucopus	S
Red-backed Mouse	Clethrionomys gapperi	S
Meadow Vole	Microtis pennsylvanicus	S
Pine Vole	Pitymys pinetorum	S
Southern Bog Lemming	Synaptomys cooperi	U
Black Rat	Rattus rattus	I
Brown Rat	Rattus norvegicus	I
House Mouse	Mus musculus	I
Woodland Jumping Mouse	Napaeozapus isignis	U
Meadow Jumping Mouse	Zapus hudsonius	U
Porcupine	Erethizon dorsatum	INC
Harbor Seal	Phoca vitulina	S
Harp Seal	Pagophilus groenlandica	P
Gray Seal	Halichoerus grypus	P
Hooded Seal	Cystophora cristata	P
Goose-beaked Whale	Ziphius cavirostris	U
Dense Beaked Whale	Mesoplodon densirostris	U
Gervais Beaked Whale	Mesoplodon europaeus	U
True's Beaked Whale	Mesoplodon mirus	U
Pygmy Sperm Whale	Kogia breviceps	U
Dwarf Sperm Whale	Kogia simus	U
Beluga Whale	Delphinapterus leucas	P
Bridled Spotted Dolphin	Stenella frontalis	U
Spotted Dolphin	Stenella plagiodon	U
Striped Dolphin	Stenella coeruleoalba	U
Saddle-backed Dolphin	Delphinus delphis	U
Bottle-nosed Dolphin	Tursiops truncatus	S
Atlantic Killer Whale	Orcinus orca	U
Risso's Dolphin	Grampus griseus	U
Long-finned Pilot Whale	Globicephala malaena	U
Short-finned Pilot Whale	Globicephala macrothyncus	U
Harbor Porpoise	Phocoena phocoena	U
Minke Whale	Balaenoptera acutorostrata	U

BIRDS	Scientific Name	Breeding Status	Non-Breed Status
Red-throated Loon	Gavia stellata		S
Common Loon	Gavia immer		S
Pied-billed Grebe	Podilymbus podiceps	E	S
Horned Grebe	Podiceps auritus		S
Red-necked Grebe	Podiceps grisegena		D
Cory's Shearwater	Calonectris diomedea		S
Greater Shearwater	Puffinus gravis		INC
Sooty Shearwater	Puffinus griseus		S
Wilson's Storm-petrel	Oceanites oceanicus		S
Leach's Storm-petrel	Oceanodroma leucorhoa		S
Northern Gannet	Sula bassanus		S
Brown Pelican	Pelecanus occidentalis		INC
Great Cormorant	Phalacrocorax carbo		S
Double-crested Cormorant	Phalacrocorax auritus		INC
American Bittern	Botaurus lentiginosos	T	S
Least Bittern	Ixobrychus exilis	D	S
Great Blue Heron	Ardea herodias	T	S
Great Egret	Casmerodius albus	S	S
Snowy Egret	Egretta thula	S	S
Little Blue Heron	Egretta caerulea	T	S
Tricolored Heron	Egretta tricolor	INC	S
Cattle Egret	Bubulcus ibis	INC	INC
Green-backed Heron	Butorides striatus	S	S
Black-crowned Night Heron	Nycticorax nycticorax	D	S
Yellow-crowned Night Heron	Nyctanassa violaceus	T	T
Glossy Ibis	Plegadis falcinellus	D	S
Fulvous Whistling Duck	Dendrocygna bicolor		P
Tundra Swan	Cygnus columbianus		INC
Mute Swan	Cygnus olor	I	
Eurasian Wigeon	Anas penelope		S
King Eider	Somateria spectabilis		S
Harlequin Duck	Histrionicus histrionicus		S
Black Vulture	Coragyps atratus	INC	S
Turkey Vulture	Cathartes aura	S	S
Osprey	Pandion haliaetus	T	T

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American Swallowtail Kite	Elanoides forficodus		INC
Mississippi Kite	Ictinia mississippiensis		INC
Northern Harrier	Circus cyaneus	E	U
Sharp-shinned Hawk	Accipiter striatus	U	U
Northern Goshawk	Accipiter gentilis	T	T
Red-shouldered Hawk	Buteo lineatus	E	T
Broad-winged Hawk	Buteo platypterus	S	S
Red-tailed Hawk	Buteo jamaicensis	INC	INC
Rough-legged Hawk	Buteo lagopus		S
Golden Eagle	Aquila chrysaetos		S
American Kestrel	Falco sparverius	INC	S
Merlin	Falco columbarius		S
Yellow Rail	Coturnicops noveboracensis		U
Black Rail	Laterallus jamaicensis	T	T
King Rail	Rallus elegans	U	U
Black-bellied Plover	Pluvialis squatarola		S
Lesser Golden Plover	Pluvialis dominica		S
Semipalmated Plover	Charadrius semipalmatus		S
Killdeer	Charadrius vociferus	S	S
American Oystercatcher	Haematopus palliatus	INC	S
Black-necked Stilt	Himantopus mexicanus		INC
American Avocet	Recurvirostra americana		INC
Greater Yellowlegs	Tringa melanoleuca		S
Lesser Yellowlegs	Tringa flavipes		S
Solitary Sandpiper	Tringa solitaria		S
Willet	Catoptrophorus semipalmatus	INC	S
Spotted Sandpiper	Actitis macularia	S	S
Whimbrel	Numenius phaeopus		S
Hudsonian Godwit	Limosa haemastica		D
Marbled Godwit	Limosa fedoa		D
Ruddy Turnstone	Arenaria interpres		S
Red Knot	Calidris canutus		D
Sanderling	Calidris alba		D
Semipalmated Sandpiper	Calidris pusillus		S
Western Sandpiper	Calidris mauri		S
Least Sandpiper	Calidris minutilla		S
White-rumped Sandpiper	Calidris fuscicollis		S
Baird's Sandpiper	Calidris bairdii		D
Pectoral Sandpiper	Calidris melanotos		S
Purple Sandpiper	Calidris maritima		INC
Dunlin	Calidris alpina		INC
Curlew Sandpiper	Calidris ferruginea		S
Stilt Sandpiper	Calidris himantopus		INC
Buff-breasted Sandpiper	Tryngites subruficollis		S
Ruff	Philomachus pugnax		INC
Short-billed Dowitcher	Limnodromus griseus		S
Long-billed Dowitcher	Limnodromus scolopaceus		S
Wilson's Phalarope	Phalaropus tricolor		INC
Red-necked Phalarope	Phalaropus lobatus		S
Red Phalarope	Phalaropus fulicarias		S
Pomarine Jaeger	Stercorarius pomarinus		S
Parasitic Jaeger	Stercorarius parasiticus		S
Long-tailed Jaeger	Stercorarius longicaudus		S
Laughing Gull	Larus atricilla	S	S
Little Gull	Larus minutus		S
Common Black-headed Gull	Larus ridibundus		S
Bonaparte's Gull	Larus philadelphia		S
Ring-billed Gull	Larus delawarensis		INC
Herring Gull	Larus argentatus	S	S
Iceland Gull	Larus glaucoides		S
Lesser Black-backed Gull	Larus fuscus		INC
Glaucous Gull	Larus hyperboreus		S
Great Black-backed Gull	Larus marinus	INC	S
Black-legged Kittiwake	Rissa tridactyla		S
Gull-billed Tern	Sterna nilotica		S
Caspian Tern	Sterna caspia		S
Royal Tern	Sterna maximus		S
Common Tern	Sterna hirundo	D	S
Forster's Tern	Sterna forsteri	INC	S
Black Tern	Childonias niger		S
Dovekie	Alle alle		D
Thick-billed Murre	Uria iomvia		D
Razorbill	Alca torda		D
Rock Dove	Columba livia	I	
Mourning Dove	Zenaida macroura	INC	S
Black-billed Cuckoo	Coccyzus erythropthalmus	S	S
Yellow-billed Cuckoo	Coccyzus americanus	S	S
Common Barn Owl	Tyto alba	S	S
Eastern Screech Owl	Otus asio	S	S
Great Horned Owl	Bubo virginianus	INC	S
Snowy Owl	Nyctea scandiaca		S
Barred Owl	Strix varia	T	T
Long-eared Owl	Asio otus	T	T
Short-eared Owl	Asio flammeus	E	U
Northern Saw-whet Owl	Aegolius acadicus	S	S
Common Nighthawk	Chordeiles minor	S	S
Chuck-will's-widow	Caprimulgus carolinensis	INC	S
Whipporwill	Caprimulgus vociferus	D	S
Chimney Swift	Chaetura pelagica	S	S
Ruby-throated Hummingbird	Archilochus colubris	D	S
Belted Kingfisher	Ceryle alcyon	S	S
Red-headed Woodpecker	Melanerpes erythrocephalus	T	T
Red-bellied Woodpecker	Melanerpes carolinus	INC	S
Yellow-bellied Sapsucker	Sphyrapicus varius		S
Downy Woodpecker	Picoides pubescens	S	S
Hairy Woodpecker	Picoides villosus	S	S
Northern Common Flicker	Colaptes auratus	S	S
Pileated Woodpecker	Dryocopus pileatus	S	S
Olive-sided Flycatcher	Contopus borealis		S
Eastern Wood Pewee	Contopus virens	S	S
Yellow-bellied Flycatcher	Empidonax flaviventris		S
Acadian Flycatcher	Empidonax virescens	INC	S
Alder Flycatcher	Empidonax alnorum	S	S
Willow Flycatcher	Empidonax traillii	INC	S
Least Flycatcher	Empidonax minimus	S	S
Eastern Phoebe	Sayornis phoebe	S	S
Great Crested Flycatcher	Myiarchus crinitus	S	S
Western Kingbird	Tyrannus verticalis		S
Eastern Kingbird	Tyrannus tyrannus	D	D
Horned Lark	Eremophila alpestris	D	S
Purple martin	Progne subis	D	S
Tree Swallow	Tachycineta bicolor	S	S
Northern Rough-winged Swallow	Stelgidopteryx serripennis	S	S
Bank Swallow	Riparia riparia	S	S
Cliff Swallow	Hirundo pyrrhonota	T	S
Barn Swallow	Hirundo rustica	S	S
Blue Jay	Cyanocitta cristata	INC	S
Fish Crow	Corvus ossifragus	INC	S
Black-capped Chickadee	Parus atricapillus	INC	S
Carolina Chickadee	Parus carolinensis	S	S
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	Polioptila 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 exubitor		S

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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 Redtart	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 lincolnii		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	Plectophenax 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

Adopted Amendment: N.J.A.C. 7:25-18.5
Adopted New Rules: N.J.A.C. 7:25-18.6, 18.7, 18.8, 18.9, 18.10 and 18.11

Proposed: May 7, 1990 at 22 N.J.R. 1311(a).

Adopted: May 6, 1991 by Scott A. Weiner, Commissioner, Department of Environmental Protection

Filed: May 7, 1991 as R.1991 d.278, **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. 23:2B-6 and 23:5-24.2

DEP Docket Number: 015-90-04.

Effective Date: June 3, 1991.

Expiration Date: February 15, 1996.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("Department") is adopting the amendment of N.J.A.C. 7:25-18.5 and is adopting N.J.A.C. 7:25-18.6, 18.7, 18.8, 18.9, 18.10 and 18.11 that were proposed on May 7, 1990 at 22 N.J.R. 1311(a). A public hearing was held on June 19, 1990. The public comment period expired on July 6, 1990. Oral comments were received from 33 commenters at the public hearing and 17 commenters submitted written comments during the comment period. Most commenters were commercial fisherman, crabbers and seafood dealers and were members of the Delaware Bay Watermen's Association (DBWA). Other commenters included an attorney, the chairperson of the New Jersey Environmental Federation, the President of the Cape May County Party and Charter Boat Association, a representative of the New Jersey Marine Advisory Service and an outdoor writer.

The following is a list of those persons or organizations that made either written or oral comments directly related to the proposed rule:

Alex Ogden	Buena Vista, Inc.
George Sparks	Paul Mecray
Henry Bendler	Steward Tweed
John Bradford	John M. Bailey
Willard Burnight	Frank LoBiondo
Jane Nogaki	Joseph Ecret
Steve Crane	George Kumor
Ted Derecky, Jr.	Steve Scarpa
Walt Chew	John King
Gary Felding	Kay Crowe
Robert Munson	Jim Heinold
Earl Miller	Scott Sheppard
Edward Sparks	Charles Guim
Frank Prichert	Rick Matthews
Lou Turner	Fred Layton
Kenneth W. Bailey	Stephen Crane, Jr.
John Shuba	Charles Clark
George Simmons	Ralph Knisell
Linwood Donelson, Jr.	Margaret Offer
Charles Esher	Frank Franklin

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The following is a summary of comments received on the Department's proposed rules and the Department's responses to the comments.

GENERAL

1. COMMENT: The Department has not adequately defined the spatial conflict on the Delaware Bay the proposed rules are intended to resolve.

The limited entry system set forth in the proposed rules is too restrictive on the commercial fishery and is not adequate to resolve the spatial conflict. Gill net licensees do not contribute to the spatial conflict. The facts are: (1) licenses are issued but no one knows how many nets are actually fished in the Bay; (2) recreational boating has shown the largest growth in the decade; (3) approximately 10 percent of the gill netters hold 1/3 of the licenses; and (4) gill nets (only eight percent of the State's total weakfish harvest) probably have the least impact on weakfish populations. The majority of license holders do not contribute to spatial problems and their reduction will not resolve the problem.

If there is a spatial conflict on the Delaware Bay, it should be resolved by implementing a delay entry system and a weakfish management plan regulating all user groups (commercial and recreational, including both private and party/charter boats) not just the commercial fishery. The implementation of a delayed entry system and weakfish management plan could more effectively and equitably resolve the spatial conflict. Weakfish resources should be protected by a management plan that, when necessary, reduces catches by all harvesters. This could be done with a 12-inch minimum size limit. Gill netting gear could easily be adjusted to comply with size limits. Conflicts that occur when opportunistic out-of-Staters, part timers, or recreational fishermen attempt to expand and compete in the commercial fishery could be controlled by a delayed entry system. Such a system has been successfully adopted in Maryland. It would require a preapplication and a two-year waiting period for entrance into the fishery. This measure, with the normal entrances and exits from the gill net fishery, will stabilize the number of nets in the bay.

RESPONSE: The proposed rules are intended to contribute to the resolution of a spatial conflict on Delaware Bay that has existed since at least 1983 when the Department held the first meeting concerning the problem. Two hundred people attended a meeting in Cape May County in 1984 to discuss this conflict on Delaware Bay. A Delaware Bay Fisheries Advisory Committee was set up to address the problem. The Committee was comprised of gill net fishermen, party and charter boat captains, recreational fishing representatives, the Marine Extension Agent for southern New Jersey and Marine Fisheries Council members. The Committee was set up and continued to meet in an effort to resolve the spatial conflict issue on the Delaware Bay.

The spatial conflict arises during the spring when tightly grouped schools of weakfish are the object of heavy fishing pressure by commercial gill netters and recreational fishermen.

During the height of the spring gill netting activity, there could be as many as 200 commercial vessels fishing on the New Jersey side of the Bay. In addition, there may be as many as a thousand or more party, charter and private sportfishing boats competing for the same resource. If the fish were spread uniformly throughout the Bay, this would probably not be a significant problem. Weakfish, however, generally tend to congregate in rather constricted areas such as Brown's Shoals, Brandywine Shoals, 14-foot Bank and Miah Maul Shoals. This congregation of fish and boats inevitably leads to a conflict of commercial and recreational fishing gear and equipment.

The Department, in consultation with the Committee, attempted to ease the gear conflict problems that were occurring around the Brandywine Shoal area at that time (May 15-June 15) by establishing an area around that Shoal within which there would be a two net per vessel limit on weekdays and a one net per vessel limit, constantly attended, on weekends. The Department also promulgated rules to provide guidelines on common courtesy, such as not fishing within 100 yards of a fishing net.

Spatial conflicts within the Delaware Bay system continue to be a problem. In resolving the problem, every effort must be made to assure a long-term healthy and viable resource. To that end, the Department is collecting data to assess the potential effects of a variety of management alternatives leading to the development of a weakfish management plan for the Delaware Bay. The Department expects to have developed such a plan by the end of October, 1991.

The form of limited entry to the commercial gill net fishery on Delaware Bay set forth in the proposed rules is not intended to be the sole means of resolving the spatial conflict between the commercial and recreational fishermen. The proposed limited entry system is an important aspect of an overall management plan.

2. COMMENT: The proposed new rules should not be adopted until a weakfish management plan is approved.

RESPONSE: The proposed new rules are designed to limit and reduce the number of gill nets fished in Delaware Bay. They are not intended to replace a management plan. The number of licenses sold annually increased 174 percent between 1985 and 1989. The spatial issue must be addressed now. The Department is preparing a management plan for weakfish, which it expects to complete by October, 1991. The plan will deal with management of New Jersey's weakfish resource, while the proposed new rules address the spatial conflict on the Bay.

3. COMMENT: The proposed new rules should not be adopted until the issue of the Salem Nuclear Generating Station (SNGS) has been resolved.

RESPONSE: The proposed new rules are designed to contribute to the resolution of a spatial conflict problem on Delaware Bay. The SNGS review is concerned with the impact of the plant on the resources of the Bay and how those impacts can be reduced. The Department is addressing these issues simultaneously under separate legal authority and does not feel that either action should be delayed until the other has been settled.

N.J.A.C. 7:25-18.6

4. COMMENT: The proposed new rules should allow persons returning from active military service to be eligible for a Delaware Bay commercial or non-commercial gill net permit if the person otherwise meets the eligibility requirements.

RESPONSE: The Department agrees to propose N.J.A.C. 7:25-18.6(d) providing that persons returning from active military service after February 28, 1991, who meet the eligibility requirements in N.J.A.C. 7:25-18.7(a) or (b) shall be allowed to obtain Delaware Bay commercial or non-commercial gill net permits. The Department intends to prepare a proposal of the change during May, 1991.

5. COMMENT: The proposed new rules will not reduce the spatial conflict between the commercial gill net fishermen and the recreational fishermen on the Delaware Bay. The proposal will only move the conflict to other areas of the Bay above the "southwest line" referred to in N.J.A.C. 7:25-18.6(a).

RESPONSE: To extend the application of the proposed new rules above the southwest line at this time would impose an unnecessary restriction on fishing activity in an area where the extent of the spatial conflict does not warrant implementation of a limited entry program. The southwest line was chosen as the upper boundary for the proposed new rules as the result of input from the upper Cumberland and Salem County commercial fishermen. They felt and the Delaware Bay Fisheries Advisory Committee agreed that most of the spatial conflict was in the lower Bay below the southwest line. While implementation of the proposed new rules may lead to an initial increase in commercial fishing above the southwest line, it should not be a major or lasting problem. The Department will, however, continue to monitor any increase in commercial fishing above the southwest line.

N.J.A.C. 7:25-81.7(a)

6. COMMENT: The proposed new rules unfairly impact the commercial fishery industry. The August 8, 1988 date set forth in N.J.A.C 7:25-18.7(a) will put people out of business that started in the commercial fishery or expanded their business operations after that date. Persons who purchased licenses after that date were not told about the proposed new rules.

RESPONSE: The Department agrees with the comment and has modified N.J.A.C. 7:25-18.7(a) to extend the period from January 1, 1985 through September 6, 1990.

7. COMMENT: Under N.J.A.C. 7:25-18.7(a) a person can only purchase the maximum number of nets for which the person held licenses in any one calendar year between January 1, 1985 and August 1, 1988. Under these restrictions a small commercial fishery business cannot expand.

RESPONSE: As provided in the response to comment 6 the date of August 1, 1988 has been changed to September 6, 1990.

The purpose of this rule is to limit and reduce the number of gill nets in the Delaware Bay to reduce spatial conflicts caused, in part, by rapid increases in the number of gill nets licensed in recent years. To accomplish this purpose with the least amount of economic disruption in the fishery, the Department, in consultation with the Marine Fisheries Council, proposed to allow limited immediate growth of very small fishing busi-

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nesses (less than six nets), limit growth of medium fishing businesses (six to 25 nets) and reduce larger recently expanded fishing businesses (in excess of 25 nets).

Accordingly, the Department recognizes that growth of small commercial fishery businesses will be limited under this rule, but does not agree that the rule prevents expansion. After eliminating those persons who hold one or two staked or anchored gill net licenses, six is the approximate average number of licenses held. In 1988, 82.9 percent of license holders held six or fewer licenses. In 1989 the figure was 73 percent. Individuals who had held more than six net licenses in the past would be able to purchase that number, up to 25, under the proposed rule. An individual who wanted to increase the number of licenses held could so do by placing his name on the list described in N.J.A.C. 7:25-18.9 and purchasing additional licenses when his name came up. This would, however, result in a substantial delay before expansion could be expected. Nothing prevented individuals from purchasing as many nets as they wanted in the past. Therefore, the number they purchased must have been what they felt they needed for the level of fishing activity they engaged in.

8. COMMENT: The maximum of 25 staked or anchored gill net permits set forth in N.J.A.C. 7:25-18.7(a) is unfair to persons who had more net permits. The 25 net limit should not be imposed on current license holders. Such a limit should be imposed when the Department begins to issue new licenses under the limited entry program. Imposition of the 25 net limit on current licensees unfairly denies the licensee renewal of previously issued licenses and discriminates against those holding more than 25 by not requiring similar cutbacks among all fishermen.

RESPONSE: The purpose of the proposed rule is to limit and to reduce the number of gill nets fished in Delaware Bay to reduce spatial conflicts caused, in part, by rapid increases in the number of gill nets licensed in recent years. As part of its plan to accomplish this purpose while minimizing the resulting economic disruption in the fishery, the Department, in consultation with the Marine Fisheries Council, proposed to reduce larger recently expanded fishing businesses (in excess of 25 nets). The Department believes that this restriction minimizes economic disruption in the fishery while reducing spatial conflicts, because it affects a small number of individuals. In 1986 only one individual had more than 25 licenses. It was only after 1986, when rumors of the possible regulation of gill netting in Delaware Bay began, that individuals began purchasing 30 or more licenses. In 1989, only 12 individuals held more than 25 licenses.

9. COMMENT: The requirement in N.J.A.C. 7:25-18.7(a)1 and (b) that an applicant for a commercial gill net permit must document the sale of 10,000 pounds of fish in one of five years preceding the effective date of the proposed new rules is unfair. The requirement does not take into account the fact that gill netting is only a part of the commercial fishermen's activities. Some commercial fishermen only gill net for part of the year and crab or oyster at other times.

RESPONSE: The Department agrees with the comment and has modified N.J.A.C. 7:25-18.7(a)1 and (b) to require documentation that the applicant sold 5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish. The Department has also changed N.J.A.C. 7:25-18.7(c) to reflect the modifications to N.J.A.C. 7:25-18.7(a)1 and (b). In addition, the Department has deleted N.J.A.C. 7:25-18.7(c)3 since N.J.A.C. 7:25-18.7(a)1, (b) and (c) have been changed to clarify that the sale of crabs may be an alternative means of satisfying the requirement that the applicant demonstrate that the applicant has sold 5,000 pounds of fish in any one year from 1985 through 1990.

The Department, in consultation with the Committee, proposed the 10,000 pound criteria as a means of limiting the Delaware Bay commercial gill net permits to those individuals that make their living as a commercial fisherman. From the comments at the public hearing, it became clear that, although it is necessary to establish a pound of fish sold requirement, the 10,000 pound criteria is unfair in that it would limit the group of eligible applicants to those individuals who are almost exclusively full time gill net fishermen while excluding the "general watermen" who are full time commercial fishermen who engage in gill netting in addition to other activities such as crabbing and eeling. While the general watermen do not make all their money from gill net fishing, what they do make is an important part of their income. If they could not prove they had sold 10,000 pounds of fish in the designated time period, they would not qualify for a permit and would lose that part of their income. Some individuals gill net primarily for bait either for their own use or to give or sell to other watermen. Although they may have met the 10,000 pound requirement, it could be difficult for them to prove it.

Although the reduction in poundage will allow the general watermen to qualify for a commercial gill net permit, the reduction to 5,000 pounds is consistent with the intent of the proposed rule to reduce the spatial conflict in the Delaware Bay by immediately limiting permits to those individuals currently engaged in commercial gill netting and reducing in the future the number of gill nets being fished in Delaware Bay. The poundage reduction will not allow an individual who is not currently engaged in commercial gill netting in Delaware Bay to qualify for a commercial gill net permit. Furthermore, the general watermen are presently fishing in the Bay with relatively few nets and under the proposed rules they will not be able to increase the number of nets they fish.

N.J.A.C. 7:25-18.11(a)

10. COMMENT: Delaware Bay gill net permits should be transferable. Non-transferability of permits will result in economic hardships for fishermen who won't be able to sell their boat, nets or other equipment.

RESPONSE: The Department does not agree. The purpose of the proposed new rules is to reduce the spatial conflict in the Delaware Bay by immediately limiting the number of permits to those individuals currently engaged in commercial gill netting and reducing in the future the number of gill nets being fished in Delaware Bay. Permits must be non-transferable in order to achieve a future reduction in the number of gill nets being fished. If the permits were transferable they would acquire a value since no more will be issued until the number of nets permitted falls below 200 for drifting gill nets or 800 for staked or anchored nets. Fishermen leaving the fishery for whatever reason would keep their permits to give away or sell. The number of gill nets fished would never be reduced.

The proposed new rules will not affect gill netting in coastal areas of New Jersey or in other waters of Delaware Bay. There will still be markets for boats, nets, and associated equipment. Boats, motors and nets wear out over time and their value decreases with use. A fisherman who quit fishing would not be out the full amount invested.

Summary of Hearing Officer Recommendations and Agency Response:

Bruce A. Halgren served as hearing officer at the June 19, 1990 public hearing. After receiving the testimony presented at the public hearing and the written comments received during the comment period, Mr. Halgren recommended that the Department adopt N.J.A.C. 7:25-18.6, 18.7, 18.8, 18.9, 18.10 and 18.11 and adopt the amendments to N.J.A.C. 7:25-18.5 with the following changes:

1. The word "person" has been replaced with "individual" throughout the proposed amendment and proposed new rules. This has been done to allow the Department to enforce the non-transferability function of the regulation and is consistent with long term Department policy on issuing licenses under N.J.A.C. 7:25-18.5.

2. The statutory reference in N.J.A.C. 7:25-18.6(a) for the "southwest line" should be corrected to N.J.S.A. 50:3-11.

3. A provision should be added to N.J.A.C. 7:25-18.6(a) requiring the person utilizing a drifting, staked or anchored gill net in that portion of Delaware Bay or its tributaries east of the southwest line shall have the permit on his or her person at all times.

4. In N.J.A.C. 7:25-18.7(a) and 7:25-18.10(d)1, the word "and" should be added to clarify that an applicant may obtain a maximum of four drifting gill net permits and/or 25 staked or anchored gill net permits. The intent is to allow for both drifting and staked or anchored gill net permits, not one or the other.

5. In N.J.A.C. 7:25-18.7(a) and 7(a)2, change the period January 1, 1985 through August 8, 1988 to January 1, 1985 through September 1, 1990.

6. In N.J.A.C. 7:25-18.7(a)1, 7(b), and 7(c), delete "of five years preceding (the effective date of this new rule)" and insert "any one year from 1985 through 1990."

7. In N.J.A.C. 7:25-18.7(c)1, insert the word "a" in the first line between "by" and "wholesaler(s)."

8. In N.J.A.C. 7:25-18.7(c)1, and 2, insert the word "any" before the phrase "one of the five years."

9. The requirement in N.J.A.C. 7:25-18.7(a)1, (b) and (c) that an applicant for a commercial gill net permit shall document the sale of 10,000 pounds of fish should be changed to "5,000 pounds of fish or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish."

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10. Delete N.J.A.C. 7:25-18.7(c)3.

11. The citation to N.J.A.C. 7:25-18.7(c) in the last line of N.J.A.C. 7:25-18.9(d) should be changed to N.J.A.C. 7:25-18.7(d) as the correct citation to the subsection setting forth the limits on the number of non-commercial gill net permits that may be issued to an applicant.

12. N.J.A.C. 7:25-18.8(a) should be changed to require that the applicant shall include with the application a notarized affidavit from a commercial fisherman that the applicant has served as a crew member on a commercial fishing boat for a minimum of three years.

13. N.J.A.C. 7:25-18.10(d)1 should be revised to read "Delaware Bay commercial gill net permits shall be issued for no more than four drifting gill nets and/or 25 staked or anchored gill nets."

Mr. Halgren also recommended that a provision should be added to N.J.A.C. 7:25-18.6 providing that persons returning from active military service after February 28, 1991, who meet the eligibility requirements in N.J.A.C. 7:25-18.7(a) or (b) shall be allowed to obtain Delaware Bay commercial or non-commercial gill net permits.

However, in consultation with attorneys in the Department of Law and Public Safety, he concluded that the Department could not make this change upon adoption of the rule without providing the public notice of the change and additional opportunity for the public to comment. The Department accepts this recommendation, and expects to propose an amendment incorporating the recommended change within 90 days after the effective date of the rule.

Mr. Halgren's recommendations were accepted by the Department, and are set forth in more detail in the hearing officer's report. A copy of the record of the public hearing, which includes the hearing officer's report, is available upon payment of the Department's normal charges for copying. Persons requesting copies should contact:

Sue Kleinberg, Esq.
Department of Environmental Protection
Office of Legal Affairs
401 East State Street
CN 402
Trenton, New Jersey 08625

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

7:25-18.5 General net regulations

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

(g) *[Persons]* ***Individuals*** 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 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]* ***An individual*** 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]* ***3-11*** shall have a commercial or non-commercial gill net permit for each gill net license in their possession. ***The person shall have the permit on his or her person at all times while fishing in that portion of Delaware Bay or its tributaries defined in this subsection.***

(b) For a period of 60 days following *[(the effective date of this new rule)]* ***June 3, 1991***, 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)]* ***August 2, 1991*** 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)]* ***June 3, 1991***

(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)]* ***June 3, 1991*** 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]* ***September 6, 1990*** but no more than four drifting gill net permits ***and/*** 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]* ***5,000*** pounds of fish ***or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish*** in ***any*** one *[of five years preceding (the effective date of this new rule)]* ***year from 1985 through 1990***; 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]* ***September 6, 1990*** 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)]* ***June 3, 1991*** allowing the use or possession on the waters of 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]* ***5,000*** pounds of fish ***or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish*** in ***any*** one *[of five years preceding (the effective date of this new rule)]* ***year from 1985 through 1990***.

(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]* ***5,000*** pounds of fish ***or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish*** in ***any*** one *[of five years preceding (the effective date of this new rule)]* ***year from 1985 through 1990***, an applicant shall include as part of the applicant's application:

*[i.]***1.*** Weigh-out slips issued to the applicant by ***a*** wholesaler(s) that acquired fish from the applicant establishing that the applicant sold *[10,000]* ***5,000*** pounds of fish ***or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish*** in ***any*** one of the five years; ***or***

*[ii.]***2.*** Notarized statements of wholesaler(s) that the wholesaler(s) records establish that the applicant sold *[10,000]* ***5,000*** pounds of fish ***or 250 bushels of crabs or any combination thereof where one bushel of crabs is equal to 20 pounds of fish*** in ***any*** 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]* ***An individual*** 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)]* ***June 3, 1991***. 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)]* ***June 3, 1991***

(a) To be eligible for a Delaware Bay commercial gill net permit issued after the 60-day period following *[(the effective date of this

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new rule)]* ***June 3, 1991***, the applicant shall, at the time that the application is submitted to the Division, have three years of commercial fishery experience. ***The applicant shall include with the application a notarized affidavit by a commercial fisherman that the applicant has served as a crew member on a commercial fishing boat for a minimum of three years.***

(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]* ***An individual*** 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)]* ***June 3, 1991***, 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)]* ***August 2, 1991*** 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)]* ***June 3, 1991*** 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)]* ***(d)***.

(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)]* ***August 2, 1991*** 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 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)]* ***August 2, 1991***

(a) When, after *[60 days following (the effective date of this new rule)]* ***August 2, 1991***, 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)]* ***August 2, 1991***, 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]* ***nets and/*** or 25 staked or anchored gill *[net permits]* ***nets***.

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]* ***an individual*** 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]* ***an individual*** 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

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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 HAZARDOUS WASTE MANAGEMENT

Environmental Cleanup Responsibility Act Rules Applicability; Cleanup Plan

N.J.A.C. 7:26B-1.3 and 1.5

Take notice that the decision of the Superior Court of New Jersey, Appellate Division, in *In re Adoption of N.J.A.C. 7:26B,* Dkt. Nos. A-2403-78T1, A-2521-87T1, A-2522-87T1, A-2523-87T1, A-2524-87T1 and A-364-89T3 (App. Div. May 6, 1991), affected the validity of N.J.A.C. 7:26B-1.3, "cleanup plan" definition, and 7:26B-1.5(b)10 and 14.

Please contact the Department of Environmental Protection regarding any further action on this case.

This notice is provided by the Office of Administrative Law pursuant to N.J.A.C. 1:30-1.13.

CORRECTIONS

(b)

THE COMMISSIONER

Inmate Discipline

Readoption with Amendments: N.J.A.C. 10A:4

Proposed: March 4, 1991, at 23 N.J.R. 658(a).

Adopted: May 3, 1991 by William H. Fauver, Commissioner, Department of Corrections.

Filed: May 7, 1991 as R.1991 d.276, **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. 30:1B-6 and 30:1B-10.

Effective Date: May 7, 1991, Readoption.
June 3, 1991, Amendments.

Expiration Date: May 7, 1996.

Summary of Public Comments and Agency Responses:

The Department of Corrections received comments from David M. Russo, Executive Director of the Inmate Legal Association, New Jersey State Prison, and Lloyd Johnson, an inmate at New Jersey State Prison, in response to the proposed readoption with amendments. A summary of the comments and the Department of Corrections' responses follows:

COMMENT: Both commenters objected to the addition of a definition for "Administrative Close Supervision Unit" because they stated that it was unnecessary and redundant.

RESPONSE: Commenters are mistaken in their view that the term is redundant. "Administrative Segregation" refers to the classification status of an inmate, whereas the purpose of "Administrative Close Supervision Unit" is to designate a housing unit for inmates who have been assigned to Administrative Segregation. As such, it is a useful definition and will be adopted.

COMMENT: Commenters objected to the addition of a definition for the term "counsel substitute." They stated that staff personnel are unqualified to serve in this capacity and should, therefore, not be legitimized by the definition.

RESPONSE: As a matter of law, inmates must be permitted to utilize counsel substitutes in certain circumstances, such as prison discipline hearings. The Department of Corrections has provided for training inmate paralegals who are available to act as counsel substitutes upon request (see N.J.A.C. 10A:6-2.11). But there are also situations in which inmates request correctional facility staff to represent them. The leading case in New Jersey, *Avant v. Clifford*, 67 N.J. 456 (1975), does not require that staff persons who act as counsel substitutes have specialized legal training. Staff persons are qualified in the sense that they understand correctional facility rules and procedures and can act in the inmate's best interests in interpreting these when requested to do so. It would be neither legal nor practical to eliminate staff persons from service as counsel substitutes in appropriate cases.

COMMENT: Commenters stated that the qualification applied to N.J.A.C. 10A:4-5.1(c)6 should be extended to other types of loss of privileges.

RESPONSE: The rule which permits loss of contact visits for up to one year to be imposed only for visit-related infractions is not new. It simply provides a cross-reference from the existing policy, expressed in the chapter on visits at N.J.A.C. 10A:18-6.19. Other types of loss of privileges are left to the discretion of the Disciplinary Hearing Officer or correction officer for On-the-Spot Correction cases. The Department of Corrections is not aware of any abuse in assigning loss of privileges in appropriate cases.

COMMENT: Commenters suggested that "confiscation" should not be added as a sanction permitted under N.J.A.C. 10A:4-7.3(a) for use in On-the-Spot Corrections because the commenters fear that it will lead to abuse by staff.

RESPONSE: There are numerous cases in which inmates are in possession of items which are not permitted, although many of these are not of such serious nature as to warrant submission to a Disciplinary Hearing Officer. It will speed up the disciplinary process if correctional staff can deal with these cases under the On-the-Spot Correction rule, but unless the item can be confiscated this process cannot work efficiently. Reports of abuse, if any, should be reported promptly to supervisory personnel.

COMMENT: Commenters complained that the changes to N.J.A.C. 10A:4-10.1(a) and (c) remove the mandatory nature of the criteria used and replaces it with discretionary language. The commenters fear that this will lead to abuse of the Prehearing Detention practice, specifically, arbitrary placement of inmates in Prehearing Detention.

RESPONSE: Changes should not lead to an abuse of Prehearing Detention, especially in view of the remaining language in subsection (a), which indicates when Prehearing Detention shall be deemed necessary.

COMMENT: Commenters objected to adding "attempting to set a fire" to N.J.A.C. 10A:4-4.1(a), prohibited act numbered *151.

RESPONSE: Commenters are correct. Prohibited act *803 makes attempting to commit a fire a serious infraction. There is no need to add it to prohibited act *151. It is being deleted upon adoption.

