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THE JOURNAL OF STATE AGENCY RULEMAKING

VOLUME 26 NUMBER 8

April 18, 1994 Indexed 26 N.J.R. 1555-1738

(Includes adopted rules filed through March 25, 1994)

MOST RECENT UPDATE TO NEW JERSEY ADMINISTRATIVE CODE: FEBRUARY 22, 1994
See the Register Index for Subsequent Rulemaking Activity.

NEXT UPDATE: SUPPLEMENT MARCH 21, 1994

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

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

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NEW JERSEY REGISTER

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

The New Jersey Register (ISSN 0300-6069) is published the first and third Mondays (Tuesday, if Monday is a holiday) of each month by OAL Publications of the Office of Administrative Law, CN 301, Trenton, New Jersey 08625. Telephone: (609) 588-6606. Subscriptions, payable in advance, are one year, $125 ($215 by First Class Mail); back issues when available, $15 each. Make checks payable to OAL Publications.

POSTMASTER: Send address changes to New Jersey Register, CN 301, Trenton, New Jersey 08625. Second Class Postage paid in South Plainfield, New Jersey.

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EXECUTIVE ORDERS

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 9(1994)
Elimination of Position of Environmental Prosecutor

Issued: March 15, 1994.
Effective: March 15, 1994.
Expiration: Indefinite.

WHEREAS, Executive Order No. 2, issued on January 18, 1990, created the position of Environmental Prosecutor in the Department of Law and Public Safety; and

WHEREAS, the position of Environmental Prosecutor was created in an effort to coordinate enforcement policy and oversee the prosecution of enforcement actions in environmental matters; and

WHEREAS, the coordination and oversight activities carried out by the Environmental Prosecutor can be achieved economically through the effective use of existing personnel within the Department of Law and Public Safety; and

WHEREAS, the Attorney General is best qualified to delegate the functions, powers and personnel of the Environmental Prosecutor; and

WHEREAS, it is the goal of the State of New Jersey to deliver efficient and cost-effective administrative services;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The position of Environmental Prosecutor is hereby eliminated from the Department of Law and Public Safety.

2. Executive Order No. 2 (Florio) is rescinded.

3. The functions of the Environmental Prosecutor shall be reallocated within the Department of Law and Public Safety by the Attorney General in such a manner as she deems appropriate in order to maximize efficiency, service and cost-effectiveness.

4. This Order shall take effect immediately.

(b)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 10(1994)
Reconstitution of Advisory Council on Juvenile Justice

Issued: March 17, 1994.
Effective: March 17, 1994.
Expiration: Indefinite.

WHEREAS, juvenile crime and youth violence are major problems throughout New Jersey especially in our most populated urban centers; and

WHEREAS, New Jersey ranked 5th in the nation in the number of juvenile arrests and 4th in arrests made for serious violent crimes in 1992, with one in every five arrests being a juvenile arrest; and

WHEREAS, juvenile arrests for murder, rape, robbery and aggravated assault have increased 34 percent since 1988 and juvenile drug arrests rose 7 percent in 1992; and

WHEREAS, juvenile crime has become a leading cause of injury and death among young people, especially minority males in our urban centers; and

WHEREAS, Reorganization Plan No. 001 of 1993 and Executive Order No. 93 (Florio) created the Advisory Council on Juvenile Justice in the Department of Human Services to address select issues regarding the provision of services and, where appropriate, sanctions to juvenile delinquents and at-risk youths within the responsibility of that Department; and

WHEREAS, it has become increasingly clear that the problem of juvenile crime and youth violence must be addressed by all State departments involved with at-risk youth, as well as by local governments, and local agencies and service providers; and

WHEREAS, State departments, local governments and local agencies and service providers must work cooperatively to ensure the most timely, uniform and cost-effective provision of a full range of services and, where appropriate, sanctions for youth involved or at-risk of involvement in New Jersey's juvenile justice system;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The Advisory Council on Juvenile Justice is hereby reconstituted as set forth in this Order. The Advisory Council shall consist of no fewer than 21 or more than 26 members, and shall include:

a. The Attorney General, who shall serve as Chairperson;

b. The Commissioner of Human Services, who shall serve as Vice-Chairperson;

c. The Secretary of State;

d. The Commissioner of Community Affairs;

e. The Commissioner of Corrections;

f. The Commissioner of Education;

g. The Commissioner of Health;

h. The Commissioner of Labor;

i. The Public Defender;

j. Between seven and twelve public members chosen by the Governor on the basis of their expertise and interest in making improvements to the juvenile justice system.

In addition, the Administrative Director of the Courts shall be invited to participate on the Advisory Council. Also, the President of the Senate and the Speaker of the Assembly shall each be asked to select two individuals chosen on the basis of their expertise and interest in making improvements to the juvenile justice system to serve as members of the Advisory Council.

2. The Advisory Council shall assist the Governor and the various State departments in order to:

a. Expand the range of diversion and disposition options available to law enforcement, county prosecutors, social service agencies and the courts, including the sharing of resources to allow for more appropriate intervention programs on the local level.

b. Develop a range of services and sanctions for committed youth, in particular those youth committed to secure youth facilities.

c. Develop a range of services and, where appropriate, sanctions for non-committed youth who are involved or at-risk of involvement in the juvenile justice system. Youth services shall include, but not be limited to, prevention, intervention, education, treatment and rehabilitation services.

d. Work with the county youth services commissions to fulfill their statutory responsibilities as outlined in P.L. 1982, c.80, sec. 16, as amended (C. 2A:4A-91).

e. Expand, replicate and develop successful model programs that involve families, schools, law enforcement and other community organizations in the prevention of juvenile crime and youth violence, using available resources.

f. Improve record keeping and information sharing among State and local agencies involved with at-risk youth.

g. Develop job training and employment opportunities for at-risk youth.

h. Review, evaluate and coordinate allocations of State and federal funds to State departments, local governments and local agencies and service providers that provide services and, where appropriate, sanctions for youth involved in and at-risk of involvement in the juvenile justice system.

i. Examine State and local government systems for planning, coordinating, providing, and funding services and, where appropriate, sanctions for youth involved in and at-risk of involvement in the juvenile justice system.

j. Work cooperatively with any independent experts contracted to analyze New Jersey's juvenile justice system.

3. By June 30, 1994, the Advisory Council shall present to the Governor recommendations as to services and, where appropriate, sanctions for youth involved or at-risk of involvement in the juvenile justice system that can be expeditiously implemented using available resources.

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4. By December 31, 1994, the Advisory Council shall provide the Governor and the Legislature with recommendations for the long-term improvement of New Jersey's juvenile justice system that shall include:

a. Recommendations as to the proper allocation of State, local, and federal funds to State departments, local governments and local agencies and service providers that provide services and, where appropriate, sanctions for youth involved or at-risk of involvement in the juvenile justice system.

b. Recommendations as to statutory, administrative, programmatic and structural changes that should be undertaken to ensure the most timely, uniform and cost-effective provision of services and, where appropriate, sanctions for youth involved in or at-risk of involvement in the juvenile justice system.

c. An evaluation, in conjunction with the Jamesburg Board of Trustees, of the operation of the New Jersey Training School for Boys and the Juvenile Medium Security Center during the term of management under Executive Order No. 93 (Florio) and recommendations for future management of these facilities.

d. An assessment and recommendations regarding the conclusions reached by any independent experts contracted to analyze New Jersey's juvenile justice system.

5. In performing its responsibilities, the Advisory Council shall, to the extent practicable, utilize existing data, reports, statistics, and other sources and materials—national, State and local—including, but not limited to:

a. **Juveniles in New Jersey Correctional Facilities,** Community Mental Health Center, College of Medicine and Dentistry, Rutgers University, 1981.

b. **Beneath the Labels,** Association for Children of New Jersey, 1981;

c. **A Call to Action Linking Policy with Need,** the Governor's Committee on Children's Services Planning, 1985;

d. **New Jersey's Action Plan for Children,** the Governor's Committee on Children's Services Planning, 1985;

e. **The Division of Criminal Justice's Juvenile Justice Action Plan,** Draft Edition, 1988;

f. **The New Jersey Supreme Court's Final Report and Implementation Plan,** 1989 Judicial Conference on Juveniles, Justice and the Courts;

g. **Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee, The Disproportionate Incarceration of Black and Hispanic Youth in New Jersey,** 1990;

h. **A Report of the Governor's Juvenile Justice and Delinquency Prevention Advisory Committee, A Primary Prevention Plan for New Jersey, Towards a New Generation,** 1990;

i. **Principles and Operating Procedures for the Family Division,** Superior Court of New Jersey's Pathfinders Report, 1991;

j. **The Report of the Supreme Court Advisory Committee on the Family Division,** 1992;

k. **The Association for Children of New Jersey's Report on the Establishment of an Office of Youth Services,** 1992;

l. **The Report from the Cabinet Task Force on Children and Families, An Agenda for Children and Families,** 1992;

m. **State and County Profiles of Child Well-Being, Kids County New Jersey,** 1992;

n. Publications and reports of the Juvenile Delinquency Commission especially its report, **Profile 93;**

o. State of New Jersey Commission of Investigation, **Criminal Street Gangs,** 1993;

p. **The New Jersey Department of Education, Violence and Vandalism Prevention Task Force,** 1994.

For this purpose, the Advisory Council shall collect from any State or local government or any other appropriate source data, reports, statistics and other materials which are necessary to carry out its functions.

6. The Advisory Council on Juvenile Justice shall be in, but not of, the Department of Law and Public Safety.

7. The Office of the Attorney General shall coordinate staffing needs of the Advisory Council. Each Cabinet member of the Advisory Council shall assign a representative of her or his department to be designated as staff to the Advisory Council.

8. The Advisory Council is authorized to call upon any department or agency of State government to provide such information, resources or other assistance deemed necessary to discharge its responsibilities under this Order. Each department, officer, division and agency of this State is hereby required, to the extent not inconsistent with law, to cooperate with the Advisory Council and to furnish it with such information, personnel and assistance as is necessary to accomplish the purposes of this Order.

9. This Order shall take effect immediately.

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 11(1994)
Project Agreements for Public Works Projects; Rescission of Executive Order No. 99 (Florio)

Issued: March 21, 1994.
Effective: March 21, 1994.
Expiration: Indefinite.

WHEREAS, Executive Order No. 99, issued on September 13, 1993, established as the policy of the State of New Jersey that public works projects implemented by any State department, authority, or instrumentality be subject to a project agreement whenever feasible and whenever such agreement substantially advances the interests of costs, efficiency, quality, safety and timeliness and the State's policy regarding women—and minority-owned businesses; and

WHEREAS, Executive Order No. 99 mandated every State department, authority, or instrumentality authorized to implement public works projects to do so, whenever possible, subject to a project agreement with the applicable building and construction trade union or council in whose jurisdiction the work is to be performed; and

WHEREAS, the conditions specifying a particular labor force placed on the bidding and award of public works projects set forth in Executive Order No. 99 have raised questions regarding competitiveness and other issues associated with those projects; and

WHEREAS, New Jersey has a compelling interest in awarding public works contracts in such a manner as to yield the lowest reasonable costs and the highest standard of quality and efficiency on the job; and

WHEREAS, a properly evaluated and effected project agreement, when appropriate, can ensure that a public project is completed at the lowest reasonable cost in a timely manner without labor disruptions such as strikes, lockouts or slowdowns; and

WHEREAS, the benefits of any proposed project agreement must be carefully weighed with respect to the effect such an agreement would have on competitive bidding, project costs and the State's policy to advance women- and minority-owned businesses; and

WHEREAS, the use of project agreements may be considered on a project-by-project basis where such project agreements clearly benefit the interests of the State from a cost, efficiency, quality, safety and/or timeliness standpoint;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. Executive Order No. 99 (Florio) is hereby rescinded and is superseded by this Executive Order No. 11.

2. A State department, authority or instrumentality may include a project agreement in a public works project on a project-by-project basis where it has been determined that such project agreement will promote labor stability and advance the State's interests in cost, efficiency, quality, safety and/or timeliness.

3. This Order does not require the use of a project agreement or selection of any particular union, trade council or labor organization.

4. In accordance with this Order, any project agreement:

(a) shall contain guarantees against strikes, lockouts, slowdowns or other similar action;

(b) shall set forth effective, immediate and mutually binding procedures for resolving jurisdictional and labor disputes arising before the completion of the work; and

(c) shall be made binding on all contractors and subcontractors on the public construction project through the inclusion of appropriate bid specifications in all relevant bid documents.

5. Any decision to use a project agreement in connection with a public works project by a State agency, authority or instrumentality shall be

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supported by a written, publicly disclosed finding by such agency, authority or instrumentality setting forth the justification for use of the project agreement.

6. All State agencies, authorities and instrumentalities are hereby ordered to ensure that all public works projects are implemented in a manner consistent with the terms of this Order and are in full compliance with all statutes, regulations and executive orders, including Executive Order No. 84 (Florio) regarding the implementation of set-aside goals for women- and minority-owned businesses.

7. This Order shall take effect immediately and is intended to have prospective effect only.

(a)

OFFICE OF THE GOVERNOR
Governor Christine Todd Whitman
Executive Order No. 12(1994)
State of Emergency
Reduction in Gas Transmission Pipeline Pressure

Issued: March 25, 1994.
Effective: March 25, 1994.
Expiration: Indefinite.

WHEREAS, a natural gas transmission pipeline located in the Township of Edison, County of Middlesex, exploded on or about midnight on March 24, 1994; and

WHEREAS, it has been reported that an approximately 150-foot fire stream erupted from the pipeline following the explosion which caused the destruction of nine buildings in the Durham Woods Apartment Complex; and

WHEREAS, it has been reported that hundreds of residents residing in a one-quarter mile area of the scene were evacuated; and

WHEREAS, an investigation is underway to ascertain the cause of such explosion and the extent of fatalities and/or personal injury, if any, as well as additional property damage; and

WHEREAS, until the results of said investigation are known, we must take every precaution to ensure that similar pipeline failures do not occur; and

WHEREAS, the conditions caused by the explosion and fire pose a threat and constitute a disaster which threatens and presently endangers the health, safety or resources of the residents of Edison Township, which threat and endangerment may be too large in scope to be handled in its entirety by the normal county and municipal operating services; and

WHEREAS, the Constitution and Statutes of the State of New Jersey, particularly, but not limited to, the provisions of the Laws of 1942, Chapter 251 (N.J.S.A. App: A:9-33 et seq.) and the Laws of 1963, Chapter 109 (N.J.S.A. 38A:2-4) and all amendments and supplements thereto, confer upon the Governor of the State of New Jersey certain emergency powers;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, in order to protect the health, safety and welfare of the people of the State of New Jersey do declare and proclaim:

1. A State of Emergency has and presently exists in this State.

2. The Acting Superintendent of the Division of State Police shall provide State Troopers and other personnel assigned to the Division of State Police, in such numbers as he deems necessary to protect the health, safety and resources of the residents of the Township of Edison and the State of New Jersey.

3. The Superintendent of the Division of State Police is further authorized and empowered to utilize all facilities owned, rented, operated and maintained by the State of New Jersey to house and shelter persons who may need to be evacuated from their residences during the course of this emergency.

4. The Superintendent of the Division of State Police is hereby authorized to order the evacuation of all persons, except for those emergency and governmental personnel whose presence he deems necessary, from any area where their continued presence would present a danger to their health, safety or welfare because of the conditions created by this emergency.

5. The Department heads of the various agencies of State Government who are called upon to provide assistance during this State of Emergency shall lend their assistance and take appropriate action to ensure the protection of the health, safety and resources of the residents of the Township of Edison and the State of New Jersey, due to this emergency.

6. Until the results of the investigation are known, all natural gas suppliers having gas transmission lines in this State shall reduce transmission pipeline pressure by five (5) percent of the Maximum Available Operating Pressure (MAOP) and coordinate said reduction with gas distribution entities to ensure the safety of all customers and continuity of service. The Commissioner of the Department of Environmental Protection and Energy and President of the Board of Regulatory Commissioners shall meet, as soon as practicable, with representatives of the affected natural gas suppliers and representatives of the gas utilities doing business in the State to obtain any recommendations for any adjustments or modifications deemed necessary to this Paragraph and to ensure its safe implementation.

7. This Order shall take effect immediately and it shall remain in effect until such time as it is determined by me that an emergency no longer exists.

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RULE PROPOSALS

AGRICULTURE

(a)

DIVISION OF REGULATORY SERVICES

New Jersey Commercial Fertilizer and Soil Conditioners

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, Department of Agriculture.

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

Proposal Number: PRN 1994-216.

Submit comments by May 18, 1994 to:
Dhun B. Patel, Ph.D., Director
Division of Regulatory Services
N.J. Department of Agriculture
CN 330
Trenton, New Jersey 08625
Telephone: (609) 292-5575

The agency proposal follows:

Summary

The purpose of this proposed amendment is to update the commercial values of primary plant nutrients. The current values have been reviewed and no change in the values is proposed at this time. However, the effective dates are being changed to reflect the annual update. The assessed penalties for deficient 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 fertilizers 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 of 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 indicated in boldface **thus**; deletion indicated in brackets [thus]):

2:69-1.11 Commercial values

(a) (No change.)

(b) These values shall be effective from [September 24, 1993] **July 1, 1994** through June 30, [1994] **1995**.

BANKING

(b)

DIVISION OF REGULATORY AFFAIRS

General Provisions; Examination Charges

Proposed Amendment: N.J.A.C. 3:1-6.6

Authorized By: Elizabeth Randall, Commissioner, Department of Banking.

Authority: N.J.S.A. 17:1-8.

Proposal Number: PRN 1994-236.

Submit comments by May 18, 1994 to:
Rule Comments
Attn: Stephen Szabatin
Deputy Commissioner
CN 040
Trenton, N.J. 08625

The agency proposal follows:

Summary

The Department of Banking proposes to increase the per diem examination charge to all of the financial institutions included in N.J.A.C. 3:1-6.6. The fee charged to banks, savings and loans and holding companies will be increased from $300.00 plus $15.00 for travel to $325.00 plus $15.00 for travel expenses and the fee charged for examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section will be increased from $325.00 plus $15.00 for travel expenses to $350.00 plus $15.00 for travel expenses.

Social Impact

These proposed amendments will increase the total amount which is billed to each in-State entity examined by the Department. This shifts the burden of paying for this regulatory service from the general taxpaying public to the entities themselves, who benefit economically from engaging in financial services in this State.

Economic Impact

The proposed amendments will have a negative economic impact on the entities which are examined by the Department as they will have to pay an additional $25.00 per day per examiner more than they are currently paying. To the extent that the proposed changes have a negative impact on these entities they will have a corresponding positive impact on the Department and the State.

Regulatory Flexibility Analysis

Most of the entities affected by these proposed amendments are small businesses as defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The changes would increase the costs to those businesses. These increases are based on the services provided to these businesses, and not on their size. The increases are necessary to reimburse the State for the costs associated with these services. Accordingly, the Department does not differentiate the fees based on the size of the business.

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

3:1-6.6 Examination charge

(a) The individual per diem per person examination charge for an examination of a bank, savings and loan association or holding company shall be [$300.00] **$325.00**, plus $15.00 for travel expenses.

(b) The individual per diem per person examination charge for an examination of a licensee, credit union, trust company or trust department of a bank, savings bank or savings and loan association, or any person not specified in this section shall be [$325.00] **$350.00**, plus $15.00 for travel expenses.

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ENVIRONMENTAL PROTECTION AND ENERGY

(a)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM

Notice of Extension of Public Comment Period

Coastal Permit Program Rules
Proposed Readoption with Amendments: N.J.A.C. 7:7
Proposed New Rules: N.J.A.C. 7:7-1.7 and 7:7-7

Rules on Coastal Zone Management
Proposed Amendments: N.J.A.C. 7:7E
Proposed Repeals: N.J.A.C. 7:7E-2.3, 3.26, 3.29, 3.30, 4.2 through 4.10, 8.3, 8.9, 8.15 and 8.16
Proposed New Rules: N.J.A.C. 7:7E-3.49, 3A, 7.3A and 8.21

Ninety-day Construction Permits; Fees
Proposed Amendments: N.J.A.C. 7:1C-1.3 and 1.5

Take notice that, in response to several requests from legislators, the Department of Environmental Protection and Energy is extending the public comment period for the three above-referenced proposed new rules and rule amendments. These proposals contain the regulatory amendments proposed by the Department to implement the 1993 legislative amendments to CAFRA, the Coastal Area Facility Review Act. The proposed new rules and amendments were published in the February 22, 1994 New Jersey Register at 26 N.J.R. 918(a) (DEPE Docket Number 08-94-01/105), 26 N.J.R. 943(b) (DEPE Docket Number 11-94-01/291), and 26 N.J.R. 913(a) (DEPE Docket Number 10-94-01/296). The extended deadline for the receipt of comments is 5:00 P.M., April 25, 1994.

Submit written comments, identified by the appropriate Docket Number, by April 25, 1994 to:

Janis Hoagland, Esq.
Administrative Practice Officer
N.J. Department of Environmental Protection and Energy
CN 402
Trenton, NJ 08625

(b)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM

Notice of Administrative Correction
Rule on Coastal Zone Management
Special Urban Areas
Proposed Amendment: N.J.A.C. 7:7E-3.43

Take notice that the Department of Environmental Protection and Energy has discovered an error in the text of the proposed amendment to N.J.A.C. 7:7E-3.43(a) published in the February 22, 1994 New Jersey Register at 26 N.J.R. 943(a).

At N.J.A.C. 7:7E-3.43(a), while present in the published list, "Rahway" should have appeared in boldface as a proposed addition to the list of coastal zone municipalities qualifying as special urban areas in 1993; "Woodbury," which is currently on the list in the New Jersey Administrative Code, should not have appeared in boldface.

This notice of administrative correction is published pursuant to N.J.A.C. 1:30-2.7.

Full text of the corrected proposed amendment follows, as it should have appeared in the notice of proposal (additions to current Code text indicated in boldface **thus**; deletions from Current Code text indicated in brackets [thus]):

7:7E-3.43 Special Urban Areas

(a) ["]Special [Urban Areas] **urban areas**["] are those municipalities defined in urban aid legislation (N.J.S.A. 52:27D-178) qualified to receive State aid to enable them to maintain and upgrade municipal services and offset local property taxes. The following [32 coastal] municipalities **within the coastal zone** qualify as [Special Urban Areas] **special urban areas** in [1989] **1993**:

Asbury Park	Jersey City	Paulsboro
Atlantic City	Keansburg	Pennsauken
Bayonne	Kearny	Penns Grove
Belleville	Lakewood	Perth Amboy
Bridgeton	Long Branch	Pleasantville
Camden	Millville	**Rahway**
Carteret Borough	**Mt. Holly Twp.**	Salem
Commercial Twp.	Neptune Twp.	Trenton
Elizabeth	New Brunswick	West New York
Glassboro	Newark	Weehawken
Gloucester City	North Bergen	**Willingboro**
Gloucester Twp.	Old Bridge City	**Woodbridge**
Hoboken	Passaic	Woodbury

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

(c)

ENVIRONMENTAL REGULATION
LAND USE REGULATION PROGRAM

Notice of Clarification
Rules on Coastal Zone Management
Scenic Resources and Design
Proposed Amendment: N.J.A.C. 7:7E-8.12

Take notice that the Department of Environmental Protection and Energy has determined that it is necessary to clarify the nature of the proposed amendment to N.J.A.C. 7:7E-8.12(d) published in the February 22, 1994 New Jersey Register at 26 N.J.R. 943(a).

The text of N.J.A.C. 7:7E-8.12(d) currently appears erroneously in the New Jersey Administrative Code. Subsection (d) was proposed at 22 N.J.R. 1188(a), but was not adopted in any part. However, in incorporating the adopted changes into the Code through the Code update of August 20, 1990, the proposed text of subsection (d) was included as if it had been adopted.

In the proposed amendments to N.J.A.C. 7:7E published in the February 22, 1994 New Jersey Register, the Department intended to propose subsection (d) as an altered version of the subsection proposed but not adopted in 1990. This intent is reflected in the proposal Summary, which states that the Department intends to revise N.J.A.C. 7:7E-8.12 "to include the addition of design standards for waterfront construction" (26 N.J.R. 949). However, because the existing text of the Code already contained subsection (d), the proposal was published to conform this subsection to the existing text, and therefore appears with additions and deletions shown rather than as completely new text. In addition, the proposal shows N.J.A.C. 7:7E-8.12(d)1 as a proposed addition to the existing Code (that is, in boldface), even though the proposed text already erroneously appears in the existing Code.

By this notice, the Department is clarifying its intention expressed in the proposal Summary that the entire net text of N.J.A.C. 7:7E-8.12(d) (that is, the text which results after making the boldface additions and bracketed deletions from the text that now appears in the Code) was intended as proposed new design standards for waterfront construction.

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(a)

DIVISION OF FISH, GAME AND WILDLIFE

Bureau of Shellfisheries
Oyster Management

Proposed Amendments: N.J.A.C. 7:25A-1.2, 1.4, 1.9 and 4.3

Authorized By: Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Authority: N.J.S.A. 50:1-5 and 50:3-8.
DEPE Docket Number: 20-94-03/439.
Proposal Number: PRN 1994-221.

Submit written comments by May 18, 1994 to:
Janis Hoagland, Esq.
Office of Legal Affairs
Department of Environmental Protection and Energy
CN 402
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed amendment to the oyster seed bed section (N.J.A.C. 7:25A-1.9) authorizes the Division with the advice of the Delaware Bay Section of the Shellfisheries Council to allow the sale of oysters directly from the oyster seed beds during Bay Season. The amendment includes a size limit, and provisions for bagging and tagging oysters to be taken to market. The amendment adds a provision for a minimum charge per bushel of oysters taken for sale, to be deposited in the Oyster Cultch Fund. The amendment retains the provision for review of harvest and for closure of beds during Bay Season on the recommendation of the Council. While these amendments were originally proposed at 25 N.J.R. 754(a), that proposal expired before its adoption could be filed with OAL (see N.J.A.C. 1:30-4.2(c)).

Social Impact

The amendment allows the sale of oysters from the seed beds during Bay season with the advice of the Council in years when enough large oysters are available to be sold without further grow-out on the planting grounds. This provision will have a positive impact on the members of the industry who have, in the past, seen promising plantings of seed oysters destroyed by disease and predation that can occur in the higher salinity planting grounds before they could be marketed.

Economic Impact

The economic impact of the amendment will be positive for oystermen who will be able to directly market the larger oysters taken from the seed beds. In past years, disease and predation have sometimes caused the loss of even the largest oysters harvested and replanted during Bay season. The amended rules will allow the Division, with the advice of the Council, to help the harvesters make better use of the available seed resource.

Environmental Impact

A new provision in N.J.A.C. 7:25A-1.9 allows the Division, with the advice of Council, to require oystermen who wish to harvest from the seed beds to transplant seed oysters from one selected seed bed to another. This process will allow beneficial management of the seed oyster population in Delaware Bay. The rest of the rule amendment will not alter current practice other than allowing the direct sale of large oysters from the seed beds. There will be a net benefit to the oyster population, an important component of the Bay's ecosystem, and thereby will have a positive environmental impact.

Regulatory Flexibility Analysis

The proposed amendments apply to all commercial fishermen with a validly licensed vessel to harvest oysters in the Delaware Bay. The approximately 95 oyster fishermen operating in Delaware Bay would be considered small business as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Although these small businesses must comply with the proposed amendments as described in the Summary above, there will be no need of additional professional services or increased costs of compliance. In developing the proposed amendments and new rule, the Department has balanced its environmental responsibilities against the economic impact to small businesses and has determined that to minimize the impact of the amendment would adversely affect the environment and, therefore, no exemption from coverage is provided.

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

7:25A-1.2 Purpose

The purpose of this subchapter is to provide an orderly procedure for the licensing of oyster vessels, the leasing of oyster grounds in Section E in Delaware Bay, and the taking of seed oysters from the State's natural seed beds **and the possible direct sale of those oysters.**

7:25A-1.4 Definitions

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

. . .

"Department" means the Department of Environmental Protection **and Energy.**

. . .

7:25A-1.9 Oyster seed beds

(a) The [division] **Division** with the advice of the Delaware Bay Section of the Shellfisheries Council and the [Oyster] **Haskin Shellfish** Research Laboratory of Rutgers University, shall determine the season for the taking of seed oysters from the natural seed beds above the southwest line in Delaware Bay and shall determine which of the natural seed beds above the southwest line shall be opened. Reasonable notice shall be given by the [division] **Division** to all oyster dredge boat license holders of the dates of the beds to be opened and the conditions attendant on the opening. Oyster seed beds shall be closed as determined in accordance with [(h)] **(i)** below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M. Monday through Friday.

(b) (No change.)

(c) Any vessel unable to plant its seed oysters because of mechanical problems, water conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.

[(c)]**(d)** All seed oysters shall be planted on the day taken by spreading them loosely on the bottom, not in bags, baskets, or other containers. All oysters taken from the natural beds are considered to be seed oysters until planted in the manner prescribed in this section. Seed oysters shall not be marketed or sold for any other purpose **except that the Division with the advice of the Council may designate times, manner and section(s) of the natural seed beds from which seed oysters may be taken for market, barter, or other trade during any period when the natural seed beds are legally opened.**

[(d) Seed oysters taken during the seed season shall not be sorted by size, or placed in any bag, bushel basket or other container, and shall remain on deck until planted, unless written exemption for the containerization of the seed oysters is provided by the Department upon the advice of the Council.]

(e) Oysters taken pursuant to (d) above for market, barter or other trade shall be bagged or containerized in one bushel bags or containers on board the harvesting vessel with harvest tags furnished by the Division. Tags shall remain in place until the oysters are delivered for sale by the harvester.

1. The minimum size limit for seed oysters taken for market, barter or other trade shall be 2½ inches in height from hinge to lip.

[(e) Any vessel unable to plant its seed oysters because of mechanical problems, water conditions or other verifiable emergency must immediately contact the Shellfish Office by VHF radio, Channel 68, or by telephoning (609) 785-0730.]

(f) The Division with the advice of the Council may require harvesters authorized to harvest seed oysters from the natural seed beds to move specified quantities of seed oysters (other than those

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culled for market, barter or other trade) from one location on the natural seed beds to another during any period open for harvest from the seed beds as provided in (d) above.

[(f)]**(g)** An Advisory Committee shall be appoined by the Commissioner and shall be composed of two members of the Council, two members of the [Oyster] **Haskin Shellfish** Research Laboratory of Rutgers University, and the Director of the Division or his or her designee.

[(g)]**(h)** Physical tests of all areas opened pursuant to this subchapter shall be made near the end of each week by the Advisory Committee described in [(f)]**(g)** above. These tests shall be the determining factor in the Advisory Committee's recommendation to close any or all beds opened by regulation.

[(h)]**(i)** Based upon the data and tests referred to in [(g)]**(h)** above and the recommendation of the Advisory Committee described in [(f)]**(g)** above, the Council, with the approval of the Commissioner, may immediately close those beds as may be necessary for the preservation and improvement of the shellfish industry.

1. It shall be illegal to harvest seed oysters from any closed beds.

2. It shall be prima facie evidence of the violation of **(i)**1 above if any vessel is observed by Radar or LORAN or other reliable means to be on closed beds with dredge in water.

Recodify existing (i)-(r) as **(j)-(s)** (No change in text.)

7:25A-4.3 Fee

(a) A fee shall be collected from harvesters by dealers for each bushel of oysters landed at their permitted landing sites.

1. The fee shall be initially set at $0.35 per bushel **except for seed oysters harvested for market, barter, or other trade. The fee for these oysters shall be initially set at the minimum rate of $1.25 per bushel.**

2.-4. (No change.)

5. The fee for seed oysters taken for market, barter, or other trade, as provided for in N.J.A.C. 7:25A-1.9(d) will be collected by the Division of Fish, Game and Wildlife prior to harvest through the purchase of tags as provided for in N.J.A.C. 7:25A-1.9(e).

[5.]**6.** (No change in text.)

HUMAN SERVICES

(a)

THE COMMISSIONER

Child Placement Rights

Proposed New Rules: N.J.A.C. 10:17

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 9:6B-6 and 30:1-12.

Proposal Number: PRN 1994-219.

Submit comments in writing by May 18, 1994 to:
E. John Walzer, Esq., Regulatory Officer
Office of Legal and Regulatory Liaison
Department of Human Services
222 South Warren Street, CN 700
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The proposed new rules establish and describe the Department of Human Services' policies and procedures regarding the rights of children placed outside their home in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-1 et seq.). The act concerns the rights of children placed outside their home by the Department of Human Services, the Department of Health or a board of education, or an agency or organization with which the applicable department contracts to provide certain services.

The Department of Human Services already has specific Division of Developmental Disabilities and Division of Youth and Family Services regulations regarding services provided to children and clients (N.J.A.C. 10:40 and 10:120). These new rules, however, are being proposed for adoption to address the general subject area of out of home placements by the Department of Human Services as required by the Child Placement Bill of Rights Act.

The scope of this legislation and the proposed new rules extends to the Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services since these are the two divisions in the Department of Human Services which make out of home placements.

These proposed new rules clarify the specific rights of children placed out of home as set forth in the Child Placement Bill of Rights Act. All Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services out of home placements shall be in accord with applicable Federal and State statutes and regulations. Additionally, of course, the placements shall be consistent with the health, safety and physical and psychological welfare of the child as appropriate to the individual circumstances of the child's physical or mental development. Both the Division of Developmental Disabilities and the Division of Youth and Family Services may place children outside their home for treatment purposes to address their physical, emotional or developmental needs. Singularly, the Division of Youth and Family Services may also place a child for protection from abuse or neglect. The controlling Individual Habilitation Plan or Case Plan which is developed for the child is always premised on the best interest of the child.

The proposed new rules also require the divisions to prepare and update at least every six months aggregate non-identifying data about children under their care, custody or supervision who are placed in out-of-home settings in accord with the Child Placement Bill of Rights Act. This information shall be compiled in the form of a Department semi-annual report which shall be made available to the public upon request.

Social Impact

The proposed new rules represent the Department of Human Services' policies and procedures regarding the rights of children placed outside their home in accord with the Child Placement Bill of Rights Act.

Although the Department of Human Services already has specfic Division of Developmental Disabilities and Division of Youth and Family Services regulations regarding services provided to children and clients, these proposed new rules do have significant social impact in terms of the rights of the children under the care, custody or supervision of the Division of Developmental Disabilities and the Division of Youth and Family Services who are placed out of home.

Economic Impact

Adoption of these proposed new rules will have no economic impact upon the children under the care custody or supervision of the Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services.

The Department will incur only minimal additional costs as a result of the implementation of these proposed new rules. These costs relate only to the compilation of data about children under the care, custody or supervision of the Division of Developmental Disabilities and the Division of Youth and Family Services who are placed in out-of-home settings in accord with the Child Placement Bill of Rights Act. The Department already has specific Division of Developmental Disabilities and Division of Youth and Family Services regulations regarding services provided to children which are consistent with these proposed new rules and the Child Placement Bill of Rights Act.

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 proposed new rules impose no reporting, recordkeeping or other compliance requirements on small businesses; therefore a regulatory flexibility analysis is not required. The new rules concern child placement rights and not any private business establishments.

Full text of the proposed new rules follows:

CHAPTER 17
CHILD PLACEMENT RIGHTS

SUBCHAPTER 1. GENERAL PROVISIONS

10:17-1.1 Purpose

This chapter establishes and describes the Department of Human Services' policies and procedures regarding the rights of children

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placed outside their home in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-1 et seq.) which concerns the rights of children placed outside their home by the Department of Human Services, the Department of Health or a board of education, or an agency or organization with which the applicable department contracts to provide certain services.

10:17-1.2 Scope

The scope of this chapter applies to the Department of Human Services' Division of Developmental Disabilities and Division of Youth and Family Services which place children outside their home.

10:17-1.3 Definitions

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

"Case Plan" (CP) means a Division of Youth and Family Services written plan developed for a child in placement outside of the home in accord with N.J.A.C. 10:133D-2. It is a single plan which includes the case goals for the child, the progress towards its achievement and any obstacles to reaching it, as well as the services or actions intended to meet the identified needs and who is responsible to provide the services and complete the activities, with projected time frames.

"Child" means a person under 18 years of age, except that persons under the age of 21 may retain the right to services, education and training in accord with N.J.S.A. 30:4-24.1 and 9:17B-2(f).

"Department" means the Department of Human Services.

"Division(s)" means the Division of Developmental Disabilities and the Division of Youth and Family Services.

"Individual Habilitation Plan" (IHP) means a Division of Developmental Disabilities written plan of intervention and action that is developed by the interdisciplinary team for each person to be provided services in accord with N.J.S.A. 30:6D-10 et seq. The IHP specifies both the prioritized goals and objectives being pursued by each individual and the steps being taken to achieve them. It is a single plan that encompasses all relevant components, such as an education plan, a program plan, a rehabilitation plan, a treatment plan and a health care plan which may identify a continuum of skill development that outlines progressive steps and the anticipated outcomes of services.

"Reasonable efforts" means actions to maintain or reunite families rather than placing or maintaining children in out of home placement which include: identifying family problems; arranging and funding services to help families stay together; assessing extended family and friends as supports to the family or as alternatives to placement; arranging visitation with parents and siblings; ensuring that the child is in a stable placement which is appropriate to meet his needs; and periodic review of the child's continued need for an out of home placement and the possibility of return home, if appropriate.

SUBCHAPTER 2. POLICIES AND PROCEDURES

10:17-2.1 Rights of child placed outside his or her home

(a) All placements of children outside the home by a division shall be in accord with all applicable Federal and State statutes and regulations, including the State Code of Criminal Justice provision at N.J.S.A. 2C:30-4 by which the disbursement of public moneys or incurrence of obligations in excess of appropriation and limit of expenditure is prohibited as criminal activity. In an effort to provide for all clients fairly, it is recognized that division appropriations and allocations need to be applied across the State and across the entire fiscal year, and that planning and judgment are necessary and appropriate on a case by case basis as well to ensure that appropriations are not dissipated in an effort to meet extraordinary needs of one client to the detriment of the rest of the population who require and could benefit from services needed to be funded from the same finite source.

(b) The rights of children placed outside their home by a division shall be consistent with the health, safety and physical and psychological welfare of the child as appropriate to the individual circumstances of the child's physical or mental development. The divisions may place children for treatment purposes to address their physical, emotional or developmental needs, while the Division of Youth and Family Services may additionally place a child for protection from abuse or neglect. Regardless, although the amount of contact the child will continue to have with his or her family while in placement will of course vary according to a number of factors, in all situations the best interest of the child is the driving force in any IHP/CP that is developed for that child. Additionally, the Division of Youth and Family Services has rules regarding placement outside of the home at N.J.A.C. 10:122A, 10:122B, 10:122C, 10:122D and 10:122E.

(c) The specific rights of children placed out of home are clarified in this subsection in accord with applicable law and regulations and as set forth in the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-4):

1. A child has the right to placement outside his or her home only after the division has made a reasonable effort to enable the child to remain in his or her home. Except in emergencies, those efforts shall be identified in his or her IHP/CP, including the provision or arrangement of financial or other assistance and services subject to the division's appropriation and consideration of the needs of other eligible persons.

i. In the instance of an emergency, the division shall develop an IHP/CP as soon as possible, but no less than 30 days after the emergency placement.

2. A child being placed outside of his or her home has the right to the best efforts of the division, including the provision or arrangement of financial or other assistance and services as necessary, to attempt to place the child with a relative. The efforts of the division shall be subject to the limit of the division's appropriation and shall reflect a reasonable allocation of those resources.

3. A child being placed outside of his or her home has the right to the best efforts of the division, including the provision or arrangement of financial or other assistance and services as necessary, to place the child in an appropriate setting in his or her own community.

4. A child being placed outside of his or her home has the right to the best efforts of the division to place the child in the same setting with his or her sibling if the sibling is also being placed outside his or her home, except where such placement is determined to be clinically inappropriate. A child's placement in a setting not with his or her sibling may be effectuated if the child has a specific medical condition or disability which is not shared by the sibling, or such placement is not clinically appropriate. Where the above conditions are present the child may be placed in a situation licensed to accept only persons with such a medical condition or disability.

5. A child in placement outside of his or her home has the right to visit with his or her parents or legal guardian as soon as possible after placement, but no more than 30 days after the placement, and to visit with his or her parents or legal guardian, on a regular basis thereafter as indicated in the IHP/CP, and to otherwise maintain contact with his or her parents or legal guardian.

i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP.

ii. The division shall arrange a follow-up visit with the parents or legal guardian and the child as soon as possible after the placement, but no more than 30 days after the placement, to develop an IHP/CP which shall establish the frequency of follow-up visits.

iii. The division, in accord with the IHP/CP, shall facilitate contact and provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources.

6. A child in placement outside of his or her home has the right to visit with his or her sibling on a regular basis and to otherwise maintain contact with his or her sibling if the child was separated from his or her sibling upon placement outside his or her home.

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i. Visitation may be limited when clinically contraindicated or restricted by court order, and any limitation of visitation shall be reflected in the IHP/CP.

ii. The division, in accord with the child's IHP/CP, shall facilitate visits between the child and his or her siblings or otherwise maintain contact between the child and his or her siblings where such contact is determined in the IHP/CP to be clinically appropriate.

iii. The division shall provide or arrange for transportation as necessary. Families shall be encouraged to provide transportation wherever possible. Where the family requires assistance, the division shall coordinate the provision of transportation using existing and generic resources. The division's ability to provide direct transportation assistance shall be subject to the limitation of the division's financial and other resources.

7. A child being placed or in placement outside of his or her home has the right to placement in the least restrictive setting appropriate to his or her needs and conducive to his or her health and safety.

8. A child being placed or in placement outside of his or her home has the right to be free from physical or psychological abuse.

9. A child being placed or in placement outside of his or her home has the right to be free from repeated changes in placement before his or her permanent placement or return home. Every effort shall be made to provide a stable placement until the child can return to his or her home and, except in emergencies, any change in placement shall be made in accordance with the child's IHP/CP.

10. A child in placement outside of his or her home has the right to have regular contact as indicated in the IHP/CP with any caseworker assigned to his or her case who is employed by the division or any agency or organization with which the division contracts to provide services and the opportunity, as appropriate to his or her age and ability, to participate in the planning and regular review of his or her placement plan, and to be informed on a timely basis of changes in any placement plan which is prepared pursuant to law or regulation and the reasons therefor in terms and language appropriate to his or her ability to understand.

11. A child being placed or in placement outside of his or her home has the right to have a placement plan, as required by law or regulation, that reflects his or her best interests and is designed to facilitate his or her placement or return home in a timely manner that is appropriate to his or her needs, and to services of a high quality that are designed to maintain and advance his or her mental and physical well-being.

i. In the case of placements by the Division of Developmental Disabilities, the interdisciplinary team shall consider the continued need for an out of home placement, the appropriateness of the present placement and the possibility of return home at the time of the annual IHP. Additionally, a review of the IHP may be requested at any time by the parent or legal guardian.

ii. In the case of placements by Division of Youth and Family Services, the placement shall be in accord with the case plan as set forth at N.J.A.C. 10:133D-2.

12. A child being placed or in placement outside of his or her home has the right in that placement to services of a high quality that are designed to maintain and advance the child's mental and physical well-being in accordance with the child's IHP/CP. Except where the child lives in his or her own home or with a relative, the division shall place the child in an appropriately licensed or approved facility or in an otherwise approved placement.

13. A child being placed or in placement outside of his or her home has the right in that placement to be represented in the planning and regular review of his IHP/CP and the provision of services to him or her, his or her parents or legal guardian and temoporary caretaker. The child may be represented by a person other than his or her parents or legal guardian and temporary caretaker who will advocate for his or her best interests and the enforcement of his or her rights. The parent, legal guardian, temporary caretaker, advocate or other interested party shall be invited to attend the annual IHP/CP meeting.

14. A child being placed or in placement outside of his or her home has the right in that placement to receive an educational program which will maximize his or her potential. Responsibility for the provision of the child's education shall remain with the local education authority (LEA). The division shall advocate for the provision of a free and appropriate education for the child and shall attend any meeting with the LEA to develop an IHP or CP.

15. A child in placement outside of his or her home shall have the right to receive adequate, safe and appropriate food, clothing and housing. This may be provided through the use of division specific or generic resources.

16. A child in placement outside of his or her home shall have the right to receive adequate and appropriate medical care. This may be provided through the use of division specific or generic resources.

17. A child in placement outside of his or her home shall have the right in that placement to be free from unwarranted physical restraint. Isolation, which is the use of a locked room, shall be prohibited.

i. The Division of Developmental Disabilities' use of any mechanical restraints shall comply with the provision of N.J.A.C. 10:42.

ii. The Division of Youth and Family Services prohibits the use of mechanical restraints in division-operated facilities. The Division of Youth and Family Services Manual of Requirements for Residential Child Care Facilities at N.J.A.C. 10:127 permits the use of certain types of mechanical restraints in privately-operated facilities, although stringent controls are imposed on the uses of such restraints.

10:17-2.2 Data on children placed in out-of-home settings

(a) The divisions shall prepare and update at least every six months aggregate non-identifying data about children under their care, custody or supervision who are placed in out-of-home settings in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5). This data shall be submitted to the Department for compilation as a Department semi-annual report which shall be made available to the public upon request.

(b) The data to be prepared and updated by the Department/divisions shall include the following in accord with the Child Placement Bill of Rights Act (N.J.S.A. 9:6B-5):

1. The number of children placed outside their homes during the six-month period and the cumulative number of children residing in out-of-home settings;

2. The age, sex and race of the children residing in out-of-home settings;

3. The reasons for placement of these children;

4. The types of settings in which these children reside;

5. The length of time that these children have resided in these settings;

6. The number of placements for those children who have been placed in more than one setting;

7. The number of children who have been placed in the same county in which their parents or legal guardians reside and the number who have been placed outside of the State;

8. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes during the six-month period, and a projection of the number of children who will be permanently placed or returned to their homes during the following six-month period; and

9. With regard to the Division of Youth and Family Services only, the number of children who have been permanently placed or returned to their homes who are subsequently returned to an out-of-home setting during the six-month period.

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(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Home Care Services; Traumatic Brain Injury; Community Service Alternatives

Proposed New Rules: N.J.A.C. 10:49-17.5 and N.J.A.C. 10:60-5

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 30:4D-6b(2), 7, 7a, b and c; 30:4D-12, 30:4E; 42 CFR 440.70, 170; 1915(c) of the Social Security Act, 42 U.S.C. 1396n.

Agency Control Number: 93-P-17.

Proposal Number: PRN 1994-79.

Submit comments by May 18, 1994 to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 10:49-17.5 and 10:60-5 are designed to provide more cost-effective community service alternatives for brain-injured individuals currently in nursing facilities or for those in the community with a potential for placement, both in and out of State. The proposed recipient population to be served will be primarily young ambulatory adults with cognitive, behavioral and physical deficits who require supervised and supported care. The proposed new rules will apply, for the most part, to individuals who have either completed, or would no longer benefit from a course of intensive rehabilitation services, and choose to be served by community service alternatives.

The objective of the program is to reintegrate and maintain the individual in the community so that supervision is no longer needed or is minimized. The proposed new rule applies to a population which is not currently being served by other agencies such as the Division of Developmental Disabilities (DDD), the Division of Mental Health and Hospitals (DMH&H) and Division of Vocational Rehabilitation (DVR).

The proposed recipient population to be served shall be individuals who are financially eligible up to the institutional eligibility standard for income and resources, and are not less than 18 nor more than 65 years of age. Medically, these individuals shall meet nursing facility standards and criteria established by the Division's Pre Admission Screening (PAS) process and also shall meet the following: 1. have a diagnosis of acquired head injury; 2. exhibit medical, emotional, behavioral and cognitive deficits; and 3. have a rating of at least four on the Rancho Los Amigos Levels of Cognitive Functioning Scale. (The Rancho Scale was developed by the Communications Disorder Service at Rancho Los Amigos Hospital in 1972, was revised in 1974, and is now commonly used in the evaluation of a head-injured individual during that individual's rehabilitation.)

The proposed new rules will provide all Medicaid State Plan services, except nursing facility care, and will offer, in addition, the following "waiver" services: case management, counseling (to include behavioral and drug/alcohol counseling); community residential services; physical and occupational therapy, and speech-language pathology and cognitive therapies; behavioral program; environmental modification; structured day program, supported day program, personal care assistant services; transportation services; respite care services; and night supervision and chore services.

"Waivered Programs" or "waivers" are intended to provide flexibility to enable states to try different approaches to health care services, or to adapt their programs to special needs of particular recipients. (Reference is made to 42 CFR 430.25(b).) The intent of the TBI Waiver Program is to arrange for community care for individuals who might otherwise be institutionalized.

The proposed new rules will make available, for individuals receiving community residential services (CRS), certain services such as personal care assistant, night supervision, chore, transportation and therapeutic recreation services which will be packaged as part of the CRS rate. For those individuals living alone or with families, these services will be unbundled and offered as required and as determined by the case manager, recipient and family.

In the proposed new rules, case management will be provided by a variety of community agencies which are independent of the providers of the waiver services.

The proposed new rules will offer full and half-day structured day programs that will consist of paid continuous on-site supervised community activity. Additionally, the proposed new rules will offer supported day programs that consist of activity development, initial and periodic support from a qualified professional, but will not provide ongoing, continuous paid supervision of the client.

The proposed new rules require that all service providers be licensed or certified as appropriate, in accordance with current Federal and State statutes, rules, and regulations.

The proposed new rules recognize that the Division of Developmental Disabilities (DDD) is the approval authority for new providers of CRS services under their community residential service standards, set forth at N.J.A.C. 10:44A and N.J.A.C. 10:44B.

The proposed new rules establish and recognize that member agencies of the Jersey Association of Rehabilitation Professionals (JARPS), Professional Rehabilitation Network (PRN), the New Jersey Head Injury Association, other non-profit human service agencies and/or licensed Medicare certified home health agencies may be utilized as case management providers.

Since drug and alcohol related problems predominate among the brain injured, the proposed new rules require that Certified Alcohol and Drug Counselors (CADC) be used to provide services when other appropriate inpatient and outpatient treatment services are not available under Medicaid.

The proposed new rules require that initial Medicaid eligibility shall be determined by the Medicaid Regional Staff Nurse (RSN) using the Division's Pre Admission Screening (PAS) for nursing facility care process (see N.J.A.C. 10:60-1.2).

The proposed new rules require that a review of the need for nursing facility care and the continued need for waiver services shall be conducted by the RSN after six months and at the end of the first year of client eligibility, and that subsequently this determination shall be performed by the case manager. Other procedures affecting the client's eligibility shall be consistent with existing waiver programs.

The proposed new rules require the Medicaid District Office (MDO) to review and approve the plan of care prepared by the case manager initially and at six month intervals. Program oversight shall be provided by the Division of Medical Assistance and Health Services through the Office of Home Care Programs (OHCP) and the Surveillance Utilization Review Subsystem (SURS). In addition, the MDO will monitor the quality of the services through a post-payment utilization review process.

Social Impact

The proposed new rules provide assistance to those individuals not currently being served by other agencies and provides eligible recipients with the opportunity to reintegrate and function within the community. The affected public will also be able to recognize the benefits of the program as those recipients receiving services achieve some ability to function within the community.

Community awareness of problems affecting recipients with traumatic brain injuries may be viewed more positively as the local residents become aware of the efforts and determination of recipients to improve their lives. The program will also enable individuals to return to community living from institutional care for a better quality of life.

It is extremely difficult to estimate the numbers of people involved or potentially involved. The waiver controls the number of slots, which is a maximum of 200 by Year Three. Currently we have 75 slots with about 52 clients placed or in process. We have had over 126 applications of potentially eligible individuals. As private insurance is capped and as health care costs grow, there are potentially increasing numbers of head injured individuals who will require community-base care. Under Medicaid, community care is preferable to institutional care where possible for such a young population for both social and financial reasons. Hence, we anticipate growing support for this program as well as a growing need. Not only are the head injured individuals affected but also their families who will likely require increasing support as they age. The families, themselves, represented by the New Jersey Head Injury Association, have advocated for community-based programming.

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Economic Impact

The proposed new rules concerning the Traumatic Brain Injury program are designed to return an individual to the community from an institutional placement or help eligible recipients to be maintained within the community, thereby providing a more cost-effective care alternative. Since no comparable type of service affecting this population exists, program costs cannot be evaluated. However, Federal regulations require that the cost of home and community-based care not exceed the cost of institutional care. Each recipient, therefore, will be provided services under a specific monthly service cost cap, to be monitored by an assigned case manager. It is anticipated that, overall, the cost of services will be less than it would have cost Medicaid if the recipient were institutionalized.

Regulatory Flexibility Analysis

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed new rules impose some new reporting, recordkeeping and other compliance requirements on small businesses. However, most of these requirements are currently in place in those agencies that provide services to brain injured individuals. As such, the Division does not believe that those providers who elect to expand services for the traumatic brain injured will incur any substantial increase in operating costs. New providers desiring to establish services only for the traumatic brain injured would be subject to the Department of Health and Department of Human Services Rules currently in effect, regardless of these proposed rules. The rules govern a medical assistance program designed to certify eligibility for Traumatic Brain Injury clients in a Federally approved waiver program monitored/supervised by a governmental agency.

Providers of waiver services will be required to enroll specifically for this program. These providers include case management providers, community residential services providers, structured day program providers, personal care, respite, therapy, counseling and other in-home services and behavior program providers. Provider requirements for each service are contained in N.J.A.C. 10:60-5.5, TBI Waiver Services. Anticipated numbers of providers statewide in each category are as follows: case management—seven; community residential services—10; structured day program—15; personal care—60; respite care (inpatient)—seven; counseling and behavior providers—20. The primary new service covered by this rule is community residential services. These programs are subject to regulations under N.J.A.C. 10:44A and B. Structured day programs, another new service, are subject to certification standards developed by the Commission on Accreditation of Rehabilitation Facilities (CARF) or Standard for Post Acute Day programs established by the Head Injury Special Interest Group of the Congress of Rehabilitation Medicine.

Full text of the proposed new rules follows:

10:49-17.5 Traumatic Brain Injury Program

(a) The Traumatic Brain Injury (TBI) Program is a renewable Federal waiver program under Section 1915(c) of the Social Security Act, 42 U.S.C. 1396n, which offers home and community-based services to a recipient with an acquired traumatic brain injury. The purpose of the TBI program is to help eligible recipients to remain in the community, or to return to the community rather than be cared for in a nursing facility.

(b) The waiver, prepared by the Division of Medical Assistance and Health Services (DMAHS), encourages the development of community-based services in lieu of institutionalization.

(c) The Program is Statewide, with slots allocated as individuals, ages 18 through 65, are admitted to the program.

(d) The Division administers the overall program, and has the responsibility for assessing an applicant's need for care and, for determining which applicants will be served by the program.

(e) Program oversight shall be provided by the Division of Medical Assistance and Health Services through the Office of Home Care Programs (OHCP) and the Surveillance Utilization Review Subsystem (SURS). The delivery of home care services to TBI Waiver recipients will be subject to a post-payment utilization review by professional staff of the Medicaid District Offices in accordance with N.J.A.C. 10:63-1.15

(f) Applicants for participation in the TBI waiver program shall meet the following medical and financial eligibility criteria:

1. Be not less than 18 nor more than 65 years of age;
2. Have a diagnosis of acquired brain injury;
3. Exhibit medical, emotional, behavioral and/or cognitive deficits;
4. Meet the Division's nursing facility standard care criteria for Pre-Admission Screening (PAS), at N.J.A.C. 10:60-1.2;
5. Have a rating of at least four on the Rancho Los Amigos Levels of Cognitive Functioning Scale (see N.J.A.C. 10:60, Appendix I);
6. Be blind, disabled, or a child under the supervision of the Division of Youth and Family Services (DYFS) and be eligible for Medicaid in the community or be eligible for Medicaid if institutionalized. Persons eligible for the Medically Needy segment of New Jersey Care ... Special Medicaid Programs, or enrolled in Garden State Health Plan, or private Health Maintenance Organizations serving Medicaid recipients are not eligible for this program.

i. There is no deeming of spousal income in the determination of eligibility for this program. While spousal resources are considered in the determination of eligibility, up to one-half of the total resources are protected for the use of the spouse; and

7. Be determined disabled by the Social Security Administration (SSA) or by the Disability Review Unit of the Division, using the SSA disability criteria.

(g) If the individual is dually diagnosed, for example, with a head injury and psychiatric illness or developmental disability or substance abuse addiction, a determination will be made during the initial review as to the most appropriate service system to manage the recipient's care. This decision will be made based on clinical evidence as of onset of injury, and professional evaluation.

(h) Retroactive eligibility shall not be available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver program. Those individuals who are not eligible for Medicaid services in the community prior to enrollment in the TBI Waiver are not eligible for retroactive Medicaid eligibility.

(i) All applicants determined eligible for the TBI Waiver shall be issued a Medicaid Eligibility identification (MEI) card.

(j) In order for an applicant to be enrolled in the program, a waiver slot must be available. When all slots are filled, a waiting list will be developed.

(k) Prior to formal application for the TBI waiver, a referral shall be submitted to the Office of Home Care Programs (OHCP) of the Division, which shall review the referral to determine if the individual meets the basic criteria for the program. If it is determined that the individual referred is a potential candidate for the TBI waiver, the following shall occur:

1. Supplemental Security Income (SSI) recipients shall be referred to the appropriate Medicaid District Office serving their county of residence;
2. Children under the supervision of the Division of Youth and Family Services (DYFS) shall be referred to DYFS for the initiation of the formal application, which includes the determination of disability, and shall then be referred to the appropriate Medicaid District Office (MDO) serving the recipient's county of residence; and
3. Individuals who are not currently Medicaid eligible shall be referred by OHCP to the county welfare agency (CWA) located in the county where the individual resides, for a determination of financial eligibility, including the referral for determination of disability.

(l) After the applicant has been determined financially eligible, he or she shall be referred to the Medicaid District Office (MDO) of the applicant's residence for a determination of medical eligibility by the Regional Staff Nurse (RSN).

(m) When the applicant is judged financially and medically eligible for the TBI waiver program, the MDO shall assign the case to a case management site and notify the OHCP of the recipient's approval for participation in the program.

(n) The MDO shall review and approve the plan of care prepared by the case manager initially, prior to the initiation of the plan, and at six month intervals.

(o) If a waiver recipient is categorically eligible for Medicaid services under the State Plan and no waiver services are required as a part of the plan of care, the recipent shall be terminated from the TBI program.

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(p) All approved services under the New Jersey Medicaid program, except for nursing facility services, are available under the TBI Waiver from approved Medicaid providers in accord with an individualized plan of care. (See N.J.A.C. 10:60-5.5 for a description of services.)

(q) An individual shall be terminated from the TBI Waiver Program for the following reasons:

1. He or she no longer meets the income and resource requirements for Medicaid;

2. He or she no longer exhibits medical, emotional, behavioral and/or cognitive deficits which would qualify the individual for nursing facility care;

3. He or she attains a Level 8 or above on the Rancho Los Amigos Levels of Cognitive Functioning Scale;

4. He or she refuses to accept case management services; or

5. He or she is categorically eligible for Medicaid State Plan services and does not require waiver services as part of the plan of care.

(r) Where termination is sought pursuant to (q) above, an individual shall be afforded the opportunity to request a hearing pursuant to N.J.A.C. 10:49-9.10

SUBCHAPTER 5. TRAUMATIC BRAIN INJURY PROGRAM

10:60-5.1 Purpose and Scope

(a) The Traumatic Brain Injury (TBI) Waiver Program is a renewable Federal waiver program which offers home and community-based services to a recipient with an acquired traumatic brain injury. The purpose of the TBI program is to help eligible recipients to remain in the community, or to return to the community rather than be cared for in a nursing facility.

(b) The waiver, prepared by the Division in response to the Omnibus Budget Reconciliation Act (OBRA) of 1981 (Section 2176, Public Law 97-35 and amendments under P.L. 99-509), encourages the development of community-based services in lieu of institutionalization.

(c) The program is Statewide with slots allocated as individuals, ages 18 through 65, are admitted to the program.

(d) The Division administers the overall program, and has the responsibility for assessing an applicants need or care and, for determining which applicants will be served by the program.

(e) Program oversight shall be provided by the Division of Medical Assistance and Health Services through the Office of Home Care Programs (OHCP) and the Surveillance Utilization Review Subsystem (SURS). The delivery of home care services to TBI Waiver recipients will be subject to a post-payment utilization review by professional staff of the Medicaid District Offices in accordance with N.J.A.C. 10:63-1.15.

(f) Applicants for participation in the TBI waiver program shall meet the following medical and financial eligibility criteria:

1. Be not less than 18 nor more than 65 years of age;

2. Have a diagnosis of acquired brain injury;

3. Exhibit medical, emotional, behavioral and/or cognitive deficits;

4. Meet the Division's nursing facility standard care criteria for Pre-Admission Screening (PAS);

5. Have a rating of at least four on the Rancho Los Amigos Levels of Cognitive Functioning Scale;

6. Be blind, disabled, or a child under the supervision of the Division of Youth and Family Services (DYFS) and be eligible for Medicaid in the community or be eligible for Medicaid if institutionalized. Persons eligible for the Medically Needy segment of New Jersey Care . . . Special Medicaid Programs, or enrolled in Garden State Health Plan, or private Health Maintenance Organizations serving Medicaid recipients are not eligible for this program.

i. There is no deeming of spousal income in the determination of eligibility for this program. While spousal resources are considered in the determination of eligibility, up to one-half of the total resources are protected for the use of the spouse; and

7. Be determined disabled by the Social Security Administration (SSA) or by the Disability Review Unit of the Division, using the SSA disability criteria.

(b) If the individual is dually-diagnosed; for example, with a head injury and psychiatric illness or developmental disability or substance abuse addiction, a determination will be made during the initial reveiw as to the most appropriate service system to manage the recipient's care. This decision will be made based on clinical evidence, age of onset of injury, and professional evaluation.

(c) Retroactive eligibility shall not be available to waiver recipients for those Medicaid services provided only by virtue of enrollment in the waiver program.

(d) All applicants determined eligible for the TBI Waiver shall be issued a Medicaid Eligibility Identification (MEI) card.

(e) In order for an applicant to be enrolled in the program, a waiver slot must be available.

10:60-5.3 Application process for TBI waiver

(a) Prior to formal application for the TBI waiver, a referral shall be submitted to the Office of Home Care Programs (OHCP) of the Division which shall review the referral to determine if the individual meets the basic criteria for the program. If it is determined that the individual referred is a potential candidate for the TBI waiver, the following shall occur:

1. Supplemental Security Income (SSI) recipients shall be referred to the appropriate Medicaid District Office serving their county of residence;

2. Children under the supervision of the Division of Youth and Family Services (DYFS) shall be referred to DYFS for the initiation of the formal application. If the recipient has not been determined disabled, DYFS has the responsibility for assuring that the disability determination is completed by the Disability Review Unit. It is then sent to the appropriate Medicaid District Office (MDO) serving the recipient's county of residence; and

3. Individuals who are not currently Medicaid eligible shall be referred by OHCP to the county welfare agency (CWA) located in the county where the individual resides, for a determination of financial eligibility, which includes the referral for disability determination.

(b) After the applicant has been determined financially eligible for Medicaid, he or she shall be referred to the Medicaid District Office (MDO) of the applicant's residence for a determination of medical eligibility by the Regional Staff Nurse (RSN). The need for nursing facility care and the continued need for waiver services shall be conducted by the RSN after six months and at the end of the first year of client eligibility and subsequently this determination shall be performed by the case manager.

(c) When the applicant is determined financially and medically eligible for the TBI waiver program, the MDO shall assign the case to a case management site and notify the OHCP of the recipient's approval for participation in the program.

(d) The MDO shall review and approve the plan of care prepared by the case manager initially and at six month intervals. Program oversight shall be provided by the Division through the Office of Home Care Programs (OHCP) and the Surveillance Utilization Review Subsystem (SURS), and the delivery of services will be subject to a post-payment utilization review, per N.J.A.C. 10:63-1.15.

10:60-5.4 Termination criteria for the TBI waiver

(a) An individual shall be terminated from the TBI waiver program for the following reasons:

1. He or she no longer meets the income and resource requirements for Medicaid;

2. He or she no longer exhibits medical, emotional, behavioral and/or cognitive deficits which would qualify the individual for nursing facility care;

3. He or she attains a Level eight or above on the Rancho Los Amigos Levels of Cognitive Functioning Scale;

4. He or she refuses to accept case management services; or

5. He or she is categorically eligible for Medicaid State Plan services and does not require waiver services as part of the plan of care.

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10:60-5.5 TBI waiver services

(a) All approved services under the New Jersey Medicaid program, except for nursing facility services, are available under the TBI waiver from approved Medicaid providers in accord with an individualized plan of care. Additionally, the following waiver services shall be available to the eligible recipient:

1. Case management services is a process in which a social worker with a Bachelor of Social Work (BSW), or Master of Social Work (MSW), or a nurse with a Bachelor of Science in Nursing (BSN), or Master of Science in Nursing (MSN), or a certified rehabilitation counselor (CRC), or a certified insurance rehabilitation specialist (CIRS), employed by a licensed Medicare-certified home health agency or a private incorporated case management consulting firm or a non-profit human service agency, is responsible for planning, locating, coordinating and monitoring a group of services designed to meet the individual needs of the recipient being served.

i. Case management shall not be provided when a recipient is in an inpatient hospital or nursing facility setting and the stay extends beyond a full calendar month.

ii. Case management shall include discharge planning and arrangements for other services when the recipient is no longer appropriate for waiver services.

iii. Acceptance of case management services shall be required for program participants.

2. Personal care assistant services are health related tasks performed in the recipient's home or place of residence by a certified homemaker/home health aide who is under the supervision of a registered professional nurse. The frequency or intensity of supervision shall be designated by the plan of care. Tasks shall include assistance with eating, bathing, dressing, personal hygiene, activities of daily living. They may include assistance with meal preparation, but not the cost of the meal itself. When specified in the plan of care, this service shall also include such housekeeping chores as bedmaking, dusting and vacuuming, which are essential to the health and welfare of the recipient. A personal care assistant shall be under contract to, or employed by a licensed Medicare certified home health agency or accredited homemaker/home health aide agency or a community residential services provider (see (a)9 below). Personal care assistant services shall be provided consistent with Medicaid program limitations of hours in accordance with N.J.A.C. 10:60-1.9(f). Family members who provide personal care assistant services shall meet the same standards as providers who are unrelated to the recipient.

3. Respite care service is care provided on a short term basis because of the absence or need for relief of those persons normally providing the care. Respite care shall be provided in the recipient's home or place of residence. Services shall also be provided in a licensed nursing facility, licensed residential health care facility, or by a community residential services program. A community residential services program shall be licensed by the Division of Developmental Disabilities. Home health agencies providing respite care shall also be licensed by the Department of Health and homemaker/home health aide agencies providing respite care shall be accredited in accordance with N.J.A.C. 10:60-1.2.

i. In-home or place of residence respite care shall be provided up to 14 days per year.

ii. Out-of-home respite care shall be provided up to 30 days per year.

iii. A community residential services program shall provide respite service to individuals living with their families but this service is not available to recipients residing in a community residential service setting.

4. Environmental modification services are physical adaptations to the recipient's home, required by the recipient and included in the plan of care, which are necessary to ensure the health, welfare and safety of the recipient, or which enable the recipient to function with greater independence in the home, without which the recipient would require institutionalization. Such adaptions shall include the installation of ramps and grabbers, widening of doorways, modification of bathrooms, or installation of specialized electric and plumbing systems necessary to accommodate medical equipment and supplies for the recipient's welfare. Vehicle modification for the recipient's/family vehicle shall also be included. Also included shall be electronic monitoring systems to protect the recipient's safety, as determined by the plan of care. Excluded are adaptions or improvements to the home which are not of direct medical or remedial benefit to the recipient, such as carpeting, roof repair, and/or central air conditioning. All environmental modification services provided shall be in accordance with applicable State and local building codes.

i. Case managers shall be responsible to assure that contractors are qualified to provide the necessary modifications.

ii. A provider of environmental modification services shall be required to execute a purchase agreement for the service with the case manager who shall submit a claim for the service to the Division's Fiscal Agent.

5. Transportation services are offered to enable recipients to gain access to services described in the plan of care. A transportation service is offered in addition to medical transportation provided under 42 CFR 431.53 and transportation offered under the State Plan as defined at 42 CFR 440.170(a), and shall not replace them. Whenever possible, family, neighbors, friends, or community agencies that are able to provide this service without charge shall be utilized. Family members shall not be reimbursed for the provision of transportation services under this waiver, in accordance with N.J.A.C. 10:50.

i. Providers of this service shall include community residential services providers, community mental health agencies, family services agencies, Commission on Accreditation of Rehabilitation Facilities (CARF) certified day programs.

ii. All drivers or carriers shall have a valid driver's license and not less than the minimum insurance coverage required by New Jersey law.

iii. Vehicles utilized shall be properly registered and pass inspection standards for bus, taxicab and other commercial carriers or private automobile and can be either regular or specially equipped for those unable to use common carrier transportation.

iv. Reimbursement paid to the transportation provider shall include the cost of the transportation plus the additional cost of the personal care assistant or companion if any, who may accompany the recipient, as long as that person is not a family member. In no case shall a family member be reimbursed for transportation services under the waiver.

v. Transportation shall be covered in the service package provided by a community residential services provider to a recipient living in a supervised residence. No additional reimbursement shall be paid for this service.

vi. Transportation shall be covered in the service package provided by the structured day program during the hours the recipient is participating in the program. No additional reimbursement shall be paid for this service.

6. Chore services are services needed to maintain the home in a clean, sanitary and safe environment. These services shall include heavy household chores, such as washing floors, windows and walls, tacking down loose rugs and tiles, moving heavy items of furniture to provide safe access for the recipient inside the home, shoveling snow to provide access and egress. These services shall be provided only where neither the recipient nor any other person in the household is capable of performing or financially providing for them, or when a relative, caretaker, landlord or community volunteer agency or third party payer cannot provide them. Prior to approving chore services for rental property, the case manager shall determine if it is the responsibility of the landlord to provide these services.

i. Services shall be provided by accredited homemaker/home health aide agencies, county service agencies, employment or cleaning service agencies licensed by the Division of Consumer Affairs, Department of Law and Public Safety. The case manager shall assure that the chore service provider meets all applicable laws, rules and regulations.

ii. Chore services shall be covered in the service package for anyone living in a community residential service provider residence. No additional reimbursement shall be paid for this service.

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7. Companion services are non-medical care, supervision and socialization provided to a functionally and mentally impaired adult. A companion shall assist the recipient with such tasks as meal preparation, laundry, and shopping, but shall not perform these activities as discrete services. This service shall not entail hands-on medical care. A companion shall perform light housekeeping incidental to the care and supervision of the recipient. Companion service shall be provided in accordance with a therapeutic goal of engaging the recipient to the extent possible with his or her own care, surroundings and other people. Companion services are appropriate for those recipients who need a person to be with them to provide prompting or cuing to initiate or complete daily activities. Companions provide assistance with shopping and meal preparation, and are available for socialization or to encourage socialization, depending upon the individual's care plan. Companion services may be a less costly service approach to enabling a recipient to remain in the community.

i. Companion service shall be provided by an accredited homemaker/home health aide agency, a private non-profit community service agency, community mental health agency, family service agency, a community residential services provider, or a Commission on Accreditation of Rehabilitative Facilities (CARF) accredited day program.

ii. Companion service shall be covered under a Community Residential Services Program when the recipient is residing in the CRS program and companion services is not reimbursed as a separate service. Companion service shall not be reimbursed as a separate service during the hours the recipient is participating in a structured day program.

iii. The case manager shall insure that the companion meets the following standards:

(1) Is able to read, write and follow simple directions;

(2) Passes a post-employment-offer physical exam prior to placement;

(3) Works under the intermittent supervision of the employment agency;

(4) Is able to handle emergency situations;

(5) Understands and is able to work with individuals with TBI;

(6) Maintains confidentiality; and

(7) Has a valid driver's license and appropriate insurance coverage, if responsible for transporting residents.

8. Therapy services include physical and occupational therapy, speech-language pathology and cognitive therapy services. Therapies shall be offered alone or in combination to enhance or maintain recipient functioning as required by the plan of care. Therapies shall focus on the reattainment of physical or cognitive skill lost or altered as a result of trauma. The aim is to maximize recipient functioning in real world situations through retraining, use of compensatory strategies and orthotic and prosthetic devices, if necessary.

i. Physical therapists (PT) and physical therapy assistants (PTA) shall meet the New Jersey licensure standards and requirements for practice (see N.J.A.C. 13:39A). PT and PTA shall be under contract to or on the staff of a licensed community residential services provider, rehabilitation hospital or agency, or home health agency which shall be reimbursed for the PT services.

ii. An occupational therapy provider shall be registered as an occupational therapist (OTR) with the American Occupational Therapy Association (AOTA). A certified occupational therapy assistant (COTA) shall be registered with the AOTA and work under the direction of an OTR. An OTR and COTA shall be under contract to or on the staff of a licensed community residential services provider, rehabilitation hospital or agency, or home health agency which shall be reimbursed for the OT services.

iii. A speech-language pathologist provider shall be licensed by the State of New Jersey (see N.J.A.C. 13:44C). A speech-language pathologist shall be under contract to a community residential services provider, rehabilitation hospital or agency, or home health agency, which shall be reimbursed for the speech-language therapy services.

iv. A cognitive therapy provider shall meet certification standards for cognitive therapy, established by the Society for Cognitive Rehabilitation Inc. (Society for Cognitive Rehabilitation, P.O. Box 33548, Decatur, GA 30033-0548, phone, 404-939-6338) and shall be under contact to a community residential services provider, rehabilitation hospital or agency which shall be reimbursed for the cognitive therapy services.

9. Community residential services (CRS) is a package of services provided to a recipient living in a community residence owned, rented or supervised by a licensed community residential services provider.

i. The package of services shall include personal care, companion services, chore services, transportation, night supervision and therapeutic activities. The reimbursement for this service to the CRS provider does not include room and board or a personal needs allowance (PNA). The recipient shall be responsible for the costs of room and board. The CRS shall not be reimbursed when the recipient is absent from the residence for a 24-hour period since the cost of such absence has been incorporated into the per diem CRS rate.

ii. The CRS provider shall be responsible for coordinating the package of services to ensure the recipient's safety and access to these services as determined by the recipient and case manager.

(1) The CRS program shall be licensed by the Division of Developmental Disabilities as a CRS provider;

(2) Employees of CRS providers shall meet all applicable professional standards; and

(3) All employees shall be trained to understand and provide appropriate care to head injured individuals.

10. Night supervision services include intermittent or ongoing overnight supervision to an individual in his or her own home for a period of not less than eight hours and not more than 12 hours. Night supervision staff shall be trained and supervised by CRS providers or home health or homemaker home health aide agencies to provide supervision and are prepared to call for assistance in the event of an emergency. They shall also be available to perform turning or repositioning tasks, to remind the patient to take medication and to assist with personal care, if needed. It is expected that one night support attendant shall provide assistance for up to three recipients in the same household. Night supervision is not available for recipients receiving CRS in a community residential services program, since supervision is provided as a component of the program:

i. This service shall be provided by a community residential service provider, a home health or homemaker/health aide agency provider.

ii. CRS providers shall be licensed by the Division of Developmental Disabilities (DDD); home health agencies shall be licensed by the Department of Health (DOH); and homemaker/home health aide agencies shall be accredited in accordance with N.J.A.C. 10:60.

11. Structured day program services is a program of daily meaningful supervised activities directed at the development and maintenance of independence and community living skills. Services may take place at home or in a setting separate from the home in which the recipient lives. Services shall include group or individualized life skills training that will prepare the recipient for community reintegration, including attention skills, task completion, problem solving, safety and money management. The services shall include nutritional supervision, health monitoring and recreation as appropriate to the individualized plan of care. The service shall cover transportation during the hours of participation in the program, including transportation to program activities. The program shall be provided in half day (a minimum of three hours) or full day (a minimum of six hours, including lunch) segments. The program excludes Medical Day Care which may be provided as a State Plan service. This service is not otherwise available under a program funded under the Rehabilitation Act of 1973, P.L. 94-142. Recipients are not eligible to receive this service if they are participating in programs for the same time period funded by other agencies.

i. Structured day programs shall be provided by CRS, rehabilitation hospitals or agencies, comprehensive outpatient rehabilitation facilities (CORF) and incorporated head injury service providers which have post-acute day programs that meet standards for post-

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acute head injury services developed by the Head Injury Special Interest Group of the American Congress of Rehabilitation Medicine or Commission on Accreditation of Rehabilitation Facilities (available from the Division through the Office of Home Care Programs, CN 712, Mail Code 35, Trenton, NJ 08625-0712).

12. Supported day program services is a program of independent activities in-home or out-of-home requiring initial and periodic support from a professional to sustain the program. Interventions shall include placement development, evaluation, and counseling, placement and follow-up in a setting where the setting itself is not paid to supervise the recipient. The professional shall be a person trained and licensed or certified in a specific profession. Examples include, but are not limited to, social work, vocational rehabilitation, psychology, nursing and therapeutic recreation. The program of activities shall promote independence and community reintegration. The professional support shall be reimbursed on an hourly basis, depending on the amount of support required within the plan of care. This service is not otherwise available under a program funded by either the Rehabilitation Act of 1973, or P.L. 94-142.

i. Supported day program staff employed by the day program are paid to develop and monitor a community-based placement for the individual recipient as part of the plan of care. The community-based placement is not paid to provide the activity to the recipient. Examples include prevocational settings, volunteer programs or social clubs where the recipient can participate in meaningful activities. The supported day program provider is paid on an hourly basis for activity development and follow-up to ensure that the recipient has made a satisfactory adjustment in the placement. Supported day program is a step-down alternative to stuctured day program and a less costly service.

(1) "Placement development" means the identification of and negotiation with an organization, business, association or other group in the community to accept a brain injured person to participate in or engage in some productive activity as a part of that group. The activity shall be related to the brain injured person's skills, interests and abilities.

(2) "Evaluation and counseling" means review of the supported day program to determine that the placement is suitable for the recipient, and availability to the recipient and the community program to resolve any problems or to support the recipient's placement.

(3) "Placement and follow-up in the setting where the setting is not paid to supervise the recipient" means that the supported day program provider arranges the placement, provides intervention if there are problems, but will not provide ongoing supervision of the recipient at his or her activity site.

ii. Supported day program services shall be provided as an alternative to structured day program, when the recipient does not require continual supervision.

iii. The providers of supported day program services shall be the same as those providing structured day programs.

13. Counseling services shall be provided to resolve intrapsychic or interpersonal conflict resulting from brain injury as an adjunct to behavioral program services in severe cases or for substance abuse problems. Counseling shall be provided to the recipient and family if necessary. Counseling for substance abuse problems shall be provided by a certified alcohol and drug counsel (CADC) familiar with brain injury or by a local alcohol/drug treatment program. Due to the high correlation between TBI and substance abuse, detailed drug/alcohol abuse history shall be obtained by the case manager for each recipient to monitor a potential for substance abuse. Waiver services shall be utilized only if State Plan counseling services for mental health or drug treatment are either unavailable or inappropriate to meet recipient needs.

i. Providers of counseling service shall be licensed mental health professionals, practicing independently, employed by an agency or under contract to an agency. These professionals include psychologists, psychiatrists, social workers and nurses.

ii. Registered professional nurses shall be licensed by the State of New Jersey and certified as a clinical specialist in psychiatric or mental health nursing by the American Nurses Association (N.J.S.A. 45:11-26).

iii. A social worker shall be licensed as a clinical social worker (LCSW) under New Jersey statutes and rules. (N.J.S.A. 45:1-15 and N.J.A.C. 13:44G).

iv. A psychologist shall be licnesed (see N.J.A.C. 13:42) as a clinical psychologist under New Jersey statute, with competencies in areas related to diagnosis and treatment of brain injury.

v. A psychiatrist shall be a physician licensed under the New Jersey Board of Medical Examiners and Board Certified or Board Eligible under the American Board of Psychiatry and Neurology (N.J.A.C. 13:35).

vi. A certified alcohol drug counselor (CADC) shall be certified by the Alcohol and Drug Counselor Certification Board of New Jersey (ADCCBNJ, 90 Monmouth St., Suite One, Red Bank, NJ 07701, Phone 908-741-3835).

vii. All mental health professionals providing counseling services shall have experience and knowledge in treating persons with brain injuries.

14. Behavioral program services is a daily program provided by and under the supervision of a licensed psychologist and by behavioral aides (specialists) trained by a licensed psychologist, which is designed to serve recipients who display severe maladaptive or aggressive behavior which is potentially destructive to the individual or others. The program provided in or out of the home, is time limited and designed to treat the individual and caregivers, if appropriate, on a short term basis.

i. Behavior programming shall include a complete assessment of the maladaptive behavior(s), development of a structured behavior modification plan, ongoing training and supervision of caregivers and behavioral aides (specialists) and periodic reassessment of the plan. The goal of the program shall be to return the individual to prior level of functioning which is safe for himself or herself and others.

ii. Enrollment in the behavioral program shall require prior authorization and recommendation by a licensed clinical psychologist (N.J.A.C. 13:42) or psychiatrist (N.J.A.C. 13:35), with subsequent consultation by same on an as needed basis. The case manager shall also prior-approve the service within the plan of care.

iii. Providers of this service shall be a licensed CRS provider (N.J.A.C. 10:44A and 10:44B), rehabilitation hospital (N.J.A.C. 8:43H), community mental health agency (N.J.A.C. 10:37 and 10:37C), clinical psychologist (N.J.A.C. 13:42), or Board Certified, Board eligible psychiatrist (N.J.A.C. 13:35).

iv. Rehabilitation hospitals shall have been licensed by the Department of Health (DOH) (N.J.A.C. 8:43H).

v. Community mental health agencies shall be approved by the Division of Mental Health and Hospitals (DMHH) (N.J.A.C. 10:37 and 10:37C).

vi. Community residential services providers shall be licensed by the Division of Developmental Disabilities (DDD) (N.J.A.C. 10:44A and 10:44B).

vii. Additionally, to supervise the program, the provider shall employ staff or contract with a Board Certified or Board Eligible psychiatrist or licensed clinical psychologist with two years experience in head injury and/or behavioral programming.

viii. Behavioral aides (specialists) employed to implement the behavior modification program shall possess a high school diploma at a minimum and have 24 hours of behavioral training from a qualified psychologist or psychiatrist. Behavioral aides (specialists) shall also receive an additional 16 hours of training in crisis management during the first 90 days of employment.

10:60-5.6 Program costs

Total program costs in the TBI waiver are limited by the number of community care slots used each year and by costs per recipient. The cost of the recipient service package shall be no more than the cost of institutional care for the recipient determined at a projected weighted cost of institutional care by the Division. The Division may elect to exclude individuals from the waiver program for whom there is an expectation that costs to Medicaid for services under the waiver may exceed the cost of nursing facility care.

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10:60-5.7 Basis for reimbursement for TBI services

(a) A fee-for-service reimbursement methodology shall be utilized for TBI waiver services. Providers shall be precluded from receiving additional reimbursement for the cost of these TBI Waiver services above the fee established by the Medicaid program. (See N.J.A.C. 10:60-5.8(c).)

(b) The health insurance claim form 1500 N.J. shall be used when billing for waiver services provided. Refer to the Fiscal Agent Billing Supplement (Appendix A of this chapter) for information in the completion of the 1500 N.J.

(c) Fees for TBI waiver services are established for each service by the Division, after a review of the range of fees charged for the service by providers throughout the State and in other states with similar waiver programs. Once a fee for a particular service has been established, that fee becomes the maximum fee that Medicaid will pay for that service. Providers seeking approval to render that service are subject to this fee ceiling.

10:60-5.8 Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS) for Traumatic Brain Injury Program

(a) The New Jersey Medicaid Program utilizes the Health Care Financing Administration (HCFA) Common Procedure Coding System (HCPCS). The HCPCS codes as listed in this subchapter are relevant only to the Traumatic Brain Injury Program.

(b) The HCPCS procedure codes are used when requesting reimbursement for services provided through the Traumatic Brain Injury Program and when a Health Insurance Claim Form (1500 N.J.) is required.

(c) The HCPCS procedure codes for the Traumatic Brain Injury Program are as follows:

HCPCS Code	Description	Maximum Rates
Y7433	TBI— Case Management, Initial (First Month)	$200.00
Y7434	TBI— Case Management, Continuing (Subsequent Month)	125.00
Y7435	TBI— Community Residential Services (Level I Supervision) 2-4 hours	99.00
Y7436	TBI— Community Residential Services (Level II Supervision) over 4-8 hours	115.00
Y7437	TBI— Community Residential Services (Level III Supervision) over 8 hours	147.00
Y7438	TBI— Structured Day Program (Full Day)	87.00
Y7439	TBI— Structured Day Program (Half Day)	44.00
Y7443	TBI— Supported Day Program (Per Hour)	30.00
Y7444	TBI— Personal Care Assistant Services (Weekdays, per hour)	14.00
Y7445	TBI— Personal Care Assistant Services (Weekends, and Holidays, Per Hour)	17.00
Y7446	TBI— Companion Services (Per Hour)	11.00
Y7448	TBI— Night Supervision (8 hours)	112.00
Y7449	TBI— Chore Services (Per hour)	10.00
Y7453	TBI— Respite Inpatient Variable NF Rate or per day for non-NF	100.00
Y7454	TBI— Personal Care Assistant Services RN Initial Nursing Assessment	35.00
Y7455	TBI— Personal Care Assistant Services, RN Reassessment	35.00
Y7456	TBI— Respite 8 hour day	88.00
Y7457	TBI— Respite 8 hour night	104.00
Y7458	TBI— Respite 9 hour to 12 hour day	128.00
Y7459	TBI— Respite 9 hour to 12 hour night	144.00
Y7463	TBI— Respite 13 hour to 24 hour day	160.00
Y7554	TBI— Physical Therapy (Per Visit)	73.00
Y7555	TBI— Occupational Therapy (Per Visit)	73.00
Y7556	TBI— Speech Therapy (Per Visit)	73.00
Y7557	TBI— Cognitive Therapy (Per Visit)	73.00
Y7558	TBI— Counseling (Behavior) (Per Hour)	65.00
Y7559	TBI— Counseling (Individual/Family) (Per Hour)	65.00
Y7563	TBI— Counseling (Addiction) (Per Hour)	65.00
Y7564	TBI— Behavior Program (Assessment) (Per Hour)	75.00
Y7565	TBI— Behavior Program (Psychologist) (Continuing) (Per Hour)	75.00
Y7566	TBI— Behavior program (Continuing) (Per Hour)	35.00
Y7567	TBI— Transportation (Per Trip) $.25 per mile	
Y7568	TBI— Environmental Modification (Per Service or Item)	1,000.0

APPENDIX I

RANCHO SCALE

Level	Response	Patient Function
I	No response	Patient is completely unresponsive to any stimulus.
II	Generalized response	Patient reacts to the environment, but not as a specific response to the stimulus—responses are often the same despite change of stimuli. The earliest response is often gross movement to deep pain.
III	Localized response	Patient reacts in a specific manner to the stimulus, but may inconsistently turn head to sound, withdraw an extremity to pain, squeeze fingers placed in the hand, or respond to family members more than others.
IV	Confused, agitated	Patient is in a heightened state of activity, but is still severely detached from the surroundings. Internal confusion and very limited ability to learn is combined with short attention span and easy fatigue. The patient is unable to cooperate and may be aggressive, combative, or incoherent.
V	Confused, inappropriate/nonagitated	Patient appears alert and is able to respond to simple commands. Responses are best with familiar routines, people, and structured situations. Distractibility and short attention span lead to difficulty learning new tasks and agitation in response to frustrations. If physically mobile, there may be wandering. Much external structure is needed. Initiation and memory are limited.
VI	Confused, appropriate	Patient shows goal-directed behavior, but still is dependent on external structure and direction. Simple directions are followed consistently and there is carry-over of relearned skills (like dressing), yet new learning progresses very slowly with little carry-over. Orientation is better and there is no longer inappropriate wandering.
VII	Automatic, appropriate	Patient appears appropriate and oriented with familiar settings such as home and hospital, but is confused and often helpless in unfamiliar surroundings. The daily routine can be managed with minimal confusion as long as there are no changes. There is little recall of what has just been done. There is only a superficial understanding of the disability, with lack of insight into the

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	significance of the remaining deficits. Judgment is impaired with inability to plan ahead. New learning is slow and minimal supervision is needed. Driving is unsafe; supervision is needed for safety in the community or in school and workshop settings.
VIII Purposeful, appropriate	Patient may not function as well as before the injury, but is able to function independently in home and community skills, including driving. Alert, oriented, and able to integrate past and present events. Vocational rehabilitation is indicated. Difficulties dealing with stressful or unexpected situations can arise, as there may be a decrease in abstract reasoning, judgment, intellectual ability, and tolerance of stress relative to premorbid capabilities.