COMMENT: Commenters contended that N.J.A.C. 10A:4-9.15(a) should be amended to require that the proper level of evidence at a disciplinary hearing be "a fair preponderance of the believable evidence." They stated further that this change is mandated by a recent unpublished appellate court decision.

RESPONSE: The level of evidence required at a disciplinary hearing was established by the New Jersey Supreme Court in *Avant v. Clifford,* 67 N.J. 496 (1975), and has been upheld by the U.S. Supreme Court in other cases. These court decisions establish the legal precedent for the Department of Corrections, which is expressed in N.J.A.C. 10A:4-9.15(a).

COMMENT: Commenters complained that at N.J.A.C. 10A:4-4.1(a), prohibited act *306 is abused and should be eliminated.

RESPONSE: Prohibited act *306 "conduct which disrupts or interferes with the security or orderly running of a correctional facility" must be retained for infractions of rules which cause disruptions in correctional facility activities, but which often do not fit into the established list of infractions. To eliminate prohibited act *306 would make discipline in such situations difficult if not impossible. Retention of prohibited act *306 is, therefore, important.

COMMENT: Commenters objected to the proposed amendment to N.J.A.C. 10A:4-10.1(e) to remove the mandatory requirement that placement in Prehearing Detention be reviewed and approved by the Superintendent, Assistant Superintendent or Director of Custody. The commenters stated that this procedure is necessary to protect inmates from arbitrary placement and is not unduly burdensome for prison administrators.

RESPONSE: The proposal does not eliminate review of Prehearing Detention placement by a Superintendent, Assistant Superintendent or Director of Custody. Rather, it acknowledges that there may be circumstances under which the review may not be possible, especially within a very short period of time.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10A:4.

Full text of the adopted amendments follows (deletions from proposal indicated in brackets *[thus]*).

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10A:4-1.1 Introduction

(a) The purpose of this chapter is to:

1.-6. (No change.)

10A:4-1.3 Definitions

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

. . .

"Administrative Close Supervision Unit" means a long term close custody unit to which an inmate may be assigned because of one or more disciplinary infractions or other administrative considerations.

. . .

"Capital Sentence Unit" means the close custody unit to which inmates sentenced to death pursuant to N.J.S.A. 2C:11-3 are assigned until such time that the execution is carried out, or the sentence is commuted or changed to a lesser penalty.

. . .

"Counsel substitute" means an individual, such as an inmate paralegal, teacher or social worker, who represents and defends an inmate at a disciplinary hearing proceeding which is conducted within a correctional facility under the jurisdiction of the Department of Corrections.

. . .

"Superintendent" means a superintendent or an administrator who serves as the Chief Executive Officer of any State correctional facility within the New Jersey Department of Corrections.

. . .

10A:4-2.1 Notification of inmates about rules and regulations

(a) At the time of arrival at a correctional facility, each inmate shall be advised in writing of his/her rights and responsibilities, the acts and activities which are prohibited, the rules which must be followed and the disciplinary process within the facility. This information shall be provided in a booklet as part of the admission-orientation program. (See N.J.A.C. 10A:8 Inmate Orientation and Handbook.) Each inmate shall be required to sign a form acknowledging receipt of the Handbook on Discipline. A refusal by the inmate to sign shall be noted on the form by the issuing staff member.

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

10A:4-4.1 Prohibited acts

(a) An inmate who commits one or more of the following numbered prohibited acts shall be subject to disciplinary action and a sanction that is imposed by a Disciplinary Hearing Officer or Adjustment Committee. Prohibited acts preceded by an asterisk are considered the most serious and result in the most severe sanctions (See N.J.A.C. 10A:4-5, Schedule of Sanctions for Prohibited Acts).

*.001-.103 (No change.)

.150 Tampering with fire alarms, fire equipment or fire suppressant equipment

*.151 Setting a fire *[or attempting to set a fire]*

.152-.803 (No change.)

(b) (No change.)

10A:4-5.1 Schedule of sanctions for prohibited acts committed at the Prison Complex, Adult Diagnostic and Treatment Center (ADTC) and Edna Mahan Correctional Facility for Women (EMCF)

(a) A finding of guilt for any offense preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);

8. Confiscation;

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or

10. Up to two weeks confinement to room or housing area.

(b) A finding of guilt in the case of all other offenses shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Any sanction prescribed for On-The-Spot Correction (see N.J.A.C. 10A:4-7);

8. Confiscation;

9. Up to 14 hours extra duty, to be performed within a maximum of two weeks; and/or

10. Up to two weeks confinement to room or housing area.

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-5. (No change.)

6. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions; and/or

7. (No change.)

10A:4-5.2 Schedule of sanctions for prohibited acts committed at the Youth Complex

(a) A finding of guilt for prohibited acts preceded by an asterisk (*) shall render the offender subject to one or more of the following sanctions:

1.-6. (No change.)

7. Loss of commutation time up to 365 days, subject to confirmation by the Superintendent (Inmates serving indeterminate sentences are not subject to this sanction, but inmates housed in the youth complex who are serving prison terms are subject to this sanction); and/or

8. (No change.)

(b) (No change.)

(c) In addition to the sanctions in (a) and (b) above, administrative action may be taken by the Institutional Classification Committee upon the recommendation of the Disciplinary Hearing Officer/Adjustment Committee or the Superintendent. Such administrative action shall include, but not be limited to, the following:

1.-2. (No change.)

3. Recommending transfer to a more appropriate correctional facility (subject to confirmation by the Special Classification Committee or the Reception Classification Committee;

4. Increasing custody status; and/or

5. Recommending loss of privileges such as contact visits for up to one year. Loss of visit privileges shall be imposed only for visit-related disciplinary infractions.

10A:4-7.3 Sanctions

(a) The following are authorized sanctions for ON-THE-SPOT CORRECTIONS:

1.-3. (No change.)

4. Up to four hours confinement to the room or housing area;

5. Loss of radio or television privileges for a period of no more than five days; and/or

6. Confiscation.

10A:4-9.3 Notification of use immunity

(a) In all cases, the inmate shall be advised of his/her right to use immunity at any investigative interview and at the disciplinary hearing. This warning shall consist of a statement that any statements made in connection with the disciplinary hearing or any evidence derived directly or indirectly from those statements shall not be used in any subsequent criminal proceeding. The failure to give this warning by the investigating officer shall not be grounds for dismissing the disciplinary report. The Disciplinary Hearing Officer at his/her discretion or the Adjustment Committee at its discretion may grant a postponement if it is determined that such failure has precluded the inmate from adequately preparing his/her defense at the hearing.

10A:4-9.21 Emergency intra-complex transfer

(a) When it shall appear that an inmate has committed a disciplinary infraction which requires his/her immediate transfer to the general population of another correctional facility or unit within the complex or the Prehearing Detention Unit of another correctional facility or unit within the complex, the notice and disciplinary hearing shall be granted after the transfer.

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

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10A:4-9.22 Emergency inter-complex transfer

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

(g) Transfers of juveniles from the Division of Juvenile Services to the Youth Correctional Institution Complex in the Division of Adult Institutions can only be effected by an approved rule exemption signed by the Superintendent, Assistant Commissioner and Commissioner. (See N.J.A.C. 10A:1-2, General Provisions.)

10A:4-9.24 Disciplinary decision

(a) After the hearing has been completed, a written statement of the fact-findings shall be given to the inmate by the Disciplinary Hearing Officer or Adjustment Committee Chairperson. This statement shall include evidence relied upon, the decision and the reason for the disciplinary action taken, unless doing so would, in the discretionary opinion of the Disciplinary Hearing Officer or Adjustment Committee Chairperson, jeopardize correctional facility security. The written statement shall also indicate the reason for refusing to call a witness or to disclose items of evidence whether it be for irrelevance, lack of necessity or other special circumstances presented in individual cases. When an inmate has been denied the opportunity for confrontation and cross-examination, the reason for such denial shall be entered in the record and made available to the inmate.

(b) A copy of the disciplinary decision shall be kept in the Disciplinary Hearing Officer's/Adjustment Committee's records and in the inmate's classification folder unless it has been decided that the inmate has been found not guilty of the charge(s), in which case, the records of the charge(s) shall be expunged from the inmate's classification folder.

(c) If the inmate is adjudicated guilty, the decision shall be entered on the inmate's progress notes and included in reports submitted to the State Parole Board.

10A:4-10.1 Confinement in Prehearing Detention

(a) An inmate may be placed in Prehearing Detention in those instances where it appears necessary to remove or isolate him/her from the general population until an investigation into his/her alleged misconduct can be completed and a disciplinary hearing can be held pursuant to N.J.A.C. 10A:4-9, Disciplinary Procedures. Confinement in Prehearing Detention shall be deemed necessary only where it appears that, if the inmate remained in his/her existing housing unit, he/she would constitute a threat to other inmates, staff member, himself/herself or to the orderly operations of the correctional facility.

(b) (No change.)

(c) Factors which may be considered in determining whether confinement in Prehearing Detention is warranted include:

1.-4. (No change.)

5. The inmate has been charged with arson or serious destruction of property and, in the opinion of the correctional staff, there is a substantial likelihood that he/she may engage in additional arson or destruction of property. (Whenever the destruction to property consists of flooding the cell or damaging plumbing fixtures, the inmate may be placed in Prehearing Detention in a "DRY" cell—New Jersey State Prison only);

6.-8. (No change.)

(d) If an inmate is confined in Prehearing Detention as a result of any of the factors in (c) above, such confinement must be authorized, in writing, by the shift supervisor. Form 255-I Authorization for Prehearing Detention, should be utilized when placing an inmate in Prehearing Detention. A separate form must be completed for each inmate and, wherever possible, the form should be completed prior to placing the inmate in Prehearing Detention. When an emergency exists which precludes completion of the form prior to placement, the form must be completed immediately following placement. After all appropriate parties have signed the form, it should be placed in the inmate's folder. Additional copies of the completed form may be kept on file, for record keeping purposes, in areas designated by the Superintendent and the Director of Custody Operations.

(e) Where possible, a Superintendent, Assistant Superintendent or Director of Custody should review and approve or disapprove a request to place an inmate in Prehearing Detention.

(f) (No change.)

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND LOCAL AID

BUREAU OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Speed Limits

Routes U.S. 46 in Morris County and N.J. 49 in Cumberland County

Adopted Amendments: N.J.A.C. 16:28-1.10 and 1.81

Proposed: April 1, 1991 at 23 N.J.R. 950(a).

Adopted: May 3, 1991 by Edward Baker, Acting Director, Division of Traffic Engineering and Local Aid.

Filed: May 8, 1991 as R.1991 d.280, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6 and 39:4-98.

Effective Date: June 3, 1991.

Expiration Date: June 1, 1993.

Summary of Public Comments and Agency Responses:

The Department received comments from Mr. James Mullin, 9W Fairview Avenue, Dover, New Jersey 07801, and Mr. John R. Curtis, 79 Baker Avenue, Dover, New Jersey 07801, concerning the speed limit on Route U.S. 46 in Dover. There were no comments received concerning Route N.J. 49 in Cumberland County.

COMMENT: (Mullin) The commenter expressed concerns with raising the speed limit along Route 46 in Dover, and since the rule has just been proposed, why have 40 miles per hour signs been erected from the railroad bridge to the Wharton Borough line? There were additional concerns expressed about the effect the higher speed limit will have on the traffic as it comes down the other side of the railroad bridge to the light at Pequannock Street.

COMMENT: (Curtis) The commenter was opposed to the increase of the speed limit along Route 46 in Dover, and that raising the speed limit will only exacerbate an already bad traffic situation, especially for those who must enter Route 46 from the side roads, such as Baker Avenue.

RESPONSE: The proposed amendment to N.J.A.C. 16:28-1.10 did not effect any change in speed limit; it merely clarifies the location where the speed limit already exists. The 40 miles per hour speed limit in both directions had been in existence since April 3, 1975; thus, the existing signs would indicate such. The Department will continue to monitor the traffic movement in the specific area to ascertain whether or not a lower speed limit is warranted.

The Department thanks the commenters for their comments and expressions of concern.

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 U.S. 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1.-3. (No change.)

4. For both directions of traffic:

i.-x. (No change.)

xi. In the Town of Dover, Morris County:

(1) Zone 21: 40 mph between the Wharton Borough line and the Bridge over Central Railroad of New Jersey (mileposts 37.33 to 38.18); thence

Recodify existing (1) and (2) as (2) and (3) (No change in text.)

5.-6. (No change.)

(b) The rate of speed designated for the certain parts of State highway Route U.S. 46 and Route U.S. 1, 9 and 46 described in this subsection shall be established and adopted as the maximum legal rate of speed:

1. (No change.)

16:28-1.81 Route 49

(a) The rate of speed designated for the certain part of State highway Route 49 described in this subsection shall be established and adopted as the maximum legal rate of speed:

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1. (No change.)
2. For both directions of traffic in Cumberland County:
i.-iii. (No change.)
iv. In the City of Bridgeton:
(1)-(2) (No change.)
(3) Zone 3: 40 miles per hour between Bank Street Extension and 800 feet east of S. East Avenue (approximate mileposts 25.75 to 26.23); thence
(4) Zone 4: 35 miles per hour between 800 feet east of S. East Avenue and Park Avenue (approximate mileposts 26.23 to 26.72); thence
(5) Zone 5: 45 miles per hour between Park Avenue and the Fairfield Township westerly line (approximate mileposts 26.72 to 27.20); thence
v.-vii. (No change.)
3.-6. (No change.)

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Public Employees' Retirement System
Methods of Payment
Adopted Amendment: N.J.A.C. 17:2-5.6

Proposed: March 4, 1991 at 23 N.J.R. 685(b).
Adopted: May 3, 1991 by the Board of Trustees, Public Employees' Retirement System, Janice Nelson, Secretary.
Filed: May 9, 1991 as R.1991 d.281, **without change**.

Authority: N.J.S.A. 43:15A-17.

Effective Date: June 3, 1991.
Expiration Date: November 8, 1994.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

17:2-5.6 Methods of payment
(a) Methods of payment include the following:
1.-2. (No change.)
3. Extra deductions equal to at least one-half of the full regular pension deduction for a maximum period of 10 years;
4. (No change.)

(b)

STATE INVESTMENT COUNCIL

Rules of the State Investment Council
Readoption with Amendments: N.J.A.C. 17:16

Proposed: April 1, 1991 at 23 N.J.R. 983(a).
Adopted: May 2, 1991 by Roland M. Machold, Director, Division of Investment (with approval of the State Investment Council).
Filed: May 2, 1991 as R.1991 d.274, **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. 52:18A-91.

Effective Date: Readoption, May 2, 1991.
Amendments, June 3, 1991.
Expiration Date: May 2, 1996.

Summary of Public Comments and Agency Responses:
The Division received one letter of comment from:
John P. Sheridan, Jr.
Riker, Danzig, Scherer, Hyland & Perretti
132 West State Street
Trenton, New Jersey 08608-1102

COMMENT: (N.J.A.C. 17:16-6.1) should be broadened from providing only a list of eligible U.S. Government securities for investment by the Division. The rule should provide for the ability to invest in mutual funds which invest only in government securities.

RESPONSE: The Attorney General has provided an opinion which states that the Division cannot legally delegate investment authority to outside parties, such as mutual funds. Furthermore, the mutual funds advanced by the commenter would not be competitive as to fees and net returns with the Division's existing investment programs in U.S. Government securities. For these reasons, the proposed rule has been adopted without the suggested modification.

Summary of Agency-Initiated Changes:
N.J.A.C. 17:16-3.1, General provisions, has been revised to exclude the specific listing of funds. Since the rule's purpose is to set forth the general classifications under which similar funds are grouped, the Council does not, on reconsideration, believe that the proposed subclassifications are necessary.
N.J.A.C. 17:16-11.1, United States Treasury and Government Agency Obligations, has been changed to Purchases subject to regulation; United States Treasury and related obligations, in order to more accurately reflect the text of the rule.
N.J.A.C. 17:16-63.12, Limitations, subsection (a), has been changed to add the phrase ". . . and conditions . . ." to more accurately reflect the requirements of N.J.A.C. 17:16.
Additionally, citations were corrected at N.J.A.C. 17:16-12.1 and a typographical error corrected at N.J.A.C. 17:16-15.2. Citations were also corrected and subcodification provided at N.J.A.C. 17:16-14.3 and 15.3.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 17:16.

Full text of the adopted amendments follows (additions indicated in boldface with asterisks ***thus***; deletions indicated in brackets with asterisks *[thus]*).

17:16-3.1 General provisions
(a) Funds having similar investment characteristics and objectives under their respective enabling acts shall be grouped together in any of the following classifications:
1. Pension and Annuity Group*[:]**;***
*[i. Consolidated Police and Firemen's Pension Fund;
ii. Police and Firemen's Retirement System;
iii. Public Employees' Retirement System;
iv. Prison Officers Pension Fund;
v. State Police Retirement System;
vi. Teachers' Pension and Annuity Fund; and
vii. Judicial Retirement System of New Jersey;]*
2. Static Group*[:]**;***
*[i. Trustees for the Support of Public Schools;
ii. Waste Water Treatment Fund; and
iii. Waste Water Treatment Trust Fund;]*
3. Demand Group*[:]**;***
*[i. Boarding House Rental Assistance Fund;
ii. Catastrophic Illness in Children Relief Fund;
iii. Clean Communities Account Fund;
iv. Development Fund—Luxury Tax;
v. Emergency Services Fund;
vi. Enterprise Zone Assistance Fund;
vii. Higher Education Assistance Fund;
viii. Luxury Tax Fund;
ix. Motor Vehicle Security Responsibility Fund;
x. New Jersey Automobile Insurance Guaranty Fund;
xi. New Jersey Insurance Development Fund;
xii. New Jersey Spill Compensation Fund;
xiii. New Jersey Uncompensated Care Trust Fund;
xiv. Outstanding Checks Account;
xv. Real Estate Guaranty Fund;
xvi. Resource Recovery Investment Tax Fund;
xvii. Sanitary Landfill Facility Contingency Fund;
xviii. Solid Waste Services Tax Fund;
xix. State Disability Benefits Fund;
xx. State Recycling Fund;
xxi. Unclaimed Personal Property Trust Fund;

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xxii. Unemployment Compensation Auxiliary Fund;
xxiii. Unsatisfied Claim and Judgment Fund;
xxiv. Volunteer Emergency Service Organizations Loan Fund;
xxv. Worker and Community Right to Know Fund;
xxvi. Workmen's Compensation Security Fund—Mutual; and
xxvii. Workmen's Compensation Security Fund—Stock;]*
4. Temporary Reserve Group*[:]**; **and***
*[i. Alcohol Education Rehabilition and Enforcement Fund;
ii. Beaches and Harbors Fund;
iii. Capital City Redevelopment Loan and Grant Fund;
iv. Clean Waters Fund;
v. CMF/Administrative Expense Fund #097;
vi. CMF/Non-State Fund #098;
vii. CMF/Pension Division Funds;
viii. CMF/Reserve Fund #099;
ix. Community Development Bond Fund;
x. Correctional Facilities Construction Fund of 1982;
xi. Correctional Facilities Construction Fund of 1987;
xii. Emergency Flood Control Fund;
xiii. Energy Conservation Fund;
xiv. Farmland Preservation Fund;
xv. 1989 Farmland Preservation Fund;
xvi. General Investment Fund;
xvii. General Trust Fund;
xviii. 1987 Green Acres Cultural Centers and Historic Preservation Bond Fund;
xix. Green Trust Fund;
xx. Hazardous Discharge Fund—1981;
xxi. Hazardous Discharge Site Cleanup Fund;
xxii. Higher Education Buildings Construction Fund (Act of 1971);
xxiii. Housing Assistance Fund;
xxiv. Human Services Facilities Construction Fund;
xxv. Institutional Construction Fund;
xxvi. Institutions Construction Fund;
xxvii. 1988 Jobs, Education and Competitiveness Fund;
xxviii. Jobs, Science and Technology Fund;
xxix. Medical Education Facilities Fund;
xxx. Mortgage Assistance Fund;
xxxi. Natural Resources Fund;
xxxii. New Home Warranty Security Fund;
xxxiii. New Jersey Bridge Rehabilitation Fund;
xxxiv. New Jersey Bridge Rehabilitation and Improvement and Railroad Right-of-Way Preservation Fund;
xxxv. 1983 New Jersey Green Acres Fund;
xxxvi. 1989 New Jersey Green Acres Fund;
xxxvii. 1989 New Jersey Green Trust Fund;
xxxviii. New Jersey Local Development Financing Fund;
xxxix. New Jersey Medical Malpractice Reinsurance Recovery Fund;
xl. Pension Adjustment Fund;
xli. Pension Payroll Investment Fund;
xlii. Pinelands Infrastructure Trust Fund;
xliii. Prescription Drug Program Fund;
xliv. Public Buildings Construction Fund;
xlv. Public Purpose Buildings and Community-Based Facilities Construction Fund;
xlvi. Public Purpose Buildings Construction Fund;
xlvii. Resource Recovery and Solid Waste Disposal Facility Fund;
xlviii. Safe Drinking Water Fund;
xlix. Shore Protection Fund;
l. State Facilities for Handicapped Fund;
li. State Health Benefits Fund;
lii. State Land Acquisition and Development Fund;
liii. State Lottery Fund—Investment;
liv. State of New Jersey—Alternate Benefit Program;
lv. State of New Jersey Cash Management Fund;
lvi. State of New Jersey—New Jersey State Dental Program;
lvii. State Recreation and Conservation Land Acquisition Fund (Act of 1971);
lviii. State Recreation and Conservation Land Acquisition and Development Fund;
lix. State Transportation Fund;
lx. State Water Development Fund;
lxi. Stormwater Management and Combined Sewer Overflow Abatement Fund;
lxii. Transportation Rehabilition and Improvement Fund;
lxiii. University of Medicine and Dentistry of New Jersey—Self Insurance Reserve Fund #110;
lxiv. Urban Development Investment Fund;
lxv. Veterans' Loan Guaranty and Insurance Fund (Veterans Guaranteed Loan Fund);
lxvi. Water Conservation Fund;
lxvii. Water Supply Fund; and
lxviii. Water Supply Replacement Trust Fund;]*
5. Trust Group*[:]**.*
*[i. Deferred Compensation Plan—Equity Fund;
ii. Deferred Compensation Plan—Fixed Income Fund;
iii. Deferred Compensation Plan—Cash Management Fund;
iv. Deferred Compensation Plan—Administrative Charges;
v. Deferred Compensation Plan—Distribution Account;
vi. Deferred Compensation Plan—Holding Account;
vii. Supplemental Annuity Collective Trust; and
viii. Tischler Memorial Fund.]*

17:16-3.2 Approved list
A "list of funds under the supervision of the Council" shall be maintained by the Director.

17:16-11.1 ***Purchases subject to regulations; United States Treasury and related obligations*** *[United States Treasury and Government Agency Obligations]*
(No change in text.)

SUBCHAPTER 12. CORPORATE OBLIGATIONS

17:16-12.1 Permissible investments
The Director may invest and reinvest the moneys of any fund in corporate obligations which meet the standards set forth in *[17:16-12.110]* ***N.J.A.C. 17:16-12.2*** below.

17:16-12.2 Pension and annuity group; static group; trust group
(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B, or where maturities are less than one year, the State of New Jersey Cash Management Fund in corporate obligations provided that:
1.-3. (No change.)
4. The obligor has a stockholders' equity, (consisting of the sum of equity accounts, capital surplus and earned surplus) of at least $50 million; and furthermore the long term debt ratio (defined as the ratio of long term debt to the sum of stockholders' equity and long term debt) of the obligor shall be less than 60 percent, except that in the case of telephone utilities the debt ratio shall be less than 60 percent.
5. (No change.)
6. The total amount of debt issues purchased or acquired in a fund of any one corporation shall not exceed 25 percent of the outstanding long term debt of the company, and not more than 25 percent of the issue at the time of issue.

17:16-55.3 Limitations
(a) (No change.)
(b) The book value of mortgages purchased under N.J.A.C. 17:16-53 and 55 shall not exceed 20 percent of the assets of any pension and annuity fund at any one time.

17:16-17.1 Applicable funds
The Director may invest and reinvest monies of any pension and annuity group, or other fund in the obligations of the State of New Jersey or any municipal or political subdivision of this State as set forth in this subchapter.

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17:16-17.2 Investment prerequisites

(a) The Director may invest monies of any eligible fund provided that:

1. The obligor is not in default as to the payment of principal or interest upon any of its outstanding obligations;

2. The obligor has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated;

3. The total amount of debt issues purchased or acquired of any one political entity shall not exceed 10 percent of the outstanding debt of the entity, and not more than 10 percent of any one issue, serial note or maturity may be purchased in the aggregate by all eligible funds; and

4. Not more than 2 percent of the assets at the time of purchase of any one fund shall be invested in senior debt of any one political entity maturing more than 12 months from date of purchase.

(b) Investment made pursuant to this subchapter shall comply with Federal arbitrage regulations.

17:16-17.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this office, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this article and the Division shall have received:

1. On new issues, a prospectus describing the issue; and

2. On existing issues, a copy of the description of the issue as contained in Moody's or in the Standard & Poor's or in any other financial records publication or service accepted as reliable by investors for such obligations.

17:16-17.4 Purchases for Temporary Reserve Group, Demand and Static Funds

The Director may invest and reinvest any moneys of an eligible fund in the obligations of any State or political subdivision thereof provided that such investment in tax exempt securities is required in order to comply with Federal arbitrage regulations and further provided that such investment qualifies under this subchapter and that the obligation was issued with an unqualified approving opinion of a recognized bond counsel to the effect that the obligations have been duly authorized and issued and are legal, valid and binding obligations of the issuer. If the obligation is guaranteed by the Federal Government, the above requirement may be waived.

17:16-18.1 Definitions

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

"Public authority" means any State or any political subdivision thereof, any authority, department, district or commission, or any agency or instrumentality of any of the foregoing, or any agency or instrumentality of the Federal Government, or a commission or other public body created by an Act of Congress or pursuant to a compact between any two or more States.

"Revenue obligations" means any bonds or other interest-bearing obligations of a public authority, the principal and interest of which are by their terms payable from the revenues derived from a utility or enterprise owned or operated by the public authority which issued such bonds or obligations, or by an agency or instrumentality thereof.

17:16-18.2 Applicable funds

(a) Subject to the limitations contained in N.J.A.C. 17:16-18.3, the Director may invest and reinvest the moneys of any pension and annuity group fund or other fund in the revenue obligations of any public authority provided that:

1. Such investment in tax exempt securities is required to comply with Federal arbitrage regulations;

2. Such obligations are rated A or better by Moody's Investors Service and the Standard and Poor Corporation; and

3. No more than 10 percent of any one issue, serial note or maturity may be purchased in the aggregate by all eligible funds.

17:16-18.3 Limitations

Not more than two percent of the assets of any eligible fund described in N.J.A.C. 17:16-18.2 shall be invested in the obligations of any one public authority.

17:16-31.3 All funds

The Director may purchase "prime commercial paper" for any fund, including the State of New Jersey Cash Management Fund, providing the maturity purchased does not exceed 270 days.

SUBCHAPTER 14. FINANCE COMPANIES; SENIOR DEBT

17:16-14.1 Permissible investments

The Director may invest and reinvest the moneys of any eligible fund in the debt securities of finance companies as is set forth in this subchapter.

17:16-14.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B or, where maturities are less than a year, The State of New Jersey Cash Management Fund, in the debt securities of finance companies provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;

2. The obligor is incorporated under the laws of the United States or any State thereof or of the District of Columbia;

3. The obligor is not in default as to the payment of principal or interest upon any of its outstanding obligations;

4. The obligor has a capitalization of at least $200 million;

5. The obligor or its predecessors shall have had an average pretax interest coverage of 1.00 times for the last five reported fiscal years;

6. The obligor has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated;

7. The total amount of debt issues purchased or acquired of any one corporation shall not exceed 10 percent of the outstanding debt of the corporation, and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.

8. Not more than two percent of the assets at the time of purchase of any one fund shall be invested in senior debt of any one company maturing more than 12 months from date of purchase.

17:16-14.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this *[article]* ***subchapter*** and the Division shall have received:

1. With respect to issues registered with the Securities and Exchange Commission:

i. On new issues, a prospectus describing the issue; and

ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;

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2. With respect to issues not registered with the Securities and Exchange Commission:

i. On new issues, in the case of private placements:

(1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;

(2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance;

(3) At the closing for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;

ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;

iii. On existing issues, in the case of issues which were originally placed privately:

(1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;

(2) A copy of the purchase agreement for the issue, together with all amendments thereto;

(3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that:

(A) There *[there]* are no restrictions on the sale of the bonds to funds managed by the Division;

(B) No *[no]* registration of the issue with the Securities and Exchange Commission is required if the bonds are sold to funds managed by the Division; and

(C) The *[the]* seller purchased the bonds directly from the issuer when the issue was originally sold*[. In the event that]* ***or, if*** other owners have intervened between the issuer and the seller, *[the seller must substitute for the representation that the seller purchased the bonds directly from the issuer when the issue was originally sold the representation]* that no such intervening transaction required registration of the securities with the Securities and Exchange Commission*[. The seller may substitute]* ***; or***

(D) In substitution* for the representations ***in (a)2iii(4)(A)-(C) above*** a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by *[(d)]* ***(a)2iii(4)*** above are satisfactory; and

(6) Approval of the State Investment Council.

SUBCHAPTER 15. BANK DEBENTURES

17:16-15.1 Permissible investments

The Director may invest and reinvest the moneys of any eligible fund in the debt securities of banks as is set forth in this subchapter.

17:16-15.2 Pension and annuity group; static group; trust group

(a) The Director may invest or reinvest the moneys of any pension and annuity fund, static group fund, trust group fund, Common Pension Fund B or, where maturities are less than a year, The State of New Jersey Cash Management Fund, in the debt securities of banks provided that:

1. The issue has been registered with the Securities and Exchange Commission, except that this requirement may be waived by the State Investment Council;

2. The obligor is incorporated under the laws of the United States or any State thereof or of the District of Columbia;

3. The total amount of debt issues purchased or acquired of any one corporation shall not exceed 10 percent of the outstanding debt of the corporation and not more than 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council;

4. The obligor:

i. Is not in default as to the payment of principal or interest upon any of its outstanding obligations;

ii. Has common equity (including surplus and retained earnings) of at least $200 million;

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:

(1) The Federal Reserve Board, in the case of United States banks; and

(2) The appropriate national regulatory body, in the case of foreign-headquartered banks.

5. Has a credit rating of A/A or higher by Moody's Investors Service, Inc. and Standard & Poor's Corporation, excepting that one rating is sufficient if only one rating is available. If a rating has not been obtained from either service, the issue may be purchased if the publicly issued outstanding debt of the issuer carries a A/A rating or higher. Subsequent to purchase, if ratings fall below A/A for such issues, they do not have to be sold, and they may be exchanged with issues of credits rated lower than A/A if the credits received in exchange are, on balance, similarly rated*[; and]***.***

17:16-15.3 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this *[article]* ***subchapter***, the Director shall have obtained, in all cases, a certification signed by a member of the Division's staff and endorsed by the Director stating that, in their opinion, the security under consideration qualifies under the requisites of this *[article]* ***subchapter*** and the Division shall have received:

1. With respect to issues registered with the Securities and Exchange Commission:

i. On new issues, a prospectus describing the issue;

ii. On existing issues, a copy of the description of the issue as contained in Moody's Manuals or in the Standard & Poor's or in any other corporation records publication or service published for the use of and accepted as reliable by investors in such obligations;

2. With respect to issues not registered with the Securities and Exchange Commission:

i. On new issues, in the case of private placements:

(1) An offering memorandum describing the terms of the issue and the business and operations of the issuer;

(2) A written approving opinion from the Attorney General to the effect that the purchase agreement is satisfactory as to form and substance; and

(3) At the closing, for the purchase of the private placement, legal opinions of counsel for the purchaser and counsel for the issuer, which opinions shall include a statement to the effect that the bonds are properly authorized and valid obligations of the issuer;

ii. On existing issues, in the case of issues which were originally offered to the public, a copy of the description of the issue as contained in Moody's Manuals or Standard & Poor's Corporation records or in any other publication or service published for the use of and accepted as reliable by investors in such obligations;

iii. On existing issues, in the case of issues which were originally placed privately;

(1) A copy of the original offering memorandum describing the terms of the issue and the business and operations of the issuer at the time of the original issue;

(2) A copy of the purchase agreement for the issue, together with all amendments thereto;

(3) A copy of the form 10-K of the issuer which was most recently filed with the Securities and Exchange Commission, or if the company does not file form 10-K reports, then the most recent audited financial statement;

(4) Representation, in writing, from the seller to the Division to the effect that:

[(i) there] ***(A) There*** are no restrictions on the sale of the bonds to funds managed by the Division;

[(ii) no] ***(B) No*** registration of the issue with the Securities and Exchange Commission is required if the bonds are sold to funds managed by the Division; and

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[(iii) the] ***(C) The*** seller purchased the bonds directly from the issuer when the issue was originally sold*[. In the event that]* ***or, if*** other owners have intervened between the issuer and the seller, *[the seller must substitute for the representation that the seller purchased the bonds directly from the issuer when the issue was originally sold the representation]* that no such intervening transaction required registration of the securities with the Securities and Exchange Commission*[. The seller may substitute]* ***; or***

(D) In substitution* for these representations ***in (a)2iii(4)(A)-(C) above*** a no-action letter of the Securities and Exchange Commission regarding any requirements to register the bonds;

(5) A written approving opinion from the Attorney General that the representations or no-action letter required by *[(d)]* ***(a)2iii(4)*** above are satisfactory; and

(6) Approval of the State Investment Council.

17:16-41.1 Permissible investments

(a) (No change.)

Recodify (c)-(e) as (b)-(d) (No change in text.)

17:16-41.2 Applicable funds

(a) Applicable funds are as follows:

1.-8. (No change.)

9. The Deferred Compensation Equity Fund.

17:16-41.3 Limitations

(a) The book value of total investments in common and preferred stock for anyone of the funds listed in N.J.A.C. 17:16-41.2 shall not exceed 40 percent of the book value of such fund, with the exception of Common Pension Fund A.

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

17:16-16.1 Permissible investments

Subject to the limitations contained in this subchapter, the Director may invest and reinvest the moneys of any pension and annuity group fund including common Pension Fund B and Common Pension Fund D in obligations issued by any company incorporated within the Dominion of Canada or which are the direct obligations of or are unconditionally guaranteed as to principal and interest by the Government of Canada, or by a province thereof and which are rated A or better by Moody's Investors Service and Standard & Poor's Corporation. All such securities must be payable as to both principal and interest in United States dollars.

17:16-16.2 Limitations

(a) Not more than 10 percent of the assets of any pension and annuity group fund shall be invested in Canadian obligations, whether direct or guaranteed.

(b) Not more than two percent of the assets of any pension and annuity group fund shall be invested in Canadian obligations, whether direct or guaranteed, of any one issuer.

(c) The total amount of debt issues purchased or acquired of any one issuer on the approved list shall not exceed 10 percent of the outstanding debt of the issuer, and not more than the greater of $10 million or 10 percent of any one issue may be purchased at the time of issue, except that these requirements may be waived by the State Investment Council.

17:16-32.1 Permissible investments

(a) The following pertains to uncollateralized certificates of deposit:

1. Subject to the limitations contained in this subchapter, the Director may invest and reinvest moneys of any fund, including the State of New Jersey Cash Management Fund, in certificates of deposit of banks provided that:

i.-iii. (No change.)

17:16-53.3 Limitations

(a) (No change.)

(b) The book value of mortgages purchased under this subchapter shall not exceed 20 percent of the assets of any pension and annuity fund at any one time.

(c)-(h) (No change.)

17:16-54.3 Limitations

(a) (No change.)

(b) The book value of construction mortgages and those purchased under N.J.A.C. 17:16-53 and 54 of this Chapter shall not exceed 20 percent of the assets of any pension and annuity fund at any one time.

17:16-61.3 Distribution of income

All income of the State of New Jersey Cash Management Fund, as calculated under N.J.A.C. 17:16-61.9, shall be invested in units of participation in accordance with the requirements of N.J.A.C. 17:16-61.10. Such units of participation may be withdrawn in accordance with the requirements of N.J.A.C. 17:16-61.11.

17:16-61.9 Calculation of daily income per participating unit

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

(d) Similarly, the Other Than State participants' pro rata share of any gains realized upon the sale of securities by the Fund should be credited to the Reserve Fund. The charge for administrative expenses shall be in the sum of up to and not to exceed one tenth of 1 percent per annum of the aggregate value of the units owned by the Other Than State Funds, and the Daily Income Per Participating Unit owned by such Other Than State Funds shall reflect their pro rata share of such sum. The charge for administrative expenses shall be paid into a fund whose assets shall be at the disposal of the Treasurer.

(e) (No change.)

17:16-62.7 Method of valuation

(a) The Director of the Division of Investment shall use the following method of valuation of investments:

1. Where there have been recorded sales or bid and asked prices of an investment in a common fund on a security exchange or exchanges approved pursuant to N.J.A.C. 17:16-41, the last recorded sale price, if there has been a recorded sale, shall be used, unless on a day subsequent to such sale, there shall have been recorded bid and asked prices, in which event the mean of the most recent of such bid and asked prices shall be used.

2.-7. (No change.)

17:16-62.12 Limitations

(a) The Common Pension Fund A shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, N.J.A.C. 17:16, particularly N.J.A.C. 17:16-41, except for the condition as to classification of funds contained in N.J.A.C 17:16-3.

(b) (No change.)

17:16-63.5 Valuation

(a) Upon each valuation date, as defined in N.J.A.C. 17:16-63.6, there shall be a valuation for every investment in the common fund in the method provided for in this chapter.

17:16-63.10 Amendments

(a) This subchapter may be amended from time to time by the State Investment Council.

(b) Any amendment adopted by the State Investment Council shall be binding upon all participating trusts and beneficiaries thereof.

(c) An amendment shall become effective on the date the adoption notice is published in the New Jersey Register. The State Investment Council may, at its discretion, postpone the effectiveness of any amendment by including an operative date in the adoption notice.

17:16-63.12 Limitations

(a) The Common Pension Fund B shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations contained in the rules of the State Investment Council, N.J.A.C. 17:16, except for the condition as to classification contained in N.J.A.C. 17:16-3.

(b) (No change.)

17:16-33.1 Permissible investments

(a) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any fund including the State of

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New Jersey Cash Management Fund in repurchase agreements of any bank, provided that:

1.-3. (No change.)

17:16-34.1 Permissible investments

(a) Subject to the limitations contained in this article, the Director may invest and reinvest moneys of any fund, including the State of New Jersey Cash Management Fund in bankers acceptances of banks provided that:

1.-4. (No change.)

17:16-19.2 Legal papers

(a) Prior to any commitment to purchase obligations of the type described in this subchapter, the Director shall have obtained:

1. (No change.)

2. A certification signed by two members of the Division's staff and endorsed by the Director stating that each proviso enumerated under N.J.A.C. 17:16-19.1 had been checked by them and that in their opinion the security under consideration qualified as a satisfactory investment as outlined by N.J.A.C. 17:16-19.1.

3. (No change.)

17:16-35.2 Permissible investments

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

(c) The Director may purchase loan participation notes only from orginating banks which meet the requirements of N.J.A.C. 17:16-32.

17:16-65.3 Distribution of income

All income as calculated pursuant to N.J.A.C. 17:16-65.7 shall be invested in units of participation in accordance with N.J.A.C. 17:16-65.9 and such units shall be withdrawn in accordance with N.J.A.C. 17:16-65.10.

17:16-65.4 Permissible investments

(a) The Director may invest the assets of the State of New Jersey Deferred Compensation Plan in securities which are legal investments for fiduciaries of trust estates in New Jersey which are permitted under N.J.S.A. 52:18A-163, subject to the applicable provisions of the regulations of the State Investment Council. The New Jersey State Employees Deferred Compensation Fixed Income Fund will be invested in fixed income securities having a maturity of one year or more, and the New Jersey State Employees Deferred Compensation Equity Fund will be invested in such common and preferred stocks and issues convertible into common stock as are permitted under N.J.A.C. 17:16-41 subject, in the case of both funds, to the exception noted in (b) below. The New Jersey State Employees Deferred Compensation Cash Management Fund shall be invested in the State of New Jersey Cash Management Fund, which in turn will be invested in accordance with N.J.A.C. 17:16-61, or in such other fixed income securities maturing in less than one year as may be permitted by N.J.A.C. 17:16.

17:16-65.5 Units of participation

Each unit of participation shall represent an equal beneficial interest in each of the funds and no unit shall have priority or preference over any other in each respective fund. Each unit of participation shall be valued at the net asset value per unit as defined in N.J.A.C. 17:16-65.7.

17:16-71.1 Permissible investment for pension and annuity group

(a) The Director may invest the moneys of any pension and annuity fund, with the exception of the Consolidated Police and Firemen's Pension Fund, in real estate equity in any of the following ways:

1.-2. (No change.)

3. Participation in real estate ventures consisting of commercial property, including office buildings, warehouses, and shopping centers, provided:

i. The value of the real estate venture is at least $150 million, and the Director has received an independent appraisal of the venture's value at the time of purchase.

ii. The investment is recommended by the Director and approved by the Council.

iii. Participation may consist of up to 51 percent of the equity in the venture or up to 25 percent of the venture's senior non-subordinated debt, provided that the debt contains equity characteristics consisting of cash and/or equity ownership/participation.

17:16-67.2 Permissible investments

The Common Pension Fund D shall be a fund created for the purpose of investing in international debt securities, international corporate common stocks or securities convertible into such stock, currencies and currency futures and options which are approved for investment under N.J.A.C. 17:16-20, 44 and 81, and in the State of New Jersey Cash Management Fund. Said Common Fund shall be composed of units of ownership of unlimited quantity. All units of ownership shall be represented by a certificate prepared by and issued by the Director of the Division of Investment. Each such certificate may represent one or more units of ownership. All units of ownership shall be purchased by cash payments or in kind. All units shall be purchased by the participating fund for the principal valuation price determined by these rules. At the outset of said Common Fund, all initial purchases shall be made for a principal valuation price of $1,000 per unit.

17:16-67.5 Valuation

Upon each valuation date, as defined in N.J.A.C. 17:16-67.6 there shall be a valuation for every investment in the Common Fund in the method provided for in this subchapter. The valuation shall be for the principal value per outstanding unit and the income value per outstanding unit.

17:16-67.6 Date of valuation

The valuation shall be determined at the opening of business of the first business day of each quarter, and shall be based on market prices and accruals as of the close of the previous day, in very case converted into United States dollars as provided in N.J.A.C. 17:16-67.7.

17:16-67.8 Valuation of units

(a) The following method shall be used in determining the principal value per unit:

1. To the valuation of investments determined as provided in N.J.A.C. 17:16-67.7, there shall be added:

i.-iv. (No change.)

2. (No change.)

(b) (No change.)

17:16-67.9 Admission date

(a) No admission to or withdrawal from the Common Fund shall be permitted except on the basis of the principal unit value determined as described in N.J.A.C. 17:16-67.8 and no participation shall be admitted to or withdrawn from the Common Fund except on a valuation date or within 15 days thereafter; however, in the event that an admission or withdrawal occurs within the 15 day period aforementioned, it shall be based upon the principal value as of the last valuation date preceding said admission or withdrawal.

(b) All admissions or withdrawals shall be made by cash payments or in kind. The price for purchasing units, except for original units issued by the Common Fund, shall be the principal valuation per unit as determined on each valuation date pursuant to N.J.A.C. 17:16-67.8. Dividends and interest earned shall be retained within the Common Fund, but may be distributed in whole or in part to the participatory pension funds, at the direction of the State Investment Council.

17:16-67.10 Amendments

This subchapter may be amended from time to time by the State Investment Council. Any amendment adopted by the council shall be binding upon all participating trusts and beneficiaries thereof. An amendment shall become effective on the date the adoption notice is published in the New Jersey Register. The State Investment Council may, at its discretion, postpone the effectiveness of any amendment by including an operative date in the adoption notice.

17:16-67.12 Limitations

(a) The Common Pension Fund D shall be permitted to invest in the Cash Management Fund and in such securities subject to the limitations and conditions contained in the rules of the State Investment Council, particularly N.J.A.C. 17:16-20, 44 and 81, except for

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the conditions as to classification of funds contained in N.J.A.C. 17:16-3.

(b) (No change.)

17:16-44.1 Permissible investments

(a) Permissible investments include stock issued by a company or bank incorporated or organized under the laws of the countries listed on the Approved List of International Government and Agency Obligations set forth in N.J.A.C. 17:16-20.4.

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

17:16-44.2 Applicable funds

(a) The following funds may invest in common and preferred stock of international corporations pursuant to this subchapter:

1.-3. (No change.)

4. Teacher's Pension and Annuity Fund;

5. Judicial Retirement System of New Jersey; and

6. Common Pension Fund D.

17:16-81.2 Limitations

(a) The following limitations apply to those investments permitted under N.J.A.C. 17:16-81.1:

1.-2. (No change.)

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

Gross Income Tax

Combat Zone; Extension of Time to File and Pay

Adopted Concurrent New Rule: N.J.A.C. 18:35-1.26

Proposed: March 18, 1991 at 23 N.J.R. 908(a).

Adopted: May 1, 1991 by Benjamin J. Redmond, Acting Director, Division of Taxation.

Filed: May 2, 1991 as R.1991 d.273, **without change.**

Authority: N.J.S.A. 54A:9-17(a) and 54:50-1.

Effective Date: June 3, 1991.

Expiration Date: June 7, 1993.

Summary of Public Comments and Agency Responses:

No comments received.

This new rule was originally adopted as an emergency new rule which expired April 28, 1991. The adoption of the concurrent proposed new rule, filed with the Office of Administrative Law on May 2, 1991, is effective June 3, 1991.

Full text of the adoption follows:

18:35-1.26 Combat zone; extension of time to file and pay

(a) Members of the Armed Forces of the United States and civilians providing support to the Armed Forces who are serving in a designated combat zone or were hospitalized outside the United States as a result of an injury received while serving in a combat zone are granted an extension of time for filing individual icome tax returns and paying tax for the period of combat service or hospitalization, plus 180 days. This extension is also granted to such a taxpayer's spouse who files jointly. No penalty, interest or addition to tax will be assessed for late filing or late payment of the tax pursuant to this subsection (a).

(b) Taxpayers who file individual income tax returns and pay gross income tax late should attach a statement to the return which indicates their qualification for the tax relief granted pursuant to (a) above. The director may request supporting information

LAW AND PUBLIC SAFETY

(b)

DIVISION OF MOTOR VEHICLES

Executive and Administrative Service

Insurance Verification

Adopted Repeal: N.J.A.C. 13:18-6.1

Adopted New Rules: N.J.A.C. 13:18-6

Proposed: April 1, 1991 at 23 N.J.R. 973(a).

Adopted: May 16, 1991, by Stratton C. Lee, Jr., Acting Director, Division of Motor Vehicles, after consultation with Samuel F. Fortunato, Commissioner, Department of Insurance.

Filed: May 16, 1991 as R.1991 d. 289, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1990, c.8, §50, N.J.S.A. 39:3-4e, 39:5-30 and 47:1A-1 et seq.

Effective Date: June 3, 1991.

Expiration Date: March 30, 1995.

Summary of Public Comments and Agency Responses:

Opportunity to be heard with regard to the proposal was invited via notice published in the April 1, 1991 edition of the New Jersey Register. 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 April 4, 1991 media advisory until May 6, 1991. By letter dated April 4, 1991, the Division of Motor Vehicles also sent a copy of the proposal to each insurance company authorized to write auto insurance in the State of New Jersey, advising each that the comment period had been extended until May 6, 1991.

Eighteen commenters forwarded comments to the Division of Motor Vehicles regarding the proposal prior to the close of the comment period. These commenters were: Allstate Insurance Company; American Insurance Association; Amica Mutual Insurance Company; City Line Insurance, Inc.; Farm Family Insurance Companies; Fireman's Fund Insurance Company; General Accident Insurance; Hanover Insurance; Insurance Services Office, Inc.; MCA Insurance Companies; The New Hampshire; Preferred Risk Group; The Prudential Property and Casualty Insurance Company of New Jersey; Royal Insurance; Selective Insurance Company of America; State Farm Insurance Companies; Tokio Marine Management, Inc.; and United Services Automobile Association. Three additional commenters, CNA Insurance Companies, Sentry Insurance and the Alliance of American Insurers, forwarded comments to the Division of Motor Vehicles after the close of the comment period. Comments forwarded to the Division after the close of the comment period were not considered by the Division. However, it should be noted that some of the points raised by the late commenters were also raised by other commenters with regard to the proposal and have therefore been taken into consideration by the Division in that context. The comments are available for inspection at the Office of the Director, Division of Motor Vehicles, 25 South Montgomery Street, 7th Floor, Trenton, New Jersey 08666.

The comments touched upon numerous points which are summarized below, together with the Division's responses.

COMMENT: Three commenters requested that the Division specify the two consecutive months of new policy information and one month of cancellation policy information needed by the Division to test and evaluate the computer system prior to its implementation as described in N.J.A.C. 13:18-6.2(g).

RESPONSE: The Division agrees with the need to specify the months of cancel and new policy information that are required to test and evaluate the computer system. The Division is requiring that this information be submitted no later than August 15, 1991. Therefore, the Division will specify the month of May, 1991 for cancellation data and the months of May, 1991 and June, 1991 for new policy data. A schedule of submission dates and technical specifications has been prepared by the Division for auto insurance companies and will be made available to them by the end of May, 1991.

COMMENT: Two commenters stated their belief that the make/model coding fields described in N.J.A.C. 13:18-6.2(b) and N.J.A.C. 13:18-6.2(e)

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and portrayed on Appendices A thru D are not needed because they are built into the vehicle identification number (VIN) which the Division is also requiring to be reported. One commenter indicated that the make code field should be optional.

RESPONSE: The Division does not agree with the proposed elimination of these two coding fields. Make/model information is not contained in VINs assigned to pre-1981 vehicles which constitute approximately 10 percent of the motor vehicles in the State of New Jersey. Therefore, separate coding fields are required. "Make" information is also needed for all vehicles to verify the accuracy of the reported VIN. Merely relying on VINs is insufficient to accomplish the necessary editing that is required. Therefore, the make field shall remain a mandatory coding field as proposed.

COMMENT: One commenter objected to the requirement of providing the four digit model year (for example, 1991) as required in N.J.A.C. 13:18-6.2(b) and N.J.A.C. 13:18-6.2(e) and portrayed on Appendices A thru D because they would have to adjust their computer system. The commenter anticipates other insurance companies may face the same problem.

RESPONSE: The Division does not agree with the proposed reduction of the four digit model year to a variable length. No other insurance company raised this objection. The Division's computer system is four digits. In addition, the year 2000 is approaching and a four digit number will be needed to correctly identify the motor vehicle. As a result, the model year information submitted by the insurance companies must be four digits for data consistency, editing, and processing purposes.

COMMENT: One commenter questioned the capability and data availability of CSC Insurance Services (CSC) and requested that the Division check with the Department of Insurance to see if CSC will have the ability to transmit the required data.

RESPONSE: After consultation with the Department of Insurance, the Division believes that the data required by the regulation is readily available within the records of CSC and that credible reports will be received from CSC. The timeliness and accuracy of the data submitted by the respective insurer(s), including CSC, will be monitored by the Division so that the appropriate remedial/administrative action may be taken to ensure the data timeliness, accuracy, and integrity of submissions.

COMMENT: One commenter requested that total loss vehicles should also be excluded from reports on those policies cancelled for nonpayment in addition to the exclusion reasons described in N.J.A.C. 13:18-6.2(d).

RESPONSE: The Division agrees with the comment and has adopted the proposed change in N.J.A.C. 13:18-6.2(d). Total loss of a motor vehicle is a valid reason for nonpayment of premium. Excluding total loss of a motor vehicle from a required report will assist the Division in that motorists will not be unnecessarily brought into the Division's insurance verification program.

COMMENT: One commenter suggested that procedures should be prepared to handle edit errors on the data submitted by the insurance companies and report those errors back to the insurance companies. In addition the same commenter suggested that a rule regarding return of tapes/cartridges to the insurer was also needed.

RESPONSE: The Division does not agree with the need for additional rules in these two areas. The Division agrees that identifying errors and forwarding them back to the respective insurance companies is important. The error and tape handling procedures will be supplied by the Division to the insurers as part of the technical specification to be furnished prior to system implementation. The Division anticipates this information will be forwarded by the end of May 1, 1991.

COMMENT: One commenter requested the possibility of a manual reporting option in lieu of the magnetic computer tape or cartridge for insurance companies that have a small amount of personal private passenger business in New Jersey. The commenter stated that the expense of automation would not be cost-effective for this number of policies.

RESPONSE: The Division agrees with the comment that the expense of automation may not be cost-effective for insurance companies with a limited number of policies in New Jersey. However, given the labor intensive effort required to process manual data combined with the Division's limited resources, the Division cannot adopt the proposed change to add a manual reporting option given the additional paperwork, manual data entry, and increased errors that can occur. The Division will, however, amend N.J.A.C. 13:18-6.2(b) and 13:18-6.2(e) to include the option of reporting information via personal computer diskette for those insurers that write less than 750 personal private passenger automobile insurance policies per year in the State of New Jersey. This number was determined by the Division after weighing the historical distribution of policies among insurers against the enhanced workload placed on the Division if an insurer exercises the option to report by personal computer diskette.

COMMENT: Three commenters objected to N.J.A.C. 13:18-6.2(f). One commenter objected on grounds that the subsection would significantly broaden the scope of reporting. Three commenters objected to the lack of specificity as to the types of reports required from insurers under this subsection.

RESPONSE: The Division does not agree with the commenters that N.J.A.C. 13:18-6.2(f) is either overly broad or vague. Subsection (h) of section 50 of the FAIR Act (P.L. 1990, c.8) provides in relevant part that "[t]he director may, by regulation, require that the provisions of this section shall be applicable to the termination of policies of motor vehicle liability insurance for reasons other than cancellation for nonpayment of premium, including nonrenewals". Subsection (f) of N.J.A.C. 13:18-6.2 is merely intended to complement the aforementioned statutory provision by alerting insurers that additional insurance verification reporting requirements may be imposed upon them by regulation by the Division in the future. It must be emphasized that subsection (f) of N.J.A.C. 13:18-6.2 is not an attempt by the Division to circumvent future rulemaking to implement such additional reporting requirements; any such additional insurance verifications reporting requirements will be proposed and adopted by the Division in accordance with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

COMMENT: One commenter requested that insurers that write less than 100 policies per year in New Jersey be exempt from reporting in months in which no policy was cancelled.

RESPONSE: The Division cannot accept the suggested change. Insurers are responsible for reporting new issuance activity as well as cancellation activity that occurs in each month as described in N.J.A.C. 13:18-6.2. Technical specifications as to how the Division will be informed concerning "no activity" (new or cancels) will be provided to the insurers by the Division by the end of May, 1991.

COMMENT: One commenter suggested an alternative definition of "effective date of policy cancellation" which makes references to the premium finance law (N.J.S.A. 17:16D-13).

RESPONSE: The Division agrees with the commenter that the definition of the term "effective date of policy cancellation" set forth in N.J.A.C. 13:18-6.1 in the proposal is somewhat confusing and lengthy, and has accordingly replaced the definition of that term upon adoption with a definition nearly identical to that suggested by the commenter. The definition of the term "effective date of policy cancellation" adopted by the Division in N.J.A.C. 13:18-6.1 means "the date designated by the insurer's notice of cancellation pursuant to N.J.A.C. 11:3-7.6 or the date cancellation takes effect pursuant to N.J.S.A. 17:16D-13." The new language is intended to clarify that the date of cancellation determined in accordance with the "Insurance Premium Finance Company Act" is the effective date of policy cancellation for policies that have been financed. The Division believes that this change to its definition of "effective date of policy cancellation" adequately addresses the commenter's concerns regarding this subject.

COMMENT: One commenter requested that the requirement of excluding the reporting of cancellation activity, such as the death of the insured, the unrecovered theft of the motor vehicle, etc., provided for in N.J.A.C. 13:18-6.2(d) be eliminated in that some insurer computer systems may not distinguish these events.

RESPONSE: The Division cannot adopt the proposed change. If the proposed change were adopted, the result would be unnecessary and unwarranted contacts with motorist by the Division. Therefore, the nonpayment circumstances to be excluded are reasonable and would result in helping the Division minimize these unwarranted contacts of motorists. Insurers should try to comply with this requirement.

COMMENT: One commenter requested clarification of the mandatory date-stamp field on the magnetic tape/cartridge.

RESPONSE: N.J.A.C. 13:18-6.2(b)9 and 13:18-6.2(e)6 specify that the date-stamp means the date on which the tape or cartridge containing the information was prepared.

COMMENT: Two commenters objected to the reports of information concerning the cancellation and issuance of personal private passenger automobile insurance policies occurring on and after February 1, 1991 as described in N.J.A.C. 13:18-6.2(a). Several of the commenters requested that this information begin to be reported on the date the system is implemented.

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RESPONSE: The Division does not agree with this comment. In passage of the FAIR Act (P.L. 1990, c.8), uninsured motorists were given an "amnesty" period of October 1, 1990 to January 31, 1991 to obtain auto insurance. The reporting of policy activity occurring on and after February 1, 1991 coincides with the end of this insurance "amnesty" period. The Division believes that the tracking and identification of potentially uninsured motorists should begin immediately after this amnesty period. Skipping over this five month time period (that is, February-June, 1991) could result in uninsured motorists within this timeframe going undetected. As a result, more undetected uninsured motorists will be on the road than is warranted. Therefore, this provision is consistent with the purpose and intent of the FAIR Act and best serves the statutory objective.

COMMENT: One commenter stated that a definition of the term "cancellation" is necessary in connection with the retroactive reporting requirements of N.J.A.C. 13:18-6.2(a). This same commenter also requested clarification of the definition of the term "nonpayment of premium."

RESPONSE: The Division agrees with the commenter that a further clarification of the definition of the term "nonpayment of premium" is advisable and has accordingly deleted the definition of that term contained in N.J.A.C. 13:18-6.1 in the proposal and replaced same with a definition of the term "cancellation for nonpayment of premium" in an effort to provide such clarification. The new definition in N.J.A.C. 13:18-6.1, "cancellation for nonpayment of premium," provides that the term means "the termination of a policy during the policy term due to the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit." It is believed that this definition adequately resolves the questions regarding this subject raised by the commenter. It must be emphasized that the definition of "cancellation for nonpayment of premium" does not include, nor is it intended to include, the failure of the named insured to respond to an offer by the insurer to renew a policy.

COMMENT: One commenter questioned when the first due date would be for the semi-annual reporting of all in-force vehicles as described in N.J.A.C. 13:18-6.2(e).

RESPONSE: The Division will specify the reporting schedule as part of the technical specifications to be provided to the insurers by the end of May, 1991. The first semi-annual reporting month will coincide with implementation of the system. Therefore, the first semi-annual reporting period will be for policies in-force as of August 31, 1991. This information will be provided to the Division by the system implementation date of September 15, 1991.

COMMENT: One commenter requested clarification of the definition of "personal private passenger automobile insurance" as contained in N.J.A.C. 13:18-6.1. Specifically, the commenter asked whether the rule applies to private passenger vehicles written on commercial automobile policies.

RESPONSE: The term "personal private passenger automobile insurance" is defined in N.J.A.C. 13:18-6.1 as "direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2 issued pursuant to a personal lines rating system filed and approved in accordance with N.J.S.A. 17:29A-1 et seq., but excluding personal excess liability insurance." The definition does not encompass commercial lines of insurance. Private passenger automobiles written under commercial policies are not impacted by the proposal.

COMMENT: One commenter questioned the risk implications on insurers for reporting errors.

RESPONSE: It is the Division's view that this matter is covered by statute. N.J.S.A. 17:29C-13 provides immunity from liability in such cases. That statute provides in pertinent part as follows:

"There shall be no liability on the part of and no cause of action of any nature shall arise against . . . any insurer, its authorized representative, its agents, its employees, or any firm, person or corporation furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in any written notice of cancellation, or in any other communication, oral or written specifying the reasons for cancellation, *or the providing of information pertaining thereto,* or for statements made or evidence submitted at any hearings conducted in connection therewith." (emphasis supplied.)

However, insurance companies are responsible for providing credible data as proposed in the rules. If repeated carelessness exists, the Division, in consultation with the Department of Insurance, will take remedial/administrative action.

COMMENT: One commenter questioned the risk implications on insurers if they fail to report a cancellation.

RESPONSE: N.J.A.C. 13:18-6 does not impose additional risk on an insurer who fails to report a cancellation to the Division of Motor Vehicles. Cancellation of automobile insurance policies is governed by statute (N.J.S.A. 17:29C-6 et seq.). It is the Division's view that the insurers who cancel policies in accordance with the statutory requirements incur no further risk on the cancelled policies. It is the Division's view that failure to report to the Division does not invalidate the cancellation of the policy.

COMMENT: One commenter requested clarification of the February 1, 1991 reporting obligation described in N.J.A.C. 13:18-6.2(a).

RESPONSE: The Division requires that insurers report the monthly cancellation activity and monthly new policy activity that occurs on or after February 1, 1991 and each month thereafter. This is consistent with N.J.A.C. 13:18-6.2(a) and will be further explained in the technical specifications that will be provided to the insurers by the end of May, 1991.

COMMENT: One commenter questioned the need for semi-annual reporting of policies in-force as described in N.J.A.C. 13:18-6.2(e). The commenter proposed that the reporting period be adjusted to an annual basis.

RESPONSE: The Division does not agree with the proposed change. The proposed annual interval is too long to allow uninsured motorists to drive undetected. For example, out-of-State drivers who initially registered in New Jersey and used car sales between private individuals that occur immediately after the annual review would go undetected as uninsured motorists for a 12-month period. The Division is convinced that the semi-annual reporting requirement as proposed in N.J.A.C. 13:18-6.2(e) is necessary to fully effectuate the statutory design of the FAIR Act (P.L. 1990, c.8).

COMMENT: One commenter supported the requirement proposed in N.J.A.C. 13:18-6.10 that information submitted by the insurers shall not be subject to public inspection. The same commenter expressed concerns that the Division have sufficient security to ensure that confidentiality of this data.

RESPONSE: The Division has taken the necessary steps to ensure that data confidentiality will not be breached.

COMMENT: One commenter objected to the semi-annual reporting requirement imposed by N.J.A.C. 13:18-6.2(e) believing that it requires more information than is necessary to implement the insurance verification program. Therefore the commenter requested that the scope of the regulations be limited to cancellations.

RESPONSE: The Division does not agree with this proposed change. It is absolutely essential to receive and match against the insured vehicles (Policies in-force) in order to identify the potential universe of uninsured motorists. Cancellation information alone will not detect a vehicle that has never been insured. This process ensures the identification of out-of-State vehicles initially registering in New Jersey, car sales between individuals, and other transactions that would otherwise go undetected in the absence of the semi-annual reporting requirement described in N.J.A.C. 13:18-6.2(e).

COMMENT: One commenter requested clarification of the vehicles to be reported as proposed in N.J.A.C. 13:18-6.2(b) and (e).

RESPONSE: The Division requires that all vehicles appearing on a personal private passenger automobile insurance policy must be reported.

COMMENT: One commenter requested clarification of the drivers to be reported. The same commenter requested clarification on which driver should be reported in instances of a multiple vehicle/multiple driver policy.

RESPONSE: As proposed in N.J.A.C. 13:18-6.2(b)2, the driver's license of the vehicle owner, if available, should be reported for each vehicle on the policy. In those situations where the driver's license of the vehicle owner is not available, the license number of the primary driver should be reported.

COMMENT: One commenter requested clarification of the matching process that the Division will use in identifying uninsured motorists.

RESPONSE: The Division has described the matching process that it will use to identify uninsured motorists in the technical specifications that will be provided to the insurers by the end of May, 1991.

COMMENT: Two commenters questioned the statutory authority for the proposed rules. One commenter stated that those sections of the proposal (N.J.A.C. 13:18-6.2(a), (b) and (g) that require the report of data

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concerning the issuance of policies and that section of the proposal (N.J.A.C. 13:18-6.2(c)) that require the report of data concerning all current policies are without statutory authority. The other commenter challenged the discretionary authority to administer the format and intervals of reporting.

RESPONSE: The statutory authority cited for the proposal, specifically N.J.S.A. 39:3-4e and the FAIR Act (P.L. 1990, c.8, §50), delegate broad powers to the Director. The statutory authority to require insurers to report data concerning the issuance of policies and data concerning all current policies is derived from N.J.S.A. 39:3-4e which provides as follows:

"The director, after consultation with the Commissioner of Insurance, is hereby empowered to prescribe, adopt, promulgate, rescind and enforce rules and regulations requiring insurers to provide all information with respect to the issuance, renewal, cancellation, nonrenewal and termination of insurance as the director may deem necessary to assist the division in enforcement of the provisions of this Title (Motor Vehicle and Traffic Regulation) relating to insurance coverage for motor vehicles.

N.J.S.A. 39:2-3 provides additional statutory authority for the Director's action in this regard. That statute confers on the director the "personal charge and supervision of the administration and enforcement of this subtitle" (Motor Vehicle and Traffic Laws) and directs that he "[c]ollect such data with respect to the proper restrictions to be placed upon motor vehicles and their use upon the public roads, turnpikes and thoroughfares as shall seem for the public good." The director's authority to require insurance companies to submit insurance information to the Division necessarily entails the power to designate the format and intervals of such reports so as to ensure his ability to properly administer and enforce the compulsory insurance laws of this State.

COMMENT: One commenter requested that policy number be added to the data required to be reported by the insurance companies as proposed in appendices A thru D in support of N.J.A.C. 13:18-6.2(b) and (e).

RESPONSE: The Division does not agree that the policy number be a mandatory reporting field in that the matching process to be used by the Division does not require policy number. However, the Division does concur with the commenter on the use of policy number for identification purposes and has adopted the necessary changes in N.J.A.C. 13:18-6.2(b) and (e) and Appendices A and B to make reporting of policy number optional.

COMMENT: Two commenters sought clarification as to when the monthly reports will be due (N.J.A.C. 13:18-6.2(a) and (b)).

RESPONSE: The Division will supply the schedule of monthly due dates to the insurers as part of the technical specifications to be issued prior to implementation of the system.

COMMENT: One commenter requested to know when the technical specifications will be issued for the monthly and semi-annual reporting datasets as proposed in N.J.A.C. 13:18-6.2(h).

RESPONSE: The Division will provide the technical specifications to each insurer by the end of May, 1991.

COMMENT: One commenter proposed that filing record space be made available for insurance company use and purposes.

RESPONSE: The Division does not agree with this proposal. The "filler" space identified in Appendices A thru D may be needed for use by the Division in the future. Allowing such use now by insurance companies would preclude the Division from using the space in the future and would necessitate increased future costs for additional space.

COMMENT: Four commenters objected to the requirement of reporting using only the National Crime Information Center (NCIC) vehicle make and vehicle model codes. One of those commenters indicated that many insurers use the Insurance Services Office (ISO) code in these two areas. One commenter indicated that each insurer not presently using NCIC codes would have to incur significant costs to obtain and convert to the required NCIC codes described in Appendices B and D in support of N.J.A.C. 13:18-6.2(b) and N.J.A.C. 13:18-6.2(e).

RESPONSE: The Division agrees with the commenters' statement that both the NCIC and ISO codes are used by insurers. The Division concurs with the proposed change to require reporting the vehicle make codes using the NCIC or ISO standard codes for reporting vehicle make information. Vehicle model number information is optional. NCIC codes should be used if available; otherwise the field should be space filled. The Division agreed to the change because insurance companies which presently use the ISO codes would incur substantial costs in converting to the NCIC codes.

COMMENT: Several commenters requested a delay in the implementation of the program as specified in N.J.A.C. 13:18-6.2(b). They stated that the resources required and the project requirements of analyzing and adjusting their computer systems could not be completed within the designated timeframe. Several commenters stated that they would only have roughly a month after the close of the comment period to implement their system changes. Therefore, the commenters were requesting extensions of time to implement the proposed changes.

RESPONSE: The Division recognizes the potential difficulty of insurers being able to adjust their systems to produce the information required for successful implementation of the program within a short timeframe. The Division has balanced these concerns against the public need for identifying and reducing the number of uninsured motorists in the quickest fashion possible. Therefore, the Division, after consultation with the Department of Insurance, has adjusted the implementation dates to the following:

(1) The June 15, 1991 test date has been pushed back to August 15, 1991. N.J.A.C. 13:18-6.2(g) will be amended accordingly.

(2) The July 15, 1991 implementation date has been pushed back to September 15, 1991. N.J.A.C. 13:18-6.2(b) will be amended accordingly.

The Division believes that these revised dates represent a reasonable compromise between these various considerations for the insurance companies to comply with in that the data that is required already exists within the respective insurers' computer systems. Therefore, the Division believes that the required programming can be done with reasonable effort within these adjusted timeframes.

Finally, the Division believes that any further delay in implementing the system will result in a negative impact on the public due to the fact that the universe of uninsured motorists will go undetected and potentially grow, thereby increasing the cost of insurance to the insured motoring public.

COMMENT: One commenter inquired if an insurer will get advance notice of action against insureds so it has the opportunity to verify the reported data.

RESPONSE: The Division does not agree with this request. Insurers are responsible for reporting credible information as required by the proposed regulation. Therefore, the Division does not see the need to notify the former insurance company of actions being initiated against uninsured motorists as part of the enforcement actions described in N.J.A.C. 13:18-6.4. In addition, the Division believes that requiring additional processing and mailing of information to each insurance company is outweighed by the need to identify and notify uninsured motorists on a timely basis.

COMMENT: One commenter proposed the need to develop a reinstatement rule.

RESPONSE: The Division does not agree with the proposed change. Consistent with the proposed rules, insurers are to report cancellations resulting from nonpayment of premium only after the effective date of the cancellation. Thereafter, if the cancelled motorist opts to get a policy with the same insurance company this "newly issued policy" as defined in N.J.A.C. 13:18-6.1 is a new policy which is to be reported as such by the insurance company. Therefore, a reinstatement rule is not needed.

COMMENT: One commenter stated its belief that the Division will adopt the Department of Insurance order as proposed, jeopardizing the integrity of the regulation process.

RESPONSE: As the foregoing indicates, the Division has reviewed the written comments provided by the insurers and has prepared changes to the proposed rules in response to some of these comments. The facts have not borne out the commenter's suggestion and show that their concern is not warranted.

COMMENT: One commenter requested clarification concerning the definition of "newly issued policy." Specifically, the commenter questioned whether the definition encompassed additional and replacement car endorsements.

RESPONSE: The term as defined includes additional and replacement automobiles.

Summary of Changes Upon Adoption:

N.J.A.C. 13:18-6.1 has been changed in that a definition of the term "cancellation for nonpayment of premium" has been added and the definition of the term "nonpayment of premium" has been deleted as a result of a commenter's request for clarification regarding the definition of the term "nonpayment of premium" in the proposal. The Division believes the addition of a definition of the term "cancellation for nonpayment of premium" to be warranted in that it will serve to clarify the meaning of that term as it is used in the adopted rules. The new language

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reinforces the statute by making specific reference to terminations during the policy term so that there is no confusion in the industry that nonrenewals of policies are impacted by the proposal. With the addition of the definition of the term "cancellation for nonpayment of premium," the definition of the term "nonpayment of premium" is rendered unnecessary and has accordingly been deleted.

N.J.A.C. 13:18-6.1 has also been changed in that the definition of the term "effective date of policy cancellation" has been changed as a result of a commenter's suggestion. The Division believes that this change in the language of the definition will serve to clarify the meaning of the term "effective date of policy cancellation" as it is used in the adopted rules. The new language specifically cites that section of the "Insurance Premium Finance Company Act" (N.J.S.A. 17:16D-13) pertaining to cancellation of premium finance contracts and is intended to clarify that the date of cancellation determined thereunder is the effective date of policy cancellation for policies that have been financed.

N.J.A.C. 13:18-6.2(b) and (e) have each been changed to permit insurers that write less than 750 personal private passenger automobile insurance policies per year in the State of New Jersey to report to the Director the information required by those respective subsections by magnetic computer tape or cartridge or personal computer diskette. N.J.A.C. 13:18-6.2(b) and (e) as proposed had contained no reference to small insurers or to the use of personal computer diskettes. The Division believes it is warranted to allow such small insurers to report to the Director the information required by N.J.A.C. 13:18-6.2(b) and (e) by magnetic computer tape or cartridge or personal computer diskette. This change is intended to lessen the economic impact of the proposal on small companies which do not have the computer resources available to larger companies. It must be emphasized that this change to N.J.A.C. 13:18-6.2(b) and (e) does not impose any additional reporting requirements upon insurers.

N.J.A.C. 13:18-6.2(b)9 and 13:18-6.2(e)6 (which set forth insurance report information) and 13:18-6.2(h) (which requires insurer compliance with the Division's technical specifications for reports from insurers) have each been changed to include a reference to personal computer diskettes. These changes are being made to complement the changes to N.J.A.C. 13:18-6.2(b) and (e) described in the preceding paragraph which permit the use of such diskettes by insurers that write less than 750 personal private passenger automobile insurance policies per year in the State of New Jersey.

N.J.A.C. 13:18-6.2(b) has also been changed in that the date upon which insurers shall be required to commence submitting monthly cancellation and new policy information to the Division has been changed from July 15, 1991 to September 15, 1991. This change to N.J.A.C. 13:18-6.2(b) has been made by the Division in response to the request of several commenters who expressed their opinion that it would be extremely difficult if not impossible for them to be able to comply with the July 15, 1991 reporting date set forth in the proposal. The Division believes the change to a September 15, 1991 reporting date to be warranted in that insurers will be afforded additional time in which to comply with the requirements imposed by these rules.