(a)

DIVISION OF FAMILY DEVELOPMENT

Public Assistance Manual

Aid to Families with Dependent Children (AFDC)

Proposed Readoption with Amendments: N.J.A.C. 10:81

Proposed Repeal: N.J.A.C. 10:81-12

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3, Federal Family Support Act of 1988 (P.L. 100-485), 58 FR 49218, 57 FR 30407, 45 CFR 250.30(b)(a), 45 CFR 250.73(e)1 and 255.2.

Proposal Number: PRN 1994-217.

Submit comments by May 18, 1994, to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, New Jersey 08625

The agency proposal follows:

Summary

In accordance with the sunset provisions of Executive Order No. 66(1978), the Department of Human Services, Division of Family Development (DFD) proposes to readopt N.J.A.C. 10:81, which is set to expire August 24, 1994. The Division has reviewed the rules and determined that all the subchapters, with the exception of subchapter 12 which is being repealed, are necessary, reasonable, adequate, efficient, understandable and responsive to the purpose for which they were originally promulgated. The proposed readoption includes amendments to N.J.A.C. 10:81-1, 3, 7, 8, 10, 13 and 14.

The Family Support Act of 1988 (FSA), Public Law 100-485, enacted on October 13, 1988, established the Job Opportunities and Basic Skills (JOBS) program for Aid to Families with Dependent Children (AFDC) applicants and recipients. JOBS is an employment/training program Federally mandated in all states for applicants and recipients of AFDC. Although REACH/JOBS is currently New Jersey's JOBS program, it is gradually being phased out by the latest welfare reform program (N.J.A.C. 10:86), the Family Development Program (FDP); however, since REACH/JOBS is still operational in a number of counties, it must be maintained under N.J.A.C. 10:81. The Federal JOBS program, like New Jersey's REACH program, was designed to provide AFDC families with employment-directed activities and necessary support services that would enable them to become economically self-sufficient. Extensive amendments were adopted throughout N.J.A.C. 10:81 to combine, within the framework of the REACH program, the elements of JOBS necessary to align the two programs; thus, REACH became New Jersey's JOBS program.

More recent amendments introduced the Family Development Program (P.L. 1991, c.523) and the gradual extension of FDP to all 21 counties. When fully implemented Statewide, FDP will replace REACH as New Jersey's JOBS program.

A summary of the text of current subchapters of N.J.A.C. 10:81 as well as an explanation of important amendments to those subchapters, subsequent to the last readoption, are presented as follows:

N.J.A.C. 10:81-1 outlines the basic principles upon which the administration of public assistance is based in New Jersey in accordance with Federal and State law and regulations. The unimpeded right to apply for assistance is affirmed, as is the applicant's eligibility for immediate assistance if need, is apparent and eligibility otherwise exists. Additionally, subchapter 1 addresses confidentiality of information, nondiscrimination in the administration of public assistance and the right of clients to appeal county welfare agency (CWA) actions. Finally, a brief description of income maintenance and other related assistance programs is presented.

N.J.A.C. 10:81-1 was amended to reference the Work Incentive (WIN) program (Title IV-C) which had been repealed by the FSA due to the establishment of JOBS. Subchapter 1 was also amended to include a brief introduction to the Family Development Program (FDP) published under N.J.A.C. 10:86.

N.J.A.C. 10:81-2 describes the application process, the responsibilities of the CWA (particularly income maintenance) during the initial contact with applicants, proper forms that must be completed and signed, and eligibility criteria for the three segments of the AFDC program—AFDC-C, -F and -N segments.

Both the applicant and the income maintenance (IM) worker have an affirmative responsibility to verify and document eligibility for AFDC assistance. If immediate need is apparent, an initial assistance payment may be issued based on presumptive eligibility; otherwise, payment is issued as soon as eligibility is verified. The IM worker determines whether or not individuals are exempt from participation in FDP or REACH, and if exempt, whether or not the individual must register with the State Employment Service.

N.J.A.C. 10:81-2.2 was amended to specify that orientation to REACH/JOBS is an income maintenance function, while the first responsibility of case management is evaluation and assessment.

N.J.A.C. 10:81-2.4 was amended to align rules with N.J.A.C. 10:82, concerning equalization of the State funded AFDC-N assistance payment standards with the assistance payment standards of the AFDC-C and -F segments, pursuant to P.L. 1991, c.527.

N.J.A.C. 10:81-2.8 was revised to redefine the responsibilities of the IM worker during the application process and to specify that the IM worker is responsible for determining each AFDC-C, -F, and -N family member's need to participate in REACH/JOBS as a condition of eligibility for AFDC, unless exempt.

N.J.A.C. 10:81-2.17 was amended to include, as an AFDC-C, -F and -N eligibility criterion, school attendance verification of dependent children ages 16 to 19.

N.J.A.C. 10:81-2.18 and 3.18 were amended to clarify that AFDC-F and -N principal earners, exempt from REACH/JOBS due to remoteness, are required to register with the State Employment Service.

N.J.A.C. 10:81-3 describes in more detail, factors that must be considered in order to establish AFDC-C, -F or -N program eligibility. Such factors include, but are not limited to, age of children; status of parents; residence; deprivation of parental support or care (AFDC-C); determining the principal earner and work criteria in two-parent families (AFDC-F and -N); and employment and training requirements for FDP and REACH/JOBS participants, including voluntary participation in either of those programs by an exempt individual. This subchapter also addresses treatment of AFDC eligible family members who are temporarily absent from the State, or change county residence within the State and outlines procedures to follow for individuals who are pending release from a medical, mental or correctional institution. Provisions are included concerning relatives who may be legally considered responsible to provide support, if financially able and, therefore, may be a source of income for a public assistance applicant or recipient. Language at the end of subchapter 3 specifies circumstances that might exist when, as a condition of AFDC eligibility, individuals must agree to repay benefits received. Other situations are also delineated as to when appropriate action is needed to recover assistance payments.

N.J.A.C. 10:81-3.8 and 3.9 were amended for alignment with FDP, to eliminate the automatic entitlement to an increase in public assistance entitlement as a result of the birth of a child, pursuant to P.L. 1991, c.526. The newborn remains eligible for Medicaid and child care benefits. Amendments also provided for a new State earned income disregard

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which would apply when a newborn in an AFDC family is cash ineligible.

N.J.A.C. 10:81-3.18 was amended by repealing and replacing rules pertaining to WIN requirements with text specifying Federal work criteria to be met by the principal earner in order to qualify the family for the Federally matched AFDC-F segment, and with criteria for determining the principal earner in both the AFDC-F and -N segments. Included also was the concept of "quarters of work" as defined in the Social Security Act, and provision for qualification for such quarters by attendance full-time in a school program designed to prepare the individual for employment, or in an education or training program established under the Job Training and Partnership Act (JTPA). Finally, rules concerning AFDC-N segment families were revised to correlate with other rules that deal with families who voluntarily terminate employment to qualify for assistance.

N.J.A.C. 10:81-3.19 was amended by repealing and replacing WIN rules with new text concerning employment and training requirements through REACH/JOBS for AFDC-C, -F and -N segment families. New language specified that if an individual applies for only Medicaid, without a request for an AFDC grant, participation in REACH/JOBS is not required since such eligibility determination is based soley on AFDC financial criteria with no work/training requirement. Voluntary participation for individuals exempt from REACH/JOBS was also delineated in accordance with the FSA. Additional langauge specified that individuals who have been verified as REACH/JOBS exempt due to incapacity are to be referred to the Division of Vocational Rehabilitation Services. Acceptance of the referral is optional and does not affect a recipient's entitlement to AFDC, unless the principal earner in an AFDC-F family is determined to be capable of being retrained and refuses such retraining. In such cases, the family loses eligibility for AFDC-F benefits but remains eligible for State funded AFDC-N benefits. Finally, the rule specifies that failure to report for REACH/JOBS evaluation and assessment, without good cause, will result in sanctioning.

N.J.A.C. 10:81-4 deals with the various ways public assistance grants may be issued. The subchapter identifies those persons authorized to receive assistance payments as payees on behalf of an eligible family and the conditions under which such persons are selected. Payment classifications include benefits issued to a designated payee, temporary payee, protective payee, and representative payee. Rules pertaining to voluntary restricted payments are presented. Such payments are made to a person or facility as compensation for providing goods and services to or for the client. Subchapter 4 also includes conditions and length of time for which assistance grants may be suspended, and reiterates policy pertaining to situations for which overpayments of assistance benefits may be recovered.

N.J.A.C. 10:81-4.5 was amended to include vendor or two-party payments to meet obligations for rent, mortgage or utility expenses; and two-party payments for transportation and child care. The rule provides AFDC recipients more flexibility to meet obligations in the purchase of goods and services, particularly in situations where housing would not be available unless payments for rent, mortgage or utility expenses are assured.

N.J.A.C. 10:81-4.23 was amended by delineating recovery procedures as described in subchapter 14 concerning overpayments of REACH/JOBS supportive services such as child care and transportation-related expenses.

N.J.A.C. 10:81-5 provides CWAs with procedures for periodic evaluation of ongoing assistance eligibility. Eligibility factors evaluated during a personal interview include financial eligibility, county residency, and the age and school attendance of the eligible children. Procedures for evaluating whether deprivation of parental support and care by at least one parent continues to exist in the AFDC-C segment of the program, by virtue of absence or incapacity, are also presented. Requirements for reevaluation of legally responsible relatives' capacity to support are also outlined.

N.J.A.C. 10:81-5 was amended to replace the restrospective budgeting methodology and monthly reporting process with a prospective system for the calculation of AFDC grant entitlements.

N.J.A.C. 10:81-6 encompasses rules and procedures concerning fair hearing requests. The recipient's right to a fair hearing and administrative review is defined, as well as the responsibilities of CWAs, DFD and the Office of Administrative Law, when there is a request for a fair hearing. Rules pertaining to time limitations on hearing rights, continued assistance, evidence discovery, representation, disposition of appeals and emergency fair hearings are also set forth.

N.J.A.C. 10:81-7 describes vital CWA administrative responsibilities which indirectly relate to the determination of program eligibility or assistance entitlement. Responsibilities include the following significant areas: timely and adequate notification requirements concerning agency actions; retention, transfer and disposal of case records; issuance of photo-identification cards; replacement of lost or stolen assistance checks; CWA participation in burial and funeral expenses; requirements for safeguarding of information concerning applicants for and recipients of assistance; rules ensuring that nondiscrimination prevails in the administration of public assistance benefits; and procedures to be followed when the CWA suspects fraudulent receipt of assistance.

N.J.A.C. 10:81-7.1 was amended to clarify the FSA client timely notice requirements concerning a change in the manner of payment of child care benefits. Such notices are required only if the changes result in discontinuation, suspension, reduction or termination of benefits, or if they force a change in child care arrangements. Additionally, N.J.A.C. 10:81-7.4 was amended to specify that reduced, discontinued or terminated child care or transportation benefits, or a determination of ineligibility for such benefits remain unchanged until after a fair hearing decision is rendered.

N.J.A.C. 10:81-7.20 was amended to define separation of income maintenance, social services and REACH/JOBS case management, as well as activities which involve both income maintenance and case management.

N.J.A.C. 10:81-8 is a compilation of procedures concerning referral to and verification of benefits issued through other programs for which recipients of AFDC may be entitled. Further, the subchapter addresses services available through the Medicaid program administered by the Division of Medical Assistance and Health Services. The process by which CWAs are to determine Medicaid entitlement for certain persons who do not automatically receive Medicaid because of their ineligibility for cash assistance under AFDC is described. The subchapter also provides for continued Medicaid eligibility extension periods beyond the point where families become ineligible for AFDC cash assistance.

Prior to the FSA, certain AFDC families could receive up to 15 months post-AFDC Medicaid extension benefits. However, with the enactment of the FSA, these benefits were time-limited to 12 months and N.J.A.C. 10:81-8.22 was amended to include this change.

Later, as a result of the implementation of the Family Development Program, N.J.A.C. 10:81-8.22 was amended to stipulate that under FDP families are eligible for post-AFDC Medicaid benefits for a period of 24 months if financial ineligibility results due to earned income.

N.J.A.C. 10:81-8.22 and 8.23, concerning medical assistance coverage for pregnant women and newborn children, were amended to align State rules with Federal statutes on AFDC-related Medicaid and Medicaid Extension, Medicaid Special and Medicaid to the Unborn programs. The provisions provide for liberalized post-partum medical coverage for a child born during the work-related Medicaid extension period and for the mother, if the 60-day post-partum period continues beyond the extension period applicable to the rest of the household. The provisions also stipulated that a woman who is eligible for Medicaid on the last day of pregnancy continues to be eligible, regardless of other program requirements, through the last day of the month in which the 60-day post-partum period ends. Moreover, an infant born to such a woman is also eligible for Medicaid for that same period, and up to one year, so long as the mother's eligibility continues and the child resides with her, whether or not application has been made. For individuals who were admitted to a hospital and were subsequently referred to the CWA through the use of the Form PA-1C, Public Assistance Inquiry, the newborn of an eligible woman is included as also having applied for assistance.

N.J.A.C. 10:81-8.22 was recently amended to clarify that when a family becomes ineligible for AFDC cash assistance due to the deeming of income of the parent to an adolescent parent, that income is not considered in determining Medicaid eligibility for other family members. Thus, the dependent child of the adolescent parent is eligible for Medicaid benefits.

N.J.A.C. 10:81-9 provides definitions of terms and acronyms pertinent to N.J.A.C. 10:81.

N.J.A.C. 10:81-10 provides rules for the administration of the Refugee Resettlement Program (RRP). That program is 100 percent Federally funded and is designed to meet the special needs of refugees. Assistance was provided to such individuals during their first 24 months in the United States. Due to Federal fiscal constraints, however, rules were

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amended to change the eligibility time limitation periods from 24 months to eight months for General Assistance and AFDC-N type cases and four months for AFDC-C and -F type cases.

N.J.A.C. 10:81-11 sets forth the regulations and procedures governing child support services to be provided under Title IV-D of the Social Security Act. The Child Support Program provides location, paternity establishment, order establishment, enforcement and collection services to all clients who have an assignment under AFDC, Medicaid or the Division of Youth and Family Services (DYFS) and to non-AFDC clients if a IV-D application is filed.

Amendments made to subchapter 11 subsequent to the last readoption were implemented primarily to comply with Federal regulations governing IV-D program requirements. A summary of those changes follows.

N.J.A.C. 10:81-11.2(a)2 and 11.5 were amended to provide that the AFDC/Medicaid Only client must cooperate in obtaining medical support orders.

N.J.A.C. 10:81-11.2(d) was amended to provide that IV-D services be made available to the clients of DYFS upon application and referral.

N.J.A.C. 10:81-11.4(a) was amended to require that up to the first $50.00 of child support collected in a month and up to the first $50.00 of any payment collected for a prior month paid by the absent parent in the month due shall be sent to the client.

N.J.A.C. 10:81-11.4(a) was amended to set forth the new Federally mandated time frame for the distribution of the disregarded child support payment. Up to the first $50.00 of support collected must be sent to the client.

N.J.A.C. 10:81-11.4(d) was amended to set forth the requirement that the IV-D unit must provide written notification to the IV-A unit upon discovering that direct support payments were received by an AFDC client. The IV-A unit will consider that amount when calculating the client's monthly income and issue procedures for the recovery of overpayments resulting from the direct support payment.

N.J.A.C. 10:81-11.4(d)1 was amended to require that the IV-A unit refer the case to IV-D no later than 45 days of initial application for AFDC. It was also amended to require that within five working days of the IV-D referral, the applicant be provided with information describing IV-D services as well as provided with an explanation of their rights and responsibilities.

N.J.A.C. 10:81-11.4(d)1i was amended to require that the IV-A unit notify the IV-D unit within 24 hours of a determination that a case is ineligible for assistance.

N.J.A.C. 10:81-11.4(d)1iii(1) was modified to require the client to remit to the CWA any direct child support payment received.

N.J.A.C. 10:81-11.4(d)1v(1) was amended to provide that if collection services under IV-A are terminated, the IV-D agency may require that a IV-D application be filed if the family requests that these services be reinstated.

N.J.A.C. 10:81-11.4(d)1v(2) was amended to require that individuals not receiving AFDC pay a $5.00 fee when applying for IV-D services.

N.J.A.C. 10:81-11.5(h)2iii was amended to provide clarification that a determination of non-cooperation cannot be based solely on the basis of a negative HLA test result.

N.J.A.C. 10:81-11.5(h)2 was amended to specify the Medicaid penalty for refusal to cooperate in matters concerning child support.

N.J.A.C. 10:81-11.6(a) was amended to specify the change in the method of determining incentive payments to the counties based on a Federal mandate changing the method in which incentive payments to the State are determined. The language was amended to reflect that incentive payments are to be computed in recognition of non-AFDC collections, as well as AFDC collections.

N.J.A.C. 10:81-11.7(a)9 was amended to require that information on Medicaid Only clients be sent to the Division of Medical Assistance and Health Services.

N.J.A.C. 10:81-11.7(a)11 was amended to clarify that a late payment fee is not imposed on obligors who owe child support.

N.J.A.C. 10:81-11.9 was amended to provide that the CWA/CSP unit take appropriate action to establish medical support orders for AFDC, Medicaid Only and non-AFDC persons. In addition, new language sets forth the requirement for the CWA/CSP unit to take action to locate obligors and establish paternity for Medicaid Only recipients.

N.J.A.C. 10:81-11.9(b) and 11.12 were amended by deleting the reference to Form CSP-157 as it is no longer used.

N.J.A.C. 10:81-11.9(d) was amended to provide that legal action for establishing paternity or obtaining a court order take place within 90 calendar days of locating the absent parent. The subsection was further amended to clarify that the CWAs are required to have attorneys on staff or under contract to represent the CWAs in court as necessary regarding child support enforcement matters.

N.J.A.C. 10:81-11.9(d)2 was amended to require that, in those AFDC cases where paternity has not been acknowledged by the absent parent, a complaint to establish paternity shall be filed by the CWA/CSP unit within 20 calendar days of locating the alleged absent parent. This time frame was subsequently amended from 20 days to 90 days.

N.J.A.C. 10:81-11.9(d)2i was amended to outline the procedures necessary for State approval for the use of genetic testing laboratories by the county IV-D agencies. In order for Federal reimbursement to be provided to the county for genetic testing, State approval must be obtained.

N.J.A.C. 10:81-11.9(d)2ii was amended to authorize CWAs to pay initial genetic testing fees for non-AFDC cases as well as AFDC cases. This amendment also reflects that although the CWA will provide the initial payment, the cost for genetic testing may be paid by either party involved as determined by the practice of the court.

N.J.A.C. 10:81-11.9(d)2vi was amended to reflect that if the court dismisses the petition, the CWA/CSP unit will determine when it will be appropriate to seek a support order in the future.

N.J.A.C. 10:81-11.9(d)4 was amended to provide that in non-AFDC cases, only the custodial parent will sign the complaint.

N.J.A.C. 10:81-11.9(d)5 was amended to provide that within 20 days of determining that an absent parent is out-of-State, the CWA/CSP Unit with the client's cooperation will file a Uniform Support Petition and General testimony in order to establish paternity and/or secure child support and medical insurance. A request for location services may also be filed with the State's central registry. N.J.A.C. 10:81-11.9(d)5 was further amended to modify the language to specify that the filing of a complaint must take place within 20 "calendar" days of determining that the absent parent is out-of-State.

N.J.A.C. 10:81-11.9(d)5i was amended to provide for the use of standardized federally approved forms for out-of-State cases and requires that the CWA request payment enforcement through a local county probation department in these cases.

N.J.A.C. 10:81-11.9(l)1 was amended to require that the CWA provide an application to the client applying for child support services on the day it is requested in person, or no later than five working days of receipt of a written request or telephone request. This amendment further requires that an application must be accepted on the day it is received and that the client shall receive information describing the services, rights and responsibilities, cost recoveries and distribution policies at the time of application. This amendment also provided for the use of a new application form for child support services.

N.J.A.C. 10:81-11.11 was amended to require that the CSP unit not undertake action to establish medical support when there is a finding of good cause for non-cooperation.

N.J.A.C. 10:81-11.13(a)1 was amended to require that the CSP unit conduct parent location activity within 30 working days of referral or application, when no court order exists.

N.J.A.C. 10:81-11.14(a) was amended to provide that the local CSP Unit is responsible for locating the absent parent by utilizing the Automated Child Support Enforcement System (ACSES) system and requires that the opening of a case and referral for location must take place within 20 calendar days. All locate sources are required to be accessed and responses verified within 75 calendar days of determining that location is necessary.

N.J.A.C. 10:81-11.14(c)2 was amended to set forth how the sharing of information throughout the State (from county to county) through the use of the ACSES system will improve efforts to secure paternity and support rights for children.

N.J.A.C. 10:81-11.14 was amended to provide additional parent locator sources to be utilized by the CWA/CSP Units in the location process.

N.J.A.C. 10:81-11.15 was amended to provide for location activities, including additional sources of information, which will occur through the ACSES interface.

N.J.A.C. 10:81-12 contains rules and procedures under which New Jersey participated in a special four-year, Federally-sponsored demonstration project, "TEEN PROGRESS," in the cities of Newark and Camden to address the problems of teenage pregnancy and welfare dependency. Text was modified to align sanction proceedings with those required under the FSA for REACH/JOBS and to eliminate procedures no longer applicable for new applicants after April 1, 1990. TEEN

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PROGRESS expires October 5, 1991, and the rules contained in subchapter 12 are being proposed for repeal in their entirety.

N.J.A.C. 10:81-13 sets forth the Systematic Alien Verification for Entitlements (SAVE) program. This system is an inter-agency Federal/State information-sharing program designed to prevent the issuance of AFDC, AFDC-related Medicaid and Food Stamp benefits to illegal aliens or aliens otherwise not entitled to such benefits due to immigration status.

N.J.A.C. 10:81-14 contains rules and procedures for administering the Realizing Economic Achievement (REACH) program and incorporates the requirements of the Federal Job Opportunities and Basic Skills (JOBS) Training Program.

The initial part of subchapter 14 sets forth REACH/JOBS participation requirements, delineates the population targeted for program participation and lists categories of exempt individuals. It continues with a description of case management functions and two key elements of the REACH/JOBS program—the Employability Plan and the REACH Agreement. The Plan, developed by the case manager in consultation with the participant, contains an employment goal and lists participant activities geared toward that goal, along with necessary supportive services, such as child care, in order to take part in an activity. The Agreement sets forth provisions, under mutual obligations, for both the participant and the agency.

Further, subchapter 14 discusses the participant's rights to a fair hearing and timely adverse action notices. Procedures are given for treatment of situations when noncompliance with REACH requirements is indicated, including explanations of "good cause" for noncompliance, concilitation procedures for resolving disputes, and actual imposition of sanctions.

Next, an indepth description is presented on REACH/JOBS participant component activities which include job search, work supplementation, community work experience, vocational assessment and counselling, on-the-job training and educational and social services.

An integral part of the REACH/JOBS program is the availability of benefits to the participant, for services needed that are crucial to support participation in employment and employment-directed activities. Provisions for child care, transportation and related expenses are vital to the program. Additionally, certain employed families who leave AFDC may also receive child care and Medicaid benefits during that first year of transition from public assistance dependency to self-sufficiency. A co-payment must be contributed by the family toward child care expenses during that post-AFDC period, as per the Federal FSA requirements. Subchapter 14 includes extensive rules and procedures concerning all the supportive services available. Allowances for recovery of any overpayment for such services, as appropriate, are also included in this section.

Extensive amendments to N.J.A.C. 10:81-14 were made to incorporate the requirements of the FSA. References to "deferred participants" were deleted since the FSA recognizes only "mandatory" and "exempt" categories of participants. With the exception of the homeless and persons in non-approved client-selected activities, all previous deferrals under REACH/JOBS were designated as exemptions. Two new definitions concerning "satisfactory progress" in an educational component and a training component were added. The definitions are consistent with Federal regulations and are used in determining whether a participant should remain in an activity and receive supportive services. Also added was a description of the FSA target group population, directed primarily toward those individuals who are most in need of assistance. Target groups include: (1) long-term receipients who have been receiving AFDC for any 36 of the preceding 60 months; (2) recidivists, individuals who make application/reapplication for AFDC and have received AFDC for any 36 of the preceding 60 months; (3) individuals who are custodial parents under age 24 who have not completed high school or its equivalent and are not currently enrolled in such programs; (4) custodial parents under age 24 with little or no work history; and (5) potentially ineligible families whose youngest child is age 16 and within two years of being ineligible for AFDC, thereby rendering the entire family ineligible.

N.J.A.C. 10:81-14.3 was amended to delineate REACH/JOBS participation requirements. Reasons for exempting individuals from participating in REACH/JOBS were deleted and relocated under a new section, N.J.A.C. 10:81-14.3A, which describes exemptions in more detail. Language was revised to emphasize that exemptions shall be reviewed by IM at least at redetermination of AFDC eligibility and the recipient and the case manager notified if a change occurs in exemption status.

N.J.A.C. 10:81-14.3 was also amended to define full-time employment as working not less than 30 hours per week; and to describe the REACH/JOBS "limited" participation requirements of no more than 20 hours per week in REACH/JOBS activities by a parent or caretaker relative who provides care for a child at least two years of age, but under six. "Limited" participation does not apply to a custodial parent under age 20 if that individual has not completed high school; and only one parent or other relative in a family may be allowed this "limited" participation. Further amendments stipulated provisions concerning client-selected activities. An assessment must be conducted and an employability plan developed to determine the appropriateness of the client-selected activity to the individual's employment goal.

Additional language added at N.J.A.C. 10:81-14.3 delineated Federal JOBS participation requirements for individuals with certain educational needs or certain family circumstances. Children age 16 to 18, who are not attending school, are mandatory REACH/JOBS participants. Such individuals are encouraged to remain in school or participate in other educational or training activities. Specific educational requirements are stipulated for individuals who are over age 20 with no high school diploma and require preparatory educational activities consistent with the individual's employment goal. The FSA requires that to the extent educational services are available and State resources permit, the State must, with certain exceptions, require certain categories of custodial parents under 20 who have not finished high school or its equivalent to participate in an appropriate educational activity. The custodial parent under age 18 with no high school diploma or equivalent, regardless of the age of the youngest child, is required to complete a high school education or its equivalent. In exceptional circumstances, criteria is established to excuse the individual from high school attendance provided he or she participates in other preparatory educational activities. Custodial parents age 18 and 19 with no high school diploma or equivalent are required to participate full-time in preparatory educational activities; or in training or work activities instead.

Other amendments were included at N.J.A.C. 10:81-14.3 concerning participation requirements for the principal earner in an AFDC-F segment family. If under 25 years of age with no high school diploma, preparatory educational activities may be required. In lieu of this, participation of at least 16 hours per week in the work supplementation program (WSP), community work experience program (CWEP) or on-the-job training (OJT) is required. Further language included the requirement that remedial educational activities are mandatory for individuals to help them achieve a basic literacy level when their employment goal does not require high school education. Limited English proficiency education is also mandated when necessary for the participant to achieve his or her employment goal.

Finally, new text at N.J.A.C. 10:81-14.3 provided that volunteers may stop participation any time without the loss of assistance. "Volunteers" in REACH/JOBS are defined as those individuals who meet REACH/JOBS exemption criteria and decide to participate in REACH/JOBS regardless of the exemption.

A new section, N.J.A.C. 10:81-14.3A, was added to delineate the categories of individuals exempt from participation in REACH/JOBS. Notable among the changes to comport with JOBS requirements are the following: the exemption for age was changed from 65 to 60 years of age; appropriate procedures related to incapacity; an allowed period of recuperation after childbirth, if prescribed by a physician, was added as an exception; and most deferrals were changed to exemptions including illness, pregnancy, and care of a child under two years of age. Only one parent may be exempt due to this exemption criteria. Text included clarification that the exemption for care of a child under two does not apply to custodial parents under age 20 if that individual has not completed high school or its equivalent, is not otherwise exempt, and child care is available. Exemption due to remoteness, formerly a REACH deferral was expanded to accommodate commuting distances beyond one hour each way. Also included was the provision for the exemption, rather than deferral, of the other caretaker relative or parent in an AFDC-C segment family when another adult relative in the home is a mandatory REACH/JOBS participant; the exemption of the second parent in an AFDC-F segment family, so long as the principal earner is participating in REACH/JOBS; and a new exemption for volunteers under Title I of the Domestic Volunteer Service Act of 1973, as required by Federal regulations.

N.J.A.C. 10:81-14.4 was amended to redefine responsibilities of the case manager to include: development of the employability plan, clarification that the case manager must notify income maintenance that

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noncompliance has occurred, or that a sanction should be imposed or lifted; reevaluation of needs and services of the participant; and arranging and monitoring of procedures for collection of post-AFDC child care co-pay fees. As part of assessment, the case manager is responsible for ensuring that a participant's literacy level is determined.

N.J.A.C. 10:81-14.5 was amended to address the development of and content to be included in the Federally mandated REACH/JOBS Employability Plan. That plan basically outlines the REACH/JOBS activities and supportive services needed by the participant to achieve a specific employment goal.

N.J.A.C. 10:81-14.5 and 14.18 were amended to clarify the requirement that REACH/JOBS participants no longer receiving AFDC must complete and sign the Agreement as a condition of receiving post-AFDC, not post-employment child care.

N.J.A.C. 10:81-14.6 was amended to reflect income maintenance responsibilities including certain functions transferred from case management. Under REACH, the IM worker provided an overview of the program and then referred the participant to the REACH case manager for full explanation of program requirements. The FSA identifies orientation to the JOBS program as a Title IV-A function to be handled by the IM worker. Other IM responsibilities include: determining participant status (exempt/mandatory participation); informing volunteers of their right to participate; informing applicants of REACH/JOBS participation requirements and availability of program support service; referral of participants to case management for evaluation; referral of participants to the agency IV-D child support unit for CSP requirements; and referral of AFDC-F and -N segment principal earners exempt from REACH/JOBS, due to remoteness, to the State Employment Service.

N.J.A.C. 10:81-14.7 was amended to confirm that the State utilizes the established hearing process which is handled by the Office of Administrative Law. An exception to timely notice was added for instances where there is a change in the manner of payment for supportive services. Additionally, new provisions were added on child care benefits pending a hearing. Clarifying new text provided that REACH/JOBS participants who wish to appeal violations of New Jersey wage and hour statutes are processed through the Department of Labor's Divisions of Workers' Compensation and Workplace Standards.

N.J.A.C. 10:81-14.8 was amended to include the FSA regulations concerning noncompliance, good cause, conciliation and sanctions. Situations not applicable to noncompliance are described. Revised text sets forth indications of noncompliance and includes individuals who reduce earnings without good cause; individuals who refuse necessary supportive services or cease participation in REACH/JOBS employment-directed activities without good cause. The participant is responsible for providing the agency with information in order that a "good cause" determination can be made. Good cause for noncompliance was expanded to include: the parent providing care for a child under six when employment would require the individual to work more than 20 hours per week; acceptance of a job that would result in a net loss of cash income to the family; and circumstances beyond the participant's control that prevent participation, particularly if necessary supportive services are not available.

New text also explained the procedures for resolution of disputes through a series of efforts called the conciliation process prior to imposition of a sanction. Further, it was stressed that a sanction only be imposed upon a participant when the case manager determines that there has been a willful refusal without "good cause" to comply with REACH/JOBS requirements. If a sanction is imposed, only the needs of the individual under sanction are deleted in determining AFDC eligibility and payment level. Under prior rules for AFDC-F, when the principal earner failed to cooperate, the entire family became ineligible; under the FSA, only the needs of the principal earner and the second parent (if that parent is not participating) are deleted, the children remain eligible. Further, in situations where the only dependent child in an AFDC-C or -F case is the mandatory participant, only the child's needs are removed as opposed to prior rules which made the entire family ineligible.

N.J.A.C. 10:81-14.8 was also amended to indicate that during the sanction period, an adult individual loses categorical eligibility for Medicaid under Federal JOBS; however, in New Jersey the individual remains eligible. Sanctioned children 16 to 18 years old continue to be eligible for Medicaid if there are other AFDC eligible children in the family.

The sanction periods for noncompliance with REACH/JOBS are: (1) For the first instance, one payment month or until the failure to comply ceases, whichever is longer; (2) for the second, three payment months or when the failure to comply ceases, whichever is longer; (3) for the third instance, six payment months or until the failure to comply ceases, whichever is longer; and (4) noncompliance after expiration of the sanction results in continued sanction. The case manager may determine that a failure to comply has ceased, after a sanction period, when an individual participates in the REACH/JOBS program for a trial period of up to two weeks.

N.J.A.C. 10:81-14.10 was amended to expand the description of the job search component of the REACH/JOBS program in accordance with the FSA provisions. Job Search is the primary activity for participants who have job skills and experience in the labor market.

N.J.A.C. 10:81-14.11 was amended to expand the description of the REACH/JOBS component. AFDC funds are used to develop and subsidize employment for WSP participants as an alternative to aid provided by AFDC. Conditions of employment under WSP were clarified. The FSA regulations reclassified WSP as subsidized "employment" rather than as an employment-directed activity. Revised procedures for budgeting of income for such individuals were also explained.

N.J.A.C. 10:81-14.12 was amended to address certain aspects of the Community Work Experience Program (CWEP). One aspect dealt with the inclusion of an element of training in a CWEP work experience position. Another aspect modified the method of calculation of the maximum number of hours which a participant is required to participate in CWEP in any month. The modification concerned itself wth AFDC-C participants with assigned child support. Specifically, the $50.00 child support pass-through is not included in determining the required maximum number of hours of CWEP participation.

N.J.A.C. 10:81-14.14 was amended to incorporate the FSA provisions applicable to OJT. Under these provisions a participant must demonstrate that he or she is making satisfactory progress in OJT, with emphasis on the individual being retained by the employer as a regular employee at the end of the OJT, as established in contracts between the IV-A agency and the employer. Under the FSA, OJT is considered "subsidized" employment. Under prior rules, OJT was considered a training component.

N.J.A.C. 10:81-14.15 was amended to provide that Adult Basic Education (ABE) may be used to help a participant achieve the basic literacy level.

N.J.A.C. 10:81-14.17 was amended to reaffirm that supportive services benefits are available for an individual's participation in REACH/JOBS when those services are not available through any other resource.

N.J.A.C. 10:81-14.18 was amended to describe REACH/JOBS child care benefits and post-AFDC child care benefits. New language was added to incorporate the FSA mandates pertaining to agency responsibilities. Families requesting child care must be informed of their rights and responsibilities. The agency must respond to a request for child care within a reasonable time and must provide the parent with the opportunity to chose the type of child care arrangement from all those available. The FSA also requires that when child care is refused, it is the individual's responsibility to ensure that the refusal will not prevent or interfere with participation in REACH/JOBS.

Other changes were made at N.J.A.C. 10:81-14.18 concerning timeframes for payment of child care benefits. Under the REACH program child care benefits were allowed for one year to bridge the period between participation activities or between REACH activities and employment. The FSA limits these benefits to a time period not to exceed two weeks, or at the most, one month. Also under REACH program rules, a one year participation time limit applied to an individual in an employment-directed activity in order to receive child care benefits. The FSA lifted this restriction.

New text at N.J.A.C. 10:81-14.18 increased the earned income child care disregards that became effective July 1, 1989 in accordance with provisions of the FSA of 1988 and affirmed that State REACH funds would supplement child care costs which exceed $175.00 for any child age two or older or $200.00 for any child under age two. In addition, new language stated the reasons for AFDC ineligibility which qualified REACH/JOBS paraticipants for the one year post-AFDC period of child care benefits. It was specified that only weeks of employment are counted toward the one year, 52-week, benefit period. Additional rule changes defined transitional support services for working families available through State-funded REACH/JOBS after the one year post-AFDC period. The one year post-AFDC child care benefit period was also aligned with the 12 month period of extended Medicaid.

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N.J.A.C. 10:81-14.18 also modified rules concerning methods of payment for child care for employed REACH/JOBS families remaining eligible for AFDC-C or -F benefits. Prior to the FSA, the disregard procedure had been the only allowable method of payment. The FSA provisions allowed the option of using direct payment to child care providers, which is this Division's preferred method. However, in accordance with Federal statute, the disregard method was retained for certain situations to ensure that child care or care for an incapacitated adult can be provided when the direct payment option is not applicable. The direct payment option alleviates shifting of payment methods during the course of an individual's REACH/JOBS participation, particularly, when an individual moves from training to employment. The amended rules delineated appropriate situations and procedures for both methods.

Additional amendments were adopted as a result of the FSA of 1988. Certain Federally required conditions of eligibility for receipt of post-AFDC child care benefits were incorporated at N.J.A.C. 10:81-14.18. Since October, 1987, those benefits had been solely State funded through the REACH program to families who became ineligible for receipt of AFDC as a result of employment. The FSA set forth requirements guaranteeing the continuation of child care benefits for 12 consecutive months to prior AFDC recipients who lost AFDC eligibility as a result of increased hours of and/or income from employment; or the loss of the time-limited earned income disregards under the AFDC program. Additional requirements included: receipt of AFDC benefits in three of the six months prior to loss of AFDC eligibility; and, request for post-AFDC child care benefits by the family and cooperation in providing the necessary information to determine their share of a co-payment for total child care costs.

New Jersey implemented the Federal requirement that a family must have received AFDC benefits in three of the six months before loss of AFDC eligibility, in order to claim Federal Financial Participation (FFP) in those situations where applicable. However, in those instances where families received AFDC for at least one month but less than Federal mandates, State funds are used to provide post-AFDC child care to families if the other eligibility requirements for those benefits are satisfied.

Clarifying language was added concerning communication responsibilities of IM staff, case managers and lead child care entities to ensure prompt payment to child care vendors in instances where participants become employed or transition into post-AFDC assistance child care benefits.

A most significant change concerning post-AFDC child care was the FSA requirement that participating families contribute a co-payment toward the total cost of post-AFDC child care benefits. Thus, the co-payment rule was established at N.J.A.C. 10:81-14.18 and became applicable to families who lost AFDC eligibility after April 1, 1990. In order to determine the amount of the co-payment to be contributed, a sliding fee scale was developed, which identified fees for children receiving part-time care and full-time care. The fee scale was set forth in a new rule at N.J.A.C. 10:81-14.18A. The assessed co-payment fee may not exceed the cost of care and is determined based on the AFDC eligible family size at time of AFDC case closing, and all gross earned and unearned income as defined by the AFDC program. Once determined, the fee does not change unless the REACH/JOBS participant reports a reduction in income or increase in family size. The amount of the fee depends on the number of children in care. Therefore, for one child, the parent pays 100 percent of the fee. If a second child is in care, then the parent pays 50 percent of the fee for that child. No additional fee is assessed for the third and additional children in the same family receiving post-AFDC child care.

Another new rule at N.J.A.C. 10:81-14.18B established the procedures for sliding fee determination and for the collection and monitoring of fees as required by Federal regulations. This section also includes a detailed outline of the procedures to be followed by key individual entities in the REACH/JOBS program—CWA IM workers, REACH/JOBS case management, the Lead Child Care Entity who is responsible for overseeing child care services in the county, REACH/JOBS participant, and the provider of care for the REACH/JOBS participant's child(ren).

Subsequent amendments were made at N.J.A.C. 10:81-14.18, 14.18A and 14.18B to align the co-payment process in the REACH/JOBS program with other child care service programs available through the Department of Human Services. Uniform co-payment scales were the first such procedures to be made consistent in all the child care programs in the Department's efforts to develop a Statewide comprehensive child care delivery system with similar requirements for the various eligibility groups to whom services are provided.

N.J.A.C. 10:81-14.19 was amended to delineate transportation costs and work/training related expenses, which comprise part of the supportive services. Text was rewritten for clarity and to incorporate several new provisions. Transportation-related expenses are considered a benefit based on need and provisions for payment of costs for transporting children to and from child care facilities were added. Also, supportive service participant allowances were expanded to include a $100.00 cumulative employment-directed activities (EDAs) allowance. EDAs are for books, supplies, equipment, uniforms and tools which are necessary to allow the individual to participate in an EDA component; a $100.00 JOB allowance for employed individuals for actual expenses for necessary items which permit an individual to accept or maintain employment, such as special clothing, tools and equipment, and union dues; and a $500.00 cumulative motor vehicle allowance (CAR) with provisions allowing the county to develop a list of approved mechanics and restrictions on payments made for car insurance purposes.

N.J.A.C. 10:81-14.20 was amended to align post-AFDC Medicaid benefits with the FSA requirements and text at N.J.A.C. 10:81-8.22.

N.J.A.C. 10:81-14.21 was amended to clarify earned income disregard procedures in the determination of eligibility and benefits for those REACH/JOBS participants serving as child care providers. Also, new provisions were added to address the FSA calculation process of "net loss of cash income", designed to prevent a family from accepting a job if the employment would result in the family having less disposable income than would be available while receiving AFDC.

N.J.A.C. 10:81-14.22 was amended to specify procedures by which REACH/JOBS participants are referred to the Child Support and Paternity (IV-D) unit.

N.J.A.C. 10:81-14.24 is a new section which was added to address procedures related to overpayments and underpayments of supportive service benefits as required by the FSA. These procedures apply to all supportive service benefits, including child care.

The following portion of the Summary explains proposed amendments which are included in this readoption:

N.J.A.C. 10:81-1.6, 7.9 and 7.30 are amended by adding language to include specific reference to Title IV-E (foster care and adoption services) as being another program for which information about AFDC applicants and/or recipients may be made available. Additionally, new text is added to emphasize that CWAs are required to report to DYFS allegations of child abuse and neglect which involve AFDC children and to describe instances involving child abuse and neglect situations. Provisions also allow for release of information concerning AFDC applicants/recipients involved in child abuse neglect situations to appropriate individuals. These proposed amendments are a result of Federal regulatory changes to the AFDC program (58 FR 49218) made by certain provisions of the Federal Omnibus Budget Reconciliation Act of 1990.

N.J.A.C. 10:81-1.12 is amended in order to provide a more updated, comprehensive description of child care programs and services administered by the Division of Family Development.

N.J.A.C. 10:81-3.9(c)1ii and 13.2(b)1 are amended to require signatures from AFDC-C, -F and AFDC-related Medicaid applicants attesting to citizenship or legal alien status by either the end of the 30 day processing standard or the last day of the last month of the redetermination period. Text is deleted in order to align signature requirements with the Food Stamp Program so that signatures must be provided only at the time of application rather than at redetermination in accordance with changes in Federal requirements.

N.J.A.C. 10:81-3.18(b)1 is amended to provide for the inclusion of current policy concerning the "underemployed." This inclusion was inadvertently omitted in prior revisions to this section.

N.J.A.C. 10:81-3.18(b)7i(2) and (3) are amended to eliminate confusing language concerning the determination of countable "quarters of work." Current text includes options allowed by the Federal Social Security Act and 57 FR 30407 but which are not applicable, as New Jersey utilizes a less stringent option described at N.J.A.C. 10:81-3.18(b)7i(1).

N.J.A.C. 10:81-3.18(b)7i(4) is amended to indicate that an individual must have participated in the WIN program prior to October, 1990. This is in accordance with 57 FR 30407.

N.J.A.C. 10:81-1.7, 7.36, 7.38(b)1i and (e)1, 8.21(a) and 14.18(a)4 are amended by replacing the word "handicapped" with the Federally re-

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quired terminology, "disabled," in accordance with the Federal Americans With Disabilities Act (P.L. 101-336).

N.J.A.C. 10:81-10.1(b) is amended by adding the phrase "subject to the availability of funds" to clarify the amount of Federal reimbursement for the Refugee Resettlement Program (RRP).

N.J.A.C. 10:81-10.3(a) is amended as a result of a letter of clarification issued recently by the Federal Administration for Children and Families, Office of Refugee Resettlement, concerning documentation requirements for eligibility under the RRP, specifically relating to Cuban or Haitian nationals.

N.J.A.C. 10:81-10.7(e)2i is amended to delete the provision that Form PA-54 is provided by DFD to the CWAs. Under current policy, DFD does not provide Form PA-54 to the CWAs.

N.J.A.C. 10:81-10.8(a) is amended for clarification purposes concerning Medicaid extention eligibility for General Assistance and AFDC-N type refugees who lose eligibility for AFDC due to increased earnings.

N.J.A.C. 10:81-12 is being repealed in its entirety due to the fact that the program it relates to, TEEN PROGRESS, was a Federally-sponsored demonstration project which expired on October 5, 1991. Text related to TEEN PROGRESS is also being deleted at N.J.A.C. 10:81-14.3A(a)12 and 14.8(l).

N.J.A.C. 10:81-14.3(g)3, (k)5 and (p), 14.3A(a)7 and (a)7ii, and 14.13(b), are amended to raise, from two to three years, the age of the youngest child for whom a caretaker relative receives an exemption from REACH/JOBS participation in accordance with Federal JOBS exemption criteria at 45 CFR 250.30(b)(9). This change was initiated in July, 1991 in an effort to prioritize the use of limited financial resources available for participation in the REACH/JOBS Program.

N.J.A.C. 10:81-14.18 is amended to include technical changes to reflect an updated form name and current names of programs (that is, JOBS).

N.J.A.C. 10:81-14.19(e) and (f) are amended to reflect that issuance of post-AFDC CAR and/or JOB allowances are time-limited not to exceed 90 days after loss of eligibility for AFDC. This revision affects both employed individuals and participants in work supplementation and on-the-job training contracts. This change was implemented in August 1991 due to a Federal policy clarification via Federal Action Transmittal 91-5 and 45 CFR 250.73(e)(l) and 255.2 concerning Federal financial participation regarding supportive services.

Social Impact

The major thrust of any public assistance system is the maintenance of income for those who are unable to provide for themselves. The Public Assistance Manual (N.J.A.C. 10:81), in conjunction with the Assistance Standards Handbook (N.J.A.C. 10:82), provides the rules governing the AFDC program through which assistance is provided to needy families. N.J.A.C. 10:81 also contains the requirements and provisions of the Federal JOBS program which provides AFDC families with education and/or employment-directed activities and necessary supportive services that would enable them to become economically self-sufficient.

Rules concerning the non-financial eligibility requirements for applicants/recipients of AFDC are set forth at N.J.A.C. 10:81. Readoption of the manual will result in the continued equitable determination of eligibility concerning non-financial eligibility factors for all AFDC applicants/recipients. Additionally, the absence of the rules contained herein would cause undue hardship to needy families eligible for AFDC. Taking March 1993 as an average month in which assistance has been granted, records indicate that 128,108 families received assistance. This includes 361,134 individuals, 244,174 of whom are children. The readoption is also essential for the efficient and effective administration of the AFDC program by the CWAs.

Prior to the enactment of OBRA 1990, the use of disclosure of information concerning AFDC applicants and recipients was restricted by section 402(a)(9) of the Social Security Act. Information on AFDC recipients and applicants could only be used for purposes directly connected with the administration of the AFDC program or several other specified Social Security Act programs. The proposed amendment regarding the confidential nature of information allows for the disclosure of information about AFDC applicants and recipients for purposes directly connected with Title IV-E programs (foster care and adoption assistance programs). It also describes what constitutes child abuse/neglect situations and allows for the release of information concerning AFDC applicants/recipients involved in these situations to appropriate individuals. As such, this amendment facilitates CWAs' awareness of child abuse/neglect situations and their reporting obligations and it also ensures that appropriate agencies have access to necessary information.

Subchapter 12 which deals with TEEN PROGRESS is being proposed for repeal because it was a Federally-sponsored demonstration project which expired on October 5, 1991. However, the educational and work related needs of the target population involved in TEEN PROGRESS are currently addressed through the provisions of the JOBS program which was implemented by the Federal Family Support Act of 1988.

The proposed amendments to subchapter 14 change the age of the youngest child for whom a caretaker relative receives an exemption from two to three years and clarify that the issuance of post-AFDC CAR and/or JOBS supportive services allowances is limited to a period not to exceed 90 days after loss of eligibility for AFDC. Both of these provisions were implemented in 1991 as a result of Federal requirements and are currently operational so there is no significant social impact to be expected at this time.

Significant among the rulemaking since August 1989 was the outcome of the FSA of 1988 and new Federal regulations concerning child support and paternity. Federally mandated program standards have resulted in the imposition of time frames for the completion of specific actions involving location, paternity establishment, order establishment, enforcement, collection, and distribution activities. New regulations requiring that the establishment and enforcement of medical support is available to IV-D clients has also resulted in significant modifications to N.J.A.C. 10:81-11. The social impact of the rulemaking was favorable as it ensured the most effective and efficient operation of the IV-D program allowing the provision of equal services to all IV-D clients and equitable treatment of all cases.

The proposed amendments which serve to clarify or update current policy at N.J.A.C. 10:81, are technical in nature and will have no additional social impact.

Economic Impact

For March, 1993, the total amount of AFDC expenditure for the AFDC-C, -F and -N segments was $46,060,304. The average payment per case was $359.54 while the average payment per person was $127.54.

The child support and paternity rulemaking since August 1989 regarding the time frames and the establishment and enforcement of medical support had a positive economic impact. The required time frames for case processing ensured the timeliness of actions being taken on a case, thereby, increasing the likelihood of a collection. The requirement to establish and enforce medical support orders lessened the financial burden on families and the State for the cost of medical care.

Readoption of N.J.A.C. 10:81 is essential for the efficient and effective administration of the AFDC and JOBS programs by the CWAs. Failure to readopt N.J.A.C. 10:81 could result in the loss of Federal financial participation since the rules are essential for the proper administration of the AFDC and JOBS programs in accordance with Federal regulations.

The proposed amendments pertaining to the description of child care programs, disclosure of information for Title IV-E programs, clarification of requirements to report child abuse and neglect, signature requirements for attesting to citizenship, and clarification of the determination of -F segment eligibility have no tangible economic impact but rather serve to improve the overall integrity of the AFDC program. These clarifications should serve to improve administration of the AFDC program and therefore have some positive, but unidentifiable economic impact for CWAs administering the program.

The repeal of Subchapter 12, Teen Progress, is required as the program was a Federally sponsored two-year demonstration project which expired October 5, 1991. Since funds were only appropriated for the period of the project, and the program no longer exists, there is no economic impact as a result of the repeal of these rules. As stated in the Social Impact, many of the educational, work-related and supportive needs of this population are addressed through the JOBS provisions.

The proposed amendment which changes the JOBS exemption for a parent who cares for a child under the age of two to under the age of three aligns New Jersey's exemption criteria with Federal JOBS exemption criteria. This change exempts additional caretaker relatives from participation in the JOBS program until such time as their child reaches the age of three. This change has no economic impact on clients who are exempted as a result of this provision as their grant remains the same whether or not they are required to participate in JOBS. Individuals who do participate in JOBS components have any additional costs offset because child care, transportation and other supportive service payments, beyond the AFDC grant, are provided to ensure the client's participation. The client who is exempted from participation in

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JOBS until such time as the child reaches age three, affects the State and CWAs administering the program in that postponement of participation for such individuals postpones JOBS program expenditures. There is no specific data to provide exact fiscal savings realized by this change. However, due to budgetary constraints, the Department chose not to require such individuals to participate before required to do so in accordance with Federal requirements. This allowed the State to use its limited appropriations for mandatory participants.

It is anticipated that the amendments regarding the one-time $100.00 cumulative JOB allowance and the one-time $500 cumulative CAR allowance will affect a very small percentage of the AFDC population eligible for these allowances. The amount of both allowances remain the same. Eligibility for these allowances begins when the client incurs expenses to accept a job or with respect to the CAR allowance when a participant begins his or her first JOBS activity or accepts employment and incurs expenses to make his or her vehicle operational to transport him or her to the JOBS activity. In both instances, the accumulation of each allowance may begin while the participant is an active AFDC recipient and continue, in accordance with the proposed amended regulation, for a period of 90 days after loss of AFDC eligibility. Under existing regulation the client could continue to accumulate the allowances up to the specified maximum, for a period of 12 months after loss of AFDC. The amendment shortens the post-AFDC period of potential receipt by nine months to align the eligibility period with Federal regulations. In most cases the client will request such allowances as soon as needed. While still an AFDC recipient or immediately prior to or upon case closing as the client needs such payments in order to accept employment or to make his or her vehicle operational in order to attend a JOBS activity or to accept employment. Because of the capped nature of these allowances, most clients will have received most, if not all, of their JOBS and CAR allowance well before 90 days after loss of AFDC eligibility.

Because the Department has major data collection requirements to meet for the JOBS program, the Department does not collect specific data on the number of former recipients who may have requested such allowances after the 90 day period. However, it is anticipated that very few clients, if any, receive no portion of the allowance as a result of the shortened post-AFDC timeframe. Likewise, it is also anticipated that only a few clients may lose a portion of the cumulative allowance because of the change to a 90 day post-AFDC benefit period. Exact numbers are not available, however, the Department does not expect a significant negative economic impact on clients as a result of these rule changes.

Regulatory Flexibility Statement

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

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:81 as amended and supplemented by the New Jersey Register.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 10:81-12.

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

10:81-1.6 Confidential nature of information

(a) Information about applicants or recipients will be used or disclosed only for purposes directly connected with the administration of public assistance and related services, **including Title IV-E (foster care and adoption assistance programs)**, which cannot be offered without such information **in accordance with the provisions at N.J.A.C. 10:81-7.31**.

1. Such safeguards shall not apply to the furnishing of recipient address information to State and local law enforcement officers attempting to locate a fugitive felon in accordance with the provisions at N.J.A.C. 10:81-[7.31 and] 7.32(c).

2. Information concerning applicants or recipients may also be released to appropriate individuals in instances involving child abuse and neglect situations as described at N.J.A.C. 10:81-3.12(e), 7.29 and 7.46(c)2.

10:81-1.7 Nondiscrimination

There shall be no discrimination on grounds of race, color, religion, sex, national origin, marital, parental or birth status, or [handicap] **disability** by State or local agencies in the administration of any public assistance program.

10:81-1.12 Other programs

(a) Other related assistance programs include (also see N.J.A.C. 10:81-8):

1.-6. (No change.)

7. Child Care Programs/Services are administered by the Division of Family Development with the goal of assisting both AFDC and non-AFDC individuals in their efforts to achieve self-sufficiency.

i. JOBS/FDP child care benefits as a supportive service to participants actively participating in New Jersey's REACH/JOBS and FDP program are made available as an entitlement. Participants may receive child care benefits as described at N.J.A.C. 10:81-14 to the extent that such child care is necessary to permit an AFDC eligible family member to accept employment, to remain employed or to participate in an educational or employment-directed activity.

ii. JOBS/FDP Transitional Child Care (TCC) benefits, described at N.J.A.C. 10:81-14, are a supportive service available to families whose eligibility for AFDC has ceased due primarily to increased earnings, increased hours of employment (including new employment), which result in increased earnings, or as a result of the loss of earned income disregards due to the expiration of time limits. This supportive service is an entitlement and is available for 12 months post-AFDC, to the extent that child care is necessary to permit a member of the AFDC family to accept or maintain employment. The eligible parent must request such benefits and will be required to pay a co-pay fee based on annual gross income, family size, hours of child care needed and the number of children needing care.

iii. DFD administers, through the county Boards of Social Services, the payment of special circumstance child care utilizing Title IV-A funds. This supportive service benefit is available when payment for such care is not available through other resources and the county Board of Social Services determines, while adhering to established guidelines, that such care is essential. This supportive service and the guidelines are outlined at N.J.A.C. 10:82-5.

iv. New Jersey Cares for Kids (NJCK) Child Care Certificate Program is made possible through block grant monies of the Omnibus Budget Reconciliation Act (OBRA) of 1990, Public Law 101-508. The block grant child care service programs are the At-Risk Child Care (ARCC) Program as implemented by Section 5081 of OBRA 1990, and the Child Care and Development Block Grant (CCDBG) Act of 1990, as implemented by Section 5082 of OBRA 1990. The NJCK Certificate Program is implemented by community child care agencies in each county via contract with DFD. The program is made available to income eligible families to the extent that such child care is necessary to permit a family member to accept employment, to remain employed, or to participate in employment/training/educational activities as specified in Federal regulations. To receive services from this program the family must pay a co-pay fee which is based on gross annual income, family size, hours of care needed and the number of children in care. This program is further described in the DFD Child Care Services Manual at N.J.A.C. 10:15, 10:15A, 10:15B and 10:15C.

[7.]**8.** (No change in text.)

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

10:81-3.9 Applicant in AFDC-C and -F

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

(c) To be eligible for AFDC-C or -F, or AFDC-related Medicaid an individual shall be either a citizen of the United States or otherwise permanently residing in the United States under color of law, including any alien who is lawfully present in the United States as a result of the application of Section 207(c), Section 203(a)(7) (prior to April 1, 1980), Section 208, and Section 212(d)(5) of the Immigration and Nationality Act.

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1. Each AFDC-C and -F and AFDC-related Medicaid applicant shall, as a condition of eligibility, provide a written statement of citizenship or legal alien status. If the applicant(s) is not a United States citizen, he or she shall provide documentation, subject to verification, of satisfactory immigration status. When the applicant or other person for whom the application is being made is an alien, his or her legal status shall be verified through evidence provided by the applicant with the United States Immigration and Naturalization Service.

i. (No change.)

ii. If a signature is not provided for all eligible family members by [either] the end of the 30-day processing standard [or the last day of the last month of the redetermination period], then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements.

iii.-iv. (No change.)

2.-4. (No change.)

10:81-3.18 Work criteria; determination of principal earner

(a) (No change.)

(b) AFDC-F segment eligibility for families with both natural or adoptive parents in the home is based on deprivation of parental support to the children in that family due to unemployment of the parent who is designated the principal earner. Form PA-22, Employment Criteria for AFDC-F families, is to be used by the CWA in determining eligibility for AFDC-F. Form PA-22 may be reproduced by each CWA. After the initial application, the CWA shall reexamine Form PA-22 whenever the circumstances surrounding employment in a two-parent household change. To qualify for AFDC-F, the following criteria shall be met:

1. The principal earner has been unemployed **or underemployed** for at least 30 days prior to the receipt of public assistance;

i. Unemployed **or underemployed** is defined as:

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

2.-6. (No change.)

7. The principal earner has six or more quarters of work (as described in (b)7i below, no more than four of which may be quarters of work over his or her lifetime as defined in (b)7i(2) below, within any 13 calendar-quarter period ending within one year prior to the application for such aid; or, within such one-year period, received unemployment compensation under an unemployment compensation law of a State or of the United States; or was qualified (see (b)6i above) for such compensation under the State's unemployment compensation law.

i. A "quarter of work" with respect to any individual means a period (of three consecutive calendar months ending on March 31, June 30, September 30, or December 31) in which:

(1) (No change.)

(2) The individual attended full-time, an elementary school, a secondary school, or a vocational or technical training course [(approved by the Secretary of the United States Department of Health and Human Services (USDHHS))] that is designed to prepare the individual for gainful employment, or in which such individual participated in an education or training program established under the Job Training Partnership Act, Public Law 97-300; **or**

[(3) The individual earned Social Security credits as delineated at Section 213 of the Social Security Act. Such credits are earned by working in a job covered by Social Security. Each credit is a quarter of coverage. A quarter of coverage is earned for each quarter, based on earnings in the quarter. An individual can earn four Social Security credits each year, but no more than four credits can be counted for any one year, regardless of total earnings. The Secretary of USDHHS determines and publishes annually in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding year; or]

[(4)]**(3)** The individual participated in the Community Work Experience Program[,] **or** WIN (Work Incentive Program) **prior to October, 1990,** or the Job Opportunities and Basic Skills Training Program (JOBS/REACH or FDP in New Jersey).

(c) (No change.)

10:81-7.29 [(Reserved)] **Reporting of child abuse and neglect**

County welfare agencies are required to report known or suspected instances of child abuse and neglect of a child receiving AFDC to the Division of Youth and Family Services. Instances of abuse and neglect involve situations where a child experiences physical or mental injury, sexual abuse or exploitation or negligent treatment or maltreatment under circumstances which indicate that the child's health or welfare is threatened.

10:81-7.30 Federal policy for safeguarding information

(a) The Federal Social Security Act requires that a State must provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of public assistance **and related services, including Title IV-E (foster care and adoption assistance programs), which cannot be offered without such information in accordance with the provisions at N.J.A.C. 10:81-7.31.**

1. (No change.)

2. Information concerning applicants or recipients may also be released to appropriate individuals in instances involving child abuse and neglect situations as described at N.J.A.C. 10:81-3.12(e), 7.29 and 7.46(c)2.

10:81-7.36 Nondiscrimination in public assistance programs

Title VI of the Federal Civil Rights Act of 1964 (Public Law 88-352) and Section 504 of the Federal Rehabilitation Act of 1973 prohibit discrimination on the grounds of race, color, national origin, or [handicap] **disability** in the administration of any program for which [federal] **Federal** funds are received. Strict compliance with the provisions of these Acts and any regulations based thereon is required as a condition of eligibility to receive [federal] **Federal** funds for assistance programs administered through the county welfare agencies. These principles apply to all public assistance programs in New Jersey.

10:81-7.38 Procedures affecting county welfare agencies

(a) (No change.)

(b) Rules concerning the assurance of compliance by vendors are:

1. All official invoice forms of the county welfare agency shall contain the following statement directly above the vendor's signature.

i. "Services are provided to all recipients without regard to race, color, national origin, sex, marital, parental or birth status, or [handicap] **disability**."

2.-3. (No change.)

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

(e) Complaint procedure rules are:

1. All persons seeking or receiving public assistance shall be afforded an opportunity to file a complaint alleging discrimination on the grounds of race, color, national origin, or [handicap] **disability**. Such complaints may be filed directly with the Regional Director, U.S. Department of Health and Human Services, Federal Building, 26 Federal Plaza, New York, New York 10007, or with the Director, Division of Family Development, Department of Human Services, CN 716, Trenton, New Jersey 08625.

2.-6. (No change.)

10:81-8.21 Function of Division of Vocational Rehabilitation Services

(a) The function of the Division of Vocational Rehabilitation Services Commission is to provide services to needy[,] **and** disabled [and handicapped] residents of the State, other than those visually [handicapped] **disabled**, in order that such individuals will be afforded the opportunity to reach the highest possible level of independent functioning through the cure, correction or amelioration of their disabling condition.

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

10:81-10.1 Purpose and funding

(a) (No change.)

(b) Federal financial participation for refugees under RRP is 100 percent. For refugees who meet AFDC-C or -F segment criteria, 50 percent of the Federal reimbursement is from Title IV-A funds and 50 percent from refugee funds **subject to the availability of**

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funds. For those refugees meeting AFDC-N or GA criteria, 100 percent Federal financial reimbursement is from refugee funds.

10:81-10.3 INS statuses for RRP

(a) Applicants may be eligible for assistance under RRP if they have been classified in one of the following INS statuses:

1.-4. (No change.)

5. A person from any country who previously held one of the statuses identified in (a)1 through 4 above whose status has subsequently been changed to that of permanent resident alien. In addition to the required form I-151 or I-551 (resident alien forms) showing the status of resident alien, the individual must also provide sufficient documentation to substantiate that one of the eligible statuses indicated in (a)1 through 4 above was held prior to that of resident alien; [or]

6. A person identified as an Amerasian from Vietnam with their close family members admitted in immigrant status under Section 584 of the Foreign Operations Appropriations Act, to be admitted during the two year period authorized by that law, beginning March 20, 1988 and so indicated on Form I-94 or I-551[.]; **or**

7. A Cuban or Haitian national granted parole for humanitarian reasons or in the public interest; or a Cuban or Haitian national who applies for asylum; or a Cuban or Haitian national who is subject to exclusion or deportation proceedings and a final order of deportation or exclusion has not been issued.

10:81-10.7 Eligibility

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

(e) Work and training requirements: Refugees who are under the -C or -F segment of the AFDC program are subject to the work and training requirements governing that program.

1. (No change.)

2. Refugee cases that are under the -N segment of the AFDC program and those considered GA type cases are subject to the work and training requirements detailed in (e)2i through iii below:

i. Work registration: All refugees who are not exempt from the work requirements (see (i)1 below) shall be registered with an Employment Services Provider (ESP). Registration is accomplished through completion and transmittal of Form PA-54, Refugee Program Interagency Referral, [(provided by DFD)] to the appropriate ESP. In some instances, however, a refugee may have been referred by a resettlement agency to an ESP which in turn referred the individual to the CWA to apply for assistance. In that instance the ESP will complete Parts A and C of Form PA-54 and provide the individual with a copy to present to the CWA for its files; the CWA need not complete another Form PA-54 for registration purposes.

ii.-iii. (No change.)

(f)-(j) (No change.)

10:81-10.8 Medical assistance and medical expense spend-down

(a) Medical assistance: State eligibility standards for Title XIX shall apply to a refugee's eligibility for medical assistance except:

1.-3. (No change.)

4. The income and resources of sponsors, and in-kind services and shelter provided to refugees by their sponsors, shall not be considered in determining eligibility for medical assistance; [and]

5. All refugees who have been in the U.S. for eight months will no longer be eligible for medical or cash assistance under RRP. Any subsequent update to this eligibility period for medical or cash assistance under RRP will be published as public notice by the Department in the New Jersey Register (see N.J.A.C. 10:81-10.7(b)), and this paragraph revised accordingly as an administrative change[.]; **and**

6. GA and AFDC-N type refugees who lose eligibility for financial assistance due to increased earnings are eligible for Medicaid extension for up to four months. This four month extension is only allowable during the refugee's first eight months in the country.

(b) (No change.)

10:81-13.2 Eligibility

(a) (No change.)

(b) For AFDC and AFDC-related Medicaid cases a statement and signature for each eligible family member shall be provided to the CWA before benefits can be issued to that individual. An adult eligible family member or applicant for the family in the absence of an adult family member shall sign for members under 18 years of age.

1. If a signature is not provided for all eligible family members by [either] the end of the 30-day application processing standard [or the last day of the last month of the redetermination period], then only those individuals for whom there is a signature shall be eligible for benefits provided they meet all other eligibility requirements. Income and resources of ineligible individuals shall be considered in the determination of benefits for the eligible family.

2. (No change.)

10:81-14.3 REACH/**JOBS** participation

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

(g) REACH/**JOBS** participation requirements

1.-2. (No change.)

3. "Limited" participation of no more than 20 hours per week in REACH/**JOBS** activities by the parent or caretaker relative who personally provides care for a child if the child is at least [two] **three** years of age but under age six, is allowable unless the custodial parent is under age 20 and has not completed a high school education or its equivalent (see (m)1 and 2 below). Only one parent or other relative in a family is allowed this limited participation level (20 hours) in an activity. Child care shall be guaranteed in accordance with N.J.A.C. 10:81-14.18 to enable the 20-hour participation in REACH/**JOBS**.

(h)-(j) (No change.)

(k) Federal participation requirements: Title II of the Family Support Act, the Job Opportunities and Basic Skills Training (JOBS) program, requires that individuals with certain educational needs or certain family circumstances participate in prescribed employment-directed activities (EDAs) or participate subject to Federal limitations. These requirements are set forth in (l) through (r) below and include:

1.-4. (No change.)

5. Limited participation for a caretaker of a child age [two] **three** and older but under age six;

6.-7. (No change.)

(l)-(o) (No change.)

(p) Caretaker of child age [two] **three** and older and under six—limited participation: A parent in an AFDC-C segment case and only one parent in an AFDC-F segment case with a child under six years of age cannot be required to participate for more than 20 hours per week in an employment-directed activity, even if child care is provided. However, the individual may volunteer to participate for greater than 20 hours.

1. (No change.)

(q)-(t) (No change.)

10:81-14.3A REACH/**JOBS** exemptions

(a) Individuals classified as exempt are not required to participate in employment or in REACH/**JOBS** employment-directed activities (see N.J.A.C. 10:81-14.3(b)). The following categories of individuals are exempt from participation in REACH/**JOBS**.

1.-6. (No change.)

7. Caretaker of young child: The parent or other caretaker relative of a child under [two] **three** years of age who personally provides care for the child, subject to the following:

i. (No change.)

ii. Only one parent or other relative in the family may be exempt from REACH/**JOBS** participation for the reason of personally providing care to a child under [two] **three** years of age.

(1) Limited participation of 20 hours in any REACH/**JOBS** activity is required for one caretaker relative whose child is [two] **three** years of age or greater, but less than age six (see N.J.A.C. 10:81-14.3(g)3).

8.-11. (No change.)

[12. TEEN PROGRESS participation: Individuals who have become part of the TEEN PROGRESS study are subject to the participation requirements of that program (see N.J.A.C. 10:81-12);]

Recodify existing 13. and 14. as **12. and 13.** (No change in text.)

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10:81-14.8 Noncompliance; good cause; conciliation; sanctions

(a)-(k) (No change.)

(l) Renewed participation after the sanction period: Individuals who are sanctioned may again participate in REACH/**JOBS** [or TEEN PROGRESS] after the expiration of the sanction period, upon application and indication to the REACH/**JOBS** case manager of willingness to participate.

1.-3. (No change.)

(m)-(o) (No change.)

10:81-14.13 Vocational assessment and counselling

(a) (No change.)

(b) Parent with a child under age [two] **three**: A special vocational assessment and counseling component may be required for any parent who is exempt from participation in REACH/**JOBS** due to care of his or her child under age [two] **three**. The REACH/**JOBS** orientation may be used to satisfy this requirement.

1.-2. (No change.)

10:81-14.18 REACH/JOBS support services: child care

(a) General provisions: The general provisions in this subsection apply to all child care benefits available through the REACH/**JOBS** program, including post-AFDC child care benefits.

1.-3. (No change.)

4. Required coordination: Each county shall coordinate REACH/**JOBS** child care activities and post-AFDC child care with existing child care resource and referral agencies; with early childhood education programs in the county, including Head Start programs, preschool programs funded under Chapter 1 of the Education Consolidation and Improvement Act of 1981 (P.L. 97-35), school and nonprofit child care programs (including community-based organizations receiving funds designated for preschool programs for [handicapped] **disabled** children); and with Federal and/or State demonstration programs, such as the [Urban Prekindergarten Pilot] **Good Starts** program, the REACH Capital Expansion Program[, the Child Care Plus Demonstration program,] and the Mini Child Care Center program.

5.-7. (No change.)

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

(f) Provider requirements: REACH/**JOBS** payments to providers of child care are available according to the following conditions:

1.-2. (No change.)

3. Family day care providers—approved homes: Providers of family day care who are not living in the home of the REACH/**JOBS** participant and who are not registered under (f)2 above shall be approved by the Department of Human Services in order to qualify for payment through the REACH/**JOBS** program. Unregisterd relatives, friends or neighbors are eligible for approved home status.

i. The minimum requirements for approval of the home are an inspection of the home using the ["REACH Family Day Care Home Approval Checklist"] **"Self-Arranged Care Inspection and Interview Checklist"** (see Appendix A, incorporated herein by reference), and standard interview procedure with the provider and family members.

ii. (No change.)

4. Providers of in-home care: Providers of in-home care, that is, care of a REACH/**JOBS** participant's children in the participant's own home, shall be evaluated using the ["REACH In-Home Care Checklist"] **"Self-Arranged Care Inspection and Interview Checklist"**, in order to qualify for payment through the REACH/**JOBS** program.

5. Providers of child care not in the categories (f)1 through 4 above are not entitled to payment through the REACH/**JOBS** program for child care provided to children of REACH/**JOBS** participants.

(g) Payment procedures: REACH/JOBS funds are expended for child care as direct vendor payments to providers or as direct payments to participants.

1. Vendor payments: Vendor payments to providers are the primary method for issuing child care payments in REACH/**JOBS**. Under this method, a voucher is issued to the child care provider. The provider completes the voucher, [lists the hours of care] **indicates appropriate attendance code for the child** and payment required, and returns it to the agency responsible for issuing payment. Upon verification of the voucher information, the agency issues a REACH/**JOBS** child care payment to the provider.

2. (No change.)

3. Special payments for child care: Payments for child care at other than the standard payment rates may be made for special circumstances such as, emergency needs, drop-in care[,] **and** approved interim care [and care for extended hours], as deemed appropriate by the case manager.

4.-6. (No change.)

(h)-(j) (No change.)

10:81-14.19 REACH/**JOBS** supportive services: participant allowances (PALS) for transportation and work/training-related expenses

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

(e) $100.00 cumulative allowance to accept or maintain employment (JOB): Allowance payments (JOBs) based on need, up to a maximum cumulative total of $100.00 per eligibility participation period (see (g) below), are provided for actual expenses necessary to permit an individual to accept or maintain employment. Such payments shall be issued in preparation for and during the course of employment. JOB payments are not an entitlement and are issued based on need only for actual expenses incurred.

1.-4. (No change.)

5. Each eligibility participation period covered by the cumulative $100.00 JOB fund begins with the first day the participant receives a firm job offer and accepts the position (the effective date of employment indicated on the OMEGA System) and ends [with the date of termination of all extended REACH benefits (transitional child care and extended Medicaid benefits for one year post-assistance).] **90 days after loss of eligibility for AFDC cash assistance. Therefore, employed individuals receiving post-AFDC child care and/or Medicaid, if determined in need of monies available through the JOB allowance, shall be authorized for payment of that allowance or of the remaining portion of that allowance fund only for the first 90 days following the AFDC case closing.** The eligibility participation period for WSP and OJT participants begins with the effective date of the activity, as indicated on the OMEGA system, and ends [with the date of termination of all extended REACH benefits] **no later than 90 days after loss of eligibility for cash assistance or the expiration of the OJT contract, whichever occurs first.**

i. Example: If an AFDC individual enters a six month OJT or WSP activity in January and loses AFDC eligibility effective March 1, he or she would remain eligible for the JOB allowance through May 29 in the post-AFDC period which encompasses the 90-day limited timeframe for Federal financial participation (FFP). Although there are four months remaining in the activity contract period through June, the final month of participation in the activity, no authorization for participant allowances can be made for that final month.

6.-7. (No change.)

(f) REACH/**JOBS** $500.00 cumulative motor vehicle related (CAR) expense allowance: Allowance payments based on need, up to a maximum cumulative total of $500.00 per eligibility participation period (see (g) below), are available for REACH/**JOBS** participants who own motor vehicles to make those vehicles operational to transport the REACH/**JOBS** participant to REACH/**JOBS** activities or employment. CAR allowances are not an entitlement and are issued based on need, only for actual expenses incurred. CAR allowance payments are available beginning with participation in the first REACH/**JOBS** activity (the effective date of the activity as indicated on the OMEGA System) and ending [with the termination date of all extended REACH benefits] **no later than 90 days after loss of eligibility for AFDC in the post-AFDC period.**

1. Example: A former AFDC REACH/JOBS participant has been employed and is in receipt of post-AFDC child care services. The AFDC case closed as of August 1. On November 15, the recipient requests a CAR allowance of $50.00. In this instance, case manage-

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ment cannot authorize payment from the CAR allowance fund since the 90-day authorization period has expired.

Recodify existing 1 through 6 as **2 through 7** (No change in text.)

(g)-(j) (No change.)

APPENDIX A

[REACH HOME APPROVAL] **SELF-ARRANGED CARE INSPECTION AND INTERVIEW** CHECKLIST

(No change in text.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Assistance Standards Handbook

Aid to Families with Dependent Children (AFDC)

Proposed Readoption with Amendents: N.J.A.C. 10:82

Authorized By: William Waldman, Commissioner, Department of Human Services.

Authority: N.J.S.A. 44:10-3, 58 CFR 49218, 45 CFR 233.30 and Federal Action Transmittal ACF-AT-93-17.

Proposal Number: PRN 1994-218.

Submit comments by May 18, 1994 to:
Marion E. Reitz, Director
Division of Family Development
CN 716
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the "sunset" provisions of Executive Order No. 66(1978), the Department of Human Services proposes to readopt N.J.A.C. 10:82, which is set to expire August 24, 1994.

N.J.A.C. 10:82 contains regulations and procedures based on Federal requirements pertaining to financial eligibility requirements in the Aid to Families with Dependent Children (AFDC) program. The purpose of the chapter is to provide county welfare agencies (CWAs) guidelines for treatment of income and resources to determine initial or continued eligibility for AFDC. N.J.A.C. 10:82 must be used and interpreted in conjunction with the Public Assistance Manual (N.J.A.C. 10:81) which delineates the non-financial eligibility criteria for the AFDC program.

N.J.A.C. 10:82-1 contains the Standard of Need which established the standards necessary to maintain a safe and decent life. The Standard of Need, set by the Commissioner of the Department of Human Services, serves as a benchmark against which the Legislature determines appropriations for funding the AFDC payment levels. Maximum income levels and AFDC assistance payment standards are also contained in this chapter. The maximum income levels, Schedule I, represent 185 percent of the Standard of Need. The AFDC assistance payment standards are set forth in Schedules II and III. The payment standards are established for the family according to the number of persons in the eligible unit. Schedule II payment standards represent a ratable reduction of 45 percent of the State's Standard of Need. The payment standards in Schedule III are maximum payment standards based on family size. The reductions in the Standard of Need reflected in Schedules II and III are made in accordance with Federal regulations since the State Legislature does not fund the full "needs standard." The eligible family must include one or more children unless such child is a recipient of Supplemental Security Income (SSI) benefits. N.J.A.C. 10:82-1 also includes: detailed descriptions of the components of the three segments (-C, -F and -N), who is eligible under each segment, eligibility of a person in an institution, eligibility of a parent or child attending school, and determination of calculated earned income. The concept of prospective budgeting is also presented in this subchapter.

Additionally, the subchapter discusses the provision that adult AFDC recipient parents shall not be entitled to incrementally increased AFDC benefits as a result of the birth of a child. Each employed AFDC adult recipient parent whose child is excluded from the eligible unit for cash assistance purposes, shall receive an additional State earned income disregard.

N.J.A.C. 10:82-2 covers procedures for determining the amount of the monthly assistance payment. For all new applications or reapplications, initial financial eligibility must be established before a determination of the amount of the monthly assistance payment can be made. When eligibility has been determined, the initial assistance payment shall be computed as follows: all income available from the date of application to the end of the month shall be considered and the countable income shall be subtracted and the result shall be prorated by multiplying that amount by the factor appropriate to the date of application found in the table at N.J.A.C. 10:82-2.2(a)1. If the result is not a whole dollar, the amount shall be rounded to the next lower whole dollar. In determining the amount of the initial assistance payment, the appropriate disregards as described in N.J.A.C. 10:82-4 shall be applied to earned income. This subchapter describes the procedures for determining the eligibility for stepparents, whether the stepparents should be included in the eligible unit, and the maximum income limits for non-needy stepparent families (Schedule VII) at N.J.A.C. 10:82-2.10(d). Also, procedures to recover overpayments or to correct underpayments are delineated in this subchapter.

N.J.A.C. 10:82-3 deals with resources. All available income and liquid resources of the eligible family must be considered in determining the amount of assistance to be granted. Available resources include cash and other forms of income immediately available to meet the needs of the eligible family. Other resources are considered either exempt or potential. Exempt resources are not subject to any requirement for liquidation and are not considered in the determination of the assistance grant. Potential resources are those which are neither exempt nor currently available but are to be liquidated within a reasonable time to meet future needs. Certain relatives are legally responsible to provide support if financially able and may be a source of income for a public assistance applicant or recipient. The CWA is to determine the capacity of legally responsible relatives to contribute to the support of public assistance clients. Deeming of income is also covered in this subchapter with respect to the program requirements of both AFDC and Medicaid.

N.J.A.C. 10:82-4 provides the CWAs with guidelines based on Federal requirements for the treatment of all income, for the purpose of determining initial or continued eligibility for AFDC. Included are provisions which define earned and unearned income and the income disregards, which are allowable for that income (including the disregard of earned income of children who are either full or part-time students). The subchapter also establishes rules regarding alimony, child support, income received at regular intervals, and irregular or nonrecurring income.

N.J.A.C. 10:82-5 contains rules which pertain to the provision of assistance payments for unusual and specific purposes not included in the regular monthly assistance payment. Special payment rules for child care, training expenses, emergency assistance and disregarded child support payments are also provided.

The Department's Division of Family Development (DFD) has recently conducted a review of N.J.A.C. 10:82 prior to this proposed readoption. After the review, it was determined that the rules along with the addition of concurrent amendments, are adequate, reasonable and responsive to the purpose for which they were promulgated. The following are significant changes which have been adopted previously, as a result of an ongoing review, since the last readoption in 1989.

N.J.A.C. 10:82-1.1A was amended to establish the monthly "standard of need" by family size. While the Commissioner of the Department of Human Services is responsible for establishing the "standard of need," responsibility for setting actual public assistance payment levels is a separate and distinct decision which is part of the State appropriations process.

N.J.A.C. 10:82-1.2 was revised to include new income limits and new public assistance payment standards. The new Schedule I, Maximum Income Levels, represents 185 percent of the State's new Standard of Need, and replaced the previous Schedule III.

The amended assistance payment Schedules II and III raised the State-funded AFDC-N segment assistance payments to the level of the Federally funded AFDC-C and -F segments (pursuant to P.L. 1991, c.527), and incorporated a ratable reduction of 45 percent of the Standard of Need in Schedule II payment standards. The ratable reduction, and maximum payment levels at Schedule III, were implemented in accordance with Federal regulations. The ratable reduction and maximum payment levels are approved methods of establishing AFDC payment levels when the State cannot meet full need.

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N.J.A.C. 10:82-1.2(a) and (a)4, 1.3(a)2 and (d), 1.4(a)1, 2.7, 2.9 and 2.10 were amended (pursuant to P.L. 1991, c.525) to indicate that when an AFDC-C recipient natural parent marries an individual on or after October 1, 1992, who is not the parent of the AFDC children, the CWA must first determine if the stepparent is needy or non-needy. The stepparent shall be determined to be needy and included in the eligible unit if financial eligibility for AFDC benefits is established. If financial eligibility is not established, the stepparent shall be considered non-needy. In situations where the stepparent is considered non-needy, the stepparent, the stepparent's children and the AFDC recipient parent are not included in the eligible unit for cash assistance purposes. Eligibility for the AFDC children shall be established provided the gross income of the entire household does not equal or exceed the maximum income limits in Schedule VII for the applicable household size.

N.J.A.C. 10:82-1.2(c) through (g) were amended to provide the methodology to be used in determining eligibility and assistance payments based on the ratably reduced payment standards.

N.J.A.C. 10:82-1.3(a), 1.4(d), 1.5(b) and 1.11 were amended to eliminate the automatic entitlement to incrementally increased public assistance benefits as the result of the birth of a child pursuant to P.L. 1991, c.526.

N.J.A.C. 10:82-1.6 and 1.7 were amended to delete and revise text to include the AFDC-N segment in computations used presently for AFDC-C and -F families.

N.J.A.C. 10:82-1.10 and 1.11 were amended to delete text concerned with Monthly Reporting/Retrospective Budgeting (MR/RB) requirements. New text was added to delineate the prospective budgeting process which replaced MR/RB.

N.J.A.C. 10:82-1.11 was added to stipulate that adult AFDC recipient parents are not entitled to an automatic increase in AFDC benefits as a result of the birth of a child. Such child is excluded from the assistance unit for cash assistance purposes only. Additional provisions specify exclusions, time frames and when such children may again be included for cash assistance.

N.J.A.C. 10:82-2.3 through 2.9 were amended to add language regarding the equalization of the AFDC-N segment, discussions concerning available income to the eligible unit, initial eligibility determination and procedures for determining calculated earned income.

N.J.A.C. 10:82-2.3(a), 2.8(a)1 and 4.4(a) were revised to increase the standard work expense and child care disregards for employed AFDC individuals.

N.J.A.C. 10:82-2.8(a)5, 2.8(c) and 4.4(c) were revised to indicate that when AFDC recipient families have a newborn child while on assistance and are not given a benefit allowance increment for the new baby, the family shall have an additional State earned income disregard deducted from the monthly earned income of each employed person.

N.J.A.C. 10:82-2.10 was amended to establish a new maximum income limits test in the eligibility determination process and new rules specifically for stepparents who also marry AFDC-C recipient parents on or after October 1, 1992, pursuant to P.L. 1991, c.525. In such cases, the non-needy stepparent and the natural parent are excluded from the eligible unit. However, the AFDC-C children remain eligible for assistance. Whenever income available to the AFDC-C children does not exceed the appropriate payment standard for the eligible unit size, the AFDC payment is not reduced below $10.00 until the gross income of the household equals or exceeds the applicable maximum income limit in Schedule VII.

N.J.A.C. 10:82-2.11 and 2.12 were modified to delete text concerned with differential treatment in determining initial eligibility and calculating earned income for AFDC-N segment individuals.

N.J.A.C. 10:82-2.11(f) was revised to indicate that where AFDC eligibility is denied or terminated because total income of the household, including that of the stepparent, exceeds maximum income limits, eligibility for Medicaid shall be evaluated without regard to the stepparent's income.

N.J.A.C. 10:82-2.11(g) was modified to indicate that newborn siblings are excluded from the eligible unit for cash assistance, but will remain eligible for Medicaid.

N.J.A.C. 10:82-2.13 was revised to include the AFDC-N segment with AFDC-C and -F segment procedures in calculating companion cases.

N.J.A.C. 10:82-2.14(a) through (c) was amended to delete language no longer applicable in determining monthly earned income for the purpose of establishing the amount of assistance.

N.J.A.C. 10:82-2.19 and 2.20 were amended to delete language which referenced procedures used under the now obsolete monthly reporting when a change in circumstances of the eligible unit may have resulted in an assistance amount adjustment.

N.J.A.C. 10:82-3.1(f) was modified to clarify current policy with respect to "and" and "or" bank accounts, and provides a uniform procedure for evaluation of bank account resources of recipients.

N.J.A.C. 10:82-3.2(b) was amended to exempt from income and resources, payments made for supportive services such as transportation and child care necessary for participation in REACH.

N.J.A.C. 10:82-3.2(b)9 was revised to eliminate the $500.00 miscellaneous deduction that was previously allowed when considering exempt resources in the determination of the grant level and replaced with language calling for verified costs of collection.

N.J.A.C. 10:82-3.6, which dealt with liquidation of real property, was relocated with revisions at N.J.A.C. 10:81-3.42 for organizational purposes.

N.J.A.C. 10:82-3.7 was deleted for organizational purposes since rules there dealt with matters of recovery which are detailed at N.J.A.C. 10:81-3.39.

N.J.A.C. 10:82-3.13 and 3.14 were modified to replace references to Schedule I with references to the Standard of Need in determining calculations when deeming income from alien sponsors or from parents of adolescent parents.

N.J.A.C. 10:82-3.14(b)6i was added to provide policy clarification to establish that the deemed income of the parent(s) of an adolescent parent is not to be used to determine Medicaid eligibility for dependent child(ren) of an adolescent parent.

N.J.A.C. 10:82-4.1(c) and 4.14(b) were revised to specify that the earned income credit (EIC) is no longer a countable income source in the calculation of AFDC-C, -F and -N segment assistance payments.

N.J.A.C. 10:82-4.4 and 4.5 were amended to specify that the application of the earned income disregards for individuals eligible under AFDC-C and -F are also applicable to AFDC-N cases.

N.J.A.C. 10:82-4.8 was modified to allow certain AFDC recipient child care providers to choose the procedure for calculating countable income which is most beneficial to them.

N.J.A.C. 10:82-4.9(c) was amended to update the monthly rates for foster care as established by the Division of Youth and Family Services (DYFS).

N.J.A.C. 10:82-4.15 was amended to change the terminology to Standard of Need in place of former allowance standards terminology in text concerned with treatment of an AFDC eligible family's receipt of nonrecurring earned or unearned income.

N.J.A.C. 10:82-5.2 was revised for purposes of clarification concerning "special circumstances" child care payments through social services.

N.J.A.C. 10:82-5.3 was modified to align child care arrangements and authorization of payment criteria with existing REACH/JOBS child care provisions at N.J.A.C. 10:81-14.18 and FDP child care provisions at N.J.A.C. 10:86.

N.J.A.C. 10:82-5.7 was amended and replaced with new language concerning work/training allowances through REACH/JOBS.

N.J.A.C. 10:82-5.10 was amended to provide new criteria for the provision of emergency assistance (EA) as well as to specify additional payments for which EA recipients are eligible.

N.J.A.C. 10:82-5.11 was deleted concerning supplemental assistance payments that were linked with retrospective budgeting which is no longer in effect.

As a result of a continuous review process, the following significant changes are being addressed as part of the proposed readoption of N.J.A.C. 10:82.

N.J.A.C. 10:82-1.9(a)3, 3.2(b)3 and (b)6viii(7) and 5.3(d)4 are being amended to change language to comport with the Federal Americans with Disabilities Act.

N.J.A.C. 10:82-2.9(d)1 is being amended to reflect the increase in the stepparent earned income disregard from $75.00 to $90.00, as identified in Federal Action Transmittal ACF-AT-93-17.

N.J.A.C. 10:82-2.11(a) is being amended by deleting reference to "TEEN PROGRESS" which was a Federally-sponsored demonstration project that expired on October 5, 1991. The addition of "JOBS or FDP" provides for updating and clarification purposes of current policy as found throughout N.J.A.C. 10:81 and N.J.A.C. 10:82.

N.J.A.C. 10:82-3.2 is being amended to indicate that stipends received through the New Jersey Youth Corps initiative are treated as an exempt resource.

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N.J.A.C. 10:82-3.14 is being amended to eliminate "legal guardians" with regard to deeming of income of parent minors living with parents as required by 58 CFR 49218.

N.J.A.C. 10:82-4.14(b) is being amended to indicate that the Homestead Property Tax Rebate is to be considered a resource in the month subsequent to receipt, rather than income, and treated in the same manner as other tax refunds. Additionally, language is being added to indicate that the earned income tax credit is to be considered an excluded resource in the month of receipt and the month following the month of receipt, in accordance with Federal requirements at 45 CFR 233.30.

N.J.A.C. 10:82-5.10(f)2 is being amended to more clearly define basic utilities as used with respect to EA payments.

N.J.A.C. 10:82-5.10(j) is being amended to indicate situations in which replacement of house furnishings are allowable.

N.J.A.C. 10:82-5.10(n)3 is being amended to provide clarification regarding procedures involving intercounty transfers of families in receipt of AFDC-EA benefits. This clarification should help minimize interagency disputes and ensure a family's uninterrupted receipt of benefits when the family relocates to another county.

Social Impact

The major thrust of any public assistance system is the maintenance of income for those who are unable to provide for themselves. The Assistance Standards Handbook (N.J.A.C. 10:82), in conjunction with the Public Assistance Manual (N.J.A.C. 10:81), provides the rules governing the AFDC program through which assistance is provided to needy families.

Guidelines for CWAs concerning the income and resources of applicants/recipients of AFDC are set forth at N.J.A.C. 10:82. Readoption of the handbook will result in the continued equitable determinations of eligibility when considering the resources, income and appropriate disregards of all AFDC applicants/recipients.

Additionally, the absence of the provisions provided herein would cause undue hardship to needy families eligible for AFDC. Taking March 1993 as an average month in which assistance has been granted, records indicate that 128,108 families received assistance. This included 361,134 individuals, 244,174 of whom are children. The readoption of these provisions will provide those individuals and families with the availability of public assistance and the knowledge that they will be treated with respect and dignity. The readoption is essential for the efficient and effective administration of the AFDC program by the CWAs.

The stepparent earned income disregard is increased from $75.00 to $90.00 in all situations, providing a uniform earned income disregard in all such cases. In addition, the amendment provides for the retention of increased income for the stepparent and encourages family stability.

When an adolescent parent lives in the same home as his or her legal guardian, the income of the guardian will no longer be considered available to the eligible family. This will provide for a larger assistance payment for the eligible family in which a legal guardian is present.

Stipends received through the New Jersey Youth Corps Program were added as an exempt resource in determining the assistance grant. This will allow the family of the Youth Corps participant to maintain their assistance grant.

Homestead Property Tax Rebates are to be considered excluded resources in the month of receipt. This will allow the family to have additional funds during the month of receipt of the refund, and not have the refund affect the family's assistance grant.

Earned Income Tax Credit (EITC) refunds are to be considered excluded resources in the month of receipt and the month following the month of receipt. Previously, the EITC was considered a resource in the month following the month of receipt. This amendment will allow the family to save some of the refund through the month following receipt of the refund.

The definition of basic utilities for EA payment purposes is added to ensure equitable treatment when payments for basic utilities are issued to prevent actual eviction or foreclosure.

Situations are detailed in which emergency house furnishings are allowed. This clarification will ensure equitable treatment of all families eligible for replacement of house furnishings.

The clarification provided regarding procedures involving intercounty transfers of families in receipt of EA benefits should help minimize interagency disputes and ensure a family's uninterrupted receipt of benefits when the family relocates to another county.

Economic Impact

The proposed amendments to N.J.A.C. 10:82 are expected to have little or no impact, inasmuch as they reflect policies which are already in effect. Readoption is essential for the efficient and effective administration of the AFDC program by the CWAs. Failure to readopt N.J.A.C. 10:82 could, however, result in the loss of Federal financial participation, since the rules are essential for the proper determination of AFDC benefits. For March 1993, the total of AFDC expenditure was $46.1 million. The average payment per case was $359.54 while the average payment per person was $127.54.

Regulatory Flexibility Statement

This chapter has been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The readoption with amendments imposes 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 Aid to Families with Dependent Children (AFDC) program to a low income population by a governmental agency, rather than a private business establishment.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:82.

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

10:82-1.9 School attendance defined

(a) A child eligible under the age requirement of N.J.A.C. 10:81-3.13(a) shall be considered a student regularly attending a school or training course when he or she is enrolled in and physically attending, as certified by the school or institute, a program of study or training leading to a certificate, diploma or degree:

1.-2. (No change.)

2. At least half time and is precluded from full-time attendance or part-time employment because of a verified physical [handicap] **disability**.

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

10:82-2.9 AFDC-C procedures for stepparents who have married an AFDC recipient parent prior to October 1, 1992, who marries on or after October 1, 1992 but prior to application or reapplication for AFDC, or who is a needy stepparent who marries an AFDC-C recipient on or after October 1, 1992

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

(d) When a stepparent of eligible AFDC-C children lives in the same home as the children, has married the AFDC-C recipient before October 1, 1992, or who marries the natural or adoptive parent on or after October 1, 1992 but prior to application or reapplication for AFDC benefits, and is not included as a member of the eligible family, his or her income shall be considered available to the eligible family in accordance with the following procedures:

1. Reduce the stepparent's gross earned income (and net income from self-employment) by [$75.00] **$90.00**.

2.-6. (No change.)

10:82-2.11 Medicaid eligibility; AFDC-C and -F procedures

(a) AFDC-C and -F parents (including parent-minors) who refuse to participate or accept employment under the REACH/**JOBS or FDP** [or TEEN PROGRESS] programs are not entitled to categorically-related Medicaid. However, in New Jersey, the individual remains eligible for Medicaid so long as other Medicaid eligibility criteria are met.

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

10:82-3.2 Exempt resources

(a) (No change.)

(b) The exempt resources are as follows:

1.-2. (No change.)

3. One motor vehicle, the equity value of which does not exceed $1,500. Any excess equity value of a motor vehicle and the full equity of any other motor vehicle is countable toward the $1,000 resource limit. If the vehicle is especially equipped with apparatus for the [handicapped] **disabled**, the apparatus shall not increase the value

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of the vehicle. The equity value of a vehicle shall be the average wholesale value as indicated in the most recent April or October edition of the Red Book; Official Used Car Valuations, less encumbrances (legal debts).

i. (No change.)

4.-5. (No change.)

6. Resources designated for special purposes as follows:

i.-vii. (No change.)

viii. Certain other Federal programs: Funds received by applicants and recipients through certain Federal programs (see (b)6vii(1) through (9) below) shall be regarded as exempt resources in determining eligibility for assistance.

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

(7) Payments made through the United States Department of Housing and Urban Development (HUD) Section 8, Rental Assistance Program (RAP), which provides funds to certain [handicapped] **disabled** individuals and low income families to assist them in meeting shelter costs;

(8)-(9) (No change.)

ix. Stipends received by individuals who participate in the New Jersey Youth Corps Stipends Program shall be treated as an exempt resource and not counted in the determination of AFDC eligibility nor in the calculation of grant entitlement.

7.-11. (No change.)

10:82-3.14 Deeming income of parents and guardians of adolescent parents

(a) (No change.)

(b) When an adolescent parent lives in the same home as his or her own parent(s) [or legal guardian(s)], the income of such parent(s) [or legal guardian(s)] shall be considered available to the eligible family in accordance with the following procedures. These rules do not apply if the parent(s) [or guardians] receive(s) SSI or AFDC or if the adolescent parent is categorically eligible for the -N segment only. [For the purposes of this section, the term parent shall include legal guardian.]

1.-6. (No change.)

(c) (No change.)

10:82-4.14 Exempt income

(a) (No change.)

(b) Exempt income is as follows:

1. (No change.)

2. Income tax refunds, including [earned income credit (EIC refunds] **Homestead Property Tax Rebates**; however, any portion of the actual refund remaining in the month following the month of receipt shall be considered as a resource in that following month.

[i. The EIC is not considered a countable income source in the calculation of AFDC benefits (for all segments -C, -F, -N).

ii. Any lump sum refund of income for EIC made to a family receiving AFDC after October 1, 1989 is not counted as earned income in the calculation of the assistance payment. Any remaining monies from such refund shall be considered a resource in the month subsequent to receipt.]

3. EIC payments are to be considered excluded resources in the month of receipt and the month following the month of receipt.

i. The EIC is not considered a countable income source in the calculation of AFDC benefits (for all segments -C, -F, and -N).

10:82-5.3 Payment for child care through Title IV-A funds

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

(d) Family day care provider rules are:

1.-3. (No change.)

4. When it is essential for physical health and safety, the cost of transporting a [handicapped] **disabled** child to and from the family day care home may be authorized (see N.J.A.C. 10:82-5.2(e)2).

(e)-(h) (No change.)

10:82-5.10 Emergency assistance

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

(f) The county welfare agency shall authorize payment of the actual cost of adequate emergency shelter/housing arrangements at the most reasonable rate available, taking into consideration family circumstances and services provided, for three calendar months inclusive of the month in which EA benefits are first provided. If at the end of the third month for which EA has been provided permanent housing has not been secured, EA extensions may be authorized, if necessary, for up to two additional months. Such emergency shelter/housing, wherever possible, shall be in the municipality in which the eligible family currently resides. If, however, shelter/housing is not available at the most reasonable rate, taking into consideration family circumstances and services provided, within the municipality of customary residence, the recipient, as a condition of eligibility, shall be obliged to accept shelter/housing which is situated outside the municipality of customary residence. In situations where the county welfare agency determines that despite efforts of both the family and agency, permanent living arrangements are unavailable, an extension of emergency assistance may be authorized in accordance with the provisions of (f)1iii below.

1. (No change.)

2. Payment may be authorized for up to any three calendar months of retroactive rental or mortgage payments and/or six calendar months of retroactive utility payments if it will prevent actual eviction or foreclosure.

i. (No change.)

ii. Basic utilities are those that are necessary to make a dwelling habitable. At a minimum, basic utilities shall include electric, water, a fuel source for heating and cooking and, where applicable, sewerage and garbage disposal. In those instances where it is necessary to pay a utility deposit in order to reinstate utilities, such payment is acceptable under EA.

3.-6. (No change.)

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

(j) Emergency house furnishings allowance: Allowances for those items deemed urgent and essential to the physical health and safety of the eligible unit shall not exceed the maximums listed below.

[i.]**1.** (No change.)

2. Replacement of house furnishings is not solely limited to replacement of items lost or destroyed in the incident that gave rise to the emergency. For example, a family may be moving from a hotel/motel shelter or furnished apartment into an unfurnished living arrangement and they do not possess essential furniture. Another example of when the use of EA funds is appropriate for replacement purposes is when an item such as a refrigerator may wear out which, because of the nature of the item, is essential for the health and well-being of the family.

(k)-(m) (No change.)

(n) Whenever a family requiring the provision of EA benefits moves from one county to another, the following provisions shall apply:

1.-2. (No change.)

3. When a non-EA AFDC recipient family voluntarily moves from one county to another, with or without CWA intercession, [into what is intended to be a permanent housing arrangement] and a subsequent change in circumstances results in the need for EA, the new county of residence shall immediately assume responsibility for EA payments, as well as all other case management functions, pursuant to case transfer provisions at N.J.A.C. 10:81-3.27.

4. (No change.)

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INSURANCE

(a)

SMALL EMPLOYER HEALTH BENEFITS PROGRAM BOARD

Small Employer Health Benefits Program Carrier Certification of Non-Member Status; The Market Share Report

Proposed Amendments: N.J.A.C. 11:21-1.2 Proposed New Rules: N.J.A.C. 11:21-8 and 10, and Exhibit CC to the Appendix to N.J.A.C. 11:21.

Authorized By: New Jersey Small Employer Health Program Board, Maureen Lopes, Chair.

Authority: N.J.S.A. 17B:27A-17 et seq. as amended by N.J.S.A. 17B:27A-51.

Proposal Number: PRN 1994-212.

Submit written comments by March 25, 1994 to:
Interim Administrator
New Jersey Small Employer Health Benefits Program
SEH Box 1
c/o The Prudential Insurance Co. of America
P.O. Box 4080
Iselin, NJ 08830

Summary

These proposed new rules are being promulgated in accordance with N.J.S.A. 17B:27A-51, which provides a special procedure whereby the Small Employer Health Benefits ("SEH") Program Board of Directors ("Board") may adopt certain actions. Pursuant to this procedure, the Board is required to publish notice of its intended action in three newspapers of general circulation, which shall include procedures for obtaining a detailed description of the intended action and the time, place and manner by which interested persons may present their views regarding the intended action. Notice of the intended action also is required to be sent to affected trade and professional associations, carriers and other interested person who may request such notice.

Concurrently, the Board is required to forward the notice of the intended action to the Office of Administrative Law ("OAL") for publication in the New Jersey Register. The Board must provide a minimum 20-day period for all interested persons to submit their written comments on the intended action to the Board. The Board may adopt its intended action immediately upon the close of the specified comment period by submitting the adopted action to OAL. If the Board elects to adopt the action immediately upon the close of the comment period, it shall nevertheless respond to the comments timely submitted within a reasonable period of time thereafter. The Board shall prepare a report for public distribution, and publication by the OAL in the New Jersey Register. The report shall include the list of commenters, their relevant comments, and the Board's responses.

These proposed new rules establish a means by which carriers may affirmatively certify, on a calendar year basis, that they are not members of the SEH Program. Certifications of nonmember status are to be filed certifying a carrier's status for the preceding calendar year. Note that unless and until the Board approves a certification of nonmember status from a carrier, the carrier shall be treated as an SEH Program member if its annual statement for the calendar year in question reports group health premium earned in New Jersey.

These proposed new rules set forth a requirement for SEH Program members to submit an annual market share report for purposes of allocating assessments among members for the administrative and operating expenses of the SEH Program. Carriers should note that failure to submit the market share report as required will result in the Board relying solely upon the carrier's annual statement filed with the Department of Insurance in determining the carrier's market share.

Finally, a proposed amendment is being made to N.J.A.C. 11:21-1.2 to the definition of "health benefits plan." The proposed amendment clarifies when stop loss or excess risk contracts issued to a self-funded arrangement covering one or more small employers falls within the definition of "health benefits plan," and hence, is subject to the provisions of the SEH Program.

Proposed new N.J.A.C. 11:21-8 establishes the rules regarding certification of nonmember status.

Proposed new N.J.A.C. 11:21-10 establishes the rules regarding market share reporting for purposes of allocating administrative expense assessments.

Proposed new Exhibit CC is the report form required to be used in accordance with proposed new subchapter 10.

N.J.A.C. 11:21-1.2 is proposed to be amended with respect to the definition of "health benefits plan."

Social Impact

These proposed new rules serve to further implement the statutes establishing the SEH Program, but because they are primarily administrative in nature, they will have little or no actual social impact. These proposed new rules will enable the SEH Board and other interested parties to identify more clearly those entities that are subject to the SEH Program, and those that are not.

The ability of the Board, Department of Insurance ("Department") and others to be able to identify members and entities subject to the statutes is important for purposes of accurately assessing administrative expenses of the SEH Program, and enforcing other provisions of the law. For carriers, certain of these proposed new rules will provide them with a means of verifying whether they must comply with N.J.S.A. 17B:27A-17 et seq., and alert others as to whether they may be in violation of various aspects of the law.

Economic Impact

These proposed new rules will have a direct economic impact on entities subject to N.J.S.A. 17B:27A-17 et seq. in terms of the administrative costs that will be incurred in complying with the reporting requirements imposed and the possible additional recordkeeping. As an indirect impact, the new rules will enable the Board to better identify members of the SEH Program, as well as member market shares. This, in turn, will allow the SEH Program to make assessments for administrative expenses already incurred, heretofore borne exclusively by the Board's directors, and interim assessments for projected administrative expenses. Members of the SEH Program will, of course, be subject to such assessments.

Regulatory Flexibility Analysis

The proposed new rules do impose additional reporting requirements which may result in additional recordkeeping as well. The information requested is necessary for all interested parties to assure accuracy and provide for the least amount of future acrimony in the administrative functions of the SEH Program. The information requested is the least amount of information the Board believes is necessary and appropriate to achieve the aforementioned goals. To the extent that any affected party is a small business, as that term is defined at N.J.S.A. 52:14B-16 et seq., the Board can determine no justification for reducing or eliminating the reporting requirements set forth and notes that doing so would adversely impact upon other affected parties directly, contrary to the mandates of the statutes.

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

11:21-1.2 Definitions

Words and terms contained in the Act, when used in this chapter, shall have the meanings as defined in the Act, unless the context clearly indicates otherwise, or as such words and terms are further defined by this chapter.

. . .

"Health benefits plan" means any hospital and medical expense insurance policy or certificate; health, hospital, or medical service corporation contract or certificate; or health maintenance organization subscriber contract or certificate delivered or issued for delivery in this State by any carrier to a small employer group pursuant to section 3 of the Act (N.J.S.A. 17B:27A-19), **or any other similar contract, policy or plan issued to a small employer not explicitly excluded from the definition of health benefits plan**. [For purposes of this act, "health] "**Health** benefits plan" excludes the following plans, policies, or contracts:

1. [accident] **Accident** only[,];
2. [credit,] **Credit;**
3. [disability,] **Disability;**
4. [long-term] **Long-term** care[,];

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5. [coverage] **Coverage** for Medicare services pursuant to a contract with the United States government[,];

6. Medicare supplement[,];

7. [dental] **Dental** only or vision only[,];

8. [insurance] **Insurance** issued as a supplement to liability insurance[,];

9. [coverage] **Coverage** arising out of a workers' compensation or similar law[,];

10. [automobile] **Automobile** medical payment insurance, or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.);

11. Stop loss or excess risk insurance designed to reimburse a self-funded arrangement of one or more small employers for expenses exceeding per person limits of no less than $100,000 per year and aggregate limits of no less than 125 percent of expected claims per year (whether or not the aggregate and per person limit are combined), wherein neither the employees nor other individuals are third party beneficiaries under the policy, contract or plan; and

12. [A "health benefits plan" also does not include any] **Any** group or group type supplemental hospital indemnity benefits program wherein the benefit does not exceed $250.00 per day[. A], **except that a** hospital indemnity benefits program does not fail to meet the test therein so long as the benefit paid for the first two days of hospitalization does not exceed that which would be paid under the following formula:

$$\frac{\text{1st day benefit} - \text{2nd day benefit}}{5} + \text{2nd day benefit} \leq \$250$$

. . .

SUBCHAPTER 8. CARRIER CERTIFICATION OF NON-MEMBER STATUS

11:21-8.1 Purpose and scope

(a) The purpose of this subchapter is to establish which carriers are not members of the SEH Program and how those carriers may be certified as non-members.

(b) This subchapter applies to any carrier which files Annual Statements with the Department evidencing premium earned on group health insurance.

11:21-8.2 Definitions

Words and terms used in this subchapter shall have the meanings set forth in the Act or N.J.A.C. 11:21-1.2, unless otherwise defined below, or the context indicates otherwise.

"Group health benefits plan" means a hospital and medical expense insurance policy, a health service corporation subscriber contract, a hospital service corporation subscriber contract or a health maintenance organization enrollment contract issued to a small employer. A group health benefits plan includes, but is not limited to, a health benefits plan. A group health benefits plan excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers compensation or similar law, automobile medical payment insurance or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.)

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed no more than 49 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

11:21-8.3 Non-member status

(a) A carrier shall be a non-member of the SEH Program for the calendar year for which it submits a completed request for non-member certification if the non-member certification is approved by the Board.

(b) A request for non-member certification shall state that:

1. The carrier neither issued nor had inforce a group health benefits plan covering New Jersey small employers during the calendar year for which certification is submitted; or

2. Other reasons which under law permit a carrier to be certified as a non-member.

11:21-8.4 Non-member certification requests

(a) To be considered a non-member in any calendar year, a carrier shall file with the Board a completed request for non-member certification no later than March 1 of the following calendar year, except that, to be considered a non-member for calendar year 1993, a carrier shall file a completed request for non-member certification no later than April 15, 1994. Such request shall be sent to the SEH Program Administrator as specified at N.J.A.C. 11:21-1.3.

(b) All requests for non-member certification shall be certified by a duly authorized officer of the carrier and shall include an affirmative statement that the carrier had no group health benefits plan covering New Jersey small employers inforce during the calendar year for which non-member status is requested, or shall set forth the other reason(s) under law why the carrier qualifies as a non-member.

(c) A copy of such request also shall be filed by the carrier with the Commissioner as follows:

Attn: SEH Annual Certification of Non-member Status
Life/Health Actuarial Services
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

11:21-8.5 Decisions on filings by the Board

The Board shall grant or deny requests for non-member certification in writing, stating the reasons for the determination, after review of a carrier's filing. A copy of such decision shall be sent to the carrier and to the Commissioner.

11:21-8.6 Review

(a) A carrier which has been denied non-member certification may contest that determination by filing an appeal with the Board no later than 20 calendar days after receiving the written determination from the Board.

(b) The appeal shall specify the reasons why the Board's determination is inaccurate and shall include all documentation that supports or tends to support the carrier's position. The carrier also shall specify whether a hearing is requested.

(c) Within 30 days of its receipt of a request for a hearing, the Board shall determine whether bona fide issues of material fact exist such that a hearing shall be conducted. If bona fide factual issues do not exist, the Board shall review the challenge itself and may delegate this review to an appropriate Board committee to make a recommendation to the Board. If a hearing is appropriate, the Board shall determine whether to hear the matter itself or refer it to the Office of Administrative Law for a hearing in accordance with the Adminstrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

SUBCHAPTER 10. THE MARKET SHARE REPORT

11:21-10.1 Scope and applicability

(a) This subchapter sets forth annual reporting requirements of market share data for the assessment of operational and administrative expenses of the SEH Program.

(b) This subchapter shall apply to all carriers that are, or become, members of the SEH Program for any portion of a calendar year for which reports under this subchapter are required to be filed, whether or not the carrier is a member on the report filing due date.

11:21-10.2 Definitions

Words and terms used in this subchapter shall have the meanings as set forth in the Act or the chapter, unless otherwise defined below, or the context clearly indicates otherwise.

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"Group health benefits plan" means a hospital and medical expense insurance policy, a health service corporation subscriber contract, a hospital service corporation subscriber contract or a health maintenance organization enrollment contract issued to a small employer. A group health benefits plan includes, but is not limited to, a health benefits plan. A group health benefits plan excludes the following plans, policies, or contracts: accident only, credit, disability, long-term care, coverage for Medicare services pursuant to a contract with the United States government, Medicare supplement, dental only or vision only, insurance issued as a supplement to liability insurance, coverage arising out of a workers compensation or similar law, automobile medical payment insurance or personal injury protection coverage issued pursuant to P.L. 1972, c.70 (N.J.S.A. 39:6A-1 et seq.)

"Small employer" means any person, firm, corporation, partnership, or association actively engaged in business which, on at least 50 percent of its working days during the preceding calendar year quarter, employed no more than 49 eligible employees, the majority of whom are employed within the State. In determining the number of eligible employees, companies which are affiliated companies shall be considered one employer.

11:21-10.3 Filing of the Market Share Report

(a) Every member of the SEH Program shall file the Market Share Report set forth as Exhibit CC in the Appendix to this chapter, incorporated herein by reference, on or before April 15, 1994 and annually thereafter no later than March 1. Every member shall complete Parts A, B, C, and D of the Market Share Report.

(b) Affiliated carriers shall submit a combined Market Share Report, except that any insurance company, health service corporation, hospital service corporation, or medical service corporation that is an affiliate of a health maintenance organization located in the State, and any health maintenance organization located in the State that is affiliated with an insurance company, health service corporation, hospital service corporation, or medical service corporation shall submit separate Market Share Reports. The combined Market Share Report shall be submitted under the name of one of the affiliated carriers' members.

(c) Certified Market Share Reports shall be submitted by mail or facsimile to the SEH Program Administrator, as set forth at N.J.A.C. 11:21-2.

11:21-10.4 Net earned premium

(a) Every member's net earned premium for the preceding calendar year ending December 31 shall be set forth in Part C of the Market Share Report.

1. Net earned premium set forth in Part C of the Market Share Report shall include net earned premium resulting from health benefits plans issued, continued or renewed during the preceding calendar year for one or more small employers.

2. Net earned premium reported in Part C of the report form shall be based upon, if not the same as, the data set forth in the member's annual reports, as follows, adjusted to meet the definition of group health benefits plan, as necessary:

i. The NAIC Life and Health Blank (Blue), State page 19, entitled "Accident and Health Insurance," Column 3 less Column 4, line 23 plus line 23.2 plus line 24.6;

ii. The NAIC Fire and Casualty Blank (Yellow), State page 14 entitled "Exhibit of Premiums and Losses," Column 3 less Column 4, line 13 plus line 15.1 through line 15.6;

iii. The NAIC HMDI blank (White), page 6, entitled "Underwriting and Investment Exhibit," Part 1, line 5, Column 9 less (Column 2 minus Column 3), and less reinsurance portions of (Column 5 minus Column 8);

iv. The New Jersey State HMO Annual Statement (for 1992), page 32 Report #2, Current Year Lines 1 plus 2 plus 4 plus 5; or

v. The NAIC HMO Blank (for 1993 and thereafter), page 4, Report #2, Column 2, lines 1 plus 2 plus 3 plus 4.

11:21-10.5 Certification

All reports shall be certified as accurate, complete and conforming with the requirements of this subchapter by the Chief Financial Officer or other duly authorized officer of the member.

11:21-10.6 Failure to comply

Failure to comply with the reporting provisions of this subchapter shall result in the Board determining that the premium set forth in the member's most recent Annual Statement filed with the Department is the premium based upon which that member's market share allocation of assessments shall be calculated by the Board.

EXHIBIT CC

New Jersey Small Employer Health Benefits Program
Carrier Small Employer Market Share Report

This report must be completed in accordance with the provisions of N.J.A.C. 11:21-10, and certified by the Chief Financial Officer or other duly authorized officer of the Carrier. Reports must be completed and returned on or before April 15, 1994 and by March 1 of each year thereafter. Completed Reports must be returned to the SEH Program Administrator as set forth at N.J.A.C. 11:21-1.3.

Part A. Carrier Information

1. Carrier's Name: _____

2. Carrier's NAIC Number: _____

3. Is the above named Carrier an affiliated Carrier?

_____ Yes _____ No

a. If Yes, please list all Carriers with whom the above named Carrier is affiliated. List only those affiliates that had group health benefits plans in force for small employers in the preceding calendar year.

Name	NAIC #

Part B. Personal Respondent Information

1. Name: _____

2. Title: _____

3. Mailing Address: _____

_____

4. Telephone No. _____ Facsimile No. _____

Part C. Calendar Year Information for 199_____

Net earned premium for all small employer group health benefits plans: $ _____

Part D. Certification

I certify that the information provided in this Report is accurate and complete, and has been prepared in accordance with the provisions of N.J.A.C. 11:21-X.

_____ _____ _____

Signature Title Date

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(a)

OFFICE OF THE COMMISSIONER

Notice of Public Hearing

New Jersey Small Employer Health Benefits Program Small Employer Health Benefits Program Plan of Operation

Proposed Amendment: N.J.A.C. 11:21-2.5

Take notice that, pursuant to N.J.S.A. 17B:27A-30, the Department of Insurance (Department) will hold a **public hearing** regarding an amendment proposed by the New Jersey Small Employer Health Benefits (SEH) Program Board of Directors (Board) to the SEH Program's Plan of Operation (Plan). The proposed amendment provides for election to the Board by the person receiving the highest number of votes properly cast in an election, rather than a majority of the total votes as presently required. The **hearing** shall be held by the Department as set forth below:

Date: Wednesday, May 4, 1994 at 9:00 A.M.
Location: Department of Insurance
Mary G. Roebling Building
2nd Floor
20 West State Street
Trenton, NJ 08625

The purpose of the hearing is to receive public comment on the proposed amendment to the SEH Program's Plan (set forth at N.J.A.C. 11:21-2). The amendment was submitted to the Commissioner on March 18, 1994 pursuant to N.J.S.A. 17B:27A-30. The statute provides that the Plan and any subsequent amendment thereto shall be submitted by the SEH Program Board to the Commissioner who shall, after notice and a hearing, approve the Plan if he finds that it is reasonable and equitable and sufficiently carries out the provisions of N.J.S.A. 17B:27A-17 et seq. The Plan or any subsequent amendments shall become effective after the Commissioner has provided written approval thereof, or shall be deemed approved if not expressly disapproved by the Commissioner in writing within 90 days of receipt by the Commissioner.

The hearing shall be conducted by a hearing officer designated by the Commissioner. A verbatim transcript of the hearing shall be prepared by a certified stenographic reporter. Interested parties may obtain a copy of the transcript by ordering it directly from the reporter at the hearing or thereafter.

At the hearing, interested parties may present oral comment about the proposed amendment to the Plan. Any person intending to speak at the hearing should so advise the Department, in writing, no later than April 29, 1994 by submitting a statement of their intent to speak at the SEH Program Plan Amendment Hearing along with their name and the name of the organization which they represent, if any, by mail to:

Donald Bryan
Acting Assistant Commissioner
Legislative and Regulatory Affairs
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

Oral testimony will be limited to a maximum of five minutes per person or organization. Persons who did not submit a written intent to speak will be permitted to present comments only after the presentation of testimony from persons who submitted written intent to speak in a timely manner.

Take further notice that a copy of the SEH Board's proposed amendment to its Plan may be inspected or obtained by interested parties directly from the SEH Program Board. Additionally, written comments on the proposed amendment will be accepted by the SEH Program Board until May 3, 1994. To request a copy or to submit written comments write to:

Interim Administrator
New Jersey Small Employer Health Benefits Program
SEH Box 1
c/o The Prudential Insurance Company of America
P.O. Box 4080
Iselin, NJ 08830

LABOR

(b)

DIVISION OF WORKERS' COMPENSATION

Investigation of Discrimination Complaints Appeal Procedures

Proposed Amendment: N.J.A.C. 12:235-9.4

Authorized By: Peter J. Calderone, Acting Commissioner, Department of Labor.
Authority: N.J.S.A. 34:1-20; 34:1A-3(e); and 34:15-64.
Proposal Number: PRN 1994-215.

Submit comments, in duplicate, by May 18, 1994 to both:

Linda Flores, Special Assistant
External and Regulatory Affairs
Department of Labor
CN 110
Trenton, New Jersey 08625-0110

Mark E. Litowitz, Director and Chief Judge
Division of Workers' Compensation
Department of Labor
CN 381
Trenton, New Jersey 08625-0381

The agency proposal follows:

Summary

Pursuant to N.J.S.A. 34:15-39.1 and N.J.A.C. 12:235-9, the Division of Workers' Compensation (Division) is responsible for investigating discrimination complaints filed by individuals who believe they were discriminated against by their employers, because they claimed or attempted to claim Workers' Compensation benefits, or because they testified or are about to testify in a Workers' Compensation proceeding. N.J.A.C. 12:235-9.4 sets forth the procedures to be followed in the event either the complainant or the employer wishes to contest the decision of the Director or his or her designee.

The proposed amendment at N.J.A.C. 12:235-9.4(c) eliminates the current informal Departmental hearing procedure which can be requested by the complainant or the employer to contest the decision of the Director or his or her designee, regarding a discrimination complaint. This amendment replaces it with a direct appeal to the Office of Administrative Law after an initial decision by the Director of Workers' Compensation.

This formal hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., 52:14F-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, can be requested by either party to contest the decision of the Director of Workers' Compensation.

In addition, N.J.A.C. 12:235-9.4(b) is amended to provide that the determination by the Director or his or her designee as to whether discrimination exists shall be forwarded to the complainant and the employer by certified mail.

Social Impact

The Department anticipates that this proposed amendment will have a positive impact on employers and complainants involved in alleged discriminatory situations, as it allows both sides an avenue of appeal should they be dissatified with the determination of the Division. The proposed amendment will continue the formal process for requesting and conducting hearings on discrimination complaints, after the Director's initial decision, while eliminating the intermediate informal hearing.

Economic Impact

The Department does not expect any costs to be associated with these hearings, as they are conducted only at the request of either party. There will be some increased administrative costs to the Division of Workers' Compensation, but it is expected that these costs will be absorbed in the existing budget. At the same time, the cost of the informal hearing procedure will be completely eliminated.

Regulatory Flexibility Analysis

The proposed amendment does not impose any reporting or recordkeeping requirements. It does impose compliance requirements on complainants and employers electing to appeal a discrimination determination made by the Director or his or her designee. Some of these employers may be small businesses as defined under the Regulatory

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Flexibility Act, N.J.S.A. 52:14B-16 et seq. These requirements are that a written request for a formal hearing must be filed within 10 days from the receipt of the Division determination. Small business employers will incur some administrative costs in the preparation of the written requests, but that requirement already exists. Representation by counsel, though permitted, is not required in order to ensure a fair and efficient appeals process. No lesser requirements or exemptions can be provided based on the employers' business size.

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

12:235-9.4 Investigation of discrimination complaints; appeal procedures

(a) Upon receipt of a complaint for discrimination, the Division shall conduct an investigation and forward the complaint and results of the investigation to the Director within 90 days.

(b) The Director or his or her designee, upon review of the investigative report, shall make a determination as to whether discrimination exists. This determination shall be forwarded to the complainant and the employer within 30 days **by certified mail** of the receipt of the investigative report.

[(c) Any individual who wishes to appeal the determination of the Director or his or her designee may request an informal administrative hearing to be conducted by a hearing officer of the Department of Labor who shall not be a Judge of Compensation.

1. The individual shall submit to the Division a written request for a hearing within 10 days from the date the individual receives the determination of the Director or his or her designee.

2. The Department shall conduct the hearing within 20 days from the date the Division receives the request for an informal hearing.

3. The Division shall notify both parties in writing as to the time and location of the hearing not less than seven days prior to the hearing.

4. The parties may be represented by counsel or any other representative, or may represent himself or herself at the hearing.

5. The parties may present evidence, call witnesses and cross-examine witnesses at the hearing.

6. The Division shall mail to the parties the written decision of the Hearing Officer within 20 days from the date of the hearing.]

[(d)](c) Any individual who disagrees with the decision of the [Hearing Officer] **Director** may submit to the Division a written request for a formal hearing to be held in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., N.J.S.A. 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, within 10 days from the date of the receipt of [Hearing Officer's] **the Director's** decision.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Licensing Service

Defensive Driving Courses

Proposed New Rules: N.J.A.C. 13:21-24

Authorized By: Stratton C. Lee, Jr., Director, Division of Motor Vehicles.

Authority: N.J.S.A. 17:33B-45.

Proposal Number: PRN 1994-238.

Submit written comments by May 18, 1994 to:
Stratton C. Lee, Jr., Director
Division of Motor Vehicles
Attn: Legal Services Office
225 East State Street
CN 162
Trenton, New Jersey 08666

The agency proposal follows:

Summary

The Division of Motor Vehicles is proposing new rules concerning motor vehicle defensive driving courses at N.J.A.C. 13:21-24. The proposed new rules conform to existing Division procedures which were initiated to accommodate two provisions of the "Fair Automobile Insurance Reform Act of 1990", P.L. 1990, c.8, §54 (N.J.S.A. 39:5-30.9) and P.L. 1990, c.8, §55 (N.J.S.A. 17:33B-45), which establish motor vehicle violation point reduction credits for completion of an approved motor vehicle defensive driving course and authorize the Director to establish requirements for such courses.

N.J.A.C. 13:21-24.1 contains the definitions applicable to the subchapter.

N.J.A.C. 13:21-24.2 provides that motor vehicle violation points recorded against a licensee shall be reduced by two points when he or she attends and satisfactorily completes an approved motor vehicle defensive driving course, except that (1) point reduction credits of this kind may be granted only once in any five year period, (2) point totals may not be reduced below zero, and (3) no licensee may receive point reduction credits for completion of a motor vehicle defensive driving course in which the licensee was the course instructor. The Division will award such point reduction credits in accordance with N.J.A.C. 13:21-24.2 upon submission of a certified student course completion record from a sponsoring agency. Computation of the time periods used in granting such point reduction credits will be based upon the respective dates of commission of the offenses for which the licensee was convicted and assessed points and completion date of the motor vehicle defensive driving course. Point reduction credits granted in accordance with N.J.A.C. 13:21-24.2 shall not invalidate proposed suspension action by the Division against a licensee's driving privileges due to excessive point accumulation by the licensee.

N.J.A.C. 13:21-24.3 sets forth qualification standards for entities that seek to qualify as sponsoring agencies pursuant to N.J.A.C. 13:21-24. The sponsoring agency is required to prove that its motor vehicle defensive driving course meets or exceeds the standards of the National Safety Council's defensive driving course; that its course has been effective in reducing either the number of moving violations or accidents or both of licensees who have completed its course; and that its instructors are qualified to conduct its course.

N.J.A.C. 13:21-24.4 establishes criterion for instructor qualification and training. To this end, a sponsoring agency is required to submit to the Division its instructor preparation course outline, instructor certification and recertification procedures, instructor manuals, and instructor course curriculum and lesson plans. The rule provides that no person shall be permitted by a sponsoring agency to act as a motor vehicle defensive driving course instructor if such person has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

N.J.A.C. 13:21-24.5 sets forth standards for course curriculum and class size. A motor vehicle defensive driving course is required to provide at least six hours of instruction with a minimum of four hours of classroom instruction. Class size is limited to 30 students, except that an additional five students may attend if they are making up for previously unattended classes. The curriculum is required to be predicated on defensive driving techniques including driver attitude.

N.J.A.C. 13:21-24.6 provides standards for classroom facilities. Classrooms are required to accommodate a minimum of 15 students. The facility must have restroom facilities to accommodate both sexes and adequate parking in close proximity. The Director must be notified in advance if a facility is not accessible to the physically handicapped.

N.J.A.C. 13:21-24.7 sets forth guidelines on preparation and maintenance of student records. A sponsoring agency is required to prepare and maintain records relating to a student's application and registration for the motor vehicle defensive driving course, a student's course attendance and completion, and student identification information which will enable the Division to award the point reduction credit to the appropriate licensee. Student records are required to be maintained by the sponsoring agency for a period of five years and must be made available to the Director or his or her designee upon request.

N.J.A.C. 13:21-24.8 requires the sponsoring agency to provide a certified list of students who have satisfactorily completed an approved motor vehicle defensive driving course. The certified student list must be submitted to the Director within ten days of course completion.

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N.J.A.C. 13:21-24.9 provides for suspension or revocation of a sponsoring agency's status as an approved sponsoring agency for cause, including failure to adhere to the rules adopted by the Division of Motor Vehicles, failure to maintain continuing qualification as an approved motor vehicle defensive driving course, misstatement of a material fact on an application for program approval, false certification of student course completion or instructor qualification, or for other good cause.

N.J.A.C. 13:21-24.10 provides that entry into an approved motor vehicle defensive driving course is voluntary. This section also provides that an attendance fee may be charged for a motor vehicle defensive driving course.

Social Impact

The proposed new rules have a beneficial social impact in that they accommodate the public policy of this State relative to point reduction credits for licensees who successfully complete an approved motor vehicle defensive driving course. The proposed rules also promote highway safety in that motor vehicle defensive driving courses are intended to improve the accident and violation records of students who complete such courses. To this end, an entity that seeks to qualify as a sponsoring agency pursuant to N.J.A.C. 13:21-24 with regard to its motor vehicle defensive driving course must meet or exceed the standards of the National Safety Council's defensive driving course; and must demonstrate its course's effectiveness in reducing violations and/or accidents of students who complete its course. The proposed rules have no social impact on the Division of Motor Vehicles.

Economic Impact

The proposed new rules have an economic impact on the Division of Motor Vehicles to the extent that the Division is responsible for the administration of the various aspects of motor vehicle defensive driving course approval. The Division is also responsible for monitoring compliance with the rules set forth at N.J.A.C. 13:21-24. It is anticipated that the general public will benefit economically from the proposed rules to the extent that the accident rate of those licensees who complete a motor vehicle defensive driving course is lowered. Since entry into an approved motor vehicle defensive driving course is voluntary, there is no adverse economic impact on the general public; however, those licensees who attend a motor vehicle defensive driving course may be charged an attendance fee for the course. An approved sponsoring agency shall be responsible for all costs incurred for recordkeeping and transmittal of same to the Division of Motor Vehicles as required by the proposed new rules.

Regulatory Flexibility Analysis

The proposed new rules have been reviewed with regard to the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The proposed rules impose compliance, recordkeeping and reporting requirements on sponsoring agencies which qualify as small businesses as defined in the New Jersey Regulatory Flexibility Act. Since a business entity's decision to seek to qualify as a sponsoring agency pursuant to N.J.A.C. 13:21-24 is voluntary, the compliance, recordkeeping and reporting requirements are not viewed as overly burdensome.

Sponsoring agencies are required to maintain sufficient records to identify the student, dates of course attendance and date of course completion so that the student may qualify for the reduction of motor vehicle violation points established by law for completion of such a course. In addition, sponsoring agencies are required to submit certified student course completion documentation to the Division. These recordkeeping and reporting requirements are necessary to accommodate the point reduction credit provisions of the Fair Automobile Insurance Reform Act of 1990. The rules do not require small businesses to engage additional professional services, nor should they necessitate any capital or annual expenditures for compliance.

The general compliance provisions contained in the rules as set forth in the Summary above have uniform application to all entities which voluntarily seek to qualify as sponsoring agencies pursuant to N.J.A.C. 13:21-24. It is not feasible to exempt small businesses from these requirements in light of the statutory responsibility imposed on the Division to establish standards which an approved motor vehicle defensive driving course must meet. The rules minimize the impact on small businesses by restricting the regulatory provisions to matters that are essential to the administration of the point reduction credit provisions of the Fair Automobile Insurance Reform Act of 1990.

Full text of the proposed new rules follows:

SUBCHAPTER 24. DEFENSIVE DRIVING COURSES

13:21-24.1 Definitions

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

"Approved motor vehicle defensive driving course" means a course of motor vehicle driver instruction predicated on defensive driving techniques that has been approved by the Director of the Division of Motor Vehicles, has been determined to meet or exceed the standards of the National Safety Council's defensive driving course, and has been determined to be effective in terms of either reducing moving violation convictions or accident involvement or both. This definition shall not be taken to include driver training courses offered by driving schools pursuant to N.J.S.A. 39:12-1 et seq., public, parochial or private school driving education courses, a Division of Motor Vehicles Driver Improvement Program required pursuant to N.J.S.A. 39:5-30.2 et seq., or a Division of Motor Vehicles Probationary Driver Program required pursuant to N.J.A.C. 13:19-10.3(d).

"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.

"Sponsoring agency" means an organization which has a motor vehicle defensive driving course approved by the Director of the Division of Motor Vehicles pursuant to N.J.S.A. 17:33B-45 and this subchapter.

13:21-24.2 Point reduction; computation; course completion

(a) Motor Vehicle violation points recorded against a licensee shall be reduced by two points when he or she attends and satisfactorily completes an approved motor vehicle defensive driving course, except that:

1. No licensee shall receive point reduction credits for completion of a motor vehicle defensive driving course more than once in any five year period;

2. No point totals shall be reduced below zero; and

3. No licensee shall receive point reduction credits for completion of a motor vehicle defensive driving course in which the licensee was the course instructor.

(b) Computation of the time periods used in granting point reduction credits, in all cases, will be based upon the respective dates of commission of the offenses for which the licensee was convicted and assessed points and completion date of the motor vehicle defensive driving course.

(c) Upon receipt by the Director of a certified student course completion record from a sponsoring agency, the licensee's record will be reviewed by the Division of Motor Vehicles and a reduction of motor vehicle violation points shall be awarded in accordance with this section. A sponsoring agency shall submit student course completion documentation and all other required information to the Director in the manner prescribed by the Director.

(d) Point reduction credits granted in accordance with this section shall not invalidate proposed suspension action by the Division against a licensee's driving privileges due to .excessive point accumulation by the licensee.

13:21-24.3 Sponsoring agency qualifications

(a) In order to qualify as an approved sponsoring agency pursuant to this subchapter, an entity shall:

1. Request approval from the Director on official letterhead signed by the chief executive officer or designee of the entity;

2. Demonstrate that its motor vehicle defensive driving course meets or exceeds the standards of the National Safety Council's defensive driving course;

3. Demonstrate its course's effectiveness in terms of either reduced moving violation convictions or accident involvement or both by licensees who have satisfactorily completed its motor vehicle defensive driving course;

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4. Provide the Director with the name and title of the official of the sponsoring agency designated as the liaison between the sponsoring agency and the Division of Motor Vehicles; and

5. Demonstrate by written operating procedures and/or on-site visitation by the Director or his or her designee that its instructors are qualified to conduct its motor vehicle defensive driving course.

13:21-24.4 Instructor qualification; training

(a) No person shall be permitted by a sponsoring agency to act as a motor vehicle defensive driving course instructor if such person has accumulated nine or more points by reason of conviction for violations of the Motor Vehicle Law or has been convicted of a violation of N.J.S.A. 39:4-50, 39:4-50.2 or 39:4-49.1, or has incurred a conviction or administrative determination of a substantially similar offense in any jurisdiction.

(b) The sponsoring agency shall submit the following information to the Division:

1. Instructor preparation course outline;
2. Instructor certification and re-certification procedures which insure course competency and continuity;
3. Instructor manuals; and
4. Instructor course curriculum and lesson plans.

13:21-24.5 Course curriculum; length; content; scope; class size

(a) The sponsoring agency's motor vehicle defensive driving course shall provide at least six hours of instruction of which a minimum of four hours shall be classroom instruction.

(b) Not more than three hours of the six hours of instruction shall be conducted by use of audiovisual aids, including, but not limited to:

1. Films and/or videotapes;
2. Filmstrips; and
3. Slides

(c) Not more than 30 students shall be scheduled in any given class; provided, however, that up to five additional students may attend a class if they have failed to attend a previously scheduled class.

(d) The use of visual aids such as magnetic boards, flip charts, and blackboards shall be incorporated into the curriculum.

(e) The curriculum content shall be predicated on defensive driving techniques, including, but not limited to:

1. Alcohol and drug usage as an accident factor;
2. The risk factors involved in improper driver attitude and behavior such as speeding, tailgating, reckless driving, inattentiveness, careless driving, and improper lane use;
3. Adjustment of driving patterns to compensate for adverse weather conditions;
4. Following distances;
5. Communication with other road users; and
6. Motor vehicle and traffic laws of New Jersey.

(f) The lesson plans shall utilize educational techniques which are designed to encourage interaction between students and instructor as a method of instruction.

13:21-24.6 Classroom facilities

(a) Classrooms shall be large enough to accommodate a minimum of 15 students with a minimum of 15 square feet of space per student.

(b) Classrooms shall be clean, adequately lighted, heated and ventilated and free from any visible and/or audible distractions.

(c) Restroom facilities shall be available to accommodate both sexes.

(d) If a classroom facility is not accessible to the handicapped the Director shall be notified prior to that facility being used as a classroom.

(e) Adequate parking shall be available in close proximity to the classroom.

13:21-24.7 Student records

(a) The sponsoring agency shall have written operating procedures approved by the Director regarding the preparation and maintenance of student records.

(b) Student records shall include:

1. The complete student name as it appears on the student's New Jersey driver license, and complete street address;
2. The full date of birth and eye color;
3. The complete New Jersey driver license number;
4. The student application and course registration forms;
5. Course attendance dates and course attendance locations; and
6. The date of student course completion.

(c) Student records shall be retained at the principal business location of the sponsoring agency for a period of five years from the date of a student's completion of the motor vehicle defensive driving course.

(d) Upon request by the Director or his or her designee, the sponsoring agency shall make available for inspection by the Director or his or her designee the student records required to be prepared and maintained in accordance with this section.

13:21-24.8 Certification of course completion

(a) Upon course completion, the sponsoring agency shall provide the Division of Motor Vehicles a list of the students who have satisfactorily completed the approved motor vehicle defensive driving course.

(b) The student list shall be certified by the chief executive officer of the sponsoring agency or his or her authorized agent.

(c) The student information must be submitted in the form and manner prescribed by the Director.

(d) The course completion certification list shall be submitted to the Division within 10 days of the completion of each course.

13:21-24.9 Suspension or revocation of sponsoring agency's approved status

(a) The Director may, in his or her discretion, upon notice and an opportunity to be heard pursuant to the procedures in N.J.A.C. 13:19-1, suspend or revoke a sponsoring agency's status as an approved sponsoring agency if the entity:

1. Fails to comply with any of the provisions of this subchapter;
2. Fails to maintain qualification as an approved motor vehicle defensive driving course in accordance with the provisions of this subchapter;
3. Misstates a material fact to the Division of Motor Vehicles in its application for program approval;
4. Falsely authenticates a student course completion certification or an instructor certification or re-certification; or
5. For other good cause.

13:21-24.10 Voluntary nature of course; fees

(a) Entry into an approved motor vehicle defensive driving course is voluntary.

(b) An attendance fee may be charged for a motor vehicle defensive driving course.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS

Return of Pressure Seal

Proposed Amendment: N.J.A.C. 13:31-1.10

Authorized By: Board of Examiners of Electrical Contractors, Edward O'Hara, President.

Authority: N.J.S.A. 45:5B-1.

Proposal Number: PRN 1994-240.

Submit written comments by May 18, 1994 to:
Christine DeGregorio, Executive Director
State Board of Examiners of Electrical Contractors
Post Office Box 45006
Newark, New Jersey 07101

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The agency proposal follows:

Summary

The Board of Examiners of Electrical Contractors is proposing amendments to N.J.A.C. 13:31-1.10, which clarify a licensee's duty to return the official pressure seal previously issued by the Board. The amendments are proposed in order to better inform licensees of their responsibilities in dealing with such pressure seals.

The circumstances in which the Board seeks to regain possession of an official pressure seal fall into one of two categories: when a licensee forfeits a license because of either a disciplinary action for misconduct or a failure to pay licensing fees as required, or because the licensee is rendered incapable of fulfilling his or her professional duties due to death, illness or other condition.

Proposed subsection (c) covers the first category by requiring, without exception, that the official pressure seal be immediately returned to the Board by the licensee.

Proposed subsections (d) through (g) cover the second category. Subsection (d) permits delays in returning the official pressure seal provided that two conditions are met: written notification as to the person assuming the business on an interim basis, and compliance with all existing rules. Subsection (e) clarifies the fact that the business entity may complete work in progress and may contract for new work provided that all such electrical work is performed or supervised by the licensee who has qualified the business entity during the interim period or by such other person as the Board deems acceptable. Subsection (f) allows the Board to grant a six-month extension of the original six-month interim period if a new qualifying licensee is not yet in place, with the provision that the conditions set forth in subsection (d) remain in effect. Subsection (g) requires that the official pressure seal be returned to the Board by the end of either the interim or extension period, depending on which is applicable.

Social Impact

The proposed amendments will assure consumers and subcode enforcement officials that measures have been taken to prevent licensees from retaining official pressure seals under circumstances when they are no longer lawfully authorized to engage in electrical contracting work. For licensees, the proposed amendments are beneficial in that they clarify the procedure to be followed in retaining an official pressure seal when the licensee is rendered incapable of fulfilling his or her professional duties due to death, illness or other condition. This clarification is meant to reduce the stress and confusion that may accompany such an event by enabling a spouse, associate or colleague to make whatever arrangements are necessary to fulfill responsibility for the official pressure seal issued to the licensee by the Board.

Economic Impact

The proposed amendments will have no economic impact on consumers. The amendments may have a beneficial economic impact on licensees who suffer an illness or other condition, however, because those licensees are permitted to maintain the continuity of their business entity by notifing the Board in writing of the person who shall take over the business during a six-month interim period.

Regulatory Flexibility Analysis

The proposed amendments will apply to all of the 8,824 current licensees and 7,028 business-permit holders of the Board of Examiners of Electrical Contractors, virtually all of them small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Compliance with these amendments requires reporting in that the Board must be provided with the name of the person who assumes responsibility for the business during the interim period.

The proposed amendments do not require any new recordkeeping requirements, initial capital costs, costs for professional services, or any other costs of compliance. Since the intent of the proposed amendments is to create uniformity in the occupation with regard to the return of official pressure seals, the amendments must be applied uniformly without differentiation as to size of practice.

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

13:31-1.10 Return of pressure seal

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

(c) A licensee whose license is suspended or revoked as a result of either a disciplinary order or a failure to pay licensing fees shall immediately return to the Board the previously issued official pressure seal.

(d) If the person whose license qualified a business entity to engage in electrical contracting is rendered incapable of fulfilling his or her professional duties due to death, illness or other condition, the licensee or such other individual who may lawfully act for the business entity may delay returning the official pressure seal for at least six months provided that:

1. The Board is immediately notified in writing of the name of a new electrical contractor licensed by the Board, or of such other person as the Board deems acceptable, who shall qualify the business entity during the interim period provided by this subsection; and

2. The business entity complies with all the provisions of the Electrical Contractors Licensing Act of 1962 and all regulations adopted thereafter.

(e) During this interim period, the business entity may complete work in progress and may contract for new work provided that all such electrical work is performed or supervised by a licensed electrical contractor.

(f) The Board may, for good cause shown, extend by six months the interim period during which electrical contracting may be performed provided that the conditions set forth in (d) above are satisfied.

(g) By the end of either the initial six-month period or the additional six-month extension period, the pressure seal issued by the Board to the individual licensee cited in (d) above shall be returned to the Board consistent with N.J.S.A. 45:5A-14.

(a)

DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF OPHTHALMIC DISPENSERS AND OPHTHALMIC TECHNICIANS

Contact Lenses

Proposed Repeal: N.J.A.C. 13:33-4.1

Authorized By: Board of Ophthalmic Dispensers and Ophthalmic Technicians, Robert Troast, President.

Authority: N.J.S.A. 52:17B-41.13 and 52:17B-41.25 et seq., specifically 52:17B-41.27.

Proposal Number: PRN 1994-241.

Submit written comments by May 18, 1994 to:
H. Lee Gladstein
Executive Director
Board of Ophthalmic Dispensers and
Ophthalmic Technicians
P.O. Box 45011
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Contact Lens Dispenser Act of 1992, N.J.S.A. 52:17B-41.25 et seq. and, specifically, N.J.S.A. 52:17B-41.27, authorizes ophthalmic dispensers licensed in the State of New Jersey to engage in the practice of contact lens dispensing. This statute impliedly repeals N.J.A.C. 13:33-4.1, which prohibits licensed ophthalmic dispensers from dispensing contact lenses directly to the patient. Therefore, the Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians wishes to repeal N.J.A.C. 13:33-4.1 to comport with current law.

Social Impact

The proposed repeal conforms to the statutory expansion of scope of licensure embodied within N.J.S.A. 52:17B-41.37, expanding the authority of ophthalmic dispensers to dispense contact lenses. This requirement, coupled with the statutory policies embodied within N.J.S.A. 52:17B-41.30 and 52:17B-41.31 providing a patient with direct access to his or her contact lens records, will allow the patient the freedom of choice that the Legislature intended.

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Economic Impact

Since the statutory provisions that the repeal implements have been in place for two years, there is no discernible economic impact that will be derived from this repeal.

Regulatory Flexibility Statement

The proposed repeal eliminates rather than creates any compliance requirements imposed on ophthalmic dispensers, which may be considered small businesses under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Therefore, no regulatory flexibility analysis is required.

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

SUBCHAPTER 4. [CONTACT LENSES] **(RESERVED)**

[13:33-4.1 Dispensing; contact lenses

Contact lenses shall not be dispensed directly to the patient; they shall be dispensed only to an ophthalmologist or optometrist designated by the patient.]

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHARMACY

State Board of Pharmacy Rules

Proposed Readoption with Amendments: N.J.A.C. 13:39

Authorized By: State Board of Pharmacy, H. Lee Gladstein, Executive Director.

Authority: N.J.S.A. 45:14-1 et seq.

Proposal Number: PRN 1994-239.

Submit written comments by May 18, 1994 to:
H. Lee Gladstein, Executive Director
State Board of Pharmacy
Post Office Box 45013
Newark, New Jersey 07101

The agency proposal follows:

Summary

The State Board of Pharmacy is proposing to readopt N.J.A.C. 13:39, with amendments. These rules are scheduled to expire on June 19, 1994 pursuant to Executive Order No. 66(1978).

This chapter was completely revised on June 19, 1989, when the Board determined that amending the existing rules was not sufficient to deal with the rapid changes in health care delivery, new and sophisticated changes in the treatment of disease and the concurrent changes in the methodologies of dispensing drugs. See 19 N.J.R. 1952(a).

Various amendments have been made since June 1989 to continue to update practice requirements. Notably, N.J.A.C. 13:39-7.14 was amended to require patient counseling consistent with the provisions of OBRA 90, and upgraded sterile admixture standards were proposed on March 21, 1994 (see 26 N.J.R. 1303(a)) based upon the recent growth in home infusion services.

In compliance with the Executive Order, the Board's Rules and Regulations Committee undertook a thorough review of the existing provisions of N.J.A.C. 13:39 in order to delete unnecessary or unreasonable rules. The Board believes the rules proposed for readoption, as amended, are necessary, reasonable, understandable and responsive to the purposes for which they were promulgated. Because pharmacy practice continues to evolve at a rapid pace, essential amendments to practice standards are also proposed at this time.

The Board notes initially that within the past few years additional categories of health care personnel have been granted statutory authority to prescribe. Accordingly, the Board has added a new definition, "authorized prescriber," and has changed references to "physician" and "licensed practitioner" to "prescriber" and "authorized practitioner" when appropriate throughout N.J.A.C. 13:39.

Following is a summary of each of the 11 subchapters of chapter 39 together with a summary of amendments, if applicable, and the rationale therefor.

Subchapter 1, General Provisions, sets forth the purpose and scope of the rules in N.J.A.C. 13:39, defines relevant terms, establishes a fee schedule and a penalty payment schedule, and advises licensees of their right to a hearing in connection with any disciplinary sanction. The term "bulk compounding" has been deleted from the definition of "compounding" because the Food and Drug Administration (FDA) considers bulk compounding to be a manufacturing procedure. The Board regulates compounding only when a direct relationship exists among the prescriber, the pharmacist and the patient. To reflect that patient counseling is now mandatory, the definition of "dispense or dispensing" has been amended. The definition of "pharmaceutical" has been deleted as unnecessary, while the definition of "poison" has been deleted because virtually any pharmaceutical substance has an element of toxicity and the poisons mentioned here are rarely, if ever, dispensed.

Subchapter 2 outlines applicant qualifications and examination requirements. N.J.A.C. 13:39-2.1 has been revised to indicate that the Board now relies upon the expertise of the American College of Pharmaceutical Education (ACPE) in accrediting schools of pharmacy. N.J.A.C. 13:39-2.4 has been repealed pursuant to Attorney General Opinion dated July 16, 1973, which states that citizenship or permanent residency cannot be a licensure eligibility requirement. Additional language has been added to N.J.A.C. 13:39-2.7 to clarify that good moral character is an on-going requirement for licensure as well as a requirement to sit for the exam.

Subchapter 3 delineates pharmacist registration requirements. The requirement that a pharmacist notify the Board in writing within 30 days of any change in place of employment is proposed to be deleted as unnecessary because the employment address is updated with each biennial renewal application. N.J.A.C. 13:39-3.11 has been amended to reflect the Board's determination that it will now rely upon the expertise of the Foreign Pharmacy Graduate Examination Committee (FPGEC) in assessing the qualifications of foreign applicants. Amendments to N.J.A.C. 13:39-3.12 conform the terminology therein to that used in the Americans with Disabilities Act (ADA). The requirement in N.J.A.C. 13:39-3.15 that the renewal application include the date of issuance of the original certificate has been deleted as unnecessary.

N.J.A.C. 13:39-3.18(e)5 has been amended to clarify that, although patient counseling is now solely the pharmacist's responsibility, an intern or extern may engage in counseling provided he or she is under the direct supervision of a registered pharmacist. Patient counseling during the period of internship is essential to enable prospective applicants for licensure to develop the counseling skills and knowledge required of a licensed pharmacist. The Board is confident that the Legislature did not intend the new Federal and State mandatory counseling requirements to create the anomolous result of prohibiting supervised interns and externs from the opportunity to develop effective counseling skills.

The requirement in N.J.A.C. 13:39-3.18(e)12 that a retail pharmacy must deliver "a complete service to the community" has been replaced by the requirement that a retail pharmacist ensure "the dispensing of all medication generally prescribed to patients in the trading area of the licensed premises or as required by the specialty for which the pharmacy holds a permit." The Board believes this regulation no longer serves the purpose for which it was originally intended. The general public is more mobile now and not necessarily limited to local pharmaceutical services. In addition, continuation of this requirement would, in the Board's opinion, create an undue economic burden on pharmacies that want to specialize, that is, infusion services, nuclear pharmacies.

Subchapter 4 outlines pharmacy permit requirements. Amendments to N.J.A.C. 13:39-4.4 and 4.7 will require that any change in pharmacy ownership—including a change of less than 10 percent—must be reported to the Board. The Board has noted instances of stock transfers taking place in increments of 10 percent, presumably to avoid obtaining new pharmacy permits and/or to avoid inspection. The Board anticipates that this amendment will avoid malfeasance in the transfer of stock. It is to be noted that the Board has not proposed a similar change with regard to change in ownership of public companies (N.J.A.C. 13:39-4.5) because transfers of publicly held shares are made public through SEC rules.

N.J.A.C. 13:39-4.9 has been amended to require all pharmacies to be open at least 40 hours a week and five days a week. Pursuant to N.J.S.A. 45:14-32, the Board has authority to establish minimum hours of operation. The Board has recently noted that some pharmacies have taken it upon themselves to limit their business hours, leaving consumers unable to contact them during regular business hours.

The evolving nature of pharmacy practice, in this instance the tremendous upsurge in chain pharmacies, has occasioned the proposed amendment to N.J.A.C. 13:39-4.15(b)2 regarding pharmacy department keys. Permitting only the registered pharmacist to possess the keys is unwork-

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able in chain stores employing a manager and/or a relief pharmacist. The Board points out that the pharmacist-in-charge remains responsible for the security of the keys should the pharmacist permit a manager to have access to them and that pharmacy keys in most instances are kept separately in the department's safe. N.J.A.C. 13:39-4.15(b)7 has been deleted because the Board believes requiring the word "department" to appear in advertisements is unnecessary.

Subchapter 5 details prescription requirements. References to schedule I controlled substances have been deleted because, as required by Federal law, they are no longer sold in a pharmacy.

Subchapter 6 sets forth dispensing and advertising requirements. The Board is proposing to repeal N.J.A.C. 13:39-6.3 because it is redundant; restrictions on the sale of CDS appear elsewhere in subchapter 6. N.J.A.C. 13:39-6.6 has been reworded for clarity.

Subchapter 7 outlines pharmacy facility and records requirements. Although the Board is not amending N.J.A.C. 13:39-7.3, Spatial requirement of a retail pharmacy prescription area, the Board is continuing to review this section and may propose changes in the future. Amendments are proposed to N.J.A.C. 13:39-7.7(a) to reflect advancements in pharmacy practice, including the availability of CD-ROM computerized texts. Additional proposed amendments delete the requirement for certain equipment that the Board believes has become unnecessary in most pharmacy practices, such as filter papers and powder papers. The Board is confident that pharmacists will use their own sound professional judgment in determining whether they will need this or any other equipment. The Board is also proposing to delete the requirement that the pharmacist keep a poison record book. The Board believes this requirement may be seen as an unfair burden upon pharmacists because substances of much greater toxicity may be purchased in places where record books are not required, such as hardware stores. The Board is confident that the required poison label serves a more useful function in protecting the health and safety of the consumer. Finally, N.J.A.C. 13:39-7.11 and 7.14 have been amended for clarification only. The Board will continue to consider and may propose at a later date additional amendments to N.J.A.C. 13:39-7.11 to deal with devices that count by weight.

Subchapter 8 sets forth procedures and requirements for internships and externships. The term "approved training pharmacies" has been changed to "approved training sites" in the subchapter title and the definitions section to clarify that externs may practice at sites other than a pharmacy, such as the State Board or private industry. In N.J.A.C. 13:39-8.3 the number of prescriptions a training pharmacy must fill annually has been updated from 10,000 to 20,000. Rarely in current practice does a pharmacy fill as few as 10,000 prescriptions, and those that do would not be able to provide sufficient experience opportunities to the intern or extern.

N.J.A.C. 13:39-8.4(a)1 has also been updated to reduce the minimum internship and externship experience requirement from 35 to 20 hours per week. The total hours of experience required (1,000) remains unchanged. The Board receives many requests for waiver regarding the 35-hour per week requirement and recognizes that it has become increasingly difficult to complete a 35-hour per week internship while gainfully employed. Paragraph (a)2 is a recodification of subsection (d), and paragraph (a)3 is proposed to clarify that the Board does not grant credit for hours served as an intern prior to application. The Board is proposing to delete N.J.A.C. 13:39-8.5(b) which requires quarterly filing of preceptor reports. Quarterly filing is unnecessary because these reports are kept as part of the pharmacist intern log, to which the Board has access upon request. An additional proposed amendment to N.J.A.C. 8:39-8.7 clarifies that preceptor's reports are a part of the pharmacist intern log. The remaining proposed changes to subchapter 8 are stylistic or for clarification only.

Subchapter 9 contains regulations pertinent to pharmaceutical services within health care facilities. For readability, the regulations have been broken down into sections dealing with only one issue and new section titles have been added. Amendments to N.J.A.C. 13:39-9.1, definitions, include the following:

1. "Authorized prescriber"—Clarified for the reasons previously stated.

2. "Health care facility"—The phrases "proprietary and non-proprietary" and "homes for the aged" have been deleted. The qualification of hospitals as proprietary or non-proprietary is unnecessary, and the term "homes for the aged" has been eliminated since these facilities are included within the broader term "long term care facilities."

3. "Medication order"—The reference to certified nurse midwife has been deleted because the CNM is now within the class of "authorized prescribers." Reference to "password" has been included to reflect current practice, and all references to "physician" have been changed to "prescriber."

Amendments are proposed in N.J.A.C. 13:39-9.3 and 9.4 for clarification. The amendment to N.J.A.C. 13:39-9.3 clarifies that use of outside pharmacies is not limited to only those health care facilities that do not have an institutional pharmacy on premises. Amendments are proposed to N.J.A.C. 13:39-9.5(a) and (e) to reflect current hospital pharmacy practice vis-a-vis the Pharmacy and Therapeutics Committee. These subsections have been amended to place sole responsibility upon the pharmacist-in-charge to determine drug specifications and drug control within the facility. The Board does not believe the Pharmacy and Therapeutics Committee should be responsible for these functions.

N.J.A.C. 13:39-9.6(e) is a recodification of the current N.J.A.C. 13:39-9.6(b). New N.J.A.C. 13:39-9.11 deletes the requirement that the Pharmacy and Therapeutics Committee develop written policies and procedures governing drug administration. The Board does not oversee the administration of drugs in a health care facility. In reviewing new N.J.A.C. 13:39-9.12, Use of patient's own medication, the Rules and Regulations Subcommittee became aware that it needs review by the full Board and extensive clarification regarding the limits of the pharmacist's liability for use of the patient's own medications. Amendments to this section will be the subject of a separate proposal. Similarly, new N.J.A.C. 13:39-9.14, Drug-dispensing devices, does not regulate use of the new computerized automated drug dispensing devices such as PYXIS, ACCESS and SUREMED. Amendments to this section, too, may be extensive and therefore will be the subject of a separate proposal. All other amendments to subchapter 9 are editorial only.

Subchapter 10 regulates sterile admixture services in retail and institutional pharmacies. The Board is proposing to adopt this subchapter without change. It should be noted, however, that proposed amendments to limit the scope of subchapter 10 to institutional pharmacies only and a new subchapter 11 to apply to retail pharmacies were proposed on March 21, 1994. (See 26 N.J.R. 1303(a).)

Subchapter 11 sets forth requirements for pharmacies providing radiopharmaceutical service. An amendment is proposed to N.J.A.C. 13:39-11.1 consistent with the Nuclear Regulatory Commission's declassification, as of January 1, 1994, of cold kits (reagent kits) as radioactive materials.

Social Impact

The rules proposed for readoption will continue to protect and safeguard the public health. The rules establish professional practice standards, ensure that dispensing pharmacists remain accountable to the public and to the Board, and ensure that patient information is easily retrievable for professional consultation and law enforcement purposes. It is expected that the proposed amendments will enhance the protection and safeguarding of the public health in that they update practice standards to ensure the highest level of patient safety.

The proposed amendments to subchapter 4 should also be beneficial to the public. These amendments require any change in pharmacy ownership to be reported to the Board in order to avoid malfeasance in the transfer of stock and establish minimum hours of operation so that consumers remain able to contact their pharmacists during regular business hours.

Interns and externs will benefit from the proposed amendments to subchapter 8 which ensure that training pharmacies are able to provide sufficient experience opportunities. The reduction in minimum weekly internship practice hours will avoid requests for waiver and ease the burden on individuals who are gainfully employed while serving an internship or externship.

The proposed clarifications of existing rules and elimination of requirements the Board has found to be unnecessary or burdensome are expected to have a beneficial impact on licensed pharmacists and permit holders. Specifically, deletion of the requirement that the retail pharmacist deliver a "complete service to the community" will be advantageous to pharmacies that wish to specialize. A pharmacist in charge of a chain pharmacy may now permit the store manager to have access to pharmacy department keys, although the pharmacist in charge remains responsible at all times for the security of the keys. Unnecessary requirements proposed to be deleted include maintaining a poison record book, notifying the Board in writing within 30 days of any change in place of employment and including on the renewal application the date the original certificate was issued.

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The Board's reliance upon the American College of Pharmaceutical Education (ACPE) in accrediting schools of pharmacy and upon the Foreign Pharmacy Graduate Examination Committee (FPGEC) to assess the qualifications of foreign graduates should ease the Board's administrative burden.

Economic Impact

The rules proposed for readoption will have an economic impact upon both pharmacists and permit holders, who will be expected to spend what is necessary to maintain their practices in the manner prescribed by the Board. The Board believes that the economic burden upon the licensee and permit holder is outweighed by the benefit these rules provide to the general public. Required patient counseling, for example, helps avoid adverse drug reactions and thus additional health care costs. Generally, the rules proposed for readoption are not expected to bring about any additional public or private costs. The fee schedule is proposed for readoption without change.

With regard to the proposed amendments, licensees and permit holders may realize nominal cost savings from the proposed deletion of the unnecessary requirements outlined in the social impact statement as well as from deletion of the requirement for equipment the Board now deems to be unnecessary.

Licensees or permit holders who do not meet existing or proposed requirements will be expected to bring their operations into line with Board rules. Specifically, pharmacies that have chosen to limit their business hours will incur additional expenses to keep the pharmacy open at least 40 hours a week, five days a week. In addition, permit holders who transfer stock ownership in amounts less than as well as more than 10 percent will be required to pay the $275.00 change of ownership fee. Because inspections are required upon issuance of new permits, the Board may incur increased inspection costs. However, it is also possible that pharmacies that transferred stock for tax savings purposes may no longer wish to do so because transfers in any increment will require a fee. In that case, inspection costs may decrease.

The Board's reliance upon ACPE in accrediting schools of pharmacy will impose no costs upon the licensee or the consumer and may result in a decrease in Board administrative costs. The Board's reliance upon FPGEC, however, will have an economic impact on applicants who attended a foreign school of pharmacy. The current cost of FPGEC certification is $700.00, which includes the cost of the TOEFL examination. The Board estimates that it receives approximately 250 applications each year from individuals who attended a foreign school of pharmacy. The Board believes reliance upon FPGEC will create a more equitable result because application review costs will be paid directly by the individual applicant and not, as before, allocated among the licensee class.

Regulatory Flexibility Analysis

The rules proposed for readoption will have an impact upon individual licensees and upon retail and institutional pharmacies. The following analysis applies to approximately 2,000 holders of pharmacy permits, the majority of which would be considered small businesses under the criteria of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

Reporting, recordkeeping and other compliance requirements include filing a permit application, display of permit, annual permit renewal, Board notification of change in pharmacy name, location or stock ownership, maintenance of minimum business hours and Board notification of any change in business hours. The holder of a permit to operate a prescription department must ensure that security of the department is maintained and must adhere to minimum spatial and equipment requirements. Prescriptions must be maintained and appropriately numbered and filed for five years; records of refills must be made; each prescription must be initialed by the pharmacist who dispensed it; patient profile records must be maintained for each patient; and the sale of Schedule V over-the-counter controlled substances must be restricted when necessary. Similar spatial, equipment, recordkeeping and reporting requirements apply to holders of institutional permits.

An estimate of compliance costs cannot be made inasmuch as costs would vary depending upon pharmacy size and the extent to which the permit holder is already in compliance with the rules proposed for readoption, as amended. Compliance costs might include capital construction and plumbing; acquisition of necessary equipment and reference books; and personnel expenses necessary to keep the pharmacy open at least 40 hours per week. Professional services other than those of the owner or pharmacist-in-charge should not be necessary.

The Board views the proposed practice standards and requirements to be the minimum necessary to safeguard patient health and safety with regard to compounding and dispensing drugs. An exemption for small business is thus neither feasible nor desirable.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 13:39.

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

SUBCHAPTER 1. GENERAL PROVISIONS

13:39-1.1 Purpose and scope

(a) (No change.)

(b) This chapter shall apply to all registered **pharmacies,** pharmacists, pharmacist applicants, interns, externs, supportive personnel and anyone within the jurisdiction of the Board of Pharmacy.

13:39-1.2 Definitions

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

"Authorized prescriber" means a licensed practitioner who is authorized by law to write prescriptions and/or medication orders.

. . .

"Compounding" means the act of preparing pharmaceutical components into medications, pursuant to [a licensed practitioner's] **an authorized prescriber's** prescription or medication order, including, but not limited to prescription compounding, [bulk compounding] and intravenous admixture preparation.

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by [a licensed practitioner] **an authorized prescriber** and dispensed by a pharmacist, in the usual scope of pharmacy practice.

. . .

"Dispense or dispensing" means the procedure entailing the interpretation of [a licensed practitioner's] **an authorized prescriber's** prescription order for a drug or device, and pursuant to that order, the proper selection, measuring, labeling, and packing in a proper container. The act of dispensing shall include [if necessary, a pharmacist's, extern's or intern's consultation with the prescribing physician and/or the patient or patient's agent to assure proper preparation, use and administration of medication. This consulting may be on a personal one-to-one basis or, as an alternate, a detailed explanatory patient brochure accompanying prescription, with verbal backup readily available if necessary] **all necessary consultation by the pharmacist**.

"Drug or medicine" means:

1.-3. (No change.)

4. Articles intended for use as [a] components of any article specified in 1, 2 or 3 above, but [does not include] **not including** devices or their components, parts or accessories. [Articles, such as sugar or starch, which may be components of any articles in 1, 2, or 3 above, are not considered drugs or medicines when sold as food.]

"Legend drug or device" means any drug or [pharmaceutical] **device** that:

1. Bears the statement, "Caution: Federal law prohibits dispensing without a prescription" or words of similar import; or

2. Requires a prescription or order by [a licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions and medication orders] **an authorized prescriber**.

"Licensed practitioner" means a duly licensed physician, dentist, veterinarian or other [medical] **health care** practitioner [licensed to write prescriptions and medication orders].

["Pharmaceutical" means any drug as defined above and all other adjunct substances or materials required in the preparation of the drug for use.]

. . .

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["Poison" means:

1. Any drug, chemical, substance or preparation which according to standard works on medicine, materia medica or toxicology is liable to be destructive of adult human life in doses of 60 grains or metric equivalent or less;

2. Any substance recognized by standard authorities on medicine, materia medica or toxicology as poisonous;

3. Any item enumerated in Schedule A of N.J.S.A. 45:14-19 or any item enumerated in Schedule B of N.J.S.A. 45:14-20; and

4. Any drug, chemical, substance or preparation which is labeled "poison".]

. . .

"Registered pharmacist" or "pharmacist" means a person [holding an unsuspended and unrevoked license as a pharmacist issued by the Board] whose certificate is in good standing for the current registration period.

. . .

SUBCHAPTER 2. APPLICANT QUALIFICATIONS AND EXAMINATIONS REQUIREMENTS

13:39-2.1 Education requirements

(a) An applicant for the written examination shall have been duly granted or have fully completed all the requirements for graduation of a minimum five-year pharmacy course leading to a degree of Bachelor of Science in pharmacy or Doctor of Pharmacy given in a school or college of pharmacy [approved by the Board] **accredited by the American College of Pharmaceutical Education (ACPE).**

(b) (No change.)

13:39-2.4 [Proof of citizenship] **(Reserved)**

[(a) An applicant for the written examination who was born outside of the United States but is a citizen of the United States must present either citizenship papers or derivative citizenship papers. If the applicant is not a citizen, he or she must first present proof of intention to become a citizen.

(b) An applicant who presents citizenship papers of his or her parents which list the applicant's name as a minor child or who presents other proof of citizenship from the United States Immigration and Naturalization Bureau may be admitted to the written examination pending the submission of derivative citizenship papers.]

13:39-2.7 Proof of character

(a) An applicant for the written examination shall submit, in advance, an application containing evidence of good moral character **which is an on-going requirement for licensure,** and evidence that he or she:

1.-7. (No change.)

SUBCHAPTER 3. REGISTRATION OF PHARMACISTS

13:39-3.4 Change of employment or address

[(a)] A registered pharmacist shall notify the Board in writing of any change in his or her home address within 30 days.

[(b) A registered pharmacist shall notify the Board in writing within 30 days of change in his or her place of employment.]

13:39-3.11 [TOEFL examination] **Foreign graduates**

(a) All pharmacist applicants **with a degree** from countries where the primary language is other than English, prior to being granted licensure as professional pharmacists in this State, shall submit to the Board evidence that they [completed] **are certified by the Foreign Pharmacy Graduate Examination Committee (FPGEC) of the National Association of Boards of Pharmacy. In order to receive FPGEC certification, applicants must document their educational backgrounds, successfully complete** the Test of English as a Foreign Language (TOEFL) Examination, **the Foreign Pharmacy Graduate Equivalency Examination (FPGEE)** and have attained a minimum passing score **in each examination.** [This test shall be taken] **FPGEC certification shall have been obtained** within two years of application for licensure in this State.

(b) A request for waiver of the [TOEFL examination shall be made to the Board in the applicant's own handwriting and] **FPGEC certificate** must delineate good cause for the waiver request. The Board may, after due consideration and within its own discretion, waive the TOEFL examination **component of the FPGEC certification process.**

13:39-3.12 **Physical and mental** [fitness] **competence** of reciprocal registrants

(a) An applicant for reciprocal registration shall be physically and mentally [fit] **able** to perform all duties normally required of a registered pharmacist.

(b) The Board, at its discretion, may require proof of the applicant's physical and mental [fitness] **competence** to practice pharmacy in this State.

13:39-3.15 Biennial registration renewal

(a) (No change.)

(b) The renewal application shall list the name, home address, original certificate of registration number, [date of issuance of original certificate of registration,] places and hours of employment, continuing education credits, and other information as requested by the Board.

(c) (No change.)

13:39-3.18 Pharmacist-in-charge

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

(e) A registered pharmacist-in-charge shall be physically present in the pharmacy or pharmacy department for that amount of time necessary to ensure the fulfilling of the following responsibilities:

1.-3. (No change.)

4. Maintaining the security of the prescription area and its contents, which includes the restriction of persons unauthorized by the pharmacist on duty from being present in the prescription area while the pharmacist is temporarily absent [attending to over-the-counter drugs or the pharmacist's personal needs] **but within the premises;**

5. Ensuring that only pharmacists[,] **and** interns or externs **under direct supervision** provide professional consultation with patients and physicians;

6.-11. (No change.)

12. Ensuring the [delivery of a complete service to the community by a retail pharmacy. This means that the pharmacy shall provide full pharmaceutical services needed to satisfy the health requirements of the population located in the general vicinity of the licensed premises, said services to include the] dispensing of all medication generally prescribed [by practitioners] **to patients** in the trading area of the licensed premises **or as required by the speciality for which the pharmacy holds a permit;**

13.-14. (No change).

SUBCHAPTER 4. PHARMACY PERMITS

13:39-4.4 Change of ownership

Whenever there is any change in ownership [of more than 10 percent of the stock of a partnership or sole proprietorship or non-public company,] **of the business entity holding a permit to operate a pharmacy,** the new ownership **of such entity** shall apply for a new permit **not less than** 30 days in advance of the change of ownership on a form prescribed and furnished by the Board and pay a fee pursuant to N.J.A.C. 13:39-1.3.

13:39-4.7 New pharmacies; eligibility and application

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

(c) The permit application shall bear the exact trade name, if any; the corporate names, if any; the name and addresses of the owners and operators, if a sole proprietorship or partnership; the names and addresses of [the] **all** officers and [principal] stockholders [holding 10 percent or more stock] and the names and addresses of all principles duly licensed to write prescriptions if the pharmacy is a non-publicly held corporation; and the names and addresses of the officers, if a publicly held corporation.

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

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13:39-4.9 [Change of business] **Business** hours

(a) All pharmacies shall be kept open for the transaction of business at least 40 hours per week and at least five days per week.

(b) If any changes are made in the opening or closing hours of a pharmacy or other Board-licensed establishment, the Board office shall be notified in writing of these changes within 30 days.

13:39-4.14 Contract pharmaceutical services

An institutional permit is required for any area within an institution where drugs are stored, manufactured or compounded and which is serviced by an outside vendor that performs pharmaceutical services as defined in N.J.A.C. 13:39-[1.1[**1.2.**

13:39-4.15 Retail permit; prescription department of pharmacy department

(a) (No change.)

(b) The holder of a permit to operate a prescription or pharmacy department and the registered pharmacist-in-charge of the department shall be subject to the following additional requirements:

1. (No change.)

2. The registered pharmacist on duty shall be responsible for keeping the prescription department secure and locked and the alarm system turned on at all times when he or she does not have full vision or control of the department or when he or she is not present within the department. [Only the registered pharmacist(s) shall maintain possession of the keys to the department.] **Only the pharmacist-in-charge of the licensed premises shall be responsible for the security of the keys to the department.**

3.-6. (No change.)

[7. Any advertising, announcements, signs or statements relating to the business enterprise and containing the words "pharmacy", "prescription", "drugs", or other like terms shall include the word "department" and shall in no way indicate that the entire business enterprise is a drugstore, pharmacy or apothecary.]

Recodify existing 8.-11. as **7.-10.** (No change in text.)

SUBCHAPTER 5. PRESCRIPTIONS

13:39-5.3 Authorization for renewal of prescriptions

(a) (No change.)

(b) When the renewals listed on the original prescription have been depleted, no additional renewals may be added to the original prescription. For additional dispensing, a new prescription must be authorized by the [prescribing physician] **prescriber** as provided in N.J.S.A. 45:14-14, which must be reduced to writing by the pharmacist and entered into either a manual or into the electronic data processing system as a new prescription. A new prescription shall be generated and the original prescription shall remain in the prescription file in chronological order.

13:39-5.6 Record of pharmacist filling prescription

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

(d) Prescriptions for all controlled substances listed in schedule[s I and] II shall be maintained in a separate prescription file.

(e) (No change.)

(f) Prescriptions for all controlled substances listed in schedules III, IV and V shall be maintained in a single file separate from all other prescriptions, unless an electronic data processing system is utilized which meets the requirements of (i) below. If such an electronic data processing system is utilized, prescriptions for all substances listed in schedules III, IV and V shall be filed either in the prescription file for controlled substances listed in schedule[s I and] II or in the usual consecutively numbered prescription file for noncontrolled substances.

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

(i) In using an electronic data processing system, the system shall have the capability of producing sight-readable documents of all original and refilled prescription data, and, in addition, the number of refills authorized by the [prescribing physician] **prescriber** for a period of not less than five years. Five years of record information shall be maintained in such a manner so as to be sight-readable within two weeks. The most recent one year of record information shall be immediately reviewable on-line and available in printed form within three business days. The term "sight-readable", as it appears in all rules of the Board, shall mean that the Board or Attorney General shall be able to examine and read the record of information. During the course of an on-site inspection, the record may be read from a cathode ray tube (CRT), microfiche, microfilm, hard copy printout or other Board acceptable method. For the purpose of administrative proceedings before the Board, records shall be provided in a paper printout form.

(j) (No change.)

SUBCHAPTER 6. DISPENSING AND ADVERTISING DRUGS

13:39-6.3 [Sale of controlled dangerous substances and prescription legend drugs by other than a registered pharmacist in a Board-licensed establishment] **(Reserved)**

[A non-registered person shall only sell or furnish a controlled dangerous substance or prescription legend drug under the direct supervision of a registered pharmacist.]

13:39-6.6 Foreign prescriptions

[Prescriptions written or signed by other than a duly licensed physician, dentist, veterinarian or other medical practitioner licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States are not considered valid prescription orders and shall not be honored.] **Only those prescriptions written or signed by an authorized prescriber licensed to write prescriptions in the United States, District of Columbia, or any territory of the United States shall be considered valid prescription orders.**

13:39-6.7 Supportive personnel

(a) (No change.)

(b) Supportive personnel shall not interpret a prescription order or consult with a patient or [physician] **prescriber** or the agent of the [physician] **prescriber**. Supportive personnel may, however, count, weigh, measure, or pour prescription medication under the direct supervision of the registered pharmacist as long as the contents and finished-product are verified by a registered pharmacist.

(c) (No change.)