N.J.A.C. 13:18-6.2(b) has also been changed to include "policy number" among the information reported to the Director by insurers in accordance with the provisions of that subsection. This change partially accommodates a commenter's suggestion regarding this subject. The addition of "policy number" to N.J.A.C. 13:18-6.2(b) has also resulted in the addition of that item and specifications for same to Appendices A and B, which N.J.A.C. 13:18-6.2(b) incorporates by reference. It must be emphasized that this change to N.J.A.C. 13:18-6.2(b) and Appendices A and B does not impose any additional mandatory reporting requirements upon insurers, since inclusion of "policy number" on the reports required to be submitted to the Director pursuant to N.J.A.C. 13:18-6.2(b) is optional.

N.J.A.C. 13:18-6.2(d) has been changed in that "the total loss of the motor vehicle" has been added to the list of reasons for nonpayment of premium which would warrant exclusion by an insurer of such a policy cancellation from its reports to the Division. This change in N.J.A.C. 13:18-6.2(d) was suggested by a commenter and is believed by the Division to be warranted. Total loss of a motor vehicle is a valid reason for nonpayment of premium. Excluding total loss of a motor vehicle from a required report will assist the Division in that motorists will not be unnecessarily brought into the Division's insurance verification program.

N.J.A.C. 13:18-6.2(g) has been changed in that the date upon which insurers shall be required to submit test data information to the Division to enable it to test its insurance verification system has been changed from June 15, 1991 to August 15, 1991. This change to N.J.A.C. 13:18-6.2(g) has been made by the Division in response to the request of several commenters who expressed their belief that it would be extremely difficult if not impossible for them to be able to comply with the June 15, 1991 date set forth in the proposal. The Division believes the change to an August 15, 1991 due date for submission of test data to be warranted in that insurers will be afforded additional time in which to comply with the requirements imposed by these rules.

Appendices B and D have been changed to require either the National Crime Information Center (NCIC) or Insurance Services Office (ISO) vehicle make code to be submitted among the information reported to the Division by insurers in accordance with the provisions of N.J.A.C. 13:18-6.2(b) and (e), respectively. N.J.A.C. 13:18-6.2(b) incorporates Appendix B by reference; N.J.A.C. 13:18-6.2(e) incorporates Appendix D by reference. This change to Appendices B and D has been made at the behest of several commenters who expressed concern at being required by the proposal to exclusively utilize the NCIC vehicle make code in the required reports. The Division agreed to the change because insurance companies which presently use the ISO codes would incur substantial costs in converting to the NCIC codes. It must be emphasized that this change to Appendices B and D does not impose any additional reporting requirements upon insurers but makes another option available to insurance companies.

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

SUBCHAPTER 6. INSURANCE VERIFICATION

13:18-6.1 Definitions

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

"Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

"Cancellation for nonpayment of premium" means the termination of a policy during the policy term due to the failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

"Director" means the Director of the Division of Motor Vehicles in the Department of Law and Public Safety.

"Division" means the Division of Motor Vehicles in the Department of Law and Public Safety.

["Effective date of policy cancellation" means a date established by the insurer which is not earlier than 10 days prior to the last full day of which premium received by the insurer prior to the date of preparation of the cancellation notice would pay for coverage on a pro rata basis. The premium applicable to the coverage provided by the policy and the premium received by the company at or prior to the time cancellation notice was prepared shall be the premium used for the calculation and determination of the effective date.]

"Effective date of policy cancellation" means the date designated by the insurer's notice of cancellation pursuant to N.J.A.C. 11:3-7.6 or the date cancellation takes effect pursuant to N.J.S.A. 17:16D-13.

"FAIR Act" means the Fair Automobile Insurance Reform Act of 1990, P.L. 1990, c.8.

"Insurer" means an entity authorized or admitted to transact the business of personal private passenger automobile insurance in New Jersey.

"Newly issued policy" means any contract or endorsement of personal private passenger automobile insurance that provides liability coverage for an automobile not previously covered by a contract of liability insurance issued by the insurer, or that was previously covered by a policy issued by the insurer which was cancelled for nonpayment of premium.

*["Nonpayment of premium" means failure of the named insured to discharge when due any of his or her obligations in connection with the payment of premiums on a policy, or any installment of such premium, whether the premium is payable directly to the insurer

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or its agent or indirectly under any premium finance plan or extension of credit.]*

"Personal private passenger automobile insurance" means direct insurance on private passenger automobiles as defined in N.J.S.A. 39:6A-2 issued pursuant to a personal lines rating system filed and approved in accordance with N.J.S.A. 17:29A-1 et seq., but excluding personal excess liability insurance.

13:18-6.2 Reports of personal private passenger automobile insurance policy information to the Director of the Division of Motor Vehicles

(a) Personal private passenger automobile insurers shall provide the Director, or his or her designee, information by vehicle identification number (VIN) concerning the cancellation and issuance of personal private passenger automobile insurance policies on and after February 1, 1991. This information shall be provided on a monthly basis in the manner and form as set forth in Appendices A and B, which are incorporated herein by reference. This information shall be provided in accordance with a schedule of dates set by the Director.

(b) Insurers shall report by magnetic computer tape or cartridge ***(or, for insurers that write less than 750 personal private passenger automobile insurance policies per year in the State of New Jersey, by magnetic computer tape or cartridge or personal computer diskette)*** to the Director on a monthly basis beginning *[July 15, 1991,]* ***September 15, 1991,*** the following information concerning policies cancelled for nonpayment of premium and newly issued policies. These reports shall be provided to the Director in such format and at such times as he or she shall prescribe. The format for said reports is set forth in Appendices A and B, which are incorporated herein by reference.

1. Vehicle identification number;
2. Driver license number (of owner, if available; if not available, of the primary driver);
3. Automobile make, year and model;
4. Insurance company code;
5. Address of insured including street, city, state and zip code;
6. Transaction type (either cancellation or new policy);
7. Policy effective date;
8. Effective date of policy cancellation; *[and]*
9. The date on which the tape or cartridge ***or personal computer diskette*** containing the information was prepared*[.]**; ***and****
10. Policy number.*

(c) Insurers shall report the cancellation of personal private passenger automobile liability coverage for nonpayment of premium after the effective date of the cancellation of a policy.

(d) Insurers shall make reasonable provision to exclude from reports those policies cancelled for nonpayment of premium when the insurer knows that the reason for nonpayment of premium is the death of the insured, the permanent relocation of the insured outside of the State of New Jersey, ***the total loss of the motor vehicle,*** the unrecovered theft of the motor vehicle, or the repossession of the motor vehicle by a lienholder.

(e) Insurers shall also report by magnetic computer tape or cartridge ***(or, for insurers that write less than 750 personal private passenger automobile insurance policies per year in the State of New Jersey, by magnetic computer tape or cartridge or personal computer diskette)*** to the Director every six months, or at such other interval as may be specified by the Director, the following information concerning all of their current personal private passenger automobile insurance policies. These reports shall be provided to the Director in such format and at such times as he or she shall prescribe. The format for said reports is set forth in Appendices C and D which are incorporated herein by reference.

1. Vehicle identification number;
2. Driver license number (of owner, if available; if not available, of the primary driver);
3. Automobile make, year and model;
4. Insurance company code;
5. Policy effective date; and
6. The date on which the tape or cartridge ***or personal computer diskette*** containing the information was prepared.

(f) Insurers shall report to the Director the termination of policies of motor vehicle liability insurance for reasons other than nonpayment of premium, including any cancellation or nonrenewal, as may be required by the Director.

(g) In addition to the other information that must be submitted under these rules, insurers shall provide the Director, or his or her designee, a report of information concerning policies cancelled for nonpayment of premium for a month designated by the Director and a report of information concerning new policies issued for two consecutive months designated by the Director. The reports required to be submitted pursuant to this subsection shall be provided not later than *[June 15, 1991]* ***August 15, 1991****, and shall be utilized by the Division to test and evaluate the insurance verification program prior to its implementation.

(h) In order to ensure that reports submitted are compatible with the Division's information system, insurers shall transmit reports of information required by the Director pursuant to this section in accordance with all of the Division's technical specifications including, but not limited to, data set name, internal and external labeling, data block size, codes, tape format and layout, and other physical characteristics of tapes or cartridges ***or personal computer diskettes****.

13:18-6.3 Registration expiration

For purposes of section 50(c)(1) of the FAIR Act and this subchapter, a vehicle registration certificate shall be deemed to be "expired" only if such certificate has not been renewed and either the expired registration certificate and registration plates for said vehicle have been surrendered to the Division of Motor Vehicles or ownership of said vehicle has been transferred to a third party.

13:18-6.4 Suspension of vehicle registration; exceptions; surrender of registration certificate and plates; expiration of registration; removal of vehicle from United States and Canada; short-term lapse in coverage not exceeding 15 days

(a) Except as otherwise provided in this section, the Division shall suspend the registration of a vehicle pursuant to section 50(c) of the FAIR Act if the owner has not filed with the Division and the Division has not received proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 or the owner has not presented proof of allowable circumstances as specified in N.J.A.C. 13:18-6.6.

(b) Proof of motor vehicle liability insurance or allowable circumstances shall be filed with and received by the Division within 30 days of the Division's notice to the owner issued in accordance with section 50(b) of the FAIR Act.

(c) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the owner has surrendered or caused to be surrendered to the Director, or his or her designee, the registration certificate (including any duplicate registration certificate and family registration certificate), and registration plates issued thereto prior to the time the cancellation of insurance became effective.

(d) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the registration of the vehicle has expired and has not been renewed prior to the time the cancellation of insurance became effective and the owner of the vehicle has surrendered or caused to be surrendered to the Director, or his or her designee, the expired registration certificate and registration plates for the vehicle prior to the time the cancellation of insurance became effective.

(e) The Division shall not suspend a vehicle registration pursuant to section 50(c) of the FAIR Act if the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic prior to the time the cancellation of insurance became effective. The owner of the vehicle must satisfy the following requirements:

1. File or cause to be filed with the Director, or his or her designee, a formal statement informing the Director that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic;

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2. File or cause to be filed with the Director, or his or her designee, proof in a form specified in N.J.A.C. 13:18-6.7 that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic;

3. Agree to immediately notify the Director upon the return of the vehicle to the United States in North America or the Dominion of Canada; and

4. Agree to file or cause to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 when the vehicle is returned to the United States in North America or the Dominion of Canada.

(f) The Director may withhold the suspension of a vehicle registration pursuant to section 50(c) of the FAIR Act if the period of time during which the vehicle was both registered and uninsured does not exceed 15 days. For purposes of this subsection, the 15 day period shall commence on the date that the cancellation of insurance becomes effective. The owner of a vehicle must file or cause to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 which was effective within 15 days from the date of cancellation of motor vehicle liability insurance coverage.

13:18-6.5 Proof of insurance; submission of fictitious proof

(a) For purposes of section 50 of the FAIR Act, proof of motor vehicle liability insurance coverage shall consist of the original or copy of the following:

1. A valid permanent insurance identification card issued in accordance with N.J.A.C. 11:3-6.2;

2. A valid temporary insurance identification card issued in accordance with N.J.A.C. 11:3-6.3;

3. The declaration page of an insurance policy;

4. An insurance policy binder;

5. A notice of policy reinstatement issued by the insurer which notified the Division of cancellation of motor vehicle liability insurance coverage pursuant to section 50(b) of the FAIR Act;

6. A certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52; or

7. Any other proof deemed acceptable by the Director, including post-audit verification by confirmation from the new policy data received from the insurance company.

(b) An owner may present proof of motor vehicle liability insurance coverage to the Division by mail or in-person.

(c) Any person who submits or causes to be submitted to the Division any falsely made, forged, altered or counterfeited proof of motor vehicle liability insurance coverage pursuant to this subchapter may be subject, upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19, to a suspension of his or her driving privileges for a period not to exceed two years.

13:18-6.6 Existence of "allowable circumstances"; avoidance of supension; proof

(a) For purposes of section 50 of the FAIR Act, the Director deems the existence of the following circumstances sufficient good cause to avoid the suspension of a vehicle registration after notice of cancellation of motor vehicle liability insurance has been received by the Division:

1. The owner has transferred ownership of the vehicle to a third party as evidenced by the owner's surrender to the Division of the registration certificate and registration plates for the vehicle pursuant to N.J.A.C. 13:21-5.10 or the Division's issuance of a transfer registration to another vehicle for the unexpired portion of the registration period of the original vehicle pursuant to N.J.S.A. 39:3-30;

2. The vehicle is inoperable or not in use. The owner must submit to the Division a notarized statement setting forth a description of the vehicle, including the vehicle identification number and registration plate number issued therefore, and the condition of the vehicle which makes it inoperable and/or setting forth the reason why the vehicle is not being used by the owner. The owner must also surrender to the Division the registration certificate and registration plates for the vehicle;

3. The owner has established domicile in a State other than New Jersey as evidenced by the issuance of a certificate of ownership or registration certificate and registration plates for the vehicle by the State of domicile and the surrender of the New Jersey registration certificate and registration plates for the vehicle to the Division;

4. The owner has qualified as a self-insurer as evidenced by a certificate of self-insurance issued by the Department of Insurance pursuant to N.J.S.A. 39:6-52; or

5. The owner has removed or will remove the vehicle from the United States in North America and the Dominion of Canada for the purpose of international traffic as evidenced by his or her submission of the statement specified in N.J.A.C. 13:18-6.7.

13:18-6.7 Removal of vehicle from United States and Canada; proof thereof

(a) For purposes of section 50(c)(2) of the FAIR Act, the statement to be filed with the Director by a vehicle owner prior to the date of cancellation of motor vehicle insurance coverage for a vehicle which has been or will be removed from the United States in North America and the Dominion of Canada for the purpose of international traffic shall include the following proof that said vehicle has been or will be so removed:

1. A shipping document issued to the vehicle owner by the United States Customs Service prior to the date of motor vehicle insurance coverage cancellation for the vehicle which indicates that the vehicle has been or will be removed from the United States in North America and the Dominion of Canada;

2. A bill of lading and receipt issued to the vehicle owner by the common carrier transporting the vehicle which confirms that said vehicle has been or will be removed from the United States in North America and the Dominion of Canada; or

3. Any other similar proof deemed acceptable by the Director.

13:18-6.8 Rescission of suspension; requirements; limitation; calculation of time

(a) The Director, in his or her discretion, may rescind an order of suspension of a vehicle registration and an order of suspension of a driver's license pursuant to subsections (d) and (g) of section 50 of the FAIR Act if the owner of the vehicle satisfies the following requirements:

1. Pays or causes to be paid to the Commissioner of Insurance, or the Director as his or her designee, a civil penalty in the amount of $4.00 for each day up to 90 days for which motor vehicle liability insurance was not in effect after cancellation for nonpayment of premium; and either

i. Surrenders or causes to be surrendered to the Director, or his or her designee, the registration certificate (including any duplicate registration certificate and family registration certificate) and registration plates for the vehicle not more than 90 days from the date of cancellation of motor vehicle liability insurance coverage; or

ii. Files or causes to be filed with the Director, or his or her designee, proof of motor vehicle liability insurance in a form specified in N.J.A.C. 13:18-6.5 which was effective not more than 90 days from the date of cancellation of motor vehicle liability insurance coverage and which remains in effect.

(b) The Director may rescind a suspension of a vehicle registration or a driver's license pursuant to subsections (d) and (g) of section 50 of the FAIR Act only once during any 36 month period.

(c) For purposes of calculating the 36 month period with regard to rescission of a vehicle registration suspension or driver's license suspension pursuant to subsections (d) and (g) of section 50 of the FAIR Act, said 36 month period shall be calculated by referring to the respective dates of vehicle registration suspensions imposed upon a registrant pursuant to section 50 of the FAIR Act.

(d) For purposes of the submission of proof of motor vehicle liability insurance coverage to the Director by a registrant seeking rescission of a vehicle registration or driver's license suspension pursuant to subsections (d) and (g) of section 50 of the FAIR Act, such proof must be submitted to the Director no later than 180 days after the effective date of a vehicle registration suspension imposed upon the registrant pursuant to the FAIR Act unless the registrant is unable to submit such proof within said period of time due to an act of God or because of the registrant's absence from the State.

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13:18-6.9 Return of surrendered registration plates to registrant

(a) In those instances in which a registrant has surrendered registration plates to the Division pursuant to section 50 of the FAIR Act and thereafter acquires motor vehicle liability insurance and furnishes proof of same to the Director as required by section 50 of the FAIR Act and this subchapter, the Division shall return to the registrant a valid set of replacement registration plates upon payment to the Division of a fee of $3.00 for the set of replacement plates.

(b) If a registrant seeking the return of surrendered registration plates in accordance with subsection (a) of this section desires plates which contain the same combination of letters and numbers as had been contained on the surrendered plates, he or she shall first be issued a set of replacement plates at a fee of $3.00 as set forth in (a) above. Upon receipt of the replacement registration plates, the registrant may apply to the Division for plates which contain the same combination of letters and numbers as had been contained on the surrendered plates. Such "special identifying marks", unless already issued to another registrant or unless such issuance is prohibited by N.J.S.A. 39:3-33.5, shall be issued to the registrant upon payment to the Division of a fee of $10.00 for the set of special registration plates.

13:18-6.10 Confidentiality of information

All information contained in the reports submitted by insurers pursuant to the requirements of this subchapter shall be confidential and such reports shall not be subject to public inspection or copying pursuant to the "Right to Know Law," N.J.S.A. 47:1A-1 et seq.

13:18-6.11 Operative date

Subsections (a) through (g) of section 50 of the FAIR Act shall become operative as of the effective date of the adoption of this subchapter by the Division ***(that is, June 3, 1991),*** in accordance with P.L. 1990, c.8, §103.

APPENDIX A

Insurance Verification Program

INSURANCE FILING RECORD—ONE (N.J.A.C. 13:18-6.2(b))

ITEM NO.	FIELD POSITION	FIELD SIZE	ELEM. CHAR.	JUST	REQ. OPT.	FIELD NAME
1.	1-19	19	A/N	LJ	R	Vehicle-Identification-Number
2.	20-34	15	A/N	NA	R	Driver-License-Number
3.	35-39	5	A/N	LJ	R	Make
4.	40-43	4	N	NA	R	Year
5.	44-48	5	A/N	LJ	O	Model
6.	49-52	4	N	NA	R	Insurance-Company-Code
7.	53-82	30	A/N	LJ	R	Policy-Owner-Street-Address
8.	83-102	20	A	LJ	R	Policy-Owner-City
9.	103-104	2	A	NA	R	Policy-Owner-State
10.	105-113	9	N	NA	R	Policy-Owner-Zip-Code
11.	114	1	A	NA	R	Transaction-Type
12.	115-122	8	N	NA	R	Policy-Effective-Date
13.	123-130	8	N	NA	R	Policy-Cancel-Date
14.	131-138	8	N	NA	R	Date-Stamp
*[15.	139-200	62	A	NA	O	Filler]*
***15.**	**139-168**	**30**	**A/N**	**LJ**	**O**	**Policy-Number***
***16.**	**169-200**	**32**	**A**	**NA**	**O**	**Filler***

Legend:

Elem. Char.		Just		Reg. Opt.	
A/N	= alphanumeric	LJ	= left justified	R	= required
A	= alpha	RJ	= right justified	O	= optional
N	= numeric	NA	= not applicable		

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APPENDIX B

INSURANCE FILING RECORD—ONE (N.J.A.C. 13:18-6.2(b))

FIELD DESCRIPTION

NO.	FIELD NAME	DESCRIPTION
1.	Vehicle-Identification-Number	If vehicle year 1981 or newer, must have 17 positions.
2.	Driver-License-Number	Owner of vehicle (preferred) or primary driver's driver license number. No spaces.
3.	Make	National Crime Information Center (NCIC) ***or Insurance Services Office (ISO)*** vehicle make code.
4.	Year	Four digit vehicle model year.
5.	Model	National Crime Information Center (NCIC) vehicle model code. Space fill if not available.
6.	Insurance-Company-Code	MVR code assigned by New Jersey Motor Vehicle Services for driver abstracts.
7.	Policy-Owner-Street-Address	Street address of policy holder.
8.	Policy-Owner-City	City of policy holder.
9.	Policy-Owner-State	State of policy holder.
10.	Policy-Owner-Zip-Code	Zip code of policy holder. Five digits required, nine digits if available. Space fill last four digits if nine digits are not available.
11.	Transaction-Type	C = Cancellation N = New Policy
12.	Policy-Effective-Date	Required if Transaction-Type = N, otherwise leave blank. Format is MMDDYYYY.
13.	Policy-Cancel-Date	Required if Transaction-Type = C, otherwise leave blank. Format is MMDDYYYY.
14.	Date-Stamp	Format is MMDDYYYY.
15.	*[Filler]* ***Policy-Number***	*[Spaces.]* ***Policy number. Space fill if not supplied.***
***16.**	**Filler**	***Spaces.***

APPENDIX C

Insurance Verification Program

INSURANCE FILING RECORD—TWO (N.J.A.C. 13:18-6.2(e))

ITEM NO.	FIELD POSITION	FIELD SIZE	ELEM. CHAR.	JUST	REQ. OPT.	FIELD NAME
1.	1–19	19	A/N	LJ	R	Vehicle-Identification-Number
2.	20–34	15	A/N	NA	R	Driver-License-Number
3.	35–39	5	A/N	LJ	R	Make
4.	40–43	4	N	NA	R	Year
5.	44–48	5	A/N	LJ	O	Model
6.	49–52	4	N	NA	R	Insurance-Company-Code
7.	53–60	8	N	NA	R	Policy-Effective-Date
8.	61–68	8	N	NA	R	Date-Stamp
9.	69–80	12	A	NA	O	Filler

Legend:

Elem. Char.		Just		Reg. Opt.	
A/N	= alphanumeric	LJ	= left justified	R	= required
A	= alpha	RJ	= right justified	O	= optional
N	= numeric	NA	= not applicable		

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APPENDIX D

INSURANCE FILING RECORD—TWO (N.J.A.C. 13:18-6.2(e))

FIELD DESCRIPTION

NO.	FIELD NAME	DESCRIPTION
1.	Vehicle-Identification-Number	If vehicle year 1981 or newer, must have 17 positions.
2.	Driver-License-Number	Owner of vehicle (preferred) or primary driver's driver license number. No spaces.
3.	Make	National Crime Information Center (NCIC) ***or Insurance Services Office (ISO)*** vehicle make code.
4.	Year	Four digit vehicle model year.
5.	Model	National Crime Information Center (NCIC) vehicle model code. Space fill if not available.
6.	Insurance-Company-Code	MVR code assigned by New Jersey Motor Vehicle Services for driver abstracts.
7.	Policy-Effective-Date	Format is MMDDYYYY.
8.	Date-Stamp	Format is MMDDYYYY.
9.	Filler	Spaces.

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MEDICAL EXAMINERS

Fee Schedule

Adopted Amendment: N.J.A.C. 13:35-6.13

Proposed: March 18, 1991 at 23 N.J.R. 833(a).

Adopted: May 8, 1991 by the State Board of Medical Examiners, Michael B. Grossman, D.O., President.

Filed: May 10, 1991 as R.1991 d.286, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 45:1-3.2 and 45:9-19.15.

Effective Date: June 3, 1991.

Expiration Date: Spetember 21, 1994.

The Board of Medical Examiners afforded all interested parties an opportunity to comment on the proposed amendment to the Board's fee schedule, N.J.A.C. 13:35-6.13. The official comment period ended on April 17, 1991. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on March 18, 1991 at 23 N.J.R. 833(a). Announcements were also forwarded to: the Trenton Times, the Star-Ledger, the Camden Courier Post, the Medical Society of New Jersey, the New Jersey Hospital Association, the New Jersey Association of Osteopathic Physicians and Surgeons, the University of Medicine and Dentistry of New Jersey, various professional groups, practitioners and other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Medical Examiners, Room 602, 28 West State Street, Trenton, New Jersey 08608.

Summary of Public Comments and Agency Responses:

Two letters regarding the proposed fee increases were received during the official 30-day comment period.

COMMENT: A representative of the American College of Nurse Midwives stated that while she conceded the state of the economy dictates a fee increase to cover the Board's operating expenses, the increases are inequitable. The commenter requested that Certified Nurse Midwives (CNMs) pay 50 percent of the fees proposed for physicians based upon salary differences between CNMs and physicians and the fact that CNM registration fees are proportionately more expensive because CNMs are regulated by both the Board of Nursing and the Board of Medical Examiners.

RESPONSE: The Board states in response that the reforms it is instituting through this fee increase will be available to all of those over whom it possesses regulatory authority. As such, a proportionate fee increase of CNM fees is appropriate.

COMMENT: The Executive Director of the New Jersey Podiatric Medical Society stated that the Board should establish a special lower fee for biennial registration of podiatrists over age 65 without health care facility or HMO affiliation, similar to that established for MDs and DOs.

RESPONSE: The Board has corrected this oversight by amending the fee schedule upon adoption to include a lower biennial registration fee ($85.00) for podiatrists in these circumstances, as required by N.J.S.A. 45:9-19.15.

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

13:35-6.13 Fee schedule

(a) The following fees shall be charged by the Board of Medical Examiners:

1. Medicine and Surgery (M.D. or D.O. license)
   - i.-vi. (No change.)
   - vii. Biennial registration 220.00
   - viii. Biennial registration for licensee over 65 without health care facility or HMO affiliation. 110.00
2. Podiatry (license)
   - i.-iii. (No change.)
   - iv. Biennial registration 170.00
   - ***v. Biennial registration for licensee over 65 without health care facility or HMO affiliation 85.00***
3. (No change in text.)
4. Bio-analytical laboratory directorship, specialty license
   - i.-iii. (No change.)
   - iv. Biennial registration 170.00
5. Midwifery (license)
   - i.-iii. (No change.)
   - iv. Biennial registration 170.00
6. Certified Nurse Midwifery (registration)
   - i.-iii. (No change.)
   - iv. Biennial registration, C.N.M. 170.00
7. (No change in text.)
8. Orthoptist (registration)
   - i. (No change.)
   - ii. Biennial registration 170.00

Recodify existing 10. and 11. as 9. and 10. (No change in text.)

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(a)

DIVISION OF CONSUMER AFFAIRS
BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS

Fees; Certificate of Authorization

Adopted Amendment: N.J.A.C. 13:40-6.1

Proposed: November 5, 1990 at 22 N.J.R. 3315(a).
Adopted: April 22, 1991 by the Board of Professional Engineers and Land Surveyors, Lewis H. Conley, Jr., President.
Filed: May 10, 1991 as R.1991 d.285, **without change.**
Authority: P.L. 1989, c.276, §9(a).
Effective Date: June 3, 1991.
Expiration Date: August 3, 1995.

The State Board of Professional Engineers and Land Surveyors afforded all interested parties an opportunity to comment on the proposed amendment to N.J.A.C. 13:40-6.1. This amendment to the Board's fee schedule establishes a fee, pursuant to P.L. 1989, c.276, for the issuance of certificates of authorization to general business corporations offering to provide engineering or land surveying services in New Jersey. The official comment period ended on December 5, 1990. Announcement of the opportunity to respond to the Board appeared in the New Jersey Register on November 5, 1990 at 22 N.J.R. 3315(a). Announcements were also forwarded to: the Star Ledger, the Trenton Times, the New Jersey Society of Professional Engineers, the New Jersey Society of Professional Land Surveyors and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Board of Professional Engineers and Land Surveyors, Post Office Box 45015, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

Two comments were received during the official 30-day comment period.

COMMENT: Paul M. Sterbenz, P.E., P.P., stated that the regulation does not contain a procedure to amend the Certificate of Authorization if a licensed individual designated on the certificate leaves the corporation or if other licensees not listed are given authority to sign documents. The commenter suggested that this procedure and any associated costs should be included in the regulation.

RESPONSE: The Board points out that the amendment to N.J.A.C. 13:40-6.1, the Board's fee schedule, was merely to establish the fee for the application process. A new rule detailing all requirements in connection with the issuance of certificates of authorization will be proposed in a future issue of the New Jersey Register.

COMMENT: H. Clay McEldowney, P.E., L.S., P.P., stated that the proposed rule fails to stipulate whether the certificate of authorization fee is to be dedicated for the Board's use in administering its office or whether such fee will be paid to the State Treasury for general purposes. The commenter stated that in order for the Board to be assured that professional corporations receive benefit commensurate with the fees they pay, any fee paid should be paid directly to the State Board.

RESPONSE: The Board states in response that, in accordance with N.J.S.A. 45:1-3.2, all fees established by the Board are used to defray all proper expenses incurred by the Board in the performance of its duties. Furthermore, as required under the statute, Board fees are calculated not to exceed the amount necessary to fund the Board's administration.

Full text of the adoption follows:

13:40-6.1 Fee schedule

(a) (No change.)

(b) For a Certificate of Authorization issued pursuant to P.L. 1989, c.276, general business corporations offering to provide engineering or land surveying services in New Jersey shall pay a fee of $120.00 for a biennial period, or $60.00 per year.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Speech Language Specialist Endorsement

Adopted Amendment: N.J.A.C. 6:11-11.9

Proposed: February 19, 1991 at 23 N.J.R. 336(a).
Adopted: May 1, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.
Filed: May 10, 1991 as R.1991 d.282, **without change**.
Authority: N.J.S.A. 18A:1-1, 18A:4-15, 18A:6-7, 18A:6-34, 18A:6-38 and 18A:26-10.
Effective Date: June 3, 1991.
Expiration Date: September 21, 1995.

Summary of Public Comments and Agency Responses:

One individual spoke at the February 20, 1991 public testimony session provided by the State Board of Education and three individuals provided written comment.

The summary includes the issues raised and heard by the Board at the public testimony session. The Board did not use a hearing officer at this hearing.

A copy of the public testimony session may be reviewed by contacting the State Board of Education Office at (609) 292-0739.

Written comments were received from the following:

Ms. Carol Jaccodine
Hamburg Public School
Lindwood Avenue
Hamburg, N.J. 07419

Ms. Lucy Altersitz Oldt
Box 237 C, RD #2
Swedesboro, N.J. 08905

Ms. Deborah Duffield
Speech Language Pathologist
1052 Kells Court
Toms River, N.J. 08753

The following speaker gave testimony on February 20, 1991:

Ms. Ria Barry
N.J. Speech Language Hearing Association

COMMENT: One individual inquired whether the formerly issued speech correctionist certificates would remain valid if the language of rules governing child study teams are amended to include the title, Speech-Language Specialist.

RESPONSE: Yes. The Speech Correctionist Certificate entitles the holder to serve in the job title, Speech-Language Specialist.

COMMENT: The same individual wanted to know if all speech-language specialists must meet the requirement of two years of provisional employment.

RESPONSE: Provisional employment is not a requirement. Instead, candidates who hold master's degrees in speech-language pathology but who lack prescribed education coursework are permitted to obtain provisional employment for up to two years. During this time they must complete education coursework for standard certification.

COMMENT: One person commented that candidates who apply for the Speech-Language Specialist Certificate under the proposed rule should not be required to pay a certificate fee.

RESPONSE: Certificate fee payment is prescribed by law and fee amounts are specified in N.J.A.C. 6:11-3.2. Certificate fee statutes reflect a view that the public should not bear the full cost of qualifying individuals for gainful employment.

COMMENT: Two persons commented that some speech correctionists hold master's degrees in fields other than the required area of Speech-Language Pathology, but they possess substantial graduate or undergraduate courses in that field.

RESPONSE: Generally, courses collected piecemeal and accepted after the fact are not collectively equivalent to a coherent program of preparation. However, candidates who believe that their education and experiences are equivalent to prescribed preparation may, pursuant to

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N.J.A.C. 6:11-3.23 through 3.28, petition the State Board of Examiners for issuance of a certificate.

Full text of the adoption follows.

6:11-11.9 Speech-language specialist

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

(c) The requirements for the speech-language specialist endorsement are as follows:

1. (No change.)

2. Graduate or undergraduate coursework in the areas listed below which is taken within or in addition to the Master's program. Job candidates who possess a Master's degree in Speech-Language Pathology and meet all other requirements for certification except the following three study areas may be employed provisionally for a period of two years until these requirements are met.

i.-ii. (No change.)

iii. Applications of speech-language pathology to the school setting, including such topics as Speech Program Development, Clinical Problems in the Public Schools and Administration of Speech and Hearing Programs in the Public Schools;

3.-4. (No change.)

(d) Individuals who hold a valid New Jersey speech correctionist endorsement and a Master's degree in Speech-Language Pathology shall be issued the speech-language specialist endorsement upon submission of a completed application and payment of fees pursuant to N.J.A.C. 6:11-3.

(a)

STATE BOARD OF EDUCATION

School Employee Physical Exams

Adopted Amendments: N.J.A.C. 6:29-7.3 and 7.4

Proposed: February 19, 1991 at 23 N.J.R. 336(b).

Adopted: May 1, 1991 by State Board of Education, John Ellis, Secretary, State Board of Education and Commissioner, Department of Education.

Filed: May 10, 1991 as R.1991, d.283, **with technical and substantive changes** not requiring additional public notice or comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 18A:1-1, 18A:4-10, 18A:4-15, 18A:16-2, 18A:16-3, 18A:16-4, 18A:35-5 and 18A:40-16.

Effective Date: June 3, 1991.

Expiration Date: February 8, 1995.

Written comments received from the following:

Ms. Rosemarie Arnold, R.N.
Hunterdon County School Nurses Association

Mr. Robert Broderick
Associate Director
Government Relations
New Jersey Education Association

Ms. Beaulah J. Clawson, R.N.
School Nurse

Ms. Arlene Cusick
President
Essex County School Nurses Association

Ms. Doris Dague, R.N., M.A.
District Chairperson
School Health Services

Frances J. Dunston, M.D., M.P.H.
State Commissioner of Health
New Jersey Department of Health

Ms. Joan Fairess, R.N., M.A.
Head School Nurse

Ms. A. Feldman, R.N.
President
Burlington County School Nurses Association

Ms. Ruth Halter, R.N., B.A.
School Nurse
Bridgeton Middle School

Ms. Tozia B. Hemecker, M.S.N., R.N.C.
School Nurse Supervisor
Wayne Township Public Schools

Ms. Mary Ellen Kreps, R.N., B.A.
President
Gloucester County School Nurses Association

Ms. Jan Kroemmelbein
Secretary
Hunterdon County School Nurses Association

Ms. Patricia Montalto
Policy Chairman
Little Falls Board of Education

Ms. Marguerite Pfeiffer, R.N.

Ms. Elaine Porter
President
Passaic County School Nurses Association

Ms. Suzanne E. Raymond, Esq.
Gutfleish and Davis, Counselors at Law

Ms. Dorothy Stier, R.N.
Frenchtown Elementary School District

Commenter at the December 18, 1990 public testimony session:
Mr. Robert Broderick
Associate Director
Government Relations
New Jersey Education Association

Commenter at the February 20, 1991 public testimony session:
Mr. Robert Broderick
Associate Director
Government Relations
New Jersey Education Association

Commenter at the April 17, 1991 public testimony session:
Nikki Feldman
President
Burlington County School Nurses Association

Summary of Public Comments and Agency Responses:

The Department had one speaker at each of the following monthly public testimony sessions provided by the State Board of Education; one in December 1990, one in February 1991 and one in April 1991. Seventeen written comments were received.

The summary includes the issues raised and heard by the Board at the public testimony sessions. The Board did not use a hearing officer at these sessions.

Copies of the public testimony sessions may be reviewed by contacting the State Board of Education Office at (609) 292-0739.

COMMENT: A commenter suggested the definition "employee assurance statement" would be clarified by revising the language to read "a statement signed by the employee, certifying that to the best of his or her knowledge, he or she is fit to perform with reasonable accommodation in the position he or she seeks or currently holds, and poses no health risk to students and other employees."

RESPONSE: The Department declines to change the definition language. The language proposed by the commenter is addressed by the revised language in N.J.A.C. 6:29-7.4(e).

COMMENT: The same commenter suggested the terms "physical examination" and "medical examination" are being used interchangeably by school districts, and direction related to the terms should be provided to school districts.

RESPONSE: The Department's dissemination of information to districts related to school employee physical examinations will direct further attention to the distinctions between these definitions.

COMMENT: A commenter opposed N.J.A.C. 6:29-7.3, and recommended that the school nurse be included in the district's development of policies and procedures in this area.

RESPONSE: The Department declines to make the suggested change as current language provides for the district boards of education to develop policies and procedures in consultation with the district medical inspector.

COMMENT: Three commenters suggested that the term "immunization status" used in the health history requirements, is difficult to understand.

RESPONSE: The Department agrees and "record of immunizations" will replace "immunization status." Guidance regarding immunizations for adults can be found in the referenced document. *Adult Immunization: Recommendations of the Immunization Practices Advisory Committee (ACIP).*

COMMENT: A commenter recommended including a listing of current medications as part of the physical examination for new employees.

RESPONSE: The Department disagrees with the recommendation as employees have the option of sharing medical information, including medications, with the building principal and/or the school nurse, if they so choose.

COMMENT: A commenter recommended a requirement for drug testing and testing for AIDS, the latter for the protection of faculty and students if exposed to blood.