SUBCHAPTER 7. PHARMACY FACILITY AND RECORDS

13:39-7.7 Minimum equipment and facilities

(a) The following minimum amount of equipment and facilities shall be required to be in every prescription area, and this equipment shall be stored so as to be readily accessible and shall be kept in a clean condition:

1. The current USP DI and supplements and suitable **current** reference texts [including at least a current edition on pharmacology,] **encompassing** the general practice of pharmacy, drug interactions and drug product composition. **Unabridged computerized versions of these reference texts shall be acceptable;**

[2. Poison record book.]

Recodify existing 3.-8. as **2.-7.** (No change in text.)

[9. Mortars and prestles:

i. Wedgewood: approximately 4 oz. and 24 oz. or the metric equivalent thereof.

ii. Glass: 4 oz. and 8 oz. or the metric equivalent thereof.]

8. A glass mortar and pestle

[10.]**9.** Glass funnels[: 1 oz. 4 oz. and 8 oz. or the metric equivalent thereof];

[11.]**10.** (No change.)

[12.]**11.** A [small, medium and large] steel spatula and a spatula of rubber or composition;

Recodify existing 13.-14. as **12.-13.** (No change in text.)

[15. Filter papers and powder papers;]

Recodify existing 16.-17. as **14.-15.** (No change in text.)

[18. Poison labels containing name of the registered pharmacist-in-charge; address and telephone number of pharmacy;]

16. Auxilliary labels, including poison labels;

Recodify existing 19.-20. as **17.-18.** (No change in text.)

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13:39-7.11 Prescription balances, scales, weights and automatic counting devices

All pharmacies shall prove to the satisfaction of the Board that all balances, scales, weights and automatic counting devices have been [currently] **annually** inspected by the Department of Weights and Measures of the municipality or county in which such pharmacy, drugstore, or other Board-licensed establishment is located, and that such balances, scales, weights and automatic counting devices have been properly sealed by the applicable authority.

13:39-7.14 Patient profile record system

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

(e) Upon receipt of a new or refill prescription, a pharmacist shall examine the patient's profile record either in a manual or electronic data processing system before dispensing the medication, to determine the possibility of a harmful drug interaction, reaction or misutilization of the prescription. Upon determining a harmful drug interaction, reaction or misutilization, the pharmacist shall take the appropriate action to avoid or minimize the problem, which shall, if necessary, include consultation with the patient and/or the [physician] **prescriber**.

SUBCHAPTER 8. INTERNSHIPS; EXTERNSHIPS; APPROVED TRAINING [PHARMACIES] **SITES**

13:39-8.1 Definitions

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

"Approved training [pharmacy] **site**" means [a pharmacy or pharmacy department] **a site** approved by the Board to provide accredited practical experience to pharmacy interns or externs.

. . .

"Pharmacy extern" means any person who is in the fifth or sixth college year (or third or fourth professional year) at an accredited school or college of pharmacy approved by the Board who is assigned to an approved training [pharmacy] **site** for the purpose of acquiring accredited practical experience under the supervision of the school or college at which he or she is enrolled.

. . .

13:39-8.2 Preceptor certification application; procedures; responsibilities

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

(e) The certified preceptor is charged with the responsibility for the following:

1.-2. (No change.)

3. Providing the pharmacy intern or extern with instruction and guidance in:

i.-vii. (No change.)

viii. Telephone procedure with [physicians] **prescribers** and patients;

ix. Consulting with [physicians] **prescribers** and patients; and

x. (No change.)

4. Arranging an interview with a physician **or other authorized prescriber** for the intern or extern; and

5. (No change.)

13:39-8.3 Training pharmacy approval

(a) To be approved as a training pharmacy for interns and externs, a pharmacy shall meet the following requirements:

1. (No change.)

2. Have a total number of prescriptions or medication orders filled annually, including renewals, of at least [10,000] **20,000**, with no more than one pharmacy intern or extern in training for each [10,000] **20,000** prescriptions filled in the pharmacy.

3.-4. (No change.)

13:39-8.4 Internship and externship practical experience

(a) The minimum accredited internship and externship practical experience requirement shall be the equivalent of 1,000 hours as follows:

1. One thousand hours for completion of a structured internship conducted after graduation from an accredited college of pharmacy and consisting of no less than 24 weeks supervised by a certified preceptor. Each week of practical experience shall consist of no less than [35] **20** hours and no more than 45 hours of actual service per week. If the intern is a foreign pharmacy graduate, he or she must have met all of the requirements of the National Association of Board of Pharmacy Foreign Pharmacy Graduate Examination Commission.

2. The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1 above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.

3. No credit shall be given for hours served as an intern prior to the Board's receipt of the written application.

Recodify existing 2. and 3. as **(b) and (c)** (No change in text.)

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

[(d) The preceptor and the pharmacy intern shall keep accurate records of the time spent by the pharmacy intern for credit toward the requirements of (a)1 above. The Board shall provide appropriate forms to be submitted to the Board for approval of postgraduate practical experience.]

[(e)]**(f)** The pharmacy college shall certify that the requirements of [(a)2] **(b)** above have been met. The Board shall provide appropriate forms for such certification.

13:39-8.5 Change in intern status

A pharmacy intern applying for registration as a pharmacist in the State of New Jersey shall notify the Board within 10 days of **any change in**:

1. [The beginning] **Beginning** of a term of internship;
2. [The termination] **Termination** of an internship;
3. [Change in number] **Number** of hours of employment;
4. [Change in the scheduled] **Scheduled** hours of employment;
5. [Change of preceptor] **Preceptor**; and/or
6. [Change in employing] **Employing** pharmacy.

[(b) Each certified preceptor shall file reports quarterly or whenever requested by the Board.]

13:39-8.7 Pharmacist intern log

(a) Pharmacist interns shall maintain a log for the internship period which meets the following requirements:

1. (No change.)

2. Entries shall be made in the log weekly and shall contain:

i. (No change.)

ii. A brief summary of all new prescription drug products (new generic entities only) dispensed, such as physical-chemical characteristics, dosage, forms, and usage; [and]

iii. One example of each of the following professional responsibilities:

(1) The use of the patient profile record requiring contact with patient, [physician] **prescriber** or hospital to resolve potential problems;

(2) Consultation with the patient[, physician or nurse] **or prescriber** concerning special instructions regarding the use of medications;

(3) [Consultation] **In a retail setting, consultation** with the patient concerning over the counter medication[.]; **and**

iv. The preceptor's report.

SUBCHAPTER 9. PHARMACEUTICAL SERVICES WITHIN HEALTH CARE FACILITIES

13:39-9.1 Definitions

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

"Authorized prescriber" means a **licensed** practitioner [licensed] **who is authorized by law** to write prescriptions **and/or medication orders** [and/or any other person legally authorized to write medication orders under the supervision of a licensed practitioner].

. . .

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"Health care facility" means:

A place where the sick and injured are cared for under a common roof such as hospitals [(proprietary and non-proprietary)]; long term care facilities; [homes for the aged]; and establishments similar to those delineated in N.J.S.A. 45:14-32.

. . .

"Medication order" means a written request for medication originated by [a licensed practitioner or] **an** authorized prescriber [or by a certified nurse midwife acting pursuant to and within the scope of the regulations of the Board of Medical Examiners, N.J.A.C. 13:35-2.12,] and intended for patient use in the health care facility, and not for use of the institution's employees or their dependents or outpatients of the facility's clinics. A valid medication order contains the date ordered, the patient's name and location within the facility, the name, dose, route, and frequency of administration of the medication, and any additional instructions. Computer-generated medication orders within an institutional setting, utilizing [a physician's] **the prescriber's** electronic signature **or password** will meet legal requirements for a [physician's] **prescriber's** original handwritten signature on medication orders. Computerized signatures **or passwords** will be accepted provided that the facility has adequate safeguards which assure the confidentiality of each electronic signature **or password** and which prohibit [the] **their** improper or unauthorized use [of computer generated signatures].

13:39-9.3 Control of institutional pharmaceutical services

(a) (No change.)

(b) If a health care facility does not have an institutional pharmacy on its premises **or chooses to utilize the services of a pharmacy outside the institution**, it may enter into an agreement with a pharmacy licensed by the Board. The pharmacist-in-charge of [the] **that** pharmacy and the designated pharmacist of the institution**, if appropriate,** shall direct, control, supervise and be responsible for the pharmaceutical services provided to the facility.

(c) The pharmacist-in-charge, with the cooperation of the Pharmacy and Therapeutics Committee, shall develop written policies and procedures as needed to provide [the] pharmaceutical services [of] **to** the facility. The written policies and procedures shall be available to the Board.

13:39-9.4 Pharmaceutical services

The pharmaceutical services shall be provided in accordance with accepted professional principles **and standards** and appropriate Federal, State and local laws. These services shall be responsive to the medication needs of the patient.

13:39-9.5 Pharmaceuticals

(a) The pharmacist-in-charge[, with the cooperation of the Pharmacy and Therapeutics Committee,] shall be responsible for determining the specifications for drugs and pharmaceutical preparations used in the treatment of patients of the facility as to quality, quantity and source of supply. An authorized purchasing agent and/or materials manager and/or pharmacy buyer of the facility may perform the actual procurement. In such a case, the purchase shall be approved by the pharmacist-in-charge or his or her designee, who shall be a pharmacist.

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

(d) The storage and dispensing of all Investigational New Drugs shall be a pharmaceutical service provided in cooperation with, and in support of the principal investigator. Under these parameters the dispensing of these drugs shall not be construed to be a violation of N.J.A.C. 13:39-[5.5]**5.4**.

(e) The pharmacist-in-charge[, in cooperation with the Pharmacy and Therapeutics Committee,] shall establish a system of control for all drugs dispensed for use in the drug therapy of patients of the facility. Inspections shall be conducted by a pharmacist of all medication areas located in the facility or any other service of the facility. These inspections shall be fully documented. Written inspection reports shall be prepared and signed by the inspecting pharmacist. Procedures for the review of these reports shall be developed and instituted by the pharmacist-in-charge and can be incorporated into the overall quality assurance program of the hospital.

13:39-9.6 Drug disbursement; written orders; outpatient prescriptions

[(a) The pharmacist-in-charge shall develop and implement policies and procedures for the following activities to ensure a safe and effective drug disbursement system with adequate controls:]

[1.]**(a)** The pharmacist shall review the prescriber's original order, a direct copy thereof, or an electro-mechanical facsimile before any initial dose of medication is dispensed, except as provided for in [(a)5 below] **N.J.A.C. 13:39-9.9**.

(b) Drugs not specifically limited as to time or number of doses when ordered shall be controlled by the automatic stop order procedure or other methods in accordance with written policies of the facility.

(c) Orders involving abbreviations and chemical symbols shall be carried out only if the abbreviations and symbols are included on a standard list that has been approved by the medical staff.

(d) When appropriate, the pharmacist shall make necessary clarifying entries into the patient medical record relative to drug use after consultation with the prescriber.

(e) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.

13:39-9.7 Drug disbursement; oral orders

[2. Physicians' oral orders for drugs may be given to another licensed practitioner, a pharmacist, a registered nurse or]

(a) A pharmacist shall receive oral orders only from an authorized prescriber. Such orders shall be immediately recorded and signed by the person receiving the order on the [physician's] **prescriber's** order sheet or into the electronic data processing system.

(b) Oral orders for Schedule II controlled substances shall be permitted only in the case of a bona fide emergency situation.

(c) Oral orders shall be countersigned by the prescriber as required by [the Code of Federal Regulations 20:3-]**20 CFR Part 3** §§405.1024(g)(6) and 405.1123(h).

13:39-9.8 Compounding

[3.]**(a)** Compounding of individual medication orders or prescriptions, the formulation of special drug needs and all bulk compounding (sterile or non-sterile) shall be done by or under the direct supervision of a pharmacist.

(b) Asceptic control procedures shall be maintained for the preparation of intravenous admixtures, the reconstitution of other sterile parenteral preparations, and the compounding and sterilization of other pharmaceutical products as needed.

[4.]**(c)** All prepackaging and labeling of drugs shall be done by or under the direct supervision of a pharmacist. Procedures shall be established for maintaining the integrity and manufacturer's control identity of prepackaged material. The prepackaging records shall be initialed by the supervising pharmacist.

13:39-9.9 Monitoring of patient drug therapy

[5.]**(a)** The pharmacist shall be responsible for monitoring drug therapy of patients in the facility. This shall include, but is not limited to, maintaining and reviewing the patient medication profile prior to the dispensing of medications.

(b) [When the pharmacy is closed and in] **In** instances involving the issuance and administration of STAT orders (orders requiring immediate attention) these drugs shall be documented on the patient's medication profile immediately after **dispensing.**

(c) When the pharmacy is closed, these drugs shall be documented on the patient's medication profile immediately after the pharmacy is reopened.

13:39-9.10 Medication not dispensed in finished form

[6.] The pharmacist shall be responsible for providing medication in a form that requires little or no further alterations, preparation, reconstitution, dilution or labeling by other licensed personnel. The pharmacist shall provide adequate instructions for those products that are not dispensed in finished form.

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13:39-9.11 Drug labeling

[i.]**(a)** Whenever drugs are added to intravenous solutions, supplementary labeling shall be affixed to the container indicating the names and amounts of all ingredients, the name and location of the patient, the date and time of expiration and the initials of the supervising or dispensing pharmacist.

[ii.]**(b)** Labeling of medications, other than intravenous solutions, shall be in conformance with written policies and procedures controlling the drug distribution system in use within the facility and in accord with current acceptable standards of pharmaceutical practice. Dispensing and labeling of outpatient prescriptions shall conform to N.J.S.A. 45:14-14.

[7. Written policies and procedures that govern the safe administration of drugs shall be developed by the Pharmacy and Therapeutics Committee.]

13:39-9.12 Use of patient's own medication

[8.]**(a)** No drugs shall be administered to a patient except those provided through the pharmacy. Any exception to this rule must be governed by written policies and procedures developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

[i.]**(b)** Although the use of patient's own medications may be warranted in certain situations, it should be discouraged as a general or routine practice. If a patient's previously acquired medication is to be used, a written order to this effect shall be signed and dated by the patient's physician. Such medications shall be given to the pharmacist for identification of contents and dispensing origin. Also, these medications shall be documented as part of the pharmacy's patient profile record system.

13:39-9.13 Investigational drugs; removal of outdated and recalled drugs; emergency drug supply; controlled dangerous substances

[ii.]**(a)** Investigational drugs shall be properly labeled and stored in the pharmacy until dispensed. Essential information on the investigational drug shall be maintained in the pharmacy. The investigational drug may be administered only after basic chemical, pharmaceutical and pharmacological information has been made available to all concerned and all the requirements of the [Federal] Food and Drug Administration and the facility are satisified.

[9.]**(b)** There shall be procedures established to assure the immediate and efficient removal of all outdated and recalled drugs from patient care areas and from the active stock of the pharmacy. The pharmacist-in-charge shall develop written policies and procedures governing the removal from the facility of outdated or recalled drugs.

[10.]**(c)** Limited quantities of emergency drugs shall be placed under controlled conditions in locations within the facility to assure immediate access by authorized licensed health care personnel for use in an emergency situation. Written policies and procedures for the maintenance, content, control and accountability of emergency drugs supplied and located throughout the facility shall be developed by the pharmacist-in-charge and approved by the Pharmacy and Therapeutics Committee.

[11.]**(d)** Controlled dangerous substances shall be purchased, received, stored, dispensed, administered, recorded and controlled in accordance with State and Federal laws and regulations. Written policies and procedures concerning control, use and accountability of controlled drugs shall be [maintained] **developed** by the pharmacist-in-charge.

13:39-9.14 Drug-dispensing devices

[12.]**(a)** Where the use of a drug-dispensing device is approved as an integral part of the drug distribution system by the facility, the pharmacist-in-charge and the Pharmacy and Therapeutics Committee, the device may be used when the pharmacist is not on duty (absent during either the day or night), provided that any absence of the pharmacist does not exceed 24 hours, or when the pharmacist is on duty, provided that proper review of the use of the drug-dispensing device can be ascertained. The drug-dispensing device shall be checked for accuracy and cleanliness every 24 hours by a pharmacist when on duty and so documented.

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

[iv.]**4.** A pharmacist shall check the record of all medications withdrawn from the drug-dispensing device against the order as written by the [licensed practitioner or] authorized prescriber. This check shall be performed and documented within 24 hours from the time of the original order and so noted on the pharmacy's patient medication profile.

Recodify existing v.-vi. as **5. and 6.** (No change in text.)

13:39-9.15 Disposal of unused medications

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

[(b) Prescriptions written for employees of the institution or their dependents, or for outpatients of the facility's clinic, shall conform to the prescription requirements of N.J.S.A. 45:14-14.]

13:39-[9.7]**9.16 Records and reports**

(a) (No change.)

(b) The institutional pharmacy shall maintain a patient profile record for each patient receiving drug therapy in accordance with N.J.A.C. 13:39-7.14 and as follows:

1. The profile records for inpatients shall contain: the date of each entry; the name; sex; age or birthdate; location of the patient; the drug name, dose, route of administration and quantity dispensed; the initials of the pharmacist performing the dispensing or supervising; the reported diagnosis [of the patient, and reported] allergies and chronic condition(s) of the patient.

2.-3. (No change.)

(c) (No change.)

(d) Records for receipt, use and final disposition of controlled dangerous substances shall be maintained by the institutional pharmacy in compliance with the requirements of Federal and State controlled dangerous substances laws and regulations. Nursing administration [of] and audit **records** for controlled dangerous substances [records] shall be available for review by the pharmacy.

(e) (No change.)

(f) The pharmacist-in-charge shall be responsible for maintaining a system by which all reported adverse drug reactions are recorded and reviewed by the Pharmacy and Therapeutics Committee. This information shall be made available to the [Federal] Food and Drug Administration or other appropriate agencies upon request.

13:39-[9.8]**9.17** (No change in text.)

13:39-[9.9]**9.18** After hours access to the institutional pharmacy

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

(c) A **registered** nurse may remove the following from the pharmacy stock of drugs:

1.-2. (No change.)

(d) A nurse shall leave in the pharmacy on a suitable form a record of any drugs removed showing the following:

1.-4. (No change.)

5. The patient's name and [station] **location**; and

6. (No change.)

(e)-(f) (No change.)

Recodify existing 13:39-9.10 through 9.18 as **9.18 through 9.26** (No change in text.)

SUBCHAPTER 11. NUCLEAR PHARMACIES

13:39-11.1 Definitions

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

. . .

"Radiopharmaceutical" means any substance defined as a drug in Section 201(g)(1) of the Federal Food, Drug and Cosmetic Act or in the FDA's Nuclear Pharmacy Guidelines and which exhibits spontaneous disintegration of unstable nuclei with the emission of nuclear particles or photons and includes any such drug which is intended to be made radioactive. This definition includes [non-

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radioactive reagent kits and] nuclide generators which are intended to be used in the preparation of any such substance but does not include drugs such as carbon-containing compounds or potassium-containing compounds or potassium-containing salts which contain trace quantities of naturally occurring radionuclides.

. . .

(a)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF PHYSICAL THERAPY

Notice of Request for Informal Public Input Authorized Practice by a Licensed Physical Therapist Assistant

N.J.A.C. 13:39A-2.3

Authorized By: Board of Physical Therapy, Stanley Mendelson, President.

Authority: N.J.S.A. 45:9-37.18.

Take notice that the Board of Physical Therapy is soliciting, pursuant to N.J.A.C. 1:30-3(a), comments with regard to draft proposed revisions to N.J.A.C. 13:39A-2.3(a).

To assist the Board in establishing standards which will promote and protect the public health and welfare, comments and suggestions concerning "direct supervision" of physical therapist assistants will be solicited at **an open public forum** to be held on Wednesday, May 4, 1994 at 10:00 A.M., at the following address:

Division of Consumer Affairs
Board of Physical Therapy
124 Halsey Street
7th Floor, Conference Room N-2
Newark, NJ 07102

Persons wishing to speak at this public forum are encouraged to provide written notice to the Board of Physical Therapy at P.O. Box 45014, NJ 07101 no later than April 29, 1994. Unscheduled speakers will have an opportunity to address the forum following the appearance of those persons who notified the Board in advance. The Board will limit the discussion to this topic.

This is a Notice of Request for Informal Public Input (see N.J.A.C. 1:30-3.2(a). Any rule proposal which may result concerning the subject of the public forum must still comply with the rulemaking provisions of the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law Rules for Agency Rulemaking, N.J.A.C. 1:30.

(b)

DIVISION OF CONSUMER AFFAIRS STATE BOARD OF SOCIAL WORK EXAMINERS

Licensure without Examination; Certification without Proof of Educational Criteria

Proposed Amendments: N.J.A.C. 13:44G-5.1, 5.2 and 5.3

Authorized By: Board of Social Work Examiners, Leslie Aronson, Executive Director.

Authority: N.J.S.A. 45:15BB-11(e).

Proposal Number: PRN 1994-242.

Submit written comments by May 18, 1994 to:

Leslie Aronson, Executive Director
State Board of Social Work Examiners
Post Office Box 45033
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Social Worker's Licensing Act of 1991, P.L. 1991, c.134 (N.J.S.A. 45:15BB-1 et seq.) ("Act") provides that persons who engaged in full time social work practice for specified periods of time during the five years prior to the effective date of the Act (May 6, 1991) are eligible to be licensed without examination (licensed social worker and licensed clinical social worker) or certified without having earned a baccalaureate degree in social work (certified social worker). As licensure and certification of social workers will commence in May 1994, three years after the Act became effective, several commenters have implored the Board of Social Work Examiners to extend the five year window (see notice of adoption of N.J.A.C. 13:44G-1 through 5, 7 and 8 published in the April 4, 1994 New Jersey Register). The Board sought and received advice from the Attorney General that would allow it to consider experience acquired between May 6, 1991 (effective date of the Act) and April 4, 1994 (effective date of the rules implementing the Act) for purposes of grandparenting applicants for licensure and certification. The Board has found that to exclude the experience acquired during this period would create the anomolous result of excluding qualified practitioners with recent experience.

The Board now proposes to amend N.J.A.C. 13:44G-5 in accordance with the comments received and the Attorney General's legal advice. The amendment to the regulation will permit an applicant for licensure or certification to demonstrate the three years of full time clinical social work experience (licensed clinical social worker), three years full time social work experience (licensed social worker), or two years of full time social work experience (certified social worker) during any consecutive five year period during the period May 6, 1986 through April 4, 1994. The Board by regulation has defined these full time requirements as hourly equivalents: three years full time clinical social work practice is a minimum of 2,880 hours of direct client contact or clinical supervision; three years full time social work practice is a minimum of 4,800 hours of social work experience; and two years of full time social work practice is a minimum of 3,200 hours of social work experience. N.J.A.C. 13:44G-5.1(b), 5.2(b) and 5.3(b). These hourly equivalents were determined by the Board using the five year time period established in the Act. This proposed amendment retains the hourly equivalents in a consecutive five year period at any time during the period May 6, 1986 through April 14, 1994, thus ensuring recent and concentrated social work experience.

Social Impact

The proposed amendments will have a positive social impact. The grandparenting of persons who have recent social work experience increases consumer choice and will ensure that competent practitioners are available to provide a myriad of services to the public in this State. The amendments will also impact favorably on agencies and long term care facilities that will continue to employ individuals as certified social workers who might not have otherwise qualified under the Act.

Economic Impact

The economic impact of the proposed amendments for applicants for licensure is negligible as they may choose to be grandparented and pay an additional processing fee or take a Board approved examination, which also requires payment of a fee. Applicants for certification under these rules as amended, who would not otherwise have been eligible for certification, will enjoy a positive economic benefit accompanying their certification as social workers. Further the agencies who employ those individuals will benefit from retention of trained staff. There are no direct costs to the public.

Regulatory Flexibility Analysis

If, for purposes of the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., individuals engaged in the practice of social work are deemed "small business" within the meaning of the statute, the following statements apply:

The proposed amendments anticipate that an applicant will document educational and experiential requirements. Costs associated with submission of transcripts (LSW and LCSW) or supervisor forms (LCSW only) and affidavits attesting to social work experience are minimal. Since the proposed amendments are intended to safeguard public health, safety and welfare, they must apply to all Board licenses, without differentiation as to size of practice or business.

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

13:44G-5.1 Licensure without examination; clinical social worker

(a) Until November 1, 1994, an individual who has not completed the board-approved examination may qualify for licensure as a

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licensed clinical social worker upon submission of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired at least three years of full time clinical social work experience during [the] **any consecutive** five-year period **during the period** [beginning] May 6, 1986 **through** [and ending May 5, 1991] **April 4, 1994**;

4.-5. (No change.)

(b) (No change.)

13:44G-5.2 Licensure without examination; licensed social worker

(a) Until November 1, 1994, an individual who has not completed the Board-approved examination may qualify for licensure as a social worker upon submission to the Board of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired three years of full time social work experience during [the] **any consecutive** five-year period **during the period** May 6, 1986 [to May 5, 1991] **through April 4, 1994**; and

4. (No change.)

(b) (No change.)

13:44G-5.3 Certification without baccalaureate degree in social work

(a) Until November 1, 1994, an individual who has not received a baccalaureate degree in social work may qualify for certification as a social worker upon submission to the Board of the following, on forms provided by the Board:

1.-2. (No change.)

3. An affidavit indicating that the applicant has acquired two years of full-time social work experience during [the] **any consecutive** five year period **during the period** May 6, 1986 [to May 5, 1991] **through April 4, 1994**.

(b) (No change.)

(a)

DIVISION OF CONSUMER AFFAIRS

Home Improvement Practices
Security Protection Devices

Proposed Amendment: N.J.A.C. 13:45A-16.1

Authorized By: Emma N. Byrne, Director, Division of Consumer Affairs.

Authority: N.J.S.A. 56:8-4.

Proposal Number: PRN 1994-243.

Submit written comments by May 18, 1994 to:
Emma N. Byrne, Director
Division of Consumer Affairs
Post Office Box 45027
Newark, New Jersey 07101

The agency proposal follows:

Summary

The Division of Consumer Affairs is proposing an amendment to N.J.A.C. 13:45A-16.1, which defines certain key words and terms in the subchapter on Home Improvement Practices. The amendment in question appears under the definition of "home improvement," and expands on that definition so that it would now include security protection devices as among the additions that constitute home improvement. The amendment is offered in response to the growing use of security protection devices and the concomitant potential for consumer fraud in this area, specific examples of which have already been brought to the Division's attention regarding the misrepresentation of equipment, disproportionate fees and other forms of abuse.

Social Impact

Given the increased need, real or perceived, for security protection devices that are now often regarded not only as home improvements but almost as necessities, the proposed amendment is likely to be highly beneficial to consumers who are contemplating or else have already purchased a security protection device. The specific inclusion of these devices under the protection of Home Improvement Practices promises to improve the State of New Jersey's ability to prosecute unlawful practices under the Consumer Fraud Act, N.J.S.A. 56-8.1 et seq.

Economic Impact

The economic impact of the proposed amendment promises to be entirely beneficial to consumers, who might otherwise have less legal recourse in addressing the fraudulent behavior of certain unscrupulous individuals who are occasionally involved in the business of promoting, selling or providing follow-up services in the home security industry. The amendment offers an opportunity to strengthen the regulatory requirements that guard consumers against egregious and unfair fees, cost overruns and other similar problems.

This amendment has no economic impact at all on companies or other business entities engaged in promoting, selling or providing follow-up services in the home security industry. The amendment merely puts these entities on notice that security protection devices fall within the definition of "home improvement," and that any entity engaged in consumer fraud in the sale or installation of such devices will be subject to penalties under the Consumer Fraud Act.

Regulatory Flexibility Analysis

The proposed amendment, which specifically includes home security devices under the protection of the Home Improvement Practices rules, will apply to any and all of the companies or other business entities engaged in promoting, selling or providing follow-up services in the home security industry. No estimate is available as to the number of companies or other business entities that will be affected by this amendment, nor as to how many would come within the definition of small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

No reporting or recordkeeping is required, except to the extent that these companies or other business entities will want to ensure that their records can substantiate the fees and procedures that were implemented should a consumer complaint be forthcoming. The amendment requires no initial capital costs or the retention of professional services or any other costs of compliance. The only compliance requirement is to uphold business standards that will not be found in violation of Home Improvement Practices.

The Division of Consumer Affairs considers the amendment to be necessary for the protection of the public health, safety and welfare. For that reason, the proposed amendment must be uniformly applied to all companies or other business entities in the home security industry without differentiation as to the volume of business generated in this field by a given entity.

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

13:45A-16.1 Definitions

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

"Home improvement" means the remodeling, altering, painting, repairing, or modernizing of residential or non-commercial property or the making of additions thereto, and includes, but is not limited to, the construction, installation, replacement, improvement, or repair of driveways, sidewalks, swimming pools, terraces, patios, landscaping, fences, porches, windows, doors, cabinets, kitchens, bathrooms, garages, basements and basement waterproofing, fire protection devices, **security protection devices,** central heating and air-conditioning equipment, water softeners, heaters, and purifiers, solar heating or water systems, insulation installation, aluminum siding, wall-to-wall carpeting or attached or inlaid floor coverings, and other changes, repairs, or improvements made in or on, attached to or forming a part of the residential or noncommercial property, but does not include the construction of a new residence. The term extends to the conversion of existing commercial structures into residential or non-commercial property.

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TRANSPORTATION

(a)

DIVISION OF TRANSPORTATION ASSISTANCE OFFICE OF REGULATORY AFFAIRS

Autobuses

Proposed Readoption: N.J.A.C. 16:53

Authorized By: W. Dennis Keck, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 48:2-12, 48:4-2.1a and 52:14D-1.

Proposal Number: PRN 1994-220.

Submit comments by May 18, 1994 to:
Thomas P. Thatcher
Administrative Practice Officer
Attention: N.J.A.C. 16:53 Rule Docket
Department of Transportation
1035 Parkway Avenue
CN-600
Trenton, NJ 08625

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:53, Autobuses, expires on July 17, 1994. N.J.A.C. 16:53 has been reviewed by staff of the Department's Office of Regulatory Affairs, and found to be adequate, reasonable, understandable and necessary for the purpose for which it was promulgated, and is, therefore, proposed for readoption without change.

The rules proposed for readoption pertain to mandated specifications for autobuses and standards and procedures for autobus inspection as well as, establish numerous specific vehicle standards for the construction and the physical operating condition of autobuses, vans operated as autobuses, sedan-type autobuses, and other forms of special equipment used in autobus service.

N.J.A.C. 16:53 also establishes equipment specifications to be met by autobus builders and operators. Inspection procedures for autobuses are also established under which the Department and bus operators respectively monitor and maintain compliance with the chapter's equipment specifications. The autobus specifications provide for vehicle operating safety, passenger safety, and the comfort and convenience of passengers.

Although the Department is proposing to readopt N.J.A.C. 16:53 without change, the Department is conducting an ongoing technical analysis of specifications, inspection requirements, and maintenance requirements, with the possibility that changes may be proposed at some time in the future. No date for the conclusion of this technical analysis study has been set.

In addition to the proposed readoption, the Department of Transportation initiated a pre-proposal for rulemaking at 26 N.J.R. 1317(b) on all of its autobus rules. The pre-proposal is intended to provide a forum to receive public and industry comments and suggestions regarding State rules on autobuses and for hire passenger transportation. The scope of the pre-proposal specifically includes N.J.A.C. 16:53, Autobuses. The other Department autobus regulations are N.J.A.C. 16:51, Practice and Procedures Before the Office of Regulatory Affairs, and N.J.A.C. 16:53D, Zone of Rate Freedom. The pre-proposal identifies many specific issues upon which the Department is requesting comment. Persons interested in any aspect of autobus, mass transit, or for hire transportation are encouraged to review the pre-proposal.

The Department believes that a complete reassessment of its bus rules will identify areas where the rules could be made less burdensome for the industry and better serve the public. In the event that a general reform of the Department's autobus program is warranted, resultant rule changes will be required of all three major autobus rule chapters. Therefore, as a part of the proposed readoption of N.J.A.C. 16:53, it is the intent of the Department to set the chapter expiration date as February 14, 1997. This is the same expiration date as N.J.A.C. 16:51, Practices and Procedures Before the Office of Regulatory Affairs. Specifying an expiration date which coincides with other autobus rule expirations (N.J.A.C. 16:51 and 16:53D) will facilitate the coordination of future autobus rule amendments.

The public comment period for the pre-proposal closes on June 4, 1994. Any person with a comment on N.J.A.C. 16:53, Autobuses, may write either to the attention of this docket or provide their comments to the pre-proposal docket.

The following outlines the contents of each subchapter:

N.J.A.C. 16:53-1 establishes specifications for vans (formerly van-type autobuses) including methods of maintenance and inspection.

N.J.A.C. 16:53-2 provides special equipment for vehicles used to transport passengers in wheelchairs.

N.J.A.C. 16:53-3 outlines the specifications for autobuses.

N.J.A.C. 16:53-4 prescribes modified interiors for autobuses used for charter or special bus operations.

N.J.A.C. 16:53-5 outlines the requirements for certificates of inspection.

N.J.A.C. 16:53-6 outlines specifications for small buses.

N.J.A.C. 16:53-7 outlines specifications for special autobus type recreational vehicles.

N.J.A.C. 16:53-8 prescribes specifications for sedan-type autobuses.

N.J.A.C. 16:53-9 prescribes the requirement for public liability insurance.

N.J.A.C. 16:53-10 outlines the fees for autobus inspections.

Social Impact

N.J.A.C. 16:53 establishes equipment standards for the construction, maintenance, inspection and continued operation of autobuses. A system of prescribed inspections assures that autobus operators remain in compliance with the standards. The standards and inspections are specifically intended to address the safety of the traveling public as well as the comfort and convenience of the public while traveling on public transportation and other services in which autobuses are used. Maintaining safety, comfort and convenience for passengers is critical when providing any mass transportation service. Diligence by service providers and oversight agencies is needed for each of these elements. Without such diligence, public and mass transportation provided by autobuses would not be an attractive transportation option. The inspection provisions of the rules provide a system of checks and balances wherein the safety and well-being of passengers, including the special need groups such as the handicapped, are a top priority. The inspection system mandates scheduled, as well as the roadside spot inspections, and ensures that the safety standards imposed by the chapter are met. Such a system is absolutely necessary to assure the safety of the public. The provisions of the chapter help to provide for a safe public transit system throughout the State.

Economic Impact

The Department will incur direct and indirect costs for personnel and equipment required to perform the periodic inspection of vehicles. Additionally, autobus operators are required to meet the specification and inspection requirements of this chapter and to pay fees for inspections. Vehicle specification compliance sometimes requires that autobus operators must modify a "stock" van, sedan, small bus or other vehicle so that it conforms with the standards in the rules. The selection of equipment is wholly an operator choice. Experience shows that operators will select equipment that allows them to comply with Department requirements at the least cost. Any added expenses involved in bringing the vehicles into compliance is absorbed by the owner of the vehicle, but such expenses are usually passed on to the passengers. Although the rules may impose direct costs upon some operators, concern for the public safety need outweighs most routine economic issues. Ongoing maintenance is usually required to keep an autobus in compliance with the prescribed specifications. Ongoing maintenance will minimize deferred maintenance, and therefore generally result in lower long term maintenance and operating costs for a vehicle.

Regulatory Flexibility Analysis

The proposed readoption of these rules would result in the continuation of autobus safety inspections and of various specific equipment standards pertaining to autobuses. There are approximately 500 businesses that operate autobuses in New Jersey. More than 90 percent of these businesses would qualify as small businesses, as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules proposed for readoption do impose some recordkeeping and other compliance requirements on those small businesses which operate autobuses. The rules do not impose recordkeeping or other compliance requirements upon businesses not involved in autobus transportation.

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Meeting vehicle equipment specifications and satisfaction of inspection and insurance certification requirements are the compliance requirements imposed by this chapter of rules. Requirements of this chapter are similar to those imposed by other States and the political subdivisions of other States which regulate autobuses. In any part of the United States, it would be highly unusual for any business to be able to utilize an autobus in for-hire service without said autobus being subject to minimum intrastate and/or interstate regulatory standards for equipment, vehicle inspection, and insurance. The Department believes that the specifications and requirements of the rule are wholly consistent with the national norms for such rules and that the operator cost for complying with the provisions of this chapter is not substantially different with operator costs encountered in other States. Specific equipment specifications for various classes of autobuses are established in subchapters 1, 2, 3, 4, 6, 7 and 8. Vehicle identification, certification of inspection or certification of compliance requirements are set forth in subchapters 1, 3, 5, 6, 7, 8, 9 and 10.

It is necessary for any business operating an autobus to maintain records regarding the vehicle's equipment, maintenance and insurance status. The rules proposed for readoption establish uniform methods for demonstrating compliance with equipment, maintenance and inspection, an autobus operator is required to possess a certificate of compliance or a certificate of inspection; proof of insurance is also required. Such certificates and proofs would qualify as a recordkeeping requirement, as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The rules proposed for readoption make no distinction between large versus small businesses. From the standpoint of passenger safety, it would be unwise to allow business size to result in differing thresholds of equipment quality and safety. In respect to the complexity of recordkeeping, the Department believes that the current rule, now proposed for readoption, imposes only minimal burden upon businesses. From a practical standpoint, the principal recordkeeping requirement of the rule is possession of the applicable certificates of inspection or compliance, and proof of insurance. This is not much different from the required possession of proofs of insurance and inspection applicable to ordinary motor vehicles. This chapter of rules does not impose a vehicle registration requirement; vehicle registration is required under separate Division of Motor Vehicles statutes and rules. The Department does, however, consider proper vehicle registration to be a precondition for operation of any motor vehicle on public roads.

Compliance with provisions of the rules does not require the use of traditional professional services (that is, licensed engineers, accountants or attorneys), but does require mechanics and technicians with specialized autobus inspection and maintenance skills. The driver of an autobus (in most cases) is also required to possess a class B Commercial Drivers License (CDL) with other license endorsements, as applicable. The CDL requirement was imposed by the United States Congress under Federal law and is implemented within the State by the Division of Motor Vehicles, Department of Law and Public Safety.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:53.

(a)

DIVISION OF TRANSPORTATION ASSISTANCE

Airport Safety Improvement Aid

Proposed Readoption with Amendments: N.J.A.C. 16:56

Authorized By: W. Dennis Keck, Acting Commissioner, Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 6:1-29, 6:1-44 and the "Airport Safety Act of 1983," P.L. 1983, c.264, effective July 11, 1983 (N.J.S.A. 6:1-89 et seq.)

Proposal Number: PRN 1994-222.

Submit comments by May 18, 1994 to:
Administrative Practice Officer
New Jersey Department of Transportation
Bureau of Policy and Legislative Analysis
1035 Parkway Avenue
CN 600
Trenton, New Jersey 08625

The agency proposal follows:

Summary

Under the "sunset" and other provisions of Executive Order No. 66(1978), N.J.A.C. 16:56, Airport Safety Improvement Aid, will expire on August 7, 1994. The Office of Aviation has reviewed these rules and has determined them to be necessary, reasonable and proper for the purpose of which they were originally promulgated. Pursuant to N.J.A.C. 1:30-4.4, the Department is proposing readoption of this chapter with amendments.

These rules were originally proposed to implement provisions and purposes of the Airport Safety Act of 1983, N.J.S.A. 6:1-89 et seq., approved July 11, 1983. The Act recognizes that the State has an interest in the safety and viability of its air transportation resources. The Legislature mandated the creation of an Airport Safety Fund, which is a fund created by revenues derived from aviation fuel taxes and fees, and which is disbursed back to the aviation industry for the improvement of air safety and the air transportation infrastructure.

The provisions of this chapter make available State grants to assist in matching Federal funds, grants or loans to publicly owned and privately owned unrestricted public use airports for safety projects, and grants or loans to publicly owned airports or counties or municipalities to acquire airports and lands or rights of lands needed for airports. Airport Safety Funds may also be used for other aviation related purposes as determined by the Commissioner. Safeguards are incorporated in the rules to insure the protection of monies disbursed from the fund.

The rules are divided into subchapters. The following is a summary of the subchapters and proposed amendments.

N.J.A.C. 16:56-1 provides definitions for the words and terms used within the Chapter. The definitions were amended to reflect deletion of terms not required within the rules, the addition of terms to reflect the name change from Division of Aeronautics to the Office of Aviation, and the clarification of terms used.

N.J.A.C. 16:56-2 outlines the purpose and general policy concerning the rules. No change has been made to this subchapter.

N.J.A.C. 16:56-3 outlines the airports and projects which meet the eligibility requirements of the Act. The subchapter has been amended to remove duplication of airport names, to eliminate redundancies in wording, and to clarify the intent of the Act as to the types of projects eligible for funding. The eligibility of airports to receive funding has not been changed.

N.J.A.C. 16:56-4 provides the classification of State Aid. No change has been made to this subchapter.

N.J.A.C. 16:56-5 establishes the procedure to be followed in applying for the receipt of State grants for matching Federal grants. The subchapter has been amended to reflect administrative changes in the name and address and in form numbers.

N.J.A.C. 16:56-6 provides guidelines in the application process for receipt of State Airport Safety Improvement loans. The subchapter has been amended to reflect administrative changes in the name and address and in form numbers. In addition, it eliminates duplicated plan requirements which are already addressed in N.J.A.C. 16:54.

N.J.A.C. 16:56-7 provides guidelines to be followed in applying for Airport Safety Improvement grants. The subchapter has been amended to reflect administrative changes in the name and address and in form numbers. In addition, it directs applicants to use N.J.A.C. 16:54 for plan requirements rather than duplicate the text in two rules.

N.J.A.C. 16:56-8 provides guidelines to be followed in applying for emergency or special State Airport Safety Aid. The subchapter has been amended to delete the requirement of the $50.00 application fee and update the references within the Chapter.

N.J.A.C. 16:56-9 establishes the deadlines for application for State Aid. The subchapter has been amended to be consistent with Federal guidelines which use a five-year Capital Improvement Program for considering projects for funding. Similarly, the dates have been amended to annual submissions to track the Federal guidelines. In addition, the deadline date for submission of projects was changed to the first Monday in February.

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N.J.A.C. 16:56-10 outlines the selection process and criteria used in the granting of funds for Airport Safety Improvement projects. The subchapter has been amended to be consistent with Federal guidelines which use a five-year Capital Improvement Program for considering projects for funding. Similarly, the dates have been amended to annual submissions to track the Federal guidelines.

N.J.A.C. 16:56-11 states the Commissioner's power in the selection of airport aid projects. No change has been made to this subchapter.

N.J.A.C. 16:56-12 provides for the establishment of standards, methods, techniques, designs, and dimensional criteria acceptable in State funded airport aid projects. No change has been made to this subchapter.

N.J.A.C. 16:56-13 authorizes the Commissioner to specify special conditions or performance criteria other than those outlined in the Chapter on a site specific or project specific basis. No change has been made to this subchapter.

N.J.A.C. 16:56-14 provides the criteria and standards in audit and recordkeeping requirements for State funded projects. The subchapter was amended to clarify the use of the term sponsor consistently throughout the subchapter to eliminate confusion.

N.J.A.C. 16:56-15 establishes the authority to inspect airport aid projects. Minor technical changes have been made to clarify the subchapter.

N.J.A.C. 16:56-16 outlines the performance requirements for persons receiving State Airport Safety Improvement Aid. The subchapter was amended to clarify that any modification to the terms of a contract or agreement must be done in writing between the Department and a legally designated representative of the sponsor.

N.J.A.C. 16:56-17 establishes the payment procedure of funds under the airport safety improvement program. The subchapter was amended to clarify the use of the term sponsor consistently throughout the subchapter to eliminate confusion.

N.J.A.C. 16:56-18 establishes liability and penalties for those failing to meet the conditions or performance criteria under an airport aid project. The subchapter was amended to clarify the use of the term sponsor consistently throughout the subchapter to eliminate confusion. The subsection pertaining to license action was eliminated because it duplicates matter already covered in N.J.A.C. 16:54.

N.J.A.C. 16:56-19 provides the listing of the fuels subject to taxation. No change was made to this subchapter.

Social Impact

The proposed readoption with amendments will continue the improvement of safety at and around New Jersey's aeronautical facilities. Communities surrounding aeronautical facilities, as well as pilots and business in general, will benefit from these improvements.

Economic Impact

The proposed readoption with amendments will have a highly favorable economic impact in that the rules will enhance air safety and qualitative improvements to air transportation facilities. The enhancements strengthen the ability of the State to attract and retain businesses. Business depends on intermodal connections and aviation is an important element in the transportation fabric. Direct employment and residual employment will result as a consequence of the projects stimulated by this rule. In addition, the fund is used as a catalyst to attract Federal funding for aviation improvements providing a multi-year economic stimulus. The application fees for emergency aid and special aid have been eliminated at N.J.A.C. 16:56-8.1(b) and (d) to bring these areas into conformance with all other grant applications which do not have application fees. No revenues will be lost since the fees were a reimbursable part of the grant.

Regulatory Flexibility Analysis

The proposed readoption with amendments provide for a State aid program to aeronautical facilities for safety improvement. Some of the eligible facilities may be small businesses as that term is defined under the Regulatory Flexibility Act, N.J.S.A 52:14B-16 et seq. The proposed readoption will impose reporting requirements in the aid application process, recordkeeping requirements and various compliance requirements for applicants for and recipients of aid. The costs of compliance with these requirements will vary for each applicant (recipient) based upon the entity's internal resources and the nature of the project for which aid is sought. In order to comply with the intent of the Airport Safety Act of 1983; to allow for the most effective use of funds available as aid; and pursuant to the mandates of the Single Audit Policy, which requires an annual audit of all grant recipients, the Department is unable to provide differing requirements based upon business size. The proposed amendments should reduce the administrative burden on the sponsor, enhance planning, stabilize program funding, and promote long range planning.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 16:56.

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

16:56-1.1 Definitions

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

["Aeronautical Facility" means, any landing strip, airport, seaplane base or heliport. The facility includes all property, paving, appliances, structures, runways, taxiways, aprons, hangars, or safety equipment associated with the aeronautical activities conducted on the premises and property.

"Airport" or "Unrestricted Public Use Airport" means any aeronautical facility for the takeoff and landing of aircraft either publicly or privately owned that does not have restrictive covenants on operational use by the general public for reasons other than safety.]

"Airport Safety Fund" means the special fund established by the "Airport Safety Act of 1983" to help finance improvements to air safety and travel.

"Applicant" [or "Local Sponsor"] means any person seeking [or in receipt of] funds from the Airport Safety Fund.

["Clear Zone" (Minimum standard) means a runway approach corridor that is 305 meters (1,000 feet) in length, 76 meters (250 feet) in width at the inner surface, and 137 meters (450 feet) in width at the outer surface. It establishes a 20/1 upward slope from the ground from its inner surface and is free of penetrating obstacles. The inner surface is collocated with the runway threshold for unpaved runways, or 61 meters (200 feet) before the runway threshold for paved runways.]

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

"Department" means the Department of Transportation.

"Director" means the Director of the [Division] **Office** of [Aeronautics] **Aviation**.

["Division"] **"Office"** means the [Division] **Office** of [Aeronautics] **Aviation**.

"Person" means any corporation, company, association, society, firm, partnership, or joint stock company, as well as any individual, the State, and all political subdivisions of the State or any agencies or instrumentalities thereof.

["Project Concept" means a proposal for a project to improve air safety or the air transportation infrastructure made to any person by the Commissioner. All proposals are considered a matter of public record and may not be treated in a preferential manner at time of formal application.

"Rightful, fair, equal and uniform use" means the establishment and maintenance of policies and practices by an airport which insures allowance of unrestricted public use of an airport by the general public. This does not exempt, however, vendors of aeronautical services from the requirement to comply with the legitimate rules, regulations, contractual requirements, or other terms of use or access applicable to an airport.]

"Sponsor" means any person in receipt of funds from the Airport Safety Fund.

"State Aid" means funds dispersed from the Airport Safety Fund for the purposes of this chapter.

"Unrestricted public use airport" means any area of land, water, or both, either publicly or privately owned, which is licensed for the landing or takeoff of aircraft and open to the public for aeronautical operations that does not have restrictive covenant on operational use by the general public for reasons other than safety.

"Waiver" means relief from application requirements of this rule or temporary relief from other provisions of this rule for a specified time period.

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16:56-3.1 Eligible facilities

(a) Airports eligible for aid under this chapter are [those general aviation airports in New Jersey which are in operation and open to the general public without restriction as determined by the Division] **unrestricted public use airports which are not international airports by classification or service characteristics.** [Under "The Airport Safety Act of 1983" P.L. 1983 c.264, Newark International Airport located in the cities of Newark and Elizabeth, and Atlantic City Airport located in Egg Harbor, Hamilton and Galloway Townships are not general aviation airports under the provisions of the act and hence not eligible for State airport aid or liable under the taxation provisions of the act.]

(b) [The following projects] **Projects** [are] eligible for consideration for funding under [certain specific] **the** provisions of this chapter **include, but are not limited to, the following**:

1.-17. (No change.)

(c) (No change.)

[(d) For the purposes of this chapter, the term "airports" may be used so as to mean any facility for the take-off and landing of aircraft, open to the general public. This includes public use heliports.]

16:56-5.1 Application for receipt of State grants for matching Federal funds

(a) Persons seeking [state] **State** grants for matching funds may request application and agreement forms by writing to the following address:

[Airport Safety Improvement Aid] **Office of Aviation**
N.J. Department of Transportation
1035 Parkway Avenue
CN [600] **610**
Trenton, New Jersey 08625-**0610**
[Re: Grants for Matching Federal Funds]

(b) (No change.)

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration[" form DA-9A, including all required attachments] **," as required under N.J.A.C. 16:54.**

2.-6. (No change.)

(d) (No change.)

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be granted only after **a** written request to the Director [of Aeronautics] and formal written response to the applicant by the Director prior to submission of the completed application to the [Division] **Office**.

16:56-6.1 Application for receipt of State Airport Safety Improvement Loans

(a) Persons seeking State Airport Safety Improvement loans may request application and agreement forms by writing to the following address:

[Airport Safety Improvement Aid] **Office of Aviation**
N.J. Department of Transportation
1035 Parkway Avenue
CN [600] **610**
Trenton, New Jersey 08625-**0610**
[Re: Airport Safety Improvement Loans]

(b) (No change.)

(c) For construction or installation project(s), the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration[" Form DA-9A, including all required attachments] **, as required under N.J.A.C. 16:54.**

[2. A scaled drawing certified as accurate and bearing the raised seal of a New Jersey registered land surveyor, professional planner, or professional engineer. The drawing shall have the following features:

i. Scale 1 inch = 400 feet;

ii. Show true north;

iii. Latitude and longitude;

iv. Actual dimensional length, width, or runways(s) or landing area(s);

v. Magnetic alignment or runway(s) or landing area(s);

vi. Locations(s) use and height(s) of structures on or proposed on the facility;

vii. Location(s) use and height(s) above grade of obstruction(s) in the area contiguous to the proposed facility within at least 3000 feet from the end of each runway or landing area and at least 1500 feet from each side of the centerline of the runway(s) or landing area(s).

viii. Air traffic pattern superimposed on the drawing;

ix. Facility property lines and municipal boundaries;

x. Surface design location, and layout of the proposed improvement or alteration.]

Recodify existing 3.-9. as **2.-8.** (No change in text.)

(d) (No change.)

(e) The Commissioner may waive the requirement[s] to submit specific maps, reports, or plans normally required for an aid application. The waivers may be [considered] **granted** only after a written request to the Director [of Aeronautics] and formal written response to the [application] **applicant** by the Director prior to submission of the completed application **to** the [Division] **Office**.

16:56-7.1 Application for receipt of State Airport Safety Improvement Grants

(a) Persons seeking State Airport Safety Improvement Grants may request application and agreement forms by writing to the following address:

[Airport Safety Improvement Aid] **Office of Aviation**
N.J. Department of Transportation
1035 Parkway Avenue
CN [600] **610**
Trenton, New Jersey 08625-**0610**
[Re: Airport Safety Improvement Grants]

(b) (No change.)

(c) For construction or installation projects, the applicant shall further provide:

1. An "Application for New Aeronautical Facility License or Alteration[" Form DA-9A, including all required attachments] **," as required under N.J.A.C. 16:54.**

[2. A scaled drawing certified as accurate and bearing the raised seal of a New Jersey registered land surveyor, professional planner or professional engineer. The drawing shall have the following minimum features:

i. Scale 1 inch = 400 feet;

ii. Show true north;

iii. Latitude and longitude;

iv. Actual dimensional length, width, or runway(s) or landing area(s);

v. Magnetic alignment of runway(s) or landing area(s);

vi. Locations(s) use and height(s) of structure on or proposed on the facility;

vii. Location(s) use and height(s) above grade of obstruction(s) in the area contiguous to the proposed facility within at least 3,000 feet from the end of each runway or landing area and at least 500 feet from each side of the centerline of the runway(s) on landing area(s).

viii. Air traffic pattern superimposed on the drawing;

ix. Facility property lines and municipal boundaries;

x. Surface design location, and layout of the proposed improvement and/or alteration(s).]

Recodify existing 3.-9. as **2.-8.** (No change in text.)

(d) (No change.)

(e) The Commissioner may waive the requirement to submit specific maps, reports, or plans normally required for an aid application. The waivers may be [considered] **granted** only after a written request to the Director [of Aeronautics] and formal written response to the applicant by the Director prior to submission of the completed application to the [Division] **Office**.

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16:56-8.1 Application for emergency or special State airport safety aid

(a) In the event that an applicant is unable to meet the [application] deadlines of **N.J.A.C. 16:56-9.1 and/or the process of N.J.A.C. 16:56-13.1** [of this chapter], or requests [early] **alternate** consideration of an application, an applicant may petition the Commissioner for emergency aid under the provisions of this Chapter [and section]. An application filed for emergency aid may be processed in an expedited manner, but within the normal application procedures [processes] to the greatest degree possible.

[(b) An applicant petitioning the Commissioner for emergency aid shall comply with all the provisions of this chapter and submit with the application, a non-refundable fee of $50.00. Any application for aid filed as an emergency application, but not selected for funding shall remain as an active application for a period of nine months.]

Recodify existing (c) as **(b)** (No change in text.)

[(d) An applicant petitioning the Commissioner for Special Aid shall comply with all applicable provisions of this chapter and any other orders made by the Commissioner under any potentially non-standard application. An applicant shall submit with the application a non-refundable fee of $50.00. An application for aid filed as a special application but not selected for funding shall remain as an active application for a period of nine months.]

Recodify existing (e)-(f) as **(c)-(d)** (No change in text.)

16:56-9.1 Deadlines for applications for State aid

(a) Applications for State aid are considered on **an** [quarterly] **annual** basis, **based on information received under the Five-Year Capital Improvement Program (CIP)**. From the completed [applications] **CIP's** on file for any given [calendar quarter] **year**, projects will be selected for State [aid] **Aid** participation. [Applications on file, but incomplete in any way, may be excluded from consideration for State funding in that calendar quarter.]

(b) The [deadlines] **deadline** for [applications for State aid for a calendar quarter are] **submission of projects under the Five-Year Capital Improvement Program is** the close of [the] business [day] on **the 1st Monday of February.** [the following dates:

1st Quarter—The 2nd Monday of January.

2nd Quarter—The 2nd Monday of April.

3rd Quarter—The 2nd Monday of July.

4th Quarter—The 2nd Monday of October.

(c) Should the deadline day of any calendar quarter for State aid occur on a legal holiday when State offices are closed, the deadline for applications shall be the close of the next business day.

(d) The Commissioner retains the right to consider applications for State aid which, although may be technically incomplete on the application deadline, may be made complete in a timely fashion. The decision to consider any application which may be determined incomplete at the application deadline time is made solely at the discretion of the Commissioner.]

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

16:56-10.1 Airport aid project selection process and criteria considered

(a) Following the closing date for the receipt of [applications for State aid,] **Capital Improvement Program (CIP) information,** all [new applications for State aid] **proposed projects** will be reviewed by the Department to determine [if those applications are complete] **their eligibility for funding**. [Applications] **Proposed projects** found to be [complete] **eligible** may be considered for funding. If, following the initial determination [that an application is complete,] **of eligibility,** it is found that additional information is necessary, the applicant shall provide that additional information so as to allow further consideration of the [application] **project**.

[(b) Following the closing date for receipt of applications, all applications filed within the past nine calendar months and found complete will be collected and considered for funding for that calendar quarter.]

[(c)]**(b)** The Director [of Aeronautics] shall review all [applications] **Capital Improvement Program projects** to be considered for funding and evaluate those proposed projects in respect to applicable criteria for project funding, available State resources, current priorities for development of the air transport infrastructure, and significant environmental or economic factors.

[(d)]**(c)** Within 60 days of the closing date for [applications] **Capital Improvement Program projects**, the Director shall forward to the Commissioner the list of projects considered for funding that [calendar quarter,] **year,** and the list of those projects recommended by the Director to be funded from all projects considered. The recommendations of the Director are to be provided exclusively to the Commissioner for review. The Director may not otherwise release recommendations as they do not constitute a public [commitment] **commitment** for Department action.

Recodify existing [(e)-(f)] as **(d)-(e)**.

[(g)]**(f)** An applicant [for aid having received from the the Commissioner] **who receives** an offer for State aid has 14 days to respond [by registered mail] to indicate acceptance of the offer for State [aid] **Aid**. Acceptance of an offer for State [aid] **Aid** is nonbinding on an applicant [unitl the completion of final contracts under the aid between the State and applicant. A lack of acceptance of State aid by an applicant within the 14 day response period] **until a grant agreement has been signed and accepted by the State and the sponsor. Failure to respond** will be considered as rejection of the State [aid] **Aid** offer [and terminates the application].

(g) The applicant shall have 60 days after accepting an offer for State Aid to submit a completed application. Applicants may request an extension of this deadline from the Director. Extensions may be granted if the applicant demonstrates that additional time is required to prepare and submit a complete application based on project complexity or pending administrative approvals. The Office will review the application for completeness. Grant agreements will be prepared by the Office for complete applications received for approved projects.

(h) In considering **Capital Improvement Program projects or** any application for aid, the Director and Commissioner shall give weight and consideration to the following criteria:

1.-9. (No change.)

(i) In consideration of the various criteria applicable to the review of [an] **a Capital Improvement Program projects or** application, the Commissioner reserves the right to evaluate the matrix of criteria in a manner which may take into account unique or special factors at any airport. Factors making an airport unique from any others may include the character of the market it serves, the type and use of based aircraft, the current or future role of the airport, nearby facilities offering similar services, or any other significant elements contributing to the character or utilization of the facility. To take into consideration special or unique factors, the Commissioner may evaluate criteria for individual applications giving differing weights to applicable criteria on a case-by-case basis.

(j) In evaluating **Capital Improvement Program projects or** applications for State [aid] **Aid**, the Commissioner may establish Department internal review procedures, review committees, or any other administrative mechanisms sufficient to handle in an expeditious manner the responsibilities of the Department in these programs. The Commissioner is required, however, to maintain an ongoing record of the specific review mechanisms used for the consideration of airport aid applications and to make available to applicants an outline of the current applicable internal review procedures.

16:56-14.1 Audit and recordkeeping requirements for State funded projects

(a) Provisions for audit of grants to [privately owned public use airports, counties or municipalities] **sponsors** are as follows:

1. The [county/municipality or privately owned public use airport entity] **sponsor** shall comply with the State of New Jersey Single Audit Policy defined by the Department of Treasury, Office of Management and Budget and the Single Audit Act of 1984 (Federal OMB Circular A-128).

2. A Single Audit of the [county/municipality or privately-owned public use airport entity] **sponsor** shall be performed annually [beginning with the fiscal year ended December 31, 1986] by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards in conformity with State audit policy.

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3. Department [of Transportation] agreements governed by this chapter shall be subjected to audit compliance tests in accordance with requirements delineated in the Department of Treasury, OMB publication entitled "New Jersey Grants Management Information System Manual".

[4. Expenditures prior to January 1, 1986 made under the terms of the county/municipality or privately-owned public use airport grant agreement(s) with the Department of Transportation and not previously audited by an independent auditor or public accountant who meets the independence standards specified in generally accepted government auditing standards may be audited in context of the Single Audit performed for the fiscal year ended December 31, 1986.]

[5.]**4.** Audit costs incurred by [the county/municipality or privately-owned public use airport] **sponsors** to comply with this subchapter are not reimbursable.

(b) General provisions for audit and recordkeeping requirements are as follows;

1. Each [recipient of aid] **sponsor** shall keep records as the Commissioner may prescribe, including records which fully disclose the amount and the disposition [by the recipient] of the proceeds of the aid, the total cost of the plan or program in connection with which the grant is given or used, and the amount and nature of that portion of the cost of the plan or program supplied by other sources, and records as will facilitate effective audit.

2. The Commissioner or any duly authorized representatives, shall have access to any books, documents, papers, and records [of the recipient] that are pertinent to aid received under this chapter, for the purpose of audit and examination. This includes progress audits at any time during the project.

3. To fulfill statutory and regulatory requirements each sponsor [is required to] **shall** establish and maintain an adequate accounting record for each individual project, which will allow the State to determine the allowability of costs incurred for the project.

4.-6. (No change.)

(c) (No change.)

16:56-15.1 Inspection of State funded projects

(a) The Commissioner, [Division and] **Director, or** any **other** [State agency or] person designated or authorized by the Commissioner has the absolute right to inspect, without notice, the sites, proposed sites, records, [and any] construction or materials [relating] **related** to an airport aid project.

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

16:56-16.1 Performance requirements for persons receiving State airport safety improvement aid

(a) All persons receiving aid under the provisions of this chapter are bound to comply with all criteria, provisions, and terms of contract and/or agreement under the granting of that aid. Modification to the terms of any contract and/or agreement can be made only after the [person in receipt of aid,] **sponsor,** or their legally [assigned] **designated** representative or successor, and the Department [of Transportation] **agree to the modification in writing.**

(b) The Department [of Transportation] may allow, by formal contract of reassignment, the transfer of the rights and obligations assumed by one person under an aid grant or loan to another person. An example [of an instance would be, where] **is when** an airport is sold and **continues to** [operates] **operate** as an airport under a new owner. The Department may agree by contract to [reassignment of] **reassign** the aid agreement to the new owner. The Department is not, however, obliged in any way to seek reassignment of any agreement or obligation.

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

16:56-17.1 Payment procedures

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

(c) [A person] **Sponsors** having received State [aid] **Aid** [under the purposes of this chapter,] shall disburse those monies and make payments to outside vendors or services and materials properly invoiced under the applicable project within 10 calendar days.

(d) **Sponsors receiving** State [grants] **Aid** for matching Federal funds[:] **shall** [1. Forward] **forward** to the Department, on the forms provided by the Department, requests for matching funds along with signed completed copies of Federal forms requesting reimbursement for airport aid projects as forwarded to the Federal Aviation Administration. [2.] When the Federal Aviation Administration releases payments to the sponsor, the State may thereafter forward to the [local] sponsor its share of project participation [to the local sponsor] as provided for in its contractual assurances with the [local] sponsor.

(e) **Sponsors receiving** State [Airport Safety Improvement Grants:] **Aid shall** [1. Forward] **forward** to the Department, on the forms provided by the Department, the request for disbursement of State [Airport Safety Improvement Grant monies] **Aid.** [Attached to the request the] **The sponsor** [person requesting funds] shall attach valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. In nonconstruction or installation projects, the [person requesting funds] **sponsor** shall attach valid copies of applicable vendor invoices for payments under a project. These invoices shall be certified by the [local] sponsor as accurate and properly invoicing the resources used in the project. [2.] Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the [local project] sponsor as provided for in its contractual assurances with the [local project] sponsor.

(f) **Sponsors receiving** State Airport Safety Improvement Loans (disbursement)[:] **shall** [1. Forward] **forward** to the Department, on the forms provided by the Department, the request for disbursement of State [Airport Safety Improvement] **Aid** Loan monies. [Attached to this] **This** request [the person requesting funds] shall [forward] **include** valid copies of applicable vendor invoices for payment under the project in the manner prescribed by the Department. In the case of construction or installation projects at an airport, these invoices shall be certified by the project's engineer as accurate and properly invoicing the "as built" resources used in the project. Requests forwarded to the Department for monies shall be in increments of not less than 25 percent of the authorized State loan participation in the project. [2.] Upon receipt of all local certifications under a project, the State may thereafter forward payments for its share of a project to the [local project] sponsor as provided for in its contractual assurances [with the local project sponsor].

(g) **Sponsors who have received** State Airport Safety Improvement Loans [(Repayment to the State) 1. A local sponsor having received a State Airport Safety Improvement Loan] shall repay that loan to the State in the manner provided for in its contractual agreements [with the State]. [2.] Unless otherwise provided for in [its] **the** [contractual relationship with the State], **contract** Airport [Safety Improvement] **Aid** Loan repayments to the State shall be due on a quarterly basis on the First day of the months of March, June, September and December.

16:56-18.1 Liability and penalties

(a) Any failure by a [person, local] sponsor[, or recipient of aid] to meet the conditions or performance criteria under an airport aid project may result in the withdrawal of [airport aid] **State Aid,** disqualification from current or future aid consideration, or the declaration [of a recipient of aid to be] **that a sponsor is** in default of the terms of an airport aid contract(s).

(b) If a [recipient of aid] **sponsor** fails to continue to comply with [the provisions of aid] **its contractual assurances** before the **end of the** predetermined life of the financially assisted improvements, as the life is determined by the Commissioner, the State shall be immediately reimbursed for the unused portion of the predetermined life and, if not fully reimbursed, the claim shall be a first lien on the airport property to the extent of the unpaid balance. [Additionally, the State may seek judgements to seize, attach, or place liens on the assets, or accounts of a recipient of aid declared in default.]

(c) (No change.)

[(d) Any license issued under the provisions of Title 6 of the New Jersey Statutes may be modified, suspended, or revoked as a result

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of established violations of any of the provisions of this Chapter, and may further subject the violator to the penalty provisions of Title 6.]

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

General Policies and Procedures
Payment of Taxes by Electronic Funds Transfer
Failure to Comply
Proposed Amendment: N.J.A.C. 18:2-3.9

Authorized By: Robert K. Thompson, Acting Director, Division of Taxation.

Authority: N.J.S.A. 54:50-1.

Proposal Number: PRN 1994-213.

Submit comments by May 18, 1994 to:
Nicholas Catalano
Chief, Tax Services
Division of Taxation
50 Barrack Street
CN 269
Trenton, NJ 08646-0269

The agency proposal follows:

Summary

The proposed amendment will provide examples of situations where a taxpayer, who is subject to EFT requirements, remits by check which is not honored within three business days following the date of receipt. The amendment provides that funds represented by a check drawn on a bank seized by bank regulators are considered received when honored, rather than tendered, even though there were sufficient funds at the time of tender.

Social Impact

The proposed amendment will provide taxpayers and their representatives, accountants, or lawyers with an understanding through the addition of examples of the relationship of payment and receipt in the context of N.J.A.C. 18:2-3.9(a). This is important to promote taxpayer compliance and reduce, if not eliminate, taxpayer inquiry should a penalty result from the submission of a check which is not honored.

Economic Impact

The proposed amendment furthers the intent of P.L.1992, c.140; that is, to allow the Division of Taxation to immediately invest a tax payment into an interest earning account on the payment's due date. This intent would not be achieved if a payment were made by check, rather than EFT, since the check would take some time to be processed through the check clearing system.

Regulatory Flexibility Analysis

This proposed amendment may impose compliance requirements on all taxpayers subject to electronic funds transfer, whether or not they are small businesses as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The amendment implements the requirements of P.L.1992, c.140, which mandates electronic funds transfer based on prior tax liability. For tax payments due between March 1, 1993 and February 28, 1994, the prior year liability must be at least $200,000 effectively eliminating most small businesses from electronic funds transfer in the short term. Exemption for small businesses other than that provided by the statutory thresholds is not authorized by the statute.

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

18:2-3.9 Failure to comply

(a) If a taxpayer is required to remit a tax payment by EFT and the taxpayer pays (with sufficient funds) by check, draft or similar instrument, payment shall be deemed to have been made on the third business day after the date the Director receives the check, draft or similiar paper instrument.

Example 1: Funds represented by a check on a bank seized by bank regulators are considered received when honored, rather than tendered, even though there were sufficient funds at the time of tender.

Example 2: A check drawn on sufficient funds is considered received when honored, rather than tendered, if honoring the check is delayed due to computer failure (other than a failure of the Division's computers).

(b) (No change.)

OTHER AGENCIES

(b)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation Fund
Proposed Amendments: N.J.A.C. 19:31-8.2 and 8.3

Authorized By: New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.

Authority: N.J.S.A. 34:1B et seq., specifically N.J.S.A. 34:1B-5(l).

Proposal Number: PRN 1994-223.

Submit comments by May 18, 1994 to:
Richard L. Timmons, Assistant Deputy Director
New Jersey Economic Development Authority
CN 990
Trenton, NJ 08625

The agency proposal follows:

Summary

On September 20, 1993, the New Jersey Economic Development Authority ("NJEDA") published proposed rules for the Hazardous Discharge Site Remediation Fund in the New Jersey Register at 25 N.J.R. 4468(a). Those rules are being published for adoption in this issue of the New Jersey Register, with the definition of "innocent party" and N.J.A.C. 19:31-8.3(b) and (f) not adopted but reserved pending adoption of these proposed amendments.

These proposed amendments clarify the definition of "innocent party," and change N.J.A.C. 19:31-8.3(b) and (f) from those proposed at 25 N.J.R. 4468(a) to limit the eligibility for financial assistance of a person engaged in a voluntary remediation to the extent that person is incapable of establishing a remediation funding source.

Social Impact

The social impact of the Hazardous Discharge Site Remediation Fund is to provide financial resources to remediate property upon which there has been or is suspected to be discharge of a hazardous substance or hazardous waste. The remediation of these sites is intended to protect the public health, safety and the environment. Funding will be available to persons participating in the voluntary cleanup program, to local governmental entities and innocent parties, who are not able to secure the funding through conventional means. Therefore the remediation activities will be able to proceed much sooner than may otherwise be possible. The social impact of the rules for the Hazardous Discharge Site Remediation Fund is not affected by these amendments.

Economic Impact

A person involved in a voluntary remediation may be affected by these amendments. To the extent that such person is able to establish a remediation funding source, the interest cost of borrowing from another lender may be higher than if financial assistance was provided by the Hazardous Discharge Site Remediation Fund.

Municipal governmental entities and innocent parties may receive an economic benefit from these amendments in that if they receive a grant from the Hazardous Discharge Site Remediation Fund to remediate a site, and at a later date dispose of the property, which will most likely have increased in value due to the remediation, they will not have to repay the grant.

Regulatory Flexibility Analysis

Small businesses as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may be affected by these amendments if they are involved in a voluntary remediation or are an innocent party as

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defined in these rules. While not directly establishing compliance requirements, the proposed amendments do concern eligibility for financial assistance. No lesser requirements or exemptions are provided for these small businesses in that the amendments to the rules are to conform it to statutory requirements. These requirements will be the same for all businesses, including small businesses as defined in the Regulatory Flexibility Act.

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

19:31-8.2 Definitions

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

"Innocent party" [(Reserved)] **means a person who:**

1. Acquired the property prior to December 31, 1983;

2. Who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by that person, or by any person that had permission to use the site from the person applying for an innocent party grant; and

3. Who can certify that he or any person that had permission to use the site from the person applying for the innocent party grant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

. . .

19:31-8.3 Eligibility

(a) (No change.)

(b) [Reserved] **No person, other than a municipal governmental entity shall be eligible for Financial Assistance from the Fund to the extent that person is capable of establishing a remediation funding source.**

(c)-(e) (No change.)

(f) [(Reserved)] **An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities.**

(a)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

New Jersey Boat Industry Loan Guarantee Fund

Proposed New Rules: N.J.A.C. 19:31-9

Authorized By: New Jersey Economic Development Authority, Richard L. Timmons, Assistant Deputy Director.

Authority: N.J.S.A. 34:1B et seq., specifically 34:1B-5(l).

Proposal Number: PRN 1994-224.

Submit comments by May 18, 1994 to:
Richard L. Timmons, Assistant Deputy Director
New Jersey Economic Development Authority
CN 990
Trenton, NJ 08625

The agency proposal follows:

Summary

The proposed new rules at N.J.A.C. 19:31-9 describe the New Jersey Boat Industry Loan Guarantee Fund ("Fund") within the New Jersey Economic Development Authority ("Authority"). This Fund has been established, pursuant to P.L. 1993, c.358 ("Act"), in order to provide guarantees of loans and lines of credit made by banks to New Jersey manufacturers and distributors of luxury boats.

A company seeking a loan guarantee from the Authority will be required to submit certain information to the Authority to determine eligibility for a guarantee from the Fund and information to enable the Authority to make a determination of the company's ability to repay the loan which is guaranteed by the Fund.

The rules identify the standards of eligibility, the application requirements and the review and approval process conducted by the Authority.

Social Impact

The social impact of the Fund is to provide a means, for a sector of the economy which has been severely impacted not only by economic conditions over the past several years, but also by a 10 percent Federal excise tax on their product, to obtain financing which would not otherwise be available. The repeal of the Federal excise tax on luxury boats has been an encouragement to the industry. This program will provide the financial means for these companies to increase production above the current levels and increase employment in this industry.

Economic Impact

The availability of guarantees for loans and lines of credit to manufacturers and distributors of luxury boats will enable them to increase production and thereby increase employment. This will provide economic benefits to those individuals who will have new job opportunities. There will also be indirect economic benefits to the municipalities in which these companies are located due to the increased level of economic activity in the municipality.

Regulatory Flexibility Analysis

Small businesses, as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., may apply for loan guarantees from the Fund. In doing so, they would incur administrative costs necessary to prepare and file an application with the Authority, which costs would include the cost of any accounting services which may be needed to provide the financial statements, current interim statements and projections required. These administrative costs will vary depending on the applicant's staff resources and the charges for the accounting services, if any are used. Applicants are also required to pay the fees established under N.J.A.C. 19:30-6.

No lesser requirements or exemptions are provided for small businesses under these rules. The requirements of these rules are in line with those which a financial lending institution would impose, and are necessary to provide the minimum lending standards needed for the Authority to properly maintain the financial viability of the Fund.

Full text of the proposed new rules follows:

SUBCHAPTER 9. NEW JERSEY BOAT INDUSTRY LOAN GUARANTEE FUND

19:31-9.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement P.L. 1993, c.358. This Act established the New Jersey Boat Industry Loan Guarantee Fund, a special, revolving fund for the purpose of providing loan guarantees to manufacturers, assemblers and distributors of luxury boats in New Jersey.

19:31-9.2 Definitions

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

"Act" means P.L. 1993, c.358.

"Authority" means the New Jersey Economic Development Authority.

"Boat" means a vessel or watercraft, other than a personal watercraft or sea plane on the water, used or capable of being used as a means of transportation on water, which may be temporarily or permanently equipped with machinery for propulsion.

"Boat manufacturer or distributor" means an independently owned and operated business which:

1. Manufactures, assembles or distributes boats in the State, the retail value of which is at least $100,000 each, or manufactures or provides marine products in the State for such boats; and

2. Prior to January 1, 1991, manufactured, assembled or distributed boats in the State the retail value of which was at least $100,000 each, or manufactured or provided marine products in the State for such boats.

"Cost" means the expenses incurred in connection with the operation of a boat manufacturer or distributor, which can be reasonably expected to be recovered through the financing of the operation, and which shall include, but not be limited to, the costs of planning,

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fixed assets, materials, working capital, floor plan funding and any other costs determined by the Authority to be necessary to carry out the purposes of the Act.

"Fixed assets" means any real property, interests in real property, plant, equipment, and other assets commonly accepted as fixed assets.

"Marine products" means those parts and materials utilized in the design, construction and maintenance of boats, which shall include, but not be limited to, parts and materials used in boat engines, generators, transmissions, exhaust systems and electrical, plumbing, heating and cooling systems, except that marine products shall not include any oil or oil-based products or materials.

"Members" means the members of the Authority.

"Participating bank" or "bank" means a State- or Federally-chartered bank, savings bank or savings and loan association or a bank organized under the laws of a foreign government, deemed eligible by the Authority for participation in the program.

"Program" means the New Jersey Boat Industry Loan Guarantee Program established by the Authority purusant to the Act.

"Working capital" means those liquid capital assets other than fixed assets.

"State" means the State of New Jersey.

19:31-9.3 Eligibility

(a) Boat manufacturers and distributors are eligible for guarantees of loans and lines of credit made by participating banks to pay for eligible costs provided that:

1. The Authority, after consultation with the Office of Labor Statistics in the Division of Planning and Research of the Department of Labor, shall determine that the loan for which a guarantee is requested, is expected to result in a net increase in the number of jobs for residents of the State subsequent to August 10, 1993; and

2. The Authority is satisfied that the boat manufacturer or distributor has the ability, reputation and credit-worthiness necessary to reach a market and generate sales.

(b) To be eligible for the program, applications must be received within one year of the effective date of these rules.

19:31-9.4 Terms of guarantees

(a) Guarantees by the Fund shall be for a term of not more than five years.

(b) Borrowings against lines of credit which are guaranteed by the Fund must be evidenced by purchase orders and the line of credit must be paid down upon receipt of payment by the borrower of the invoices represented by the applicable purchase orders.

19:31-9.5 Amount of guarantees

(a) Guarantees by the Fund may be, generally, for the lesser of $1.5 million or 90 percent of the principal amount of the loan or line of credit.

(b) In no event will the fund provide guarantees in an amount in excess of $35,000 per new or maintained job which can reasonably result from the loan or line of credit financing which the Fund will guarantee.

19:31-9.6 Application procedures

(a) The prospective applicant should consult with the Authority to determine if the project is eligible for consideration.

(b) To apply, a completed Application for Financial Assistance ("Application") concerning the project must be submitted to the Authority for review, together with the Application fee.

(c) A completed Application includes:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds;

4. Annual financial statements for the three years ending immediately prior to January 1, 1991, including the balance sheets, operating statements and reconciliation of source and application of funds;

5. A current interim statement, if the most recent annual financial statement is more than six months old;

6. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

7. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

8. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number, and contact person;

9. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

10. A formal commitment letter from the participating bank providing the loan, including all terms, conditions, collateral, and a statement of the requirement for the Authority guarantee.

(d) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the Application.

(e) Applications are processed through several layers of staff review, and may then be recommended for consideration and official actions of the Members at a public meeting. The applicant has no right to have its Application presented to the Members.

19:31-9.7 Evaluation process

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business, which may take place prior to the Application as part of the meeting to determine eligibility;

2. An analysis of historic and projected financial statements and a comparison to industry peers (primary emphasis will be placed on the record of profitability and financial stability prior to January 1, 1991 and projections of recovered profitability and financial stability over the term of the guarantee);

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination is made as to the merits of the request, the likelihood of repayment, the adequacy of the collateral available to secure the requested financing and the number of jobs to be created.

(c) If a positive determination is made, the requested financing is presented to the Members for approval.

19:31-9.8 Approval process

(a) Only the Members can approve a loan guarantee.

(b) When the Members approve a request, the minutes of the meeting at which such approval occurs are submitted to the Governor.

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(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter is issued to the applicant and the bank which will be providing the loan.

1. The commitment letter incorporates the bank's commitment, and contains all terms, conditions and collateral required by the Authority.

2. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's guarantee. The life insurance must name the Authority as beneficiary and collateral assignee.

3. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) When the commitment letter has been accepted by the applicant and the bank, and returned to the Authority, a list of closing instructions is mailed to the attorneys for the applicant and bank.

(f) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing is scheduled and the funds are made available to the applicant.

19:31-9.10 Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-9.11 Fees

Fees for loan guarantees will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

(a)

CASINO CONTROL COMMISSION

Applications
Commitments to Reserve a Casino License
Hearings
Renewal of Casino License
Casino Licensees
Application Requirements
Renewal of Casino License

Proposed New Rules: N.J.A.C. 19:43-5 and 11
Proposed Repeal: N.J.A.C. 19:42-3.6

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70b, 70h, 70l, 80, 81, 82, 83, 84, 85, 86, 87, 88 and 98.

Proposal Number: PRN 1994-225.

Submit written comments by May 18, 1994 to:
Mary S. LaMantia, Senior Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

A new chapter of rules, N.J.A.C. 19:43, was promulgated in December 1992 by the Casino Control Commission (Commission) to provide comprehensive rules concerning standards, procedures and requirements for casino licensees and applicants for a casino license.

A proposed new subchapter, N.J.A.C. 19:43-5, outlines the process of applying for an initial casino license. Proposed N.J.A.C. 19:43-5.1 addresses the applicant's responsibility to provide all information required to establish its qualification under the Casino Control Act ("the Act"), N.J.S.A. 5:12-1 et seq. Proposed N.J.A.C. 19:43-5.2 discusses the duration of a casino license pursuant to the Act. Proposed N.J.A.C. 19:43-5.3 sets forth the content of an application for a casino license, including the requisite disclosure forms, fees and filings regarding the facilities and affirmative action and equal opportunity standards of the Act. Proposed N.J.A.C. 19:43-5.4 discusses the filing of a petition for waiver of qualification pursuant to N.J.S.A. 5:12-85d(1) or f. Proposed N.J.A.C. 19:43-5.5 references the applicable statutory and regulatory provisions concerning a request for a statement of compliance or a commitment to reserve a casino license pursuant to N.J.S.A. 5:12-81. Finally, proposed N.J.A.C. 19:43-5.6 addresses prehearings and hearings regarding issuance of a casino license, including the content of prehearing orders.

Similarly, the proposed new rules in subchapter 11 set forth standards and procedures for the renewal of a casino license. Proposed N.J.A.C. 19:43-11.1 discusses the prerequisites for renewal of a license, including timely filing of an application. Proposed N.J.A.C. 19:43-11.2 outlines the contents of a renewal application. Proposed N.J.A.C. 19:43-11.3 references proposed rule N.J.A.C. 19:43-5.5 regarding petitions for a waiver of qualification. Finally, proposed N.J.A.C. 19:43-11.4 references the applicable statutory and regulatory standards for the conduct of prehearing conferences and hearings concerning the casino license renewal.

N.J.A.C. 19:42-3.6 is superseded by these proposed renewal rules and is therefore proposed for repeal.

It should be noted that the proposal herein references several recent proposals concerning persons required to be qualified (Proposed amendments to N.J.A.C. 19:43-2.6 and 2.7 and proposed new rule N.J.A.C. 19:43-2.7A, see 26 N.J.R. 782(a)); Business Entity Disclosure Forms (proposed new rules N.J.A.C. 19:41-5.6 and 5.6A, see 26 N.J.R. 1437(a)); confidentiality (proposed amendments to N.J.A.C. 19:40-4, see 26 N.J.R. 1434(a)); and statements of compliance (proposed amendments to N.J.A.C. 19:41-6, see 26 N.J.R. 1319(a)).

Social Impact

In that the proposed new rules reflect existing standards and procedures, codification should have no impact on the process of applying for a casino license or renewal of a casino license for either the applicant or the regulatory agencies. However, all parties should benefit by the existence of comprehensive regulatory standards that codify current standards and procedures. Moreover, the substantive requirements reflected in these standards are significant in their contribution to the strict regulation of casino gaming and the persons involved therein, consistent with the goals of the Act. N.J.S.A. 5:12-1b.

Economic Impact

Since the proposed new rules codify current practice, no additional economic impact should result beyond that which is already incurred. The process of applying for an initial casino license, or renewal thereof, involves costs for both the applicant and the regulatory agencies. Each applicant and person required to be qualified must provide all information required by the Casino Control Act, N.J.S.A. 5:12-1 et seq., in order for a casino license to be issued by the Commission. Time and expense are necessarily involved in compiling such information and completing the requisite disclosure forms, and in preparing for the casino licensing hearings. Each applicant for a casino license is also responsible for initial and renewal license fees as set forth in N.J.A.C. 19:41-9.4. Both regulatory agencies devote considerable resources to the investigation of such applicants and their qualifiers, and to the casino licensing hearing process. Nonetheless, the casino licensing process is essential to the strict regulation of all persons, locations, practices and associations related to the operation of licensed casinos.

Regulatory Flexibility Analysis

For the most part, the proposed new rules affect casino licensees and applicants for a casino license. None of those presently holding a casino license qualify as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., nor are future applicants for a casino license likely to fall within that category. It is possible that certain of the entities required to establish their qualification by virtue of their relationship with a casino license applicant will qualify as a small business. Such entities will incur time and expense in compiling information, completing the requisite disclosure forms and filing the submissions with the Commission.

It would not be possible to exempt small businesses from these rules, or to differentiate between entry qualifiers based upon size. Adequate disclosure must be required of all enterprises, without regard to size, to facilitate adequate investigation and ensure strict regulation of all persons, locations, practices and associations related to the operation of licensed casinos.

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

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19:42-3.6 [Renewal of casino license] **(Reserved)**

[(a) Subject to the power of the Commission to deny, refuse to renew, revoke or suspend licenses, the Commission shall renew for the next succeeding license period any casino license in force upon:

1. A proper application for renewal filed with the Commission no later than 90 days prior to the expiration of the current license; and

2. Payment on or before the date of expiration of the current casino license of all license fees and taxes as required by law and the regulations of the Commission.

(b) The Commission shall act upon any application for renewal of a casino license no later than 30 days prior to the date of expiration of the current casino license.

(c) Upon renewal of any casino license the Commission shall issue an appropriate renewal certificate or validating device or sticker which shall be attached to each casino license.]

SUBCHAPTER 5. APPLICATION REQUIREMENTS [(RESERVED)]

19:43-5.1 General information requirements

No casino license shall be issued or renewed by the Commission unless the applicant, and each person required to be qualified as part of the application, provides all information, documentation and assurances required by N.J.S.A. 5:12-80, 82, 83, 84, 85, 86 and 87 or as otherwise may be required to establish its qualification pursuant to the Act and the rules of the Commission.

19:43-5.2 Duration of license; conditions

(a) In accordance with N.J.S.A. 5:12-87e and 88, a casino license shall be issued by the Commission for an initial period of one year, and shall be renewable thereafter for a period of up to one year for each of the first two renewal terms, and up to two years for successive renewal terms thereafter.

(b) A casino license may be issued or renewed subject to such conditions, restrictions, limitations or covenants as the Commission, in its discretion, deems necessary.

19:43-5.3 Contents of application for initial casino license

(a) An application for the initial issuance of a casino license shall include, without limitation, the following information, which shall be completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the application materials:

1. A Business Entity Disclosure Form-Corporate (BED-Corporate) as set forth in N.J.A.C. 19:41-5.6 or Business Entity Disclosure Form-Partnership (BED-Partnership) as set forth in N.J.A.C. 19:41-5.6A for each of the following:

i. The casino license applicant;

ii. Each holding company or intermediary company of the applicant required to be qualified pursuant to N.J.S.A. 5:12-85b, d or e; and

iii. Each entity required to be qualified pursuant to N.J.S.A. 5:12-85c;

2. The appropriate Personal History Disclosure Form (PHDF) for the following:

i. For each natural person required to be qualified pursuant to N.J.S.A. 5:12-85c or e by virtue of his or her relationship to the applicant, the PHDF required by N.J.A.C. 19:43-2.6; and

ii. For each natural person required to be qualified pursuant to N.J.S.A. 5:12-85c and d by virtue of his or her relationship to a holding company or intermediary company of the applicant, the PHDF required by N.J.A.C. 19:43-2.7;

3. Such information and documentation as may be required by the Commission or the Division to establish the qualification of any person required to be qualified as a financial source pursuant to N.J.S.A. 5:12-84b;

4. Such information and documentation as may be requested by the Commission or the Division to demonstrate the financial stability, integrity and responsibility of the casino license applicant pursuant to N.J.S.A. 5:12-84a and N.J.A.C. 19:43-4, the integrity of its financial sources and adequacy of its financial resources pursuant to N.J.S.A. 5:12-84b, and sufficient business ability and the likelihood of successful and efficient casino operations pursuant to N.J.S.A. 5:12-84d;

5. Such information and documentation as may be required by the Commission or the Division to establish compliance with N.J.S.A. 5:12-83, 84e and all other relevant facilities requirements of the Act and the rules of the Commission including, without limitation, the following:

i. A description of the proposed casino hotel site, including site plans, total acreage, total square footage, frontages and elevation;

ii. A description of the proposed casino hotel, including floor plans; and the total number of qualifying and non-qualifying sleeping units pursuant to N.J.S.A. 5:12-27 and 83, the number of sleeping units on each floor, the square footage of each unit and the average size of all units;

iii. A description of the casino room and casino simulcasting facility, including floor plans;

iv. A description of each proposed casino hotel alcoholic beverage location, including type, location and square footage;

v. The construction program, including estimated construction time and anticipated date of opening; the status of all required governmental and regulatory approvals and any conditions thereto; the project budget; and the architect, general contractor, construction manager and primary subcontractors, environmental consultant and interior designer; and

vi. An impact statement and related material which establishes to the satisfaction of the Commission the suitability of the casino and related facilities in accordance with the standards set forth in N.J.S.A. 5:12-84e;

6. The information required in N.J.A.C. 19:53-2.4, 2.5, 2.6, 4.6 and 6.7 and such other information, documentation and assurances as may be requested by the Commission or the Division to ensure compliance with the equal employment and business opportunity and affirmative action requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53;

7. The initial license fee required by N.J.A.C. 19:41-9.4; and

8. Any other information or documentation which the Commission or the Division may deem material to the qualification of the applicant, or of any person required to be licensed or qualified, pursuant to the Act and the rules of the Commission.

(b) The applicant shall file an original and three copies of each Personal History Disclosure Form required by (a) above, and an original and four copies of all other information required by (a) above, with the Commission in accordance with N.J.A.C. 19:40-3.5(b).

19:43-5.4 Petitions for waiver

(a) Upon the petition of a casino license applicant, the Commission, with the concurrence of the Director, may waive compliance with the qualification requirements of N.J.S.A. 5:12-85d for an officer, director, lender, underwriter, agent, employee or security holder of a publicly traded holding or intermediary company of a casino licensee pursuant to N.J.S.A. 5:12-85d(1), or for an institutional investor thereof pursuant to N.J.S.A. 5:12-85f. Such petition shall be in writing and shall include the following:

1. A description of all outstanding securities of the applicant and its holding companies and intermediary companies and a list of all holders thereof; and

2. A certification in support of the petition, including the following:

i. Compliance with the criteria for such waivers as set forth in N.J.S.A. 5:12-85d(1) or f; and

ii. A statement that the holding company will immediately notify the Commission and the Division as soon as it becomes aware that any person has beneficially acquired five percent or more of its equity securities or has acquired the ability to control it or elect one or more of its directors.

19:43-5.5 Statements of compliance; commitment to reserve a casino license

(a) A casino license applicant may, pursuant to N.J.S.A. 5:12-81, file a petition in accordance with N.J.A.C. 19:41-6 requesting that

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the Commission issue a statement of compliance that the applicant has established compliance with one or more of the eligibility criteria required by the Act or the rules of the Commission for a casino license.

(b) A statement of compliance certifying satisfaction of the requirements of N.J.S.A. 5:12-84e may be accompanied by a written commitment by the Commission to reserve a casino license in accordance with N.J.S.A. 5:12-81c and N.J.A.C. 19:41-6.4.

19:43-5.6 Prehearing conference; hearing

(a) All hearings and prehearing conferences regarding an application for a casino license shall be conducted in accordance with N.J.A.C. 19:42 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A party other than the applicant may on motion seek leave to intervene or to participate in a hearing regarding an application for a casino license in accordance with the standards and procedures set forth in N.J.A.C. 1:1-16.

SUBCHAPTER 11. RENEWAL OF CASINO LICENSE [(RESERVED)]

19:43-11.1 Renewal; time for filing

(a) The Commission may, upon the written petition of the casino licensee, renew a casino license in accordance with N.J.S.A. 5:12-88 provided that:

1. The casino licensee files a completed application for renewal of a casino license with the Commission no later than 90 days prior to the expiration of the current license; and

2. All license fees and taxes as required by law and the rules of the Commission are paid by the casino licensee on or before the date of expiration of the current license.

19:43-11.2 Contents of renewal application

(a) An application for the renewal of a casino license shall include, without limitation, the following, which shall be completed in accordance with the requirements of the Act and the rules of the Commission and any instructions included with the application materials:

1. The Business Entity Disclosure (BED) Forms required by N.J.A.C. 19:43-5.2(a)1;

2. The Personal History Disclosure Forms required by N.J.A.C. 19:43-5.2(a)2, in accordance with the qualifier renewal procedures set forth in N.J.A.C. 19:43-2.7A;

3. Copies of all New Jersey Consolidated Corporation Business Tax Returns, in accordance with N.J.S.A 5:12-148b;

4. The information required in N.J.A.C. 19:43-5.3(a)4;

5. Such information as may be requested by the Commission or the Division to demonstrate the applicant's good faith efforts to comply with the equal employment and business opportunity and affirmative action requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 and any relevant conditions to the current casino license;

6. Such information as may be requested by the Commission or the Division to demonstrate compliance with all conditions, restrictions, limitations and convenants in the current casino license and certificate of operation;

7. The license renewal fee specified in N.J.A.C. 19:41-9.4; and

8. Any other information or documentation which the Commission or the Division may deem material to the qualification of the applicant, or of any person required to be licensed or qualified, pursuant to the Act and the rules of the Commission.

(b) The applicant shall file an original and three copies of each Personal History Disclosure Form required by (a) above, and an original and four copies of all other information required by (a) above, with the Commission in accordance with N.J.A.C. 19:40-3.5(b).

19:43-11.3 Petitions for waiver

Upon the petition of the casino license applicant in accordance with N.J.A.C. 19:43-5.5, the Commission, with the concurrence of the Director, may waive compliance with the qualification requirements of N.J.S.A. 5:12-85d for an officer, director, lender, underwriter, agent, employee or security holder of a publicly traded holding or intermediary company of a casino licensee pursuant to N.J.S.A. 5:12-85d(1), or for an institutional investor thereof pursuant to N.J.S.A. 5:12-85f.

19:43-11.4 Prehearing conference; hearing

(a) All hearings and prehearing conferences concerning an application for renewal of a casino license shall be conducted in accordance with N.J.A.C. 19:42 and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

(b) A party other than the applicant may on motion seek leave to intervene or to participate in a hearing regarding an application for a casino license in accordance with the standards and procedures set forth in N.J.A.C. 1:1-16.

(a)

CASINO CONTROL COMMISSION

Gaming Schools
Application for Initial License and License Renewal; Establishment of Qualifications
Junkets
Applications for Initial Junket Enterprise License and License Renewal
Persons Doing Business with Casino Licensees
Standards for Qualification
Application for Initial Casino Service Industry License and License Renewal
Proposed New Rules: N.J.A.C. 19:44-2.6 and 2.7, 19:49-2.3 and 2.4, and 19:51-1.3A and 1.3B.
Proposed Amendments: N.J.A.C. 19:44-5.1 and 19:51-1.3 and 1.8.

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63c, 69a, 70a, 89b, 90b, 91b, 92, 102c.

Proposal Number: PRN 1994-226.

Submit written comments by May 18, 1994 to:
Ruth S. Morgenroth, Counsel
Casino Control Commission
Tennessee and Boardwalk
Atlantic City, New Jersey 08401

The agency proposal follows:

Summary

The proposed new rules and amendment to N.J.A.C. 19:51-1.3 codify the various forms, documents and fees required to be filed by applicants seeking an initial license or a renewal license for a gaming school, junket enterprise or casino service industry. The proposed amendment to N.J.A.C. 19:44-5.1 specifies the form of license required for a resident director of a gaming school. The proposed amendment to N.J.A.C. 19:51-1.8 deletes provisions regarding the information required for casino service industry renewal applications that are superseded by the other provisions in this proposal.

Social Impact

The Commission requires applicants for licensure as a gaming school, junket enterprise or casino service industry to provide information concerning their business organization, owners, management and supervisory personnel. This information is used to determine whether these companies and individuals possess the character, financial and business qualifications required by the Casino Control Act and Commission rules. As such, the application procedures codified herein protect the casino industry and the gaming public and enable the Commission to fulfill its statutory mandate to strictly regulate all persons related to the operations of licensed casino enterprises and all related casino service industries.

Economic Impact

Applicants for licensure as a gaming school, junket enterprise or casino service industry are currently required to file applications in the manner specified and resident director of gaming schools are currently required

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to hold either a valid resident director gaming school license or a casino key employee license with a resident director endorsement. Compiling and submitting the information required as part of the application process necessarily involves the expenditure of an applicant's time. In certain instances an applicant may also incur costs for clerical and professional assistance. However, the Commission believes these expenditures are justified by the Commission's and Division's need for the information requested. Without this information, the legislative directive prohibiting the participation of unfit persons and entities could not be satisfied.

Regulatory Flexibility Analysis

Some of the enterprises which will be filing applications for licensure as a gaming school, junket enterprise or casino service industry may qualify as small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. These enterprises will incur the costs involved in filing an application for such licensure and renewal, including the required license fees. See N.J.A.C. 19:41-9. Although professional services may be used by some applicants, the Commission believes that the required application forms can be prepared without professional assistance.

The licensing process is necessary to enable the Commission to ensure the integrity of the casino industry and related industries as mandated by the Casino Control Act. Without the information submitted as part of the application process, it would be impossible to ensure that persons with known criminal records, habits or associations are excluded therefrom. Licensing procedures must be applied uniformly to all applicants because differing standards based on business size might endanger the public interest.

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

19:44-2.6 Application for initial license

(a) An application for initial issuance of a gaming school license pursuant to N.J.S.A. 5:12-92 a and b shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. Both of the following in a format prescribed by the Commission;

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1; and

5. The fee specified in N.J.A.C. 19:41-9.8.

19:44-2.7 Renewal application

(a) An application for renewal of a gaming school license shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii, and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

ii. For a partnership or sole propietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1 who has not previously been found qualified;

5. An Employee License Renewal Application as set forth in N.J.A.C. 19:41-14.3 for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:44-4.1 who has previously been found qualified; and

6. The fee specified in N.J.A.C. 19:41-9.8.

19:44-5.1 Establishment of qualifications

(a) (No change.)

(b) No natural person shall be employed as a resident director of a gaming school unless he or she shall first have established his or her qualifications in accordance N.J.S.A. 5:12-86, 90 and 92b and the rules of the Commission and unless he or she holds a valid resident director gaming school license or a casino key employee license with a resident director endorsement.

Recodify existing (b) as **(c)** (No change in text.)

19:49-2.3 [(Reserved)] **Application for initial junket enterprise license**

(a) An application for initial issuance of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form as set forth in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1B (PHB-1B) as set forth in N.J.A.C. 19:41-5.3, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b);

5. Notice of a designated agent for service of process; and

6. The fee specified in N.J.A.C. 19:41-9.11A.

19:49-2.4 Application for renewal of junket enterprise license

(a) An application for renewal of a junket enterprise license pursuant to N.J.S.A. 5:12-92c and 102 shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

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i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6a except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force in New Jersey;

3. A BED-Corporate form in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1B (PHD-1B) as set forth in N.J.A.C. 19:41-5.3, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b) who has not previously been found qualified;

5. An Employee License Renewal Application as set forth in N.J.A.C. 19:41-14.3 for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and 102 and N.J.A.C. 19:51-1.14(a)2 or (b) who has previously been found qualified;

6. Notice of a designated agent for service of process; and

7. The fee specified in N.J.A.C. 19:41-9.8.

19:51-1.3 Standards for qualification

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

(e) Any modifications of a casino service industry license application permitted pursuant to this section may be in any form deemed appropriate by the Commission except that every such application shall include the following:

1. The appropriate Personal History Disclosure Forms **or Qualifier Disclosure Forms** for all those individuals required to so file by the Commission [in consultation with the Division of Gaming Enforcement] **pursuant to N.J.A.C. 19:51-1.14(a)2**; and

2.-5. (No change.)

19:51-1.3A Application for initial casino service industry license

(a) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6; or

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A;

2. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.A.C. 19:53-3 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate BED form in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-14a(1); and

5. The fee specified in N.J.A.C. 19:41-9.8.

(b) An application for an initial casino service industry license pursuant to N.J.S.A. 5:12-92c and d shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure Form—3 (BED-3) as set forth in N.J.A.C. 19:41-5.7 for the applicant;

2. Both of the following in a format prescribed by the Commission:

i. A notarized acknowledgment of the equal employment and business opportunity obligations imposed by N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. A Business Entity Disclosure Form—Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-14(a)2;

5. The fee specified in N.J.A.C. 19:41-9.9; and

6. If the applicant is required pursuant to N.J.A.C. 19:51-1.2(g) to obtain a license prior to conducting business with a casino licensee or applicant, the following additional documents:

i. The applicant's Federal and State tax returns for the one year preceding application; and

ii. The Federal and State tax returns for the one year preceding application for each person required to be qualified pursuant to N.J.A.C. 19:51-1.14(a)2.

19:51-1.3B Application for renewal of casino service industry license

(a) An application for renewal of a casino service industry license pursuant to N.J.S.A. 5:12-92a and b shall consist of a completed original and one copy of the following:

1. A Business Entity Disclosure (BED) form for the applicant as follows:

i. For a corporation, a BED-Corporate as set forth in N.J.A.C. 19:41-5.6 except that documents in N.J.A.C. 19:41-5.6(a)28i, ii, iv, viii and ix, (a)29 and (a)31 which were included in a prior application may be incorported by reference if there is no change in the information contained therein;

ii. For a partnership or sole proprietor, a BED-Partnership as set forth in N.J.A.C. 19:41-5.6A except that documents in N.J.A.C. 19:41-5.6A(a)23 through 25 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. The appropriate form in (a)1i or ii above for each holding company of the applicant;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Personal History Disclosure Form—1A (PHD-1A) as set forth in N.J.A.C. 19:41-5.2, for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-1.14(a)1 who has not previously been found qualified;

5. An Employee License Renewal Application, as set forth in N.J.A.C. 19:41-14.3(b), for each person required to be qualified pursuant to N.J.S.A. 5:12-92a and b and N.J.A.C. 19:51-14(a)1 who has previously been found qualified; and

6. The fee specified in N.J.A.C. 19:41-9.8.

(b) An application for renewal of a casino service industry pursuant to N.J.S.A. 5:12-92c and d shall consist of a completed original and one copy of the following:

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1. A Business Entity Disclosure Form—3 (BED-3) as set forth in N.J.A.C. 19:41-5.7(a) for the applicant except that documents in N.J.A.C. 19:41-5.7(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

2. Both of the following, in a format prescribed by the Commission:

i. A notarized affidavit of compliance with the equal employment and business opportunity requirements of N.J.S.A. 5:12-134 and 135 and N.J.A.C. 19:53 which shall be signed and dated by the president, chief executive officer, partner or sole proprietor of the applicant, as applicable; and

ii. A statistical report of the composition of the applicant's work force;

3. A Business Entity Disclosure Form—Holding Company (BED-HC) as set forth in N.J.A.C. 19:41-5.8 for each holding company of the applicant except that documents in N.J.A.C. 19:41-5.8(a)5 which were included in a prior application may be incorporated by reference if there is no change in the information contained therein;

4. A completed application in accordance with N.J.A.C. 19:41-7.1A, including a Qualifier Disclosure Form (QDF) as set forth in N.J.A.C. 19:41-5.9, for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has not previously been found qualified;

5. A Qualifier Renewal Form (QRF) as set forth in N.J.A.C. 19:41-5.10 for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2 who has previously been found qualified;

6. The fee specified in N.J.A.C. 19:41-9.8; and

7. If the applicant is required pursuant to N.J.A.C. 19:51-1.2(g) to obtain a license prior to conducting business with a casino licensee or applicant, the following additional documents:

i. The applicant's Federal and State tax returns for the three years preceding application; and

ii. The Federal and State tax returns for the one year preceding application for each person required to be qualified pursuant to N.J.S.A. 5:12-92c and N.J.A.C. 19:51-1.14(a)2.

19:51-1.8 Duration of licenses; renewal

(a) Licensure pursuant to N.J.S.A. 5:12-92a is granted for a term of one year for the initial license term and the first two successive renewals, and for a term of two years for all subsequent renewals; provided, however, that the Commission shall reconsider the granting of such a license at any time at the request of the Division. Licensure pursuant to N.J.S.A. 5:12-92c and 5:12-102 is granted for three years. An application for renewal of a license shall be filed no later than 120 days prior to the expiration of that license. [The application for renewal of a license need contain only the information which represents or reflects changes, deletions, additions or modifications to the information previously filed with the Commission.]

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

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls

Procedures Governing the Removal of Coin, Slot Tokens and Slugs from a Slot Machine

Definitions

Proposed New Rule: N.J.A.C. 19:45-1.41A

Proposed Amendments: N.J.A.C. 19:40-1.2 and 19:45-1.1

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 5:12-69(a) and 5:12-99(a)11.

Proposal Number: PRN 1994-227.

Submit written comments by May 18, 1994 to:

Barbara A. Mattie
Manager—Operations
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendments and new rule codify the Commission's practice of permitting casino licensees to remove coin and slot tokens from a slot machine's hopper to complete a machine-paid jackpot whenever a malfunction prevents the machine from completing the payout. The new rule also permits casino licensees to prepare a Jackpot Payout Slip pursuant to N.J.A.C. 19:45-1.40 to complete the payout provided a notation is made on the slip indicating the jackpot was a machine paid jackpot instead of a hand-paid jackpot.

The proposed amendments and new rule will also permit casino licensees to remove coin and slot tokens from a slot machine's hopper when the coin or slot tokens were inserted into the machine and did not register and were not returned to the patron.

The casino licensee would be permitted to remove and return to the patron up to the maximum number of coin or slot tokens which may be wagered on one handle pull. Lastly, the amendments and new rule detail procedures to be followed whenever slugs are found inside of a slot machine and redefines the term "slug".

Social Impact

The proposed amendments and new rule which permit casino licensees to remove and return coin or slot tokens which did not register on the slot machine are anticipated to have a positive social impact since patrons will have the coin or slot tokens immediately returned to them. The remaining procedures and requirements are not anticipated to have a social impact.

Economic Impact

The proposed amendments and new rule may have a slight impact on casino licensees since casino licensees will be required to complete documentation whenever slugs are found inside a slot machine.

Regulatory Flexibility Statement

A regulatory flexibility statement is not required since the proposal will only affect the operation of New Jersey casino licensees, none of which qualifies as a small 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]):

19:40-1.2 Definitions

(a) (No change.)

(b) The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

. . .

"Slug" means any object found in a slot machine hopper, slot drop bucket or slot drop box which is not approved pursuant to N.J.A.C. 19:46-1.33.

. . .

19:45-1.1 Definitions

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

. . .

["Slug" is defined as a metal disk having no cash value.]

. . .

19:45-1.41A Procedures governing the removal of coin, slot tokens and slugs from a slot machine hopper

(a) Except as provided in N.J.A.C. 19:45-1.38(d), and (b) through (d) below, no coin, slot tokens, or slugs shall be removed from a slot machine hopper.

(b) If a slot machine malfunctions during a payout and the slot machine cannot be repaired in a timely manner, coin and slot tokens may be removed from a slot machine's hopper in order to complete

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the slot machine paid jackpot. The coin or slot tokens shall be removed from the slot machine hopper by a slot attendant, slot mechanic or supervisor thereof for slot machines which accept coin or slot tokens in denominations less than $25.00, or a slot department supervisor for slot machines which accept slot tokens in denominations of $25.00 or more. The removal of the coin or slot tokens shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36(k). Nothing in this section shall preclude a casino licensee from preparing a Jackpot Payout Slip for the amount of coin or slot token owed the patron provided that the payout is completed in accordance with N.J.A.C. 19:45-1.40 and a notation is made on the Jackpot Payout Slip indicating the reason for the slip.

(c) If coin or slot tokens are inserted by a patron and are neither registered nor returned to the patron by the slot machine, a member of the slot department in accordance with (b) above may remove the coin or slot tokens from the slot machine hopper and return them to the patron. The removal of the coin or slot tokens shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36(k). Under no circumstances shall a casino licensee remove more coin or slot tokens than the maximum number of coin or slot tokens which can be wagered on one handle pull of the slot machine.

(d) Whenever slugs are found in a slot machine's hopper the following procedures and requirements shall be followed:

1. A slot attendant, slot mechanic or supervisor thereof shall, for slot machine denominations less than $25.00, or a slot department supervisor for slot machine denominations of $25.00 or more, immediately remove the slugs from the slot machine hopper and place the slugs into an envelope or container. The individual who found the slugs shall record the asset number and denomination of the slot machine, the quantity of slugs found, the date the slugs were found, and his or her signature on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36(k). The envelope or container may be maintained inside the slot machine until the number of slugs in the envelope or container is nine. When the number of slugs in the envelope or container reaches nine or at such other times as may be necessary, the slot attendant, slot mechanic or slot supervisor shall complete a three-part Slug Report which contains, at a minimum, the following:

i. The date and time;

ii. The asset number of the slot machine from which the slugs were removed;

iii. The denomination of the slot machine;

iv. The denomination and quantity of slugs;

v. A brief description of the slugs; and

vi. The signature of the slot attendant, slot mechanic or slot department supervisor completing the Slug Report.

2. Upon completion of the Slug Report required by (d)1 above, the slot attendant, slot mechanic or slot department supervisor shall remove the envelope or container, seal the envelope or container and transport it with the Slug Report to the Master Coin Bank or other location as approved by the Commission. The individual accepting receipt of the slugs shall sign all three parts of the Slug Report. The slot department member shall deliver the original copy of the Slug Report to the Commission's Principal Inspector and the triplicate to the Division's in-house office. The duplicate Slug Report shall remain with the slugs until their destruction.

3. If more than nine slugs are found at any one time in a slot machine's hopper, the slot department member shall place the slugs into the envelope or container and immediately complete the Slug Report required by (d)1 above. The slugs shall be immediately transported in accordance with (d)2 above. The slot department member shall inspect the slot machine and coin mechanism to determine if there is a malfunction. The results of this inspection shall be documented on the Machine Entry Authorization Log pursuant to N.J.A.C. 19:45-1.36(k).

4. All slugs shall be destroyed in accordance with procedures submitted to and approved by the Commission and the Division.

(a)

CASINO CONTROL COMMISSION

Accounting and Internal Controls
Gaming Equipment
Slot Drop Boxes
Proposed Amendments: N.J.A.C. 19:45-1.42 and 1.43

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a), 70(l), 99(a)10-11 and 100(c).

Proposal Number: PRN 1994-228.

Submit written comments by May 18, 1994 to:
Seth H. Briliant, Senior Counsel
Casino Control Commission
Arcade Building
Tennessee Avenue & the Boardwalk
Atlantic City, N.J. 08401

The agency proposal follows:

Summary

On July 6, 1993, the Commission proposed certain changes in its slot drop procedures, which also incorporated other recent changes in its slot drop procedures, including the use of slot drop boxes, which became mandatory for slot machines accepting slot tokens in denominations of $25.00 or more. See 25 N.J.R. 1503(b) and 25 N.J.R. 2855(a). The latter proposal was adopted without change; see 25 N.J.R. 4622(a).

These amendments would restore the term "slot drop boxes" in subsections where it was mistakenly deleted from the original published proposal.

The amendments would require the opening of slot drop buckets and slot drop boxes in the count room in addition to the previously adopted requirement that the buckets and boxes be counted and recorded in the count room. At N.J.A.C. 19:45-1.43(b), slot drop boxes would be added to the requirement that the contents of slot drop buckets be counted and recorded immediately after removal from their slot machine compartments. At N.J.A.C. 19:45-1.43(i) the term slot drop box is to be included in the requirements regarding emptying, counting and recording. The amendments would also correct a similar error in N.J.A.C. 19:45-1.43(c)3 concerning the description of the one-piece garment worn by the count team substituting hand openings for arm and leg openings, and conform N.J.A.C. 19:45-1.42(c) to match.

Social Impact

Other than to clearly indicate that the handling of both slot drop buckets and slot drop boxes is the intention of the rules, these technical corrections to the Commission's slot drop bucket and slot drop box procedures are not expected to have any social impact.

Economic Impact

Similar to the originally proposed amendments, the currently proposed amendments may have an economic impact upon casino licensees, since there may be some additional costs in complying with the increased security measures mandated for higher denomination of tokens. However, it is hoped that such measures would result in increased security and control over such slot token operations and therefore reduced possibilities of loss or theft of slot tokens.

Regulatory Flexibility Statement

The proposed amendments will affect only casino licensees, none of which is a small business as that term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Accordingly, a regulatory flexibility analysis is not required.

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

19:45-1.42 Removal of slot drop buckets, slot drop boxes and slot cash storage boxes; meter readings

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

(c) Procedures and requirements for removing slot drop buckets, slot drop boxes and slot cash storage boxes from the casino shall be as follows:

1.-2. (No change.)

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3. All persons participating in the removal of slot drop buckets, slot drop boxes and slot cash storage boxes, except for casino security department employees and representatives of the Commission and Division, shall wear as outer garments only a full-length, one-piece pocketless garment with openings only for the [arms] **hands**, feet and neck.

(d)-(q) (No change.)

19:45-1.43 Slot count; procedure for counting and recording contents of slot drop buckets and slot drop boxes

(a) The **opening,** counting and recording of the contents of slot drop buckets and slot drop boxes (the "hard count") shall be performed in the count room required pursuant to N.J.A.C. 19:45-1.32 by at least three employees of the casino licensee (the "count team"). Except as otherwise provided in (i) below, the hard count shall be performed in the presence of a Commission inspector. To gain entrance to the count room, a Commission inspector shall present an official identification card issued by the Commission which contains his or her photograph.

(b) The contents of slot drop buckets **and slot drop boxes** shall be counted and recorded immediately after [the buckets and boxes are removed] **removal** from their slot machine compartments. Each casino licensee shall file with the Commission and the Division the specific times during which the contents of slot drop buckets and slot drop boxes shall be counted and recorded.

(c) All members of the count team present in the count room during the counting process shall be required to wear a full-length, one-piece, pocketless outer garment with no openings other than for the [arms, legs] **hands**, feet[,] and neck.

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

(i) Procedures and requirements for conducting the hard count shall be as follows:

1. Prior to the first slot drop bucket **or slot drop box** being emptied and counted, employees of the casino licensee shall:

i.-iii. (No change.)

2.-6. (No change.)

7. As the contents of each slot drop bucket or slot drop box are counted by the counting machine or weighed by the scale, one member of the count team shall record on the Slot Win Sheet or a supporting document, the asset number of the slot machine to which the slot drop bucket or slot drop box contents corresponds, if not preprinted thereon, and the number of coins or slot tokens, or the weight of the coins or slot tokens contained in the slot drop bucket **or slot drop box**. If the value of the coins or slot tokens is not converted into dollars and cents until after the counting process is completed, the conversion shall be calculated and the dollar value of the drop shall be entered by denomination on the Slot Win Sheet.

8.-12. (No change.)

(j) (No change.)

(a)

CASINO CONTROL COMMISSION

Gaming Equipment
Dealing Shoes
Proposed Amendments: N.J.A.C. 19:46-1.19

Authorized By: Casino Control Commission, Joseph A. Papp, Executive Secretary.

Authority: N.J.S.A. 5:12-63(c), 69(a) and 99(a).

Proposal Number: PRN 1994-229.

Submit written comments by May 18, 1994 to:
Barbara A. Mattie, Manager
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The agency proposal follows:

Summary

The proposed amendment will permit the use of an alternate design for the side of a dealing shoe. Currently, the casinos in Atlantic City are required to use dealing shoes with sealed sides that are transparent or cutout below the base plate to prevent the concealment of illicit cards or objects. However, the progression of gaming has brought the introduction of a new type of dealing shoe which will still maintain and insure gaming integrity.

The proposed amendment would permit a dealing shoe to be otherwise designed and constructed to prevent any object from being removed or placed into the part of the dealing shoe below the base plate, and to permit the inspection of this portion of the shoe.

Social Impact

The proposed amendment is not anticipated to have any social impact beyond allowing the casinos use of an alternate designed dealing shoe, since the proposed amendment maintains the current standard for dealing shoes.

Economic Impact

Casino licensees choosing to utilize dealing shoes with the alternate design may incur the cost of purchasing or leasing the equipment. Manufacturers of dealing shoes may experience a slight benefit in that they may not have to redesign a dealing shoe for the Atlantic City market as long as the sides below the base plate are adequately secured.

Regulatory Flexibility Analysis

This proposed amendment will affect New Jersey casino licensees, none of which qualifies as a small business under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq.

The amendment will also affect manufacturers of dealing shoes, which may or may not qualify as small businesses. However, all dealing shoes must meet the same requirements in order to maintain the security and integrity of the games in which they are utilized. It should also be noted that the amendment would permit all dealing shoe manufacturers with the flexibility to provide alternative type shoes as long as the design would not compromise the integrity of gaming. Therefore, no further differing standards based on business size are provided.

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

19:46-1.19 Dealing shoes

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

(d) A dealing shoe shall be designed and constructed to contain any feature the Commission may require to maintain the integrity of the game and at a minimum shall adhere to the following specifications:

1. (No change.)

2. The sides of the shoe below the base plate shall be transparent or have a transparent sealed cutout **unless the dealing shoe is otherwise constructed to prevent any object from being placed into or removed from the portion of the dealing shoe below the base plate and to permit the inspection of this portion of the shoe**; and

3. (No change.)

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

COMMUNITY AFFAIRS
(b)

DIVISION ON WOMEN

Displaced Homemaker Programs
Eligibility for Grants-in-Aid
Proposed New Rules: N.J.A.C. 5:60

Authorized By: Harriet Derman, Commissioner, Department of Community Affairs.

Authority: N.J.S.A. 52:27D-43.24c.

Proposal Number: PRN 1994-214.

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Submit comments by May 18, 1994 to:
Michael L. Ticktin, Esq.
Chief, Legislative Analysis
Department of Community Affairs
CN 802
Trenton, NJ 08625
FAX No. (609) 633-6729.

The agency proposal follows:

Summary

P.L. 1993, c.188, approved July 19, 1993 and effective September 17, 1993, increases the filing fee in divorce actions from $135.00 to $160.00 and provides that $25.00 of that increased fee is to be forwarded to the Department of Community Affairs for deposit in a Displaced Homemaker Trust Fund to be used to provide grants-in-aid to programs for displaced homemakers, as identified by the Division on Women. The proposed new rules at N.J.A.C. 5:60 establish eligibility requirements for programs to qualify for this aid, as well as application procedures.

A "displaced homemaker" is defined as a person who has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members and was dependent upon the income of another family member but is no longer supported by that income. Additionally, a "displaced homemaker" must be receiving public assistance because of dependent children but be within one year of no longer being eligible for that assistance, be either unemployed or underemployed and be having difficulty in obtaining or upgrading employment, or be at least 40 years of age. (This last criterion is used because experience has shown that, after the age of 40, discrimination based on age is likely to occur and entry or re-entry into, or advancement in, the job market is difficult.)

In order to qualify for funding, a program for displaced homemakers must provide the following services: job counseling; job training and placement; health education and counseling; financial management; educational assistance; legal counseling and referral; and outreach and information.

The Division on Women will implement the program by issuing a request for proposals to displaced homemaker programs existing as of January 1, 1994 and funded by the Division on Women pursuant to P.L. 1979, c.125 (hereafter called "qualified existing programs"). When all qualified existing programs have reached at least an identified minimal level of funding for core services, the Division will issue a new open competitive request for proposals in order to fund new programs, with preference going to programs in counties not served by qualified existing programs. Proposals will be reviewed by a committee that shall include representatives of the displaced homemaker community, and awards will be set by the Department of Community Affairs based on the recommendations of the Division on Women.

Social Impact

The proposed new rules will enable the Division on Women to allocate funds so as to increase the number of displaced homemakers served by qualified existing programs and to reach additional people in need of the services by funding new programs in counties not now served by qualified existing programs.

Economic Impact

Studies have indicated that two-thirds of projected new entrants into the labor force are expected to be women. Many of these will be displaced homemakers. This program is intended to provide these women with the skills, training and support services that they need in order to compete effectively for employment and to improve the quality of the State's labor force.

Regulatory Flexibility Analysis

The proposed new rules affect public and nonprofit organizations that provide services to displaced homemakers. These organizations will be required to prepare proposals outlining their existing and proposed activities and, upon receipt of a grant, to prepare quarterly fiscal and performance reports.

Organizations that do not have staff members or volunteers who are able to prepare these documents may have to engage the services of professionals, whose costs will vary depending upon the nature and extent of the services rendered. However, the Department does not anticipate that these reports will be difficult for organizations to prepare and, in any event, such reports are necessary in order to assure that public funds are being properly used. No distinction can therefore be made between those nonprofits that qualify as "small businesses" under the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. and those that do not.

Full text of the proposed new rules follows:

CHAPTER 60
DISPLACED HOMEMAKER PROGRAMS

SUBCHAPTER 1. GENERAL PROVISIONS

5:60-1.1 Title

The rules in this chapter may be known and cited as the "Regulations Governing Grants from Displaced Homemaker Trust Fund."

5:60-1.2 Purpose

The purpose of the Displaced Homemaker Trust Fund is to provide a funding source to support programs for displaced homemakers as described in this chapter and as identified by the Division on Women in the Department of Community Affairs pursuant to N.J.S.A. 52:27D-43.20. These rules are intended to govern the disbursement of grants-in-aid from the Displaced Homemaker Trust Fund to such programs.

SUBCHAPTER 2. ELIGIBILITY REQUIREMENTS

5:60-2.1 Definitions

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

"Commissioner" means the Commissioner of the Department of Community Affairs.

"Director" means the Director of the Division on Women, Department of Community Affairs.

"Division" means the Division on Women, Department of Community Affairs.

"Displaced homemaker" means an individual who has:

1. Not worked in the labor force for a substantial number of years;
2. Has, during the years of not working in the labor force, worked in the home providing unpaid services for family members;
3. Was, during the years of not working in the labor force, dependent upon the income of another family member, but is no longer supported by that income; and
4. Is a person who is:

i. Receiving public assistance because of dependent children in the home, but is within one year of no longer being eligible for that assistance; or

ii. Unemployed or underemployed and experiencing difficulty in obtaining or upgrading employment; or

iii. At least 40 years of age.

"Displaced Homemaker Trust Fund" means a trust fund administered by the Department of Community Affairs, which contains funds from divorce filing fees pursuant to P.L. 1993, c.188.

5:60-2.2 Qualified existing programs

The Division on Women shall identify qualified existing programs funded as displaced homemaker programs as of January 1, 1994, pursuant to P.L. 1979, c.125.

5:60-2.3 Program requirements

(a) In order to be eligible for funding, programs must provide, at a minimum, the following services:

1. Job counseling;
2. Job training and placement;
3. Health education and counseling;
4. Financial management;
5. Educational services;
6. Legal counseling and referral; and
7. Outreach and information.

SUBCHAPTER 3. PROCEDURAL REQUIREMENTS

5:60-3.1 Procedures for funding

(a) The Division on Women shall initially prepare and distribute a request for proposals (RFP) to sponsors of qualified existing

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programs as of January 1, 1994 and shall establish a minimum level of funding for those programs. When all qualified existing programs have reached the minimum level of funding, the Division shall issue an open competitive RFP in order to fund new programs, with preference to be given to programs proposed in counties not served by qualified existing programs.

(b) Notice of each RFP shall be published in the New Jersey Register and shall be distributed to all potentially eligible program sponsors known to the Division.

(c) In order to be eligible for consideration, a program sponsor must submit its proposal within the time period indicated in the notice of the RFP in the New Jersey Register.

(d) All proposals shall be reviewed by a committee appointed by the Director of the Division that shall include representatives of the displaced homemaker community and shall reflect the racial, ethnic, regional and economic diversity of the State's population.

(e) Awards shall be set at the discretion of the Commissioner of the Department of Community Affairs, upon the recommendation of the Division on Women and shall not, in the aggregate, exceed the amount of money collected and deposited in the Displaced Homemaker Trust Fund.

(f) The Department of Community Affairs may award a program sponsor an amount different from the amount requested; provided, however, that, to the extent that available funds allow, each qualified existing program shall receive at least the amount established as a minimum by the Division on Women.

(g) New programs established after January 1, 1994 are not designated as "qualified existing programs." The Division on Women shall determine eligibility for new programs to receive the minimum funding amount through utilization of the following criteria:

1. The program must provide services listed in N.J.A.C. 5:60-2.3;
2. Preference will be given to programs located in a county or region where there are no Division on Women Programs;
3. The program must have an institutional or community based host agency to provide support services and facilities; and
4. The program must document the need for its services in the region or community in which it proposes to be located.

(h) Continuation of the minimum level of funding shall be conditioned upon the compliance of qualified existing programs and new programs with the requirements of the Displaced Homemaker Act; regulations promulgated by the Division on Women pursuant to P.L. 1993, c.188; the terms and provisions of the grant agreements to be executed between the Division and the aforementioned programs; and the efficient and effective provision of services to displaced homemakers by such programs.

HEALTH

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Health Maintenance Organizations

Proposed New Rules: N.J.A.C. 8:38-1 through 3

Authorized By: Leonard Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

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

Proposal Number: PRN 1994-232.

Submit comments by May 18, 1994 to:
John A. Calabria, Program Manager
Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625-0367

The agency proposal follows:

Summary

In accordance with N.J.A.C. 1:30-4.4, the Department is proposing as new rules the rules on Health Maintenance Organizations (HMO) at N.J.A.C. 8:38-1 to 3, which expired April 3, 1994 pursuant to Executive Order No. 66(1978). The rules describe the procedures and requirements for a HMO to initiate or expand services in New Jersey, which form the criteria for the granting or denial of a Certificate of Authority. These applications must be filed with both the Department of Health and the Department of Insurance. The former reviews the health system network and the quality assurance and utilization review mechanisms, while the later reviews the financial aspects of the HMO. One expired subchapter, N.J.A.C. 8:38-4, which is now redundant, because of Department of Insurance requirements, is not being proposed as new rules.

The Department recognizes that the entire managed care field has substantially evolved since these rules were last revised in 1976. Therefore, only a three year readoption is requested. This readoption will provide the Department with continued authority to review HMO Certificate of Authority applications. Concurrently, the Department will assemble an advisory group to carefully review the managed care field and to assist in the development of revised regulations that reflect contemporary managed care issues, particularly with regard to quality assurance and consumer satisfaction.

In N.J.A.C. 8:38-1.1 and 1.2, the rules define those basic health care services deemed necessary for obtaining and maintaining optimal health that must be provided by or arranged for by the HMO. N.J.A.C. 8:38-1.3 provides a listing of supplemental health services which are not considered under basic health care services but which may be provided by an HMO. N.J.A.C. 8:38-1.4 requires specific identification of the health care delivery network proposed.

N.J.A.C. 8:38-2.1 to 2.4 lists the process and support documentation requirements for the establishment and operation of an HMO. N.J.A.C. 8:38-2.5 requires that HMOs comply with certain licensure provisions of P.L. 1971, c.136 as amended. HMOs are generally exempt from both licensure and certificate of need requirements under this Act and its implementing regulations.

N.J.A.C. 8:38-2.6 describes when and how an HMO may disenroll a member.

N.J.A.C. 8:38-3.1 describes those conditions which must be met by an HMO applicant prior to the issuance of a Certificate of Authority by the Commissioner of Health and Commissioner of Insurance. N.J.A.C. 8:38-3.2 describes requirements for minimum protection for HMO enrollees against possible insolvency of an HMO. N.J.A.C. 8:38-3.3 provides that HMO premium rate filings be actuarially certified and be accompanied by sufficient assumptions and supporting documentation to show that such proposed charges to enrollees are "not excessive, inadequate, or unfairly discriminatory" as stated in N.J.S.A. 26:2J-8.

Social Impact

The New Jersey HMO Statutes, N.J.S.A. 26:2J-1 et seq., and rules, N.J.A.C. 8:38, bestow upon the Department of Health the responsibility to provide alternatives for health care delivery and financing, to provide for the establishment and certification of health maintenance organizations and establish the duties and responsibilities of the Commissioner of Health and the Commissioner of Insurance in supervising these organizations.

The Department expects that the repromulgation of the HMO rules will further its efforts to encourage the development of HMOs and other HMO-like variations which now comprise the world of managed care, as well as assist its efforts to monitor the activities, particularly quality assurance, of these managed care plans.

When the New Jersey statutes and rules were originally enacted and promulgated, HMOs were considered a plausible "alternative" to traditional fee for service health care delivery and financing. At this juncture in time, it is becoming increasingly obvious that HMOs and other HMO-like Managed Care plans are fast replacing traditional indemnity health insurance plans and fee for service medicine.

Repromulgation of the New Jersey HMO rules will permit the continuation of the Department's efforts to encourage the development of and to oversee the performance of HMO managed care plans. At the same time, the Department recognizes the need to undertake a comprehensive and careful review of these rules to assure that they are compatible with today's more competitive managed care market place, as well as with consumers' expectations regarding quality assurance.

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Economic Impact

There is a growing body of evidence showing that HMOs and other HMO-like managed care plans have been successful in achieving that delicate balance between controlling health care costs and maintaining high quality of health care services through effective selection of high quality providers of care and effective quality and utilization control systems.

Readoption of the HMO rules will have no negative economic impact on existing or potential HMOs. They all will continue to be required to provide for a comprehensive range of basic health care services and implement the standards for the establishment and operation of a quality, cost effective health care delivery network. This includes mechanisms for assuring timely access to quality health care, mechanisms for the ongoing monitoring of the quality of care being delivered and mechanisms protecting against overutilization and underutilization of health care services. The rules will assist the Department in assuring the HMO consumer that only high quality, cost-effective HMOs will be allowed to operate in the State.

Regulatory Flexibility Analysis Statement

The rules as proposed will continue to apply to the review of HMO Certificate of Authority applications, as has been the case for over 20 years. No HMOs are considered small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., because they all have more than 100 employees.

The purpose of this readoption is to continue the Department's authority to appropriately review the health care system aspects, particularly quality assurance, of new and expanding HMOs. Concurrently, the Department will undertake a prompt, careful and thorough public review of these regulations in order to have them reflect the current managed care environment.

The Department maintains the general appropriateness of these rules for all HMOs and that no differentiation based on business size is appropriate.

Full text of the expired rules proposed herein as new can be found in the New Jersey Administrative Code at N.J.A.C. 8:38-1, 2 and 3.

(a)

DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Alcoholism Treatment Facilities Standards for Licensure

Proposed Readoption: N.J.A.C. 8:42A

Authorized By: Leonard Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1994-233.

Submit comments by May 18, 1994, to:
Robert J. Fogg, J.D., M.P.H.
Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing readoption of the Manual of Standards for Licensure of Alcoholism Treatment Facilities, N.J.A.C. 8:42A. This chapter applies to all facilities which provide inpatient alcoholism treatment services, including hospitals which provide these services as a separate service. The current rules, which constitute the basis for the licensure of 22 alcoholism treatment facilities by the Department, are scheduled to expire on June 19, 1994, pursuant to the "sunset" provisions of Executive Order No. 66(1978).

The current rules were adopted in 1989 following a comprehensive revision of N.J.A.C. 8:42A intended to "permit the Department to more effectively fulfill its responsibilities regarding the licensing of alcoholism treatment facilities and the promulgation of licensure standards" (see 20 N.J.R. 3059(a); 21 N.J.R. 1681(a)). At the present time, the Department is examining the issue of substance abuse treatment facility licensure in general and may determine that these facilities will be classified along different lines than are presently employed for the purpose of licensure and will be licensed under a statute more specific to substance abuse treatment than is N.J.S.A. 26:2H-1 et seq., the Health Care Facilities Planning Act. Given this reexamination of the present situation, and based upon the Department's belief that these current rules have functioned effectively since their promulgation in 1989, the Department maintains that readoption of the rules represents the most reasonable option at this time for averting expiration of the licensure standards.

Alcoholism treatment facilities provide specialized, integrated care to patients in order to assist these individuals in reaching the functional levels of which they are capable as well as to protect their health and safety. Care is rendered by means of a multidisciplinary approach to treatment, requiring the active involvement of professionals, the patient, and, in some instances, family members. The continuum of care provided in each alcoholism treatment facility includes preventive, diagnostic, therapeutic, and rehabilitative services. In addition, some facilities provide medical detoxification services. N.J.A.C. 8:42A supports these activities by establishing minimum rules with which an alcoholism treatment facility must comply in order to obtain a license to operate in New Jersey.

A summary of the rules follows:

The scope and purpose of the rules in this chapter are set forth at N.J.A.C. 8:42A-1. The subchapter includes definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to alcoholism treatment facilities which are defined for the purposes of this text and general terms which are defined from an alcoholism treatment perspective. The definition of "medical detoxification services," for example, is intended to describe the process of detoxification conducted in facilities which are specifically licensed by the Department to provide medical detoxification services. The rules also delineate the qualifications for health care practitioners to whom the proposed rules refer. The rules include, for example, specification of the qualifications of the administrator, N.J.A.C. 8:42A-1.4, the alcoholism counselors, N.J.A.C. 8:42A-1.5, and the director of alcoholism counseling services, N.J.A.C. 8:42A-1.7.

N.J.A.C. 8:42A-2, Licensure Procedures, outlines procedures for obtaining licensure, which are similar to those for other types of health care facilities. Sections of N.J.A.C. 8:42A-2 address requirements for the following: Certificate of Need; application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; the fee schedule for filing an application for licensure; as well as the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

General areas common to the licensure rules for many types of health care facilities are addressed at N.J.A.C. 8:42A-3. The rule at N.J.A.C. 8:42A-3.4(f) delineates the requirements for direct care staff to be awake and on duty at all times in each residential building. N.J.A.C. 8:42A-3.4(a) requires job descriptions for all personnel. The facility is also required to maintain written staffing schedules and to substitute staff with equivalent qualifications for absent staff members.

N.J.A.C. 8:42A-4 outlines the responsibilities of the governing authority, which retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated include provision of a safe, adequately staffed and equipped physical plant.

N.J.A.C. 8:42A-5 applies to the administration of the facility. The rules require the appointment of a full-time administrator who shall be available on the premises of the facility at all times and of a designee to act in the absence of the administrator. Administrative responsibilities are also enumerated.

Requirements for patient care policies for the facility are set forth at N.J.A.C. 8:42A-6. The rationale for this subchapter is to protect patient health and safety, to facilitate the delivery of appropriate patient care, and to enhance the patient's access to information. While the subchapter delineates aspects of patient care which require the formulation of written policies and procedures, the facility retains control over their actual content in many instances. Many of the subject areas are the same

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as for other health care facilities, but the policies and procedures are to be appropriate to the alcoholism treatment environment, in accordance with the determination of the individual facility. N.J.A.C. 8:42A-6.2 contains a series of provisions intended to ensure that the patient is fully informed of all financial arrangements.

N.J.A.C. 8:42A-7, Medical Services, is the first of the series of subchapters which discuss requirements for the specialized professional services to be offered by alcoholism treatment facilities. The rules require that a medical director and medical services be available to all patients at all times.

The structure and rationale of N.J.A.C. 8:42A-7 are shared by the subchapter on nursing services, N.J.A.C. 8:42A-8. N.J.A.C. 8:42A-8.2(a) requires that a registered professional nurse direct the nursing service. The rules also stipulate that additional licensed nursing personnel and ancillary nursing personnel beyond the specified minimum shall be provided in accordance with a systematic determination of nurse staffing levels on the basis of the acuity of patient need. Requirements for nursing care services related to pharmaceutical services are specified at N.J.A.C. 8:42A-8.5.

Subchapter 9 concerns patient assessments and treatment plans and is formulated so as to reflect the multidisciplinary approach necessary for successful alcoholism treatment, with emphasis on continuity of care. The rules include a requirement for individual assessment of the patient at the time of admission. Assessments are to be used to develop a multidisciplinary patient treatment plan, which is to be reviewed and revised based upon the patient's response to the care provided. Health care practitioners providing services to the patient are to participate as members of the multidisciplinary team.

The rules at N.J.A.C. 8:42A-10 require that alcoholism counseling services be provided directly in the facility to patients, in accordance with the patient treatment plan. The alcoholism counselor to patient minimum ratio of 1:8 is specified at N.J.A.C. 8:42A-10.1(d). Supportive services, such as vocational, legal and educational counseling, are to be available to patients.

The requirements for a planned, diversified program of patient activities are delineated in N.J.A.C. 8:42A-11, Recreational Services. Responsibility for the recreational service lies with the administrator (see N.J.A.C. 8:42A-11.2).

Licensing of laboratory services and radiological services by the appropriate State agencies is addressed at N.J.A.C. 8:42A-12.

According to N.J.A.C. 8:42A-13, pharmaceutical services must be available to all patients. Those facilities providing medical detoxification services must also comply with N.J.A.C. 8:42A-13.5, which includes requirements for a unit dose drug distribution system and an intravenous infusion admixture service. The unit dose drug distribution system promotes the safe and proper use of medications and facilitates the provision of cost-effective care.

N.J.A.C. 8:42A-14 includes requirements for dietary services. Dietary services must be provided to meet the nutritional needs of patients. N.J.A.C. 8:42A-14.2(a) requires that a dietitian be appointed to be responsible for the dietary service. A full-time food service supervisor is required by N.J.A.C. 8:42A-14.3.

Requirements concerning patient rights are stated at N.J.A.C. 8:42A-14. Alcoholism treatment facilities are required to develop and implement policies and procedures regarding, for example, the following patient rights: right to appropriate treatment; freedom from discrimination or abuse; right to register complaints; and right to privacy and to security of personal possessions.

The content of N.J.A.C. 8:42A-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required by N.J.A.C. 8:42A-16.1(a) to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disaster. All emergency plans are to be posted, and drills and tests are to be conducted and documented. The provisions contained in this subchapter are intended to promote patient safety.

N.J.A.C. 8:42A-17 concerns discharge planning—an important part of the continuum of care in an alcoholism treatment setting. The intent of the requirements regarding discharge planning is to promote the preparation of the patient for independent functioning in the community.

Requirements for medical records, including provisions addressing medical record maintenance, storage, contents, and confidentiality, are presented at N.J.A.C. 8:42A-18. The rules stipulate that a medical record shall be maintained for each patient. N.J.A.C. 8:42A-18.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified at N.J.A.C. 8:42A-1.11.

N.J.A.C. 8:42A-19 includes requirements concerning infection prevention and control. While the facility is given flexibility in the management of infection control, this subchapter identifies the content areas to be addressed by the facility's infection control policies and procedures.

Housekeeping, sanitation, and safety are the subject of N.J.A.C. 8:42A-20. The alcoholism treatment facility is required to maintain a safe, sanitary environment. Twenty-one specific conditions which must be satisfied are enumerated at N.J.A.C. 8:42A-20.3.

N.J.A.C. 8:42A-21, Volunter Services, requires facilities to specify qualifications and permitted duties of volunteers, if volunteers participate in patient care.

The requirement for a quality assurance program is established by N.J.A.C. 8:42A-22. A written plan specifying a timetable and assignment of responsibility must provide for monitoring of staff and services rendered to patients.

Social Impact

N.J.S.A. 26:2H-1 et seq. gives the Department of Health the responsibility of protecting and promoting the health of the citizens of New Jersey and also gives the Department the authority to establish rules for the licensure of health care facilities. N.J.A.C. 8:42A establishes minimum rules for the licensure of alcoholism treatment facilities. The intent of the rules is to ensure the quality of care provided to patients who receive alcoholism treatment services. In the absence of any action by the Department, such as this proposed readoption, prior to June 19, 1994, the rules will expire as of that date.

As was the case when the current rules were adopted in 1989, alcoholism currently represents a major public health problem in New Jersey, as it does throughout the United States. The social consequences of alcoholism have been widely reported. The problems associated with alcoholism are difficult to overcome. It is believed, however, that alcoholism treatment facilities in New Jersey have helped some patients to become rehabilitated and to become productive members of society. Readoption of the rules at N.J.A.C. 8:42A will result in the continuing operation of alcoholism treatment facilities which are licensed and regulated in a manner which promotes the delivery of quality care to patients who may benefit from alcoholism treatment services.

The rules at N.J.A.C. 8:42A require the use of a multidisciplinary team of alcoholism treatment professionals who offer individualized services to each patient. The various services must be integrated through joint treatment planning into a continuum of care. Requirements for a broad range of alcoholism treatment services, including medical, nursing, dietary, alcoholism counseling, pharmaceutical, and recreational services, reflect this multidisciplinary approach. Multidisciplinary patient assessment, coordinated and goal-oriented treatment planning, ongoing reassessment, and discharge planning characterize alcoholism treatment services provided in accordance with N.J.A.C. 8:42A.

Involvement of the patient and family in patient treatment planning and discharge planning is emphasized. N.J.A.C. 8:42A includes provisions for patient and family instruction, education, and, when possible, participation in the development of the patient treatment plan.

The rules at N.J.A.C. 8:42A were designed to provide alcoholism treatment facilities with the flexibility to establish policies, procedures, and means of service delivery which are best, given the facilities' individual structures and patient populations.

N.J.A.C. 8:42A-22 recognizes the importance of patient care evaluation by means of implementation of an organized quality assurance program. Quality assurance activities are required for each patient care service as well as for facility-wide functions. The provisions regarding quality assurance are intended to focus the facility's efforts upon delivery of safe and effective patient care.

The Department maintains that readoption of the rules at N.J.A.C. 8:42A would have a beneficial impact upon individual patients and their families, providers of alcoholism treatment services, the health care system, and the general public. The rules, if readopted, would continue to support efforts to conserve the human potential of alcoholism treatment patients through restoration of functional abilities which would allow the patients to become less dependent upon sources of public support.

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Economic Impact

Alcoholism treatment facilities in New Jersey are currently providing the services addressed by N.J.A.C. 8:42A, and the rules reflect current practices of the facilities.

The rules at N.J.A.C. 8:42A allow the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances, and in determining staffing levels to meet patient care needs. This flexibility allows the facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. The emphasis upon coordination of care is intended to reduce duplication and fragmentation of services. Use of a multidisciplinary team approach in patient assessment, treatment planning, and implementation of treatment plans helps to ensure that each patient benefits from a range of professional skills and that the facility's resources are used with efficiency in meeting the patient's total alcoholism treatment needs.

Discharge planning as required by these rules contributes to the goal of reducing costs. Careful discharge planning, with the participation of various professional disciplines, facilitates the patient's transition, while ensuring that arrangements are made for aftercare so as to avoid potentially costly fragmentation or interruption in services.

The rules at N.J.A.C. 8:42A-19 and 20 encourage avoidance of unnecessary expenses which result from accidents and injuries by including requirements regarding the areas of infection prevention and control, housekeeping, sanitation, and safety. While the primary concern of these rules is the health and safety of patients, they also aim to reduce costs by focusing upon environmental safety in all areas of the alcoholism treatment facility.

N.J.A.C. 8:42A-22 contains requirements for a quality assurance program which could function in such a way as to increase the cost-effectiveness of facility operations. Review and evaluation of patient care services, staffing, maintenance of physical plant and equipment, discharge planning services, and volunteer services are required.

Since these rules are currently in effect, readoption of N.J.A.C. 8:42A should not result in any new costs related to the licensure and survey process. Licensure fees range from $500 plus $3.00 per bed for an alcoholism treatment facility to $150.00 for an alcoholism treatment service within a licensed hospital. The administration of the licensure and survey process includes costs to the State for staff, transportation to and from the facility site, and preparation of the necessary reports and correspondence. Should a licensee be required to surrender a license, any appeal pursued may create costs for legal services; however, such expenditures are not required by these rules.

Readoption of the current rules may ultimately result in a savings, not only of health care dollars, but of human potential, as more individuals who receive care through alcoholism treatment facilities attain a level of functional ability whereby they can make an occupational and economic contribution to society.

Regulatory Flexibility Analysis

N.J.A.C. 8:42A sets forth standards for licensure and operation of alcoholism treatment facilities within the State of New Jersey. Program requirements, as described in the Summary, are imposed to assure that staffing, services, and the facility's physical environment meet a minimum which has been determined by the Department to be necessary. No specific professional services are required beyond those which would normally be provided to patients as part of the program.

The Department of Health has determined that compliance with the current N.J.A.C. 8:42A is necessary for all facilities which provide alcoholism treatment services in a residential setting. These rules have been applied to all licensed alcoholism treatment facilities since 1989. Twenty-two alcoholism treatment facilities are licensed at the present time. The Department acknowledges that all alcoholism treatment facilities presently licensed have fewer than 100 full-time employees and are, therefore, categorized as small businesses, as defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. Services required must be provided to patients regardless of the size of the facility; therefore, no differentiation based upon business size has been made in the rules.

When the rules delineated in the Summary and Impact statements were originally proposed in December 1988, the Department asserted that the rules had been designed so as to minimize adverse economic impact on small businesses, while ensuring the provision of quality care to patients. The Department now reaffirms the reasonableness of these rules, on this same basis of minimal adverse impact and promotion of quality care, and maintains that readoption of N.J.A.C. 8:42A would be in the best interest of the residents of New Jersey.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:42A.

(a)

OFFICE OF THE COMMISSIONER
OFFICE OF LEGAL AND REGULATORY AFFAIRS
OFFICE OF BOARDS AND COUNCIL

Health Care Administration Board Bylaws

Proposed Repeal: N.J.A.C. 8:43D

Authorized By: Leonard Fishman, Acting Commissioner, Department of Health (with the approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq.

Proposal Number: PRN 1994-235.

Submit comments by May 18, 1994 to:
Eileen Bonilla O'Connor, M.S.W.
Acting Executive Director
Office of Boards and Council
NJ State Department of Health
CN 360
Trenton, NJ 08625

The agency proposal follows:

Summary

The Department, with the approval of the Health Care Administration Board (HCAB), is proposing to repeal the Health Care Administration Board bylaws that have been codified in rule form and can be found at N.J.A.C. 8:43D. These codified bylaws were adopted by the 1975 HCAB, prior to the enactment of the "sunset provision", which gives a maximum five year effective period to all new rules. These outdated and unnecessary HCAB rules have and will continue to exist ad infinitum unless amended or repealed. The Department proposes to repeal these rules because it is unnecessary for the HCAB's bylaws to be codified in rule form as codified bylaws are not mandated. The HCAB does have existing bylaws governing the Board and its functions. These are a public record.

Social Impact

The statutory authority for the HCAB is N.J.S.A. 26:2H-4 et seq. The repeal of these old 1975 bylaws will clarify the Board's functions and rules of order for both the Board members and the general public.

Bylaws for the HCAB currently exist and will continue so there is no social impact by this repeal. The only body affected is the HCAB yet this change is for administrative clarity and will not diminish or change the Board's powers or have any affect on the public.

Economic Impact

The repeal of N.J.A.C. 8:43D will have no economic impact, as the current, uncodified bylaws continue in effect.

Regulatory Flexibility Statement

The proposed repeal of the HCAB bylaw rules would not impose requirements on small businesses, as the term is defined in the Regulatory Flexibility Act, 52:14B-16 et seq., as the bylaws only concerned the HCAB and its function. Therefore, a regulatory flexibility analysis is not required.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 8:43D.

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DIVISION OF HEALTH FACILITIES EVALUATION AND LICENSING

Rehabilitation Hospitals
Standards for Licensure
Proposed Readoption: N.J.A.C. 8:43H

Authorized By: Leonard Fishman, Acting Commissioner, Department of Health (with approval of the Health Care Administration Board).

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5.

Proposal Number: PRN 1994-234.

Submit comments by May 18, 1994, to:
Robert J. Fogg, J.D., M.P.H.
Director
Licensing, Certification and Standards
Division of Health Facilities Evaluation and Licensing
New Jersey State Department of Health
CN 367
Trenton, New Jersey 08625

The agency proposal follows:

Summary

The Department is proposing readoption of the Manual of Standards for Licensure of Rehabilitation Hospitals, N.J.A.C. 8:43H. This chapter pertains to all facilities which provide comprehensive rehabilitation services, including hospitals which provide these services as a separate service. The current rules, which constitute the basis for the licensure of 12 rehabilitation hospitals by the Department, are scheduled to expire on August 21, 1994, pursuant to the "sunset" provisions of Executive Order No. 66(1978).

Prior to the adoption of the current rules in 1989, hospitals providing comprehensive rehabilitation services had been licensed by the Department of Health in accordance with the requirements specified in the hospital licensure manual in existence at that time. That manual contained a subchapter regarding "special hospitals"—a licensure category which extended to several different types of facilities, including rehabilitation facilities. Vagueness and lack of specificity, however, rendered those rules unable to address the special attributes of rehabilitation hospitals. Consequently, the Department proposed and adopted new, more specific rules at N.J.A.C. 8:43H for the licensure of rehabilitation hospitals, and amended the hospital manual accordingly so as to exclude rehabilitation hospitals from its scope. Thus was established the present basis for the separate and distinct licensure of rehabilitation hospitals in accordance with N.J.A.C. 8:43H. These current rules for rehabilitation hospitals take into account the unique goals and service delivery system which characterize the area of rehabilitation.

The Department amended the rules on March 16, 1992, in accordance with the provisions of adopted laws which affected rehabilitation hospitals—The New Jersey Advance Directives for Health Care Act, N.J.S.A. 26:2H-53 et seq., P.L. 1991, c.201 ("the Act"), and the Federal Patient Self Determination Act, P.L. 101-508. The intent of these laws is to recognize the personal right of individuals to make voluntary, informed choices about the course of their health care, and to ensure that this right is guaranteed through execution of an advance directive.

The incorporation of the requirements of the Act necessitated amending N.J.A.C. 8:43H-3, General Requirements, N.J.A.C. 8:43H-5, Administration, and N.J.A.C. 8:43H-17, Patient Rights. N.J.A.C. 8:43H-19, Medical Records, was amended to require the documentation of the existence or nonexistence of an advance directive in the patient's record. Requirements for establishment of a dispute resolution procedure, a forum for discussion, and community education programs for consumers were added as new rules at N.J.A.C. 8:43H-5.3(a), (b), and (c). A definition of "advance directive" as well as required policies and procedures were included in amendments at N.J.A.C. 8:43H-5.4. Mandatory policies and procedures for advance directives were codified by rules added at N.J.A.C. 8:43H-5.4(b) through (h).

Rules that reference the New Jersey Declaration of Death Act, N.J.S.A. 26:6A-1 et seq., P.L. 1991, c.201, requiring the facility to establish policies and procedures for the declaration of death of patients, if appropriate, were added by amendments codified as N.J.A.C. 8:43H-5.4(i).

Rehabilitation hospitals provide integrated care to disabled individuals in order to assist these individuals in reaching the functional levels of which they are capable. N.J.A.C. 8:43H complements this facility function by establishing minimum rules with which a rehabilitation hospital must comply in order to obtain a license to operate in New Jersey. Although the Department is considering the possibility of convening an advisory body to discuss substantive changes to N.J.A.C. 8:43H in the future, the Department maintains that readoption of the rules represents the most reasonable option at this time for averting expiration of the licensure standards for rehabilitation hospitals, as the current rules have functioned effectively since their promulgation in 1989.

A summary of the rules proposed for readoption follows:

The scope and purpose of the rules in this chapter are set forth at N.J.A.C. 8:43H-1. The rules contain definitions of technical terms, many of which are the same as those for the terms in licensure rules developed by the Department for other types of health care facilities. There are, however, terms specific to rehabilitation hospitals which are defined for the purposes of this chapter and general terms which are defined from a rehabilitation perspective. Such rehabilitation-oriented definitions include definitions of "activities of daily living (ADL)," "environmental modification services," "sexual counseling services," and "patient treatment plan." N.J.A.C. 8:43H-1 also delineates the qualifications for the health care practitioners to which the rules refer, including the various rehabilitation therapists.

N.J.A.C. 8:43H-2, Licensure Procedures, outlines procedures for obtaining licensure, which are similar to those for other types of health care facilities. Sections of N.J.A.C. 8:43H-2 address the following: Certificate of Need; application for licensure; the fee schedule for filing an application for licensure; newly constructed or expanded facilities; surveys and temporary license; full license; surrender of license; and the facility's right to a hearing pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

N.J.A.C. 8:43H-3 lists the services which the facility must provide directly in the facility, as well as services which must be provided on an inpatient basis and on an outpatient basis. Audiology, dental, dietary, driver evaluation, environmental modification, laboratory, medical, nursing, nutritional counseling, occupational therapy, orthotic and prosthetic, pharmaceutical, physiatry, physical therapy, psychological, radiological, recreational therapy, respiratory therapy, sexual counseling, social work, speech-language pathology, and vocational testing services must be provided directly in the facility. Driver training services must also be provided. The subchapter requires job descriptions for all personnel. The facility is also required to maintain written staffing schedules. N.J.A.C. 8:43H-3.5 requires that the rehabilitation hospital develop and implement a policy and procedure manual to guide the organization and operation of the facility.

The responsibilities of the governing authority are outlined at N.J.A.C. 8:43H-4. The governing authority retains legal responsibility for the management, operation, and financial viability of the facility. Responsibilities enumerated in the rules include provision of a safe, adequately staffed and equipped physical plant.

Administration of the rehabilitation hospital is the subject of N.J.A.C. 8:43H-5. This subchapter requires the appointment of a full-time administrator who shall be available on the premises of the facility at all times and of a designee to act in the absence of the administrator. N.J.A.C. 8:43H-5 also enumerates responsibilities of the administrator.

Requirements for patient care policies for the facility are set forth at N.J.A.C. 8:43H-6. This subchapter is intended to facilitate the delivery of patient care. The rules require the formulation of written patient care policies and procedures, including policies and procedures for the referral of patients to other health care providers and medical consultants, for the provision of sexual counseling services, and for the provision of environmental modification services. N.J.A.C. 8:43H-6 also contains a series of provisions intended to ensure that the patient and the family are fully informed of all financial arrangements.

N.J.A.C. 8:43H-7 concerns patient assessments and treatment plans and is formulated so as to reflect the multidisciplinary approach necessary for the provision of successful comprehensive rehabilitation services, with emphasis on continuity of care. A patient assessment, which becomes a basis for the development of a multidisciplinary patient treatment plan, is required for each patient. In addition to including orders for treatment or services, the patient treatment plan must include rehabilitation goals, time frames for achieving goals, and measures for assessing effects of treatment or services.

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N.J.A.C. 8:43H-8, Medical Services, is the first of the subchapters which discuss requirements for the specialized professional services to be offered by rehabilitation hospitals. The rules require that medical services be provided to patients and that a full-time medical director be appointed. In accordance with N.J.A.C. 8:43H-1.11, the medical director must be a Board-certified physiatrist, unless the facility provides services to pediatric patients only, in which case the medical director may be a Board-certified pediatrician. N.J.A.C. 8:43H-8 states that, if the medical director is a pediatrician, a full-time physiatrist must be available. In any case, a pediatrician must be available if the facility provides care for pediatric patients. This subchapter also delineates the duties of the medical director.

The subchapter on nursing services, N.J.A.C. 8:43H-9, includes a requirement for the appointment of a director of nursing services, whose responsibilities include developing a quality assurance program for the service and assigning duties based upon education, training, competencies, and job descriptions. At least one registered professional nurse and one licensed nurse, excluding the director of nursing services, must be assigned to each nursing unit at all times. The rules also stipulate that additional licensed nursing personnel and ancillary nursing personnel shall be provided in accordance with a systematic determination of nurse staffing levels on the basis of the acuity of patient need, thus allowing for individualized patient care rather than care based solely upon the number of patients in the facility. The specified responsibilities of licensed nursing personnel include assisting patients in activities of daily living based upon the patient's abilities, disabilities, and rehabilitation goals. In providing nursing care, licensed nursing personnel must act in accordance with the State of New Jersey Nursing Practice Act, N.J.S.A. 45:11-23 et seq.

According to N.J.A.C. 8:43H-10, pharmaceutical services must be provided to patients. If a facility has an institutional pharmacy, the pharmacy must be licensed by the New Jersey State Board of Pharmacy and operated in accordance with the New Jersey State Board of Pharmacy Rules, N.J.A.C. 13:39. The facility must appoint a pharmacist to be responsible for the direction of the service, and this pharmacist's responsibilities include working together with a Pharmacy and Therapeutics Committee. The facility is required to have policies and procedures for implementation of a unit dose drug distribution system. The unit dose drug distribution system promotes the safe and proper use of medications and facilitates the provision of cost-effective care.

N.J.A.C. 8:43H-11 includes requirements for dietary services. Dietary services must be provided to meet the nutritional needs of patients. The facility must appoint a full-time dietitian, whose duties include providing nutritional counseling, to be responsible for the direction of the dietary service. A full-time food service supervisor must also be appointed. Although dietitians are required to participate as part of the multidisciplinary team in developing, implementing, reviewing, and revising the patient treatment plan, this participation does not entail attendance at all multidisciplinary team meetings.

N.J.A.C. 8:43H-12 contains rules for physical therapy, occupational therapy, respiratory therapy, speech-language pathology, and audiology services. Patients must receive at least three hours of such services per day, five days per week. The rules differentiate the case of the adult patient from the case of the pediatric patient with respect to the particular services which may account for the required three hours of services. Practitioners are responsible for participating as part of the multidisciplinary team in developing the patient treatment plan and for ensuring that patient care services are provided as specified in the respective care plans. The rules require that physical therapy, speech-language pathology, and audiology personnel carry out their responsibilities in accordance with pertinent State practice acts.

Requirements for social work services and psychology services are specified at N.J.A.C. 8:43H-13. The facility must appoint a full-time social worker and a psychologist to assume responsibility for the direction, provision, and quality of the social work service and the psychology service, respectively. Social workers and psychology staff members contribute to the rehabilitation of patients by providing care and by participating as members of the multidisciplinary team.

The requirements for a planned, diversified program of patient activities are delineated at N.J.A.C. 8:43H-14, Recreational Therapy Services. The facility must provide both indoor and outdoor recreation. The recreation therapist responsible for the service must, among other specified duties, maintain a record of weekly recreational activities schedules.

N.J.A.C. 8:43H-15 recognizes the importance of rehabilitation supportive services by requiring that orthotic and prosthetic services, vocational testing, dental services, and laboratory and radiological services be provided directly in the facility by qualified personnel. Driver training services must also be provided. Licensing of laboratories and facilities providing radiological services is also addressed. The physical facilities which support the laboratory or radiological services need not be located in the rehabilitation hospital.

N.J.A.C. 8:43H-16, Emergency Services and Procedures, incorporates principles of fire safety and emergency planning. The facility is required by the rules to develop a written emergency plan for various emergency situations, including medical emergencies, equipment breakdown, fire, and other disaster. The provisions contained in this subchapter are intended to promote patient safety.

Requirements for patient rights are stated at N.J.A.C. 8:43H-17. Rehabilitation hospitals are required to develop and implement policies and procedures regarding, for example, the following patient rights: freedom from discrimination or abuse; right to register complaints; and right to privacy and to security of personal possessions.

N.J.A.C. 8:43H-18 concerns discharge planning services—an important part of the continuum of care in a rehabilitation hospital. Patients and families are to participate in the development of the discharge plan. The intent of the provisions for discharge planning contained in these rules is to promote the preparation of the patient for maximum independent functioning outside the facility.

Requirements for medical records, including provisions for medical record maintenance, storage, contents, and confidentiality, are presented at N.J.A.C. 8:43H-19. The rules stipulate that a medical record shall be maintained for each patient. N.J.A.C. 8:43H-19.2 requires that the facility employ the services of a medical record practitioner, whose qualifications are specified at N.J.A.C. 8:43H-1.12.

N.J.A.C. 8:43H-20 includes requirements for an infection prevention and control program. While the rehabilitation hospital is given flexibility in the management of infection control, this subchapter identifies the content areas to be addressed by the facility's infection control policies and procedures.

Housekeeping, sanitation, and safety are the subjects of N.J.A.C. 8:43H-21. The rehabilitation hospital is required by the rules to maintain a safe, sanitary environment, managed in accordance with policies and procedures which the facility develops.

The requirement for a quality assurance program is established at N.J.A.C. 8:43H-22. A written plan specifying a timetable and assignment of responsibility must provide for monitoring of staff and services rendered to patients.

Whereas N.J.A.C. 8:43H-23 cross-references applicable construction standards, such as the New Jersey Uniform Construction Code, N.J.A.C. 5:23, the following subchapter contains more specific functional requirements. These latter rules specifically address the physical plant needs of, for example, psychology services, vocational services, patient dining, respiratory therapy, food service facilities, physical therapy, occupational therapy, speech-language pathology and audiology services, engineering services, and educational services.

Social Impact

N.J.A.C. 8:43H establishes rules for the licensure of rehabilitation hospitals and has been effective since its adoption in helping to ensure that a high quality of care is provided to patients in rehabilitation hospitals and that patients' health and safety are protected.

People who are affected by the rules include patients who require comprehensive rehabilitation services due to disease or injury which impairs functioning and who require specialized, integrated care to reach an attainable degree of independence. In a rehabilitation hospital, patient care is rendered by means of a multidisciplinary approach to treatment, requiring the active involvement of professionals, the patient, and, when indicated, family members. The rules have helped to prevent fragmentation of services and promote continuity of care through requirement of a multidisciplinary approach to patient care. Although each adult patient must receive at least three hours of physical therapy and other therapy services per day, the facility has the flexibility to determine the particular mix of therapies which meets the individual needs of the patient, based upon the multidisciplinary assessment. Supportive services, such as social work, orthotic and prosthetic, vocational testing and laboratory services must be provided to patients who need them. Availability of these supportive services directly in the facility has also been of value in helping patients to achieve their maximum functional levels while being treated in licensed rehabilitation hospitals.

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The rules require patient care evaluation through an organized quality assurance program, which is intended to lead to improved staff performance and patient care. Quality assurance activities are required for each patient care service and must include patient care outcome assessment systems. Facility-wide functions such as staffing, infection control, housekeeping, and maintenance must be evaluated. The provisions for quality assurance are designed to focus the facility's efforts upon delivery of safe and effective patient care.

Both the Department and the rehabilitation hospitals have benefited from having these objective and measurable rules to support the survey, licensure, and enforcement processes. Because of the varying needs of patients served, the rules have been designed to provide rehabilitation hospitals with the flexibility to establish policies, procedures, and means of delivery of specialized services which have been tailored to meet these individual needs.

The March 16, 1992, amendments which were added at N.J.A.C. 8:43H-3, 5, 17 and 19 address the responsibilities of health care institutions as required by the New Jersey Advance Directives for Health Care Act, P.L. 1991, c.201 (The Act). The Act itself has a significant social impact in that it guarantees the right of individuals receiving treatment in New Jersey's 12 licensed rehabilitation hospitals to retain ultimate decision-making authority regarding the course of their medical treatment.

Economic Impact

Readoption of the rules is not expected to change their present economic impact. Rehabilitation hospitals are currently providing the services covered in the rules, and costs will not change as a result of the readoption. Departmental licensure and survey mechanisms already in place will continue to function with no additional costs resulting from readoption of the rules.

N.J.A.C. 8:43H allows the facilities flexibility in management practices, such as in developing policies and procedures best suited to their individual circumstances and in determining staffing levels to meet patient care needs and rehabilitation goals. This flexibility will continue to allow the facilities to conserve resources by determining the most efficient manner in which to utilize services and personnel. Use of a multidisciplinary team approach also fosters the cost efficient utilization of the facility's resources in serving the individual patient's specific rehabilitation needs.

Discharge planning is another requirement of the rules which helps to control costs. Effective discharge planning, with the participation of the multidisciplinary team, the patient, and the family, helps to prevent improper post-discharge placements and facilitates the patient's transition to a setting which is commensurate with the level of care needed and in which the individual can reach his or her potential. Well-planned post-discharge care is effective in the avoidance of potential costs associated with inappropriate placements, service gaps, or interruption of services.

It is believed that the requirements for a quality assurance program at N.J.A.C. 8:43H-22 have been effective in increasing the cost-effectiveness of facility operations.

Provision of comprehensive rehabilitation services in many instances improves patients' abilities to engage in activities of daily living and in work activities, shortens the time required for recovery, and prevents long-term institutionalization of patients, thereby resulting in savings of health care dollars.

Regulatory Flexibility Statement

Rehabilitation hospitals currently licensed in New Jersey are not considered to be small businesses, as the term is defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., as each employs more than 100 people. Therefore, readoption of the rules imposes no requirements on small businesses, and no regulatory flexibility analysis is necessary.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 8:43H.

(a)

NARCOTIC AND DRUG ABUSE CONTROL
Controlled Dangerous Substances
Proposed Amendments: N.J.A.C. 8:65-10.1 and 10.2

Authorized By: Leonard Fishman, Acting Commissioner, Department of Health.

Authority: N.J.S.A. 24:21-3.

Proposal Number: PRN 1994-237.

Submit comments by May 18, 1994, to:
Mark A. Strollo, R.Ph., M.S.
New Jersey Department of Health
Room 501, CN 360
Trenton, N.J. 08625-0360
609-292-4029

The agency proposal follows:

Summary

The Department of Health proposes to reschedule levoalphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM) from Schedule I to Schedule II of the controlled dangerous substances schedules to bring the State rules into conformity with the Federal controlled substances regulations. This substance, which has a high potential for abuse without having any medical use in Schedule I, has been approved by the U.S. Food and Drug Administration as safe and effective in the treatment of narcotic addiction and has been placed into Schedule II of the Federal regulations as listed in the Federal Register, cited at 58 FR 158, effective August 18, 1993.

Placement of this substance into Schedule II of the controlled dangerous substances will allow production of this newly approved medicinal preparation and would allow for physician prescribing and dispensing of the medication. This transfer will apply only to the levo isomer of acetylmethadol while all other isomers of acetylmethadol will remain in Schedule I.

Social Impact

The proposal to reschedule levo-alphacetylmethadol into Schedule II will have a significant impact upon the public because it would allow for the manufacture and distribution of the newly approved drug product containing levo-alphacetylmethadol and would allow for physician prescribing and the dispensing of this product to patients. There would be no additional requirements generated for record keeping other than those already established for Schedule II drugs.

Economic Impact

The Department of Health's proposal to reschedule levo-alphacetylmethadol to Schedule II of the controlled dangerous substances schedules would have a potential beneficial economic impact on the manufacturers, prescribers and pharmacists by having available a new drug product on the market. Since recordkeeping and security requirements are already established for Schedule II substances, this proposal will have no economic impact upon small businesses, prescribers or pharmacists.

Regulatory Flexibility Statement

Although this amendment will have an impact upon thousands of registrants, who have been determined to be small business entities as defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq., there will be no added recordkeeping requirements that are not already required of substances in Schedule I. There are no new proposed requirements in this amendment which will impact on those entities.

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

8:65-10.1 Controlled dangerous substances; Schedule I

(a) (No change.)

(b) The following is Schedule I listing of the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance[s] code number.

1. Opiates: Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the

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existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation (listed by generic/established or chemical name with CDS code);

Acetylmethadol **(except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM)** [9601] **9603**

...

2.-7. (No change.)

8:65-10.2 Controlled dangerous substances; Schedule II

(a) (No change.)

(b) The following is Schedule II listing the controlled dangerous substances by generic, established or chemical name and the controlled dangerous substance code number.

1. (No change.)

2. Opiates: Unless specifically excepted or unless in another schedule, any of the following opiates, including its isomers, esters, ethers, salts and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextorphan and levopropoxyphene excepted, (listed by generic/established or chemical name with CDS code);

...

Levo-alphacetylmethadol (Some other names: levo-alpha-acetylmethadol, levomethadyl acetate, LAAM) 9648

...

3.-7. (No change.)

HUMAN SERVICES

(a)

DIVISION OF MENTAL HEALTH AND HOSPITALS

Notice of Administrative Correction
Screening and Screening Outreach Programs
Proposed Readoption: N.J.A.C. 10:31

Take notice that the Office of Administrative Law has discovered an error in the text of the notice of proposed readoption of N.J.A.C. 10:31 published in the April 4, 1994 New Jersey Register at 26 N.J.R. 1424(a). The notice erroneously provides a March 30, 1994 deadline for the receipt of public comments. As noted at 26 N.J.R. 1418, the 30-day minimum deadline for public comment on proposals in that issue of the Register is May 4, 1994. By this notice, published pursuant to N.J.A.C. 1:30-2.7, the correct deadline is provided.

Submit comments by May 4, 1994 to:
Raymond M. Deeney
Administrative Practice Officer
Division of Mental Health and Hospitals
CN 727, Capital Center
Trenton, New Jersey 08625-0727

(b)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Notice of Administrative Correction
Medical Day Care
Addition of Pediatric Medical Day Care Services
Proposed Amendments: N.J.A.C. 10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1 and 2.2
Proposed New Rule: N.J.A.C. 10:65, Appendix H—Fiscal Agent Billing Supplement

Take notice that the Division of Medical Assistance and Health Services has discovered an error in the text of the notice of proposed amendments and new rule at N.J.A.C. 10:65 published in the April 4, 1994 New Jersey Register at 26 N.J.R. 1427(a). The notice erroneously provides an April 20, 1994 deadline for the receipt of public comments. As noted at 26 N.J.R. 1418, the 30-day minimum deadline for public comment on proposals in that issue of the Register is May 4, 1994. By this notice, published pursuant to N.J.A.C. 1:30-2.7, the correct deadline is provided.

Submit comments by May 4, 1994 to:
Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance and Health Services
Mail Code #26
CN 712
Trenton, New Jersey 08625-0712

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ADOPTIONS

ENVIRONMENTAL PROTECTION AND ENERGY

(a)

WATER MONITORING MANAGEMENT
BUREAU OF MARINE WATER CLASSIFICATION AND ANALYSIS

Shellfish Growing Water Classifications

Adopted Amendments: N.J.A.C. 7:12-1.2, 2.1, 2.2, 3.2, 4.1 and 9.1

Proposed: February 7, 1994 at 26 N.J.R. 789(a).
Adopted: March 24, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.
Filed: March 25, 1994 as R.1994 d.201, **without change**.

Authority: N.J.S.A. 13:1D-9 and 58:24-1 et seq.
DEPE Docket Number: 01-94-01/299.

Effective Date: April 18, 1994.
Expiration Date: November 24, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

7:12-1.2 Definitions

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

. . .

"Bureau" means the Bureau of Marine Water Classification and Analysis in the Division of Science and Research.

. . .

"Department" means the New Jersey Department of Environmental Protection and Energy.

. . .

"Division" means the Division of Science and Research in the Department of Environmental Protection and Energy.

. . .

"Shellfish" means all species of oysters, clams or mussels, either shucked or in the shell that are fresh or fresh frozen and whole or in part and scallops, only when they are whole or with roe-on.

. . .

7:12-2.1 Shellfish growing water classification—Prohibited

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

1.-8. (No change.)

9. Atlantic City area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. All of Clam Creek and contiguous harbors;

ii. All of Inside Thorofare and West Canal;

iii. All of Beach Thorofare from a line across Beach Thorofare bearing approximately 225 degrees T from the eastern side of the mouth of Penrose Canal at its junction with Beach Thorofare to a line from the northernmost tip of runway number 442 (North-South runway) at Bader Field in Atlantic City and bearing approximately 033 degrees T across Beach Thorofare; and

iv. All of an unnamed lagoon at the northwest corner of Lakes Bay.

10.-14. (No change.)

15. Jenkins Sound Area:

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

ii. (No change.)

16.-17. (No change.)

18. Delaware Bay area (Note: Portions are also designated as Special Restricted and Seasonal. See N.J.A.C. 7:12-3 and 4):

i. (No change.)

ii. All of Cox Hall Creek and Fishing Creek;

iii. (No change in text.)

iv. All of the Bidwell Creek upstream of the easterly side of the Route 47 bridge;

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

19. (No change.)

20. Atlantic Ocean:

i. All of the ocean waters east of a line connecting the northernmost point of Sandy Hook and the southwesternmost point of Rockaway Point and south of the New York State line and extending to and following the New Jersey three nautical mile jurisdiction limit in a southerly direction until it intersects a line bearing approximately 269 degrees T connecting a point with coordinates of latitude 40 degrees 20.8 minutes N., longitude 73 degrees 47.7 minutes W. (generally marked by a buoy charted as W Or "BA" Gp Fl(4) 20 sec WHISTLE marking the separation zone on the Ambrose-Barnegat traffic lane) and the radio tower located at the New Jersey Marine Police Station, 128 Ocean Avenue, Borough of Monmouth Beach, with coordinates of latitude 40 degrees 20.5 minutes N., longitude 73 degrees 58.5 minutes W., then along that line to a point 1.5 nautical miles directly offshore, then along the shoreline in a southerly direction 1.5 nautical miles offshore until it intersects a line beginning at the water tank located on 509 Monmouth Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 02.2 minutes W., and bearing approximately 085 degrees T through the dome of the Essex-Sussex Hotel, 700 Ocean Avenue, Borough of Spring Lake, with coordinates of latitude 40 degrees 08.8 minutes N., longitude 74 degrees 01.5 minutes W., then proceeding from that point of intersection in a westerly direction along that line towards the above noted dome until it is 0.5 nautical miles directly offshore, then continuing in a southerly direction 0.5 nautical miles offshore for approximately 3.9 nautical miles to a point with coordinates of latitude 40 degrees 5.1 minutes N., longitude 74 degrees 1.7 minutes W., then bearing approximately 280 degrees T (reciprocal 100 degrees T) to the water tank located next to the junction of New York Avenue and the Con Rail Railroad tracks, Borough of Point Pleasant Beach, with coordinates of latitude 40 degrees 05.2 minutes N., longitude 74 degrees, 2.8 minutes W., and terminating.

ii.-xii. (No change.)

7:12-2.2 Use of shellfish grown in waters classified as Prohibited for human consumption

Shellfish grown in waters classified as Prohibited may not be utilized for human consumption except under conditions as may be established by the ISSC.

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

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

1.-22. (No change.)

23. Atlantic City-Absecon area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i.-vi. (No change.)

vii. All of Beach Thorofare from Absecon Channel to a line across Beach Thorofare bearing approximately 225 degrees T from the eastern side of the mouth of Penrose Canal at its junction with Beach Thorofare.

24. Pleasantville-Northfield-Linwood-Margate-Ventnor-Longport area (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4):

i.-ii. (No change.)

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iii. All of Great Thorofare and all of Beach Thorofare from a line from the northernmost tip of runway number 422 (North-South runway) at Bader Field in Atlantic City and bearing approximately 033 degrees T across Beach Thorofare to a line from the tip of the stone jetty at the end of Atlantic Avenue (Longport) and bearing approximately 336 degrees T across Beach Thorofare to the center of the Longport Blvd.-Route 152 bridge, that crosses an unnamed creek on the unnamed island immediately north and west of the city of Longport;

iv.-v. (No change.)

vi. Lakes Bay (Note: A portion is also designated as Seasonal. See N.J.A.C. 7:12-4.): All of Lakes Bay within a line from the Pleasantville Yacht Club and following the channel markers F1 G "15", F1 B "13", F1 G "11", F1 R "8" to F1 G "7", then bearing approximately 061 degrees T across the northernmost tip of a small unnamed island to Great Island then northwesterly across the mouth of Great Thorofare, then along the shoreline in a northwesterly direction, then across the mouth of an unnamed lagoon at the northwest corner of Lakes Bay and returning to the point of origin.

25.-33. (No change.)

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

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

1.-9. (No change.)

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

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

ii.-iv. (No change.)

11. (No change.)

7:12-9.1 General provisions; all programs

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

(c) Each application shall be accompanied by a fee in the amount of $25.00 (check or money order made payable to Treasurer, State of New Jersey). Forms may be obtained from the New Jersey Department of Environmental Protection and Energy, Bureau of Marine Water Classification and Analysis, Stoney Hill Road, P.O. Box 405, Leeds Point, New Jersey 08220, and New Jersey Marine Police stations located throughout the State. Duplicate permits may be issued upon written request to the Bureau of Marine Water Classification and Analysis at the aforementioned address if accompanied by a $10.00 check or money order payable to the Treasurer, State of New Jersey.