RESPONSE: Current code, N.J.A.C. 6:29-2.5, requires the adoption of universal precautions when handling blood and body fluids from any student or employee, which is all that is necessary for protection.

COMMENT: A commenter recommended deleting N.J.A.C. 6:29-7.4(c) and substituting a single paragraph that addresses the requirements for an annual submission of an updated health history with an assurance statement because the current language was confusing.

RESPONSE: The Department agreed and condensed the language of N.J.A.C. 6:29-7.4(c) into one paragraph and also deleted the phrase "undergo an annual physical examination" because it was causing confusion as well. The term physical examination as it is defined within this rule means annual submission of an updated health history with an

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assurance statement. This requirement for health history and the assurance statement has not been changed; rather the phrase physical examination has been removed from the subsection because it was misleading.

COMMENT: The same commenter suggested some district boards of education have requirements beyond those mandated within the code.

RESPONSE: The proposed rules state the minimum requirements, but district boards of education may go beyond the minimal provisions established.

COMMENT: A commenter recommended substituting a card with non-medical emergency information in place of the annual employee physical examination, and providing for the employee to share information related to their health history. The card would be on file with the school nurse.

RESPONSE: The Department declines to make the requested change as there is nothing within this code which precludes a district from requesting non-medical information. Employees have the option of sharing health information, including current medications, with the school nurse and/or building principal.

COMMENT: The same commenter and two additional commenters recommended sharing the health information with the school nurse, in addition to the building principal, if the employee chooses to do so.

RESPONSE: The Department agrees and has made the change upon adoption.

COMMENT: One of the above commenters requested that for clarity the word "provide" be substituted for "include in the health history" in N.J.A.C. 6:29-7.4(d).

RESPONSE: The Department agrees and has made the change upon adoption.

COMMENT: A commenter recommended access to employee medical information be extended to include board attorneys in addition to the employee, chief school administrator and the school medical inspector.

RESPONSE: The Department rejects the suggested change to provide the board attorney with access to the employee's health record. If a district board requires additional psychiatric or physical examinations the board attorney may be provided access to that information which indicated the evidence of deviation from normal mental or physical health.

COMMENT: Fourteen commenters recommended that the school nurse have access to employee medical records in addition to the employee, chief school administrator and the school medical inspector.

RESPONSE: The Department disagrees with the suggestion as the school nurse does not have an administrative role giving them reason for having access to an employee's health status information. N.J.A.C. 6:29-7.4(d) gives the employee the option to share health information with the school nurse.

Summary of changes made upon adoption:

At N.J.A.C. 6:29-7.4(b)1iv, the agency made the following change to provide clarity: the term "Immunization status" was changed to "Record of immunizations."

At N.J.A.C. 6:29-7.4(b)3, the agency added language to provide assistance to districts and the school medical inspector regarding adult immunizations.

At N.J.A.C. 6:29-7.4(c), the agency revised language to provide clarity. The subsection was condensed into one paragraph and the phrase "undergo an annual physical examination" was removed because it was causing confusion.

At N.J.A.C. 6:29-7.4(d), the school nurse is allowed access to medical records in the current code. In the proposal which was published in the February 19, 1991 New Jersey Register the school nurse was deleted. Based on comments received, a change has been made to allow access by the school nurse to medical information if desired by the school employee.

At N.J.A.C. 6:29-7.4(g), the agency made a change to correct a typographical error. The agency added language to reflect the option employees have of sharing health information with the building principal and/or the certified school nurse if they so choose, as provided for in N.J.A.C. 6:29-7.4(d).

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

6:29-7.3 Policies and procedures for employee physical examinations

District boards of education shall adopt written policies and procedures for the physical examination of employees, and may adopt written policies and procedures for candidates for employment. Such policies shall be based on the advice and recommendation of the district medical inspector, provide for notification to school employees regarding the requirements for physical examinations, and establish procedures to assure confidentiality during the collection, transmission and storage of employee medical records pursuant to N.J.A.C. 6:29-7.4.

6:29-7.4 Requirements of physical examinations

(a) Any candidate for employment may be required to undergo a physical examination that may include, but not be limited to, health history, health screenings and medical evaluation. The preemployment physical examination shall not be used to determine a candidate's disabilities. Such examination shall be used only to determine whether the applicant is able to perform with reasonable accommodation job-related functions pursuant to P.L. 101-336, Americans with Disabilities Act of 1990.

(b) Newly employed staff shall be required to undergo a physical examination which shall include, but not be limited to:

1. A health history completed by the individual or their physician which shall include:

i.-iii. (No change.)

iv. *[Immunization status]* ***Record of immunizations***.

2. (No change.)

3. A medical evaluation which shall include, but not be limited to, *[an assessment]* ***a record*** of *[immunization status.]* ***immunizations. Guidance regarding immunizations for adults may be found in the document Adult Immunization: Recommendations of the Immunization Practices Advisory Committee (ACIP). Copies are available from the Immunization Program, Centers for Disease Control, Public Health, United States Department of Health and Human Services, Atlanta, Georgia 30333.***

(c) Each school employee shall *[undergo an annual physical examination, which shall include, but not be limited to:]*

[1.] ***submit annually*** *[An]* ***an*** updated *[employee]* health history *[of current health problems.]* ***with an assurance statement.***

[2. Any updated information provided in accordance with (c)1 above shall require an assurance statement signed by the employee.] If *[an]* ***the*** employee refuses to *[provide updated]* ***submit this*** information *[with a signed assurance statement,]* the employee shall undergo a physical examination which includes (b) 1 and 3 above.

(d) Individual employees may *[include in the health history,]* ***provide*** health status information, including medications, which may be of value to medical personnel in the event of an emergency requiring treatment. In such instances, an employee may also choose to share with the building principal ***and, if desired, with the certified school nurse,*** information regarding current health status to assure ready access in a medical emergency.

(e) Any examinations or assurances required or permitted by N.J.S.A. 18A:16-2 or this subchapter shall be limited to those assessments or information necessary to determine the individual's physical and mental fitness to perform with reasonable accommodation in the position which he or she seeks or currently holds, and to detect any health risks to students and other employees.

(f) Additional individual psychiatric or physical examinations of any employee may be required by the district board of education whenever, in the judgment of the board, an employee shows evidence of deviation from normal physical or mental health. When a board requires an employee to undergo such an individual examination:

1. The board must provide the employee with a written statement of reasons for the required additional examination. The board, if requested, shall provide the employee with a hearing.

2. The determination of such a hearing shall be appealable to the Commissioner of Education pursuant to N.J.S.A. 18A:6-9 and N.J.A.C. 6:24.

(g) All employee medical records for the district, including computerized records, shall be secured, and shall be stored and main-

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tained separately*[,]* from other personnel files. Only the employee, the chief school administrator and the school medical inspector, shall have access to the medical information in that individual's file. ***The section of the medical record which contains the health history may be shared with the building principal and the school nurse with the consent of the employee as provided for in (d) above.***

(h) Cost for examinations made by a physician or institution designated by the district board of education shall be borne by the district board of education. If, however, the examination is performed by a physician or institution designated by the employee, with approval of the district board of education, the cost shall be borne by the employee.

LABOR

(a)

DIVISION OF WORKERS' COMPENSATION

Rules of the Division of Workers' Compensation

Readoption: N.J.A.C. 12:235

Proposed: March 18, 1991, at 23 N.J.R. 834(a).

Adopted: May 3, 1991, by Raymond L. Bramucci, Commissioner, Department of Labor.

Filed: May 3, 1991 as R.1991 d.275 **without change as to the readoption, but with the proposed amendments not adopted.**

Authority: N.J.S.A. 34:1-20, 34:1A-3(e), 34:1A-12 (b) and (c) and 34:15-64.

Effective Date: May 3, 1991.

Expiration Date: May 3, 1996.

Summary of Public Comments and Agency Responses:

The Department of Labor (Department) received 18 public comments during the comment period concerning the proposed readoption, with amendments, of N.J.A.C. 12:235-1, Rules of the Division of Workers' Compensation (Division). Several of these comments contained a request for a public hearing and requests for an extension of the time period for comment, which was scheduled to expire on April 17, 1991. The requests for a public hearing are denied. The comment period was extended to April 22, 1991 by letter to the New Jersey Bar Association. However, the Department has decided at this time to readopt the existing text of N.J.A.C. 12:235 without change and concurrently repropose amendments to this chapter elsewhere in this issue of the New Jersey Register. This will allow the Department to grant an additional time period for public comment without risking regulatory hiatus. A list of those commenting follows:

1. Alfred H. Hatzman, Esq.
2. Valerie L. Brown, Esq., New Jersey State Bar Association
3. Charles N. Miller and Gerald Rotella, Esqs., WC Committee, Essex County Bar Ass'n
4. Honorable Isaac G. McNatt, Judge of Compensation
5. Honorable Ray A. Farrington, Judge of Compensation
6. Honorable William L. Boyan, Judge of Compensation
7. & 8. Ronald E. Simon, Esq. (2 comments)
9. Anthony C. Famulari, Esq.
10. Charles J. Farley, Jr., Esq.
11. Glenn F. Corbett, Esq.
12. Mark A. Cunningham, Esq.
13. Neil F. Flaherty, Selective Insurance
14. Milton D. Liebowitz, Esq.
15. Kenneth H. Wind, Esq.
16. David Tykulsker, Esq.
17. Robert J. Wegner, Jr., Esq. and Jon L. Gelman, Esq., WC Section, Passaic County Bar Ass'n
18. Allen S. Goldberger, Esq.

All of the public comments received on this proposed readoption are summarized and responded to below.

COMMENT: N.J.A.C. 12:235-3.21(a)5 should indicate an oral reprimand as distinguished from a verbal reprimand as both written an oral reprimands can properly be referred to as verbal reprimands.

RESPONSE: In the proposed amendments, N.J.A.C. 12:235-3.21 has been recodified as N.J.A.C. 12:235-3.19. The Department agrees with the suggested language change, and the section will be amended in the reproposed amendments per the commenter's suggestion.

COMMENT: The two Judges who would serve on the Commission of Judicial Performance (Commission) should be Judges who are not assigned as Supervising Judges or Supervising Administrative Judges.

RESPONSE: The two Judges who are appointed and serve on the Commission are to be retired, pursuant to N.J.A.C. 12:235-3.11(a)1, and thus they would not be Supervising or Supervising Administrative Judges.

COMMENT: The two Judges who would serve on the Commission should be elected by their peers for such duty. The election should be held at a meeting specifically called for that purpose, upon proper notice to all other Judges.

RESPONSE: The Department disagrees. The Judges appointed to the Commission are to be retired Judges, and thus will not be able to influence the Commission members either favorably or unfavorably with regard to their fellow Judges. Additionally, individuals who may be subject to discipline should not be able to select the body which may ultimately recommend that discipline.

COMMENT: Two commenters suggested that the term of office for serving on the Commission should be for two years, and a Judge should not serve in such capacity for more than two consecutive terms.

RESPONSE: The Department agrees with the commenter that the term of office should be for two years, but feels that members may be reappointed for such additional term or terms as the Director shall determine. This language, which duplicates that found in the Pressler, N.J. Court Rules Governing Appellate Practice; Rule 2:15-1 et seq. (N.J. Court Rules), will be incorporated at N.J.A.C. 12:235-3.11(a)1 when reproposing the amendments.

COMMENT: Any Judge who is the subject of any hearing by the Commission, or by any panel of the Commission, shall be notified of the date and time of such hearing. The Judge shall be entitled to be present, in person and by counsel, at any such hearing.

RESPONSE: The Department disagrees. The rules contemplate that the Commission may determine that a matter before it is obviously unfounded, frivolous or relating to a matter solely subject to an appeal. The Department does not believe that the Judge should be notified of these preliminary investigations. Once a preliminary investigation indicates that further inquiry into the matter is necessary, the Judge will be notified and will be entitled to rebut the charges.

COMMENT: The nine members making up the Commission would seem to be subject to some juggling. It is mandatory that two members be retired Judges and at least three members of the Bar; however, the laymen on the Commission shall not be more than four and presumably can be less, thereby permitting the other two classes of members to be increased.

RESPONSE: The commenter has correctly interpreted the composition of the Commission, which was taken directly from the New Jersey Court Rules previously cited.

COMMENT: While there are nine members on the Commission, three-member panels may be designated to conduct an investigation or hearing; however, the action of the entire Commission can consist of a majority of the three conducting the hearing, or two and three members who are only guided by the record but who have not participated in the hearings. Further, if there is no hearing but only an investigation, the quorum can consist of five members who took no part in the investigation. If the Commission is going to recommend the institution of formal proceedings leading to censure, suspension or removal, it would be desirable to have all members of the Commission participating in the investigation or hearing. The suggestion that the chairman of the Commission may establish and designate three-member panels to do the work of the Commission defeats the purpose of inviting nine people to serve on the Commission and, in effect, can create self-serving cliques within the Commission.

RESPONSE: Again, this language was taken directly from the New Jersey Court Rules which govern the practice of the Superior Court Judges. The Commission has been modeled after the Superior Court to the greatest extent possible. The Department believes the Judges of Compensation should be subject to the same standards of conduct and review as are the Judges of the Superior Court. Additionally, having the entire Commission participate in an initial investigation would defeat the purpose of the second investigation, as the Commission would reach a conclusion after only one review process.

COMMENT: The intention of the investigation procedure is to have either an investigation or a hearing and, while a hearing is understood and presumably contemplates the presentation of witnesses and

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evidence—pro and con, the investigation and the bounds thereof are not set forth. Consequently, if a three-member panel conducts an investigation and not a hearing, they will be reporting to the full Commission the results of their investigation which can only be in the form of hearsay statement. When considered in connection with N.J.A.C. 12:235-3.11(c), that a preliminary investigation may be initiated by the Commission on its own motion without a statement, criticism or complaint having been received, the process speaks of a star chamber proceeding.

RESPONSE: While the Department is not in complete agreement with the conclusions drawn by the commenter, in order to avoid any misconception, the authority of a three-member panel established and designated by the Chairman of the Commission shall be limited only to the conduct of hearings and not investigations. Further, in order to eliminate any additional misconceptions, N.J.A.C. 12:235-3.11(c) will be deleted in the reproposed amendments.

COMMENT: The commenter presumes that any preliminary investigation that is conducted, even if it finds no fault with the Judge, will be part of the Judges of Compensation's personnel file. That being the case, he or she should be made aware of even a groundless written statement, criticism or complaint in order that he or she might place in his or her personnel file any statement that he or she deems appropriate.

RESPONSE: The commenter's presumption is incorrect. In the event that a determination is made to make any complaint a part of the Judge's personnel file, the Judge shall be notified.

COMMENT: Pursuant to N.J.A.C. 12:235-3.11(e), if further inquiry is to be entertained, it is done by a verified complaint filed by the complainant. However, the complainant is never required to testify, is not confronted and is not subject to cross-examination. Under N.J.A.C. 12:235-3.11(e)2, the Judge is then given the opportunity of making a statement under oath as he or she deems appropriate. The commenter states that this is similar to defending oneself without having had the opportunity to fully explore the charges.

RESPONSE: N.J.A.C. 12:235-3.11(d) merely defines the manner in which a preliminary investigation may lead to further investigation which, in turn, may lead to the institution of removal proceedings. At this stage, the complainant will be required to appear, testify and be subject to cross-examination. The procedure is designed to limit, rather than to expand, the institution of removal proceedings.

COMMENT: Pursuant to N.J.A.C. 12:235-3.11(g)2, the short, explanatory statement should be made public, particularly if a Judge has been publicly charged.

RESPONSE: The commenter is correct. Such statements will be made public.

COMMENT: N.J.A.C. 12:235-3.11(g)3i should be (g)4.

RESPONSE: The commenter is not correct; "i" is correctly codified as a subparagraph of paragraph 3.

COMMENT: Concerning N.J.A.C. 12:235-3.13(a), the burden of proof to warrant removal has been reduced and is not desirable.

RESPONSE: The Department agrees, and the language will be amended upon reproposal of the amendments to raise the burden of proof to "beyond a reasonable doubt."

COMMENT: Former N.J.A.C. 12:235-3.16(b) has been omitted and, therefore, the subpoena power of both parties has been eliminated.

RESPONSE: The Department agrees and will include a paragraph allowing both parties subpoena power in the reproposed amendments.

COMMENT: N.J.A.C. 12:235-3.18(b) identifies a third proceeding that is, "Any action" is presumably different from an investigation or hearing previously identified in the rules and may be conducted in a summary manner. This commenter does not know what action is contemplated nor what a summary manner is. Therefore, on its face, the rule is void for vagueness.

RESPONSE: The Department agrees that the language is vague, and will amend the paragraph to more accurately reflect the intent of the rule in the reproposed amendments.

COMMENT: Forms of discipline outlined at N.J.A.C. 12:235-3.19 seem totally appropriate after a formal hearing; however, all five forms of discipline can be imposed after an informal hearing without the safeguards of a formal hearing and no procedure is set forth for an informal hearing, nor is its scope defined. Further, N.J.A.C. 12:235-3.19(a)1 flies in the face of N.J.A.C. 12:235-3.17.

RESPONSE: The Department agrees with the commenter, and will amend the section upon reproposal to delete reference to an informal hearing. Additionally, the fine penalty will be deleted.

COMMENT: N.J.A.C. 12:235-5.2(b)2 is honored in the breech more than its observance. Motions for temporary or medical benefits are often received and listed for hearing without any supporting documentation. Further, while it provides for a certification made by the petitioner based on this personal knowledge describing ". . . the medical diagnosis and the specific type of treatment . . .," for the most part, if the motion is supported by a certification, it is merely a net opinion that "I hurt and I want treatment."

RESPONSE: The current practice in the Division is to review all motions for medical and temporary benefits for completeness before they are listed for hearing. For the most part, this directive is observed and very few, if any, motions for medical and temporary benefits are listed without supporting documentation.

COMMENT: N.J.A.C. 12:235-5.2(c) contemplates knowingly filing an incomplete Notice of Motion. However, the imposition of penalty is no longer mandatory but is now discretionary (may has been substituted for shall). This is inconsistent with N.J.A.C. 12:235-5.4(f) where an incomplete, inaccurate or frivolous motion for third party joinder is knowingly filed, and circumstances *shall* be considered. Insofar as the respondent is concerned, the imposition of penalty is not discretionary but mandatory. Both petitioner and respondent should be treated the same.

RESPONSE: The Department agrees, and the language contained in N.J.A.C. 12:235-5.4(f) will be amended upon reproposal of the amendments to make the penalty discretionary. Additionally, the maximum opposing counsel fee will be changed to $200.00, rather than $500.00, and the language will be clarified upon reproposal to provide that the counsel fee applies to each party sought to be joined. Seven commenters raised similar concerns about the penalty provisions.

COMMENT: Pursuant to N.J.A.C. 12:235-5.2(e), the motion and deficient certification by rule constitutes a *prima facie* case and, if not rebutted, *"shall"* be sufficient basis for the issuance of an Order compelling the respondent to provide the medical treatment sought. What this means is, despite a legally insufficent motion, the respondent will be compelled to provide treatment or temporary disability since by rule, the deficient pleading has been raised to the level of a *prima facie* case. At the very least, *may* should be used instead of *shall*.

RESPONSE: The vigorous enforcement of N.J.A.C. 12:235-5.2(b) will resolve the concerns raised by the commenter, as subsection (e) contemplates compliance with subsection (b).

COMMENT: N.J.A.C. 12:235-5.6(g) provides for deposition of witnesses. Presumably, this is intended in lieu of live, oral testimony before the trier of fact and law—the Judge of Compensation. The commenter is loathe for the trier of fact not to see, observe and assess the credibility of the deponent. This depersonalizes the process and makes it one more step removed from a true adversary proceeding. Further, if depositions are to be entertained in addition to regular court schedules and cases which will be placed on the continuous trial list after four hearing dates, there will be a time problem which cannot be overestimated for practitioners in the Division.

RESPONSE: The deposition of witnesses contemplated by this section must be upon motion for good cause shown and subject to the approval of the Judge of Compensation, who may determine whether or not he or she wishes to observe the deponent. With regard to conflicting court schedules, the Department and Division are confident that any Judge who allows depositions upon good cause shown will be considerate of any time constraints on the parties involved.

COMMENT: N.J.A.C. 12:235-5.9(b) is often confused and used to override N.J.A.C. 12:235-5.9(a)5. There are often times that medical examinations have not been ordered inasmuch as discovery is not yet complete, hospital records have not been obtained, physician records not obtained, etc. A slavish adherence to the rule that an examination date must be supplied gives no credence to the medical examination. It is not just a matter of getting the body in and a number placed on the case. If the doctor is to render a sound medical opinion regarding diagnosis, causal relationship and permanent disability, everything should be in front of him.

RESPONSE: In order to assure the orderly progress of cases, it is essential that responsible adjournments be granted. In order to do so, the Judge of Compensation must know the dates of all examinations. However, when it is apparent that the gathering of medical information is necessary to the proper preparation of a case, an adjournment for that purpose may be allowed in the discretion of the Judge.

COMMENT: Concerning N.J.A.C. 12:235-5.10(m), both petitioners and respondents rely on a select group of physicians to testify as medical experts in workers' compensation matters. A rule compelling those medical experts to adhere to the Division's vacation schedule is not efficient. The rules say that the Judge of Compensation may require a

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party to obtain another expert, if that witness is not available because of "an unexcused absence." Examination by another expert may be ordered causing additional expense, additional delay and an opinion different from that of the vacationing expert and one that may be less desirable from the client's point of view.

RESPONSE: The Department and Division recognize the right of parties to rely on physicians of their own choosing. However, when a physician elects to examine literally thousands of people in conjunction with their workers' compensation cases, the Department and the Division feel that those physicians should be subject to a somewhat liberal vacation schedule and be available to testify as required according to the Court's schedule and not to their own personal vacation schedule. The New Jersey Workers' Compensation court system cannot function based upon the availability of physicians who control the vast majority of pending cases before the Division.

COMMENT: Concerning N.J.A.C. 12:235-5.10(r), a developing practice in the Division is for an attorney to serve an ex-parte subpoena for the production of medical records, documents, etc. (usually upon a respondent) and not make the subpoena returnable before the Judge of Compensation. This is an abuse of the Division's subpoena power and violates R.R. 4:14-7(c).

RESPONSE: Violation of these rules by any party may be brought to the attention of the Judge before whom the matter is pending for appropriate relief.

COMMENT: The commenter states that N.J.A.C. 12:235-5.10(u) might be interpreted to shorten the time to file an appeal should there be a significant delay between the date of signing and the date the appealing party receives a copy of the judgment, if ever.

RESPONSE: This rule is intended only to avoid confusion as to when the time for approval starts to run. It is not meant to shorten the time for appeal.

COMMENT: With regard to the Second Injury Fund procedures outlined in N.J.A.C. 12:235-7.1(b)2, a problem will arise if a trial is started before Judge A with the participation of the Deputy Attorney General representing the Fund and then placed on the respondent's regular list; however, that list is before Judge B. On that day, the attorney will have to interrupt the handling of his list before Judge B to the detriment of that list and appear before Judge A to continue the Fund case.

RESPONSE: The Department agrees that this section will result in problematic case handling, and it will be deleted in its entirety upon reproposal of the amendments.

COMMENT: N.J.A.C. 12:235-7.3(a) comtemplates the payment of permanent total disability prior to a determination of Fund liability. Presumably, this will be an interim order subject to review by the Appellate Division similar to an order for the payment of temporary disability. However, should the paying respondent commence the payment without an appeal until Fund liability has been determined and should he then be successful on appeal proving that petitioner is not permanently totally disabled, from whom does he collect the overpayment of permament total disability?

RESPONSE: This section merely requires the respondent to commence payments pursuant to a valid judgment of the Court. If the respondent feels aggrieved by that judgment, an appeal may be filed and a stay of the Order to pay may be sought.

COMMENT: With regard to N.J.A.C. 12:235-14.2(a), the commenter is concerned that this rule might be used to deny a petitioner benefits when he is aware that his employer is without insurance, has been lulled into taking no action for more than 45 days and then consults with an attorney who promptly notifies the Fund that benefits will be sought; however, the 45 days has expired. Two commenters raised similar concerns.

RESPONSE: The Department and Division agree with the commenters, and appropriate language changes will be made upon reproposal of the amendments. The rule is certainly not intended to deny any type of benefits to an injured worker.

COMMENT: The commenter suggests that all cases that involve the disposition of claims involving scheduled losses (hands, feet, arms, legs, etc.) be submitted to the Court on discontinuous forms that would not necessitate a hearing before the Judge of Compensation. These cases could be disposed of without the necessity of a petitioner coming to Court. He could sign a discontinuance. The attorneys for each of the parties could sign it, and a Judge of Compensation could sign it after reviewing both sides' medical reports. It does not seem to make a lot of sense to having hearings conducted in which relatively minor awards are made, and it would seem to the commenter that this would expedite the process.

RESPONSE: The Department disagrees. This practice would constitute a denial of due process, a failure to comply with the mandates of *Perez v. Pantasote Inc.*, 95 N.J. 105 (1984) and a failure to provide a record from which an application for review or modification of award or appeal can be taken.

COMMENT: The commenter suggests that if the attorneys are able to settle claims from their offices, the cases ought to be able to be put through in one vicinage, even though the claims may be in several vicinages. Petitioner's and respondent's attorneys could settle several claims. The respondent may have a regular day in Newark. Some of the settled cases may be in Elizabeth or Jersey City. The petitioner could notify the Court ahead of time that there are several settled cases, including cases from other vicinages that he would be desirous of putting through on the respondent's regular day in Newark. Those cases could be put through in an expeditious fashion and the resulting judgments forwarded to the office where the case was pending and the cases could be closed in that manner. This would encourage out-of-court negotiations between attorneys to expedite those cases that may lend themselves to early settlements.

RESPONSE: Notwithstanding the fact that there is no production requirement for Judges of Compensation, it is felt that claims should be disposed of in the vicinage in which they are filed. However, in order to accommodate the injured worker and his or her attorney, and to encourage out-of-court negotiations, the procedure suggested by the commenter will be considered by the Division in conjunction with future rule amendments.

COMMENT: The commenter recommends that, at least on an experimental basis, examining physicians' testimony could be taken on the speaker-phone in chambers where the Court Reporter can take down the testimony stenographically. The Court and attorneys can be present and question the doctor by phone. Some of them will go to no more than one Court a day, and consequently, this represents the biggest cause of delay in the disposition of cases. The telephone company presently has available telephones with a screen so that the witness could be seen on the screen. Physicians could pay for the TV screen phones to be put in the Court because in the long run they would make a great deal more money. They would not have to leave their offices to come and testify, and the system would benefit by an expeditious resolution of many cases.

RESPONSE: The use of a speaker-phone to take physicians' testimony has been used on a limited basis and is permitted, subject to the approval of the Court. The television screen concept appears to have merit, subject to budgetary constraints. Private physicians cannot pay for or be expected to pay for equipment used by the State.

COMMENT: In Second Injury Fund cases, if the petitioner's and respondent's attorneys agree on what percentage of total disability the carrier should pay, and the Fund is unwilling to participate in the proposed settlement, petitioner and respondent, with the approval of the Court, should be able to settle their phase of the case, and petitioner should then proceed against the Fund. In this manner, the injured petitioner would receive his benefits immediately. Many never live to receive the Fund benefits. If the case is not settled, the litigation takes months, and often in excess of a year, often to the hardship of the petitioner, himself.

RESPONSE: Unless the parties agree that the petitioner is totally and permanently disabled as a result of the last compensable accident, the issue of total disability and the apportionment thereof must be addressed by a Judge of Compensation, after a fully litigated trial.

COMMENT: The rules proposed by the Division require that if the Commission finds sufficient cause to recommend formal proceedings which may lead to censure, suspension or removal of a Judge of Compensation, such recommendation may be made only upon the affirmative vote of five members of the Commission who have considered the record including at least two of whom who were present at any hearing in which oral testimony was produced. In contrast, Rule 2:15-3(a) requires the affirmative vote of at least three members of the Committee present at any hearing at which oral testimony was produced.

RESPONSE: The Department agrees with the commenter and this provision will be amended in the reproposed amendments to the existing rules.

COMMENT: N.J.A.C. 12:235-3.11 as proposed permits the institution of a preliminary investigation into violations of any law, rule, regulation, policy or procedure of the Division, the Department of Labor or the State of New Jersey. There is no similar language in Rule 2:15-1 et seq. Moreover, the language in question is sufficiently broad as to constitute an attempt to interfere with the judicial independence of each of the Judges of Compensation. There is little doubt that this language would

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conflict with a regulation, policy or procedure was adopted administratively and not as a result of litigation.

RESPONSE: The commenter is referring to language that existed in the former rules which were declared invalid by the Appellate Division, Superior Court. As reproposed, N.J.A.C. 12:235-3.11 does not contain language that would permit Judges of Compensation to be disciplined for violating any law, rule, regulation, policy or procedure of the Division, Department of State of New Jersey.

COMMENT: N.J.A.C. 12:235-3.11(g)2 may be taken from Rule 2:15-11, but as written in this rule, is confusing at best and should be rewritten using the clear language of Rule 2:15-11(b).

RESPONSE: The Department disagrees. The language is identical in content and intent to that found in the New Jersey Court Rules. This section will remain unchanged when amendments to the rules are reproposed.

COMMENT: N.J.A.C. 12:235-3.11 directs that if the Commission makes a finding, the Director shall take action as deemed appropriate. At this stage the rule departs from Rule 2:15-1 et seq. which then sets forth in the Appellate Court a procedure for a formal hearing. N.J.A.C. 12:235-3.11 vests in the Director unbridled discretion to take any action deemed appropriate.

RESPONSE: The Department agrees with the commenter and upon reproposal of the amendments has amended the language at N.J.A.C. 12:235-11 to allow the Director to recommend action to the Commissioner, who shall make the final agency determination.

COMMENT: N.J.A.C. 12:235-3.12, regarding physical capacity to preside, likewise vests in the Commissioner unbridled discretion to require a Judge to take an indefinite leave due to severe incapacitating disease or severe incapacitating injury. Such a rule might be permitted provided that the Judge alleged to be incapable of presiding had alternatives to contest such a ruling by the Commissioner but no such provision is incorporated in the rules. Similarly, N.J.A.C. 12:235-3.11 is flawed.

RESPONSE: Again, the commenter is referring to sections which were deleted by the Department in the originally proposed readoption with amendments.

COMMENT: N.J.A.C. 12:235-3.14 is patently unconstitutional. A Judge of Compensation may be removed from office only where he or she has been convicted of a crime requiring forfeiture of office or when impeached. Insofar as this rule purports to provide additional grounds for removal, it must fail. Furthermore, N.J.A.C. 12:235-3.14(a)5 of this rule, which allows for removal of a judge for the accumulation of two or more unsatisfactory evaluations by the Director, places in the Director sufficient power over the Judges of Compensation to effectively remove their independence and is not only unconstitutional but repugnant.

RESPONSE: The Department agrees that the commenter is correct, with regard to the forfeiture of office or impeachement comment. The text has been changed to allow removal of Judges only if they are convicted of an indictable offense, are found incapable of executing the duties of the office, or have committed an enumerated offense, pursuant to N.J.S.A. 2C:51-2. (It is noted that there is no N.J.A.C. 12:235-3.14(a)5, because the commenter has referred to Code text which had been deleted by the Department in the originally proposed readoption with amendments.)

COMMENT: N.J.A.C. 12:235-3.17 regarding suspension with or without pay is unconstitutional. The Commissioner may have an opportunity to suspend a Judge of Compensation pending removal proceedings, but unless impeached, a Judge of Compensation is entitled to continue to receive his or her salary.

RESPONSE: As proposed with the readoption and as reproposed, N.J.A.C. 12:235-3.17 has been recodified as N.J.A.C. 12:235-3.15, and the "without pay" language deleted.

COMMENT: N.J.A.C. 12:235-5.2(e) provides that a motion for medical and temporary disability benefits may be supported by affidavits, certifications and medical reports in support of the motion. It is unclear from this rule whether an affidavit or certification by the claimant in and of itself is sufficient to support the motion or must medical reports be attached as well. Subsection (g) of the rule states in part, "Under no circumstances shall briefs be filed later than 15 days after the hearing." Is it contemplated under this rule that there can not be any exceptional circumstance which might result in the filing of a brief more than 15 days after the date of the hearing? If so, the rule is unrealistic and probably a denial of due process. Two other commenters expressed concerns with the same rule provision.

RESPONSE: The commenter's statement concerning the supporting affidavits for motions for medical and temporary benefits has been addressed in a previous response. Concerning the filing of briefs post 15 days, the Division is concerned that any extension beyond this time would interfere with the timely payment of benefits in these emergent matters, which is contrary to the intent of the Act.

COMMENT: N.J.A.C. 12:235-5.4 repeats the error in the rules previously adopted of requiring a moving party to show a "substantial likelihood" that a party to be joined may be liable for compensation benefits. Not only does this contradict established case law, but "substantial likelihood" is not defined.

RESPONSE: The Department agrees with the commenter and in the reproposed amendments will delete the term "substantial likelihood."

COMMENT: N.J.A.C. 12:235-5.8, Certification for pre-existing conditions, duplicates the requirement for filing a Second Injury Fund Application. The rule might better require that an individual filing such an application provide copies of the petition and all available medical records to all parties at the time of the filing of the Application.

RESPONSE: The Department disagrees. The Second Injury Fund Application is certified, and this section requires a verification and is designed to more fully inform counsel for respondent and facilitate the resolution of the matter.

COMMENT: N.J.A.C. 12:235-5.9, Pre-trial conferences, imposes a new rule requiring that the Judge and the attorneys agree upon the type of examinations required by each party. Frankly, the only time a Judge should become involved in determining which type of examinations each party should obtain is at the final pre-trial conference, at which time a pre-trial memorandum is to be executed. Until that time, a determination as to what examinations are to be ordered is solely within the discretion and province of the attorneys for the respective parties. Some attorneys routinely order many examinations which are not really necessary and respondents should not automatically be required to obtain medical evaluations to controvert all such allegations unless it becomes clear that a settlement of the matter is not possible and that trial is likely. To require otherwise would be to unnecessarily delay cases by obtaining unnecessary medical evaluations and to enrich those physicians who would benefit from strict adherence to any such rule. One other commenter expressed similar concerns with the section.

RESPONSE: The Division disagrees. The rule is extremely important and is necessary to ensure that all necessary examinations are obtained by both parties, so that the issue is joined quickly in order to proceed with the case as expeditiously as possible. It is further contemplated that the implementation of this rule may serve to eliminate the necessity of a respondent obtaining an unnecessary examination. Further, it is the responsibility of a Judge of Compensation to ensure that each petitioner's claim is pursued in the most appropriate manner which, in many cases, can only be determined after a conference and a review of all treating reports and hospital records.

COMMENT: N.J.A.C. 12:235-5(b) is impractical. Frequently, respondents will request that the petitioner schedule an evaluation with an examining physician of its choice but does not know the date of the examination inasmuch as it is within the petitioner's province once the examination is requested. Unless the rule is clarified to indicate that once requested it is the petitioner's obligation to schedule appropriate medical evaluations, a request by a respondent to adjourn a matter pending an examination should be granted provided the respondent indicates that the examination has been requested.

RESPONSE: The purpose of the rule is to enable the Judge of Compensation to adjourn a case in order that a meaningful pre-trial conference may be conducted. Since the respondent knows the doctor or doctors by whom examinations have been requested, he or she can readily obtain the dates of examination. This section will be reproposed without change in the reproposed amendments published in this issue of the N.J. Register.

COMMENT: N.J.A.C. 12:235-5.10, Conduct of formal hearings, incorporates in subsection (e) a long overdue change in the rule. However, the rule should be clarified and the language changed from "Said scheduling may be accelerated as ordered by the Director," to "Said scheduling may be accelerated as ordered by the Director upon a showing of good cause." By imposing a requirement of good cause for the acceleration of a case, meritorious cases would not be bypassed to accommodate the "squeaky wheels" or cases in which no acceleration is necessary, that is, no hardship of any of the litigants. Two commenters had similar suggestions to avoid the appearance of concentrated power in the Director.

RESPONSE: The Department agrees and will change the language upon reproposal to also allow the Supervising Judge and the Judge of Compensation before whom the case is listed to accelerate the listing. A showing of good cause has not been included, as the Department

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believes that it should be within the discretion of the judges to list cases in the manner they deem appropriate with or without a showing of good cause.

COMMENT: N.J.A.C. 12:235-7.1, as amended, is an improvement over the current rule in that it permits representatives of the Second Injury Fund to participate in the trial through the testimony of the petitioner. However, as drafted, the rule then imposes requirements upon petitioners, respondents and Judges which are impractical, at best. Starting a trial before a Judge assigned to a Second Injury Fund list and then transferring that trial to the respondent's regular day, a day which might be before a different Judge, requires the Judge who started the case to interrupt his regular list and the respondent to either ignore his regular list or delay the Second Injury Fund trial until he has concluded his regular list. Once started, a case should remain on the day on which it is started. Two other commenters had the same or similar concerns about the Second Injury Fund procedures.