(d)-(m) (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Marine Fisheries
General Net Regulations
Delaware Bay Gill Net Permits
Weakfish Management
Adopted Amendments: N.J.A.C. 7:25-18.5, 18.6 and 18.12

Proposed: December 6, 1993 at 25 N.J.R. 5397(a).

Adopted: March 24, 1994 by Robert C. Shinn, Jr., Commissioner, Department of Environmental Protection and Energy.

Filed: March 25, 1994 as R.1994 d.202, **with technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

DEPE Docket Number: 59-93-10/256.

Effective Date: April 18, 1994.

Expiration Date: February 15, 1996.

The New Jersey Department of Environmental Protection and Energy (Department) is adopting amendments to N.J.A.C. 7:25-18.5, 18.6 and 18.12. The amendments were proposed on December 6, 1993 at 25 N.J.R. 5397(a). The comment period closed on January 5, 1994. Two individuals, both who are commercial fishermen, submitted written comments.

The following is a list of persons that made written comments directly related to the proposal:

1. Earl Miller
2. Robert Munson

Summary of Public Comments and Agency Responses:

The following is a summary of the comments received and the Department's responses to those comments.

N.J.A.C. 7:25-18.5(g)5iii(2)

1. COMMENT: One individual was concerned that the prohibition on the use of small mesh gill nets during the night would impact his fishery for menhaden. He regularly nets menhaden at night to sell to crabbers for bait in the morning and felt this restriction would hurt him economically (1).

RESPONSE: This restriction only applies to individuals fishing small mesh (2.75 inches to 3.25 inches) drifting gill nets in the Atlantic Ocean under the proposed Gill Net Mesh Exemption Permit program. Currently, there are not restrictions on gill net fishing at night in the Delaware Bay. Since this individual lives along Delaware Bay, his fishing most likely occurs in the Bay. Therefore, this provision would have no impact on this individual's current fishing practices. The prohibition on use of small mesh nets at night in the Atlantic Ocean was a result of a recommendation from ocean fishermen to the Marine Fisheries Council's Weakfish Committee.

N.J.A.C. 7:25-18.5(g)5vii(2)

2. COMMENT: The commenter believes that this section gives the Department the power to require more information from fishermen than he feels is necessary (2).

RESPONSE: The Department acknowledges receipt of the comment. The Atlantic States Marine Fisheries Commission (ASMFC) Weakfish Fishery Management Plan Amendment 1 (Plan) requires states to take certain weakfish management measures. One of these is the requirement to implement appropriate mesh size restrictions in gill nets to achieve a 75 percent escapement rate of the state's minimum size weakfish. Since New Jersey's minimum size limit for weakfish taken by gill net is 13 inches, a 3.25 inch minimum mesh size is required in gill nets. Fishermen indicated that while this mesh size was appropriate for species such as weakfish or bluefish, it was too large for smaller species such as butterfish, kingfish and spot. In an attempt to allow fishermen to continue to fish for these smaller species, the Gill Net Mesh Exemption Permit Program was developed. This allows fishermen to utilize smaller mesh (minimum of 2.75 inches), gill nets within two nautical miles of the shoreline in Delaware Bay and along the oceanfront in the Atlantic Ocean. However, this mesh exemption is in direct conflict with the Plan management requirement listed above. In order to allow this small mesh fishery and still be found in compliance with the Plan, the Department

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must demonstrate that this fishery is not impacting the weakfish resource. In order to do this, the Department must have the authority to collect the necessary information. The information necessary include catch, effort, species composition, lengths and numbers of selected species and fishing location as well as information needed for verification such as port of landing, wholesaler, etc. All information collected will be confidential. Any data used to justify this program will be complied from all fishermen's reports and no data that is fisherman specific will be released. With the enactment of the Atlantic Coastal Fisheries Cooperative Management Act (Federal legislation), it is imperative that the Department be able to closely monitor any deviations from accepted plans in order to verify compliance. Under the Atlantic Coastal Fisheries Cooperative Management Act, any state deemed out of compliance with an ASMFC plan could have a complete moratorium placed on that particular fishery. It is therefore essential that the Department be able to collect the necessary information to justify any deviation from plan requirements. Without collection of information necessary to monitor the Gill Net Mesh Exemption Program, the Department would not be able to operate this special program without jeopardizing the state's entire weakfish fishery.

3. COMMENT: The commenter indicated that if the reporting requirement is solely related to weakfish management, then there is no reason to require reports until such time as weakfish are caught by gill nets within the management area (2).

RESPONSE: The Department concurs that the mesh exemption is a result of the implementation of weakfish regulations; however, plans currently being developed for other species, such as bluefish, will also require monitoring. In addition, it is just as important to know when weakfish are not being caught as to know when they are being caught. If fishermen do not regularly submit reports, the Department will not be able to determine what impact may be occurring on the weakfish stocks and, consequently, will not be able to demonstrate compliance with the Plan. It is therefore essential to require regular (monthly) reporting for those fishermen granted an exemption for the use of smaller mesh gill nets.

N.J.A.C. 7:25-18.12(e)3

4. COMMENT: A commenter indicated that the 3.0 inch maximum gill net mesh allowed within two miles of the MHWL in Delaware Bay during the spring and fall closed seasons should be increased to 3.25 inches in order to allow flexibility in the traditional fisheries. The commenter understood that this was agreed to in a Weakfish Committee meeting in early 1993 (2).

RESPONSE: The Department acknowledges the comment but disagrees with the commenter's interpretation. The existing rule and proposal has never imposed a maximum mesh size during the fall weakfish closure, only during the spring weakfish closure in Delaware Bay. Additionally, the gill net mesh exemptions for Delaware Bay were established as a result of discussions with various user groups and the New Jersey Marine Fisheries Council's Weakfish Committee. Upon agreement between the parties, these exemptions were included in the amendment when it was submitted for adoption (see 24 N.J.R. 1113(a)). The Department believes that these exemptions do allow flexibility in the traditional fisheries during the relatively short spring closed season (June 7 through June 30) and, therefore, elect not to modify this provision as the commenter suggested.

Summary of Agency-Initiated Changes:

At N.J.A.C. 7:25-18.6(d), a technical correction has been made to clarify the intent of this section. The Delaware Bay gill net permit (DBGNP) system requires fishermen to obtain a DBGNP to fish the lower Delaware Bay. Each fisherman was authorized to fish up to a certain number of gill nets based upon their historical participation in the fishery. The modification to this section clarifies the intent of the proposal that the number of nets authorized under the permit will be reduced if the fisherman does not license each of them annually.

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.)

(g) 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. To be eligible to purchase a 1992 license for a drifting, staked or anchored gill net the applicant shall have purchased a gill net license during 1990, 1991 or a 1992 license prior to May 1, 1992 or provide documented proof of active military service within one year of application. An applicant who does not meet the above requirements must file an application, in person, with the Department in each of two consecutive years. Such an applicant shall be eligible for gill net licenses in the following calendar year. Beginning in the license year (January 1-December 31) 1993 an applicant for a gill net license must have possessed a gill net license in one of the two previous years. Failure to purchase a gill net license in one of the prior two years shall subject the applicant to the two year waiting period described above. Availability of Delaware Bay Gill Net Permits shall be determined pursuant to N.J.A.C. 7:25-18.6 through 18.11. 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.-4. (No change.)

5. Drifting gill nets shall be used only in the Atlantic Ocean, Delaware Bay, and the tributaries of Delaware Bay. The smallest mesh of any drifting gill net shall be not less than five inches stretched beginning February 12 through February 29. From March 1 through December 15 the smallest mesh of any drifting gill net shall be not less than 3.25 inches stretched except in the tributaries of Delaware Bay and in Delaware Bay and the Atlantic Ocean within two nautical miles of the mean high water line where the smallest mesh shall be not less than 2.75 inches stretched and subject to the permitting and reporting requirements specified in (g)5vii below and in N.J.A.C. 7:25-18.12. These nets shall not individually exceed 200 fathoms in length. Individual drifting gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length beginning February 12 through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15. Drifting gill nets may be used for all species except those specifically protected.

i.-ii. (No change.)

iii. Drifting gill nets shall be used in the Atlantic Ocean only from February 12 through December 15. Drifting gill nets shall not be used in the Atlantic Ocean within 100 fathoms of the marked channel of any inlet. Drifting gill nets between 2.75 inches stretched mesh and 3.25 inches stretched mesh shall be subject to the permitting and reporting requirements specified in (g)5vii below, and

(1) Shall only be fished within two miles of the MHWL;

(2) Shall only be fished between the hours of sunrise and sunset;

(3) Shall be no higher than eight feet (off the bottom) while fishing; and

(4) A maximum of 200 fathoms per licensed fisherman shall be in the water at any one time;

iv.-vi. (No change.)

vii. Individuals utilizing drifting, staked or anchored gill nets less than 3.25 inches stretched mesh in the Atlantic Ocean or in the Delaware Bay after February 29 in any calendar year shall possess a Gill Net Mesh Exemption Permit.

(1) An individual shall apply annually for the permit.

(2) All permittees shall submit monthly reports of their catch and effort and other information as may be determined by the Department on forms provided by the Department. These reports shall be filed with the Division of Fish, Game and Wildlife no later than 10 calendar days after each monthly reporting period. If no fishing activity was conducted under this permit during the month, a report to that effect shall be provided. Gill Net Mesh Exemption permittees shall be personally responsible for guaranteeing the timely delivery of reports to the Division as well as the accuracy of all information contained therein. The Department may demand that a permittee provide proof of the truth of any data contained in any report submitted to the Division under this program. If the permittee fails to file a true, complete monthly report with the Division by the 15th day of any month, the Division, in its discretion, may contact the permittee by the most expeditious method available in order to secure a complete report.

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(3) If the Division is unable to secure a true, complete monthly report from the permittee by such informal means or the Division has credible evidence that the data on any report is false, the Division shall notify the permittee in writing of the Division's intention to revoke the permittee's Mesh Exemption privilege for the reasons stipulated in the notice, effective 20 business days after the date on the written notice (excluding the date on the notice) and of the Division's suspension of the permittee's Mesh Exemption privileges in the interim, effective on a date stipulated in the notice but no sooner than 10 business days after the date of the notice (excluding the date on the notice).

(4) The permittee may request a hearing to contest a proposed revocation of Mesh Exemption privileges in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1. The request for an administrative hearing must be received in writing by the Department within 20 business days from the date on the Division's notice of suspension and intention to revoke, excluding the date on the notice. However, if a timely request for a hearing is not received by the Department, any allegation contained in the notice shall be deemed admitted by the permittee and Mesh Exemption privileges shall be revoked as of the date stipulated in the notice, without any further action by the Division.

(5) The Division Director may, in his or her sole discretion, stay the suspension of Mesh Exemption privileges pending a hearing on the notice of proposed revocation of Mesh Exemption privileges for any good cause set forth in a written petition from the permittee, including sworn statements from the permittee or other persons with knowledge relevant to the allegations on which the Division action is based. The petition and its supporting statements and documentation shall be made available to the court and all parties in advance of any hearing.

(6) The Division shall reinstate Mesh Exemption privileges suspended for late or incomplete reports, but no more than three times per permittee in any single permit year, if that permittee personally delivers any missing reports, completed, along with a credible written explanation for the delay and/or omissions to the Division within 20 business days from the date on the notice of suspension.

(7) Any permittee who has had a Mesh Exemption privilege revoked shall be disqualified from exercising any privilege associated with a Mesh Exemption permit for 24 months following:

(A) The effective date of an uncontested notice of proposed revocation of privileges;

(B) The date of the Commissioner's Final Decision affirming revocation of Mesh Exemption privileges; or

(C) The filing date of the court order affirming the Commissioner's Final Decision revoking Mesh Exemption privileges, whichever is applicable.

(8) The Division shall issue a Mesh Exemption permit to an applicant pending resolution of a contested Division proposal to revoke that applicant's Mesh Exemption privilege, but that permittee shall not exercise or enjoy any Mesh Exemption privilege if the Division has already suspended that permittee's Mesh Exemption privilege pending resolution of a proposed revocation until:

(A) The Division Director lifts the suspension of that permittee's Mesh Exemption privileges;

(B) The Commissioner issues a Final Decision reinstating that permittee's Mesh Exemption privileges; or

(C) A court of competent jurisdiction orders reinstatement of that permittee's Mesh Exemption privileges, as the case may be.

6. Staked and anchored gill nets shall be used only in the Atlantic Ocean, Raritan Bay, Sandy Hook Bay, and the Delaware Bay and its tributaries. Staked or anchored gill nets shall not be fastened together to form a series of nets exceeding 400 fathoms in length from the beginning of the season through May 15 or exceeding 200 fathoms in length beginning May 16 through December 15, subject to the additional conditions specified in N.J.A.C. 7:25-18.12.

i.-iv. (No change.)

v. Staked gill nets may be used in the tributaries of Delaware Bay for any species except those specifically protected only beginning January 1 through May 15 and July 15 through December 15, where individual gill net length shall not exceed 30 fathoms. The mesh of any such net used in the tributaries of Delaware Bay shall not be less than 2.75 inches stretched nor greater than 3.25 inches stretched beginning January 1 through February 29 and no mechanical means shall be utilized to retrieve such net. The mesh of any net shall not be less than 2.75 inches from March 1 through May 15 and July 15 through December 15. No net shall be set across any tributary or mouth of any tributary, nor shall any net be set in a manner that impedes navigation;

vi. Staked gill nets may be used in Delaware Bay only from February 1 through December 15, except as further defined by statute and/or rule. Individual staked gill net length shall not exceed 30 fathoms. The mesh of any such net used in Delaware Bay shall be 2.75 inches stretched beginning February 1 through February 29 except that staked gill nets of a mesh not less than 2.75 inches stretched or greater than 3.25 inches stretched may be used within one half nautical mile of the MHWL from January 1 through February 29 provided no mechanical means are utilized to retrieve such nets. From March 1 through December 15 the smallest mesh of any staked gill net shall not be less than 3.25 inches stretch except within two nautical miles of the mean high water line where the smallest mesh shall not be less than 2.75 inches stretched and subject to the permitting and reporting requirements specified in (g)5vii above and N.J.A.C. 7:25-18.12. Staked gill nets shall not be used in that portion of Delaware Bay known as the Brandywine Shoal Restricted Area as defined in (g)5v above;

vii.-ix. (No change.)

7.-12. (No change.)

(h) (No change.)

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

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

(c) No new Delaware Bay commercial or non-commercial gill net permits shall be issued after 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, except as provided in (c)1 below.

1. Individuals returning from active military service after August 2, 1991, who were on active duty during the application period (June 3, 1991 through August 2, 1991) and who meet the requirements in N.J.A.C. 7:25-18.7(a) or (b) below, shall have 60 days from their date of discharge to apply for a permit to cover the number of licenses for which they qualify, upon submission of official documentation indicating duration of military service and date of discharge and a notarized statement from the applicant that said documentation is accurate.

(d) An individual possessing a Delaware Bay Gill Net Permit shall obtain the number of gill net licenses authorized by the Delaware Bay Gill Net Permit in each calendar year. Failure to do so will result in the number of *[licenses]* ***nets*** authorized by the permit being reduced to the number of net*[s]* ***licenses*** actually obtained in that calendar year beginning in *[the calendar year in which these regulations become effective]* ***1994***, or in the event no licenses are purchased, invalidation of the permit immediately following the end of that calendar year.

7:25-18.12 Weakfish management

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

(e) A person shall not set, tend, or attempt to set or tend a drifting, staked or anchored gill net in Delaware Bay during the spring closed season specified in (d) above or as modified by the Commissioner by notice unless such person has obtained a Gill Net Mesh Exemption Permit as specified in N.J.A.C. 7:25-18.5(g)5vii and such net is one of the following:

1. Drifting, staked or anchored nets with a stretched mesh not less than 10 inches;

2. Drifting, staked or anchored nets with a stretched mesh not less than 5.5 inches south of Loran C42800;

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3. Drifting, staked or anchored nets with a stretched mesh not less than 2.75 inches or greater than 3.0 inches in Delaware Bay within two nautical miles of the mean high water line.

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

HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Child Care Services Manual
Public Assistance Manual
Assistance Standards Handbook
Family Development Program Manual
Child Care Payment Rates/Age Categories; Co-payment for Child Care
Adopted Amendments: N.J.A.C. 10:15A-1.2; 10:15C-1.1; 10:81-14.18A; 10:82-5.3; and 10:86-10.2 and 10.6

Proposed: January 18, 1994 at 26 N.J.R. 296(a).

Adopted: March 23, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: March 25, 1994 as R.1994 d.206, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 30:1-12 and 44:10-3.

Effective Date: April 18, 1994.

Expiration Date: January 1, 1995, N.J.A.C. 10:15A and 10:15C;
August 24, 1994, N.J.A.C. 10:81;
August 24, 1994, N.J.A.C. 10:82;
September 21, 1997, N.J.A.C. 10:86.

Summary of Public Comments and Agency Responses:
No comments received.

Summary of Changes Upon Adoption:

The Child Care Co-Payment Scale (both the full-time and part-time scales) at N.J.A.C. 10:15C-1.1, 10:81-14.18A and 10:86-10.6 has been revised to add a legend which makes provision for the assessment of co-payment fees to families with a gross annual income in excess of that which is indicated on the scale. This legend was included on previous co-payment scales which were adopted in State regulations. However, it was inadvertently omitted from the co-payment scale at the time these amendments were proposed in the January 18, 1994 issue of the New Jersey Register. This legend is necessary in order to ensure program compliance with Federal regulations (45 CFR Parts 256.3(b), 257.31(a) and 98.42), which govern the JOBS, Title IV-A "At Risk" and Child Care and Development Block Grant Programs.

The inclusion of this addition will not have an adverse effect on the community. Adding this legend will ensure families with an annual income in excess of the chart will receive an accurate assessment of their fee requirements. In addition, the county welfare agencies and the child care agencies directly responsible for the assessment of a family's co-payment fees, have been using the information contained in the legend to ensure that the fee requirement for all eligible families is accurately determined.

Full text of the adoption follows (additions to proposal indicated in boldface with asterisks ***thus***).

10:15A-1.2 Payment policies

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

(c) The maximum child care payment rates are set forth in Tables I, II and III below. The maximum child care payment rates utilized in the Department of Human Services child care service programs are available through a written request to the New Jersey Department of Human Services, Division of Family Development, CN 716, Trenton, NJ 08625, or the local Division of Youth and Family Services Regional Office, the county welfare agency or the county designated agency.

1.-3. (No change.)

4. Tables I, II and III specify monthly, weekly and daily rates for the various age categories of children based on the hours of care provided.

NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, SUMMER DAY CAMPS

Child's Service Category	Hours of Care Provided: Full Time 6 hrs. or more/day	Hours of Care Provided: Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$513.12	$256.56
Weekly	$118.50	$ 59.25
Daily Equivalent	$ 23.70	$ 11.85
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$513.12	$256.56
Weekly	$118.50	$ 59.25
Daily Equivalent	$ 23.70	$ 11.85
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	$423.04	$211.52
Weekly	$ 97.70	$ 48.85
Daily Equivalent	$ 19.54	$ 9.77
Kindergartener & School-Agers (5-13 yrs.)		
Monthly	$423.04	$211.52
Weekly	$ 97.70	$ 48.85
Daily Equivalent	$ 19.54	$ 9.77
Special Needs Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$513.12	$256.56
Weekly	$118.50	$ 59.25
Daily Equivalent	$ 23.70	$ 11.85
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$513.12	$256.56
Weekly	$118.50	$ 59.25
Daily Equivalent	$ 23.70	$ 11.85
Special Needs (2.5 up to 19 yrs.)		
Monthly	$423.04	$211.52
Weekly	$ 97.70	$ 48.85
Daily Equivalent	$ 19.54	$ 9.77

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

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NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

Child's Service Category	Hours of Care Provided: Full Time 6 hrs. or more/day	Hours of Care Provided: Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$405.30	$202.65
Weekly	$ 93.60	$ 46.80
Daily Equivalent	$ 18.72	$ 9.36
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$405.30	$202.65
Weekly	$ 93.60	$ 46.80
Daily Equivalent	$ 18.72	$ 9.36
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	$317.40	$158.70
Weekly	$ 73.30	$ 36.65
Daily Equivalent	$ 14.66	$ 7.33
Kindergartener & School-Agers (5-13 yrs.)		
Monthly	$317.40	$158.70
Weekly	$ 73.30	$ 36.65
Daily Equivalent	$ 14.66	$ 7.33
Special Needs Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$493.62	$246.81
Weekly	$114.00	$ 57.00
Daily Equivalent	$ 22.80	$ 11.40
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$493.62	$246.81
Weekly	$114.00	$ 57.00
Daily Equivalent	$ 22.80	$ 11.40
Special Needs (2.5 up to 19 yrs.)		
Monthly	$405.30	$202.65
Weekly	$ 93.60	$ 46.80
Daily Equivalent	$ 18.72	$ 9.36

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

NJCK CHILD CARE CERTIFICATE/VOUCHER MAXIMUM RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

Child's Service Category	Hours of Care Provided: Full Time 6 hrs. or more/day	Hours of Care Provided: Part-Time Less than 6 hrs./day
Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$243.36	$121.68
Weekly	$ 56.20	$ 28.10
Daily Equivalent	$ 11.24	$ 5.62
Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$243.36	$121.68
Weekly	$ 56.20	$ 28.10
Daily Equivalent	$ 11.24	$ 5.62
Pre-Schoolers (2.5 up to 5 yrs.)		
Monthly	$190.52	$ 95.26
Weekly	$ 44.00	$ 22.00
Daily Equivalent	$ 8.80	$ 4.40
Kindergartener & School-Agers (5-13 yrs.)		
Monthly	$190.52	$ 95.26
Weekly	$ 44.00	$ 22.00
Daily Equivalent	$ 8.80	$ 4.40
Special Needs Infants/Toddlers (0 up to 2 yrs.)		
Monthly	$296.18	$148.09
Weekly	$ 68.40	$ 34.20
Daily Equivalent	$ 13.68	$ 6.84
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)		
Monthly	$296.18	$148.09
Weekly	$ 68.40	$ 34.20
Daily Equivalent	$ 13.68	$ 6.84
Special Needs (2.5 up to 19 yrs.)		
Monthly	$243.36	$121.68
Weekly	$ 56.20	$ 28.10
Daily Equivalent	$ 11.24	$ 5.62

The above represents the maximum authorized rates for child care. The NJCK Child Care Certificate Program may authorize payment for the actual cost of care up to these amounts. The required co-payment will be deducted from the appropriate rate before voucher payment is issued. Parent/applicant may select child care with a cost higher than these maximum rates; however, in such instances the parent/applicant is totally responsible for all expenses in excess of these authorized maximum rates as well as for the required co-payment.

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

10:15C-1.1 Co-payment procedures

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

(d) The amount of the required co-payment is based on the family's annual gross income level, family size, number of children, and number of children in care. Assessed co-payments are apportioned weekly and are due for the entire period of time that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required co-payment. There are two co-payment scales:

***Table I**
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $1.00 ($2.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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***Table II**
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $.50 ($1.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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Table I
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

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Table II
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

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

10:81-14.18A REACH post-AFDC co-payment scale

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

(d) The co-payment scales are as follows:

1. (No change.)

2. Assessed co-payments are apportioned weekly and are due for the entire 52-week period that subsidized child care assistance is received. Holidays, emergency closings, and absences do not exclude or reduce the required fee co-payment.

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***Table I**
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $1.00 ($2.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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*Table II
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $.50 ($1.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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Table I
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

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Table II
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

(e)-(h) (No change.)

10:82-5.3 Payment for child care through Title IV-A funds

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

(g) Statewide maximum child care payment rates are based upon either the age or special needs status of the child and on the number of hours of care provided in the various types of child care arrangements. Included in the types of arrangements are registered homes, approved homes, in-home care, child care centers and day camps, and the hours of care provided (that is, full and part-time day care and care before and after school and during school recesses).

1.-4. (No change.)

5. The maximum authorized rates for child care are set forth in Tables I, II and III below, as determined by the type of child care arrangements, and based upon either the age or special needs status of the child and the hours of care provided.

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IV-A CHILD CARE MAXIMUM RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, SUMMER DAY CAMPS

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$ 97.70	$73.30	$48.85	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89
Kindergarteners & School-Agers (5-13 yrs.)				
Weekly	$ 97.70	$73.30	$48.85	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$ 97.70	$73.30	$48.95	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

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IV-A CHILD CARE MAXIMUM RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$ 73.30	$54.95	$36.65	$18.30
Daily	$ 14.66	$10.99	$ 7.33	$ 3.66
Kindergartners & School-Agers (5-13 yrs.)				
Weekly	$ 73.30	$54.95	$36.65	$18.30
Daily	$ 14.66	$10.99	$ 7.33	$ 3.66
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$114.00	$85.50	$57.00	$28.50
Daily	$ 22.80	$17.10	$11.40	$ 5.70
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$114.00	$85.50	$57.00	$28.50
Daily	$ 22.80	$17.10	$11.40	$ 5.70
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

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IV-A CHILD CARE MAXIMUM RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

HOURS OF CARE PROVIDED

Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$44.00	$33.00	$22.00	$11.00
Daily	$ 8.80	$ 6.60	$ 4.40	$ 2.20
Kindergarteners & School-Agers (5-13 yrs.)				
Weekly	$44.00	$33.00	$22.00	$11.00
Daily	$ 8.80	$ 6.60	$ 4.40	$ 2.20
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$68.40	$51.30	$34.20	$17.10
Daily	$13.68	$10.26	$ 6.84	$ 3.42
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$68.40	$51.30	$34.20	$17.10
Daily	$13.68	$10.26	$ 6.84	$ 3.42
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and fifteen minutes is rounded to two hours.

(h) (No change.)

10:86-10.2 Types of care and duration of child care payments

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

(d) The maximum child care payment rates, set forth in Tables I, II and III below, specify weekly and daily rates for the various age categories of children based on the hours of care provided.

1.-3. (No change.)

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IV-A CHILD CARE MAXIMUM RATES

Table I

These rates shall be utilized for:

LICENSED CHILD CARE CENTERS, SCHOOL-AGE PROGRAMS, SUMMER DAY CAMPS

	HOURS OF CARE PROVIDED			
Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$118.50	$88.90	$59.20	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$ 97.70	$73.30	$48.85	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89
Kindergarteners & School-Agers (5-13 yrs.)				
Weekly	$ 97.70	$73.30	$48.85	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$118.50	$88.90	$59.25	$29.65
Daily	$ 23.70	$17.78	$11.85	$ 5.93
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$ 97.70	$73.30	$48.85	$24.45
Daily	$ 19.54	$14.66	$ 9.77	$ 4.89

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

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IV-A CHILD CARE MAXIMUM RATES

Table II

These rates shall be utilized for:

REGISTERED FAMILY DAY CARE HOMES

	HOURS OF CARE PROVIDED			
Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$ 73.30	$54.95	$36.65	$18.30
Daily	$ 14.66	$10.99	$ 7.33	$ 3.66
Kindergarteners & School-Agers (5 up to 13 yrs.)				
Weekly	$ 73.30	$54.95	$36.65	$18.30
Daily	$ 14.66	$10.99	$ 7.33	$ 3.66
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$114.00	$85.50	$57.00	$28.50
Daily	$ 22.80	$17.10	$11.40	$ 5.70
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$114.00	$85.50	$57.00	$28.50
Daily	$ 22.80	$17.10	$11.40	$ 5.70
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$ 93.60	$70.20	$46.80	$23.40
Daily	$ 18.72	$14.04	$ 9.36	$ 4.68

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

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IV-A CHILD CARE MAXIMUM RATES

Table III

These rates shall be utilized for:

APPROVED HOME DAY CARE

	HOURS OF CARE PROVIDED			
Child's Service Category:	Full-Time 6 hrs. or more per day	Three-Quarter Time* 4 or 5 hrs. per day	One-Half Time* 2 or 3 hrs. per day	One-Quarter Time* 1 hr. per day
Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81
Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81
Pre-Schoolers (2.5 up to 5 yrs.)				
Weekly	$44.00	$33.00	$22.00	$11.00
Daily	$ 8.80	$ 6.60	$ 4.40	$ 2.20
Kindergarteners & School-Agers (5 up to 13 yrs.)				
Weekly	$44.00	$33.00	$22.00	$11.00
Daily	$ 8.80	$ 6.60	$ 4.40	$ 2.20
Special Needs Infants/Toddlers (0 up to 2 yrs.)				
Weekly	$68.40	$51.30	$34.20	$17.10
Daily	$13.68	$10.26	$ 6.84	$ 3.42
Special Needs Early Pre-Schoolers (2 up to 2.5 yrs.)				
Weekly	$68.40	$51.30	$34.20	$17.10
Daily	$13.68	$10.26	$ 6.84	$ 3.42
Special Needs Child(ren) (2.5 up to 19 yrs.)				
Weekly	$56.20	$42.15	$28.10	$14.05
Daily	$11.24	$ 8.43	$ 5.62	$ 2.81

*Care given for any portion of an hour shall be rounded to the next full hour. For example, one hour and 15 minutes is rounded to two hours.

10:86-10.6 Co-payment scales

(a) (No change.)

(b) The co-payment scales are as follows:

1.-2. (No change.)

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*Table I
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $1.00 ($2.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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*Table II
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income****					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

****Families with a maximum gross income for their family size in excess of their scale will be assessed an additional weekly fee of $.50 ($1.00 for a Bi-weekly fee) for each $1,000 of gross income above their scale.*

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Table I
CHILD CARE CO-PAYMENT SCHEDULE
FULL TIME CARE*

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$4.40	$2.20	$19.05	$9.53	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$6.60	$3.30	$28.58	$14.29	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$9.90	$4.95	$42.87	$21.43	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$12.10	$6.05	$52.39	$26.20	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$15.40	$7.70	$66.68	$33.34	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$19.80	$9.90	$85.73	$42.87	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$24.20	$12.10	$104.79	$52.39	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$29.70	$14.85	$128.60	$64.30	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$35.20	$17.60	$152.42	$76.21	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$40.70	$20.35	$176.23	$88.12	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$47.30	$23.65	$204.81	$102.40	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$55.00	$27.50	$238.15	$119.08	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$62.70	$31.35	$271.49	$135.75	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$67.10	$33.55	$290.54	$145.27	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Full Time Co-Payment		Monthly Full Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$1.10	$0.55	$4.76	$2.38	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$4.40	$2.20	$19.05	$9.53	5% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$6.60	$3.30	$28.58	$14.29	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$9.90	$4.95	$42.87	$21.43	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$12.10	$6.05	$52.39	$26.20	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$15.40	$7.70	$66.68	$33.34	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$19.80	$9.90	$85.73	$42.87	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$24.20	$12.10	$104.79	$52.39	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$29.70	$14.85	$128.60	$64.30	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$35.20	$17.60	$152.42	$76.21	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$40.70	$20.35	$176.23	$88.12	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$47.30	$23.65	$204.81	$102.40	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$55.00	$27.50	$238.15	$119.08	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$62.70	$31.35	$271.49	$135.75	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$67.10	$33.55	$290.54	$145.27	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Full time care is defined as six (6) or more hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

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Table II
CHILD CARE CO-PAYMENT SCHEDULE
PART-TIME CARE*

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income				
First Child	Second Child***	First Child	Second Child***		1 or 2	3	4	5	6
$0	$0	$0	$0	0%	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 1,768	1 - 2,184	1 - 2,600	1 - 3,016	1 - 3,432
$2.20	$1.10	$9.53	$4.76	6% - 10%	1,769 - 3,536	2,185 - 4,368	2,601 - 5,200	3,017 - 6,031	3,433 - 6,863
$3.30	$1.65	$14.29	$7.14	11% - 15%	3,537 - 5,304	4,369 - 6,552	5,201 - 7,799	6,032 - 9,047	6,864 - 10,295
$4.40	$2.20	$19.05	$9.53	16% - 20%	5,305 - 7,071	6,553 - 8,735	7,800 - 10,399	9,048 - 12,063	10,296 - 13,727
$5.50	$2.75	$23.82	$11.91	21% - 25%	7,072 - 8,839	8,736 - 10,919	10,400 - 12,999	12,064 - 15,079	13,728 - 17,159
$7.70	$3.85	$33.34	$16.67	26% - 30%	8,840 - 10,607	10,920 - 13,103	13,000 - 15,599	15,080 - 18,094	17,160 - 20,590
$9.90	$4.95	$42.87	$21.43	31% - 35%	10,608 - 12,375	13,104 - 15,287	15,600 - 18,198	18,095 - 21,110	20,591 - 24,022
$12.10	$6.05	$52.39	$26.20	36% - 40%	12,376 - 14,143	15,288 - 17,471	18,199 - 20,798	21,111 - 24,126	24,023 - 27,454
$14.30	$7.15	$61.92	$30.96	41% - 45%	14,144 - 15,911	17,472 - 19,655	20,799 - 23,398	24,127 - 27,141	27,455 - 30,885
$17.60	$8.80	$76.21	$38.10	46% - 50%	15,912 - 17,679	19,656 - 21,839	23,399 - 25,998	27,142 - 30,157	30,886 - 34,317
$19.80	$9.90	$85.73	$42.87	51% - 55%	17,680 - 19,446	21,840 - 24,022	25,999 - 28,597	30,158 - 33,173	34,318 - 37,749
$23.10	$11.55	$100.02	$50.01	56% - 60%	19,447 - 21,214	24,023 - 26,206	28,598 - 31,197	33,174 - 36,188	37,750 - 41,180
$27.50	$13.75	$119.08	$59.54	61% - 65%	21,215 - 22,982	26,207 - 28,390	31,198 - 33,797	36,189 - 39,204	41,181 - 44,612
$30.80	$15.40	$133.36	$66.68	66% - 70%	22,983 - 24,750	28,391 - 30,574	33,798 - 36,397	39,205 - 42,220	44,613 - 48,044
$33.00	$16.50	$142.89	$71.45	71% - 75%	24,751 - 26,518	30,575 - 32,758	36,398 - 38,996	42,221 - 45,236	48,045 - 51,476

Weekly Part-Time Co-Payment		Monthly Part-Time Co-Payment**		Percent of State 1989 Median Family Income	Family Size and Annual Income					
First Child	Second Child***	First Child	Second Child***		7	8	9	10	11	12
$0	$0	$0	$0	0%	0	0	0	0	0	0
$0.00	$0.00	$0.00	$0.00	1% - 5%	1 - 3,510	1 - 3,588	1 - 3,666	1 - 3,744	1 - 3,822	1 - 3,900
$2.20	$1.10	$9.53	$4.76	6% - 10%	3,511 - 7,019	3,589 - 7,176	3,667 - 7,332	3,745 - 7,488	3,823 - 7,644	3,901 - 7,800
$3.30	$1.65	$14.29	$7.14	11% - 15%	7,020 - 10,529	7,177 - 10,763	7,333 - 10,997	7,489 - 11,231	7,645 - 11,465	7,801 - 11,699
$4.40	$2.20	$19.05	$9.53	16% - 20%	10,530 - 14,039	10,764 - 14,351	10,998 - 14,663	11,232 - 14,975	11,466 - 15,287	11,700 - 15,599
$5.50	$2.75	$23.82	$11.91	21% - 25%	14,040 - 17,548	14,352 - 17,939	14,664 - 18,329	14,976 - 18,719	15,288 - 19,109	15,600 - 19,499
$7.70	$3.85	$33.34	$16.67	26% - 30%	17,549 - 21,058	17,940 - 21,527	18,330 - 21,995	18,720 - 22,463	19,110 - 22,931	19,500 - 23,399
$9.90	$4.95	$42.87	$21.43	31% - 35%	21,059 - 24,568	21,528 - 25,114	21,996 - 25,660	22,464 - 26,206	22,932 - 26,752	23,400 - 27,298
$12.10	$6.05	$52.39	$26.20	36% - 40%	24,569 - 28,077	25,115 - 28,702	25,661 - 29,326	26,207 - 29,950	26,753 - 30,574	27,299 - 31,198
$14.30	$7.15	$61.92	$30.96	41% - 45%	28,078 - 31,587	28,703 - 32,290	29,327 - 32,992	29,951 - 33,694	30,575 - 34,396	31,199 - 35,098
$17.60	$8.80	$76.21	$38.10	46% - 50%	31,588 - 35,097	32,291 - 35,878	32,993 - 36,658	33,695 - 37,438	34,397 - 38,218	35,099 - 38,998
$19.80	$9.90	$85.73	$42.87	51% - 55%	35,098 - 38,606	35,879 - 39,465	36,659 - 40,323	37,439 - 41,181	38,219 - 42,039	38,999 - 42,897
$23.10	$11.55	$100.02	$50.01	56% - 60%	38,607 - 42,116	39,466 - 43,053	40,324 - 43,989	41,182 - 44,925	42,040 - 45,861	42,898 - 46,797
$27.50	$13.75	$119.08	$59.54	61% - 65%	42,117 - 45,625	43,054 - 46,641	43,990 - 47,655	44,926 - 48,669	45,862 - 49,683	46,798 - 50,697
$30.80	$15.40	$133.36	$66.68	66% - 70%	45,626 - 49,135	46,642 - 50,229	47,656 - 51,321	48,670 - 52,413	49,684 - 53,505	50,698 - 54,597
$33.00	$16.50	$142.89	$71.45	71% - 75%	49,136 - 52,645	50,230 - 53,816	51,322 - 54,986	52,414 - 56,156	53,506 - 57,326	54,598 - 58,496

*Part-time care is defined as less than six (6) hours of care per day.

**The monthly co-payment is calculated by multiplying the weekly co-payment by 4.33.

***The co-payments listed are for the first and second child of the family receiving care. The co-payment for the second child receiving care is calculated at one-half of the full co-payment for that child. No additional co-payment is charged for the third or subsequent child(ren) in the family receiving care.

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

(a)

DIVISION OF DEVELOPMENTAL DISABILITIES

Administration

Adopted New Rules: N.J.A.C. 10:41

Proposed: January 3, 1994 at 26 N.J.R. 811(a) (see also 26 N.J.R. 725(a)).

Adopted: March 21, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: March 22, 1994 as R.1994 d.196, **without change**.

Authority: N.J.S.A. 9:6-8, 10a, 20:10-12, 30:4-24.3, 30:6D-4(f).

Effective Date: April 18, 1994.

Expiration Date: April 18, 1999.

Summary of Public Comments and Agency Responses:

The proposed readoption with amendments was published on January 3, 1994. During the comment period, which closed March 3, 1994, comments were submitted by Jean Paashaus of Summit, New Jersey and the Eden Family of Programs. As the filing of the readoption with OAL did not occur until after the chapter's expiration, the rules proposed for readoption with amendments are adopted herein as new rules, in accordance with N.J.A.C. 1:30-4.4(f).

Jean Paashaus

COMMENT: The regulation substitutes the term "individual" or "individual served" for the term "client" which was previously used. It is suggested that the term "client" be retained to clearly delineate the responsibility of the Division to these persons.

RESPONSE: Various advocacy groups have urged the Division of Developmental Disabilities to use the term "individual" or "individual

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served" instead of the term "clients." It is felt that the term "individual" more fully considers the unique nature of each person who receives Division services.

The Division has already amended several regulations to use the term "individuals" instead of "client." The Division therefore cannot agree to the suggested change.

Eden Family of Programs

COMMENT: At N.J.A.C. 10:41-4.12(d), it is required that "For agencies with their own Human Rights Committees, the minutes shall be forwarded to the Regional Administrator." While we agree that the Human Rights Committee minutes of these agencies should be available to the Regional Administrator at all times, we feel that this would be best accomplished through an agency audit, rather than by increasing the amount of paperwork sent to the Division.

RESPONSE: The regulations previously required that the minutes be on file and available for review by Division staff. The Human Rights Committee is required to meet every other month at a minimum. The committee is also responsible to review highly sensitive human rights issues including the use of aversive techniques.

While the requirement to provide minutes to the Regional Administrator may be a slight increase in the paperwork the agency must forward, the Division is ultimately responsible for the individuals that it places with a provider agency. Issues which affect the human rights of the persons served should be available to the Division for review on an immediate basis rather than being merely retained on file by the agency. The Division does not agree to the change.

COMMENT: We strongly support the Division's change from the term "client" to "individual."

RESPONSE: The Division thanks the agency for its support.

COMMENT: It is suggested that the Division change the term "mental retardation facility" to "facility serving individuals with developmental disabilities."

RESPONSE: The Division appreciates the spirit of the comment. However, the rule uses the term "private mental retardation facility" in only two places: N.J.A.C. 10:41-4.18(b) and 10:41-4.20(a). In each case, the term is meant to refer to private institutions within New Jersey. The term "private mental retardation facility" is a license category used by the New Jersey Department of Health and is also the term used in the licensing regulations found at N.J.A.C. 10:47. Reluctantly, the Division cannot agree to the suggested change.

Full text of the expired rules adopted herein as new rules can be found in the New Jersey Administrative Code at N.J.A.C. 10:41.

Full text of the adopted amendments to the expired rules adopted herein as new follows:

10:41-4.3 Definitions

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

"Behavior Management Committee (BMC)" means a representative body of individuals who have clinical expertise and individuals who have administrative authority within the Division component or provider agency who review behavior plans and who make a judgment as to whether or not the plans are clinically and technically appropriate.

"Chief executive officer (CEO)" means the person having administrative authority over, and responsibility for, a State-operated developmental center, or a private residential facility licensed under N.J.A.C. 10:47.

. . .

"Human rights committee" means a group comprised of professionals, individuals served, advocates and/or interested persons from the community at large who function as an advisory body to the CEO, executive director or regional administrator, on issues directly or indirectly affecting the rights of individuals served.

. . .

"Regional administrator" means the person having administrative authority and responsibility for a community based regional office.

10:41-4.4 Rights of developmentally disabled persons

(a) Developmentally disabled individuals are entitled to exercise the same human and civil rights enjoyed by other citizens. These rights shall not be limited or modified unless the individual's disability limits the exercise of these rights. Staff shall make efforts to assure that the human and civil rights of developmentally disabled individuals are protected and exercised.

(b) Limitations of an individual's rights shall be documented in the client record.

(c) All staff and contract service providers shall advocate for and protect the rights of developmentally disabled individuals in programs for which they are responsible. Staff and contract service providers shall utilize the structured form of the human rights committee as an assist in protecting the rights of the developmentally disabled.

10:41-4.5 Role for the human rights committee

(a) The human rights committee shall exercise an advisory role only in relation to the regional administrator, CEO or executive director.

(b) The regional administrator, CEO or executive director shall make the final decision on any issue regarding the rights of a person receiving services and when proceeding against the advice and recommendations of the human rights committee, shall document the substantive reasons for proceeding against the advice and recommendations of the human rights committee in the client record.

(c) The orientation of the human rights committee shall be proactive and preventative. The committee shall recommend procedures and programs which safeguard the rights of the individual.

(d) The regional administrator, CEO or executive director, shall ensure that each committee be afforded a private meeting area and an atmosphere respectful of its independence and objectivity as a review group.

10:41-4.6 Appointment of members

(a) The members of the human rights committee shall be appointed by the regional administrator, CEO or executive director for a two year term. The term may be renewable.

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

(d) (No change in text.)

10:41-4.7 Appointment and duties of chairperson and vice-chairperson

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

(c) The chairperson and vice-chairperson shall serve a two-year term to which they may be reelected.

(d) (No change.)

10:41-4.8 Conflict of interest

(a) (No change.)

(b) Representatives of legal services, such as the Department of the Public Advocate or other agency, who may represent future individual interests, shall not be appointed members of a human rights committee as defined in this subchapter. Their role and authority exist independent of this advisory body.

10:41-4.9 Filling vacancies created by unexpired terms

(a) Any human rights committee member who cannot complete his or her term shall communicate this in writing to the regional administrator, CEO or executive director at least two weeks before the date of resignation.

(b) If any human rights committee member, for good reason, cannot complete his or her term, the regional administrator, CEO or executive director shall appoint a replacement within 30 days of the creation of a vacancy.

10:41-4.10 Removal of human rights committee members

(a) A committee member may be removed by the regional administrator, CEO or executive director, for good cause, based upon a two-thirds majority vote of the full committee. The member who may be removed shall not vote on the action.

(b) (No change.)

10:41-4.12 Minutes of the meeting

(a) Minutes of the meeting shall be retained on file in the office of the regional administrator, CEO or executive director, and shall be available to Division staff.

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

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(d) For agencies with their own committees, the minutes shall be forwarded to the regional administrator.

10:41-4.13 (Reserved)

10:41-4.14 General committee functions

(a) The functions of a human rights committee shall include, but not be limited to, the following:

1. To advise the regional administrator, CEO or executive director with regard to issues, regarding the human and civil rights of individuals, bringing to his or her attention existing or potential infringements upon, or impediments to the free exercise of individual's rights including recommendations for action.

2. To contribute to the development of revision of policies and procedures directly relating to individual's rights.

3. To review alleged or suspected violation of the rights of individuals or groups of individuals brought to the attention of the committee and to recommended investigation of violations, as deemed appropriate by the committee.

4. To review behavior modification plans which employ the use of procedures not prohibited by law or rule which may present an element of risk and/or restriction to an individual's rights.

5. To review the proposed involvement of person participating in research projects.

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

10:41-4.15 Responsibilities of the chairperson

(a) The chairperson of the committee shall be responsible for the following:

1.-2. (No change.)

3. Forwarding copies of minutes and other communications to the members of the committee and the regional administrator, CEO or executive director; and

4. (No change.)

10:41-4.18 Provider agency committees

(a) (No change.)

(b) The CEO of a private mental retardation facility or the executive director shall establish a line of communication with the regional administrator of the appropriate office to facilitate case reviews.

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

10:41-4.20 Membership of provider agency human rights committees

(a) The CEO of a private mental retardation facility or the executive director shall appoint members of the committee, one of whom may be a Division employee.

(b) The Division may assign an observer who is not a voting member of the committee, under the following conditions:

1. (No change.)

2. Should the observer have concerns about the agency or facility, he or she shall bring these concerns to the CEO of a private mental retardation facility or the executive director; and

3. (No change.)

(c) (No change.)

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled (PAAD)

Eligibility Criteria; Exclusion of Income

Adopted Amendments: N.J.A.C. 10:69A-1.2 and 6.2

Proposed: December 20, 1993 at 25 N.J.R. 5750(a).

Adopted: March 15, 1994 by William Waldman, Commissioner, Department of Human Services.

Filed: March 17, 1994 as R.1994 d.191, **without change**.

Authority: N.J.S.A. 30:4D-20, 21 and 24; P.L. 1992, c.30.

Effective Date: April 18, 1994.

Expiration Date: March 26, 1998.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10:69A-1.2 Legal authority

(a) The New Jersey Program of Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established by Chapter 194, Laws of 1975, as amended by:

1.-9. (No change.)

10. Chapter 30, Laws of 1992, effective June 29, 1992.

11. (No change in text.)

(b) (No change.)

10:69A-6.2 Income standards

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

(c) All income, from whatever source derived, is considered in determining eligibility for the purposes of PAAD. Jointly owned income sources will be allocated according to degree of ownership.

1. (No change.)

2. Sources of income which are excluded in considering eligibility for PAAD are as follows:

i.-v. (No change.)

vi. Agent Orange payments;

vii. Reparation payments to Japanese Americans by the Federal Government pursuant to sections 105 and 106 of the Civil Liberties Act of 1988, P.L. 100-383 (50 U.S.C. App. 1989b-4 and 1989b-5).

(d)-(i) (No change.)

(b)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Corrections

Program Administration

Factors Prompting the Assumption of County Operations

General Assistance Manual

Referral to State Agencies

N.J.A.C. 10:84-1.2 and 10:85-8.4

Take notice that the Department of Human Services has discovered errors in the current text of N.J.A.C. 10:84-1.2(a)2 and 10:85-8.4(c)2iv(1)(A).

At N.J.A.C. 10:84-1.2(a)2, the word "Inaudible" beginning the second sentence of the paragraph is a misspelling of the word "Inauditible." The misspelling originated in the published proposal of this chapter (see 24 N.J.R. 4480(b)) and continued through the publication of the chapter adoption (see 26 N.J.R. 374(a)) and its incorporation into the Administrative Code.

At N.J.A.C. 10:85-8.4(c)2iv(1)(A), subparagraph text adopted at 14 N.J.R. 1217(a) was erroneously not incorporated into the Administrative Code. The subparagraph should read, "Specialized and subspecialized evaluation, diagnostic and treatment services for infants and children who have multiple handicapping conditions, chronic diseases/disorders and/or are at risk for delayed development."

Through this notice, published in accordance with N.J.A.C. 1:30-2.7, this misspelling and omission are corrected.

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

10:84-1.2 Factors prompting the assumption of county operations

(a) The following are factors viewed as particularly significant program irregularities and management deficiencies. Elements such as unlawful activity, pervasive fiscal and/or program deficiencies are the primary basis for consideration of assumption action. Failure on the part of the county to correct any such deficiency so identified by the Department will result in the ultimate administrative takeover of program administration by the Department.

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1. (No change.)
2. Fiscal operations irregularities or management deficiencies refer to absence of adherence to State and Federal fiscal procedures and regulations relating to public assistance administration. [Inaudible] **Inauditible** fiscal records shall be interpreted as evidence of noncompliance if the agency fails to effect corrective action within specified timeframes.
3. (No change.)

10:85-8.4 Referral to State agencies
(a)-(b) (No change.)
(c) The New Jersey Department of Health administers the programs and services described in (c)2 below.
1. (No change.)
2. Description of programs: The Department of Health administers the following programs;
i.-iii. (No change.)
iv. Special Child Health Services (SCHS): This program is designed to promote early identificaton, diagnosis, evaluation and treatment of any child under the age of 21 with handicapping or potentially handicapping conditions.
(1) This program replaces the former "Crippled Children's Program" and "Juvenile Terminal Illness Assistance Program" with expanded services for children and families who are at risk for developing a handicapping condition. Services are provided by health care agencies/facilities throughout the state, which have contracted with the State Department of Health. Financial assistance is available through these agencies/facilities on a limited basis when third party resources are exhausted or unavailable to the child or family. Services that are supported include:
(A) Specialized and subspecialized evaluation, diagnostic and treatment services for infants and children who have **multiple handicapping conditions, chronic diseases/disorders** and/or are at risk for delayed development.
(B)-(D) (No change.)
(2) (No change.)
(d)-(k) (No change.)

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of Administrative Correction
General Assistance Manual
Eligibility for Assistance; Financial Eligibility
N.J.A.C. 10:85-3.3

Take notice that the Department of Human Services has discovered a typographic error in the current text of N.J.A.C. 10:85-3.3(e)5vi. That subparagraph was adopted effective January 1, 1978 reading, "HUD Payments: Any HUD (Housing and Urban Development) vendor payments made on behalf of recipients." (See 9 N.J.R. 471(b) and 10 N.J.R. 15(c)). Although the subparagraph has not been amended since its original adoption, two typographic errors have occurred in the preparation of update pages to the New Jersey Administrative Code. The first such error occurred in the 1-3-84 Code update, with the term "vendor payments" misprinted as "render payments." The second error, which persists in the current (6-15-92) Code update page, occurred in the 1-17-89 Code update, with the already misprinted "render payments" further misprinted as "rendered payments." Through this notice, published pursuant to N.J.A.C. 1:30-2.7, the Code text will be restored to its adopted form.

Full text of the corrected rule follows (addition indicated in boldface **thus**; deletion indicated in brackets [thus]):

10:85-3.3 Financial eligibility
(a)-(d) (No change.)
(e) Rules concerning unearned income are:
1.-4. (No change.)
5. Income exclusions: The following shall not be counted when determining financial eligibility:
i.-v. (No change.)
vi. HUD Payments: Any HUD (Housing and Urban Development [rendered] **vendor** payments made on behalf of recipients.
vii.-xiii. (No change.)
(f)-(g) (No change.)

CORRECTIONS

(b)

THE COMMISSIONER
CLASSIFICATION PROCESS

Criteria for Consideration for Gang Minimum Custody Status and Full Minimum Custody Status

Adopted Amendment: N.J.A.C. 10A:9-4.6

Proposed: February 7, 1994 at 26 N.J.R. 728(a).
Adopted: March 11, 1994 by William H. Fauver, Commissioner, Department of Corrections.
Filed: March 24, 1994 as R.1994 d.197, **without change.**
Authority: N.J.S.A. 30:1B-6 and 30:1B-10.
Effective Date: April 18, 1994.
Expiration Date: February 18, 1997.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

10A:9-4.6 Criteria for consideration for gang minimum custody status and full minimum custody status
(a)-(e) (No change.)
(f) Inmates who were considered for reduced custody status on or after April 2, 1990, and were sentenced to serve mandatory minimum terms of more than 24 months are eligible to be considered for gang minimum custody status and full minimum custody status when the inmate has served one-half of the mandatory minimum or is within 24 months of the expiration of the mandatory minimum term, whichever is less. (EXAMPLE 1: If the inmate has a mandatory minimum of three years, one-half of three years is equal to one year and six months. However, after the inmate serves one year on his or her three year mandatory minimum he or she is within 24 months of the expiration date. The inmate is therefore eligible for reduced custody after having served only one year in maximum custody because one year is less. EXAMPLE 2: If the inmate has a mandatory minimum of five years, one-half of five years is two and one-half years. However, the inmate must serve three years prior to being within 24 months of the expiration date. The inmate is therefore eligible for reduced custody after having served only two and one-half years in maximum custody because two and one-half years is less.) Any New Jersey presentence jail credit awarded on the instant offense shall be counted. Time served on a prior sentence may not be applied to satisfy this requirement.
(g)-(m) (No change.)

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INSURANCE

(a)

DIVISION OF PROPERTY AND CASUALTY

Standards for Written Notice: Buyer's Guide and Coverage Selection Form: Minimum Standards for Coverage Selection Form

Adopted Amendments: N.J.A.C. 11:3-15.7

Proposed: January 3, 1994 as 26 N.J.R. 85(a).

Adopted: March 18, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.

Filed: March 21, 1994 as R.1994 d.195, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e), 39:6A-8.1, 39:6A-23 and 17:28-1.9.

Effective Date: April 18, 1994.

Expiration Date: January 4, 1996.

Summary of Public Comments and Agency Responses:

The proposed amendments were published on January 3, 1994 at 26 N.J.R. 85(a). During the comment period which closed February 2, 1994, three comments were submitted from insurance companies (American International Group, Inc. and Colonial Penn Insurance Company) and a producer association (Professional Insurance Agents of New Jersey, Inc.). These comments and the Department's responses are summarized below:

COMMENT: One commenter noted that the warning statements which have been proposed to be included in the coverage selection form (CSF) appear to be taken directly from the law and, therefore, contain "legal phrases" which may not be understood by some policyholders. The commenter recommended the following as alternative language:

Insurance companies or their producers or representatives cannot be held liable in an action for damages because of the selection of either the Lawsuit Threshold (otherwise known as the verbal threshold) or no threshold or because of the option imposed by law if no selection is made by the named insured, except for damages caused as the result of a willful, wanton or grossly negligent act of commission or omission.

Insurance Companies or their producers or representatives cannot be held liable in an action for damages either on account of the selection of liability limits by a named insured, as long as the limits provide at least the minimum coverage required by law, or because the named insured did not elect to purchase underinsured motorists coverage, collision coverage or comrehensive coverage, except for damages caused as a result of a willful, wanton or grossly negligent act of commission or omission.

RESPONSE: The Department agrees with the commenter's suggestion. The Consumer Contracts Act at N.J.S.A. 56:12-2 requires that all consumer contracts "be written in a simple, clear, understandable and easily readable way." The Department, therefore, amends the warning statements to conform to these requirements.

COMMENT: One commenter inquired as to whether the proposed amendments to N.J.A.C. 11:3-15.7 apply to commercial lines insurers which write private passenger insurance.

RESPONSE: These amendments must be incorporated into all CSFs regardless of whether they are issued by personal or commercial lines insurers.

COMMENT: One commenter agreed with the Department's interpretation of P.L. 1993, c.156 in that the act requires amendments to the CSF to include an acknowledgement by the insured that the limits available for uninsured and underinsured motorist coverages have been explained to the insured and that a statement is necessary to notify insureds that insurance companies and their representatives cannot be held liable because of the election they have made for liability or tort coverage. The commenter further agreed with the Department's characterization of these statements as "warning statements."

The commenter suggested that the statements of immunity belong below the signature line to clarify that the immunity statements are for informational purposes only and are not contingent or dependent upon the signature of the applicant insured.

RESPONSE: The Department disagrees with the relocation of the warning statements because they belong in immediate proximity to the sections for which they apply. Insureds are more likely to notice the warnings, read them and understand their meaning if they remain in the body of the CSF.

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

11:3-15.7 Minimum standards for Coverage Selection Form

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

(h) The text of the Coverage Selection Form follows:

(NOTE: Company's name may be included here.)

(NOTE: If a company has more than two percent of the New Jersey private passenger automobile market, it shall include its name and toll-free number here.)

COVERAGE SELECTION FORM

Name:_____

For new policies, you must choose one option for each item below. For changes upon renewal and mid-term policy changes, you must use this Form when you:

(a) elect the "No Threshold" option;

(b) change from the "No Threshold" option to the "Lawsuit Threshold" option;

(c) desire collision or comprehensive deductibles other than $500;

(d) desire to change to the $500 deductible for collision or comprehensive coverage;

(e) desire your health insurer to be the primary insurer to pay for your auto accident-related medical bills; or

(f) desire your auto insurance carrier to be the primary insurer for your auto accident-related medical bills.

The following item numbers match the explanations in the New Jersey Auto Insurance Buyer's Guide. Read the Buyer's Guide for information and help in completing this form.

1. Liability Coverage

How much coverage do you choose for damage you may do to others?

☐ _____

☐ _____

☐ _____

☐ _____

(NOTE: At least four of the most popular coverage limits shall be listed, including the lowest limit offered.)

(NOTE: If a complete list is not provided, state that other coverage limits are available.)

2. Lawsuit Threshold (Otherwise known as the "Verbal Threshold")

Do you accept the basic limit on the right to sue if injured in an auto accident?

☐ Yes. I want the Lawsuit Threshold.

☐ No. I want No Threshold. My bodily injury liability premium will be ____% to ____% higher if I select the No Threshold option instead of the Lawsuit Threshold, depending upon where my car is garaged, my bodily injury liability coverage limit, and other factors. Per vehicle, my bodily injury liability premium at current rates will be $_____ to $_____ higher on each _____ renewal of my policy if I select the No Threshold option instead of the Lawsuit Threshold. I understand that I can contact my insurance company or my insurance producer (i.e., agent or broker) for specific details.

(NOTE: Insurance companies writing six month policies should insert the word "semi-annual" in the blank space above. Companies writing 12 month policies should insert the word "annual.")

(NOTE: Insurance companies writing single limit liability coverage may add a footnote to inform insureds that the policy declaration page will not include a specific premium for "bodily injury liability" coverage.)

NOTE: *[Pursuant to N.J.S.A. 39:6A-8.1e, insurance]* ***Insurance*** companies or their producers or representatives*[, including, but not limited to, all persons enumerated at N.J.S.A. 39:6A-8.1e]* shall not be held liable in an action for damages either on account of the *[election]* ***choice*** of a tort option (lawsuit threshold/verbal threshold or no threshold) ***made*** by *[a named]* ***an*** insured or on account of the tort option imposed *[pursuant to N.J.S.A. 39:6A-8.1b]* ***by law if no choice is made***, except for damages caused as the result of a willful, wanton or grossly negligent act of commission or omission.

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3. Personal Injury Protection (PIP). Choose the kind of coverage you want.

☐ Basic PIP Coverage which includes income continuation, essential services, death benefits and funeral expense benefits as well as medical expense benefits, or

☐ PIP Medical Expenses Only Coverage, for a ___% to ___% savings in the _____ premium. (NOTE: Include the range of percentage savings and the base, i.e., basic PIP premium.);

☐ Additional PIP Coverage at an extra cost. NOTE: This option is not available if you have selected PIP Medical Expenses Only coverage. Contact your insurance company or insurance producer (i.e., agent or broker) for details. (NOTE: Company's name may be used here or a chart listing options may be enclosed.)

☐ Additional Medical Expense Coverage.

(NOTE: Reference to Additional Medical Expense Coverage shall be deleted by those companies which do not offer the coverage.)

4. PIP Health Insurance Option: Choose if you want your health insurer, other than Medicare or Medicaid, to be your primary carrier to pay your auto accident-related medical benefits. Check with your employer or health insurer to see if you are eligible and request an answer in writing. To choose this option, health coverage must cover the named insured and members of his family residing in the household.

☐ Yes. I choose the PIP health insurer option.

(NOTE: Your auto insurance company may invalidate this option selection and request payment of the discounted premium amount if it checks but cannot verify that (1) your health coverage is in effect, and (2) your health insurer will provide primary coverage for your auto accident-related medical expenses.

The name of my health insurer(s) is (are):

1. _____

Number:_____
Policy, Plan, Membership or Group Certificate Number (circle one)

2. _____

Number:_____
Policy, Plan, Membership or Group Certificate Number (circle one)

☐ No. I do not want the PIP health insurer option.

5. PIP Medical Expenses Deductible. Choose only one:

☐ $250 deductible, minimum required by law.

☐ $500 deductible, for a _____% to _____% reduction in the Basic PIP premium.

☐ $1,000 deductible, for a _____% to _____% reduction in the Basic PIP premium.

☐ $2,500 deductible, for a _____% to _____% reduction in the Basic PIP premium.

6. Uninsured/Underinsured Motorists Coverage

How much coverage do you choose for damage which another driver who has little or no insurance may do to your car, your family, your passengers or yourself? Your auto insurance company must offer this coverage up to the bodily injury and property damage liability limits you have selected.

☐ _____
☐ _____
☐ _____
☐ _____

(NOTE: List the same options available for liability coverage above. Other options may also be listed.)

NOTE: *[Pursuant to N.J.S.A. 17:28-1.9 (P.L.1993, c.156), insurance]* ***Insurance*** companies or their producers or representatives*[, including, but not limited to, all persons enumerated at N.J.S.A. 17:28-1.9 (P.L.1993, c.156),]* shall not be held liable in an action for damages either on account of the *[election]* ***choice*** of a given level of motor vehicle insurance coverage ***made*** by *[a named]* ***an*** insured, as long as those limits provide at least the minimum coverage required by law, or on account of the *[named]* insured not *[electing]* ***choosing*** to purchase underinsured motorists coverage, collision coverage or comprehensive coverage, except for damages caused as the result of a willful, wanton or grossly negligent act of commission or omission.

7. Do you choose "collision" coverage?

☐ No. I do not wish to be covered for collision damage.

☐ Yes, with the basic $500 deductible.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately **less** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $100, $150, $200 or $250. This premium will be proportionately **more** than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker.)

(WARNING: YOU MAY NOT BE ABLE TO ADD COLLISION COVERAGE TO AN EXISTING VEHICLE OR TO ADD AN ADDITIONAL OR REPLACEMENT VEHICLE TO YOUR EXISTING POLICY WITHOUT FIRST HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

8. Do you choose "comprehensive" coverage? (NOTE: If appropriate, use the term "other than collision" coverage throughout this section.)

☐ No. I do not wish to be covered for comprehensive damage.

☐ Yes, with the basic $500 deductible.

☐ Yes, with the deductible circled here: $1,000, $1,500 or $2,000. This premium will be proportionately less than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

☐ Yes, with the deductible circled here: $50, $100, $150, $200 or $250. This premium will be proportionately more than the premium with the basic $500 deductible. Details available from company or insurance producer (i.e., agent or broker).

(NOTE: For both collision and comprehensive, if either the $200 deductible or $250 deductible is not offered, that option may be deleted from this form. Also, all other available collision and comprehensive deductibles shall be listed where appropriate.)

(WARNING: YOU MAY NOT BE ABLE TO ADD COMPREHENSIVE COVERAGE TO AN EXISTING VEHICLE OR TO ADD AN ADDITIONAL OR REPLACEMENT VEHICLE TO YOUR EXISTING POLICY WITHOUT FIRST HAVING THAT VEHICLE INSPECTED; CONTACT YOUR INSURANCE COMPANY OR INSURANCE AGENT IMMEDIATELY.)

I have read the Buyer's Guide outlining the coverage options available to me. The limits available for uninsured and underinsured motorists coverage have been explained to me. My choices are shown above. I agree that each of these choices will apply for all vehicles insured by my policy and to each subsequent renewal, continuation, replacement or amendment until the insurance company or its insurance producer (i.e., agent or broker) with the company's binding authority receives my request that a change be made.

For new policyholders, I understand that:

(a) if I do not make a written choice for Item 2, I will receive the Lawsuit Threshold option;

(b) if I carry collision or comprehensive coverage without making a written choice for Item 7 or Item 8, I will receive the $500 deductible; and

(c) if I do not make a written choice for the PIP health insurer option in Item 4, my auto insurer will be the primary health insurer for PIP medical expense benefits.

I understand that if this is a policy renewal and I do not complete choices, I will receive the same coverage as in my previous policy except when changes are required by a law becoming effective during the term of my previous policy.

I understand that these choices take effect in the following manner:

(1) for new policies and mid-term policy changes, the choices on this Form are effective the day following the date of postmark or, when personal delivery is made or the postmark is illegible, the day following receipt of this Form by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority; and

(2) for changes upon renewal, the changes to be made on this Form are effective on the date of the next policy renewal if postmarked or received by the insurance company or by an insurance producer (i.e., agent or broker) with the company's binding authority prior to the renewal date.

ANY PERSON WHO KNOWINGLY MAKES AN APPLICATION FOR MOTOR VEHICLE INSURANCE COVERAGE CONTAINING ANY STATEMENT THAT THE APPLICANT RESIDES OR IS DOMICILED IN THIS STATE WHEN, IN FACT, THAT APPLI-

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CANT RESIDES OR IS DOMICILED IN A STATE OTHER THAN THIS STATE, IS SUBJECT TO CRIMINAL AND CIVIL PENALTIES.

Please check the appropriate box to which this form applies
☐ NEW POLICY ☐ Mid-Term Change ☐ Renewal Change

SIGNATURE _____ DATE _____

(i)-(k) (No change.)

(a)

DENTAL SERVICES

Dental Plan Organizations: Renewal of Certificate of Authority

Adopted New Rule: N.J.A.C. 11:10-1.13 and 11:10 Appendices A and B

Adopted Amendments: N.J.A.C. 11:10-1.4 and 1.12

Proposed: February 7, 1994 at 26 N.J.R. 738(a).
Adopted: March 24, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.
Filed: March 24, 1994 as R.1994 d.200, **without change.**
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:48D-1 et seq., 17:48D-5 and 17:48D-16.
Effective Date: April 18, 1994.
Expiration Date: July 12, 1995.

Summary of Public Comment and Agency Response:

The Department received one comment from the New Jersey Dental Association (NJDA) on the proposed new rule and amendments.

COMMENT: The commenter supports the Department's rule proposal, indicating that NJDA has detected problems and that a review of DPOs for continued compliance with the DPO Act (N.J.S.A. 17:48D-1 et seq.) is necessary prior to renewal of their Certificate of Authority.

RESPONSE: The Department agrees that these rules are necessary to ensure that DPOs continue to comply with the financial and other requirements of the DPO Act.

Full text of the adoption follows:

11:10-1.4 General rules
(a) (No change.)
(b) (No change in text.)

11:10-1.12 Schedule of charges
(a) (No change.)
(b) All filings of charges must include sufficient information to enable the Commissioner to determine whether the charges are not excessive, inadequate or unfairly discriminatory. All details, used in the development of rates, must accompany the filing, include:
1.-3. (No change.)
(c)-(f) (No change.)

11:10-1.13 Renewal of Certificate of Authority
(a) Every request by a dental plan organization for renewal of its Certificate of Authority shall be in writing.
(b) A request for renewal of a DPO Certificate of Authority shall include at least the following items:
1. The renewal fee as currently set forth at N.J.A.C. 11:1-32.4(a)7 in the form of a check or money order made payable to the State Treasurer of New Jersey;
2. The completed Certificate of Authority Renewal Affidavit set forth as Appendix A to this chapter, incorporated herein by reference, signed by a principal officer of the DPO responsible for conducting the affairs of the DPO and notarized; and
3. The completed Certificate of Authority Renewal Request Form set forth as Appendix B to this chapter, incorporated herein by reference, containing all the information required therein.
(c) The DPO shall submit and the Department shall receive at least 45 days prior to the expiration date of the DPO's current Certificate of Authority, the notarized Certificate of Authority Renewal Affidavit, signed Certificate of Authority Renewal Request Form, and renewal fee. All materials shall be submitted to:
Assistant Commissioner
Actuarial Services, Life and Health Division
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

Recodify existing 11:10-1.13 and 1.14 as 11:10-1.14 and 1.15 (No change in text.)

APPENDIX A
CERTIFICATE OF AUTHORITY
RENEWAL AFFIDAVIT

State of _____

County of _____

The undersigned, being duly sworn according to law upon his/her oath deposes and says:

I, _____ in my capacity as
(Affiant's full printed name—no initials)

_____, on behalf of
(Affiant's title)

_____, which is located at
(Name of dental plan organization)

_____
(Street and City where dental plan organization is located)

in New Jersey, do hereby make application for the renewal of the Certificate of Authority of the above-named dental plan organization, which Certificate of Authority shall otherwise expire on _____
(Expiration date and year)

I do hereby certify on this _____ day of _____, 19_____, under penalty of perjury that I am a principal officer of the above-named dental plan organization, and that all statements made herein and in the Certificate of Authority Renewal Request Form attached hereto and incorporated herein are true and correct to the best of my knowledge and belief.

_____
(Signature of Affiant)

Subscribed and duly sworn before me, the undersigned authority, on this _____ day of _____, 19_____.

(Seal) _____
(Notary Public)

My Commission Expires _____

APPENDIX B
DENTAL PLAN ORGANIZATION
CERTIFICATE OF AUTHORITY
RENEWAL REQUEST FORM

Full Name and Address of Dental Plan Organization

_____

_____

_____

Provide relevant information to each numbered item below. If an item is not applicable, mark it as nonapplicable or NA. Failure to respond to all items may delay the review process. If you need more space than is provided to answer any item, attach additional pages to complete the answer. Please number answers in accordance with the item number. Submit all documents required to be attached to this form with this form, indicating the item number to which the document is responsive. When completed, and no later than 45 days prior to the date of expiration of the current Certificate of Authority, submit this form and all attachments, the Certificate of Authority Renewal Affidavit and the required renewal fee to:

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Assistant Commissioner
Actuarial Services, Life & Health Division
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625-0325

1. List, in reverse chronological order, any changes which have been made in the past three (3) years to the articles of incorporation, articles of association, partnership agreement, shareholder agreement, bylaws and other documents regulating the conduct or internal affairs of the DPO. Specify the date of change and document changed, date submitted to DOI and date of DOI's approval, if applicable.

_____

_____

_____

2. List any new officers, partners or members of the DPO's Board of Directors, Board of Trustees, Executive Committee or other governing board or committee, who have been hired, elected or appointed within the past three (3) years. (Provide full name; date of hire, election or appointment; and date of submission of Biographical Affidavit to the Department of Insurance.) _____

_____

_____

If Biographical Affidavit has not been submitted to the Department of Insurance, so indicate and submit with this renewal request form.

3. Have any professional, occupational or vocational licenses of any officer, partner or members of the DPO's Board of Directors, Board of Trustees, Executive Committee or other governing board or committee been amended or, terminated within the past three (3) years?
YES _____ NO _____
If yes, attach a list indicating name, position, type of license, date of amendment or termination and an explanation.

4. Has any officer, partner or member of the DPO's Board of Directors, Board of Trustees, Executive Committee or other governing board or committee or any other person responsible for conducting the affairs of the DPO:
   a. Been indicted or convicted of a crime, misdemeanor or disorderly person offense in this State, other state, or by the federal government?
   YES _____ NO _____
   If yes, attach a certified copy of the indictment or judgment of conviction, which may be obtained from the clerk of the court where the conviction was entered.
   b. Had any business or professional license been suspended or revoked?
   YES _____ NO _____
   If yes, attach a copy of the order of suspension or revocation from the professional or governmental authority.
   c. Filed for bankruptcy, been declared bankrupt or made an assignment for benefit of creditors?
   YES _____ NO _____
   If yes, attach a copy of the bankruptcy petition, complaint in bankruptcy, or complaint in action for assignment to creditors.

5. Have any changes been made or any new contracts or agreements been made with any consultant, finder or business manager within the past three (3) years? YES _____ NO _____
If "yes," attach a list specifying date and nature of change, date of submission to and date of approval by the Department of Insurance.

6. Have any changes been made to provider contracts in the past three years?
YES _____ NO _____
If yes, attach list including brief description of change, date of submission to and date of approval by the Department of Insurance.

7. In reverse chronological order, specify the number of "full-time equivalent dentists", as defined at N.J.A.C. 11:10-1.3, under contract with the DPO as of the date of the submission of this form and December 31 of the two immediately preceding years:

Current_____ : _____
12/31/_____: _____
12/31/_____: _____

8. Attach a list of any changes which have been made to the form of any group or non-group contract or evidence of coverage within the past three (3) years, specifying the type of form, form number, date submitted to DOI and date of DOI approval.

9. List the number of group and non-group contracts in force and the group and non-group enrollees' count as of the date of this form and at December 31 of the prior two (2) years.

	Group contracts	Group enrollees	Group dependents	Non Group contracts	Non Group enrollees	Non Group dependents
Current____ :						
12/31/_____:						
12/31/_____:						

10. List in reverse chronological order how many types of benefit plans currently are being offered, and the number available on December 31 of the two immediately preceding years.

Current_____ : _____
12/31/_____: _____
12/31/_____: _____

11. Give a brief description of any changes made to the schedule of charges within the past three (3) years listing dates of submission to the Department of Insurance.

_____

_____

_____

12. Have any changes been made to any marketing or advertising materials in the past three (3) years? YES _____ NO _____
If yes, has the material been submitted to the Department of Insurance?
YES _____ NO _____
If no, attach copies with this renewal request form.

13. As of the date of this form and December 31 of the prior two years, list the number of complaints (see N.J.S.A. 17:48D-12) made during the year and the number outstanding.

	Complaints Made	Complaints Outstanding
Current_____ :		
12/31/_____:		
12/31/_____:		

14. On a year-to-date basis, list the gross contract and certificate income, the percentage of gross contract and certificate income used for the direct provision of professional dental services to enrollees (as defined at N.J.A.C. 11:10-1.9) and the gain or loss before income taxes, for the quarter ending on or before the date of this form and the December 31 of the prior two years.

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	Gross Contract and Certificate Income	Dental Expense Percent	Gain or Loss
Qtr. Ending _____:	_____	_____	_____
12/31/_____:	_____	_____	_____
12/31/_____:	_____	_____	_____

15. List the total surplus, as of the quarter ending on or before the date of this form and December 31 of the prior two years. (Total surplus is Line 21, Page 6 of the Annual Report and Line 10, Page 1 of the Quarterly Report).

	Total Surplus
Qtr. Ending _____:	_____
12/31/_____:	_____
12/31/_____:	_____

16. In compliance with N.J.A.C. 11:10-1.8, the general surplus, as of the quarter ending on or prior to the date of this form, has been maintained as follows:

Balance Sheet Item	Amount
_____	_____
_____	_____
Total	_____

17. In compliance with N.J.S.A. 17:48D-7, the special contingent surplus, as of the quarter ending on or prior to the date of this form, has been maintained as follows:

Balance Sheet Item	Amount
_____	_____
_____	_____
Total	_____

_____ (Date)

_____ (Signature)

_____ (Type Name)

_____ (Title)

LABOR

(a)

DIVISION OF PROGRAMS

Application and Review Process for Employment and Training Grants for Services to Disadvantaged Workers

Adopted New Rules: N.J.A.C. 12:23-6

Proposed: March 15, 1993 at 25 N.J.R. 1054(a).

Adopted: March 15, 1994 by Peter J. Calderone, Acting Commissioner, Department of Labor.

Filed: March 15, 1994 as R.1994 d.190, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: P.L. 1992, chapters 43 to 49.

Effective Date: April 18, 1994.

Expiration Date: April 4, 1999.

If you need this document in braille, large print or audio cassette, contact the Office of Work and Disability at (609) 777-1727 or N.J. Relay (TTY) 1-800-852-7899.

On March 15, 1993 at 25 N.J.R. 1054(a), the Department of Labor proposed new rules at N.J.A.C. 12:23-6 which set forth the rules governing the allocation of funds for the provision of employment and training services for qualified disadvantaged workers and the application and review process for awarding grants under the program.

Comments on the proposal were received from Abilities of Northwest Jersey, Inc., and the Department of Labor's Office of Policy as well as its Office of Employment and Training Services during the comment period which ended April 14, 1993. A full record of the opportunity to be heard can be inspected by contacting the Office of External and Regulatory Affairs, New Jersey Department of Labor, CN 110, Trenton, New Jersey 08625.

Summary of Public Comments and Agency Responses:

COMMENT: It is important that the proposed new rules not impose additional burdens on service providers and that the application and review process be as expedient as possible.

RESPONSE: The only additional burdens imposed on service providers are those associated with the completion of a program application and, if funding is provided, a subsequent agreement. These administrative requirements are not unduly burdensome and constitute the minimum necessary for the proper administration and implementation of the program.

COMMENT: The only funds partially targeted to the disabled population are the Innovative Demonstration Project Funds. Disabled clients require significantly more support services than other individuals. Additionally, programs serving the disabled population have lower student to instructor ratios than programs in other settings. Additional funds under this program should be specifically targeted for disabled clients during the next five years and future programs should recognize and adequately fund the specialized programs needed to serve the disabled population.

RESPONSE: Individuals with disabilities are eligible to receive services provided by Service Delivery Areas (SDAs) with funding from the Workforce Development Partnership Program so long as the individuals served by an SDA meet the definition of "qualified disadvantaged worker" as set forth in the statute, P.L. 1992, Chapter 43, Section 3. With reference to the Innovative Demonstration Projects, N.J.A.C. 12:23-6.5(b) establishes a priority in evaluating applications for disadvantaged worker funds if the funds will be utilized to serve individuals with disabilities. Nevertheless, there is no minimum nor maximum amount that may be utilized to serve individuals with disabilities in this program either through funds provided through the Service Delivery Areas or Innovative Demonstration Projects. In addition, individuals with disabilities may also be eligible for other Workforce Development Partnership Program services.

COMMENT: N.J.A.C. 12:23-6.2 should include in the listing of "prospective recipients" Job Training Partnership Act Service Delivery Areas (SDAs). This lends consistency to the text that follows and clearly allows SDAs to apply for Innovative Demonstration Project Funds.

RESPONSE: While the JTPA Service Delivery Areas are already included within the scope of the language, nevertheless the Department will list the SDAs as an example at N.J.A.C. 12:23-6.2.

COMMENT: "Assessment" and "job development and placement services" should be added to the kinds of activities that can be funded under N.J.A.C. 12:23-6.4.

RESPONSE: This addition is not necessary, since assessment, job development and placement services are required and would be included as part of the Employability Development Plan.

COMMENT: If "Welfare Reform Program" cited at N.J.A.C. 12:23-6.5(b) refers to the Federal Job Opportunities and Basic Skills (JOBS) program, then the JOBS program should be specifically identified here.

RESPONSE: The Federal JOBS program is encompassed in the proposed language and since this language is broader than the suggested language, no change has been made upon adoption.

COMMENT: The "number of eligible individuals to be served" found at N.J.A.C. 12:23-6.5(c)1 may not be a useful factor in evaluating proposals as the numbers served are dictated by available funds. Also, using this as a factor may have a negative impact on the quality of services, since it may emphasize quantity over quality of services.

RESPONSE: Although the number of individuals to be served should not be dispositive in evaluating proposals, it is appropriate that the number of individuals to be impacted by the proposed activity be one of several criteria utilized in the grant evaluation process. Accordingly, the language is being retained.

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COMMENT: The definition of "qualified disadvantaged worker" found at N.J.A.C. 12:23-1.1 should be repeated here as the Job Training Partnership Act definition for "disadvantaged" is more restrictive.

RESPONSE: The Department agrees; however, since the Department did not adopt N.J.A.C. 12:23-1, the definition of "qualified disadvantaged worker" contained therein may not be adopted at this time. The Department expects to repropose N.J.A.C. 12:23-1 in the near future at which time the suggested change can be incorporated in this subchapter.

COMMENT: Considering that the Federal job placement standard under the Job Training Partnership Act for dislocated workers is 64 percent, the placement rate contained in N.J.A.C. 12:23-6.11(a)2 of 70 percent for disadvantaged individuals who have a relatively unstable connection to the labor market is too high. A placement rate of 60 percent is recommended for this group.

RESPONSE: The Department will clarify its intent by indicating that a goal of 70 percent placement rather than an absolute requirement of 70 percent placement is intended by this section.

COMMENT: N.J.A.C. 12:23-6.5(e) provides that the Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy. This paragraph should be changed to state that such modification shall be accomplished through public notice, rather than rulemaking.

RESPONSE: The Department believes that any changes to the review factors should be subject to public comment. Accordingly, no changes are being proposed upon adoption.

COMMENT: N.J.A.C. 12:23-6.6(b)1 should be changed to increase the amount of funds reserved for employment and training services provided by Service Delivery Areas to 75 percent, rather than the proposed 50 percent allocation.

RESPONSE: The Department will be revisiting the allocation of the funds reserved for services to disadvantaged workers. Based upon its experience, the Department believes that the SDAs are a more effective conduit for the distribution of a significant portion of the funds targeted to serve disadvantaged individuals in local areas. The Department expects to propose an amendment and receive comments on the proposal in time to amend the rule for the fiscal year beginning July 1, 1994.

COMMENT: N.J.A.C. 12:23-6.6(b)2 should be modified to provide that the balance of employment and training funds allocated to innovative demonstration projects is permitted, but not mandated. N.J.A.C. 12:23-6.6(b)2 should be changed to read, "From the amounts reserved for employment and training services for qualified disadvantaged workers up to 40 percent of these funds will be available for innovative projects pursuant to N.J.A.C. 12:23-6.5. These funds shall be made available through a competitive application process." A new paragraph, N.J.A.C. 12:23-6.6(b)3, should be added providing that no less than 10 percent be reserved for demonstration projects.

RESPONSE: As indicated in the immediately preceding response, the Department will be proposing a modification to N.J.A.C. 12:23-6.6(b)2 in the near future which will alter the allocation formula. At that time, the Department will consider alternatives to the proposal. With regard to the suggested addition of a paragraph stating that no less than 10 percent will be reserved for demonstration funds, the proposal requires that 50 percent of the funds be allocated for demonstration projects; therefore, the suggested change is unnecessary.

COMMENT: N.J.A.C. 12:23-6.7 should be clarified by indicating that individuals classified as qualified disadvantaged workers may receive services even if eligible under other programs if no other funding source is available.

RESPONSE: The Department does not agree with this recommendation. The Department believes the intent of the law is clearly to reserve 8 percent of the workforce Development Partnership program funds to those who meet the "qualified disadvantaged worker" definition as set forth in the law, P.L. 1992, Chapter 43, Section 3. The Department believes these funds are not also intended by the Legislature to be available to those who meet the "qualified displaced worker" definition, since the law provides 27 percent of the program funding for this latter category of individuals.

COMMENT: N.J.A.C. 12:23-6.2, Scope, should also include as examples of prospective recipients, small businesses, minority owned businesses, women owned businesses and businesses located in urban enterprise zones.

RESPONSE: These categories are already encompassed within the scope of the existing language. The Department believes that if specific groups are targeted in the regulation, the rules may be read too narrowly.

COMMENT: N.J.A.C. 12:23-6.3(a)2 should be amended by deleting the word "demonstration" from "innovative demonstration projects funds." Also, a new paragraph to N.J.A.C. 12:23-6.3(a) providing that demonstration funds will be available for the Commisisoner's discretionary use should be added.

RESPONSE: The Department believes the word "demonstration" is descriptive of the purpose of these funds. As such it is being retained. Innovative demonstration projects are indeed funded at the Commissioner's discretion pursuant to N.J.A.C. 12:23-6.5. Therefore, it is not necessary to add a new subparagraph to this effect.

COMMENT: N.J.A.C. 12:23-6.11(a)3 should be modified to delete the phrase "acting on behalf of NJOICC."

RESPONSE: The Department agrees that "acting on behalf of NJOICC" should be deleted from N.J.A.C. 12:23-6.11(a)3, since this reference gives the appearance that the job counselor is acting as an agent of the NJOICC. The job counselor was not intended to function as the agent of the NJOICC in a technical or legal sense.

COMMENT: N.J.A.C. 12:23-6.11(b) should be modified to delete the word "demonstration" and to change the word "evaluated" to "assessed." A new paragraph N.J.A.C. 12:23-6.11(c) should be added as follows: Employment and training services for qualified disadvantaged workers provided under this subchapter through innovative project funds or Commissioner's demonstration funds shall be evaluated based upon the criteria and procedures established by the State Employment and Training Commission.

RESPONSE: The Department does not agree with these recommendations. The term "demonstration" is descriptive of the purpose of these funds and should not be deleted or changed. The terms "evaluated" and "assessed" are basically interchangeable and therefore do not warrant a change. Also, while the Department recognizes the need for evaluation criteria, it should not be restricted to those developed by the State Employment and Training Commission. The term "evaluated" is broad and thereby applicable to a range of proposals which may be submitted.

COMMENT: A new paragraph should be added, N.J.A.C. 12:23-6.12(b), providing that reports may also be required as deemed appropriate by the Commissioner.

RESPONSE: The Department agrees. As noted by the title of this section, Records and reports, the Department intended to include reports as well as records. This inadvertent omission has been corrected upon adoption at N.J.A.C. 12:23-6.12(a).

Summary of Agency-Initiated Changes:

All references throughout N.J.A.C. 12:23-6 to the definitions found at N.J.A.C. 12:23-1 have been changed to the corresponding statutory citation for these definitions. This change was made necessary due to the fact that the Department did not adopt the proposed rules at N.J.A.C. 12:23-1. It should be noted that the definitions proposed at N.J.A.C. 12:23-1 were derived from those set forth in the statute creating the Workforce Development Partnership Program, P.L. 1992, Chapter 43. Accordingly, the reference to the statutory citation results in no substantive change to the rules as proposed.

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

SUBCHAPTER 6. EMPLOYMENT AND TRAINING GRANTS FOR SERVICES TO DISADVANTAGED WORKERS

12:23-6.1 Purpose

The purpose of this subchapter is to set forth the rules for the allotment of funds reserved under P.L. 1992, c.43, Section 4e to provide employment and training services for qualified disadvantaged workers under the Workforce Development Partnership Program.

12:23-6.2 Scope

This subchapter establishes the allocation of funds reserved under the Workforce Development Partnership Program for employment and training services to qualified disadvantaged workers as defined at *[N.J.A.C. 12:23-1]* ***N.J.S.A. 34:15D-3*** and sets forth the application and review process for awarding grants under this subchapter to prospective recipients, such as community based organizations, corporations, consortia, agencies***, Service Delivery Areas*** and units of government.

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12:23-6.3 Employment and training grants to serve disadvantaged workers

(a) Funds reserved for employment and training services to qualified disadvantaged workers will be through:

1. Service Delivery Area funds awarded pursuant to the formula set forth under section 302(d) of the Job Training Partnership Act and in accordance with N.J.A.C. 12:23-6.4; and

2. Innovative demonstration projects funds awarded through a competitive application process in accordance with N.J.A.C. 12:23-6.5.

(b) Funds available for employment and training services to qualified disadvantaged workers under this subchapter shall not be used for activities which induce, encourage or assist any displacement of currently employed workers by trainees, including partial displacement by such means as reduced hours of currently employed workers; replacement of laid off workers by trainees; or relocation of operations resulting in a loss of employment at a previous workplace located in the State.