RESPONSE: The Department agrees with the commenter and in the reproposed amendments, N.J.A.C. 12:235-7.1(a) has been rewritten to address the commenter's concerns specifically. After careful consideration and in an effort to avoid any problems with regard to the rescheduling of Second Injury Fund cases, the Department has decided that the representatives of the Fund will no longer be permitted to participate in the initial stages of the trial. This procedure should ensure a more orderly trial of fund cases in the initial stage. When one considers that at the present time there are only three Deputy Attorney Generals representing the Second Injury Fund and there are 1,988 cases pending, it would be virtually impossible to address these most serious cases in an expeditious manner. The rule will be amended to move as many Fund cases as possible while ensuring that the Second Injury Fund has an opportunity to participate as fully as it wishes, after a decision of total disability has been rendered and there appears to be a potential basis for Fund liability.

COMMENT: N.J.A.C. 12:235-7.3 is an improvement in that it does require the Fund to reimburse an employer who has paid in excess of the amount for which it has been held responsible, but it is unfair in that it requires such an employer to make, for all practical purposes, an interest-free loan to the Fund pending a determination of the Fund Application.

RESPONSE: The Department is satisfied with the language as drafted, and this section will remain unchanged upon reproposal of the amendments. The section is designed to ensure continuation of benefits to a worker declared totally and permanently disabled, and is further designed to encourage the respondent to move promptly against the Fund. The commenter's characterization of the Fund's reimbursement of an employer as an "interest free" loan is inaccurate, as the initial payment of the money represents the payment of benefits that are due and owing by the respondent-employer or the respondent's carrier.

COMMENT: Two commenters objected to the deletion of N.J.A.C. 12:235-5.10(i), bifurcation of any trial. Bifurcation of a trial in workers' compensation is a very useful tool and should not be eliminated. Many petitioners cannot afford to pay doctors to testify on their behalf only to find out that they have lost the case in the initial stages. This only benefits the respondents who will stand tough, knowing that the petitioner may have difficulties with his case and perhaps force the petitioner to throw in the towel or dismiss his case by consent without any payments whatsoever because he cannot afford to pay the doctors to testify in a case where the accident has been denied, or exposure is denied. Petitioners may be forced to accept unconscionably low settlements. With bifurcation, if a dismissal is entered, the time for medical testimony is eliminated. If the matter is compensable, less time will be required to conclude the resolution of the issue of permanency.

RESPONSE: The Department concurs with the commenters. As a result of administrative oversight, this paragraph was deleted. However, it will be reproposed in the amendments so as to provide for bifurcation of trials.

COMMENT: Two commenters expressed concerns about a possible conflict of interest on the part of the Division in assessing liability against the Fund. The Division is now funded out of the surplus of the Second Injury Fund, and it can be alleged that there is a motive in delaying or not establishing proper responsibility on the Fund so as to protect that surplus and have more money available for the administration of the Division. Although the system builds in certain checks and balances for transfer of funds, it cannot escape at least the appearance of this conflict.

RESPONSE: Contrary to the commenters' statements, liability against the Fund is not assessed by the Division, but by Judges of Compensation in accord with accepted legal principles. Additionally, it is the intent of these rules to speed up the process of providing Second Injury Fund bnefits to the injured worker, not to delay them. Lastly, the commenter is incorrect that the Division is funded out of the surplus of the Second Injury Fund. The statute authorizing funding of the Division from the Second Injury Fund provides that the Commissioner of Labor may, with the authorization of and appropriation by the Legislature, transfer from the Second Injury Fund an amount necessary for the cost of administration of the Division.

COMMENT: N.J.A.C. 12:235-14 sets up the procedures for making claims against the Uninsured Employer's Fund. The practical effect of these procedures is rather onerous to the claimant in establishing the responsibility of the Fund. Although detailed procedures are necessary to provide guidance as to how claims should be processed, the procedures as stated are rather cumbersome and may actually work to the detriment of the injured worker by serving as trip wires to the prosecution of a claim.

RESPONSE: The Department believes that N.J.S.A. 34:15-120.1 et seq. requires that the Commissioner of Labor preserve the assets of the Uninsured Employer's Fund in a highly responsible manner. The rules governing the procedures for making claims against the Fund are designed to uphold that responsibility.

COMMENT: The changes and amendments sought are giving excessive powers to the Director over the supervision and operation of the Division of Workers' Compensation. The authority of the Director appears to exceed the authority of the Chief Justice of the New Jersey Supreme Court and of the local assignment judges.

RESPONSE: The Director of the Division of Workers' Compensation neither seeks nor assures any powers contrary to the intent and purpose of N.J.S.A. 34:15-1 et seq. and N.J.S.A. 34:1A-12.

COMMENT: N.J.A.C. 12:235-3.11, the Commission of Judicial Performance, is surplusage since it is taken directly from the Rules of New Jersey Courts, with minor changes (see R. 2:15). Reference to the Court Rule would suffice. N.J.A.C. 12:235-3.19(a)3 provides for a "fine," without furnishing guidelines or amounts. R. 2:15 does not provide for such discipline for Superior Court Judges.

RESPONSE: A mere reference to the New Jersey Court Rules would not suffice because of the difference in personnel structure between the Division and the Superior Court. The Department has attempted to adhere to the Court Rules as closely as possible. With regard to the fine, the Department agrees with the commenter and the fine provision will be eliminated in the reproposed amendments.

COMMENT: N.J.A.C. 12:235-6.9 regarding solicitation and referral fees is dealt with in the Rules of Professional Conduct and Rules of Court.

RESPONSE: As these rules are already addressed in other legal requirements, the reiteration of them in the New Jersey Administrative Code will not adversely affect any party.

COMMENT: There is no question that Judges of Compensation are subject to discipline and/or removal. However, these proposed rules are deficient.

RESPONSE: The Department agrees that Judges of Compensation are subject to discipline and/or removal. It cannot respond to their deficiency as the commenter has failed to cite specific examples.

COMMENT: The Judges of Compensation are all tenured administrative officers in the executive department and as such are entitled to receive all the protection afforded to other tenured employees. This is not done in these proposed rules.

RESPONSE: The Department agrees that all existing Judges of Compensation have tenure. Many of the Judges of the Superior Court are subject to the Advisory Committee on Judicial Conduct provided by Rule 2:15 also have tenure. The Commission of Judicial Performance contained in N.J.A.C. 12:235-3.11 is modeled as closely as possible after the Superior Court rules. Therefore, Judges of Compensation are not treated differently from other tenured persons of the same or similar position.

COMMENT: The Commission should not exist. There is no statutory authority to allow a Commission to hold hearings or to take evidence.

RESPONSE: In the absence of any specific statute to the contrary, the Department may promulgate such rules as it deems necessary to ensure the orderly workings of the Department, pursuant to N.J.S.A. 34:1-20 and N.J.S.A. 34:1A-3(e).

COMMENT: The procedural summary is inaccurate; there can be no changes or amendments to the rules concerning discipline of the Judges since they do not exist to be changed or amended. The Appellate Division voided the rules and they must be promulgated, not changed or amended. This procedure must be used.

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RESPONSE: The appropriate procedure was used in repromulgating these rules. The existing, voided text was deleted in its entirety, and an entire new section was proposed in accordance with the Administrative Procedure Act. The section will be reproposed as amendments concurrent with this adoption.

COMMENT: If a Commission is to exist there should be no quorum. Each instance is so important that all members of the Commission should participate fully.

RESPONSE: The rules were predicated and modeled after the New Jersey Court rules, which provide for a quorum.

COMMENT: N.J.A.C. 12:235-3.13 may not use the word "may" but shall designate how a removal proceeding will be instituted and shall indicate how the hearing shall be conducted.

RESPONSE: This section must be read in *pari materia* with N.J.A.C. 12:235-3.14 to alleviate the commenter's concerns.

COMMENT: Concerning N.J.A.C. 12:235-3.15, if the Commissioner is the person that can remove a Judge then the Commissioner should be the only person to institute proceedings by filing a complaint and/or appointing a Commission.

RESPONSE: The individual filing the complaint should not be the one to make the decision to remove, otherwise the complaint stage would be superfluous. However, the commenter has not referred to the correct section of the rule and the Department cannot adequately respond to the comment as stated.

COMMENT: Concerning N.J.A.C. 12:235-3.16, if the Judge is not removed or disciplined, should not the State pay the cost of the defense?

RESPONSE: The Department does not believe that it is responsible for paying the cost of defense, because the cost of defending oneself against such charges should be borne by the defendant.

COMMENT: Formal hearings have no guidelines that shall be followed.

RESPONSE: The formal hearing should commence after 30 days and be tried to conclusion, pursuant to N.J.A.C. 12:235-3.17(b).

COMMENT: Who is the first appeal authority taken for minor discipline or removal?

RESPONSE: Final agency determinations are appealable directly to the Appellate Division of the Superior Court.

COMMENT: N.J.A.C. 12:235-3.18 uses the term "in which the penalty sought." Who determines what the penalty sought will be and what standards are used?

RESPONSE: The commenter is referring to the former rules which have been declared invalid as a result of the Appellate Division's recent decision. In the reproposed N.J.A.C. 12:235-3.18, no reference is made to "in which the penalty sought." N.J.A.C. 12:235-3.18 has been repromulgated to provide a procedure for an informal hearing to deal with situations not calling for either suspension or removal of a Judge, but calling for written or oral reprimand.

COMMENT: N.J.A.C. 12:235-3.19 is inconsistent as it allows the Commissioner to remove a Judge from office after an informal hearing. This is inconsistent with other provisions requiring a formal hearing for removal.

RESPONSE: The Department agrees with the commenter, and the section will be amended in the reproposal.

COMMENT: If a Judge is to be removed from office, no delegation of the Commissioner's responsibility or authority should be allowed.

RESPONSE: The Department agrees with the commenter, and N.J.A.C. 12:235-3.18(b) has been amended upon reproposal.

COMMENT: N.J.A.C. 12:235-3.18 allows the Director of Chief Judges to conduct summary hearings. This is in conflict with the Director's duties under the statute to rate Judges of Compensation for raises within range 39.

RESPONSE: The Department does not feel that there is anything incompatible with a designated Department of Personnel rating and disciplinary responsibilities. However, this section has been amended in the reproposal to provide for more specific procedures for informal hearings, including the provision that they be conducted before the Commissioner or a representative, not before the Director or Chief Judge.

COMMENT: The commenter is distressed by the proposed rules in the first instance because of the clear failure to make any mention of N.J.A.C. 12:235-5.5. If, as the rules promulgated and published on March 18, 1991 purport to be a re-adoption with amendments of the existing rules, then they are incomplete if *all* the rules are not accounted for! The same is true of N.J.A.C. 12:235-6.3! What happened to N.J.A.C. 12:235-11.1, 12:235-11.2, 12:235-12.1, 12:235-12.2 and 12:235-2.3? We have also lost without comment N.J.A.C. 12:235-13.1, 13.3, 13.4, 13.5, 13.6, 13.7, 13.8, and finally 12:234-13.9. If this was to repromulgate rules then that is what should be done. If it is intended to amend the existing rules then do so and state all the rules being amended or deleted and why. To leave out whole sections of the exisitng rules without comment is wrong!

RESPONSE: As explained in a previous response, only sections which are amended upon proposed adoption are published. Any sections that are not published have not been amended and remain the same as the existing text. The method of reading the text of the proposed readoption is explained at the end of the summary statements: "Full text of the rules proposed for readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:235. Full text of the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated by brackets [thus]).."

COMMENT: N.J.A.C. 12:235-3.19 is not taken from the *Pressler* New Jersey Court Rules, and flies in the face of due process of law. A Judge should not be removed at an informal hearing.

RESPONSE: The commenter is correct in that N.J.A.C. 12:235-3.19 did not come from the New Jersey Court Rules. The language concerning the informal procedure has been amended to the reproposed amendments, by outlining the forms of discipline that can be dispensed after formal or informal hearings and by eliminating the imposition of any type of fine.

COMMENT: Adopting N.J.A.C. 12:235-5.6(f) containing the term "for good cause shown," is a clear invitation to the creation of a lengthy interrogatory practice. The term "good cause" is so loose that there will be interrogatories in every case. The present standard of "in extraordinary circumstances" is the best means to speedy resolution and should remain.

RESPONSE: The Department disagrees with the commenter. The Superior Court uses the term "for good cause shown," and, as it relies upon the Judge of Compensation to determine what constitutes "good cause," the Department believes that the Judge will use their discretion to promote the speedy resolution of cases and avoid lengthy and prolonged litigation.

COMMENT: The specific reference to the case of *Bond v. Rose Ribbon and Carbon Mfg. Co.*, is inappropriate in the rules as cited in N.J.A.C. 12:235-7.1(b)1. While this case is presently the existing law as enunciated by the Supreme Court, there are cases being heard by the Appellate Division of the Superior Court and the Supreme Court which are changing the system all the time. To lock in a specific case in the rules that may be changed would necessitate a modification in our rules every time the Appellate Courts acted.

RESPONSE: The Department can assure the commenter that should the landmark case of *Bond v. Rose Ribbon* be overturned, the rules will be amended accordingly.

COMMENT: The proposed deletion of N.J.A.C. 12:235-7.3(e) is particularly devastating to our seriously disabled. If the Second Injury Fund is not found to be liable but the petitioner has already been determined to be totally disabled, how can we permit the respondent to stop paying those total benefits the petitioner has been found eligible for? N.J.S.A. 34:15-12 requires these payments to continue.

RESPONSE: While N.J.A.C. 12:235-7.3(e) has been deleted, N.J.A.C. 12:235-7.3(a) has been amended to require these payments to be made.

COMMENT: It is respectively submitted that N.J.A.C. 12:235-14.1(c) is not in compliance with N.J.S.A. 34:15-120.1 et seq. A Judge of Compensation has the ability by statute to hear and render decisions regarding the entitlement of these benefits and is not an "advisory" opinion. The Legislature specifically eliminated that type of procedure when it amended the Second Injury Fund provisions of the statute because of the potential conflicts inherent in such a system. The power to act must be maintained in the sitting Judges who are the triers of the facts and the determinators of the law.

RESPONSE: The statute, N.J.S.A. 34:15-120.1 et seq. specifically provides that these benefits are not payable until after judgment is rendered against the uninsured employer and an application for the payment of benefits from the Uninsured Employer's Fund is made to the Commissioner of Labor.

COMMENT: Attorneys should not be able to be reimbursed by either the carrier or the self-insured for sanctions imposed against them. There simply is no reason why such sanctions for attorney misdeeds should be passed onto industry, and the public, at large.

RESPONSE: The Department has not only the right, but the obligation, to impose sanctions for failure to comply with the rules. Also, the Department expects all attorneys to abide by the provisions in the Rules

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of Professional Conduct, which prohibit attorneys from "passing" the fine onto the client and public at large.

COMMENT: The current practice of scheduling such motions on the cycle system has led to delays of many months in resolving what purports to be emergency motions. This intolerable situation should not be allowed to continue, and a rule should be promulgated requiring that the Judge of Compensation, at the initial listing date, shall enter a scheduling Order requiring the presentation of all witnesses within six weeks of that listing.

RESPONSE: The Department agrees with the commenter's suggestion, and the following language will be incorporated in the reproposed amendments at N.J.A.C. 12:235-5.2(d): "Motions for medical and temporary benefits shall commence and continue in a timely manner, subject to the scheduling constraints of the Division. Said scheduling may be accelerated as ordered by the Director, the Supervising Judge of the vicinage or the Judge of Compensation to whom the case is assigned."

COMMENT: Concerning N.J.A.C. 12:235-5.6(b), a respondent need only forward medical records authorized by him or her, rather than the former rule requiring forwarding of *all* treating records in its possession. There is no need for the change, which may have the effect of hindering petitioner's ability to present his or her examining expert with all of the relevant medical facts.

RESPONSE: The intent of the rule is to require the respondent to provide medical records authorized by the respondent, whether or not they are in his or her possession. The Department believes that this is a more stringent requirement which does not allow for nonproduction merely because the records are not in their actual, physical possession.

COMMENT: It is not good practice not to mark and retain the medical reports used to support dispositions under N.J.S.A. 34:15-20. The rules should make this an explicit requirement.

RESPONSE: A "Section 20" disposition does not rely on medical reports, as it is a dismissal that does not need to be supported by documentary evidence.

COMMENT: The commenter is concerned that the unintended result of N.J.A.C. 12:235-14.1 is to further delay payments to injured/sick petitioners, after they have been adjudicated to be in need of medical and temporary benefits. An order requiring payment of such benefits would be entered against an uninsured employer; said Order would be docketed; an attempt would be made to obtain the amounts due (by a demand letter); and when same is unfulfilled, and the 45-day appeal time has expired, the Commissioner will consider (and presumably routinely grant) the payment from the Uninsured Fund. The net result is that an innocent petitioner will have to wait at least 45 days, probably more, after having been adjudicated as entitled to benefits. This situation occurs in which the injured/sick petitioner is wholly innocent of any wrongdoing, and is without means of support. A better rule would be to allow for an Order directing payments immediately from the Uninsured Fund, while allowing said process to go forward.

RESPONSE: N.J.S.A. 34:15-120.1 et seq. specifically outlines the payment procedure to be followed by the Uninsured Employers' Fund, pursuant to legislative mandate. The Department is following these procedures and cannot change statutory procedures by promulgating a differing rule.

COMMENT: The commenter suggests that according to a Bar Association letter, the existing rules were drafted by Kristie Brown, a Department of Labor employee, who has not had sufficient experience in the Workers' Compensation field to draft such rules.

RESPONSE: The Department disagrees entirely with this statement. The rules were drafted by the Division of Workers' Compensation. The language changes were forwarded to Ms. Brown, who merely conformed the material given her to the technical format required for rules, pursuant to the Office of Administrative Law (OAL) and the Administrative Procedure Act (APA). The draft was then submitted to the Commissioner, who received the rules and promulgated them as required by the OAL and APA.

COMMENT: The commenter states that because of a distribution delay in the New Jersey Register, commenters were not given a full 30 days in which to comment. Additionally, the commenter states that a recent court decision held that the Department should not grudgingly afford the least amount of time to comment on a rule. Additionally, a public hearing should be held.

RESPONSE: While the Department believes that it is not required to provide longer than 30 days, it agrees with the commenter that, in this instance, the interests of justice would be best served by an extension of the comment period. Therefore, the Department has elected to readopt the existing rules without change, in order to avoid a regulatory hiatus, and to concurrently repropose amendments to the newly readopted rules. The reproposed amendments will incorporate numerous changes as suggested by commenters responding to this proposed readoption. Additionally, an extended comment period will be provided. The Department does not plan to hold a public hearing. The Department believes that additional time for written comments is a more adequate forum for expression than is a public hearing, which merely affords comments a place to verbally state their opinions. A public hearing is not a forum for debate.

COMMENT: The Workers' Compensation Court doesn't serve process the way the statute says it should, and the rules don't tell the public what it does do instead. There are no rules telling a petitioner whose case is going nowhere because a respondent has not answered what he can do to make something happen. There is no provision for default or default judgment, and it is doubtful that any respondent ever in any case files an answer to the claim petition within the time limited by statute.

RESPONSE: The Department views service of process as an internal procedure and, as such, does not need to be codified by rulemaking. As long as process is served, the public does not have to know the procedure which is used for the source. There is no rule provision for default judgment since none is needed. A petitioner may make a motion for default judgment returnable before a Judge of Compensation whenever the respondent fails to file a timely answer.

COMMENT: Although there are provisions in the statute for laying venue in any of generally three counties, but occasionally in a fourth, the rules are silent on venue and the public can only guess in which county venue will be laid. No one is sure what has to be done to change venue in the proper case. There is nothing in the rules to avoid improper changes of venue.

RESPONSE: Nothing requires venue to be addressed in the rules, as this again is an internal Departmental procedure. In response to the commenter's statement, the practice in the Division to establish venue has been established over many years and has resulted in the orderly listings and disposition of thousands of cases.

COMMENT: There is almost no reference to consolidation in the rules. It is not at all clear who has authority to order consolidation. There is very little reference to joinder of additional parties and most attorneys who practice regularly in the Workers' Compensation Court are under the impression that additional respondents can be joined in violation of the "real party in interest" policy and without meeting the requirement of the Workers' Compensation Statute that no respondent should have to afford benefits to a petitioner who has not sworn in writing that he is entitled to them.

RESPONSE: Issues as to consolidation and joinder are issues solely in the discretion of the Judge of Compensation hearing the case. A petition is a verified document and a Judge can order additional parties to be joined.

COMMENT: The proposed rules state that at a pretrial conference, reports of medical experts who will testify at trial must be "exchanged." Ordinarily, this language would mean furnish a copy of one's own medical reports to one's adversary and permit the adversary to keep them in his file. But only rarely does a party appearing at a pretrial conference in a Workers' Compensation Court prepare to leave with his adversary copies of his medical reports. The practice, the wording of the old rule, and the wording of the proposed rule will not lead the practitioner to think that the language in the new rule intends any change, yet that the present practice is contrary to the ordinary meaning that most attorneys would ascribe to the language of the new rule.

RESPONSE: The language of this rule is not ambiguous. Anyone who feels that the rules have been breached should report such violation to the Supervising Judge.

COMMENT: The rules on motion for medical and temporary benefits authorize an attorney to file an affidavit in support of his client's motion. If the attorney is not averring on personal knowledge, his statements are hearsay. If they are on personal knowledge, he is violating the canons of ethics in acting as a witness for his own client.

RESPONSE: The commenter is incorrect in his reading of the rules. The rules provide for a certification, not an affidavit.

COMMENT: The rule on the motion for medical benefits is also poorly drawn in that it states that the attorney's affidavit "shall constitute" a *prima facie* case. Whether or not an affidavit submitted in support of a motion for medical and temporary benefits constitutes a *prima facie* case depends on its content and its credibility which must be weighed by the Judge.

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RESPONSE: Notwithstanding the language of the rule, the implementation thereof relies on the discretion, integrity and ability of the Judge of Compensation and the attorneys practicing before the Workers' Compensation Court, in whom the Division and Department have the utmost confidence. N.J.A.C. 12:235-5.2(e) assumes that the affidavit contains sufficient facts to establish a *prima facie* case.

COMMENT: There is a proposed provision in N.J.A.C. 12:235-5.9(b): "Incomplete medical examinations by either party shall be considered good cause for adjournment of a pretrial conference." This appears to take from the Judge discretion to determine that a party has already had sufficient time to obtain medical examinations and either to mark the case "not moved" or strike claims or defenses. It would seem to allow perpetual delay as long as one attorney can say with a straight face that he is still trying to obtain medical examinations.

RESPONSE: This section must be read in *pari materia* with N.J.A.C. 12:235-5.9(c). Such reading should alleviate the commenter's concerns.

COMMENT: N.J.A.C. 12:235-5.10(t) is not aptly drawn to cover the situation where the judge utilizes the service of the Department of Labor Word Processing Center to prepare his written opinions.

RESPONSE: The Department agrees with the commenter's observations. It had no intention to require Judges to use only shorthand reporting services. The language in the section will be changed upon reproposal to include reference to the Centralized Word Processing Center or any other method by which the opinion is produced.

COMMENT: N.J.A.C. 12:235-6.2 is the informal hearing process. This is not required by statute. Consideration should be given to replacing the informal hearing simply with a requirement that upon the filing of an accident report the employer must present the injured worker with a booklet outlining his rights generally under the Workers' Compensation Law. The informal hearing process is a paternalistic procedure that has the State doing for the injured worker what his lawyer or his union representative should be doing for him. In cases of major disabilities, it seems likely that the injured worker does not receive net as much permanent disability benefits as he would at the formal hearing process.

RESPONSE: The Department disagrees: The informal hearing process is a viable and valuable method for the speedy resolution of cases which lend themselves to an informal process.

COMMENT: The provisions in the new rules concerning the awards of attorney's fees in cases against the Uninsured Employer's Fund seem to make the procedure *ex parte*. The whole tradition of the Workers' Compensation Law in New Jersey has been for adversary proceedings, and it would seem doubtful if excluding the adversary principle from the determination of the attorney's fees to be paid by the Uninsured Employer's Fund, is in compliance with the statutory scheme.

RESPONSE: The attorney's fee is established by the Judge of Compensation through an adversary proceeding. The requirement that an application be made to the Commissioner of Labor is to protect the assets of the Uninsured Employer's Fund as mandated by N.J.S.A. 34:15-120.1 et seq.

COMMENT: The provision in the proposed rules that the Uninsured Employer's Fund will not pay medical benefits if the injured worker's spouse has private plan coverage for medical benefits generally seems a stretch.

RESPONSE: N.J.A.C. 12:235-14.3(a)16 is written pursuant to the statutory requirement that Fund assets be preserved.

COMMENT: The commenter expresses general concerns about the provisions concerning the discipline of Judges. Specifically, these concerns are: (1) That Judges of Compensation aren't subject to the same standards as are Federal Judges; (2) The former disciplinary rules were thrown out by the Appellate Court; (3) Judges of Compensation should serve for "good behavior" and cannot be removed for anything short of bad behavior; (4) The rules provide that a Judge can be removed for any violation of the rules; and (5) The rules provide for removal of a Judge found to be "incompetent."

RESPONSE: In response, the Department first notes that Workers' Compensation Judges are **not** constitutional Judges, they are statutory Judges. Provisions in the Federal Constitution have absolutely no relevancy, bearing or impact on Judges of Compensation in New Jersey. Secondly, the recent Appellant Division's decision did not address the substantive validity of the Commission of Judicial Performance, but rather commented on the inadequacy of the secondary notice requirements. The rules were voided on an administrative technicality, not on substance. Notwithstanding the recent decision, a sincere effort is being made by the Department to adopt a Commission of Judicial Performance compatible with Superior Court rules to afford Judges of Compensation a similar form in which to have complaints against them addressed. In this effort, the Department has deleted the requirement that a Judge be removed for any violation of the rules and deleted the reference to "incompetent" in the reproposed amendments.

COMMENT: The provision for suspension of Judges is both contradictory and unlawful. Although the introductory explanation to the proposed rule states that a Judge will not be submitted to suspension pending proceedings to remove him, N.J.A.C. 12:235-3.15 does provide for exactly that.

RESPONSE: The right to suspend a Judge of Compensation is in the province of the Commissioner of Labor, and the proposed rule is designed to allow Judges to continue to receive pay pending the suspension procedures.

COMMENT: N.J.A.C. 12:235-3.19(a)2 provides for suspension as a penalty apparently where removal is not contemplated. This is perhaps the most dangerous attach that could be made on the independence and initiative of a Judge. A Judge cannot afford to retain an attorney to defend him against the threat of loss of a day's pay.

RESPONSE: The Department has redrafted this section in the reproposed amendments to appropriately address the commenter's concerns by allowing the Commissioner to suspend a Judge of Compensation only after a formal hearing.

COMMENT: There should be no provision for suspension for minor discipline.

RESPONSE: The rules do not apply to suspenion for minor discipline, pursuant to N.J.A.C. 12:235-3.18. However, N.J.A.C. 12:235-3.16 through 3.19 have been reproposed to eliminate any confusion as to the repercussions of an informal or formal hearing.

COMMENT: The provision that a disciplinary action against the Judge can be "heard" by anyone other than the Commissioner is unthinkable. The proposed rules provide for the Commissioner abdicating this power to "the Director, Chief Judge, or an individual designated by the Commissioner." The statutes do not permit this. Additionally, the provision that a disciplinary hearing be conducted in a summary manner denied the Judge due process.

RESPONSE: The Department agrees with the commenter and N.J.A.C. 12:235-3.18(b) has been amended upon reproposal to allow only the Commissioner or a designated representative to hear informal hearings. The proceeding shall be conducted in a summary manner, but only after the Judge has been advised of the charges in writing and has had time to prepare a defense.

COMMENT: The commenter incorporates by reference his comments on the 1985 rule proposal and the Appellate Court brief.

RESPONSE: The commenter's 32-page comments on the 1985 rule proposals were summarized and responded to by the Department when those rules were adopted. Furthermore, the Department is not required to keep the record of public comment for more than three years from the date of the effective rule, pursuant to N.J.A.C. 1:30-3.4(b). With regard to the Appellate Brief, most of the comments contained in the commenter's Appellate brief have been satisfied by the Appellate Court itself when it declared the rules invalid based on improper secondary notice. In its current reproposed amendment, the Department has rectified many of the commenter's other concerns which have been addressed in this summary. The remaining issues raised in the commenter's brief are summarized below:

COMMENT: The Administrative Procedure Act requires the Division to describe its means of operation.

RESPONSE: The Department agrees, and the rules, as repromulgated, accomplish that objective.

COMMENT: The rules which became effective May 6, 1986 contained spelling, grammatical and typographic errors.

RESPONSE: The Department agrees and has corrected the errors wherever they have been recognized.

COMMENT: The computer-generated hearing notices do not set forth the time of day for scheduled hearings.

RESPONSE: The commenter is incorrect as to present procedure. The computer-generated hearing notice now includes the time of day for scheduled hearings, which is 9:00 A.M.

COMMENT: The rules should provide for and "Accelerated Award Program"; that is, a procedure in which cases are adjudicated on evidence restricted to examination and cross-examination of petitioner and the written reports of medical examinations for both parties.

RESPONSE: The Department disagrees. A hearing as described by the commenter can proceed under the rules as repromulgated when the

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parties stipulate to waive their right of cross-examination, subject to approval by the Judge.

COMMENT: The requirement in N.J.A.C. 12:235-5.9(a)1 to "exchange reports" should be deleted because such "exchange" does not, in fact, occur.

RESPONSE: The Department disagrees. Judges of Compensation are expected to enforce N.J.A.C. 12:235-5.9(a)1 to facilitate preparation for trial, or to enable the parties to reach a fair and equitable settlement.

COMMENT: The reference to continuous trials ought to be deleted.

RESPONSE: The Department agrees. The rules as repromulgated will require that trials shall commence and continue in a timely manner subject to scheduling constraints.

COMMENT: The Division has no elaborate provisions for doing business by telephone, as does the office of Administrative Law.

RESPONSE: The Division of Workers' Compensation is not the office of Administrative Law. Furthermore, this subject is not part of the rules, and the Department is not required to comment.

COMMENT: The "cycle" system utilized by the Division should be explained to the public.

RESPONSE: The Department views the scheduling of Workers' Compensation cases as an internal Departmental function which is not required to be codified by rule.

COMMENT: The proposed rules undermine the statutory parameters for the operation of the workers' compensation system by attempting to vest and centralize authority in the Director of the Division of Workers' Compensation (see N.J.A.C. 12:235-3.1(a)).

RESPONSE: The content of N.J.A.C. 12:235-3.1(a) is proposed in order to ensure that the injured worker receives a prompt hearing, and to enable the Division to review performance records and data relating to the manner in which claims are adjudicated in order to eliminate delays and to ensure a more orderly disposition of claims.

COMMENT: The proposed rules attempt to regulate the conduct of attorneys in a fashion more sweeping than that set forth in the Code of Professional Ethics by establishing regulation without definition of "unprofessional" conduct (see N.J.A.C. 12:235-3.3(b)).

RESPONSE: The Department believes that the conduct to the attorneys in the Workers' Compensation Court should not be regulated in a fashion more sweeping than that set forth in the Rules of Professional Conduct adopted September 10, 1984 as set forth in the Rules Governing the Courts of the State of New Jersey. Accordingly, the reproposal of the amendments will be changed to ". . . Attorney conduct in controvention of the Rules of Professional Conduct."

COMMENT: The proposed rules attempt to regulate the conduct of witnesses and others having business before the Division of Workers' Compensation in a vague and undefined manner by setting forth a standard of undefined "proper manner." (see N.J.A.C. 12:235-3.4(a)).

RESPONSE: The Department does not believe that the term "proper manner" is either vague or undefined. It is the intent of this section to require people having business before the Workers' Compensation court conduct themselves in a manner consistent with the reasonable standards of courtroom behavior.

COMMENT: The sanctions to be imposed for an incomplete/incorrect motion for temporary disability and/or medical benefits are oppressive (see N.J.A.C. 12:235-5.2). Does the State of New Jersey assess penalties against injured workers who file inaccurate or incomplete applications for State temporary disability benefits? Likewise, are there sanctions imposed by the Social Security Administration for errors in documents filed with that Federal agency?

RESPONSE: The sanctions proposed at N.J.A.C. 12:235-5.2(c) have been reclassified from mandatory to discretionary and are based on the petitioner's attorney knowingly filing such a motion. It is a detriment to the petitioner's case to file inaccurate information, as it requires increased and unnecessary investigation by the respondent, resulting in delays in promptly providing necessary emergent treatment and benefits to the petitioner.

COMMENT: The proposed rules inhibit the respondents from adequately defending their clients by imposing a penalty in the amount of $500.00. Such a penalty may be in excess of statutory limitations of a 20 percent counsel fee. The statutory limit cannot be exceeded by the administrative rules. Due process to the respondent is not afforded in assessment of the severe sanction.

RESPONSE: The Department will reduce these penalties to a discretionary $200.00 in the reproposed amendments. The Department does not intend to inhibit the respondents from adequately defending their clients, but does intend to penalize a respondent who *knowingly* files an incomplete, inaccurate or frivolous motion for third party joinder.

COMMENT: The proposed rules remove the right of the parties to consent to the deposition of an injured or ill petitioner without order of the Court. If the parties consent to the deposition, there should be no reason whatsoever why time and effort to make application to the court must be taken. In many instances the Divison of Workers' Compensation is not available to handle motions on an expedited or emergency basis. There is no emergency access to a Judge of Compensation on a 24-hour basis, nor is there a Judge available during the approximate month of vacation time of the Division of Workers' Compensation when it is effectively closed and local hearing officials are not available.

RESPONSE: The Department agrees. The reproposed amendments will be changed to permit the deposition of an injured or ill employee by consent of all parties, provided there is a report from a physician stating the medical basis upon which the deposition is sought.

COMMENT: There is a conflict between N.J.A.C. 12:235-5.8 and N.J.A.C. 12:235-5.6. In one instance there is no time limitation while in the other instance there is a 10-day limitation. In one instance, there is a requirement to either furnish the records and/or make them available for inspection and in the other instance there is a requirement to furnish the records in a time certain.

RESPONSE: N.J.A.C. 12:235-5.8 concerns persons claiming total, permanent disability and the existence of a pre-existing condition. N.J.A.C. 12:235-5.6 concerns discovery in general. The Department does not see any inconsistency in providing different methods for discovery in markedly different situations.

COMMENT: The Division of Workers' Compensation should recognize the difficulty in obtaining the availability of medical experts to appear before it. A mechanism should be afforded to permit the deposition of the medical expert by stenographic and/or videotaped means in order to avoid their actual appearance before the Judge of Compensation. In that way, scheduling problems could be avoided and cases could be concluded within a much shorter period of time for the benefit of all parties (see N.J.A.C. 12:235-5.10).

RESPONSE: The Department agrees with the commenter and, in fact, has encouraged the use of the conference call for the taking of medical testimony wherever practicable. Although videotaping does not appear to be readily available, that method, too, is acceptable. Depositions may also be used, provided, however, the Judge of Compensation agrees that the actual appearance of the witness is not necessary.

COMMENT: Five commenters raised concerns about the 20-year record retention period, stating it would be burdensome and costly, and is not required by the Superior Court.

RESPONSE: The record retention period is governed by N.J.S.A. 34:15-121. The Department and Division both recognized their responsibility for record retention and has done so subject to budgetary constraints in the most efficient manner possible. It is the interest of this rule to provide a more responsible record for retention, appeal purposes and applications for reviewer modification. The Division does and will continue to maintain all records capable of being microfilmed. However, exhibits such as X-rays and surveillance films are incapable of being microfilmed. This rule contemplates that the parties and the Judge shall confer to determine what non-microfilmable exhibits are to be retained. It does not appear to be onerous to require counsel to retain these exhibits.

COMMENT: In an era of ever-burdening claims before the Division of Workers' Compensation it would appear appropriate that the informal hearing system be utilized as a settlement vehicle of claims now pending. Therefore, the counsel fee available at the informal hearing should be changed to 20 percent of the workers' award (see N.J.A.C. 12:235-6.11). Informal hearings should be scheduled on a timely basis and in a fashion so that the employees and employers of the State of New Jersey are not required to suffer an economic loss by unscheduled hearings. Informal hearings should be scheduled on an hourly basis during the course of a specific date.

RESPONSE: There does not appear to be any compelling reason for changing the counsel fee allowed for informal hearings. The Department and the Division are currently scheduling informal hearings in a timely fashion. At the present time, informal hearings are scheduled on the same day that the named respondent has a formal list for greater efficiency. Arrangements are made with the independent adjusters to schedule informal hearings at their convenience.

COMMENT: If there is an overpayment of benefits to the Fund by the employer, a timely schedule for reimbursement should be afforded the employer. If the time period for reimbursement is excessive, interest should be afforded the employer on funds reimbursed. Upon the filing of a verified petition for benefits from the Second Injury Fund, not only

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should the applicant's medical reports be presented, but the respondents should also be required to provide their reports in a timely and appropriate fashion to both the applicant's attorney and to the Fund so that an evaluation of Fund participation on a voluntary basis can be made and the conference expedited (see N.J.A.C. 12:235-7.4).