12:23-6.4 Service delivery area funds

Funds allocated to Service Delivery Areas pursuant to N.J.A.C. 12:23-6.6 must be used to provide training grants for vocational training, on-the-job training, basic skills training and remedial education including English as a Second Language. Funds may also be used to provide counseling and employability development plan services as required by Section 7 of the Act to meet the needs of qualified disadvantaged workers. Services provided must lead to enhanced marketable skills and earning power, and relate to training for a labor demand occupation as defined by NJOICC or a qualified job counselor, acting on behalf of NJOICC, based on documented local labor market conditions or projected labor market conditions.

12:23-6.5 Innovative demonstration project funds

(a) A service provider of employment and training services may seek funds for innovative demonstration projects and services. An innovative demonstration project is an alternative plan to develop skills for disadvantaged individuals that will result in employability in a labor demand occupation by using techniques that may include other than the traditional classroom and on the job training methods.

(b) In reviewing applications, the Commissioner will give priority to those innovative demonstration projects which are designed to serve the General Assistance/AFDC Welfare population, the disabled, and those who marginally exceed the eligibility for Federal programs such as JTPA, Youth Corps and the Welfare Reform Program.

(c) The factors that will be considered in reviewing and evaluating applications for funds for innovative demonstration projects are:

1. The number of eligible individuals to be served;

2. The population to be served;

3. Whether the services are likely to substantially enhance participants' marketable skills;

4. The degree to which the services are related to training for a labor demand occupation;

5. The organizational capability of the applicant to provide the proposed services;

6. The previous effectiveness of the efforts of the applicant in providing similar services;

7. The costs of the proposed services; and

8. The potential for the proposed program activities to be replicated throughout the State or to have a positive impact beyond the program ending date.

(d) Applications will be reviewed and evaluated by a panel consisting of representatives from the Department of Labor and the Departments of Higher Education, Education and Human Services. The review panel will:

1. Serve as an objective, independent source of comments and recommendations concerning the merit of applications for consideration by the Department; and

2. Ensure that proposals will be as effective as possible through coordination and use of the resources of participating departments.

(e) The Commissioner retains the authority to modify application review factors based on the changing needs of the New Jersey economy. Such modification shall be through the rulemaking process.

(f) Funds awarded under this section will be limited to prospective recipients as defined at *[N.J.A.C. 12:23-1.1]* ***N.J.S.A. 34:15D-3***.

(g) No application for innovative demonstration projects will be funded unless approved by the Commissioner of Labor.

(h) Instructions for the competitive application process for funds available under this section shall be obtained by writing to:

Director, Division of Programs
New Jersey Department of Labor
CN 058
Trenton, New Jersey 08625-0058

12:23-6.6 Allocation of funds

(a) Pursuant to section 4(e) of the Act, eight percent of the total resources dedicated to the program during any one fiscal year shall be reserved to provide employment and training services for qualified disadvantaged workers. The Commissioner is authorized to provide training grants to the extent that funding for these services is not available from Federal or other sources.

(b) Allocation of reserved funds shall be as follows:

1. From the amounts reserved for employment and training services for qualified disadvantaged workers under Section 4(e) of the Act, up to 50 percent shall be reserved for allocation to the Service Delivery Areas designated by the Governor under Section 101 of the Job Training Partnership Act, P.L. 97-300, as amended.

2. After allocating the Service Delivery Area funds, the balance of these funds shall be allocated for innovative demonstration projects pursuant to N.J.A.C. 12:23-6.5. Said funds shall be made available through a competitive application process.

(c) The Commissioner retains the authority to change the scope of this allotment based on the changing needs of the New Jersey economy.

12:23-6.7 Eligibility for services

Individuals receiving training or services under this subchapter must be qualified disadvantaged workers as defined at *[N.J.A.C. 12:23-1.1]* ***N.J.S.A. 34:15D-1 to 11***.

12:23-6.8 Eligibility of service providers

No employment and training services shall be obtained from a service provider unless the provider is located in New Jersey and is approved pursuant to the procedures established by the State Employment and Training Commission.

12:23-6.9 Limitation on administrative costs

Not more than 10 percent of the funds awarded under this subchapter may be used for reasonable administrative expenses.

12:23-6.10 Monitoring and oversight

The Department of Labor or its designee will monitor the overall effectiveness of the employment and training services provided under this subchapter to assess the programmatic, management and financial performance of the grantee. The Department will consider the past performance of a grantee in evaluating application(s) for funding in subsequent years.

12:23-6.11 Evaluation of employment and training services

(a) The results of employment and training services provided by Service Delivery Areas under this subchapter shall be evaluated based upon the following criteria:

1. The effectiveness of the training and services in terms of increasing employability, the affect on earnings after training and the career opportunities provided in relation to the individuals served;

2. The achievement of a minimum job placement *[rate]* ***goal*** of 70 percent; and

3. The degree to which the training or services are related to a labor demand occupation as defined by NJOICC or a qualified job counselor, *[acting on behalf of NJOICC,]* based on local labor market conditions or projected labor market conditions.

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(b) The results of the innovative demonstration projects funded under this subchapter shall be evaluated based upon criteria negotiated at the time the funds are awarded.

12:23-6.12 Records and reports

(a) Each grantee shall maintain appropriate records ***and reports*** and make any records available upon request for monitoring or inspection by the Commissioner including:

1. A record for each student enrolled, including the student's name, social security number and address upon enrollment;

2. A record of all direct, administrative and overhead expenses of the grantee related to the provision of employment and training services funded under this subchapter; and

3. Any other information deemed appropriate by the Commissioner for a specific grantee or service provider.

12:23-6.13 Expiration date

Upon adoption, this subchapter will remain in effect until December 31, 1997.

LAW AND PUBLIC SAFETY

(a)

OFFICE OF THE ATTORNEY GENERAL

Petitions for Rules

Adopted New Rules: N.J.A.C. 13:1D

Proposed: January 18, 1994 at 26 N.J.R. 330(a).
Adopted: March 16, 1994 by Deborah Poritz, Attorney General.
Filed: March 18, 1994 as R.1994 d.193, **without change**.

Authority: N.J.S.A. 52:17B-4d.

Effective Date: April 18, 1994.
Expiration Date: April 18, 1999.

The Department of Law and Public Safety afforded all interested persons with an opportunity to comment on the adoption of N.J.A.C. 13:1D. These rules set forth the procedures which a person should follow in petitioning the Department of Law and Public Safety to promulgate, amend or repeal a rule. The rules also set forth the procedures which the Department of Law and Public Safety will use when receiving and responding to petitions for rules. Announcement of the opportunity to comment on the proposed rule appeared in the New Jersey Register on January 25, 1994, at 26 N.JR. 330(a). Secondary publication of the proposed amendments, and a 30 day opportunity to comment appeared in the Asbury Park Press, the Atlantic City Press, the Camden Courier Post, the Newark Star Ledger and the Trenton Times, all newspapers of general circulation. One comment was received.

COMMENT: A commenter from Stockton, New Jersey, Thomas P. Thatcher, expressed concern that the rule would require disclosure of the petitioner's organizational affiliation as a precondition to petitioning the Department for rulemaking.

RESPONSE: It is useful for the Department to be aware of a petitioner's organizational affiliation in evaluating the ramifications of the requested change on the regulated community, and in particular, the interests of the petitioner. See N.J.S.A. 52:14B-4(f)(2). Nevertheless, petitions which omit this information will be considered in the same manner as those which contain the information.

Full text of the adoption follows:

CHAPTER 1D
PETITIONS FOR RULES

13:1D-1.1 Scope

This chapter shall apply to petitions submitted pursuant to N.J.S.A. 52:14B-4(f) for the promulgation, amendment or repeal of any rule by the Attorney General and by any agency within the Department of Law and Public Safety that is subject to the supervision of the Attorney General, including those agencies which have independent or delegated rulemaking authority but have not adopted a rule providing for a petition for rulemaking.

13:1D-1.2 Procedure for petitions

(a) Except as otherwise provided in Title 13 of the New Jersey Administrative Code, any interested person may petition the Attorney General, or any agency within the Department of Law and Public Safety which is subject to the supervision of the Attorney General, to promulgate, amend or repeal any rule of the Department of Law and Public Safety. Such petition must be in writing, signed by the petitioner, and must state clearly and concisely:

1. The full name and address of the petitioner;

2. The substance or nature of the rulemaking which is requested;

3. The problem or purpose which is the subject of the request;

4. The petitioner's interest in the request, including any relevant organization affiliation or economic interest;

5. The statutory authority under which the Attorney General, or agency within the Department of Law and Public Safety which is petitioned, may take the requested action; and

6. Existing Federal or State statutes and rules which the petitioner believes may be pertinent to the request.

(b) Petitions for the promulgation, amendment or repeal of a rule submitted pursuant to this chapter shall be addressed to:

Legal Affairs Director
Office of the Attorney General
Hughes Justice Complex
CN-081
Trenton, New Jersey 08625

(c) Any document submitted to the Department of Law and Public Safety which is not in substantial compliance with this section shall not be deemed to be a petition for rulemaking requiring further agency action.

13:1D-1.3 Procedure after receipt of petition

(a) Upon receipt of a petition by the Department of Law and Public Safety filed pursuant to N.J.A.C. 13:1D-1.2:

1. The petition shall be date stamped and logged; and

2. The petition shall be referred to the relevant Department division or other Department office as appropriate.

(b) Within 15 days of receipt of a petition, the Department shall prepare and file a notice of petition with the Office of Administrative Law in compliance with N.J.A.C. 1:30-3.6(a).

(c) Within 30 days of receipt of a petition, the Department shall mail to the petitioner and file with the Office of Administrative Law for publication in the New Jersey Register a notice of action on the petition in compliance with N.J.A.C. 1:30-3.6(b).

(d) The Department's action on the petition may include:

1. Denial of the petition;

2. Filing a notice of proposed rule or a notice of pre-proposal for a rule with the Office of Administrative Law; or

3. Referral of the matter for further deliberations, the nature of which shall be specified and which shall conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner and shall be submitted to the Office of Administrative Law for publication in the New Jersey Register.

(b)

DIVISION ON CIVIL RIGHTS

Multiple Dwelling Reports

Readoption: N.J.A.C. 13:10

Proposed: February 22, 1994 at 26 N.J.R. 901(a).
Adopted: March 25, 1994 by C. Gregory Stewart, Director, Division on Civil Rights.
Filed: March 25, 1994 as R.1994 d.203, **without change.**

Authority: N.J.S.A. 10:5-1 to 42.

Effective Date: March 25, 1994, Readoption;
April 18, 1994, Amendments.
Expiration Date: March 25, 1999.

Summary of Public Comment and Agency Response:
No comments received.

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Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:10.

Full text of the adopted amendments follows:

13:10-1.1 Words and phrases defined

The following words and phrases, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise. (Unless the context indicates to the contrary all terms used in this rule have the same meanings as in N.J.S.A. 10:5-1 et seq.)

. . .

"Racial designation" means Caucasion, Black, Asian American Pacific Islander or Spanish surname.

13:10-2.1 Purpose

The provisions of this chapter are adopted to enable the Division on Civil Rights to study patterns of housing occupancy, investigate practices of discrimination and affirmatively administer the Law Against Discrimination, N.J.S.A. 10:5-1 to 42.

13:10-2.2 Persons required to report

(a) The owner or owners of every multiple apartment development which has 25 units or more shall file an annual report with the Division on Civil Rights concerning the racial composition of the multiple dwelling, whether any of its buildings or developments are barrier free, and factors affecting its composition.

(b) (No change.)

13:10-2.3 Form and contents of report

(a) (No change.)

(b) The report may include information concerning:

1.-4. (No change.)

5. Rental rates and apartment sizes;

6. Whether the multiple apartment development is barrier-free; and

7. Such other information as the Attorney General determines is necessary to effectuate the purposes of this rule.

13:10-2.4 Filing of reports

(a) One copy of the report shall be filed with the Division on Civil Rights on a yearly basis.

(b) (No change.)

13:10-2.6 Violations

Failure to comply with this chapter shall constitute a violation of the Law Against Discrimination, N.J.S.A. 10:5-1 to 42.

(a)

DIVISION OF CONSUMER AFFAIRS KOSHER ENFORCEMENT BUREAU

Regulations Concerning the Sale of Food Represented as Kosher

Adopted Repeal and New Rules: N.J.A.C. 13:45A-21
Adopted Repeal: N.J.A.C. 13:45A-22

Proposed: July 19, 1993 at 25 N.J.R. 3086(a).

Adopted: March 23, 1994 by Emma N. Byrne, Director, Division of Consumer Affairs.

Filed: March 25, 1994 as R.1994 d.204, **with substantive and technical changes** not requiring additional public notice and comment (N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 56:8-4.

Effective Date: April 18, 1994.

Expiration Date: November 9, 1995.

The Division of Consumer Affairs afforded all interested parties an opportunity to comment on the proposed repeal and new rules concerning the sale of food represented as kosher, as proposed in the New Jersey Register on July 19, 1993 at 25 N.J.R. 3086(a). The official comment period ended on August 19, 1993. Announcements of the opportunity to respond to the Board were also forwarded to the Star Ledger, the Trenton Times, and to other interested parties.

A full record of this opportunity to be heard can be inspected by contacting the Division of Consumer Affairs, Post Office Box 45027, Newark, New Jersey 07101.

Summary of Public Comments and Agency Responses:

During the 30-day comment period, the Board received 10 comment letters. A list of commenters follows:

FEMA (Flavor and Extract Manufacturers of the United States); Larry S. Loigman, Esq.; Rabbi Alan J. Yuter; Kof-K Kosher Supervision Service; Tablet-K (a kosher supervisory agency); AKO (Association of Kashruth Organizations); United Jewish Federation of MetroWest; Eric Chase, Esq. (represented adversaries in the constitutional challenge); Professor Joe Regenstein (Cornell University, Food Scientist); Jim Watson, Esq. (Attorney for Wakefern Corp.); Richard Konopka (Foodtown); Leonard Posnock (Shofar Foods).

The Division received written comments from 10 entities. Comments and responses follow.

The Division received a number of oral and written comments praising the proposal. Among other oral comments, Richard Konopka on behalf of Foodtown felt that the regulations were well done and the proposal was something it "could live with." Jim Watson, Esq., general counsel for Wakefern Corp. (ShopRite), believes that the regulations address the concerns of the New Jersey Supreme Court's July 1992 decision in *Ran Dav's County Kosher, Inc. v. State,* 129 *NJ* 141 (1992) *cert. denied sub nom National Jewish Commission on Law and Public Affairs v. Ran Dav's County Kosher, U.S.,* 113 *S.Ct.* 1366, 122 *L.Ed2d* 744 (1993). He maintains that the proposed disclosure system affords them greater and sufficient latitude in carrying out their business practices. Leonard Posnock, Chairman of Shofar Kosher Foods, Inc., had high praise for the regulations commenting that they are very workable.

Written comments follow:

COMMENT: Rabbi Harvey Senter of Kof-K Kosher Supervision, a New Jersey based national kosher certifying agency, suggests that the new rules will benefit the consumer even more than the old regulations by the requirement that each establishment post its standard of kosher. Rabbi Senter also commends the Division "for a job well done."

RESPONSE: The Division thanks Rabbi Senter for his comments.

COMMENT: Rabbi Yehudah Rosenbaum generally praised the regulations as "well written and very inclusive." Rabbi Rosenbaum singled out N.J.A.C. 13:45A-21.6, Inspections, 21.2, Disclosure requirements, and the requirements to identify meat at the slaughterhouse and processor for particular mention.

RESPONSE: The Division thanks Rabbi Rosenbaum for his comments.

COMMENT: Professor Joe M. Regenstein submitted comments strongly supporting the regulations. While he noted his background as a food scientist teaching that subject at Cornell University, a member of the New York State Kosher Food Advisory Council, an author regarding topics affecting the kosher industry and executive director of the National Kosher Food Trade Association, the comments submitted reflect his own views. Prof. Regenstein comments that the proposal displays an "extensive effort and it really looks good."

COMMENT: Prof. Regenstein writes that the definition of advertising should include specific reference to any "in-store" signage.

RESPONSE: The Division agrees with the comment and has amended the definition of advertising to include reference to any in-store signs.

COMMENT: Prof. Regenstein comments that since N.J.A.C. 13:45A-21.2(d) requires a response after the Division does a mailing he is concerned that the Division does not have a full mailing list and that there is no due date for the filing.

RESPONSE: The Division has required an annual filing of dealers in kosher food and supervising agencies and rabbis for over five years. This procedure has yielded a comprehensive list of persons in the industry. Also, N.J.A.C. 13:45A-21.2(d) specifies a deadline of 14 days within which regulated entities are required to file their responses.

COMMENT: Prof. Regenstein recognizes that N.J.A.C. 13:45A-21.2(f), requiring any party to a contract be advised of changes to disclosures, is very important but notes it could be administratively burdensome to a dealer.

RESPONSE: The Division considers it vital to consumer choice and awareness for all parties, and particularly parties to a contract, to be informed of changes in an establishment's practices as they relate to representations of kosher food. Such changes may impact on the consumer's choice of a dealer.

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COMMENT: Prof. Regenstein suggests that N.J.A.C. 13:45A-21.2(g) be amended to specify a bound notebook as opposed to a loose leaf binder.

RESPONSE: The Division considers this a valid concern and has amended the language to read a "permanently bound logbook."

COMMENT: Prof. Regenstein questions whether N.J.A.C. 13:45A-21.2(i) would allow a supermarket to sell kosher salami and slice it on a nonkosher slicer if no claims of kosher are made.

RESPONSE: Establishments not making any claims of kosher are exempt from these rules.

COMMENT: Prof. Regenstein comments, with regard to N.J.A.C. 13:45A-21.3(h), that some meat trimmings and some fat are capable of being used as kosher product.

RESPONSE: The Division acknowledges Prof. Regenstein's concern. The regulations require that the dealer determine which trimmings and fat are not kosher and will be placed in the discard barrel and as such may not be used as kosher. The dealer may use fat and trimmings that he considers kosher.

COMMENT: Prof. Regenstein questions why N.J.A.C. 13:45A-21.3(l) excludes poultry.

RESPONSE: The Division recognizes the general industry practice that poultry slaughtered to be sold as kosher is soaked, salted, identified and often packaged by the poultry processor. As such, inclusion of poultry here is unnecessary. Should the general industry practice change the Division will consider an amendment.

COMMENT: Prof. Regenstein suggests that pursuant to N.J.A.C. 13:45A-21.4 wash letters be kept for a period of about two weeks after the sale of meat, in the event further reference to the letter becomes necessary.

RESPONSE: The Division believes that it is sufficient for its purposes to require that dealers retain wash letters until the meat is sold.

COMMENT: Prof. Regenstein addresses N.J.A.C. 13:45A-21.7(a)5iii(2) which requires that in an advertisement that utilizes any kosher symbol and also promotes the sale of nonkosher food a clear and conspicuous disclaimer be present stating that some of the food offered is not represented as kosher, and is concerned that it would allow the use of kosher symbols on nonkosher packages of food.

RESPONSE: The regulation is designed to prevent the misconception that all food in a given advertisement is kosher. The Division does not believe the rule would permit the unauthorized use of kosher symbols.

COMMENT: Prof. Regenstein comments that the term KM is used by some in the kosher industry to imply kosher/dairy.

RESPONSE: The Division has added that designation to N.J.A.C. 13:45A-21.7(a)9.

COMMENT: Prof. Regenstein suggests that companies will need time to adjust to N.J.A.C. 13:45A-21.7(a)10 limiting the use of the letter P in conjunction with a kosher symbol to represent kosher for Passover product.

RESPONSE: The Division acknowledges this concern and will allow time for its implementation.

COMMENT: Rabbi Alan J. Yuter comments that the rules focus on issues of misrepresentation and fraud and not on religious matters.

RESPONSE: The Division intended this distinction.

COMMENT: Rabbi Yuter suggests that the Division coordinate its efforts with the local rabbinate to maximize consumer protection.

RESPONSE: The Division believes that such an effort would violate its secular mandate.

COMMENT: Larry S. Loigman, Esq. suggests that where rabbinical supervision is present dealers should indicate the rabbi's organizational affiliation, for greater consumer awareness.

RESPONSE: The Division accepts Mr. Loigman's comment and notes that the information is included on the appropriate disclosure form.

COMMENT: Mr. Loigman suggests that the logbook described in N.J.A.C. 13:45A-21.2(g) be made available for public inspection.

RESPONSE: The Division maintains that this is unnecessary as the number of visits made by the rabbi or rabbi's designee is part of the disclosure form posted for consumer review.

COMMENT: Mr. Loigman suggests that the Division compile a concise list of all required filings to be made available to consumers, at some minimal cost, upon request.

RESPONSE: All disclosure forms will be available for public review and may be obtained at costs as fixed in N.J.S.A. 47:10-1.

COMMENT: Mr. Loigman offered a general comment praising the rules and its constitutional conformance.

COMMENT: Mr. Glenn Roberts, on behalf of the Flavor and Extract Manufacturers' Association of the United States, Washington, D.C., argues that the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("Act") does not apply to transactions between businesses and suggests that the rules be limited to retail sales.

RESPONSE: The Act has long been held to apply to business to business transactions. *Dreier Co., Inc. v. Unitronix Corp.,* 218 *N.J. Super.* 260, 272-73 (App. Div. 1986); *Hundred East Credit Corp. v. Eric Schuster,* 212 *N.J. Super.* 350, 357 (App. Div. 1986) *certif. den.* 107 *N.J.* 60 (1987). The need to ensure full and accurate disclosures is not limited to retail sales. The Division's mandate is to prevent misrepresentation to the marketplace. Retailers are consumers in the traditional sense of the word when purchasing from wholesalers or manufacturers. Indeed, transactions between manufacturers may well be entitled to the protections of the Act. Ensuring accuracy of information along the chain of commerce is fundamental to the effectiveness of this proposal. As such, the rules are not limited to retail sales.

COMMENT: Mr. Roberts suggests that the regulations establish a religious standard of kosher and as such violate the Supreme Court decision in *Ran-Dav's.*

RESPONSE: The Division is not establishing any standard of kosher but rather is enforcing a merchant's representation. As such, the regulations fall well within the parameters of the Court's decision.

COMMENT: Eric Chase, Esq., representing the Alliance of Kosher Caterers ("AOKC"), raises general objections to the proposal arguing that the regulations "emasculate the spirit and substance of the *Ran-Dav's* decision in the New Jersey Supreme Court, over a year ago . . ."

RESPONSE: The Division rejects the AOKC' assertion and believes that the regulatory proposal, which does not establish religious standards but rather relies upon disclosures of secular, commercial representations, is consistent with both the spirit and substance of the decision.

COMMENT: The AOKC argues that excessive government entanglement in religion remains in that: "The proposed regulations permit the State to enforce disclosure of adherence to a particular sect of the Jewish religion and to define and apply the standard for adherence to that disclosure."

RESPONSE: The Division rejects this argument. The regulations clearly allow each merchant to establish his own standard of kosher without reference to any particular sect of the Jewish religion, or any religion for that matter. The Division's enforcement activity is centered on consistency between the dealer's stated commercial standard (as reflected in the posted and filed disclosure forms) and the dealer's practices. To the extent a dealer represents that it is under the supervision of a particular agency or rabbi, the dealer is responsible to conform to the standards represented by that agency or rabbi, as well as the represented disclosures, so that consumers are not misled with false information.

COMMENT: The AOKC states concerns about administration of the regulations as it relates to resolution of religious disputes. They request that new rules encompassing first amendment protections be proposed.

RESPONSE: The Division believes that the current proposal, based as it is upon the dealer's disclosure, will not cause the State to resolve any religious disputes and is entirely consistent with both the State and Federal constitutions.

COMMENT: The AOKC suggests the establishment of a new category for caterers in the definition section and asks that processor be defined.

RESPONSE: The Division has added "caterers" to the definition of "dealer" to clarify that caterers as well as catering facilities are included in the rule. The Division does not see the need to define processors as a separate category at this time.

COMMENT: The AOKC objects to the posting of disclosures at catering establishments, arguing that disclosures detract from the esthetics, serve no legitimate purpose and may be undesired by the host. The AOKC states that the disclosures should be provided upon the signing of a contract, upon request only, as some "clientele [may be] unconcerned or biased against kosher observance." They further maintain that the host, not a guest, at a catered event is the consumer and that a guest should not have access to the dealer's represented standard of kosher unless the guest specifically and affirmatively makes a request for that information.

RESPONSE: As the *Ran Dav* decision does not permit the State to impose an identifiable, uniform standard of kosher in the State, the Division believes the posting of each dealer's standard for review by interested and affected persons, including guests who are "consuming" the food represented to be kosher, is essential. Consumers are entitled

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to information and the Division does not believe the burden should fall on them to seek out that information at each event. The Division acknowledges concerns about esthetics and anticipates that disclosure forms will not be unduly large. Furthermore, a host may not disallow the disclosure anymore than he may disallow a sign indicating seating capacity or a health certificate. Finally, as to the charge that some "clientele [may be] unconcerned or biased against kosher observance," the Division acknowledges that regrettably the potential for bias based in hatred or ignorance remains a concern statewide. The Division believes, however, that the need for consumer disclosure at the time of the signing of the contract remains an integral part of an informed decision.

COMMENT: The AOKC suggests that a period of seven business days within which to return required forms and to notify the Division of changes in disclosure forms is too brief.

RESPONSE: The Division accepts the AOKC's suggestion and will extend the deadline to 14 calendar days.

COMMENT: The AOKC objects to the Division monitoring conformance of the disclosures arguing that a supervising rabbi should make such determinations.

RESPONSE: The disclosures do not specify adherence to any religious standard but require a dealer to disclose what commercial practices are followed in his establishment. Any stated practice (for example, separating meat and dairy products) is an affirmative representation on the part of the dealer. It is that secular statement that is monitored by the Division. Religious determinations, which are not the concern of the State, should be made by the supervising rabbi, if any. The Division views the need for an establishment to live up to its posted practices as a fundamental component of honest business.

COMMENT: The AOKC argues that the maintenance of a logbook to be signed by the visiting rabbi "denigrates rabbinical authority and superimposes the authority of the State upon the supervising rabbi."

RESPONSE: An establishment represented as under rabbinical supervision is required to post the disclosure form that includes a statement as to the number of times a supervising rabbi or his or her designee visits the establishment. The logbook, rather than exercising control over any ecclesiastical personnel, merely provides a mechanism for verifying the accuracy of the posted information. The Division notes that it received the support of various rabbinical groups and kosher certifying agencies who fully support the requirement.

COMMENT: The AOKC objects to the placement of a sign stating "Kosher and Nonkosher Served Here" as required by N.J.A.C. 13:45A-21.2(h).

RESPONSE: The Division has modified its regulation to permit a dealer not to post the sign required by N.J.A.C. 13:45A-21.2(h) where the dealer, in compliance with the requirement for posting the disclosure, has checked the statement on the disclosure that it serves or sells kosher and nonkosher food. This will provide accurate consumer information and eliminate redundancy of information.

COMMENT: The AOKC objects to the requirement of dealers not removing marks of kosher identification until immediately preceding the final fabrication of the product. They argue that the caterer may, in the process of fabrication, break down a tagged unit into several pieces.

RESPONSE: The Division acknowledges that meat and poultry are purchased in portions which will subsequently be broken down into smaller pieces and that tags and/or plumbas will not be on each "fabricated" piece. N.J.A.C. 13:45A-13:45A-21.3(i) already permits such a procedure.

COMMENT: The AOKC suggests substitute language for N.J.A.C. 13:45A-21.4, the recordkeeping requirement, which would omit the requirement that wash letters be retained until meat is sold and that records as to the source (slaughterhouse or wholesaler) be retained.

RESPONSE: The division believes the information required to be maintained is a necessary enforcement tool to ensure that stated disclosures are accurate.

COMMENT: The AOKC suggests that N.J.A.C. 13:45A-21.7(a)15, which makes it an unlawful practice to refuse an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection, be amended with "which is official, duly authorized and for the reasonable purpose of carrying out these regulations."

RESPONSE: Since those requirements are implied in every inspection performed by a Division inspector, the Division sees no reason for the amendment.

COMMENT: The AOKC suggests that the term "timely fashion" as used in N.J.A.C. 13:45A-21.7 be defined as 30 days.

RESPONSE: The Division is aware that circumstances vary and "timely fashion" will be interpreted reasonably.

COMMENT: The AOKC suggests that N.J.S.A. 56:8 as it appears in N.J.A.C. 13:45A-21.7(a)18 be defined as the Consumer Fraud Act and that "bona fide claim of privilege" be defined.

RESPONSE: The Division does not believe these changes are necessary. N.J.S.A. 56:8-1 et seq., the Consumer Fraud Act, is defined at the beginning of N.J.A.C. 13:45A-21.7 and to identify it again in the same subsection would be redundant. *Bona fide* claims of privilege are recognized generally in the law and need not be listed here.

COMMENT: The AOKC objects to N.J.A.C. 13:45A-21.8 which makes possession of a product not in conformance with posted disclosure presumptive evidence of intent to sell.

RESPONSE: Possession is presumptive evidence. The presumption may be rebutted. The Division will continue to accept a dealer's good faith reliance on representations of a slaughterhouse, manufacturer, processor, packer or distributor.

COMMENT: The AOKC argues that the regulations should contain guidelines for enforcement and inspections.

RESPONSE: Activities of all units in the Division are conducted and supervised in accordance with Division policy and by the Attorney General.

COMMENT: The AOKC argues that caterers should not be inspected during an event.

RESPONSE: The Division maintains that it is necessary to conduct inspections when establishments are open for business. Inspections are not conducted in a disruptive manner.

COMMENT: The AOKC suggests the inclusion of the required forms in the rules. They maintain that the forms detail religious observance.

RESPONSE: The Division anticipates the inclusion of the forms in the rules in the future. Its decision not to include the forms at this time arises from a recognition that experience garnered during the first several months after implementation may necessitate changes in these forms due to industry needs and concerns. The Division rejects the contention that the forms detail religious observance and notes that the disclosure forms reflect common consumer questions as to content and preparation of food.

COMMENT: The AOKC suggests that the penalty structure be included in the regulations.

RESPONSE: The Consumer Fraud Act, N.J.S.A. 56:8-1, the enabling legislation for these rules, specifies the civil penalties that may be imposed upon a finding that the Act has been violated. N.J.S.A. 56:8-13.

COMMENT: The AOKC suggests that the use of "publicity to coerce compliance with the regulations should be carefully regulated."

RESPONSE: The Division monitors and issues all press releases and communications in accordance with appropriate ethical guidelines.

COMMENT: The AOKC states that the rules are "flawed" and should be redrafted.

RESPONSE: The Division believes the concerns of the AOKC have been answered and will not redraft the regulations.

COMMENT: Lee Adlerstein, Esq., writing on behalf of the Community Relations Committee of the United Jewish Federation of Metrowest ("CRC"), suggests that the rules be amended to add a provision making it an unlawful practice to "falsely and knowingly represent a food to be 'kosher' as prepared in conformity with the traditions and practices of the Jewish religion when that food is not so prepared."

RESPONSE: The Division believes that such a regulation would necessarily entail the State imposing substantive religious requirements and making religious determinations and as such, would violate the Court's ruling.

COMMENT: The CRC suggests that caterers be exempted from disclosure requirements so as to be able to maintain a decorous environment.

RESPONSE: As stated earlier the Division holds that the posting of disclosures are vital to its regulatory scheme. It assumes the CRC that they will be produced in good taste.

COMMENT: The CRC is concerned that caterers may not always be able to post Passover disclosures 30 days in advance.

RESPONSE: In conversation Mr. Adlerstein explained caterers may not be using a permanent facility but rather may be renting a premise for the Passover holiday. The Division accepts this comment and has revised the rules at N.J.A.C. 13:45A-21.2(c)1 to provide for such a contingency.

COMMENT: The CRC suggests that meat in the possession of retailers may not have tags as required by the rules.

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RESPONSE: Retailers are not required to have more tags than have been affixed by the slaughterer and/or wholesaler.

COMMENT: The CRC suggests that there be no requirement to list the time that meat is washed; rather, they comment, a sign should be placed stating that meat is washed within every 72 hours, if so claimed.

RESPONSE: If a dealer represents that meat is washed within every 72 hours, it is necessary for enforcement purposes that the information be available to assure the accuracy of the representation. The Division considers this to be an important rule and will not delete it.

COMMENT: The CRC suggests that different disclosure requirements apply to hospitals and nursing homes and that they not be included, indiscriminately, with the general food trade.

RESPONSE: The Division agrees fully with the comment and has met separately with these groups to determine appropriate disclosure guidelines.

COMMENT: The CRC suggests that phone book advertisements be included in the definition section under "Advertises."

RESPONSE: The Division agrees and has amended the rules accordingly.

COMMENT: The CRC suggests that telephone numbers of rabbis or supervising agencies be included on the disclosure forms.

RESPONSE: The Division accepts the comment and has amended the form accordingly.

COMMENT: The CRC suggests that a copy of the inspection report be left with the establishment representative upon completion of an inspection.

RESPONSE: An inspector does not complete a report while at the establishment. The Division believes it to be inappropriate for an inspector to leave his notes with an establishment representative. A report that has been filed is available to the dealer upon request.

COMMENT: The CRC suggests that inspectors be rotated among establishments.

RESPONSE: The Division administers and enforces the Act and attendant regulations with such staff as is alloted pursuant to the budget. Staff assignments are handled administratively and are in the province of the Division.

COMMENT: Rabbi Rafael Saffra, representing Tablet-K d/b/a/ Religious and Kitchen Supervision, Inc., of Howard Beach, NY, argues that N.J.A.C. 13:45A-21.5 is not necessary since "most agencies issue a sign to be displayed by the establishment giving an expiration date."

RESPONSE: The Division's experience in regulating kosher food sales belies Rabbi Saffra's assumption. Many letters of kosher certification do not contain the expiration date or other information necessary for consumers to make informed decisions. The information required in this section would serve to help ensure that products represented as under a particular supervision are, in fact, under that supervision.

COMMENT: Rabbi Saffra argues that kosher certifying agencies should not be required to provide a list of its customers to the Division as it is confidential business information.

RESPONSE: The Division notes that establishments holding themselves as being under rabbinical supervision are required to post the rabbinical disclosure statement which contains the name of the supervising rabbi, a practice Rabbi Saffra himself maintains already exists. In addition, the dealer's annual filing requirement lists the supervising rabbi, if any. It is therefore not confidential information. Further, the filing requirement provides the mechanism by which persons who falsely represent themselves as being under a particular rabbinical supervision can be prevented from misleading the public.

COMMENT: Rabbi Saffra argues that N.J.A.C. 13:45A-21.6 and 21.7 are unnecessary since "The display of the Agency logo should be sufficient or under Rabbinical Supervision should be enough. The consumer could ascertain the information of who it is."

RESPONSE: The Division maintains that while a kosher certifying agency logo may contain the requisite information, it does not always do so. Further, blanket claims of "under rabbinical supervision" may create confusion in the marketplace. There is no burden on the merchant to list the name of the certifying entity while it is a significant burden for the consumer to discover that information on his own.

COMMENT: Rabbi Saffra argues that N.J.A.C. 13:45A-21.2(g) is unnecessary and that the State is trying to supervise the supervising agencies.

RESPONSE: As noted in a previous response to a similar comment the Division in its requirement for dealers to maintain a logbook for its rabbi or rabbi's representative to sign ensures the accuracy of the dealer's representation regarding the number of visits made by the supervisor. It provides the consumer with much needed information. Such a requirement cannot be considered as supervising the kosher agencies as the regulations create no requirement as to the number or content of visits, if any, that the supervisor should make.

The Division also notes that the proposed rules and disclosures received the support of virtually all kosher agencies Statewide as well as national agencies, in addition to a letter of support from AKO, Association of Kashrus Organizations, which represents almost all national kosher agencies as well as a large number of local groups.

COMMENT: Rabbi Saffra argues that the inclusion of some recognized kosher symbols in N.J.A.C. 13:45A-21.7(a)8 suggests a recommendation or endorsement of these agencies on the part of the State.

RESPONSE: The Division believes that the inclusion of some kosher symbols is necessary for purposes of clarity. The Division rejects the notion that consumers will make a choice of reliability of kosher agencies based upon a mention in the rules.

The Division received one comment addressed to the Director marked "personal and confidential" which did not speak to the substance of the regulations but rather to their enforcement.

In soliciting comments on the regulations the Division forwarded copies of the proposed rules and disclosure statements to all entities that have previously filed with the Division as selling kosher food, to supervising rabbis and agencies, to the New Jersey Food Council, the New Jersey Civil Liberties Union, and other interested parties.

Several dealers completed the forms and returned them to the Division. Some commented on the forms, including suggestions for refinement. The Division has considered these comments and thanks the contributors for their input.

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

SUBCHAPTER 21. REGULATIONS CONCERNING THE SALE OF FOOD REPRESENTED AS KOSHER

13:45A-21.1 Definitions

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

"Advertises, represents or holds itself out" means engaging, directly or indirectly, in promotional activities including, but not limited to, oral representations, newspaper, radio and television advertising, ***telephone book listings,*** distribution of fliers and menus ***and any in-store signs or announcements*.**

"Dairy" means a food that is or contains any milk or milk derivative.

"Dealer" means any establishment that advertises, represents or holds itself out as selling, preparing or maintaining food as kosher. This shall include, but not be limited to, manufacturers, slaughterhouses, wholesalers, stores, restaurants, hotels, ***caterers,*** catering facilities, butcher shops, summer camps, bakeries, delicatessens, supermarkets, grocery stores, nursing homes, freezer dealers and food plan companies. Such establishments may also deal in food not represented as kosher.

"Director" means the Director of the Division or his or her designee.

"Disclosure" means the form(s) provided by the Division and executed by a dealer for the purpose of disclosing to consumers and to the Division practices relating to the preparation, handling and sale of food represented to be kosher.

"Division" means the Division of Consumer Affairs in the Department of Law and Public Safety.

"Food" means a food, food product, ingredient, dietary supplement or beverage.

"Kosher brand" means a branding symbol approved by the United States Department of Agriculture and used by slaughterhouses.

"Meat" means animal and/or poultry meat, meat products and/or meat by-products.

"Pareve" means a food which contains neither meat nor dairy products and unless otherwise disclosed by the merchant is represented to be kosher.

"Person" means an individual, corporation, business trust, trust, estate, partnership, association, two or more persons having a joint

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or common interest or any other legal or commercial entity. When used in this subchapter, "person" shall include, but not be limited to, all retail establishments, all dealers as defined above, manufacturers, wholesalers, processors, slaughterhouses and all others along the chain of commerce from the time the product is produced or, in the case of meat or poultry, from the time of slaughter to the time of its sale.

"Plumba" means the seal commonly used in the kosher industry with the word "kosher" indicated either in English or Hebrew letters, and with certain letters, figures or emblems indicated that will positively identify such plumba with the particular slaughterhouse where the animal or poultry was slaughtered or processed.

"Properly sealed packages" means those packages which bear a kosher symbol insignia and are sealed by the manufacturer, processor or wholesaler at its premises.

"Sell" means to offer for sale, expose for sale, serve or sell, directly or indirectly.

"Tag" means an identification of whatever form bearing the name and address of the slaughterhouse where the animal was slaughtered, the name of the person who sanctioned the slaughtering of meat at the slaughterhouse named and the date of the slaughter. All requisite information must be included in English with Arabic numerals. It may also contain the information in other languages. When information presented in English with Arabic numerals conflicts with information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

"Wash letter" means the document stating the time and date the meat was last washed. All requisite information must be included in English with Arabic numerals. It may also contain information in other languages. When this information is not delineated on the attached tags, the wash letter must accompany the meat until the meat is fully fabricated. When information presented in English with Arabic numerals conflicts with the information presented in other languages, the information presented in English with Arabic numerals shall be considered definitive.

"Wholesaler" means any person selling food to another person where that food is intended for resale.

13:45A-21.2 Disclosure requirements

(a) A dealer shall post on premises where food is sold, in a location readily visible to the consumer, a completed disclosure statement provided by the Division for that purpose.

1. In establishments such as hospitals or other places where representations that food is kosher are not made until after the consumer has made a request for kosher food, the disclosure shall be provided to the consumer either prior to serving the food or together with the food served.

2. Nursing homes, summer camps, caterers or other places providing food pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted dislosure stated in (a) above.

(b) A dealer representing itself as having rabbinical supervision shall post in a location on its premises, readily visible to the consumer, the completed rabbinical supervision disclosure statement provided by the Division.

(c) A dealer selling food represented as kosher for Passover shall post on its premises, in a location readily visible to the consumer, a completed Passover disclosure provided by the Division for that purpose. The disclosure must be posted at least 30 days before Passover and stay posted until the conclusion of Passover.

1. Where a dealer assumes a facility to be used exclusively for the Passover holiday and it is not its regular facility, that dealer is not required to post the Passover disclosure until such time as it takes residence in that facility.

*[1.]***2.*** Nursing homes, summer camps, caterers or other places providing food during Passover pursuant to a contract shall provide the consumer or his or her legal representative with a copy of the disclosure prior to the signing of the contract. This requirement is in addition to the posted disclosure stated in (c) above.

(d) A dealer shall complete and return to the Division within *[seven business]* ***14 calendar*** days of receipt:

1. The copy of the disclosure form provided by the Division for that purpose; and

2. If representing to be under rabbinical supervision, the copy of the disclosure form provided by the Division for that purpose; and

3. If representing the sale of food as kosher for Passover, the copy of the disclosure form as provided in (c) above.

(e) A dealer completing the disclosures as stated in (a), (b), (c) and/or (d) above is required to conform sales practices to those disclosures.

(f) Dealers shall immediately amend disclosures to reflect any change in the posted practices and shall inform the Director, in writing, and if applicable, any party to a contract, within *[seven business]* ***14 calendar*** days of any change in the stated information.

(g) A dealer representing itself as being under rabbinical supervision shall maintain a permanent***ly bound*** logbook that shall include for each inspection visit of the supervising rabbi or his representative the signature and printed name of the person performing the inspection, date and time of arrival at the establishment. The logbook shall be maintained for a period of not less than two years after the final entry.

(h) Persons advertising the sale of both food represented as kosher and food not represented as kosher shall display in a prominent place in its front window or front entrance the following sign which shall be printed in block letters at least four inches in height: "KOSHER AND NON-KOSHER FOOD SOLD HERE."

1. In the case of a restaurant, hotel, caterer or other place where food is served the word "SERVED" may be submitted for "SOLD."

2. Any dealer posting the disclosure required in (a) above and identifying itself on that form as selling kosher and nonkosher food is not required to post the disclosure stated in this subsection.

(i) Any person whose sole representation of kosher is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

13:45A-21.3 Labeling requirements

(a) A dealer shall ensure that all meat and/or poultry slaughtered to be sold as kosher shall have affixed to it at the slaughterhouse a tag and/or plumba.

(b) The day of the slaughter, where required, shall be reflected by an incision of a Hebrew letter or an English letter, A through F, with Sunday being represented with the letter A. The identification shall be affixed as follows:

1. All forequarters of steers, cows, bulls, heifers, and yearling calves ("baby beef"), shall arrive at wholesalers and butchers with the following kosher identifications:

i. Breast, rib plate, chuck, shoulder: A tag attached by a wire or plastic. Additionally, the rib-cage of each quarter shall indicate the day of slaughter;

ii. All hanging tenders, spleens, oxtails, hearts and intestines (kishka) shall be identified with a tag attached by a wire or plastic, and by the use of a rubber stamp. Skirt steaks (from the diaphragm) when disconnected at the packing house or deboning rooms shall be affixed with a tag attached by a wire or plastic or legibly stamped with a stamp indicating the date of slaughter and kosher supervisor's name;

iii. Liver: two kosher brands, one on the liver's top portion, the other near the bottom. Additionally, a tag shall be attached to the white sinew on the liver's side, by a wire or plastic;

iv. Feet: a tag attached by a plumba-wire to each foot;

v. Breads: a tag attached by a plumba-wire to each pair;

vi. Brains: a tag attached by a plumba-wire to each brain when sold separately from the head;

vii. Tongue: a tag attached by a wire or plastic, as well as a kosher brand; and

viii. Breastbone: incisions indicating day of slaughter;

2. All foresaddles of veal shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

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i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side;

iv. Feet: a tag attached by a plumba-wire;

v. Breads: a tag attached by a plumba-wire to each pair; and

vi. Tongue: a tag attached by a wire or plastic, plus a kosher brand;

3. All foresaddles of lamb and mutton shall arrive at wholesalers and butchers with the following identification attached at the slaughterhouse:

i. Breast: incision on each breast indicating day of slaughter. In addition, each breast shall be affixed with a tag attached by a plumba-wire;

ii. Rack: each rack shall bear an incision, in the rib-cage area, indicating the day of slaughter. If wholesalers, butchers or processors ship the rack separately, a tag shall be affixed by a wire or plastic to each rack;

iii. Liver: a kosher brand, plus a tag attached by a wire or plastic at the white sinew on the liver's side; and

iv. Tongue: a tag attached by a wire or plastic, plus a kosher brand; and

4. Cheek-meat, ground (chopped) meat, shoulder clods, skirts, flanken, and other such meat that are piled or stored inside plastic bags or vacuum packed and thereafter shipped, shall have a tag placed inside the bag or container as well as a kosher stamp or tag attached to the package's exterior. If the items have not been salted, a tag indicating the last washing shall be included. Meat shipped as indicated in this paragraph shall not be contained in packages exceeding 10 pounds. Each brisket or plate shipped in "combos" shall be affixed with a tag.

(c) Portions of meat, excluding poultry, having been fabricated by the wholesaler, regardless of the size of the portion, must have a tag affixed to it. The tag shall bear the name and address of the wholesaler, the name of the slaughterhouse from which the meat was purchased, the name of the authority sanctioning the kosher slaughter, the date of the fabrication of the meat and whether the meat has been soaked and salted. If the meat was not soaked and salted the tag must include the date and time of the last washing of the meat.

(d) A document containing the information specified in (c) above may be substituted for the tag provided that the meat is identified with either a tag or plumba.

(e) Except as provided in (f) below, all poultry sold as kosher must have plumbas affixed at the slaughterhouse, as follows:

1. Turkey necks: 10 pounds or less, in a bag securely closed with a plumba.

2. Chicken necks: five pounds or less, in a bag securely closed with a plumba.

3. Chicken and turkey livers: five pounds or less, in a bag securely closed with a plumba.

4. Chicken and turkey gizzards: five pounds or less, in a bag securely closed with a plumba.

5. Chicken wings: five pounds or less, in a bag securely closed with a plumba.

6. Turkey wings: 10 pounds or less, in a bag securely closed with a plumba.

7. Chicken and turkey thighs with back portion: five pounds or less, in a bag securely closed with a plumba.

8. Chicken and turkey legs: five pounds or less, in a bag securely closed with a plumba.

9. Chicken and turkey boneless breasts: five pounds or less, in a bag and securely closed with a plumba.

10. Chicken and turkey breasts: five pounds or less, in a bag securely closed with a plumba.

11. Chicken and turkey boneless bottom meat: five pounds or less, in a bag securely closed with a plumba.

12. Chicken and turkey whole poultry: Each piece shall have a plumba securely affixed to it.

(f) A poultry processor may apply to the Director for an exemption from the labeling requirements of (e) above based on volume sales to an individual entity. The Director retains discretion to approve alternative labeling requirements for such shipments.

(g) The slaughterer and/or wholesaler of poultry and/or meat sold as kosher shall ensure that plumbas and/or tags are affixed and so remain, as stated in this section. Slaughterers and/or wholesalers who have sold meat and/or poultry not in compliance with this section shall not refuse to accept returned poultry and/or meat and must provide a refund for the returned item.

(h) All excised fats, veins or meat trimmings which will be sent to a renderer or discarded shall be put into receptacles marked DISCARD. Such fats, veins and trimmings shall not then be sold or used as kosher.

(i) A dealer shall not remove plumbas, tags or any other marks of kosher identification affixed to meat and/or poultry at the slaughterhouse or by the wholesaler until immediately preceding the final fabrication of the product.

(j) A dealer shall not remove the identifying kosher marks of any food until immediately prior to the sale or use of the product.

(k) A dealer who represents in its disclosure that it does not soak and salt its meat but washes it within every 72 hour period, shall disclose legibly the date and time of the day, A.M. or P.M., of each washing and the name of the person performing the washing, on all tags attached to the meat or shall write the information on a wash letter. This applies to all meat sent from slaughterhouses, wholesalers, butcher shops, or any other place until the meat has been fully fabricated.

(l) A dealer shall indicate the date of packaging on the label of packaged raw meat, excluding poultry.

(m) A dealer shall ensure that packaged raw meat, excluding poultry, shall bear one of the following disclosures: "soaked and salted," "not soaked and salted" or "soaked and salted upon request only."

13:45A-21.4 Recordkeeping requirements

Complete and accurate records of all meat and/or poultry purchased as kosher shall be kept by dealers. This shall include the name and address of the slaughterhouse, wholesaler or other source from which such purchases are made, the dates, quantities and identity or nature of meat and/or poultry, and copies of all invoices and bills of sale. A dealer shall retain such records on its premises for a two year period following the purchase of properly identified kosher meat and/or poultry. Wash letters as referred to in N.J.A.C. 13:45A-21.1 shall be kept as long as the meat is in possession of the dealer and shall be kept attached to its appropriate invoice.

13:45A-21.5 Filing requirements

(a) Every dealer shall file annually with the Director:

1. If the dealer is under rabbinical supervision, a letter, in English, from a supervising rabbi or rabbinical agency that the dealer is rabbinically supervised. The letter shall include the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the dealer receiving certification and the type of establishment certified;

2. In the case of products produced on behalf of another person, a letter, in English, from the supervising rabbi or rabbinical agency that states the name and address of the person providing the certification, the date the letter was issued, the date it becomes effective, the date it expires, the name and address of the manufacturer receiving certification, the type of establishment certified, and where applicable, the specific products and brands certified; or

3. If the establishment is not under rabbinical supervision, a letter so stating.

(b) Any individual or organization giving rabbinical supervision to any dealer located in New Jersey shall file annually with the Director a document listing the name, address and type of each establishment that is supervised.

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(c) Dealers required to file pursuant to this section shall provide written notification to the Director of any change related to rabbinical supervision, represented status, address or ownership status within seven business days of such change.

(d) Any person whose sole representation of kosher products is limited to properly sealed packages prepared by others shall be exempt from the requirements of this section.

13:45A-21.6 Inspections of dealers

(a) Inspections are to be conducted by authorized inspectors of the Division.

(b) For the purpose of making any inspection an inspector shall have a right of entry to, upon and through the business premises of persons making any representation of kosher.

13:45A-21.7 Unlawful practices

(a) In addition to a violation of any other laws, the following shall constitute an unlawful practice under the Consumer Fraud Act, N.J.S.A. 56:8-1 et seq.:

1. Failure to comply with the disclosure requirements of N.J.A.C. 13:45A-21.2;

2. Failure to comply with the filing requirements of N.J.A.C. 13:45A-21.5;

3. Failure to conform sales practices with the posted disclosures;

4. Failure to conform posted disclosures with the disclosure filed with the Division;

5. Use of any of the following in the advertisement or sale of any food by a dealer that fails to post or file the required disclosure or by a person not representing itself as selling kosher food:

i. By direct statements, orally or in writing, that the food sold is kosher or pareve;

ii. By display or by inscription on any food or its package, container or contents, the word "kosher", "pareve", "Glatt" or "rabbinical supervision" or similar expression, in any language, or by any sign, emblem, insignia, six-pointed star, Menorah, symbol or mark in simulation of the word kosher unless such inscription is on a properly sealed package; or

iii. By display on any interior or exterior sign, menu or otherwise, or by advertisement, either oral or in writing, the words "kosher-style", "kosher-type", "Jewish", "Hebrew", "holiday (Jewish) foods", "traditional (Jewish)", "Bar Mitzvah", "Bat Mitzvah" or other similar words, either alone or in conjunction with the word "type", "style" or other similar expression, unless there is clearly and conspicuously stated a disclaimer in the same size type or letters in some prominent place or location on the sign or menu or in the case of an advertisement in type no smaller than the smallest type in the advertisement, and in no event less than 10-point type, that the product or products offered for sale are not represented as kosher.

(1) The disclaimer shall appear in a box within the advertisement and shall be preceded with the word "NOTICE" or other similar word, in not smaller than bold 14-point type.

(2) An advertisement that utilizes any kosher symbol that also promotes the sale of non-kosher food is in violation of this section unless there is clearly and conspicuously stated in the advertisement a disclaimer in accordance with the requirement of this section, that some of the food offered for sale is not represented to be kosher;

6. By advertising an establishment as being under rabbinical supervision without including in the advertisement the name of the supervising rabbi or agency;

7. By representing a food and/or an establishment as being under rabbinical supervision when that food and/or establishment is not in conformance with the requirements of that supervision;

8. Use by any person of a recognized kosher food symbol, including but not limited to OU, OK, Kof-K, Triangle-K, Star-K, without first obtaining written authorization from the person or agency represented by that symbol;

9. Use of the word(s) "kosher" or "pareve" or a kosher symbol insignia or the letter(s) "K", ***"KM,"*** "KP" or "KD", on properly sealed packages that are not produced under rabbinical supervision, shall bear the statement "not under rabbinical supervision" in bold type on the label;

10. Use of the letter "P" as part of a kosher symbol on any product when that product is not represented as kosher for Passover;

11. Possession by any person, other than the manufacturer or packer at its premises, of kosher or kosher for Passover identification bearing a kosher symbol, unless the certifying entity of that symbol authorizes application of that symbol to that product on that premise;

12. Possession by any person of meat and/or poultry represented as having been slaughtered to be sold as kosher, when that meat and/or poultry is not properly identified with the slaughterhouse tag and/or plumba or the wholesaler's tag;

13. Failure to comply with the labeling requirements of N.J.A.C. 13:45A-21.3;

14. Failure to comply with the recordkeeping requirements of N.J.A.C. 13:45A-21.4;

15. Failure to allow an inspector entry upon the business premises of a dealer or to interfere in any way with an inspection;

16. Failure to respond in a timely fashion to an inquiry conducted by the Division;

17. Failure to attend any scheduled proceeding as directed by the Division. In the event that a person elects to retain counsel for the purpose of representation in any such proceeding, it shall be the person's responsibility to do so in a timely fashion. The failure of a person to retain counsel, absent a showing of good cause for such failure, shall not require an adjournment of the proceeding;

18. Failure to answer any question pertinent to an inquiry made pursuant to N.J.S.A. 56:8-3, or other applicable law, unless the response is subject to a *bona fide* claim of privilege; or

19. Failure to make a proper and timely response by way of appearance and/or production of documents to any subpoena issued pursuant to N.J.S.A. 56:8-3 or as otherwise may be provided by law.

13:45A-21.8 Presumptions

Possession by a dealer of any product not in conformance with its disclosure is presumptive evidence that the dealer is in possession of that food with the intent to sell.

(a)

DIVISION OF MOTOR VEHICLES BOAT REGULATION COMMISSION

Boating Regulations

Adopted Repeal: N.J.A.C. 7:6
Adopted New Rules: N.J.A.C. 13:82

Proposed: February 7, 1994 at 26 N.J.R. 744(a).

Adopted: March 22, 1994 by Deborah T. Poritz, Attorney General and Stratton C. Lee, Director, Division of Motor Vehicles as to N.J.A.C. 13:82-8.1 through 8.21.

Filed: March 25, 1994 as R.1994 d.205, **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. 12:7-34.36 et seq. and 12:7A-29.

Effective Date: April 18, 1994.

Expiration Date: April 18, 1999.

Summary of Public Comments and Agency Responses:

COMMENT 1: Several commenters objected to the provision in proposed N.J.A.C. 13:82-3.1(b) prohibiting water-skiing within 200 feet of any shore, wharf, pier, bridge structure, abutment, channel buoy, day marker or persons in the water. The commenters felt that this change from the source rule, N.J.A.C. 7:6-1.37, which contained a 100 foot limitation, would effectively preclude water-skiing in many areas of the State where it is now permitted.

RESPONSE: The purpose of the proposal was to make this provision consistent with proposed N.J.A.C. 13:82-1.7, which limits the speed of vessels to slow speed within 200 feet of any marina, pier, dock or wharf. In response to the comments, the Boat Regulation Commission reconsidered the proposed rule at its public meeting on March 9, 1994. The Commission decided to amend N.J.A.C. 13:82-1.7 and 13:82-3.1(b) to provide a 200 foot restriction for water-skiing and speed for any marina, pier, dock, wharf, or abutment, and to provide a 100 foot

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restriction for water-skiing for any shore, approved aid to navigation or mooring. The 100 foot limitation is consistent with sources rule N.J.A.C. 7:6-1.37. The Commission believes that this change will promote the safety of all persons using the waters of the State as well as the safety of boats and structures in the water and on shore.

COMMENT 2: The Lake Hopatcong Regional Planning Board endorsed the proposed rule on Riders in N.J.A.C. 13:82-1.13, and generally endorsed the proposed rules on operations on Lake Hopatcong, N.J.A.C. 13:82-3.11. However, the Board requested that the exemption from the limitations in N.J.A.C. 13:82-1.7(b) be removed. The representative of the Planning Board present at the March 9 Commission meeting indicated that the changes in N.J.A.C. 13:82-1.7(b) and 13:82-3.1 discussed in Comment 1 were acceptable. The Commission will consider the request to remove the exemption for a future rule proposal.

The Planning Board also objected to the proposed rule N.J.A.C. 13:82-4.2, because the decibel level specified, 90 dba at idle, effectively raises the minimum noise level of 82 dba measured at full throttle.

The Planning Board also pointed out that N.J.A.C. 13:82-4.6, Racing Events, omitted the word "motorboat." The Planning Board questioned whether this omission was intentional or an oversight.

RESPONSE: The Commission has retained an expert to make a thorough analysis of the noise limitations and method of testing contained in N.J.A.C. 13:82-4.2. The expert has not submitted a final report. Therefore, the Commission decided that the proposed new rule should continue the limitations and testing method contained in source rule N.J.A.C. 7:6-6.3 until the expert report has been received and evaluated. The Commission therefore made no change in the proposed rule. The Commission agreed that N.J.A.C. 13:82-4.6(a) contained an unintentional omission. The proposed new rule is intended to continue the source rule, N.J.A.C. 7:6-4.6, without change. The corrected provision adds "inboard or outboard motorboats" to conform the proposed new rule to the source rule. The Commission will, however, consider substantive changes to the new rule at a future time.

COMMENT 3: The Lake Hopatcong Yacht Club noted the omission in proposed new rule N.J.A.C. 13:82-4.6 explained in Comment 2.

RESPONSE: See Comment 2.

COMMENT 4: The Berkeley Striper Club objected to proposed N.J.A.C. 13:82-3.17(c)3, which permits skin and scuba diving from the north and south jetties. The Club felt that the north jetty is subject to dangerous riptides and that diving would interfere with fishing from the jetty. The Club felt that divers were being given an unfair preference over fishermen.

RESPONSE: The proposed new rule was suggested by the New Jersey Council of Diving Clubs and was discussed at several public meetings of the Commission. The proposed rule contains specific limitations on time and place for diving. The Commission believes that the proposed new rule adequately protects the safety of all persons using the Barnegat Inlet waterways and balances the competing interests of divers and fishermen. The Commission decided not to make any change in the proposed new rule. Changes based on experience will be considered at a future time, if warranted.

COMMENT 5: The New Jersey Council of Diving Clubs suggested that the term "swimming" be deleted from the title of proposed new rule N.J.A.C. 13:82-3.17 to distinguish diving from other in-water activities. The Council also requested that proposed N.J.A.C. 13:82-3.17(c)3 be amended to add "in the inlet" to clarify that the regulation does not apply to the Atlantic Ocean side of the jetty.

RESPONSE: The proposed new rule contains limitations on swimming in certain areas; therefore, the title is appropriate. The Commission agreed to add the requested phrase to proposed N.J.A.C. 13:82-3.17(c)3 for clarification, although the regulation on its face applies only within Barnegat Inlet.

COMMENT 6: The Lake Mohawk Country Club requested changes in proposed new rule N.J.A.C. 13:82-3.8, which regulates activities on Lake Mohawk. The Club requested that N.J.A.C. 13:82-3.8(c), (f), and (h) be amended to substitute "8:00 A.M." for "sunrise." The Club suggested that 8:00 A.M. was a more reasonable hour to permit higher speeds and water-skiing on the Lake to accommodate the interests of homeowners along the shore.

The Club also suggested that the reference to "permits from the State Police" in N.J.A.C. 13:82-3.8(f) and (i) be changed to "waiver from the Boat Regulation Commission" to more accurately reflect the current practice of granting such waivers from the general provisions on water-skiing for exhibitions by the Lake Mohawk Ski Hawks.

RESPONSE: Lake Mohawk is a private lake subject to the jurisdiction of the Boat Regulation Commission. The Commission agrees that 8:00 A.M. is a reasonable time to permit water-skiing and higher speeds and therefore amends the proposed new rule as requested.

The Commission also agrees to the amendment to clarify the current practice of considering waivers from general water-skiing provisions, pursuant to N.J.A.C. 13:82-3.1(h), which continues source rule N.J.A.C. 7:6-1.37(j).

COMMENT 7: Captain William J. Gronikowski, Bureau Chief of the Marine Law Enforcement Bureau in the New Jersey State Police, submitted a comment to the Division of Motor Vehicles which indicated that proposed new rule N.J.A.C. 13:82-8.2 left out a provision that regulates hyphens or spaces between groupings of letters and numbers which had been included in old rule N.J.A.C. 7:6-1.3 and corresponds to a provision in 33 Code of Federal Regulations, Navigation and Navigable Waters, Section 173.27, entitled, "Numbers: Display; size; color." According to Captain Gronikowski, the wording in the old regulation is necessary for the State of New Jersey to receive Federal boating safety funds.

He indicated that it is not necessary to eliminate the hyphen or space requirement due to the Division's computer system's inability to accommodate hyphens and spaces in those fields because N.J.A.C. 13:82-8.2 is not intended for boat registration documents; it only pertains to the boat owner's placement of the numbers on the hull of the boat.

RESPONSE: The Division of Motor Vehicles accepted this comment and changed the language of the new rule N.J.A.C. 13:82-8.2 back to the language of the old rule N.J.A.C. 7:6-1.3.

Summary of Agency-Initiated Changes:

1. References to the Marine Law Enforcement Bureau have been standardized throughout the proposed new rules to "Bureau."
2. In proposed new rule N.J.A.C. 13:82-1.7(d), "on plane" was deleted as unnecessary.
3. Proposed new rule N.J.A.C. 13:82-1.18 has been deleted because the Marine Law Enforcement Bureau does not have the technical expertise to make full inspections of boats carrying passengers for hire. On navigable waters of the United States, these vessels are regulated by the United States Coast Guard. Proposed new rules N.J.A.C. 13:82-1.19 and 1.20 have been recodified accordingly.
4. In proposed new rule N.J.A.C. 13:82-1.19 (now 1.18), the reference to the "Bureau of Navigation" has been changed to the "Land Use Regulation Program" to reflect the new name of that entity in the Department of Environmental Protection and Energy.
5. In proposed N.J.A.C. 13:82-3.1(b), "channel buoys and day markers" was changed to "approved aid to navigation" to conform to Coast Guard terminology for these items.
6. In proposed N.J.A.C. 13:82-3.1(d), the phrase "except as specifically provided otherwise in these regulations" has been added to alert the public that individual bodies of water may have specific restrictions on tow line length provided elsewhere in the regulations.
7. In proposed N.J.A.C. 13:82-3.8(e), "clock" was corrected to "dock."
8. In proposed N.J.A.C. 13:82-3.10(f), reference to non-existent subsection (g) was changed to reference to subsection (e).
9. In proposed N.J.A.C. 13:82-4.2(b), "National Bureau of Standards" was changed to "National Institute of Science and Technology" to reflect the new name of that Federal entity.
10. Proposed subchapter 5 on Personal Watercraft has been deleted due to the enactment of P.L. 1993, c.299. This statute provides specific provisions on the operation of personal watercraft which supersede the proposed new rule. Subchapter 5 will therefore provide that the operation of Personal Watercraft on waters of the State will be as provided in P.L. 1993, c.299 (N.J.S.A. 12:7-62 et seq.).

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

CHAPTER 82
BOATING REGULATIONS

SUBCHAPTER 1. EQUIPMENT

13:82-1.1 Scope

The rules in this chapter shall govern the operation of vessels on tidal and nontidal waters of the State of New Jersey.

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13:82-1.2 Construction

(a) These rules shall be liberally construed to permit the Department, the *[Bureau of]* Marine Law Enforcement ***Bureau*** and its various agencies to discharge statutory functions.

(b) As used in these rules "Department" refers to the Department of Law and Public Safety, "Commission" refers to the Boat Regulation Commission, and "Bureau" refers to the Marine Law Enforcement Bureau in the Division of State Police.

(c) These rules are to be construed consistent with the Federal Motorboat Act of 1940 (46 U.S.C. 526 et seq.), the Federal Safe Boating Act of 1971 (46 U.S.C. 1451 et seq.), and all regulations adopted under each Act, as amended and as may be amended, and other applicable Federal law or regulation relating to vessels.

13:82-1.3 Equipment

(a) No person shall operate or allow any person to operate any motorboat in or on the waters of this State unless said motorboat is carrying on board the minimum equipment for motorboats as is required in the Federal Boating Act of 1940, the Federal Boat Safety Act of 1971 and/or amendments thereto and as may be amended, including any and all regulations adopted thereunder, amendments thereto and as may be amended.

(b) Whenever such motorboat is in operation, this equipment shall be produced by the operator or the captain of the motorboat upon the request of a law enforcement officer of this State.

(c) Failure to produce such equipment will be a violation of this section.

13:82-1.4 *[Lifesaving devices]* ***Personal flotation devices***

No person shall operate or allow any person to operate any vessel in or on the waters of this State unless such vessel has a serviceable United States Coast Guard approved personal flotation device (PFD) for each person on board. Such PFD's shall be of the type(s) and number(s) required by the United States Coast Guard for a vessel of that class operating on navigable waters. Such PFD's shall be readily accessible when the vessel is underway. This rule includes all vessels except surfboards, racing shells, rowing sculls and racing kayaks.

13:82-1.5 Rotating lights

(a) No vessel shall display a rotating or sequential flashing light except as provided in this section.

(b) Any law enforcement or emergency vessel may display a rotating blue light beacon.

(c) Any vessel engaged in activity recognized by the Coast Guard as being eligible for its use may display a rotating red and yellow light.

13:82-1.6 Siren

No vessel shall be equipped with, nor shall any person use upon a vessel, any siren except as otherwise permitted in this section. It is permissible that any vessel be equipped with a theft alarm signal device which is so arranged that it cannot be used by the operator as an ordinary warning signal. This section shall not apply to any vessel operated by or for the Department, a first aid squad, a police or fire Department.

13:82-1.7 Speed

(a) No person shall operate a power vessel or allow a power vessel to be operated in a manner where the speed of the power vessel may cause danger or injury to life or limb or damage to property. The speed of every power vessel shall be regulated so as to avoid the risk of damage or injury by any means, from the power vessel's wake.

(b) All power vessels shall reduce their speed to a slow speed when passing:

1. Any marina, pier, dock***,*** *[or]* wharf ***or abutment*** at a distance of 200 feet or less, except on Lake Hopatcong, which shall be in accordance with N.J.A.C. 13:82-3.11;

2. Work barges or work floats while actually engaged in construction;

3. Through bridge spans;

4. Through lagoons, canals and confined areas of less than 200 feet in width:

5. Vessels not under command; or

6. Emergency vessels displaying sequential flashing or rotating blue lights.

(c) "Slow speed" as used in this section is defined as the speed at which a power vessel moves through the water and is able to maintain minimum headway in relation to the vessel or structure being passed. "No wake" as used in this subsection shall mean the speed at which a power vessel moves through the water while maintaining minimum headway and producing the minimum wake possible.

(d) All power vessels, when moving through an area that has been marked a "Slow Speed/No Wake" area either by buoys or by signs with those words, shall move only at a no-wake speed. No vessel may be operated *[on plane or]* at other than minimum headway speed while in a "Slow Speed/No Wake" area.

13:82-1.8 Rules of the road

All vessels navigating the waters of this State shall comply with the inland rules of the road as set forth by the Coast Guard, except where the international rules of the road are applicable.

13:82-1.9 Anchoring near aid to navigation

No person shall anchor or cause to be anchored, tie or cause to be tied any power vessel, rowboat, sailboat, canoe, or any other vessel to or within a radius of 50 feet of any light, beacon, buoy, or any other aid to navigation, except in an emergency. This section shall not apply to vessels operated by the State or Federal Government for the maintenance, replacement or survey of navigation aids.

13:82-1.10 Anchoring in channels

(a) No person shall operate any vessel in a manner which shall unreasonably interfere with other vessels or with free and proper navigation of the waterways.

(b) Anchoring in heavily traveled channels or main thoroughfares shall constitute such interference if unreasonable in the prevailing circumstances.

(c) No person shall tie up or anchor vessels or other craft in navigable channels in such a manner as to prevent or obstruct the passage of other vessels or craft, or carelessly sink or permit or cause to be sunk, or except in an emergency, voluntarily sink or permit or cause to be sunk a vessel or other craft in a navigable channel.

13:82-1.11 Transversing race course

No boat shall move across the course or around the course of any such race or regatta so as to create a water condition which shall unnecessarily endanger the life, limb or craft of those competing in the race or regatta.

13:82-1.12 Obeying orders

No person shall fail to stop or lay to when ordered to do so by any *[Marine Patrolman or other]* law enforcement officer.

13:82-1.13 Riders

(a) The operator of a power vessel shall not allow any person to ride in any position that would unduly endanger life or limb nor allow passengers or cargo in excess of the maximum capacity stated on the manufacturer's or U.S. Coast Guard information label.

1. This prohibition includes, but is not limited to, any position where the person may be in grave danger of falling overboard.

2. This prohibition excludes all positions which may be necessary for the operation or safety of the vessel.

13:82-1.14 Altered motor numbers

Any person who shall have in his or her possession, any motor, whether inboard or outboard, the motor number of which has been altered or mutilated, or who shall come into possession of such a motor, shall at once file in writing with the Bureau a statement setting forth all circumstances in connection with his or her possession of such motor.

13:82-1.15 Lanyard cut-off switch

The operator of a vessel equipped with a lanyard cut-off switch shall wear the safety switch lanyard at all times when the vessel is in operation.

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13:82-1.16 Exclusion of racing events

The provisions of this subchapter shall not apply to any vessel or to any operator while actually competing in an authorized race as in N.J.A.C. 13:82-4.6, held under the auspices of a duly incorporated yacht club or racing association.

13:82-1.17 Finding

(a) Any person finding, recovering or coming into possession of any vessel other than through normal purchase, loan, rental, charter, or gift, shall notify the Bureau within 24 hours.

(b) The notification shall include a description of the vessel and the specific location where it was found or recovered.

*[13:82-1.18 Vessels carrying passengers for hire

(a) Any owner of a power vessel carrying passengers for hire, applying for a license for such vessel, shall notify the Bureau at least 10 days before launching such vessel, so as to afford an examination of the hull. All such vessels now in use and for which a license is to be applied for shall be dry-docked to permit an examination of its hull before the license may be issued.

(b) On all power vessels carrying passengers for hire, the pilot shall be stationed in such a position that he has a clear and unobstructed view for at least 500 feet forward over the bow of his or her vessel. All such vessels shall be equipped with a reverse gear.]*

13:82-*[1.19]***1.18*** Obstruction to navigation

Unless permitted in writing by the *[Bureau of Navigation]* ***Land Use Regulation Program*** in the Department of Environmental Protection and Energy, no person shall place, anchor, or construct or cause to be placed, anchored or constructed, any float, or diving platform more than 25 feet from shore unless the same be properly marked by warning lights, which lights shall be approved by the *[Bureau]* ***Land Use Regulation Program***, between the hours of sunset and sunrise.

13:82-*[1.20]***1.19*** Nonlicensed operator

Any person owning a power vessel or motor shall not knowingly allow it to be operated by a nonlicensed operator in waters where a license is required.

SUBCHAPTER 2. REPORTING OF BOATING ACCIDENTS

13:82-2.1 Reporting of boating accidents

(a) Pursuant to N.J.S.A. 12:7-34.46, 46 U.S.C. 1451 et seq., and 33 CFR 173.1 et seq., all boating accidents in which a person loses consciousness or receives medical treatment or is disabled for more than 24 hours, shall be reported to the Bureau within 48 hours. Such reports shall be in writing on forms furnished by the Bureau.

(b) In addition to the written report, required within 48 hours, when as a result of an occurrence that involves a vessel or its equipment, a person dies or disappears from a vessel or its equipment, the operator shall, without delay, by the quickest means available, notify the nearest *[Marine Police]* ***Bureau*** station of the following:

1. The date, time and exact location of the occurrence;
2. The name of each person who died or disappeared;
3. The number and name of the vessel; and
4. The name and addresses of the owner and operator.

(c) When the operator of a vessel cannot give the notice or file the report required by (a) or (b) above, each person on board the vessel shall notify the *[New Jersey Marine Police]* ***Bureau*** station or determine that the notice has been given or the report has been filed.

(d) If damage to the vessel and other property totals more than $100.00, a written report shall be made within 15 days on forms furnished by the *[New Jersey Marine Police]* ***Bureau***.

(e) The written report required in (a), (b) and (d) above shall include the following information:

1. The numbers and names of each vessel involved;
2. The name and address of each owner of each vessel involved;
3. The name of the nearest city or town, the county, the State and the body of water;
4. The time and the date of the casualty or accident;
5. The location on the water;
6. The visibility, weather and water conditions;
7. The estimated air and water temperatures;
8. The name, address, age or date of birth, telephone number, vessel operating experience, and boating safety training of the operator making the report;
9. The name and address of each operator of each vessel involved;
10. The number of persons on board or towed on skis by each vessel;
11. The name, address, and date of birth of each person injured or killed;
12. The cause of each death;
13. Weather forecasts available to, and weather reports used by the operator before and during the use of the vessel;
14. The name and address of each owner of property involved;
15. The availability and use of personal flotation devices;
16. The type and amount of each fire extinguisher used;
17. The nature and extent of each injury;
18. A description of all property damage with an estimate of the cost of all repairs;
19. A description of each equipment failure that caused or contributed to the cause of the casualty;
20. A description of the vessel casualty or accident;
21. The type of vessel operation (cruising, drifting, fishing, hunting, skiing, racing, or other), and the type of accident (capsizing, sinking, fire or explosion or other);
22. The opinion of the person making the report as to the cause of the casualty;
23. The make, model, type (open cabin, house or other), beam width at widest point, length, depth from transom to keel, horsepower, propulsion (outboard, inboard, inboard outdrive, sail, or other), fuel (gas, diesel or other), construction (wood, steel, aluminum, plastic, fiberglass, or other), and year built (model year), of the reporting operator's vessel;
24. The name, address, and telephone number of each witness;
25. The issued hull identification number, if any of the reporting operator's vessel; and
26. The name, address, and telephone number of the person submitting the report.

(f) When the operator of a vessel or other persons aboard cannot submit the casualty or accident report as required, the owner of the vessel shall submit the casualty or accident report.

SUBCHAPTER 3. OPERATIONAL REGULATIONS

13:82-3.1 General provisions

(a) "Waterskiing" is defined as anything with a rider being towed by a power vessel by means of a tow rope, tow line, or training boom, except another vessel being towed.

(b) All power vessels conducting waterskiing operations shall, while underway, keep at least 200 feet distant from any *[shore,]* wharf, ***marina, dock,*** pier, bridge structure, abutment, *[channel buoys, day markers,]* or persons in the water, and 100 feet from other vessels, ***any shore, approved aid to navigation or mooring*** except specifically provided otherwise in these regulations.

(c) All power vessels conducting waterskiing operations shall have a crew of at least two persons, one of whom shall be a competent observer, and shall have adequate space on the vessel for the waterskiing participant.

(d) Tow lines shall be not less than 35 feet nor more than 75 feet in length***, except as specifically provided otherwise in these regulations***.

(e) Waterskiing is permitted only between sunrise and sunset, except as specifically provided otherwise in these regulations.

(f) Waterskiiers shall wear a United States Coast Guard approved Type I, II, III or Type V Hybrid personal flotation device, except that a barefoot wetsuit may be worn during sanctioned competitions or shows and while training for such events, as long as there is a United States Coast Guard approved wearable personal flotation device on board the vessel for each skier.

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(g) All ski boats shall display a signal pennant, which shall be orange in color and triangular in shape and not less than 12 inches on any dimension.

1. Said pennant shall be displayed at least four feet above the highest structure on the boat during each of the following activities:

i. While pulling or retrieving a skier;

ii. While a skier is in the water; or

iii. While a tow line is in the water.

2. A person shall not display the pennant at any time other than while conducting any of the activities described in this subsection.

(h) The Commission may, upon application, waive any one or more of the above requirements for events of public entertainment on any wholly-owned private lake, provided that it finds the event to be consistent with the interests of boating safety.

13:82-3.2 Beaver Dam Creek, Point Pleasant and Brick Town, Ocean County

No skiing shall be permitted in the north and south branches of Beaver Dam Creek west of Beaver Dam Road bridge.

13:82-3.3 Deal Lake, Monmouth County

(a) Water-skiing is permitted east of the Main Street bridge only.

(b) Skiing under Norwood Avenue bridge is prohibited.

(c) Tow lines shall not exceed 65 feet in length.

(d) Barefoot skiing, kite flying, para-sailing and ski-jumping are prohibited, except for specific exhibitions requiring a permit from the State of New Jersey, as required by law.

13:82-3.4 Grinnel Lake, Sussex County

(a) A maximum of two power vessels each towing a single skier shall be allowed on the ski course simultaneously.

(b) The skiing course is established as follows:

1. Commencing at a point approximately 100 feet south of Risse's point running in a counterclockwise direction.

2. Commencing at a point approximately 100 feet north of the northern shore of the island and continuing in a circle in a counterclockwise direction.

3. The course shall be identified by white styrofoam markers placed at approximately 200 foot intervals.

4. An orange flag will designate the starting point which will also be the finishing point.

(c) The tow line shall not exceed 65 feet in length.

(d) Vessels towing skiers shall proceed in counterclockwise pattern around the lake and the island, and in the narrow area behind the island the skier shall remain directly behind the vessel.

(e) Under no circumstances will skiing be permitted between the "island" and the Lehigh and Hudson Railroad embankment.

(f) Skiing hours are as follows:

1. Weekdays—11:00 A.M. to 6:00 P.M.;

2. Saturday, Sunday, and holidays—10:00 A.M. to 12:00 P.M.; 2:00 P.M. to 5:00 P.M.

(g) Barefoot skiing, kite flying, para-sailing and ski-jumping are prohibited, except for specific exhibitions requiring a permit from the State of New Jersey as required by law.

13:82-3.5 Indian Lake, Morris County

(a) Water-skiing is prohibited before 8:00 A.M. and after sunset.

(b) All water-ski riders shall start all operations and terminate all operations at a single designated point.

1. The designated point is to be within wading distance of shore in the area known as "Monkey Island."

2. This requirement is not to be interpreted as to prohibit normal pickup of a spilled water-skier.

(c) Seven red marker buoys are to be placed and maintained in a central location on the waters of Indian Lake, around which all vessels will proceed counterclockwise, keeping said buoys on the left.

(d) Barefoot skiing, kite flying, parasail and ski jumping are prohibited, except for specific exhibitions requiring a permit from the State of New Jersey, as required by law.

13:82-3.6 Paulinskill Lake, Sussex County

(a) Water-skiing shall be permitted on Paulinskill Lake only within the designated ski course as described below.

1. The skiing course shall commence at a point approximately 2,000 feet northeast of Beach No. 2 and run in a northerly direction on a line established in the center of the lake, to a point at the northeastern end of the Paulinskill Lake Association tract (said point is also known and designated as the southwestern end of the Lennington or campground tract); thence turn 180 degrees and run in a southwesterly direction along the center of a lake to the finish point which shall be at approximately the same point as the starting area designated as 2,000 feet northeast of Beach No. 2.

2. The ski course described in (a)1 above, including the start, stop and turning areas, will be identified by marker buoys.

(b) Skiing hours are designated as follows:

1. Weekdays—10:00 A.M. to sunset;

2. Saturday, Sunday and Holidays—12:00 Noon to sunset.

(c) A skier shall begin the course at the designated start area and continue on the right hand side of the center line in a counterclockwise direction.

(d) Turning shall be permitted only in the designated areas except when retrieving a fallen skier.

(e) A boat with a skier just starting the course shall yield the right of way to a boat and skier turning to repeat the course.

(f) A boat with a skier may continue around the ski course as many times as desired, turning in the designated areas.

(g) When more than one boat is on the ski course at the same time, each boat shall maintain a distance of at least 1,000 feet between itself and the boat in front of it.

(h) No boat shall pass a boat with a fallen skier unless signaled to do so by an occupant of that boat.

(i) A slalom course is established and located directly in front of the parallel to Beach No. 2. The starting area shall be a point 250 feet northeast of Beach No. 1. Turning areas shall be located approximately 250 feet northeast of Beach No. 1 and 1,000 feet northeast of Beach No. 2.

1. Slalom hours shall be as follows:

i. Weekdays—6:00 A.M. to sunset;

ii. Weekends and holidays—8:00 A.M. to 12:00 Noon.

(j) A maximum of six power vessels shall be allowed on the ski course simultaneously.

1. When proceeding in the same direction, these vessels shall remain a minimum of 1,000 feet apart.

2. In the event the lead skier falls, the vessel following shall stop and remain in place until the fallen skier has regained skiing position or boarded a vessel.

3. When one vessel is towing two or more skiers, no other vessels towing skiers shall be permitted on the ski course.

(k) The luminous painted barrel designating the starting and/or finishing point at the eastern or western boundary of the course and the luminous painted barrel designating the turning point at the western boundary of the course will be removed from the lake during the hours between sunset and sunrise. This requirement may be eliminated if a blinking amber light is mounted on the barrels.

(l) Barefoot skiing, kite flying, parasail and ski jumping are prohibited, except for specific exhibitions requiring a permit from the State of New Jersey as provided by law.

(m) The use of the most easterly beach will be allowed as a take-off point and return point between the hours of 9:30 A.M. and 10:30 A.M. for a ski school or training class, as a practice area.

13:82-3.7 Grover's Mill Pond, Mercer County

(a) No power vessel powered by a motor in excess of 7½ horsepower, shall be operated on Grover's Mill Pond, Mercer County.

(b) No power vessel shall be operated upon Grover's Mill Pond between the hours of 11:00 P.M. and 7:00 A.M.

(c) No waterskiing shall be permitted on Grover's Mill Pond at any time.

13:82-3.8 Lake Mohawk, Sussex County

(a) No waterskiing shall be permitted in Tamarack Cove, Turtle Cove, Three Finger Cove or the South End Cove of the lake.

(b) No waterskiing shall be permitted to the west of Manitou Island north and south of Manitou Bridge.

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(c) Power vessels shall not exceed a speed of 10 miles per hour from sunset to *[sunrise]* ***8:00 A.M.*** anywhere on the lake.

(d) Power vessels shall not exceed a speed of five miles per hour—no wake—in Tamarack Cove, Turtle Cove, Three Finger Cove or the South End Cove of the lake.

(e) Power vessels shall not exceed five miles per hour—no wake—within 200 feet of any shore, wharf, pier, bridge structure, or abutment, *[clock]* ***dock***, floating float of any kind, or floating swimming and diving platform.

(f) Power boats shall not exceed a speed of 35 miles per hour between *[sunrise]* ***8:00 A.M.*** and sunset except for *[specific exhibitions requiring a permit from the State of New Jersey]* ***waterski practices, shows and exhibitions with a waiver granted by the Boat Regulation Commission***.

(g) All power vessels towing ski or aquaplane riders shall keep at least 200 feet distance from any other craft.

(h) Waterskiing or aquaplane or towing of skiers or aquaplanes shall be permitted only during the hours between 9:00 A.M. and sunset.

(i) Barefoot skiing, balloon skiing, kite flying skiing, hydrofoil skiing, motor operated ski skiing, parasail skiing and ski jumping are prohibited except for *[specific exhibitions requiring a permit from the State of New Jersey]* ***waterski practices, shows and exhibitions with a waiver granted by the Boat Regulation Commission***.

13:82-3.9 South Branch of Kettle Creek, Ocean County

(a) No waterskiing shall be permitted in the south branch of Kettle Creek.

(b) Waterskiing is prohibited west of a line, if extended, from the easterly end of Queen Ann Road (Bay Harbor Estates), Brick Township, to 224 Kettle Creek Road (Lot 30, Block 254) in Dover Township.

13:82-3.10 Shrewsbury and Navesink Rivers and Adjacent Areas; Tidal Waters

(a) No waterskiing shall be permitted in the following waterway areas of Shrewsbury and Navesink Rivers and adjacent areas:

1. Between northern limit Buoys No. 10 and No. 11 at Highlands to Buoys No. 28 at Rumson; thence to Buoys No. 5 off Barley Point;
2. From Buoys No. 10 southerly through Monmouth Beach Channel and Cove;
3. From Buoys No. 28 through area between Gunning Island and Rumson including entire area of Oyster Bay of Pollys Pond.

(b) The right is reserved to amend these rules and regulations to cover more extensive areas as conditions warrant.

(c) All operations of power vessels towing ski or aquaplane riders while underway must at all times keep at least 100 feet from any shore, wharf, pier, bridge structures, or abutment, or persons in the water.

(d) In passing another boat the operator thereof must keep at least 100 feet distance from any other craft.

(e) Water-skiing or aquaplaning or towing of skis or aquaplane will be permitted only during the hours between sunrise and sunset.

(f) The provisions of (b) through *[(g)]* ***(e)*** above apply to all tidal waters.

13:82-3.11 Lake Hopatcong, Sussex and Morris County

(a) From May 15 through September 15 of each calendar year, no person shall waterski on Saturdays, Sundays or holidays between the hours of 11:00 A.M. and 5:00 P.M. in the following areas:

1. Byram Cove;
2. Between Raccoon Island and Prospect Point;
3. Between Prospect Point and Halsey Island;
4. Woodport Cove;
5. Between Halsey Island and Racoon Island.

(b) No boat shall pull more than two skiers at any one time on Saturdays, Sundays or holidays from May 15 through September 15 of any year except when participating in an exhibition or race sanctioned by the United States Coast Guard or *[State Police]* ***Bureau***.

(c) The ski boat shall not be loaded beyond the manufacturer's recommended capacity. For purposes of this subsection, the skier, or skiers, shall be included when determining the number of passengers in the boat.

(d) While towing a skier, the operator of the vessel shall maintain a distance from any shore, structure, buoy, person in the water, vessel or other object, of not less than the length of the tow line plus 100 feet.

(e) The ski boat operator shall, when a skier has fallen, or has otherwise become disconnected from the tow line, reduce speed and return to the skier in a safe and reasonable manner.

(f) The dropping of skis for the purpose of barefoot or slalom skiing is prohibited, unless the ski is immediately retrieved by a following vessel.

(g) No vessel shall be operated upon Lake Hopatcong between the hours of sunset and sunrise at a speed in excess of 10 miles per hour.

(h) No vessel shall be operated upon Lake Hopatcong on Saturdays, Sundays or legal holidays between May 15 and September 15 at a speed in excess of 30 miles per hour.

(i) No vessel shall be operated at a speed in excess of five miles per hour within 100 feet of shore, any wharf, pier, bridge, dock structure, buoy or person in the water or designated bathing area which is marked by buoys.

(j) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water. Operation of the vessel in such a manner shall constitute, without further proof, careless operation. An exception to this requirement will be allowed for operation during authorized races sanctioned by the United States Coast Guard, *[New Jersey State Police]* ***the Bureau***, or with a race test permit issued by the *[State Police]* ***Bureau***.