RESPONSE: While the Department and the Division agree that the timely exchange of medical reports in a Second Injury Fund case is desirable, in most instances the respondent has not obtained medical evaluations prior to filing an answer. One of the major purposes of the Second Injury Fund conference is to ensure that respondents obtain the necessary evaluations so that a meaningful settlement may be effectuated. The Second Injury Fund was created by the Legislature to encourage the hiring of the handicapped by providing total permanent benefits to those injured workers whose last compensable accident did not produce total permanent disability in and of itself. There is no statutory authority for the allowance of interest against the Fund, nor does the Division have any authority to render such determinations.

COMMENT: The Uninsured Employer's Fund of the State of New Jersey should be required to be subjected to the same or similar responsibilities as is an employer. Accountability and certainty of payment is important, and a judgment or order should be entered to finalize and assure responsibility for payment from the Uninsured Employers' Fund (see N.J.A.C. 12:235-14.1). Instead of providing a much needed benefit to the injured worker, the proposed rules have established self-defeating requirements and obstacles which create excessive burdens upon the petitioner. There is no need to place additional burden upon an injured and disabled employee merely because his or her employer violated the law by not having adequate insurance. The burden should be shifted *entirely* to the employer and not be placed on the shoulders of the injured worker (see N.J.A.C. 12:235-14.2).

RESPONSE: The Department and the Division disagree with the comment and direct the commenter to N.J.S.A. 34:15-120.1 et seq., which sets forth not only the liability of the Uninsured Employer's Fund but also the manner in which payment from the Fund is to be obtained. A fair reading of this statute clearly discloses that the Commissioner of Labor is charged with the conservation of the assets of the Uninsured Employer's Fund and that no payments shall be made from the Fund except upon application to and approval by the Commissioner.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 12:235.

AGENCY NOTES:

1. N.J.A.C. 12:235-3.11 through 3.23 were invalidated by the New Jersey Superior Court, Appellate Division. (see 23 N.J.R. 207(a)).

2. The amendments proposed simultaneously with the readoption have not been adopted, and have been superseded by the reproposed amendments published elsewhere in this issue of the New Jersey Register.

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PUBLIC NOTICES

BANKING

(a)

OFFICE OF REGULATORY AFFAIRS

Notice of Action on Petition for Rulemaking Budget Cap

Petitioner: Government Finance Officers' Association of New Jersey.

Take notice that on or about January 30, 1991, the Department of Banking received a petition for rulemaking from the Government Finance Officers' Association of N.J. concerning exclusions from the annual budget cap base under N.J.S.A. 40A:4-45.3(cc) (see 23 N.J.R. 1033(a)). Petitioner requests that the Department promulgate a regulation specifying that any new expense, program or function required of county or municipal government henceforth by the Department of Banking be deemed a mandated expenditure which should be excluded from the annual budget cap base pursuant to N.J.S.A. 40A:4-45.3(cc), and certified to the Local Finance Board as such.

Petitioner seeks a blanket-type rule exempting all new expenses from the annual budget cap base. It is the Department's view that N.J.S.A. 40A:4-45.3(cc) does not contemplate promulgation of such a broad rule. Rather, that section specifically provides that State agencies may only certify costs which they have "identified" as constituting "mandated expenditures" for such purposes. The use of the term "identified" in N.J.S.A. 40A:4-45.3(cc) clearly reflects a legislative intention that the certification process be utilized on a case-by-case basis.

Further, the Department rarely, if ever, imposes mandated costs on local governments. It is not anticipated that this will change. Accordingly, such a rule is unnecessary. However, should the Department propose rules which mandate local governmental action, it will be sensitive to the concerns of Petitioner.

Accordingly, the petition for rulemaking is denied.

ENVIRONMENTAL PROTECTION

(b)

DIVISION OF ENVIRONMENTAL QUALITY

Notice of Public Hearings New Jersey Radiological Emergency Response Plan

Take notice that, pursuant to the "Radiation Accident Response Act," N.J.S.A. 26:2D-37 et seq., the Department of Environmental Protection in cooperation with the Division of State Police will hold public hearings to determine the adequacy and effectiveness of the New Jersey Radiological Emergency Response Plan. The hearings will be held on the following dates:

Thursday, July 11, 1991
7:00 P.M.-9:00 P.M.
Fire Training Center
Cemetery Road, Mannington Township, New Jersey

Tuesday, July 16, 1991
7:00 P.M.-9:00 P.M.
Greenwich Fire Station, Greenwich, New Jersey

Tuesday, July 23, 1991
7:00 P.M.-9:00 P.M.
Ocean County Administration Building, Room 119
101 Hooper Avenue, Toms River, New Jersey

In addition to accepting public comments, the following speakers will appear at the hearing: the Chief, Bureau of Nuclear Engineering, Department of Environmental Protection, and the Director of the Office of Emergency Management, Division of State Police.

Copies of the New Jersey Radiological Emergency Response Plan are available at the following locations:

Office of Emergency Management
State Police Headquarters, West Trenton, New Jersey

Salem County Emergency Management Office
Cemetery Road, Mannington Township, New Jersey

Cumberland County Office of Emergency Management
Bridgeton Avenue, Bridgeton, New Jersey

Ocean County Office of Emergency Management
Robert J. Miller Air Park, Route 530
Berkeley Township, New Jersey

For additional information contact:

Department of Environmental Protection
Maryanne Quinn, Bureau of Nuclear Engineering
CN 415, Princeton, New Jersey 08540
Telephone (609) 987-2032

(c)

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 sewer service area of the Harrison Township sewage treatment plant approximately 9.5 acres to include various lots in Block 49, Harrison Township, Gloucester County. This sewer service area expansion would serve the proposed Cider Press Estates Phase II development. The proposed wastewater flow from these residential lots is 4,800 gallons per day.

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, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to John Helbig, Adams, Rehmann, and Heggan Associates, Inc., 850 S. White Horse Pike, P.O. Box 579, Hammonton, N.J. 08690. A copy of the comments should be sent to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 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 days of this public notice to Mr. Frankel 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.

(d)

DIVISION OF WATER RESOURCES

Amendment to the Lower Delaware Water Quality Management Plan Public Notice

Take notice that an amendment to the Lower Delaware Water Quality Management (WQM) Plan has been submitted for approval. This amendment would allow the Haleyville Elementary School located at Block 198, Lot 8, in Commercial Township, Cumberland County to expand its nonsurface wastewater discharge to serve a proposed 6,830 square foot ad-

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dition. The proposed school expansion will bring the total school population to 580 students and teachers.

This notice is being given to inform the public that a plan amendment has been developed for the Lower Delaware WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the office of the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, N.J. 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to J. Michael Fralinger, P.E., Albert A. Fralinger, Jr. P.A., West Park Executive Campus, 629 Shiloh Pike, P.O. Box 477, Bridgeton, N.J. 08302. A copy of the comments should be sent to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 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 days of this public notice to Mr. Frankel at the NJDEP address cited above. If a public hearing is held, the public comment period in this notice shall be extended 15 days after the close of the public hearing.

(a)

DIVISION OF WATER RESOURCES

Amendment to the Cape May County Water Quality Management Plan
Public Notice

Take notice that an amendment to the Cape May County Water Quality Management (WQM) Plan has been proposed. This amendment would adopt a Wastewater Management Plan (WMP) for Woodbine Borough dated March 1, 1991. The WMP provides for a projected wastewater flow of 46,500 gallons per day (gpd) to be treated by the Carol-Lynn Campground on-site groundwater disposal system and delineates a service area for this facility. The WMP also delineates the service area of the Woodbine Developmental Center wastewater treatment facility. The rest of the Borough is delineated as an on-site groundwater discharge service area for facilities with design capacities of less than 20,000 gpd.

This notice is being given to inform the public that a plan amendment has been developed for the Cape May County WQM Plan. All information dealing with the aforesaid WQM Plan and the proposed amendment is located at the Cape May County Planning Department, 14-34 Mechanic Street, Cape May Court House, New Jersey 08210, and the New Jersey Department of Environmental Protection (NJDEP), Division of Water Resources, Bureau of Water Quality Planning, 401 East State Street, 3rd Floor, CN-029, Trenton, New Jersey 08625. It is available for inspection between 8:30 A.M. and 4:00 P.M., Monday through Friday. An appointment to inspect the documents may be arranged by calling the Cape May County Planning Department at (609) 465-1083 or the Bureau of Water Quality Planning at (609) 633-7026.

Interested persons may submit written comments on the amendment to Grover Webber, Cape May County Planning Department at the address cited above. A copy of the comments should be sent to Ed Frankel of the Bureau of Water Quality Planning, at the NJDEP address cited above. All comments must be submitted within 10 days of the date of this public notice. All comments submitted by interested persons in response to this notice, within the time limit, shall also 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 days of this public notice to Mr. Frankel 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 ENVIRONMENTAL QUALITY

Notice of Future Proposed Amendments
Control and Prohibition of Air Pollution by Volatile Organic Substances

Take notice that the Department of Environmental Protection (Department) intends to propose amendments to N.J.A.C. 7:27-16, Control and Prohibition of Air Pollution by Volatile Organic Substances (Subchapter 16). Subchapter 16 establishes standards and requirements for equipment, control apparatus, and source operations which may release volatile organic emissions to the atmosphere. Additionally, the Department is proposing related amendments to N.J.A.C. 7:27-8, Permits and Certificates; N.J.A.C. 7:27-17, Control and Prohibition of Air Pollution by Toxic Substances; N.J.A.C. 7:27-23, Prevention of Air Pollution from Architectural Coatings and Consumer Products; N.J.A.C. 7:27-25, Control and Prohibition of Air Pollution by Vehicular Fuels; N.J.A.C. 7:27A-3, Civil Administrative Penalties and Requests for Adjudicatory Hearings; and N.J.A.C. 7:27B-3, Sampling and Analytical Procedures for the Determination of Volatile Organic Substances from Source Operations (Air Test Method 3).

The primary intent of these amendments is to address deficiencies which the United States Environmental Protection Agency (EPA) has identified in the Department's rules. On May 26, 1988, the EPA Region II Administrator informed New Jersey's Governor that the State would be required to take steps to achieve the National Ambient Air Quality Standards for ozone established by the EPA. These steps include the amendment of the Department's rules governing control of volatile organic compounds ("VOC"), to make it consistent with and at least as stringent as Federal Control Technology Guidelines and other federal VOC policies and requirements. Subsequently, in a June 14, 1988, letter the EPA identified specific deficiencies in Subchapter 16. The EPA identified an additional deficiency in this rule in a January 3, 1991, letter to the Department.

The Department intends to publish the proposal in the June 17, 1991 New Jersey Register, and accept written comments until August 1, 1991. The Department has scheduled a public hearing on the rule for 10:00 A.M. on July 17, 1991. The hearing will be held at:

Trenton & Mercer County Memorial Building Commission
War Memorial Building
West Lafayette and John Fitch Way
Ball Room
Trenton, New Jersey

To obtain a copy of the proposal, please contact:

Samuel A. Wolfe, Esq.
Administrative Practice Officer
Department of Environmental Protection
401 East State Street
CN 402
Trenton, New Jersey 08625-0402

(c)

DIVISION OF HAZARDOUS WASTE MANAGEMENT

Invitation for Input to Preliminary Regulations for Cleanup Standards

Take notice that the New Jersey Department of Environmental Protection is currently developing regulatory cleanup standards for use during remediation of surface soils, subsurface soils, building interior surfaces, and ground water. To ensure the most comprehensive, scientific basis for these standards at time of formal proposal (anticipated for Fall 1991), the Department is inviting informal review and discussion by interested parties.

To this end, the Department is sponsoring several workshops throughout the State to allow the opportunity for face-to-face discussion with the Department's site remediation program managers and scientists involved in development of the preliminary draft. Interested persons are

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invited to register to attend any one of these workshops to discuss potential impacts and proposed modifications to the preliminary drafts. **To obtain a copy of the preliminary draft or to register for the workshop you wish to attend, please contact the Division of Hazardous Waste Management at 609-633-1408.**

Following is a list of the workshop times and locations.

June 3, 1991
9 A.M.-3 P.M.
NJIT
Ballroom D—Hazell Center
150 Bleeker Street
University Heights
Newark, NJ

June 7, 1991
9 A.M.-3 P.M.
New Jersey Department of Personnel
Training Center
Forrestal Complex
Arbor 600—1st Floor, Room 11
600 College Road East
Princeton, NJ

June 10, 1991
9 A.M.-3 P.M.
Stockton State College
Room G208
Jimmy Leeds Road
Pomona, NJ

June 14, 1991
9 A.M.-3 P.M.
New Jersey Department of Personnel
Training Center
Forrestal Complex
Arbor 600—1st Floor, Room 11
600 College Road East
Princeton, NJ

In order that these sessions be as productive as possible, the Department will limit attendance to 30 per workshop. The Department asks that organizations limit their workshop representation to one person so that all interested parties may have an opportunity to participate. The Department will issue written confirmation of registration for attendees prior to each workshop. If demand warrants, additional workshops may be scheduled and interested parties will be notified of availability.

In addition, your written comments are encouraged and should be forwarded to the attention of Assistant Commissioner Lance Miller, Hazardous Waste Management Program, CN 028, 401 E. State Street, Trenton, NJ 08625, no later than June 30, 1991. The preliminary draft may be viewed at any of the official depositories listed at the end of this notice or by prior appointment at any of the following offices of the Division of Hazardous Waste Management.

Northern Field Office
1259 Route 46
Parsippany, NJ
201-299-7570

Metro Field Office
2 Babcock Place
West Orange, NJ
201-669-3960

Trenton Office
Division of Hazardous Waste Management
5th Floor East
401 East State Street
Trenton, NJ
609-633-1408

Central Field Office
300 Horizon Center
Robbinsville, NJ
609-584-4150

Southern Field Office
The Paint Works
20 East Clementon Road
Gibbsboro, NJ
609-346-8000

Documents Depository
Center for Research Libraries
6050 S. Kenwood Ave.
Chicago, IL 60637-2804

New Jersey Documents Depository
Glassboro State College
Savitz Library
Glassboro, NJ 08028-1701

New Jersey Documents Depository
Fairleigh Dickinson University
Messler Library
Monstrose Ave.
Rutherford, NJ 07070-1999

New Jersey Documents Depository
Princeton University
Firestone Library
Nassau St. & Washington Rd.
Princeton, NJ 08544-1000

New Jersey Documents Depository
Elizabeth Public Library
11 South Broad St.
Elizabeth, NJ 07202-3401

New Jersey Documents Depository
Rutgers Alexander Library
169 College Ave.
New Brunswick, NJ 08903

New Jersey Documents Depository
Drew University
Rose Memorial Library
Madison, NJ 07940-1825

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Vicki Christian
Documents Librarian
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New York, NY 10163-2221

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Washington, DC 20540-0001

HUMAN SERVICES

(a)

OFFICE OF CHILD CARE DEVELOPMENT

Notice of Availability of Grant Funds
Federal Dependent Care Grant

Take notice that, in compliance with N.J.S.A. 52:14-34.4, 34.5 and 34.6, the Department of Human Services, Office of Child Care Development hereby announces the availability of the following grant program funds.

Name of program: School-Age Child Care.

Purpose: To provide funding for the planning, development, establishment, expansion or improvement of School-age Child Care Services as defined by the Human Services Reauthorization Act of September 1986 (P.L. 99-425. Sec. 670).

Amount of money in the program: Approximately $100,000.

Organizations which may apply for funding under this program: Schools, private, non-profit organizations, and public agencies that provide or plan to provide non-sectarian school-age child care. (Note: All applicants agencies must provide or plan to provide non-sectarian school-age child care.)

Qualifications needed by an applicant to be considered for funding: Funds will be used to aid planning, development, establishment and expansion of school-age child care to children and families.

Procedure for eligible organizations to apply: All eligible organizations interested in applying should contact the Project Coordinator, Pat Townsend Collier at (609) 292-2402, and request that an application be sent to them.

Address to which applications must be submitted:

Department of Human Services
Office of Child Care Development
222 South Warren Street—5th Floor
CN 700, Trenton, N.J. 08629
Attn: Pat Townsend Collier

Deadline by which applications must be submitted: July 19, 1991.

Date by which applicant shall be notified of approval or disapproval: August 23, 1991.

(b)

COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

Notice of Public Hearings
Three-Year State Plan for Vocational Rehabilitation Services and the Title VI, Part C Supplement for Supported Employment Services

Take notice that the Commission for the Blind and Visually Impaired will conduct public meetings on the three-year State Plan for Vocational Rehabilitation Services and the Title VI, Part C Supplement for Supported Employment Services on June 6, 1991, June 12, 1991, June 19, 1991 and June 20, 1991. Public meetings are required prior to the submittal of the State Plan to the Office of Special Education and Rehabilitative Services in Washington, D.C. and the Governor's office on July 1, 1991.

The Federal requirements for public meetings are based on the House Report 99-571 (May 5, 1986) associated with the 1986 Amendments to the Act. In the State Plan report, it is stated ". . . that in the formulation of the State Plan and any revisions thereto, . . . the State conduct public meetings, allow for public comments, and include a copy of the comments and the State Agency's response. . . . The committee believes it is important that individuals, groups and organizations have access, through public

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forums, to help to shape their State's Plan, and not only comment on the implications of proposed or changing policy. The committee also believes that this provision will make the State planning process more efficient."

A position paper will be prepared and distributed to the members of the Commission for the Blind and Visually Impaired's Consumer Advisory Boards and interested parties by June 1, 1991. Persons interested in receiving a copy are requested to telephone the Director's office (201) 648-2324 by June 7, 1991.

The Public Meetings will be held at the following locations and times:

June 6, 1991
10 A.M.-1 P.M.
New Jersey Commission for the Blind and Visually Impaired
153 Halsey Street (5th floor)
Newark, NJ 07101

June 12, 1991
10 A.M.-12 P.M.
Joseph Kohn Rehabilitation Center
130 Livingston Ave.
New Brunswick, NJ 08901

June 19, 1991
10 A.M.-1 P.M.
New Jersey Commission for the Blind and Visually Impaired
100 Hamilton Plaza (9th floor)
Paterson, NJ 07505

June 20, 1991
12 P.M.-3 P.M.
New Jersey Commission for the Blind and Visually Impaired
Parkade Building, Suite 403
Camden, NJ 08103

A formal presentation and elaboration of the position paper and time for questions will precede the public comment portion of the hearing. Persons wishing to speak are requested to telephone the Director's office prior to the meeting. Speakers will be expected to limit their presentation to 10 minutes. **Interested parties** may submit written testimony at the hearing. Written testimony may also be submitted by June 25, 1991 to:

Jamie Casabianca Hilton
Executive Director
New Jersey Commission for the Blind and
Visually Impaired
153 Halsey Street
P.O. Box 47017
Newark, New Jersey 07101

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ATTORNEY GENERAL'S OPINIONS

(a)

ATTORNEY GENERAL
Formal Opinion No. 3(1991)
Determination of Quorum for Meetings of Public Body Where One or More Vacancies Exist in Membership

May 7, 1991

Hon. Andrew Weber
Chief Counsel to the Governor
State House
CN 001
Trenton, New Jersey 08625

Re: FORMAL OPINION NO. 3 (1991)
Determination of quorum for meetings of public body where one or more vacancies exist in membership.

Dear Counsel Weber:

You have asked how a quorum of members of a public body is determined when one or more vacancies exist in the agency's membership. For the following reasons, it is our opinion that where an act prescribes a specific minimum number of members to constitute a quorum for meetings, that number must be present in all cases despite any current vacancies in the agency's membership. Similarly, where an act defines a quorum as a majority or larger fraction of "all the members" or of "the authorized members," the number constituting a quorum is a fixed one which remains constant irrespective of vacancies. On the other hand, in those acts where a quorum consists of "a majority of the members" or words to that effect, or where the act says nothing at all on the matter, a quorum means a majority of the actual current membership after subtracting any vacancies.

A quorum is the number of members of a body necessary to hold a meeting. 62 *C.J.S.* §399 at 757. Absent a statute to the contrary, the common law rule in New Jersey and elsewhere is that "a majority of a public body constitutes a quorum." *Matawan Teachers Association v. Board of Education,* 223 *N.J. Super.* 504, 507 (App. Div. 1988); *see also Edgewater Park v. Edgewater Park Housing Authority*, 187 *N.J. Super.* 588, 597 (Law Div. 1982).

The most common form in which a quorum requirement appears in enabling acts of public bodies is as a fixed, specific number representing a majority of the total membership. *See, e.g., N.J.S.A.* 52:9Q-12e (quorum of Capital City Redevelopment Corporation is "five directors" of nine-member board of directors); *N.J.S.A.* 55:19-4g ("five members, including at least two ex officio members" of nine-member board of directors of Urban Development Corporation); *N.J.S.A.* 52:18A-78.4d ("seven directors" of 12-member New Jersey Building Authority); *N.J.S.A.* 11A:2-3 ("three members" of five-member Merit System Board); *N.J.S.A.* 27:1B-4 ("three members") of five-member New Jersey Transportation Trust Fund Authority); *N.J.S.A.* 55:14A-6 ("four members" of seven-member local housing authority).

As an alternative to prescribing a specific number of members, there is a second way in which enabling acts may establish a fixed quorum requirement which remains constant at all times despite existing vacancies. In this variant, the act does not use a single number but defines a quorum as a majority or some larger fraction of the agency's total authorized membership. The omission of a specific number in this type of statute merely reflects the fact that the act applies to more than one type of public body or to a single type of varying size as established in separate legislation. *See, e.g., N.J.S.A.* 40:81-1 and 40:81-20 ("a majority of all the members" of a municipal council constitutes quorum where council may be comprised of "three, five, seven or nine members"); *N.J.S.A.* 40:69A-180(a) ("a majority of the whole number of members" of a city council constitutes quorum); *N.J.S.A.* 40:55D-6 (defining quorum in Municipal Land Use Law as "the majority of the full authorized membership of a municipal agency"). *See also N.J. Const.* (1947), Art. IV, § IV, ¶2 (in both houses of Legislature "a majority of all its members shall constitute a quorum to do business.").

With both types of statutes (or constitutional provisions), the intent is the same: to establish a fixed number for a quorum which is based on an agency's full statutory membership and which remains constant despite temporary vacancies resulting from death, resignation or expiration of term. The rule in New Jersey is that such provisions must be strictly interpreted and enforced. The leading case on this point is *Ross v. Miller,* 115 *N.J.L.* 61 (Sup. Ct. 1935). There, the City of Clifton fell within a class of municipalities for which a city council of seven members was established by State law. The deaths of two members left the council with five current members. A statute provided that "a majority of all the members of the municipal council shall constitute a quorum . . . ." the common law rule, said the Court, was that "a majority of all the members of a municipal governing body constituted a quorum," but that in the event of one or more vacancies "a quorum consisted of a majority of the remaining members." 115 *N.J.L.* at 63 (citations omitted). It concluded, however, that the governing statute, defining a quorum as "a majority of all the members" of the council, required "a majority of the full membership prescribed by law, rather than of the qualified, sitting members for the time being." *Id.* at 64. Hence, a quorum consisted of four members, a majority of the total authorized membership of seven, rather than three members, a majority of the current membership after the two vacancies. *Accord, Dombal v. Garfield,* 129 *N.J.L.* 555 (Sup. Ct. 1943).

Twenty-six years later, the Law Division, in *Prezlak v. Padrone,* 67 *N.J. Super.* 95 (Law Div. 1961), reaffirmed the *Ross* rule in construing an East Orange city charter provision which defined a quorum for the transaction of business as "a majority of the whole number, as herein provided, of the members of the city council." The council consisted of ten members but there was a vacancy resulting from a resignation. Citing *Ross* and other decisions, the Court concluded that an interpretation of the phrase "a majority of the whole number of the members" as requiring "the presence of a majority of all seats of that body, whether filled or not, has been firmly established in our common law." 67 *N.J. Super.* at 100. Accordingly, a quorum consisted of six members, a majority of the full ten-member council, rather than five, a majority of the nine members remaining after the resignation. *Id.* at 103. *See also Aurentz v. Planning Board,* 171 *N.J. Super.* 135, 139 (Law Div. 1979) (under Municipal Land Use law definition of quorum in *N.J.S.A.* 40:55D-6 as "the majority of the full authorized membership of a municipal agency," four members of seven-member planning board constituted quorum).

A month before the decision in *Prezlak,* the Attorney General issued an opinion which, like that decision, followed the rule of *Ross v. Miller.* We construed various provisions of the State Constitution which require action by a majority or greater percentage "of all the members" of the Senate or General Assembly. One of these provisions, Art. IV, § IV, ¶ 2, states that "a majority of all its members shall constitute a quorum to do business." We concluded that "constitutional references to a majority or to fractions of 'all the members' of the houses of the Legislature must be construed to refer to fractions of the full membership authorized by law, even though from time to time one or more seats may be vacant." Formal Opinion No. 3 (1961); *see also* Formal Opinion No. 6 (1978) (phrase "a majority of the members of the entire board or commission" in *N.J.S.A.* 45:1-2.2d means majority of full membership of professional board); 67A *C.J.S.* §6 at 619 ("Whenever the number required to constitute a quorum is fixed by statute or other rule, a diminution in the number of members of the body will not change the number necessary for a quorum.").

In sum, wherever an act expresses a quorum for meetings of a public body as a specific number of members, or as a majority or other fraction of "all the members" (or of "the authorized membership" or words to that effect, the quorum requirement must be construed as a fixed number which, based as it is on the agency's total *statutory* membership, does not vary with any temporary vacancies created by expiration, resignation or death.

Although the kind of provision just discussed—fixing a quorum as a majority or larger percentage of an agency's full statutory membership—appears to represent the most common form of quorum provision, it is not the only kind. Enabling acts for public bodies sometimes define a quorum merely as "a majority of the members" or

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similar language. *See, e.g., N.J.S.A.* 34:1B-49c ("a majority of the members of the board shall constitute a quorum" for meetings of New Jersey Development Authority for Small Businesses, Minorities' and Women's Enterprise); *N.J.S.A.* 45:1-2.2d ("a majority of the voting members of such [professional] boards or commissions shall constitute a quorum thereof."). In other instances, the act is simply silent on the matter of a quorum. *See, e.g.,* New Jersey Urban Enterprise Zones Act, *N.J.S.A.* 52:27H-60 *et. seq.*

In both cases, the rule in New Jersey and most other states is the same: a quorum, absent some clear evidence to the contrary in the act's text or legislative history, consists of a majority of the agency' *current* membership; in other words, a majority of the authorized membership reduced by any vacancies. As stated in *Ross v. Miller, supra*: "At common law, a majority of all the members of a [public] body constituted a quorum; and in the event of a vacancy a quorum consisted of a majority of the remaining members." 115 *N.J.L.* at 63 (citations omitted). In *Prezlak v. Padrone, supra,* the Court applied this rule in distinguishing between a city charter provision which defined a quorum for the transaction of business as "a majority of the whole number of the members of the city council" and required "corporate action" by the same number, from a second provision which authorized the filling of vacancies without specifying numbers needed for a quorum or vote. The Court found the omission of these details in the second provision "significant" and, ultimately, controlling, holding that action to fill a vacancy could be taken by a majority of the current members remaining after a resignation. 67 *N.J. Super.* at 109. *See also Edgewater Park v. Edgewater Park Housing Authority,* 187 *N.J. Super.* 588, 597 (Law Div. 1982); *State v. King,* 562 *S.W.*2d 704, 706 (Mo. Ct. App. 1978) ("The parties agree that in computation of the requisite three-fourths majority, the number of councilmen to be considered shall be reduced by reason of Councilman Theiss' death."); 62 *C.J.S.* §399c at 758-759 (". . . as a general rule, if there is a vacancy in the council or governing body, a majority of the remaining members will suffice for a quorum, especially where a statute or charter defines a quorum as a majority of the council, or a similar phrase, as distinguished from a majority of the entire board 'elected,' or similar terms.").

In Formal Opinion No. 6 (1978), we discussed the distinction between the two types of quorum provisions in the context of *N.J.S.A.* 45:1-2.2d. That provision defines a quorum for meetings of professional boards as "a majority of the voting members" but, in an amendment added in 1977, adds that action may be taken "upon the affirmative vote of a majority of the members of the *entire* board or commission." (Emphasis added.) We concluded that a majority of a board's full authorized membership was required to take formal action as a result of the 1977 amendment, but that for purposes of a quorum only a majority of the current members after any vacancies was necessary. This reading of the act is consistent with the decision and other authorities discussed above.

It is appropriate to add a final comment on this point. It is possible to hypothesize a situation in which the number of vacancies in an agency's membership might become so large, and the number of remaining members so small, that a quorum comprised of a majority of current members would not constitute a fair representation of the agency. We recognize in this respect that "[t]he requirement of a quorum is a protection against totally unrepresentative action in the name of the body by an unduly small number of persons." *Robert's Rules of Order* (1981), p. 16. While in extreme emergencies there might be resort to other legal doctrines such as the "rule of necessity" which could enable a public body to act in rare cases where less than an authorized quorum is available where a public exigency requires governmental action, we must be mindful of the dictum in *Ross v. Miller, supra,* that "[i]t would clearly do violence to the legislative purpose and policy to hold that if the membership were . . . reduced to one, the surviving member could" act alone. 115 *N.J.L.* at 66.* This possibility is lessened by the provisions usually included in agency enabling acts by which a member whose term has expired continues in office until a successor is appointed and takes office. In any event, the issue must be addressed by considering the specific factual circumstances in which the issue arises.

For these reasons, it is our opinion that laws which define a quorum for meetings of a public body as a specific minimum number of members must be strictly applied irrespective of any vacancies in the agency's current membership. Laws which define a quorum as a majority or larger percentage of "all the members" or of "the authorized membership," or words to that effect, must likewise be read as requiring a fixed number of members which remains constant despite any vacancies. On the other hand, where an act states that a quorum consists of "a majority of the members" or "a majority of the voting members," or where an act is silent on the question, a quorum means a majority of the current membership after taking into account any vacancies.

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*The rule of necessity is an ethical doctrine governing public bodies which, under certain limited circumstances, allows a body to act upon a particular matter when less than a legal quorum of the group is qualified to act. The rule is generally applied when a number of the members of the public body have a conflict regarding a particular item which otherwise would prevent such members from voting upon that matter. In order for the rule to be properly invoked, the body must be unable to act without the members in conflict taking part, no alternative forum may exercise jurisdiction over the proposed action and there must exist a pressing public need for the action to be taken which cannot be postponed to a later date. *See Allen v. Board of Educ.,* 233 *N.J. Super.* 642 (Law Div. 1989). Under application of the rule, all members of the body, including those with conflicts, are permitted to vote upon the matter in question after placing the nature of their conflict on the record.

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EXECUTIVE ORDER NO. 66(1978) EXPIRATION DATES

Pursuant to Executive Order No. 66(1978), an administrative rule is assigned an expiration date not to exceed five years from the date of promulgation by a State agency, unless the rule is exempt from the provisions of the order. In the Administrative Code, single expiration date is affixed at the chapter level and applies to the entire chapter. See N.J.A.C. 1:30-4.4 for an explanation of expiration date assignment.

The following table is a complete listing of established New Jersey Administrative Code expiration dates and exemptions, by Title and Chapter. Current expiration dates may also be found in the loose-leaf volumes of the Administrative Code as a part of the Title Table of Contents for each executive department or agency, on the Subtitle Page for each group of chapters in a Title, and at the beginning of each Chapter.

This listing is published quarterly, in March, June, September and December, in the first issue of the month.

OFFICE OF ADMINISTRATIVE LAW—TITLE 1

N.J.A.C.	Expiration Date
1:1	5/4/92
1:5	10/20/91
1:6	5/4/92
1:6A	3/19/95
1:7	5/4/92
1:10	5/4/92
1:10A	5/4/92
1:10B	10/6/91
1:11	5/4/92
1:13	5/4/92
1:13A	4/3/94
1:20	5/4/92
1:21	5/4/92
1:30	1/25/96
1:31	6/17/92

AGRICULTURE—TITLE 2

N.J.A.C.	Expiration Date
2:1	11/19/95
2:2	1/17/94
2:3	8/21/94
2:5	8/21/94
2:6	9/3/90
2:9	7/7/91
2:16	1/22/96
2:19	10/1/95
2:20	10/1/95
2:22	7/6/92
2:23	7/18/93
2:24	4/2/95
2:32	6/1/92
2:33	3/6/94
2:34	1/2/95
2:48	10/25/95
2:50	5/1/92
2:52	5/1/95
2:53	1/10/96
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	8/20/95
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	6/22/95

BANKING—TITLE 3

N.J.A.C.	Expiration Date
3:1	1/4/96
3:2	4/12/95
3:3	1/11/95
3:6	3/1/96
3:7	9/12/95
3:11	5/1/94
3:13	11/17/91
3:16	6/18/95
3:17	6/18/91
3:18	1/19/93
3:19	3/15/96
3:21	2/2/92
3:22	5/12/94
3:23	7/6/92
3:24	8/18/94
3:25	8/17/92
3:26	12/31/95
3:27	9/12/95
3:28	12/12/94
3:32	10/3/93
3:33	9/18/94
3:38	10/5/92
3:41	10/11/95
3:42	4/4/93

PERSONNEL—TITLE 4A

N.J.A.C.	Expiration Date
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

COMMUNITY AFFAIRS—TITLE 5

N.J.A.C.	Expiration Date
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	11/9/95
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	7/10/95
5:25	2/19/96
5:26	2/7/96
5:27	5/2/95
5:28	12/13/95
5:29	2/19/96
5:30	6/29/93
5:31	12/1/94
5:33	8/6/95

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N.J.A.C.	Expiration Date
5:34	12/3/95
5:37	1/7/96
5:50	10/27/93
5:51	9/1/93
5:52	1/2/95
5:70	7/9/92
5:71	6/4/95
5:80	4/20/95
5:91	2/7/96
5:92	2/7/96
5:100	6/18/95

DEPARTMENT OF MILITARY AND VETERANS' AFFAIRS—TITLE 5A

N.J.A.C.	Expiration Date
5A:1	3/12/95
5A:2	5/17/95

EDUCATION—TITLE 6

N.J.A.C.	Expiration Date
6:1	1/11/96
6:2	2/6/94
6:3	7/8/93
6:5	10/22/95
6:7	1/2/95
6:8	1/5/92
6:11	9/21/95
6:12	3/8/96
6:20	7/16/95
6:21	11/22/94
6:22	7/16/95
6:22A	12/19/93
6:24	1/11/96
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	8/10/95
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	8/15/95
7:1A	6/5/92
7:1C	6/15/95
7:1D	11/28/93
7:1E	8/6/95
7:1F	4/20/92
7:1G	9/29/94
7:1H	7/13/95
7:1I	7/18/93
7:2	6/24/93
7:3	3/21/93
7:4A	9/18/94
7:5	11/19/95
7:5C	1/16/95
7:6	6/9/94
7:7	5/12/94
7:7A	6/6/93
7:7E	7/24/95
7:7F	1/19/93
7:8	2/5/93
7:9	1/18/96
7:9A	8/21/94
7:10	9/1/94
7:11	5/13/93
7:12	4/11/93
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
7:18	8/6/91
7:19	2/26/95
7:19A	3/19/95
7:19B	3/19/95
7:20	5/2/95
7:20A	12/16/93
7:22	1/5/92
7:22A	2/5/95
7:23	6/9/94
7:24	4/22/96
7:25	2/15/96
7:25A	4/23/95
7:26	10/25/95
7:26B	12/21/92
7:27	Exempt
7:27A	12/4/94
7:27B-3	Exempt
7:28	7/30/95
7:29	5/21/95
7:29B	2/1/93
7:30	12/4/92
7:31	6/20/93
7:36	11/21/93
7:38	9/18/95
7:45	2/6/94

HEALTH—TITLE 8

N.J.A.C.	Expiration Date
8:7	9/14/95
8:8	4/12/94
8:9	2/14/96
8:13	9/8/92
8:18	11/6/94
8:19	5/11/95
8:20	3/2/95
8:21	10/23/95
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	4/12/96
8:31	1/16/95
8:31A	2/20/95
8:31B	8/17/95
8:31C	1/20/92
8:33	7/27/95
8:33A	2/20/92
8:33B	7/27/95
8:33C	7/17/91
8:33E	6/23/92
8:33F	11/16/94
8:33G	7/17/94
8:33H	5/16/95
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
8:33Q	11/19/95
8:34	11/15/93
8:38	4/3/94
8:39	6/20/93
8:40	5/7/91

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N.J.A.C.	Expiration Date
8:41	2/17/92
8:42	8/17/92
8:42A	6/19/94
8:42B	7/18/93
8:43	11/19/92
8:43A	7/27/95
8:43E	12/11/92
8:43F	2/20/95
8:43G	2/5/95
8:43H	8/21/94
8:43I	3/21/93
8:44	11/2/93
8:45	2/7/95
8:51	9/17/95
8:52	12/15/91
8:53	8/4/91
8:57	4/20/95
8:57A	4/20/95
8:59	9/29/94
8:60	5/3/95
8:61	10/6/91
8:65	12/2/90
8:66	3/5/95
8:66A	3/5/95
8:70	8/19/93
8:71	2/17/94

HIGHER EDUCATION—TITLE 9

N.J.A.C.	Expiration Date
9:1	2/21/94
9:2	5/4/95
9:3	9/27/93
9:4	10/30/91
9:5	4/1/96
9:6	4/30/95
9:6A	1/4/93
9:7	2/28/93
9:8	10/15/95
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

N.J.A.C.	Expiration Date
10:1	11/7/93
10:2	1/5/92
10:3	11/21/93
10:6	1/7/96
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	11/2/95
10:38	4/29/96
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
10:44A	11/21/93
10:44B	7/16/95
10:45	2/20/95
10:46	9/17/95
10:47	11/2/95
10:48	12/19/95
10:49	7/13/95
10:50	2/27/96
10:51	10/9/95
10:52	2/8/95
10:53	4/27/95
10:54	2/15/96
10:55	3/8/95
10:56	8/26/91
10:57	2/13/96
10:58	2/22/96
10:59	2/15/96
10:60	2/19/96
10:61	2/15/96
10:62	12/19/93
10:63	11/28/94
10:64	2/22/96
10:65	2/19/96
10:66	12/15/93
10:67	2/19/96
10:68	7/7/91
10:69	6/6/93
10:69A	4/20/93
10:69B	11/21/93
10:70	6/16/91
10:71	12/24/95
10:72	8/27/92
10:80	5/19/94
10:81	8/24/94
10:82	8/24/94
10:83	1/19/94
10:85	12/20/94
10:87	1/27/94
10:89	5/24/95
10:90	10/14/92
10:91	9/4/95
10:95	Exempt
10:97	5/15/94
10:99	6/4/95
10:109	2/4/96
10:120	8/21/91
10:121	7/16/95
10:121A	12/7/92
10:122	5/15/94
10:122A	Exempt
10:123	7/13/95
10:124	12/7/92
10:125	6/4/95
10:126	11/7/93
10:126A	5/7/95
10:127	8/26/93
10:128	2/19/96
10:129	7/13/95
10:130	7/2/95
10:131	12/7/92
10:132	1/5/92
10:141	2/7/94

CORRECTIONS—TITLE 10A

N.J.A.C.	Expiration Date
10A:1	7/6/92
10A:2	2/5/95
10A:3	10/6/91
10A:4	5/7/96
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:21	2/4/96
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:35	4/15/96

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N.J.A.C.	Expiration Date
10A:70	Exempt
10A:71	2/5/95

INSURANCE—TITLE 11

N.J.A.C.	Expiration Date
11:1	1/31/96
11:2	11/30/95
11:3	1/4/96
11:4	11/30/95
11:5	10/28/93
11:7	10/19/92
11:10	7/12/95
11:12	10/27/91
11:13	11/12/92
11:15	10/26/94
11:16	1/31/96
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

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	7/30/95
12:16	3/23/95
12:17	1/4/96
12:18	3/7/93
12:19	7/2/95
12:20	8/14/94
12:35	7/16/95
12:40	2/5/95
12:41	1/17/94
12:45	5/2/93
12:51	6/30/91
12:56	9/26/95
12:57	9/26/95
12:58	9/26/95
12:60	3/21/93
12:90	12/15/94
12:100	9/22/94
12:102	5/21/95
12:105	1/11/96
12:110	1/19/93
12:112	9/6/93
12:120	5/3/95
12:175	11/28/93
12:190	1/4/93
12:195	6/24/93
12:196	8/6/95
12:200	8/3/95
12:210	9/6/93
12:235	5/3/96

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:31	7/16/95
12A:50	8/15/93
12A:54	8/15/93
12A:60	11/21/93
12A:80	7/2/95
12A:100-1	9/8/91
12A:120	9/6/93
12A:121	12/5/93

LAW AND PUBLIC SAFETY—TITLE 13

N.J.A.C.	Expiration Date
13:1	7/5/93
13:1A	10/15/95
13:2	7/24/95
13:3	4/25/93
13:4	1/17/96
13:10	3/27/94
13:13	7/16/95
13:18	3/30/95
13:19	8/18/94
13:20	12/13/95
13:21	12/13/95
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	5/23/95
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	8/27/95
13:39	6/19/94
13:39A	7/7/91
13:40	8/3/95
13:41	7/17/95
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	11/9/95
13:45B	4/17/94
13:46	9/4/95
13:47	2/2/92
13:47A	10/5/92
13:47B	2/21/94
13:47C	6/9/94
13:47K	9/17/95
13:48	1/17/96
13:49	12/16/93
13:51	4/27/92
13:54	10/5/91
13:59	7/30/95
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
13:80	9/17/95
13:81	8/6/95

PUBLIC UTILITIES—TITLE 14

N.J.A.C.	Expiration Date
14:1	12/16/90
14:3	5/6/96
14:5	12/16/90
14:6	3/3/91

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N.J.A.C.	Expiration Date
14:9	4/1/96
14:10	9/8/91
14:10-6	9/5/91
14:11	1/27/92
14:17	4/24/94
14:18	7/26/95
14:25	3/5/95
14:29	3/4/96
14:30	2/19/96
14:32	1/22/96
14:38	4/1/96

ENERGY—TITLE 14A

N.J.A.C.	Expiration Date
14A:6	1/16/95
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: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	4/15/96

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	10/1/95
16:1A	6/16/94
16:5	11/20/94
16:6	8/7/94
16:7	3/6/94
16:13	9/4/95
16:20A	2/20/95
16:20B	2/20/95
16:21	8/6/95
16:21A	11/20/94
16:21B	12/3/95
16:22	12/18/95
16:24	2/5/95
16:25	8/15/93
16:25A	7/18/93
16:26	9/5/94
16:27	4/8/96
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
16:38	10/15/95
16:41	7/28/92
16:41A	1/23/95
16:41B	7/2/95
16:43	5/10/95
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	3/28/96
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	3/20/96
16:73	1/30/92
16:74	10/20/91
16:75	5/13/93
16:76	2/6/94
16:77	3/5/95
16:78	12/17/95
16:79	10/20/91
16:80	11/7/93
16:81	11/7/93
16:82	9/5/94

TREASURY-GENERAL—TITLE 17

N.J.A.C.	Expiration Date
17:1	5/6/93
17:2	11/8/94
17:3	8/15/93
17:4	6/8/95
17:5	11/30/95
17:6	11/22/93
17:7	12/19/93
17:8	10/15/95
17:9	10/3/93
17:10	5/6/93
17:12	10/13/94
17:13	10/13/94
17:14	10/13/94
17:16	5/2/96
17:19	3/8/95
17:20	9/26/93
17:25	5/26/94
17:27	10/7/93
17:28	8/17/95
17:29	9/26/95
17:30	5/4/92
17:32	3/21/93
17:33	4/17/94
17:40	11/19/95
17:41	4/1/96

TREASURY-TAXATION—TITLE 18

N.J.A.C.	Expiration Date
18:1	7/21/94
18:2	9/6/93
18:3	3/14/94
18:5	3/14/94
18:6	3/14/94
18:7	3/14/94
18:8	2/24/94
18:9	6/7/93
18:12	7/29/93
18:12A	7/29/93
18:14	7/29/93
18:15	7/29/93
18:16	7/29/93
18:17	7/29/93
18:18	3/14/94
18:19	3/14/94
18:21	2/19/96
18:22	2/24/94
18:23	2/24/94
18:23A	9/4/95
18:24	6/7/93
18:25	2/19/96

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N.J.A.C.	Expiration Date
18:26	6/7/93
18:35	6/7/93
18:36	3/19/95
18:37	7/23/95
18:38	2/16/93
18:39	9/8/92

OTHER AGENCIES—TITLE 19

N.J.A.C.	Expiration Date
19:3	5/26/93
19:3B	Exempt (N.J.S.A. 13:17-1)
19:4	5/26/93
19:4A	6/20/93
19:6	5/6/96
19:8	7/5/93
19:9	10/17/93
19:10	9/5/94
19:11	8/20/95
19:12	8/7/91
19:14	8/20/95
19:16	8/7/91
19:17	6/8/93
19:18	5/21/95
19:20	2/5/95
19:25	10/1/95
19:30	7/23/95
19:31	8/20/95
19:40	8/24/94
19:41	5/12/93
19:42	5/12/93
19:43	4/27/94
19:44	9/29/93
19:45	3/24/93
19:46	4/28/93
19:47	4/28/93
19:48	10/13/93
19:49	3/24/93
19:50	5/12/93
19:51	8/14/91
19:52	9/25/91
19:53	4/28/93
19:54	3/24/93
19:61	7/7/91
19:65	7/7/91
19:75	1/13/94

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REGISTER INDEX OF RULE PROPOSALS AND ADOPTIONS

The research supplement to the New Jersey Administrative Code

A CUMULATIVE LISTING OF CURRENT PROPOSALS AND ADOPTIONS

The **Register Index of Rule Proposals and Adoptions** is a complete listing of all active rule proposals (with the exception of rule changes proposed in this Register) and all new rules and amendments promulgated since the most recent update to the Administrative Code. Rule proposals in this issue will be entered in the Index of the next issue of the Register. **Adoptions promulgated in this Register have already been noted in the Index by the addition of the Document Number and Adoption Notice N.J.R. Citation next to the appropriate proposal listing.**

Generally, the key to locating a particular rule change is to find, under the appropriate Administrative Code Title, the N.J.A.C. citation of the rule you are researching. If you do not know the exact citation, scan the column of rule descriptions for the subject of your research. To be sure that you have found all of the changes, either proposed or adopted, to a given rule, scan the citations above and below that rule to find any related entries.

At the bottom of the index listing for each Administrative Code Title is the Transmittal number and date of the latest looseleaf update to that Title. Updates are issued monthly and include the previous month's adoptions, which are subsequently deleted from the Index. To be certain that you have a copy of all recent promulgations not yet issued in a Code update, retain each Register beginning with the April 1, 1991 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.1991 d.1 means the first rule adopted in 1991.

Adoption Notice (N.J.R. Citation). The New Jersey Register page number and item identification for the publication notice and text of an adopted amendment or new rule.

Transmittal. A series number and supplement date certifying the currency of rules found in each Title of the New Jersey Administrative Code: Rule adoptions published in the Register after the Transmittal date indicated do not yet appear in the loose-leaf volumes of the Code.

N.J.R. Citation Locator. An issue-by-issue listing of first and last pages of the previous 12 months of Registers. Use the locator to find the issue of publication of a rule proposal or adoption.

MOST RECENT UPDATE TO THE ADMINISTRATIVE CODE: SUPPLEMENT MARCH 18, 1991

NEXT UPDATE: SUPPLEMENT APRIL 15, 1991

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 1649 and 1806	June 4, 1990
22 N.J.R. 1807 and 1964	June 18, 1990
22 N.J.R. 1965 and 2062	July 2, 1990
22 N.J.R. 2063 and 2202	July 16, 1990
22 N.J.R. 2203 and 2386	August 6, 1990
22 N.J.R. 2387 and 2622	August 20, 1990
22 N.J.R. 2623 and 2860	September 4, 1990
22 N.J.R. 2861 and 3072	September 17, 1990
22 N.J.R. 3073 and 3182	October 1, 1990
22 N.J.R. 3183 and 3274	October 15, 1990
22 N.J.R. 3275 and 3420	November 5, 1990
22 N.J.R. 3421 and 3606	November 19, 1990
22 N.J.R. 3607 and 3666	December 3, 1990

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
22 N.J.R. 3667 and 3896	December 17, 1990
23 N.J.R. 1 and 144	January 7, 1991
23 N.J.R. 145 and 248	January 22, 1991
23 N.J.R. 249 and 332	February 4, 1991
23 N.J.R. 333 and 636	February 19, 1991
23 N.J.R. 637 and 798	March 4, 1991
23 N.J.R. 799 and 924	March 18, 1991
23 N.J.R. 925 and 1048	April 1, 1991
23 N.J.R. 1049 and 1226	April 15, 1991
23 N.J.R. 1227 and 1482	May 6, 1991
23 N.J.R. 1483 and 1722	May 20, 1991
23 N.J.R. 1723 and 1854	June 3, 1991

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-3.3, 14.4, 14.14	Return of cases; failure to appear; sanctions	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:1-5.4	Representation by non-lawyers	23 N.J.R. 1053(a)		
1:1-9.5	OAL Notice of Filing: preproposal regarding notification of parties to contested case	22 N.J.R. 2066(b)		
1:10-8.1	Transmission of Economic Assistance cases	23 N.J.R. 3(a)		
1:13-1.1, 4.1	Division of Motor Vehicle cases	23 N.J.R. 928(a)		
1:13-14.4	Motor Vehicle cases: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:13A-14.1	Lemon Law hearings: failure to appear	23 N.J.R. 639(a)	R.1991 d.279	23 N.J.R. 1786(a)
1:14	Board of Public Utility hearings	23 N.J.R. 640(a)		
1:14	Board of Public Utility hearings: extension of comment period	23 N.J.R. 1230(a)		
Most recent update to Title 1: TRANSMITTAL 1991-2 (supplement February 19, 1991)				
AGRICULTURE—TITLE 2				
2:6-1	Distribution and use of veterinary biologics	22 N.J.R. 2068(a)		
2:9-1	Avian influenza: indemnification of poultry losses	23 N.J.R. 1485(a)		
2:18	Nursery inspection fees	23 N.J.R. 1230(b)		
2:21-7	Fees for seed testing	23 N.J.R. 1231(a)		
2:32-2.3, 2.11, 2.22, 2.27	Sire Stakes Program	23 N.J.R. 252(a)	R.1991 d.241	23 N.J.R. 1408(a)
2:50-1.1, 2.1	Dairy farmers and milk dealers notice to discontinue sale or purchase of milk	23 N.J.R. 929(a)		
Most recent update to Title 2: TRANSMITTAL 1991-2 (supplement February 19, 1991)				
BANKING—TITLE 3				
3:1-2.17	Closing of branch offices	23 N.J.R. 801(a)		
3:1-2.25, 2.26	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)		
3:1-2.25, 2.26, 17	Automated teller machines	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:1-4.2, 4.7, 4.9, 4.10	Protection of governmental unit deposits	22 N.J.R. 1809(a)	R.1991 d.186	23 N.J.R. 997(a)
3:1-6.1, 6.2, 6.6	Assessments on trust assets	23 N.J.R. 1073(b)		
3:1-6.1, 6.2, 6.6, 7.4, 7.6	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:1-18	Foreign banks and associations: registration of service facilities	23 N.J.R. 1233(a)		
3:3-2	Nonpublic records	23 N.J.R. 253(a)		
3:6	General rules for banks	23 N.J.R. 147(a)	R.1991 d.171	23 N.J.R. 998(a)
3:6-8	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)		
3:6-13	Repeal (see 3:1-2.25, 2.26, 17)	23 N.J.R. 642(a)	R.1991 d.244	23 N.J.R. 1408(b)
3:6-14.2	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:13-3.2	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:17	Consumer Loan Act rules	23 N.J.R. 1234(a)		
3:17-1.1, 1.4	Consumer loan advertisements	22 N.J.R. 2626(a)		
3:17-1.1, 1.4	Consumer loan licensees: check solicitations	23 N.J.R. 931(a)		
3:17-3.4	Location of consumer loan records	23 N.J.R. 803(a)		
3:18-2.1	Location of secondary mortgage loan records	23 N.J.R. 803(a)		
3:18-10.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:18-10.5	Surety bonding of secondary mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
3:19-1	Home repair financing	23 N.J.R. 256(a)	R.1991 d.194	23 N.J.R. 1127(a)
3:23-2.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:23-2.1	License fees for motor vehicle installment sellers and home repair contractors	23 N.J.R. 1073(b)		
3:24-2.7	Posting of general ledger by check cashers	23 N.J.R. 932(a)		
3:29-1.1–1.4, 1.6, 1.7, 1.8	Savings and loan associations: audit requirements	23 N.J.R. 1485(b)		
3:32-1.11, 2	Conversions of savings and loan associations and savings banks	23 N.J.R. 929(b)		
3:38-1.1	License fees, assessments, examination charges	23 N.J.R. 254(a)	R.1991 d.195	23 N.J.R. 1125(a)
3:38-1.2, 1.4, 1.9	Mortgage banker and broker net worth standards	23 N.J.R. 643(a)		
3:38-1.5	Surety bonding of mortgage loan licensees	23 N.J.R. 802(a)	R.1991 d.272	23 N.J.R. 1661(a)
3:38-2.1	Location of mortgage loan records	23 N.J.R. 803(a)		

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CIVIL SERVICE—TITLE 4

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PERSONNEL—TITLE 4A

4A:6-5.3	PAR use and review: administrative change	_____	_____	23 N.J.R. 1410(a)

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COMMUNITY AFFAIRS—TITLE 5

5:2-3	Grant and loan approval	Exempt	R.1991 d.164	23 N.J.R. 1026(a)
5:4-1	Contract approval (repealed)	Exempt	R.1991 d.164	23 N.J.R. 1026(a)
5:10-1.6, 1.10, 1.11	Hotels and multiple dwellings: classification of dormitories	22 N.J.R. 1870(a)		
5:10-1.12	Hotels and multiple dwellings: administrative correction regarding Uniform Fire Code inspections	_____	_____	23 N.J.R. 1410(b)
5:14-1.1–1.6, 2.1, 2.2, 2.3, 3.1–3.12, 3A, 4.10, App. A–D	Neighborhood Preservation Balanced Housing Program	23 N.J.R. 1075(a)		
5:18-1.5	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:18-3.2	Uniform Fire Code: hotel-casinos	23 N.J.R. 1237(a)		
5:18A-1.4, 2.3, 3.3, 4.3–4.7, 4.9, 4.10	Fire official and fire inspector certification	23 N.J.R. 1235(a)		
5:19-3.1	Continuing care retirement communities: financial feasibility study for proposed facility	23 N.J.R. 3(b)	R.1991 d.175	23 N.J.R. 1028(a)
5:23-1.1, 1.4, 2.14, 2.23, 2.25, 3.4, 3.11, 3.14, 4.3, 4.5, 4.12, 4.13, 4.18, 4.20, 4.24, 5.1, 5.3, 5.5, 5.7, 5.19, 5.20, 5.23, 12	Elevator Safety Subcode	23 N.J.R. 805(a)		
5:23-2.23	Uniform Construction Code: certificate of occupancy requirements	23 N.J.R. 257(a)	R.1991 d.180	23 N.J.R. 1028(b)
5:23-3.11A, 4.2	Uniform Construction Code: plan review of proposed school facilities	23 N.J.R. 1084(a)		
5:23-3.14, 3.18, 3.20, 10.3	Uniform Construction Code: 1991 subcode references; Energy and Radon Hazard subcodes	23 N.J.R. 1487(a)		
5:23-3.15, 3.18	Uniform Construction Code: plumbing and energy subcodes	23 N.J.R. 804(a)		
5:23-4.19–4.22, 4A.12, 5.21, 5.22, 8.6, 8.10, 8.18, 8.19	Uniform Construction Code fees	23 N.J.R. 257(b)	R.1991 d.181	23 N.J.R. 1029(a)
5:23-5.3, 5.15, 5.20, 5.23	Uniform Construction Code: fire inspector RCS license	23 N.J.R. 1085(a)		
5:23-7.18	Barrier-Free Subcode: platform lifts	23 N.J.R. 260(a)	R.1991 d.210	23 N.J.R. 1128(a)
5:23-11	Uniform Construction Code: preproposal on indoor air quality subcode	22 N.J.R. 3209(a)		
5:24-2.3, 2.5	Dwelling unit conversions: senior citizens and disabled protected tenancy	23 N.J.R. 645(a)	R.1991 d.252	23 N.J.R. 1662(a)
5:27-1.3	Rooming and boarding houses: proof of fire code compliance	23 N.J.R. 932(b)		
5:34-7.1–7.4, 7.7	Cooperative pricing and joint purchasing systems by local governmental units	23 N.J.R. 933(a)	R.1991 d.284	23 N.J.R. 1787(a)
5:38	Intergovernmental review of Federal programs and direct development activities	Exempt	R.1991 d.211	23 N.J.R. 1128(a)
5:70-6.3	Congregate Housing Services Program: service subsidies	23 N.J.R. 934(a)		
5:80-2.2	Housing and Mortgage Finance Agency: consultation with housing sponsors	22 N.J.R. 3669(b)		
5:80-9	Housing and Mortgage Finance Agency: housing project rents	22 N.J.R. 2389(b)		

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
5:80-9.9	Housing and Mortgage Finance Agency: JUMPP project net increases	23 N.J.R. 646(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of surplus funds	22 N.J.R. 3670(a)		
5:91-4.1, 4.5	Council on Affordable Housing: petition for substantive certification; municipal/developer incentives	23 N.J.R. 1088(a)		
5:92	Council on Affordable Housing: preproposal regarding mandatory developers' fees	23 N.J.R. 646(b)		
5:92-1.3, 6.1, 6.2, 6.3, 14.4	Council on Affordable Housing: credits for rehabilitation and new construction; rental housing	23 N.J.R. 1488(a)		

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5A:3	Military service medals	23 N.J.R. 1490(a)		
5A:4	Brigadier General Willaim C. Doyle Veterans' Memorial Cemetery	23 N.J.R. 1491(a)		

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6:3-7.4, 7.7	Homeless children and youth: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:11-11.9	Speech language specialist endorsement	23 N.J.R. 336(a)	R.1991 d.282	23 N.J.R. 1816(b)
6:12	Governor's Teaching Scholars Program	22 N.J.R. 3672(a)	R.1991 d.182	23 N.J.R. 999(a)
6:20-4.3, 4.4	Private schools for handicapped: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:22-1.2–1.7, 2, 3, 4, 5.4, 5.5, 6, 7, 8	School Facility Planning Service	23 N.J.R. 1238(a)		
6:24-7.1, 7.2, 7.7	Budget appeals: administrative corrections	_____	_____	23 N.J.R. 1410(c)
6:28-1.1, 1.3, 3.2, 3.5, 3.7, 4.2, 4.4, 6.5, 7.1, 7.2, 10.1, 10.2, 11.4	Special education	23 N.J.R. 1053(d)		
6:29-7.3, 7.4	School employee physical examinations	23 N.J.R. 336(b)	R.1991 d.283	23 N.J.R. 1817(a)
6:30-4.4, 4.5	Reporting of enrollments in adult high schools	23 N.J.R. 1243(a)		
6:39-1.3, 1.4	Statewide assessment of pupil achievement: students with educational disabilities; State mandated tests	23 N.J.R. 1244(a)		
6:41	Repeal Advisory Council	23 N.J.R. 1244(b)		
6:43-1.1, 1.2, 3.3, 7.1, 8.1	Vocational and technical education: programs and standards	23 N.J.R. 1246(a)		
6:46-1.1, 2	Local area vocational school districts	23 N.J.R. 1247(a)		
6:47	Repeal Management Services	23 N.J.R. 1244(b)		
6:48	Repeal Professional Services	23 N.J.R. 1244(b)		
6:49	Repeal Occupational Research Development	23 N.J.R. 1244(b)		
6:50	Repeal Urban Education and Manpower Training	23 N.J.R. 1244(b)		
6:51	Vocational and technical education: administration and organization	23 N.J.R. 1250(a)		
6:52	Repeal Residential Schools	23 N.J.R. 1244(b)		

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7:0	Clean Water Enforcement Act: notice of intention to propose rules regarding civil administrative penalties	23 N.J.R. 935(b)		
7:1E	Discharges of petroleum and other hazardous substances	23 N.J.R. 1335(a)		
7:11-3.3	Sanitary Landfill Facility Contingency Fund: suspension of claims	22 N.J.R. 3675(a)		
7:2	State Park Service rules	22 N.J.R. 2652(a)		
7:5C-1.4, 3.1, 5.1	Endangered Plant Species Program	23 N.J.R. 812(a)		
7:6-1.31, 1.37, 1.42, 6.2, 6.3, 6.4	Boating rules	23 N.J.R. 392(a)	R.1991 d.225	23 N.J.R. 1192(a)
7:7A	Freshwater Wetlands Protection Act rules: water quality certification	23 N.J.R. 338(a)		
7:7E-8.13	Buffers and compatibility uses: administrative correction	_____	_____	23 N.J.R. 1662(b)
7:8-1.1, 1.2, 1.5, 2.2, 2.3, 3.1, 3.4, 3.5, 3.6	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:9-5.8	Water pollution control: minimum treatment requirements	23 N.J.R. 1493(a)		
7:10-1.3, 5.1	Safe Drinking Water rules: applicability of national regulations	_____	_____	23 N.J.R. 1150(b)
7:11-2.2, 2.3, 2.9	Delaware and Raritan Canal-Spruce Run/Round Valley Reservoir Complex: schedule of rates	22 N.J.R. 3676(a)	R.1991 d.270	23 N.J.R. 1662(c)
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: schedule of rates	22 N.J.R. 3678(a)	R.1991 d.271	23 N.J.R. 1664(a)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
7:13-7.1	Redelineation of Coles Brook in Hackensack and River Edge	23 N.J.R. 647(a)		
7:13-7.1	Redelineation of South Branch Raritan River in Hunterdon County	23 N.J.R. 647(b)		
7:13-7.1	Redelineation of Passaic River in Florham Park	23 N.J.R. 648(a)		
7:13-7.1	Redelineation of Lawrence and Heathcote Brooks in South Brunswick	23 N.J.R. 649(a)		
7:14-8	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14-8.1, 8.2, 8.5	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:14A-1.8	NJPDES fee schedule	22 N.J.R. 3679(a)	R.1991 d.214	23 N.J.R. 1151(a)
7:14A-1.9, 2.5, 3.10, 8.13	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:14A-15	Industrial wastewater pretreatment: preproposed rules	23 N.J.R. 149(a)		
7:18	Certification of laboratories analyzing drinking water and wastewater	23 N.J.R. 1109(a)		
7:18-1.1, 1.3, 1.4, 1.6, 1.7, 1.9, 2.1–2.4, 2.6, 2.7, 2.10–2.15, 5.2–5.5, 5.7, 5.8	Radon laboratory certification program	23 N.J.R. 29(b)	R.1991 d.246	23 N.J.R. 1423(a)
7:18-6.6	Water Pollution Control Act: civil administrative penalties and reporting requirements; methodology	23 N.J.R. 1089(a)		
7:22A-1.1, 1.2, 1.3, 1.4, 1.7, 3.1, 4, App.	Water Pollution Control Act	22 N.J.R. 2870(a)		
7:24	Dam Restoration Grant Program	23 N.J.R. 650(a)	R.1991 d.256	23 N.J.R. 1665(a)
7:24	Dam Restoration Grant Program: administrative correction to proposal	23 N.J.R. 935(a)		
7:25-4.13, 4.17	Endangered and nongame wildlife species	22 N.J.R. 1308(a)	R.1991 d.277	23 N.J.R. 1788(a)
7:25-5	1991-92 Game Code	23 N.J.R. 1494(a)		
7:25-12	Surf clam management	23 N.J.R. 223(a)	R.1991 d.173	23 N.J.R. 1001(a)
7:25-18.1	Winter flounder and red drum: size and possession limits	23 N.J.R. 43(a)		
7:25-18.1	Taking of Atlantic sturgeon: preproposed amendment	23 N.J.R. 1111(a)		
7:25-18.5	Bait net and gill net regulation	22 N.J.R. 3685(a)		
7:25-18.5–18.11	Gill netting in Delaware Bay	22 N.J.R. 1311(a)	R.1991 d.278	23 N.J.R. 1792(a)
7:25-22.1–22.4	Menhaden fishing in Delaware Bay: notice of rule invalidation	———	———	23 N.J.R. 1432(a)
7:25-22.3	Fishing for Atlantic menhaden	22 N.J.R. 3611(a)		
7:25A-1.4, 1.5, 1.6, 1.9	Oyster management	23 N.J.R. 1112(a)		
7:26-4.3, 4.4, 4.6, 15.6	Fee schedule for solid waste facilities	22 N.J.R. 3079(a)		
7:26-4A.3	Fee schedule for hazardous waste generators, facilities, and transporters: correction to proposal	23 N.J.R. 1113(a)		
7:26-4A.3, 4A.5	Fee schedule for hazardous waste generators, facilities, and transporters	23 N.J.R. 814(a)		
7:26-8.1	Mixtures of solid and listed hazardous wastes	23 N.J.R. 1113(b)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: Toxicity Characteristic	23 N.J.R. 151(a)		
7:26-8.2, 8.8, 8.12	Hazardous waste management: reopening of comment period regarding Toxicity Characteristic of waste	23 N.J.R. 1401(a)		
7:26-8.13	Hazardous waste from non-specific sources: F019 exclusion	23 N.J.R. 153(a)	R.1991 d.243	23 N.J.R. 1432(b)
7:26-8.14	Hazardous waste management: methyl bromide production wastes	23 N.J.R. 154(a)		
7:26-8.14	Hazardous waste management: reopening of comment period regarding listing of methyl bromide production wastes	23 N.J.R. 1401(b)		
7:26-8.15, 8.16	Hazardous waste criteria, identification, and listing	23 N.J.R. 1114(a)		
7:26-8.15, 8.16	Hazardous waste management: ferric dextran and strontium sulfide	23 N.J.R. 44(a)	R.1991 d.209	23 N.J.R. 1166(a)
7:26-8.17, App. I	Delisting of hazardous waste at Beecham Laboratories	22 N.J.R. 3430(b)	R.1991 d.172	23 N.J.R. 1004(a)
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management	22 N.J.R. 3186(a)		
7:26-9.2, 10.6, 10.8, 11.3, 11.4, 12.2, 12.4	Hazardous waste management: extension of comment period	22 N.J.R. 3431(a)		
7:26-12.4	Hazardous waste facility permits: administrative correction	———	———	23 N.J.R. 1432(c)
7:26A	Solid waste recycling	22 N.J.R. 3088(a)		
7:26B-1.3, 1.5	ECRA "cleanup plan" and applicability: validity of rules	———	———	23 N.J.R. 1797(a)
7:27-2	Control and prohibition of open burning: administrative corrections	———	———	23 N.J.R. 1166(b)

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7:27-9	Sulfur in fuels: administrative corrections	_____	_____	23 N.J.R. 1166(b)
7:27-13.1, 14.1, 15.1	Air pollution control: administrative corrections	_____	_____	23 N.J.R. 1432(d)
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Air pollution by vehicular fuels	23 N.J.R. 45(b)		
7:27-25.1, 25.2, 25.5, 25.7, 25.8	Vehicular fuel air pollution: extension of time to inspect copies of proposed amendments and new rules	23 N.J.R. 261(a)		
7:28-1.4, 20	Particle accelerators for industrial and research use	23 N.J.R. 1401(c)		
7:28-3.5, 3.13, 4.19	Fee schedules for possession and use of radioactive materials	22 N.J.R. 3300(a)		
7:28-16.2	Dental radiographic installations: qualified individual	22 N.J.R. 3303(a)		
7:31-2.16	Toxic Catastrophe Prevention Act Program: annual registration fees	23 N.J.R. 818(a)		
7:50-2.11, 4.66, 6.13	Pinelands Comprehensive Management Plan: preproposed amendments	22 N.J.R. 3432(a)		

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HEALTH—TITLE 8

8:9-1.2, 1.4, 1.5	Handling and disposition of human remains	23 N.J.R. 1508(a)		
8:20-1.2	Birth Defects Registry: reporting requirements	23 N.J.R. 820(a)		
8:21A	Good drug manufacturing practices	22 N.J.R. 3189(a)		
8:21A	Good drug manufacturing practices: reopening of comment period	23 N.J.R. 1252(a)		
8:22-1	Campground sanitation	23 N.J.R. 1252(b)		
8:24	Retail food establishments	23 N.J.R. 168(b)		
8:25	Youth Camp Safety Act standards	23 N.J.R. 651(a)	R.1991 d.269	23 N.J.R. 1665(a)
8:26	Public recreational bathing	23 N.J.R. 376(a)	R.1991 d.245	23 N.J.R. 1433(a)
8:31A-1, 2, 5, 7, 9, 10	Standard Hospital Accounting and Rate Evaluation (SHARE) Manual	22 N.J.R. 3460(a)	R.1991 d.212	23 N.J.R. 1169(a)
8:31B-3.73	Hospital reimbursement: reconciliation	22 N.J.R. 3724(a)	R.1991 d.213	23 N.J.R. 1176(a)
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8:66	Alcohol countermeasures: waiver of expiration provision of Executive Order No. 66(1978)	23 N.J.R. 177(a)		
8:71	Interchangeable drug products (see 22 N.J.R. 1597(b), 2163(a))	22 N.J.R. 596(a)	R.1990 d.570	22 N.J.R. 3581(c)
8:71	Interchangeable drug products (see 22 N.J.R. 2162(b), 3149(a), 3581(b))	22 N.J.R. 1214(b)	R.1991 d.161	23 N.J.R. 906(a)
8:71	Interchangeable drug products	22 N.J.R. 1511(a)	Expired	
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10:38	Interim Assistance Procedures Manual	23 N.J.R. 261(b)	R.1991 d.268	23 N.J.R. 1686(a)
10:42	Use of mechanical restraints and safeguarding equipment on developmentally disabled individuals	23 N.J.R. 1653(a)		
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10:51 et al.	Bundled drug services reimbursement: public hearing	23 N.J.R. 1310(a)		
10:51-1.1, 1.14, 3.3, 3.12	Bundled drug services	23 N.J.R. 281(a)		
10:51-1.2, 1.13, 1.14, 1.20, App. B, C, D, E	Pharmaceutical services under Medicaid program	23 N.J.R. 1310(b)		
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10:72-1.1, 3.4, 4.1, 4.3, 4.5	Medicaid eligibility: pregnant women and children	Emergency (expires 5-27-91)	R.1991 d.223	23 N.J.R. 1200(a)
10:73	Medicaid program case management services	23 N.J.R. 1328(a)		
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10:81-8.22, 8.23	Extended Medicaid eligibility for newborns	23 N.J.R. 1657(a)		
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10:82-1.1A	AFDC Standard of Need	23 N.J.R. 285(a)		
10:82-1.1A	AFDC Standard of Need: public hearings and extension of comment period	23 N.J.R. 967(a)		
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10:83-1.11	Supplemental security income payment levels	23 N.J.R. 234(a)	R.1991 d.168	23 N.J.R. 1008(a)
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10:85-4.6	General Assistance: emergency assistance	22 N.J.R. 2078(a)	R.1991 d.174	23 N.J.R. 1177(a)
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10A:2-5	Reporting loss of funds	23 N.J.R. 1510(a)		
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10A:34-3	Processing and housing juveniles in municipal detention facilities	23 N.J.R. 935(c)		
10A:35	Alternatives to Juvenile Incarceration Grant Program	23 N.J.R. 156(b)	R.1991 d.192	23 N.J.R. 1129(a)

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13:27-5.8	Architectural Registration Examination fees	23 N.J.R. 671(a)	R.1991 d.258	23 N.J.R. 1683(b)
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13:30-8.4	Announcement of practice in special area of dentistry: extension of comment period	22 N.J.R. 3108(a)		
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13:31-1.4	Exempt electrical work and use of qualified journeyman electrician	23 N.J.R. 979(a)		
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13:32-1.8	Licensed master plumber: scope of practice	23 N.J.R. 1062(a)		
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13:36-1.6	Board of Mortuary Science: fee schedule	23 N.J.R. 1063(b)		
13:36-7	Board of Mortuary Science: practice regarding persons who died of infectious or contagious disease	23 N.J.R. 1517(a)		
13:36-10	Mortuary science licensees: continuing education	23 N.J.R. 1277(a)		
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13:37-12.1	Board of Nursing fees	23 N.J.R. 672(a)		
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13:38-3.11	Practice of optometry: application for licensure	23 N.J.R. 166(a)	R.1991 d.228	23 N.J.R. 1418(b)
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13:39A	Board of Physical Therapy rules	23 N.J.R. 1065(a)		
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13:41-4.2–4.5	Certified landscape architects; site planning services	23 N.J.R. 1516(a)		
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13:44D-2.4	Advisory Board of Public Movers and Warehousemen: fee schedule	23 N.J.R. 1066(b)		
13:44E-2.1	Advertising of chiropractic services	23 N.J.R. 389(a)		
13:44E-2.2	Chiropractic patient records	23 N.J.R. 391(a)		

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13:63	Combat Auto Theft Program	23 N.J.R. 981(a)		
13:70-1.31	Thoroughbred racing: election of horsemen's organization	22 N.J.R. 3450(a)		
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13:70-19.43	Thoroughbred racing: presence of veterinarian throughout racing program	23 N.J.R. 674(b)	R.1991 d.260	23 N.J.R. 1684(b)
13:71-3	Harness racing: hearings regarding license suspensions	23 N.J.R. 1282(a)		
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13:71-9.4	Harness racing: presence of veterinarian throughout racing program	23 N.J.R. 675(b)	R.1991 d.261	23 N.J.R. 1684(d)
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13:71-23.8	Harness racing: time on respiratory list	23 N.J.R. 675(c)	R.1991 d.264	23 N.J.R. 1684(e)
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