(k) When the water level reaches the Extreme High Water Level (Elevation 924.20 feet) or when the gauge at the dam in Hopatcong State Park reads 9.5, a "Slow Speed—No Wake" condition shall exist.

13:82-3.12 Budd Lake, Morris County

(a) The ski boat operator shall, when a skier has fallen or has otherwise become disconnected from the tow line, reduce speed and return to the skier in a safe and reasonable manner.

(b) The dropping of skis for the purpose of barefoot or slalom skiing is prohibited, unless the ski is immediately retrieved by a following vessel.

(c) No vessel shall be operated on Budd Lake on Saturdays, Sundays, and legal holidays between May 15 and September 15, at a speed in excess of 35 miles per hour, from sunrise to sunset.

(d) No vessel shall be operated on Budd Lake between the hours of sunset and sunrise at a speed in excess of 15 miles per hour.

(e) Any applicant for a permit from the Bureau for a race or regatta shall submit an application to the Township Clerk, who shall then submit such application to the Bureau with any comments or recommendations from the Township.

(f) No vessel shall be operated at such a speed that shall cause 100 percent of the hull to come out of the water, except in the case of a race or regatta, where permitted by the rules of such race or regatta.

(g) No vessel shall be operated at a speed in excess of five miles per hour within 50 feet of any shore, wharf, pier, bridge, dock structure, buoy, or person in the water or designated bathing areas which are marked by buoys.

(h) A distance of at least 30 feet shall be maintained between all vessels operating at speeds in excess of five miles per hour.

(i) No person shall operate a personal watercraft on Budd Lake on Saturdays, Sundays or legal holidays between May 15 and September 15.

13:82-3.13 Operation on Greenwood Lake

(a) A person shall not operate a vessel on Greenwood Lake, Passaic County, in such a way as to unreasonably interfere with or endanger any other vessel or person. Every vessel operated on Greenwood Lake shall be operated in a careful and prudent manner.

(b) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 45 miles per hour.

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(c) A vessel shall not be operated upon Greenwood Lake at a speed exceeding 15 miles per hour between one-half hour after sunset and one-half hour before sunrise.

(d) A vessel shall not be operated upon Greenwood Lake within 200 feet of shore, a dock, pier, raft or float, or an anchored or moored vessel at a speed exceeding five miles per hour.

(e) The provisions of this section shall not apply to any vessel or to any person operating a vessel while actually competing in an authorized race or regatta.

13:82-3.14 Operation on Cranberry Lake

(a) Subject to the restrictions imposed by (b) below, vessels operating on Cranberry Lake shall not exceed a speed of 35 miles per hour.

(b) No person shall operate a vessel at a speed in excess of five miles per hour between sunset and sunrise or at any time in the following areas:

1. In front of the clubhouse and extending north of the bridge into Laurel Cove;

2. Between Rose's Beach and Rock Island;

3. In Weaver House Cove;

4. Within 100 feet of any shore, any wharf, pier, bridge, dock structure, buoy or person in the water or designated bathing area which is marked by buoys.

(c) Any person swimming or using a raft, tube or other floatation device shall be accompanied by a boat escort unless such person is not more than 75 feet from the shore or is in an area in which vessel speed is limited to five miles per hour.

13:82-3.15 Seven Presidents Park, Long Branch, Monmouth County

(a) Between Memorial Day weekend and Labor Day, no person shall operate a personal watercraft, power vessel or any other type of vessel (hereinafter referred to as watercraft) within the outer (eastern) most boundaries of the jetties located at Seven Presidents Park, Long Branch, Monmouth County, with the exception of watercraft entering and egressing the boat launch area. Those watercraft entering and egressing the boat launch area are to stay within the entry-egress lane as designated on site and are to maintain a speed no faster than that which is required to safely navigate the surf.

13:82-3.16 Upper Greenwood Lake

(a) No water-skiing shall be permitted around Blueberry Island, Carters Island and Snake Island at the northeast end of the lake or in the Mount Laurel section cove in the southeast section of the lake.

(b) Personal watercraft shall be prohibited from the Mount Laurel section cove in the southeast section of the lake.

(c) All vessels shall maintain slow speed no wake around Blueberry Island, Carters Island and Snake Island at the northeast end of the lake, and in the Mount Laurel section cove in the southeast section of the lake.

(d) No vessel shall be operated on Upper Greenwood Lake on Saturdays, Sundays and legal holidays at a speed in excess of 30 miles per hour. Between sunset and sunrise, no vessel shall be operated at a speed in excess of 10 miles per hour.

13:82-3.17 Diving and swimming

(a) General provisions with respect to diving and swimming are as follows:

1. Underwater diving with or without an underwater apparatus is permitted in all navigable waters in New Jersey unless otherwise prohibited in this section.

2. Any person while diving shall mark his or her position with a buoyed flag approved by the New Jersey Boat Regulation Commission:

i. Such flag shall be displayed so that it is visible all around the horizon from a buoy, float, boat or other floating object;

ii. Such flag shall be a minimum of 14 inches by 16 inches, shall be rigid to enhance visibility and shall be a red background with a white diagonal stripe running from one corner to the other.

3. No person shall operate a vessel within 50 feet of the buoyed flag.

4. No person shall display a flag at times other than when diving is in progress.

5. No person shall swim or dive in a narrow, confined or improved channel or in a marked fairway, under a bridge, or impede, obstruct or interfere with passage of watercraft therein.

6. No diver shall surface more than 25 feet from the buoyed flag except in an emergency.

(b) Provisions for Manasquan Inlet are as follows:

1. Underwater diving shall be permitted in the Manasquan Inlet only within 50 feet from the stone jetties and bulkheads.

2. Underwater diving is permitted only in the area east of an imaginary line drawn from Ocean Avenue, Point Pleasant Beach, extended to a point across the inlet at First Avenue, Manasquan.

(c) Provisions for Barnegat Inlet are as follows:

1. Except as provided in this subsection, no person or persons shall, while engaged in gogglefishing, spearfishing or skin diving, enter into any navigable channel or approach within 200 feet of any boat anchored or underway within the water adjacent to the land areas of the Borough of Barnegat Light.

2. No person shall dive in any of the waters of the Barnegat Inlet channel.

3. Skin and Scuba diving is permitted from the north and south jetties, but no person shall dive further than 25 feet from the rock jetty or bulkhead ***within the inlet***.

4. No person shall dive within Barnegat Inlet between 8:00 A.M. and 5:00 P.M. on Saturdays and Sundays from June 1 to September 30.

5. A diver shall mark his or her position with a float and skin diver's flag.

6. Only "buddy diving" shall be permitted in the Barnegat Inlet.

7. Recreational diving is prohibited within 100 feet of the north monument.

8. Recreational diving is prohibited within the inlet when the current is at flood.

(d) Provisions for Shark River Inlet are as follows:

1. Underwater diving is permitted in the Shark River Inlet in that area which lies east of a line extending from the northwest end of A Street in Belmar to the southeast end of First Avenue in Avon.

2. Divers shall stay within 25 feet of the jetties and bulkheads in the area described.

3. A diver shall mark his or her position with a float and skin diver's flag.

4. No diver shall surface more than 15 feet from the buoyed flag except in an emergency.

5. No underwater diving shall be permitted in Shark River Inlet between the hours of 8:00 A.M. and 5:30 P.M. during the period each year commencing May 1 terminating October 1.

SUBCHAPTER 4. WATERCRAFT NOISE CONTROL

13:82-4.1 Definitions

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

"Department" means the Department of Law and Public Safety, Division of State Police.

"Person" means any corporation, company, association, society, firm, partnership and joint stock company, as well as individuals, and shall include the State and all its political subdivisions and any agencies and instrumentalities thereof.

"Vessel" means a boat or watercraft other than a seaplane on the water, used or capable of being used as a means of transportation on the water.

13:82-4.2 Noise limitation provisions

(a) No person shall operate or give permission for the operation of any vessel or watercraft capable of emitting noise totalling in excess of 90 dba in or upon the waters of this State.

(b) Measurements shall be made by a sound level meter which satisifies ANSI-S 1.4, type 2, or equivalent, and is certified by the Department of Environmental Protection and Energy, Office of Noise Control, with reference, as applicable, to standards of the New

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Jersey Office of Weights and Measures or the National *[Bureau of Standards]* ***Institute of Science and Technology*** or both, or by other competent authority designated by the Office of Noise Control.

(c) The noise emission test measurement shall be made with the sound level meter at a distance of not less than four feet above the water at a point where the transom gunwale and port or starboard gunwale intersects. The vessel being tested shall operate its engine at the lowest throttle setting in neutral gear. In the case of a vessel with multiple engines, said engines shall operate together at the lowest throttle setting in neutral gear. Personal watercraft, jet boats, and all other vessels which have no neutral gear shall operate at the lowest throttle setting with minimum or no headway motion.

(d) Any marine police officer or other law enforcement officer certified by the Office of Noise Control with a reason to suspect that a vessel is exceeding the noise limitation may require the operator to submit to a noise emissions test as described in (b) and (c) above.

(e) Any person who fails to comply with the directive to submit to a noise emissions test shall be ordered to immediately return the vessel to its mooring and cease operations and shall be subject to the penalty for violation of those regulations.

(f) The noise limitation provisions of this section shall not apply to vessels registered and actually participating in racing events or tune-up periods for such racing events, when authorized by the Department or by any other public authority with the Department's approval. Tune-up periods approved pursuant to this section shall be limited as follows:

1. Before any race boat is tested, the driver shall secure a Race Test Permit from the *[New Jersey State Police Marine]* Bureau.

2. Before the permit is issued, the *[New Jersey State Police Marine]* Bureau shall obtain a statement from the applicant which shall include the following:

i. The name and address of the driver;

ii. The type and a description of the boat;

iii. The area of the test;

iv. The name and address of the boat's owner;

v. The date and location of the next race in which the operator will compete; and

vi. Any other information deemed necessary by the *[New Jersey State Police Marine]* Bureau *[Station Commander]*.

3. From May 15 through October 1, there shall be no race tests permitted on Saturday, Sunday or holiday.

4. All race tests shall be conducted between the hours of 10:00 A.M. and sunset.

5. All race tests shall be limited to a total test period of 20 minutes on the water.

6. There shall be a maximum five race tests in any seven day period.

7. No driver shall be permitted more than five race tests in any seven day period.

8. No boat shall be tested more than five times in any seven day period.

9. The provisions of (f)3, 6, 7 and 8 above shall not apply on a body of water in the three day period immediately preceding a race on that body of water. Subject to such restrictions as may be imposed by the U.S. Coast Guard or the *[New Jersey State Police Marine]* Bureau, testing on days of sanctioned race may begin two hours before the start of the first race.

10. The *[Station Commander, New Jersey State Police Marine]* Bureau, is authorized to deny or cancel any permit issued by the Bureau for the reasons of boat traffic, poor weather, confined area, or other valid reason.

13:82-4.3 Muffling device

Every outboard motor, inboard motor or inboard/outboard motor in use or attached to a vessel operating on the waters of this State shall be equipped with a muffling system as supplied by the manufacturer or installed by the owner. The muffling system shall be maintained in good working order at all times. An exception to this requirement will be allowed for operation during authorized races sanctioned by the United States Coast Guard, *[New Jersey State Police]* ***the Bureau***, or other operation with a race test permit issued by the *[State Police]* ***Bureau***.

13:82-4.4 Use of cutouts

(a) The use of cutouts, removal of mufflers, cutting or punching holes in mufflers is prohibited.

(b) Mufflers may be removed and cutouts opened only where such boats are actually engaged in a lawfully conducted race or during such tuning-up period as the Department may assign thereto.

13:82-4.5 Owner's permission

No person shall operate or tamper with any vessel or its motor without the owner's permission.

13:82-4.6 Racing events

(a) Every incorporated yacht club or racing association, before holding or conducting races or regattas, whether for ***inboard or outboard motors***, or both, shall first secure a permit to hold such races from the Bureau.

(b) Application for such permit shall be made in writing to the Bureau at least 20 days prior to the race or regatta, and no such race or regatta shall be conducted unless a permit shall have been received from the Bureau.

(c) Any such permit shall include such requirements as will tend to insure the safety of those competing and the safety of other craft, during such regatta or race, including the tuning-up period before, as shall be prescribed by the Department. All boats not competing, except official boats, shall remain anchored during the running of the events of the race or regatta.

SUBCHAPTER 5. PERSONAL WATERCRAFT

13:82-5.1 Scope

Operations of personal watercraft on the waters of the State accordance with the provisions of P.L. 1993, c.299 (N.J.S.A. 12:7-62 et seq.). *[The rules in this subchapter shall govern the operation of personal watercraft operating on the waters of New Jersey. These rules are in addition to all other applicable laws, rules and regulations governing power vessels.

13:82-5.2 Definition of personal watercraft

(a) "Personal watercraft" means a power vessel which:

1. Is designed to be operated by a person or persons, sitting, standing or kneeling; and

2. Uses an internal combustion engine to power a water jet pump which propels the vessel through the water.

13:82-5.3 Operation limitations

(a) A person shall not operate a personal watercraft during the hours between sunset and sunrise or during the times of restricted visibility.

(b) A person shall not operate a personal watercraft in the confines of the Point Pleasant Canal.

(c) A person shall not operate a personal watercraft within the Cape May Canal.

(d) A personal watercraft shall at all times proceed at a safe speed so that it can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

(e) A person shall not operate a personal watercraft in such a manner so as to become airborne or completely leave the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake.

(f) A person shall not operate a personal watercraft within 50 feet of a bathing beach that has its boundaries marked by buoys or signs.

(g) A person shall not operate a personal watercraft above idle speed within 50 feet of the shoreline or 50 feet from a person in the water.

(h) A person shall not tow a waterskier or any device with a personal watercraft.

(i) Any person operating a personal watercraft and any passenger on a personal watercraft shall at all times, when the personal water-

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craft is in operation, wear a United States Coast Guard Approved Type I, II, III, or V Hybrid Flotation Device.]*

SUBCHAPTER 6. PARASAILING

13:82-6.1 Scope

Parasailing, as defined in N.J.A.C. 13:82-6.2, is permitted on the waters of the State, except where prohibited by this subchapter or by local ordinance.

13:82-6.2 Definition of parasailing

"Parasailing" is an operation conducted with a vessel designed by the manufacturer for parasailing, equipped with a rear launch platform and hydraulic winch used to release a towline connected to a rider fitted with a personal flotation device secured in a seat harness connected to the towline and an ascending type of parachute. The rider ascends into the air by the towline extended from the vessel and remains suspended in the air as the vessel runs its course.

13:82-6.3 Operation

(a) All commercial parasail operators are required to have a Captain's License for carrying passengers for hire issued by the United States Coast Guard.

(b) All parasailing operations shall include an observer 18 years of age or older at all times to monitor the progress of the airborne parasail rider and parachute.

(c) All parasail riders shall wear a United States Coast Guard approved Type I, II, or III personal flotation device.

(d) Parasailing conducted in the Atlantic Ocean shall be restricted to not less than one-half nautical mile from the shore.

(e) No parasailing shall be permitted within 600 feet of a bridge span, concrete bridge supports, barriers, other vessels, or persons in the water.

(f) Parasailing shall be prohibited on bodies of water less than 1200 feet in width from shore to shore.

(g) All parasail towing vessels shall be equipped with a VHF radio.

(h) Parasailing shall only be conducted from one-half hour after sunrise to one-half hour before sunset, and at no time during restricted visibility.

(i) Parasailing is prohibited when small craft advisories are in effect.

(j) Tow lines shall not exceed 500 feet in length.

(k) Individuals intending to engage in parasailing shall notify the Marine Law Enforcement Bureau station nearest the area of operation 24 hours in advance. Commercial operators shall notify the Marine Law Enforcement Bureau at least 10 days in advance of the commencement of annual operations.

(l) Parasail operators shall only launch and land riders from the flight deck of the vessels.

(m) Advertisement banner flying is prohibited.

SUBCHAPTER 7. MOTOR VEHICLES ON ICE-COVERED WATERS

13:82-7.1 Scope

The following rules in this subchapter shall govern the operation of motor vehicles on ice-covered waters of New Jersey.

13:82-7.2 Definitions

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

"All-terrain vehicle" means a motor vehicle, designed to travel over all terrain, of a type possessing between three and six rubber tires and powered by a gasoline engine not exceeding 400 cubic centimeters, but shall not include golfcarts.

"Snowmobile" means any motor vehicle designed primarily to travel over ice or snow, of a type which uses sled-type runners, skis, and endless belt, tread, cleats, or any combination of those or other similar means of contact with the surface upon which is operated, but does not include any farm tractor, highway or other construction equipment or any military vehicle.

13:82-7.3 Prohibited operation

No person shall operate a motor vehicle, other than a snowmobile or all-terrain vehicle, upon the ice-covered waters of this State at any time. Operators and passengers on a snowmobile or all-terrain vehicle shall wear a Coast Guard approved Type I, Type II, Type III or Type V Hybrid personal flotation device while on ice-covered waters.

13:82-7.4 Violations

Violations of this subchapter shall be subject to penalties as provided by N.J.S.A. 12:7-34.51.

SUBCHAPTER 8. REGISTRATION AND LICENSING

13:82-8.1 Definitions

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

"Bureau" means the Bureau of Marine Police in the Division of State Police.

"Director" means the Director of the Division of Motor Vehicles.

"Division" means the Division of Motor Vehicles.

"Register," "registration" and "registration certificate" as used in this subchapter are the equivalent of the terms "number," "numbering" and "certificate of number" which are used in the amended "New Jersey Boat Act of 1962" which is found at N.J.S.A. 12:7-34.36 et seq.

13:82-8.2 Numbering pattern

(a) The following numbering pattern for boats under the New Jersey numbering pattern is hereby established:

1. The identification numbers awarded under the State system shall consist of three parts:

i. The first part shall consist of the letters NJ indicating this State;

ii. The second part shall consist of not more than four Arabic numerals;

iii. The third part shall consist of not more than two letters.

2. The parts shall be separated by a hyphen or an equivalent space (as examples: NJ-1234-AA, NJ 9999 Z2).

*[2.]***3.*** Since the letters "I," "O," and "Q" may be mistaken for numerals, they shall not be used in the suffix.

13:82-8.3 Display of numbers on vessels

(a) The identification number awarded to any vessel under the New Jersey numbering system shall be displayed thereon by being:

1. Painted on, or attached to, each side of the bow (that is, the forward half) of the vessel; reading from left to right; and in such position as to provide maximum visibility;

2. In block characters of good proportion not less than three inches in height; and

3. Of a color which will contrast with the color of the background (that is, dark numbers on a light background, or light numbers on a dark background) and so maintained as to be clearly visible and legible.

(b) No other number shall be carried on the bow of the vessel.

(c) This section does not apply to the following:

1. A vessel for which a valid temporary certificate has been issued to its owner by the issuing authority in the state in which the vessel is principally used; and

2. A vessel documented in accordance with Part 67 of Title 46, Code of Federal Regulations.

13:82-8.4 Application for number

(a) The application for a number shall include the following information:

1. The legal name and address of the owner including zip code;

2. The driver license number or corpcode;

3. The citizenship of owner;

4. The date of birth of owner;

5. The type of application (new number, initial number, renewal of number, transfer of ownership, duplicate registration, duplicate decal and so forth);

6. The owner's eye color, height and weight;

7. The previous number, if any;

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8. The hull material (wood, steel, aluminum, fiberglass, other);
9. The hull identification number, if any;
10. The type of boat (open, cabin, houseboat, sail, auxiliary, canoe, other);
11. The type of propulsion (outboard, inboard, sail, inboard/outboard, electric, other);
12. The type of fuel (gas, diesel, other);
13. The make, model and year;
14. The length, measured from end to end over the deck excluding sheer;
15. The state of principal use;
16. The type of use (livery, commercial or pleasure);
17. A statement of ownership by applicant; and
18. The signature of the owner or owners.

13:82-8.5 Registration certificate

(a) The registration certificate shall include the following:
1. The legal name and address of owner;
2. The number issued;
3. The driver license number or corpcode;
4. The expiration date;
5. The state of principal use;
6. The type of use;
7. The hull identification number;
8. The make and year of vessel;
9. The model or type of vessel;
10. The hull material (wood, steel, aluminum, fiberglass, other);
11. The length of vessel;
12. The propulsion (inboard, outboard, sail, inboard/outboard, electric, other); and
13. The fuel (diesel, gasoline or other).

13:82-8.6 Duplicate registration certificates

(a) The fee for the issuance of a duplicate registration certificate for a vessel shall be $3.00.

(b) The fee for new registration certificates in transfer of ownership shall be in accordance with the annual fees established by N.J.S.A. 12:7-34.47.

13:82-8.7 Transfer of registration certificates

All requests for transfer of ownership shall be accompanied by a registration application form, the original registration certificate issued by the Coast Guard or the State of New Jersey and the certificate of title for those vessels which are required to be titled. If the original restriction certificate does not accompany the request, a statement as to the disposition of the original registration certificate shall be written on the reverse side of the registration application form.

13:82-8.8 Registration certificate; livery vessels

The registration certificate for vessels less than 26 feet in length and leased or rented to another for the latter's noncommercial use of less than 24 hours may be retained on shore by the vessel's owner or his or her representative at the place from which the vessel departs or returns to the possession of the owner or his representative.

13:82-8.9 Operation of vessel; certificate

(a) Except for vessels that are not required to be numbered pursuant to the New Jersey Boat Act of 1962 as amended, no person shall operate or use a vessel upon the waters of the State unless such vessel has on board:

1. A valid registration certificate or temporary registration certificate for that vessel; or

2. A copy of the lease or rental agreement, signed by the owner or his or her authorized representative and by the person leasing or renting the vessel, which agreement contains at least:

i. The vessel number that appears on the registration certificate; and

ii. The period of time for which the vessel is leased or rented.

(b) In addition to any other requirement, whenever a vessel is in operation, the registration certificate, lease or rental agreement shall be presented to any Federal, State or local law enforcement officer at his or her request.

(c) No person may use or operate a vessel to which this section applies unless the required registration certificate or rental agreement is carried onboard in such a manner that it can be handed to the inspecting person.

13:82-8.10 Registration certificate; validity

(a) In addition to any other provision, specifically N.J.A.C. 13:82-8.9, a registration certificate is invalid after the date upon which:

1. The person whose name appears on the registration certificate as owner of the vessel sells or transfers all of his or her ownership in the vessel, involuntarily loses his or her interest in the registered vessel by legal process or in any way disposes of the vessel;

2. The vessel is lost, destroyed or abandoned; or

3. The fees for the issuance or renewal of the certificate of number are not paid.

(b) A registration certificate is invalid 60 days after the day on which the vessel is no longer principally used in the State where the registration certificate was issued as required by Title 33 of the Code of Federal Regulations.

13:82-8.11 Notification required

(a) In addition to any other requirement, a person whose name appears as the owner of a vessel on a registration certificate shall within seven days notify the Division in writing of:

1. Any change in address from that shown on his registration certificate;

2. The theft or recovery of the vessel;

3. The loss or destruction of a valid registration certificate; or

4. Any condition which would invalidate the registration certificate.

(b) A person whose name appears as the owner of a vessel on a registration certificate shall within two weeks notify the Division of a change in name due to marriage, divorce or by order of court.

13:82-8.12 Removal of numbers; removal of validation sticker

(a) The person whose name appears on a registration certificate as the owner of a vessel shall remove the registration number and validation sticker from the vessel when:

1. The vessel is no longer principally used in the State where the registration certificate was issued; or

2. The registration certificate becomes invalid because the application for the registration certificate contains a false or fraudulent statement.

(b) The validation sticker shall be removed upon completion of a sale or transfer transaction whichever is sooner.

(c) Expired validation stickers shall be removed.

(d) When a vessel is documented under Part 67 of Title 46, Code of Federal Regulations, the owner shall:

1. Remove the registration number and validation sticker from each side of the bow or the forward half of the vessel; and

2. Conform to the provisions of N.J.A.C. 13:82-8.13, Display of validation sticker and fee for duplicate, where the vessel is subject to the provisions of N.J.S.A. 12:7-34.44a, Documented Vessels under 500 gross tons based in this State.

13:82-8.13 Display of validation sticker and fee for duplicate

(a) Every vessel on the waters of this State required to be registered shall display validation stickers to indicate the year of expiration of its registration. The validation stickers shall be displayed on each side of the vessel, three inches behind the State registration number assigned to the vessel, except for documented vessels.

(b) Those vessels documented under Part 67 of Title 46, Code of Federal Regulations and required to register with this State pursuant to N.J.S.A. 12:7-34.44a shall display a validation sticker on each side of the vessel in an area adjacent to the main steering station affixed to a vertical surface plainly visible at all times from both the port and starboard sides.

(c) The fee for the duplicate issuance of a validation sticker shall be $3.00.

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13:82-8.14 Registration of manufacturers' and dealers' boats

(a) Registration requirements of this section shall apply to boats operated by manufacturers and dealers.

(b) The description of the boat will be omitted from the registration certificate since the numbers and the registration certificate awarded may be transferred from one boat to another. In lieu of the description, the word "manufacturer" or "dealer," as appropriate will be plainly marked on each registration certificate.

(c) The manufacturer or dealer may have the registration number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being demonstrated or tested so long as the display meets the requirements of N.J.A.C. 13:82-8.3.

13:82-8.15 Registration of livery boats

(a) Registration requirements of this section shall apply to boats operated by livery and other rental agents.

(b) The word "livery" shall be plainly marked on each registration certificate.

(c) The livery or rental agent may have the number awarded printed upon or attached to a removable sign or signs to be temporarily but firmly mounted upon or attached to the boat being rented so long as the display meets the requirements of N.J.A.C. 13:82-8.3.

13:82-8.16 Misstatements

(a) No person shall make any misstatement of fact in an application for a registration number or an operator's license, or give a fictitious name or address.

(b) The Division shall, upon presentation of evidence of any such misstatement, or the giving of a fictitious name or address, or of the conviction therefor, revoke the registration of the power vessel or motor, or the operator's license as the case may be.

13:82-8.17 Change in address; name

(a) Every licensed operator of a power vessel or motor shall notify the Division of any change in his or her legal residence within seven days of the change.

(b) Every licensed operator of a power vessel or motor shall notify the Division within two weeks of a change in name due to marriage, divorce or court order.

13:82-8.18 Renewal of registration

(a) Any person, corporation or firm, applying for the renewal of a registration after six months have elapsed beyond the renewal date, may be assigned a new expiration date, 12 months from the current date.

(b) Failure to receive a renewal notice does not excuse the owner from the requirement of renewing the number on or before the expiration date shown on the registration certificate.

13:82-8.19 Fee for duplicate operator's license

(a) The fee for issuance of a duplicate boat operator's license shall be $3.00.

(b) The fee for issuance of a duplicate boat operator's license with a photo shall be $4.50.

(c) Photo licenses shall be mandatory for boaters under the age of 21.

13:82-8.20 Operator's license; proof of age and identity; expiration

(a) All applicants for a boat operator's license will be required to furnish proof of identity and date of birth. Proof of identity and date of birth may be established in the following manner:

1. An original domestic birth certificate or foreign birth certificate with United States Consulate Seal when United States citizen is born outside of the country;
2. A certified copy of birth certificate (state or municipal seal must appear on document);
3. A United States passport;
4. A valid foreign passport (with acceptable Visa status indicated in passport);
5. A valid alien registration card;
6. Citizenship papers;
7. Military identification cards (active duty only);
8. United States adoption papers;
9. A valid New Jersey driver license (also acceptable if expired less than three years);
10. A New Jersey Division of Motor Vehicles nondriver identification card;
11. Military discharge papers (DD-214);
12. A court order or judgment authorizing legal name change when accompanied by satisfactory proof of birth; or
13. A valid work authorization card (when accompanied by a Social Security card).

(b) In addition to the documentation in (a) above, a parent or guardian must consent to the granting of a boat license for any applicant who is under 17 years of age.

(c) For purposes of a name change only, a New Jersey boat license can be issued in the boater's married name if an acceptable original or certified marriage certificate (state or municipal seal must appear on document) is accompanied by another acceptable identification in the boater's former name.

(d) All boat licenses which are endorsements on basic driver licenses shall have the same expiration date as the basic driver license.

(e) All boat-only licenses shall expire four years from the last day of the month in which the license was originally issued and, thereafter, every four years.

13:82-8.21 General provisions; hull identification numbers

(a) Any vessel offered for sale in New Jersey must have a hull identification number assigned to it. The number assigned to said vessel shall be in the form approved by the United States Coast Guard.

(b) Registration numbers shall not be issued to any vessel that does not comply with the above requirement.

(c) Vessels which are homemade or for other reasons that do not have a hull identification number assigned to them by their builders shall be assigned a number by the Division once the Division receives satisfactory proof on a form approved by the Director that they have been examined by the Bureau of Marine Police. The series used by the Division shall be composed of three parts. The first section shall be NJZ—followed by a second section composed of a five digit number commencing with 00001; the third section shall consist of the word "HULL." An example of a hull identification number is as follows: NJZ-00001-HULL.

(d) The hull identification number must be carved, burned, stamped, embossed or otherwise permanently affixed to the outboard side of the transom or, if there is no transom, to the outermost starboard side at the end of the hull that bears the rudder or other steering mechanism, above the waterline of the boat in such a way that alteration, removal or replacement would be obvious and evident.

(e) The character of the hull identification number must be no less than ¼ of an inch in height.

PUBLIC UTILITIES

(a)

BOARD OF REGULATORY COMMISSIONERS
Office of Cable Televison

Rules of Practice and Procedure of the Office of Cable Television

Readoption with Amendments: N.J.A.C. 14:17
Adopted Repeal and New Rules: N.J.A.C. 14:17-3, 4, 8, 9, and 10
Adopted Repeal: N.J.A.C. 14:17-5, 11 through 16, and 18

Proposed: January 3, 1994 at 26 N.J.R. 96(a).

Adopted: March 16, 1994 by Celeste M. Fasone with the approval of the Board of Regulatory Commissioners, Herbert H. Tate, Jr., President, Carmen J. Armenti, Commissioner, and Edward H. Salmon, Commissioner.

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Filed: March 21, 1994 as R.1994 d.194, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

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

BRC Docket Number: CX93110509.

Effective Date: Readoption, March 21, 1994;
Amendments and New Rules, April 18, 1994.

Expiration Date: March 21, 1999.

The purpose of this rulemaking is the readoption, with amendments, to the Office of Cable Television's (OCTV) procedural rules governing proceedings conducted by the OCTV and the Board of Regulatory Commissioners (Board).

The Notice of Proposed Readoption, Repeal and New Rules was published in the New Jersey Register on January 3, 1994, at 26 N.J.R. 96(a) with a public comment hearing held on February 4, 1994. Celeste M. Fasone was the presiding hearing officer. No specific recommendation was issued pursuant to the hearing. Notice of the hearing was published in nine daily newspapers of general circulation throughout the State. In addition, all cable operators and interested parties listed with the OCTV under N.J.A.C. 1:30-3.1(h)(3) were mailed a copy of the full proposal on January 10, 1994. Written comments were accepted through February 11, 1994. The proposal was discussed and approved for adoption with substantive changes noted herein at the Board's March 16, 1994 public meeting. Transcripts of the public hearing may be reviewed by contacting: Office of Cable Television, Board of Regulatory Commissioners, Two Gateway Center, Newark, New Jersey 07102.

Summary of Public Comments and Agency Responses:

Comments were received from Francis R. Perkins, Esq., Meyner & Landis, Newark, New Jersey, on behalf of the New Jersey Cable Television Association (NJCTA), Dennis C. Linken, Esq., Stryker, Tams & Dill, Newark, New Jersey, representatives of various cable television operators, and J. Lila Steele, Esq., Assistant Deputy Public Advocate, Division of Rate Counsel, New Jersey Department of the Public Advocate (Rate Counsel).

COMMENT: Rate Counsel filed comments supporting the adoption of the chapter as proposed, with the addition of Rate Counsel's mailing address to N.J.A.C. 14:17-6.17(b)2.

RESPONSE: In its final adoption, the Board has included the mailing address of the Division of Rate Counsel as requested.

COMMENT: The NJCTA commented that proposed N.J.A.C. 14:17-1.8(f) and (g) could be combined in a single provision without altering the intent.

RESPONSE: The Board, while questioning the advantage in doing so, does not disagree that the two sections are capable of being combined. However, the Board does see a benefit in keeping this rule consistent with its general rules of practice for utilities, specifically N.J.A.C. 14:1-1.8. Accordingly, the Board will not adopt this recommendation.

COMMENT: The NJCTA expressed concern that the proposed language of N.J.A.C. 14:17-4.7 would restart the pleading cycle, recommending instead language to permit a brief continuance to allow an opposing party additional preparation time.

RESPONSE: The proposed language is similar to that previously contained in N.J.A.C. 14:17-5.10 and is consistent with the provisions of N.J.A.C. 14:1-4.7. The Board would note that it has not experienced any problems regarding these sections and, as stated above, does see a benefit in keeping, to the greatest extent possible, consistency between the rules of practice concerning cable television operators and utilities, respectively.

COMMENT: The NJCTA points out that the three appraisal requirement of proposed N.J.A.C. 14:17-6.10(a)6 is unnecessarily duplicative, is not required of utilities (cf. N.J.A.C. 14:1-5.6) and that should a single appraisal be insufficient, the Board could require additional ones.

RESPONSE: The Board agrees. The attachment of three appraisals would make this rule inconsistent with the rules regarding utilities. Neither N.J.A.C. 14:1-5.6 nor proposed N.J.A.C. 14:17-6.10 require an appraisal; they only call for attachment of an appraisal if an appraisal has, in fact, been prepared. With the requirement that an appraisal, if prepared, be attached, there does not appear sufficiently compelling reason to require the attachment of additional appraisals. Therefore, the Board is changing the rule upon adoption. The Board would still have the authority to order additional appraisals if deemed necessary in specific cases.

COMMENT: The NJCTA believes that the provision in N.J.A.C. 14:17-8.3 pertaining to the review of stipulations is superfluous, as there would be Board review of any stipulation dispositive of all issues, and partial stipulations are merely a part of the record to be considered by the Board during final deliberations.

RESPONSE: The Board disagrees because it is of the opinion that partial stipulations are not necessarily reviewed during final deliberations in a matter. Rather, such stipulations may be ripe for review as soon after execution as is possible. The Board would further note that the addition of N.J.A.C. 14:17-8.3(c) makes this section consistent with the provisions of N.J.A.C 14:1-7.3.

COMMENT: The NJCTA comments that N.J.A.C. 14:17-9.4 and 14:17-9.5 are inconsistent with each other and suggests that after the issuance of a final order, the appropriate relief would be by way of motion for "rehearing," "reargument," or "reconsideration," which must be made within 15 days. NJCTA proposes that N.J.A.C. 14:17-9.4 be entitled "Motion for reopening the record."

RESPONSE: The Board sees no inconsistency between N.J.A.C. 14:17-9.4 and 14:17-9.5, which are similar to N.J.A.C. 14:1-8.4 and 14:1-8.5. N.J.A.C. 14:17-9.4 provides for the method of seeking the reopening of a matter prior to the issuance of a final order by the Board. N.J.A.C. 14:17-9.5, in turn, provides for the method of seeking reopening after the Board has issued a final decision.

COMMENT: The NJCTA and Mr. Linken filed comments stating that proposed N.J.A.C. 14:17-9.6(b) would not provide sufficient finality to Board orders, and would effectively create an impediment to transactions such as the sale or financing of cable systems. Bank or lender concerns about the Board's ability under the rule to "at any time" reconsider on its own motion an Order previously issued or to modify or even revoke a decision previously rendered could delay closings on such transactions, according to the commenters.

RESPONSE: The Board finds this argument to be without merit in that the rule is consistent with applicable statutory authority granted to the Board. N.J.S.A. 48:2-40 states:

A majority vote of the board shall be necessary to the making of an order. Every order made by the board shall be served upon the person or public utility affected thereby within ten days from the time the order is filed, by personnally delivering or by mailing a certified copy thereof in a sealed package with postage prepaid.... All orders of the board shall become effective upon such dates ... as may be specified therein. *The board at any time may order a rehearing and extend, revoke or modify an order made by it.* (emphasis added).

These provisions have been in the utility rules for many years without significant objections to the Board or challenges from the utility, banking and investment communities. There is nothing unique in this regard to compel different treatment for cable television matters. Lastly, it should be noted that there are practical limits to the Board's authority to reopen matters.

Summary of Agency-Initiated Changes:

At its open public meeting held on March 16, 1994, the Board stated that, beginning on March 21, 1994, all petitions and filings seeking Board action and all other papers pertinent thereto will be submitted to the attention of the Secretary to the Board who, along with all case files, will be located at the Board's Newark offices. Accordingly, N.J.A.C. 14:17-1.4, 1.6(a) and 6.17 have been modified to reflect the change of address.

N.J.A.C. 14:17-6.5 pertains to the handling of informal complaints in lieu of petition. Subsection (b) thereof indicates that matters are addressed in this way "... in an endeavor to bring about an adjustment of the subject matter of the complaint *with* formal hearing or order." (Emphasis added). Obviously, this was a typographical error as the use of an informal procedure presents an opportunity to resolve a matter prior to the need for formal hearings or orders. Therefore, the word "with" cited above shall be replaced by the word "without."

All other changes made to the proposal are no more than grammatical or punctuation modifications for the sake of consistency in wording. They include minor changes at N.J.A.C. 14:17-6.1, 6.8, 6.9, 6.11, 6.12, 6.14, 6.15, 6.16 and 9.6. The Board would specifically note that the phrase "... on notice in writing of the Office or Board ..." contained in N.J.A.C. 14:17-6.19, has been changed to "... on notice in writing by the Office or Board ..." to ensure that it is clear that it is the Office or the Board which is, in fact, providing the required written notice.

Full text of the readoption may be found in the New Jersey Administrative Code at N.J.A.C. 14:17.

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Full text of the adopted amendments and new rules follows (additions to proposal indicated in boldface with asterisks ***thus***; deletions from proposal indicated in brackets with asterisks *[thus]*):

SUBCHAPTER 1. GENERAL PROVISIONS

14:17-1.1 Scope

These rules shall govern practice and procedure before the Office of Cable Television within the Board of Regulatory Commissioners.

14:17-1.2 Construction and amendment

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

(c) The rules may be amended by the Office, with the approval of the Board, from time to time.

14:17-1.3 Definitions

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

"Board" means the Board of Regulatory Commissioners.

. . .

"Commissioner" means a member of the Board of Regulatory Commissioners.

. . .

"Presiding Officer" means any member of the Board, the Director, or an Office staff member who is designated as a hearing examiner in an uncontested case.

. . .

14:17-1.4 Offices

The statutory offices of the Board, the office of the Secretary of the Board, and the Office of Cable Television are located at *[44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625]* ***Two Gateway Center, Newark, New Jersey 07102***.

14:17-1.5 Hours

(a) All offices of the Board are open on weekdays from 9:00 A.M. to 5:00 P.M., unless otherwise authorized by the Board.

(b) The offices are closed on legal holidays, Saturdays and Sundays.

14:17-1.6 Communications

(a) All pleadings, correspondence and other papers should be addressed to the Secretary, Board of Regulatory Commissioners, *[44 South Clinton Avenue, CN 350, Trenton, New Jersey 08625]* ***Two Gateway Center, Newark, New Jersey 07102***.

(b) All such papers and correspondence shall be deemed to be officially received when delivered at the office of the Board, but the Director, a Commissioner, the Secretary or an Assistant Secretary of the Board may in his or her discretion receive papers and correspondence for filing.

(c) Additional copies of such pleadings and correspondence for the Director and staff may be sent to the Director, Office of Cable Television, Two Gateway Center, Newark, New Jersey 07102.

14:17-1.7 Official records

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

(c) The Chair of the Cable Television Advisory Council shall have custody of the Council's official records, including the minutes of all meetings held.

14:17-1.8 Cameras and recording devices

(a) (No change.)

(b) The use of cameras and recording devices, including still cameras, movie cameras, television cameras, tape recorders and stenotype machines (hereinafter referred to as "equipment"), in open meetings or other public proceedings conducted by the Board or Office is permitted.

(c) (No change.)

(d) No such equipment shall be placed on the counsel tables, witness stand or on the Board or presiding officer's bench, without the approval of the Board or presiding officer; equipment which would require the user to move about the room during the proceedings is prohibited. Moving about the meeting room in order to more advantageously use such equipment is prohibited, while the meeting is in session.

(e) Except for portable equipment which is used at an individual's seat in the audience, such equipment must be in place and ready for use prior to the start of the meeting or set-up during a recess thereof. Such equipment may be removed only at the conclusion of the meeting or during a recess. A pre-arranged recess for the set-up or removal of such equipment may be requested through the Office of Public Information.

(f) The Board or presiding officer may suspend the operation of all or part of this rule with respect to a particular meeting.

(g) The Board or presiding officer may at any time limit or prohibit the use of any or all of such equipment in meetings where in the opinion of the Board or presiding officer use of such equipment may obstruct the conduct of the meeting.

SUBCHAPTER 2. FEES AND CHARGES

14:17-2.1 Amount of fees and charges

(a) The fee required to defray administrative expenses of hearings held pursuant to N.J.S.A. 48:5A-1 et seq., where applicable, shall be $50.00 per day of hearing or portion thereof, to be paid by the petitioner or other moving party.

(b) (No change.)

SUBCHAPTER 3. APPEARANCE AND PRACTICE BEFORE THE BOARD OR OFFICE

14:17-3.1 Appearances

Any person appearing before or transacting business with the Board or Office in a representative capacity may be required by the Board or Office to file evidence of his or her authority to act in such capacity.

14:17-3.2 Ethical conduct and ex parte communications

All attorneys appearing in proceedings before the Board or Office in a representative capacity shall conform to the standards of ethical conduct required of attorneys before the courts of the State of New Jersey.

14:17-3.3 Former employees

Except with the written permission of the Board, no former member or employee of the Board or member of the Attorney General's staff assigned to the Board may appear in a representative capacity or as an expert witness on behalf of other parties at any time within six months after severing his or her association with the Board, nor may he or she appear after said six-month period in any proceeding wherein he or she previously took an active part when associated with the Board.

SUBCHAPTER 4. PLEADINGS

14:17-4.1 Pleadings enumerated and defined

(a) Pleadings before the Board or Office shall be petitions, answers, and replies which for purposes of these rules are defined as follows:

1. "Petition" means the pleading filed to initiate a proceeding invoking the jurisdiction of the Board or Office;

2. "Answer" means the pleading filed by a respondent or other party against whom a petition is directed or who is affected by the filing of a petition; and

3. "Reply" means the pleading filed by the petitioner or others in response to an answer.

14:17-4.2 Number of copies

(a) Unless otherwise required by the Board or Office, there shall be filed with the Board for its own use, an original and 10 conformed copies of each pleading or other paper and amendment thereof.

(b) Where a pleading originating a proceeding is filed by a party other than a cable television company subject to the jurisdiction of the Board, one additional conformed copy shall be filed for each respondent named therein for service by the Secretary in accordance with the provisions of N.J.A.C. 14:17-4.5.

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14:17-4.3 Attachments to pleadings

All balance sheets, income statements and journal entries submitted with pleadings must conform to generally accepted accounting principles and generally accepted auditing principles, or if adopted under State or Federal law, any applicable uniform system of accounts.

14:17-4.4 Defective pleadings

Pleadings will be liberally construed with the view to effect justice. The Board or Office may disregard errors or defects in pleadings which do not affect the substantial rights of the parties. However, if the defect in a pleading prejudices a substantial right of any party the Board or Office may, on notice, strike the pleading or take such other action as it deems appropriate.

14:17-4.5 Service and notice of proceedings

(a) Unless otherwise provided for by statute or in these rules or unless otherwise ordered or permitted by the Board or Office, the following provisions shall govern:

1. A petition filed on behalf of a cable television company shall be served by such cable television company or its agent or attorney upon each respondent named in such petition;

2. A petition originating a proceeding filed by a party other than a cable television company shall be served by the Secretary of the Board upon each respondent named in such petition;

3. Every other pleading, including all answers, replies, notices, briefs and other papers, shall be served by the party filing the same (whether a cable television company or not) on all other parties of record concurrently with or prior to the filing thereof; and

4. Whenever public notice is required, the same shall be at the expense of the party directed to give such notice.

14:17-4.6 Verification

All pleadings initiating a proceeding or otherwise seeking affirmative relief shall be verified except for those matters brought upon the Board's own motion or the motion of the Attorney General of the State of New Jersey.

14:17-4.7 Changes in facts or circumstances

(a) Whenever, subsequent to the date of a pleading, there is any significant change in respect to matter contained in such pleading, the party who filed the pleading shall promptly file an amendment showing or explaining the changed facts or circumstances.

(b) The filing of such amendment shall be considered a new filing as of the date of its filing unless otherwise ordered or permitted by the Board or Office.

SUBCHAPTER 5. (RESERVED)

SUBCHAPTER 6. PETITIONS

14:17-6.1 Form and content of petitions

(a) All petitions shall comply with the provisions of N.J.A.C. 14:17-4 to the extent applicable; shall clearly and concisely state the facts and relief sought; shall cite by appropriate reference the statutory provision**s*** or other authority under which the Office's action is sought; and, in addition, shall contain such information or statements as are required by ***the*** provision**s*** of the statute and the applicable provision**s*** of these rules, or such other rules by the Office with the approval of the Board or orders adopted by the Board pertaining to certain petitions, or as may be required by the Board or Office in a particular proceeding.

Recodify existing 2. and 3. as (b) and (c) (No change in text.)

14:17-6.4 Procedures of Office on filing of petition

(a) (No change.)

(b) Unless otherwise directed by the Board, petitions and subsequent pleadings shall be served by the parties as provided for in N.J.A.C. 14:17-4.5.

14:17-6.5 Handling informal complaint to the Office as complaint officer in lieu of petition

(a) When a municipality designates the Office as the "complaint officer" pursuant to the applicable provisions of N.J.S.A. 48:5A-1 et seq., an informal complaint may be made by letter or other writing, in lieu of filing a petition.

(b) Matters thus presented will be taken up with the parties affected by correspondence or otherwise, in an endeavor to bring about an adjustment of the subject matter of the complaint *[with]* ***without*** formal hearing or order.

(c) While no form of informal complaint is prescribed, to be considered by the complaint officer such complaint must be signed and state the name and address of the complainant and the party complained of as well as the essential facts upon which the complaint is based, including the dates of acts or omissions complained of.

(d) The complaint officer will bring the matter to the attention of the party complained of and direct the said party to submit information deemed to be pertinent as well as a statement of its position.

(e) Following a study and review of the complainant's and cable television operator's positions and supporting data and after such informal conferences as may be held, an attempt will be made to effect an amicable adjustment of the dispute.

(f) A letter will then be forwarded, within 30 days of the receipt of said complaint*,** to all parties reflecting the results, if any, of the processing of the informal complaint.

(g) Informal complaints shall be without prejudice to the right of any party to file a petition pursuant to N.J.S.A. 48:5A-1 et seq., or of the Board to institute a formal proceeding.

(h) While informal complaints are recommended wherever practicable as a method designed for amicable adjustment of disputes, no mandatory or prohibitory order will be issued on an informal complaint.

(i) A party desiring a decision on order of the Board must file a petition.

14:17-6.6 Petitions for certificates of approval

(a) Petitions for a certificate of approval shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable. The following information shall also be supplied in the body of the petition or in attached exhibits:

1.-3. (No change.)

(b) (No change.)

14:17-6.7 Petition for approval of the modification or amendment of the terms or conditions of a municipal consent upon which a certificate of approval is based

(a) Petitions for the approval of the modification or amendment of the terms or conditions of a municipal consent upon which a certificate of approval is based shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof or attached exhibits, also provide the following information:

1.-5. (No change.)

14:17-6.8 Petitions for approval of the transfer of certificates of approval

(a) Petitions for approval of the transfer of certificates of approval shall conform to the requirements of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable*,** and shall in the body thereof*,** or in the attached exhibits*,** also provide the following information:

1.-9. (No change.)

10. Proof of service of notice of the proposed transfer to subscribers by way of bill insert or by publication in at least one newspaper circulated in the cable television company's service area, and upon all cable television companies referred to in (a)(4) above, and all the electric and telephone utilities serving the area, in the manner provided by law.

(b) (No change.)

14:17-6.9 Petitions for renewal of certificate of approval

(a) Petitions for renewal of a certificate of approval shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable*,** and shall*[,]* in the body thereof, or in attached exhibits*,** also provide the following information:

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

14:17-6.10 Petitions for the approval of the sale or lease of property
(a) Petitions for the approval of the sale, conveyance or lease of real or personal property, or the granting of an easement, or like interest therein as required by law shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4 to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:
1.-5. (No change.)
6. The basis of the price or rental: Assessed valuation, appraisal, comparable sales, or other basis; whether it is the best price or rental obtainable (attach *[three independent]* appraisals, if any, as exhibits);
7.-15. (No change.)
(b) Where the Board's approval of sale or lease is required by law and the property has a net book cost or fair market value of more than $100,000, the property shall be advertised for sale or lease at least twice, one week apart, in a daily newspaper published or circulated in the county in which the property is located, within 90 days immediately prior to the filing of the petition for the approval of the sale or lease, except that advertising shall not be required for sale or lease of property for cable television purposes to another cable television company or other person or company subject to any jurisdiction of this Office or Board, and the advertisement shall contain the following:
1.-3. (No change.)
4. A statement that the sale or lease is subject to the approval of the Office of Cable Television, Board of Regulatory Commissioners;
(c)-(f) (No change.)

14:17-6.11 Petitions for authority to change depreciation rates
(a) Petitions for the approval of a change or variation in the rates of depreciation used shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall*[,]* in the body thereof, or in attached exhibits, also provide the following information:
1.-5. (No change.)

14:17-6.12 Petitions for reconsideration of assessment
(a) Petitions for reconsideration of the assessment levied in accordance with N.J.S.A. 48:5A-1 et seq., where applicable, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or the exhibits attached thereto***,***, provide the following information:
1.-2. (No change.)

14:17-6.13 Petitions for authority to issue stocks, bonds, notes, other evidence of indebtedness or to execute mortgages
(a) Petitions for authority to issue any stocks, bonds, notes, or other evidence of indebtedness, payable in more than one year from the date thereof, and to execute mortgages shall conform to the provisions of N.J.S.A. 48:5A-1 et seq., and N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, provide the following:
1.-12. (No change.)
13. Petitions filed under this rule shall contain a certified copy of the resolution of the Board of Directors or other authority authorizing the proposed issuance of securities and shall be verified. The verification shall include a statement that it is the intention of the petitioner in good faith to use the proceeds of the securities proposed to be issued for the purposes set forth in the petition; and
14. Information which under this rule is required to be set forth in a petition or any exhibit attached thereto and which is contained in any report, document, pleading or other instrument previously filed with the Office pursuant to any requirement of any statute or any rule of the Office, may be incorporated in such petition or exhibit by reference to the official filing thereof with the Office provided that said information is still correct in all respects.

14:17-6.14 Petitions for authority to transfer capital stock
(a) Petition***s*** for authority to transfer upon the books and records of any cable television company, pursuant to N.J.S.A. 48:5A-1 et seq., where applicable, any share or shares of its capital stock, shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:
1.-8. (No change.)

14:17-6.15 Petitions for permission to lend money or property
(a) Petitions for permission to lend money or property pursuant to N.J.S.A. 48:5A-1 et seq., shall conform to N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall*[,]* in the body thereof, or in exhibits thereto***,***, provide the following additional information:
1.-5. (No change.)

14:17-6.16 Tariff filings which do not propose increases in charges to customers
(a) Tariff filings for the purpose of making effective initial tariffs or of revisions, changes or alterations of existing tariffs and which are not filed because of the need for additional revenue from products or services covered by existing tariffs, ***and*** which do not propose increases in charges to customers, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:
1.-3. (No change.)
4. A statement as to the date on which it is proposed to make the tariff or change effective, which date shall not be earlier than 30 days after the filing unless otherwise permitted by the Office with the approval of the Board; and
5. (No change.)
(b) Review of petitions and tariffs under this section shall conform and comply with the regulations and procedures established by the Federal Communications Commission for the regulation of cable television rates.

14:17-6.17 Tariff filings or petitions which propose increases in charges to customers
(a) Tariff filings or petitions for the purpose of making effective revisions, changes or alterations of existing tariffs which propose to increase any rate, rental or charge or so to alter any classification, practice, rule or regulation as to result in such an increase, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, contain all applicable information and data set forth in N.J.A.C. 14:17-6.16 and, in addition, shall contain the following information and financial statements prepared in accordance with generally accepted accounting and auditing principles, orthe applicable uniform system of accounts:
1.-4. (No change.)
5. A *pro forma* income statement reflecting operating income at present and proposed rates and an explanation of all adjustments thereon, as well as a calculation showing the indicated rate of return on the average net investment for the same period as that covered by the *pro forma* income statement that is, investment in plant facilities plus supplies and working capital to the extent claimed, less the reserve for depreciation and advances and contributions for facilities.
6. In providing the information required by (a)5 above, a company may also file, in addition to the new rates proposed to become effective, alternative rate changes designed to produce the full revenue request, which alternatives are illustrative of the application of other possible rate designs to the filing.
7. An itemized schedule showing all payments or accruals to affiliated companies or organizations and to those who own in excess of five per cent of the cable television company's capital stock regardless of the form or manner in which such charges are paid or accrued and an explanation of the service performed for such charges;

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8. A copy of the form of notice to customers.

(b) Each cable television company that makes a filing under (a) above shall, at the same time, unless otherwise ordered or permitted by the Board, give notice thereof as follows:

1. (No change.)

2. Serve a notice of the filing and two copies of the petition or tariff on the Department of Law and Public Safety, 124 Halsey Street, P.O. Box 45029, Newark, New Jersey 07102 and on the Director, Division of Rate Counsel, Department of the Public Advocate***, 31 Clinton Street, P.O. Box 46005, Newark, New Jersey 07102***; and

3. (No change.)

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

(h) Review of petitions and tariffs under this section shall conform and comply with the regulations and procedures established by the Federal Communications Commission for the regulation of cable television rates.

14:17-6.18 Petitions for approval of a merger or consolidation

(a) Petitions for approval of a merger or consolidation of one cable television company of New Jersey with that of another cable television company, shall conform to the provisions of N.J.A.C. 14:17-4, and N.J.A.C. 14:17-6.1 through 6.4, and 6.13, as well as N.J.A.C. 14:11-1.17, to the extent applicable, and shall contain in the petition, or as attached exhibits, the following information:

1.-11. (No change.)

12. Proof of service of notice of the proposed merger to the public, the municipalities being served by the companies to be merged, and the public utilities serving in the area, pursuant to N.J.A.C. 14:17-4.5;

13.-14. (No change.)

14:17-6.19 Petitions for permission to keep books and records outside the State of New Jersey

(a) Petitions for authority to keep books, records, accounts, documents and other writings outside the State of New Jersey, filed with the Board, as required under N.J.S.A. 48:5A-1 et seq., where applicable, shall conform to the provisions of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, to the extent applicable, and shall in the body thereof, or in attached exhibits, also provide the following information:

1.-7. (No change.)

8. Whether the books and records which will be kept at the location outside the State will be, on notice in writing *[of]* ***by*** the Office or Board, produced at such time and place within this State as the Board or Office may designate;

9. Whether the petitioner will pay to the Office any reasonable expenses or charges incurred by the Office for any investigation or examination, if the Board grants said permission;

10.-11. (No change.)

14:17-6.20 Petitions by municipalities for permission to charge franchise fee above that prescribed in N.J.S.A. 48:5A-1 et seq.

(a) Petitions by municipalities for permission to charge a franchised fee above that prescribed in N.J.S.A. 48:5A-1 et seq., shall be filed in one of two forms:

1. (No change.)

2. A petition in conformity with the requirements of N.J.A.C. 14:17-4 and N.J.A.C. 14:17-6.1 through 6.4, may be filed separately by a municipality.

3. (No change.)

14:17-6.21 Petition to set aside refusal pursuant to N.J.S.A. 48:5A-17(e)

(a) Petition for an order setting aside municipal or county refusal for zoning variance, or other act or necessary authorization pursuant to N.J.S.A. 48:5A-17(e), shall conform to N.J.A.C. 14:17-4 and N.J.A.C. 17-6.1 through 6.4, to the extent applicable, and shall include, but not be limited to the following:

1.-4. (No change.)

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

SUBCHAPTER 7. ANSWERS AND REPLIES

14:17-7.1 Form and content

(No change in text.)

14:17-7.2 Time for filing

(a) Unless otherwise provided in these rules or ordered by the Office with the approval of the the Board, an answer, if made, must be filed within 20 days after the service of the pleading against which it is directed. A party desiring to reply to an answer shall file the same with the Board within 10 days after service of the answer.

(b) Whenever the Office or the Board believes the public interest requires expedited procedure, it may shorten the time for any answer or reply.

(c) Upon motion on notice to all parties to the proceeding, the Office with the approval of the Board may, in its discretion, extend or shorten the time to file an answer or reply.

SUBCHAPTER 8. CONFERENCES

14:17-8.1 Purposes

(a) The purpose of this subchapter is to foster early settlement of cases pending before the Board or Office prior to the case being transmitted to the Office of Administrative Law and to provide a vehicle for the parties to file pre-transmittal motions with the Board for retention and disposition of certain issues. Pre-transmittal settlement conferences of parties or their attorneys may be held to provide opportunity for a settlement, subject to approval of the Board, of a proceeding or any of the issues therein, and for the submission and consideration of facts, argument, offers of settlement or proposals of adjustments, as time, the nature of the proceeding and the public interest may permit.

(b) Pre-transmittal conferences of parties or their attorneys may be held to expedite the disposition of any hearing. At such conferences there may be considered, in addition to the matters set forth in (a) above, the following:

1. Identification and simplification of the issues;

2. Admissions or stipulations of facts;

3. Identification of those matters or issues which should either be retained for disposition by the Board or be transmitted to the Office of Administrative Law; and

4. Such other matters as may be properly dealt with to aid in expediting the proceeding.

14:17-8.2 Initiation of conferences

(a) The Board, Office or a designated officer, with or without motion, may direct that a conference be held at any stage prior to transmittal to the Office of Administrative Law or at any time when the Board certifies a case unto itself pursuant to N.J.S.A. 52:14F-8(b).

(b) On motion of a party, the Board or Office-designated officer may direct the parties or their attorneys to appear for a conference to consider the matters set forth in N.J.A.C. 14:17-8.1(b).

14:17-8.3 Stipulation of conference results

(a) Upon conclusion of the pre-transmittal conference, the parties or their attorneys shall reduce the results thereof to the form of a written stipulation reciting the matters agreed upon, and three copies thereof shall be filed with the Board within 10 days of the date of the conference. If no stipulations are reached, the matter shall be immediately transmitted to the Office of Administrative Law.

(b) Such stipulations shall be signed by the parties or their attorneys, may be received in evidence as part of the record and when so received shall be binding on the parties with respect to the matters therein stipulated.

(c) Such stipulations are subject to review by the Board at a regularly scheduled agenda meeting.

14:17-8.4 Authority of Board or Office-designated officers

(a) Any Board or Office-designated officer shall have the authority to conduct and preside over pre-transmittal conferences in the interest of fostering resolution of issues.

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(b) When appropriate, a Board or Office-designated officer may submit a pre-transmittal order which shall be reviewed by the Board at an agenda meeting and, if acceptable, shall be adopted as its own order.

SUBCHAPTER 9. CONTESTED CASE HEARINGS

14:17-9.1 Contested case procedures

The hearing in any matter which is determined by the Board to be a contested case shall be conducted pursuant to the procedures in the Administrative Procedures Act, N.J.S.A 52:14B-1 and 52:14F-1, the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Regulatory Commissioners Rules of Special Applicability, N.J.A.C. 1:14.

14:17-9.2 Argument on exceptions

After receipt of the initial decision, the exceptions and answers thereto, if any, will be disposed of by the Board based on the exceptions, answers and briefs filed unless the Board, in its discretion, requires or permits oral argument, in which case the Board will schedule the matter for argument before it.

14:17-9.3 Review of initial decision by the Board on its own motion

The Board may institute on its own motion a review of any aspect of the initial decision and it may call for oral argument, the filing of briefs, or both, or the taking of additional testimony.

14:17-9.4 Method of reopening

(a) At any time after the conclusion of a hearing in a proceeding or adjournment thereof *sine die*, but before the entering and issuance by the Board of its final decision or order, any party to the proceeding may file with the Board a motion to reopen the hearing for the purpose of taking additional evidence. Such motion shall set forth clearly the reasons for reopening of the hearing, including any material changes of fact or of law alleged to have occurred since the last hearing.

(b) If, after the hearing in a proceeding, the Board shall have reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of such hearing, the Board will issue an order for the reopening of same.

14:17-9.5 Motions to reopen

(a) After issuance of the final decision, a party may file for the reopening of the proceeding. Upon filing by any party of a motion for the reopening of a proceeding, appropriate notice thereof shall be given forthwith by the moving party to all other parties, or their attorneys of record, by service of a copy of the motion for reopening.

(b) Within 10 days following the service of a motion to reopen, any party to the proceeding may serve upon the moving party and file with the Board an answer thereto, and in default thereof shall be deemed to have waived any objection to the granting of such motion.

(c) As soon as practicable after the filing of answers to a motion to reopen or default thereof, as the case may be, the Board will grant or deny such motion. The action by the Board may be conditioned on reasonable terms.

14:17-9.6 Rehearing, reargument or reconsideration

(a) A motion for rehearing, reargument or reconsideration of a proceeding may be filed by any party within 15 days after the issuance of any final decision or order by the Board.

1. Such motion shall state in separately numbered paragaraphs the alleged errors of law or fact relied upon and shall specify whether reconsideration, reargument, rehearing or further hearing is requested and whether the ultimate relief sought is reversal, modification, vacation or suspension of the action taken by the Board or other relief.

2. Where opportunity is also sought to introduce additional evidence, the evidence to be adduced shall be stated briefly together with reason*s* for failure to previously adduce said evidence.

(b) The Board at any time may order a rehearing, reargument or reconsideration on its own motion and extend, revoke or modify any decision or order made by it.

14:17-9.7 Motions and answers on rehearing

(a) A copy of the motion shall be served by the moving party upon all other parties or their attorneys of record, forthwith upon the filing hereunder. The moving party shall also give such notice, as the Board may direct, of the filing of the motion to all other persons to whom notice of the original hearing had been given.

(b) Any answer to the motion shall be filed within 10 days following the service of the motion. Failure to file an answer shall be deemed to be a waiver of any objection to the granting of the motion.

(c) Any motion hereunder which is not granted or otherwise expressly acted upon by the Board within 60 days after the filing thereof, shall be deemed denied.

(d) The filing or granting of any motion under this rule shall not operate as a stay of the Board's decision or order. A stay will be granted only for good cause shown.

SUBCHAPTER 10. UNCONTESTED CASE PROCEEDINGS

14:17-10.1 Uncontested case proceedings

This subchapter applies only to a matter which the Board or Office determines to constitute an uncontested case. Where the Board or Office determines to hold a hearing in an uncontested case, said hearing shall be conducted pursuant to this section and, in the absence of a specific provision herein, pursuant to the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and the Board of Regulatory Commissioners Rules of Special Applicability, N.J.A.C. 1:14.

14:17-10.2 Designation

The Board or Director, may by general order in writing designate as a presiding officer such person or persons, as provided by statute, as its representative or representatives in and on its behalf to conduct any hearing in any uncontested proceeding now or hereafter pending before the Board or Office.

14:17-10.3 Filing

Pleadings, correspondence or other documents pertaining to an uncontested case shall be filed pursuant to N.J.A.C. 14:17-4. Copies of such correspondence shall be filed with the presiding officer and with the parties of record.

14:17-10.4 Cameras and recording devices

Cameras or recording devices may be used at uncontested case proceedings in accordance with the standards and procedures of N.J.A.C. 14:17-1.8.

14:17-10.5 Appearances

Any person appearing in a representative capacity in any uncontested case proceeding shall conform to the requirements of N.J.A.C. 14:17-3.

14:17-10.6 Service

Whenever a party has the right or is required to do some act within a prescribed period after the serving of a notice or other paper upon said party, and the notice or paper is served upon said party by mail, three days from the date of mailing shall be added to the prescribed period.

14:17-10.7 Motions

All motions shall be deemed denied if not decided within 60 days after the filing thereof, whether referred to the Board or to be decided by the presiding officer. The Board or presiding officer may waive this rule on their own motion or for good cause shown by a party.

SUBCHAPTER 11. COMPLIANCE WITH ORDERS, DECISIONS AND RECOMMENDATIONS

Recodify existing N.J.A.C. 14:17-17.1 to 17.3 as 11.1 to 11.3 (No change in text.)

14:17-11.3 Extension of time limits

(No change in text.)

14:17-11.4 Answers to communications

(a) (No change.)

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(b) If circumstances prevent compliance with this rule, the cable television company must advise the Board through the Office, in writing within the above prescribed period, of its inability to comply and the reasons therefor.

TRANSPORTATION

(a)

DIVISION OF TRAFFIC ENGINEERING AND SAFETY PROGRAMS

Notice of Administrative Correction
Lane Usage
Route I-287 in Morris County
Adopted New Rule: N.J.A.C. 16:30-3.10

Take notice that the Department of Transportation has discovered an omission in the notice of adoption of new rule N.J.A.C. 16:30-3.10, published in the March 7, 1994 New Jersey Register at 26 N.J.R. 1241(a). The notice failed to include a summary of a comment on the proposal from Donald F. Henry, Assistant Director, Driver Control and Regulatory Affairs, New Jersey Division of Motor Vehicles, and the Department response thereto. Such summary is provided below to correct the notice of adopiton in accordance with N.J.A.C. 1:30-2.7.

COMMENT: N.J.A.C. 16:30-3.10(a)1i should be amended to read: "The drivers of all vehicles having a registered weight in excess of five tons shall not drive the vehicle . . ." This amendment is necessary for two reasons. First, by changing the word "trucks" to "vehicles," the population of tractor-trailer and tractor-trailer-semi-trailers will be included. Second, the registered weight of a vehicle includes the load. Therefore, it is not necessary to say registered gross weight plus load.

RESPONSE: The area of Route I-287 referenced in this new rule encompasses an H.O.V. lane, and it is the Department's intention to restrict trucks over five tons (10,000 pounds) from the H.O.V. lane and the lane adjacent to the H.O.V. lane. However, the Department does not want to restrict buses from either of these lanes. In addition, the proposed wording is more consistent with N.J.S.A. 39:4-88e. While the comment concerning the wording "registered gross weight plus load" is valid as "plus load" does come under registered gross weight, the Department does not see the retaining "plus load" will alter the effect of the new rule. However, "plus load" will be omitted in future use of the term "registered gross weight."

(b)

DIVISION OF PROCUREMENT
BUREAU OF CONSTRUCTION SERVICES, PROCUREMENT
Construction Services
Classification of Contractors and Prospective Bidders; Distribution of Standard Specifications; Distribution and Sale of Construction Plans and Supplementary Specifications; Advertising for Bids; Receipt of Bids; Contracts; Deferred Payment to Contractors for Materials Supplied and Work Performed in the Construction of State Highways and Related Projects; Debarment; Suspension and Disqualification of a Person(s); Corporate Reorganization of Contractors
Readoption: N.J.A.C. 16:44
Adopted Amendments: N.J.A.C. 16:44-1.1 through 1.5, 1.8, 1.18 through 1.19, 2.1 through 2.2, 3.2 through 3.4, 8.5 and 8.8
Adopted Repeals: N.J.A.C. 16:44-1.18, 2.1, 2.4, 3.1, 4.1 through 4.2, 5.1 through 5.5, 6.1 through 6.4, 7.1, 8.1 and 9.2
Adopted New Rules: N.J.A.C. 16:44-1.9, 4.1, 5.1 through 5.3 and 6.1

Proposed: October 18, 1993 at 25 N.J.R. 4727(a).
Adopted: March 21, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.
Filed: March 24, 1994 as R.1994 d.198, **without change.**
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:7-2.1 and 27:7-35.2 et seq.
Effective Date: March 24, 1994, Readoption;
April 18, 1994, Amendments, Repeals and New Rules.
Expiration Date: March 24, 1999.

Summary of Public Comments and Agency Responses:
The Department received comments from:
Mr. Robert A. Briant, Jr.
Assistant Executive Director
Utility and Transportation Contractors Association of New Jersey
and
Mr. Joseph R. Pagano
Counsel, New Jersey Steel Association, Inc.

The comments and agency responses follow:

COMMENT: At N.J.A.C. 16:44-1.2(a)5 the work record statement for past work completed has been extended from the three previous years to the four previous years. Our organization feels that the added fourth year information will increase contractor costs, while providing no additional information of any value to the Department in conducting its prequalification review process.

RESPONSE: This change was incorporated to afford the accumulation of additional data which will be used to evaluate a contractor/prospective bidder's financial capacity and engineering ability. The value of this additional information to the Department is in its ability to show a trend or changing work pattern of a firm. A four year work statement record is also consistent with the project rating, which is based on the largest project completed in the last four years.

To determine if this additional data request would cause a hardship on the construction industry, the Department conducted a spot check and found that most companies kept these records on computer going back at least four years.

COMMENT: At N.J.A.C. 16:44-1.2(a)5ii objection is made to the removal of this language. The Department should recognize that subparagraph (a)5ii provides efficiency of operations in the administration of the NJDOT's prequalifications procedures without adversely affecting the Department's ability to prequalify contractors.

RESPONSE: The Department deleated N.J.A.C. 16:44-1.2(a)5ii as part of the overall revamping of the prequalification process. Although the deleted section theoretically provided efficiencies, in practice, it most often caused delays. This is because a majority of the contractors, when applying for new work classes, did not complete the work record statement. As a result, the Department then had to request this statement, causing a delay in the processing of the contractor's application. The Department's overall change to the prequalification process is designed to create new efficiencies.

In addition, the Department needs to keep a contractor's work statement current. The intent of this statement is to identify liens, defaults, labor troubles, penalties, failures to complete contracts, etc. The Department conducted a spot check of the construction industry and found that a majority of the firms already keep these records on computer for at least a four year period. A four year work statement is consistent with the project rating, which is also based on the largest project completed in the last four years.

COMMENT: At N.J.A.C. 16:44-1.2(a)7, this disclosure statement should be limited to any currently enforced or past three year suspension, debarment or disqualification. This timeframe is consistent with all the other information time periods that the Department requires in the prequalification procedure.

RESPONSE: The Department has a responsibility to the public at large. The Department asks for disclosure of **any** suspension, debarment, or disqualification so that the responsibility of firms and individuals working on DOT projects can accurately be assessed.

COMMENT: N.J.A.C. 16:44-1.9 allows the Department to require additional information from the contractor seeking prequalification.

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There should be a five day time limit established which allows the Department to request additional information. If a timeframe for the Department's request for additional information is not adopted, it could result in the Department waiting until 14 days after receiving the Prequalification Questionnaire to ask for additional information and then have an additional 15 days to review the new information.

RESPONSE: Because of the cyclical nature of the workload and resultant review required, a five day time constraint is not feasible for the Department. The Department would be remiss in its obligation to the public if it agreed to prequalify a firm submitting an incomplete or unclear prequalification application merely because it could not comply within a five day timeframe.

COMMENT: Currently, N.J.A.C. 16:44-1.15 requires five days notice in a separate "Joint Venture Statement" if two or more corporations plan to submit a bid as a joint venture. It is submitted that if both can separately qualify there appears to be no reason for such notice. Changing this regulation in this manner would be consistent with the proposed regulation's ability of each contractor to determine its financial ability before bidding and the announced goal of reducing administrative burdens particularly on small businesses. The clarification is sought to permit small businesses the flexibility to combine forces for business reasons unrelated to financial ability to prequalify since either prequalifies on its own.

RESPONSE: The Department must know about a joint venture in advance to ensure that appropriate technical staff are available to review the bidding capacity of the combined entity within the prescribed timeframes. This also allows the Department sufficient time to set up the necessary computer programs to accept the joint venture bid proposal.

COMMENT: In light of delays in the mail system, internal and external, coupled with the short time frame available for small businesses to prepare a bid, currently an employee of a small business, particularly one in Southern or Northern New Jersey, must lose at least a half to two-thirds of a working day to drop off a check and pick up the plans in Trenton. In addition to those costs, there is the delay in getting the plans to prepare the bid. Each prequalified contractor should have the option to establish an account with DOT for not less than $500.00. DOT would then prepare a list of prequalified contractors maintaining such an account together with their current balance for use by the Division of Procurement which issues the plans. Once the Division establishes a fax telephone line, the same could be used for a fax order from the contractors to order the plans and authorize the charging of its account for the plans and the overnight mail charge. On receipt of such a fax, the Department would overnight mail the plans to the contractor and charge its account for both the cost of the plans and the overnight mail.

RESPONSE: The Department is currently looking into other ways to accomplish this or a similar type of system.

COMMENT: At N.J.A.C. 16:44-5.1, it is requested that the Department adopt the procedure of making public the Department's project cost estimate at the project bid opening.

RESPONSE: The Department does not release the project cost estimates until after the award of the contract because not every project is awarded when initially bid, and no useful public purpose is served by releasing the project cost estimate at the time of bid openings. The Planned Advertising Schedule does include a range of project costs to alert contractors of the magnitude of the project prior to bid.

COMMENT: N.J.A.C. 16:44-5.2 pertains to multiple bid lettings during the same bidding session. It is proposed that the Department stagger the bid openings to allow contractors to either withdraw or adjust their bids to the following project, and/or the Department can accept multiple project bids at the same time, but allow those contractors with a limited bidding capacity to indicate through a bid reservation which project is preferred in the event that a contractor is low bidder on two or more projects.

RESPONSE: The Department considered this change to the bidding process, but found it not to be in the best interests of the public bidding process. The integrity of the bidding process is best preserved by not having a contractor adjust its bid after submission to the Department. A contractor is free to withdraw its bid prior to the bid opening.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 16:44.

Full text of adopted amendments and new rules follows:

SUBCHAPTER 1. CLASSIFICATION OF CONTRACTORS AND PROSPECTIVE BIDDERS

16:44-1.1 Definitions

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

"Affiliates" means persons having a relationship such that any one of them directly or indirectly controls or has the power to control another.

. . .

"Bond value" means par value or market value of the bond, whichever is lower.

"Classification" means the rating given a contractor that denotes the type of contracts on which the New Jersey Department of Transportation (NJDOT) will allow the contractor to submit bids and the total amount of work which the contractor may undertake.

. . .

"Corporate reorganization" means any change in the structure or organization of a corporation wherein one or more of the following events occur:

1. A change in ownership of more than 5 percent of the stock of the corporation;
2. A transfer of the assets, in whole or in part, from the existing corporation to another or new corporation;
3. Any modification of the corporate name;
4. Any other change, modification, dissolution, transfer of, deletion from or addition to the corporate entity which may affect the operation of the corporation as a contractor; or
5. Any change in operation or function of the corporation, such as a change in classification or industry.

. . .

"Debarment" means an exclusion from NJDOT contracting, on the basis of a lack of responsibility evidenced by an offense, failure, or inadequacy of performance, for a reasonable period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

"Disqualification" means a debarment or a suspension which denies or revokes a qualification to bid or otherwise engage in NJDOT contracting which has been granted or applied for pursuant to statute, or rules and regulations.

"Key sheet" means the first sheet of a set of plans containing a location map for the project, usually at a scale of 2000 feet to the inch, a brief description of the project and the necessary approvals.

. . .

"NJDOT contracting" means any arrangement giving rise to an obligation to supply anything to or perform any service for the NJDOT, other than by virtue of State employment, or to supply anything to or perform any service for private or public persons where the NJDOT provides substantial financial assistance or retains the right to approve or disapprove the nature or quality of the goods or service or the persons who may supply or perform the same.

"Person" means any natural person, company, firm, association, corporation, or an entity.

"Plans" means construction plans, supplementary specifications and proposal forms.

"Pre-qualification Committee" means a committee appointed by the Commissioner of Transportation to perform the duties indicated in this chapter. The Committee shall be comprised of five voting members, selected at the discretion of the Commissioner of Transportation. The Manager, Bureau of Construction Services, Procurement Division, shall serve as a non-voting member and Secretary to the committee, and may be granted authority by the Pre-Qualification Committee to sign renewal of pre-qualification applications on behalf of the Committee in those circumstances deemed appropriate by the Committee.

"Project Rating" means the maximum dollar amount which a contractor shall be allowed to bid on an individual project.

. . .

"Standard Specifications" means the 1983 edition of the book entitled "New Jersey Department of Transportation Standard

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Specifications for Road and Bridge Construction," as amended and supplemented.

"Supplementary specifications" means amendments or revisions updating the Standard Specifications.

"Suspension" means an exclusion from NJDOT contracting for a temporary period of time, pending the completion of an investigation or legal proceedings.

"Vendor" means any person, firm, corporation or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency.

16:44-1.2 Statements under oath

(a) All contractors proposing to bid on NJDOT work shall furnish, on forms provided by the Commissioner of Transportation, a Prequalification Questionnaire including, at a minimum, the following statements:

1. A statement as to financial ability, which statement shall show current assets and current liabilities and shall include verifications of unsecured lines of credit extended by banks. The Prequalification Questionnaire must be accompanied by certified audited financial statements or a CPA review of financial statements. The financial statements shall be complete, with a balance sheet, related statements of income and retained earnings and cash flows. The financial statements shall be completed by a certified public accountant or public accountant, as established by N.J.S.A. 45:2B-29 et seq., who is independent of, and not an employee of, the contractor for which the financial statements are being provided;

i.-ii. (No change.)

iii. Submission of a consolidated financial statement is acceptable. It may be submitted with the Prequalification Questionnaire completed in the name of the parent corporation. A consolidated financial statement submitted with a Prequalification Questionnaire and completed in the name of the subsidiary corporation shall include a separate breakdown of the financial statements, that is, balance sheet, income statement, statement of changes in financial position and cash flows, in the name of the subsidiary corporation;

2.-4. (No change.)

5. A statement which shall give an accurate and complete record of work completed in the previous four years and which shall identify the projects undertaken, type of work performed, location, contract price, name and telephone number of the owner's engineer in charge;

i. The work record statement shall list, in detail, any liens, stop notices, default notices or claims filed with regard to any project within the previous four years. The work record statement shall also disclose labor troubles experienced, failures to complete contracts and all penalties imposed by reason of any contract undertaken within the previous four years. The contractor shall explain all such items;

6. (No change.)

7. A statement disclosing any suspension, debarment, or disqualification of the contractor, its parent company or subsidiary and/or any owner, stockholder, officer, partner or employee of the contractor;

Recodify existing 7.-10. as 8.-11. (No change in text.)

16:44-1.3 Penalties for false statements

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

16:44-1.4 Types of work

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

(c) Each contractor will be classified for one or more of the types of work requested by that contractor and will be rated in accordance with its financial ability, adequacy of plant and equipment, organization, record of construction and any other factors deemed pertinent by the NJDOT. The contractor will be assigned a classification, designating the types and dollar values of work upon which it shall be eligible to bid.

(d) (No change.)

(e) The dollar rating ranges within which contractors may be entitled to bid are as set forth in Table I below.

TABLE 1
Dollar Rating Ranges

$ 50,001 to 100,000	20,000,001 to 25,000,000
100,001 to 150,000	25,000,001 to 30,000,000
150,001 to 200,000	30,000,001 to 35,000,000
200,001 to 300,000	35,000,001 to 40,000,000
300,001 to 400,000	40,000,001 to 45,000,000
400,001 to 500,000	45,000,001 to 50,000,000
500,001 to 750,000	50,000,001 to 55,000,000
750,001 to 1,000,000	55,000,001 to 60,000,000
1,000,001 to 2,000,000	60,000,001 to 65,000,000
2,000,001 to 3,000,000	65,000,001 to 70,000,000
3,000,001 to 4,000,000	70,000,001 to 75,000,000
4,000,001 to 6,000,000	75,000,001 to 80,000,000
6,000,001 to 8,000,000	80,000,001 to 85,000,000
8,000,001 to 10,000,000	85,000,001 to 90,000,000
10,000,001 to 15,000,000	90,000,001 to 95,000,000
15,000,001 to 20,000,000	95,000,001 to 99,999,999
	over 99,999,999

1.-2. (No change.)

16:44-1.5 Classification rating system

(a) (No change.)

(b) Aggregate Ratings will be established as follows:

1.-2. (No change.)

3. The NJDOT will add dollar figures established by use of the multipliers indicated below. For contractors which have not had a NJDOT performance rating within the prior four year period, the resulting figure shall be the contractor's aggregate rated capacity. For contractors which have had a NJDOT performance rating within the prior four year period, the resulting figure will be multiplied by the contractor's average performance rating to establish the contactor's aggregate rated capacity.

Contractors without NJDOT past performance

Aggregate rated capacity = (Net working capital × 9) + (net book value of equipment × 9) + (unsecured lines of credit × 4).

Contractors with NJDOT past performance

Aggregate rated capacity = ((net working capital × 15) + (net book value of equipment × 15) + (unsecured lines of credit × 7)) × the contractor's average past performance rating.

4.-6. (No change.)

(c) (No change.)

16:44-1.8 Renewal of classification ratings

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

(c) Upon renewal of classification, contractors with a NJDOT past performance rating within the previous four years will be evaluated on the basis of their average performance rating and a Project Rating will be established in the following manner:

1. If a contractor's average performance rating does not meet the criteria of (c)2, 3, or 4 below, the contractor's average past performance rating will be multiplied by a dollar level equal to three times the largest successfully completed NJDOT or similar contract performed during the prior four years. The contractor's Project Rating will be determined by applying the resulting dollar figure to Table I at N.J.A.C. 16:44-1.4(e).

2. (No change.)

3. If the two most recent performance ratings assigned a contractor during the prior four year period average five points or more above the average performance rating of all contractors that have received a NJDOT performance rating within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating, up to a limit of Over $99,999,999.

4. If the four most recent performance ratings assigned a contractor during the prior four years are at least equal to the average performance rating of all contractors that have received NJDOT performance ratings within the previous four years, or if the contractor's average rating is 80 or above, the contractor will be entitled to a Project Rating equal to its Aggregate Rating up to a limit of Over $99,999,999.

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16:44-1.9 Effective date of classification

The effective date of a classification shall be 15 days after the Prequalification Questionnaire is received in the Bureau of Construction Services or 15 days after receipt of any additional information requested by the Bureau of Construction Services. The expiration date shall be 18 months after the date of the financial statement accompanying the Prequalification Questionnaire.

Recodifying existing N.J.A.C. 16:44-1.9 through 1.16 as N.J.A.C. 16:44-1.10 through 1.17 (No change in text.)

16:44-1.18 Requirements

(a) The Bureau of Construction Services will provide a Prequalification Questionnaire and Past Performance Record (Form DC 74A) to any contractor that desires to be classified to perform work for NJDOT under contract.

(b) Completed questionnaires shall be submitted to the Bureau of Construction Services.

16:44-1.19 Notice of classification

A "Notice of Classification" form shall be prepared in triplicate by the Bureau of Construction Services. The original shall be signed and mailed to the applicant by First Class mail.

SUBCHAPTER 2. DISTRIBUTION OF STANDARD SPECIFICATIONS

16:44-2.1 Requirements

(a) The Bureau of Construction Services shall:

1. (No change.)

2. Establish a reasonable selling price for the current "Standard Specifications."

(b) Approval of the Assistant Commissioner of Design and Right-of-Way or designee is required for nondepartmental distribution without charge.

16:44-2.2 Distribution of free copies

(a) The Bureau of Construction Services is authorized to distribute "Standard Specifications" upon revision and reprinting, without charge, to the following:

1. New Jersey county engineer's office (one copy each);

2. Chief engineer of other state transportation departments (one copy);

3. American Association of State Highway and Transportation officials (three copies);

4. Each successful bidder may receive one free copy upon request, upon award of the contract; provided that not more than one copy of the current "Standard Specifications" will be furnished to any contractor, regardless of its number of awarded contracts, except upon payment of the established selling price per copy.

(b) No other free copies shall be provided. The Assistant Commissioner of Design and Right-of-Way or designee may, however, make exceptions to this rule on a case-by-case basis.

SUBCHAPTER 3. DISTRIBUTION AND SALE OF CONSTRUCTION PLANS AND SUPPLEMENTARY SPECIFICATIONS

16:44-3.1 (No change in text.)

16:44-3.2 Requisitioning of plans

Requests for plans should be sent to the Bureau of Construction Services, Division of Procurement, New Jersey Department of Transportation, CN605, 1035 Parkway Avenue, Trenton, New Jersey 08625-0605.

16:44-3.3 Nondepartmental distribution and sale

(a) The Bureau of Construction Services shall issue plans and supplementary specifications in the quantities indicated without cost to the following:

1. The successful low bidder will receive copies of plans specified below and five additional free copies of supplementary specifications without charge, upon award of the contract if requested.

TABLE OF PLANS FURNISHED WITHOUT CHARGE

From more than	To and including	Set of plans furnished
0	500,000	1
500,000	1,000,000	2
1,000,000	5,000,000	3
5,000,000	10,000,000	4
10,000,000	—	5

Additional copies of plans and supplementary specifications will be furnished, upon request, at a charge commensurate with reasonable copying costs.

2.-6. (No change.)

16:44-3.4 Departmental distribution

(a) The division or bureau of origination shall provide construction plans and specifications on each advertised project to the Design Field Offices in the State to enable the contractor organizations to make a review of these plans and specifications. The four (4) Design Field Offices are located in:

1. Parsippany-Troy Hills;
2. Newark;
3. Freehold;
4. Mt. Laurel.

SUBCHAPTER 4. ADVERTISING FOR BIDS

16:44-4.1 Requirements

Projects shall be advertised as required by N.J.S.A. 27:7-29.

SUBCHAPTER 5. RECEIPT OF BIDS

16:44-5.1 Procedures

(a) Bid proposals will be received at the hour, date and place specified in the advertisement. Bids will only be accepted from contractors currently classified, in accordance with N.J.A.C. 16:44-1 for the project advertised.

(b) The presiding officer will open each bid session as near to the hour specified in the advertisement as is practical. The presiding officer will announce the projects on which bids are being received during that bid session and ask if there are any additional bid proposals to be submitted. The presiding officer will then declare the bidding closed. No bids will be accepted after the bidding has been closed.

(c) The bid proposals will be opened and reviewed for acceptability and total bid prices will be read.

(d) Each bid shall be accompanied by a proposal bond in an amount equal to or greater than 50 percent of the bid price. Each proposal bond shall reference the project to which it applies.

i. Proposal bonds shall comply with the requirements of this chapter and relevant State statutes. Proposal bonds covering NJDOT projects shall be issued only by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

ii. Proposal bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

iii. Two or more companies may underwrite the proposal bond on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the proposal bond. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligation shall be executed by the principal and sureties jointly and severally.

iv. Reinsurance shall be prohibited on NJDOT proposal bonds.

(e) The NJDOT shall examine all bid documents for completeness, conformity with requirements and mathematical accuracy. Adjustments will be made by the Bureau of Construction Services where necessary to establish the correct total bid amount.

(f) All proposals will be microfilmed at the bid session by NJDOT, or other State agency staff. The proposal bonds and the contractor's Updated Financial Statement (Form DC-74B) of all but the two

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lowest bidders will be returned after the processed microfilm has been deemed acceptable. The proposal bond and the contractor's Updated Financial Statement (Form DC-74B) of the second lowest bidder will be retained until a contract with the low bidder has been executed by the Commissioner of Transportation.

16:44-5.2 Multiple bids

If a bidder submits bids on two or more projects at the same bid session, that bidder must have a current bid capacity greater than or equal to the combined amount of its bids, unless a reservation has been placed in each bid limiting the maximum gross amount of awards acceptable to the bidder at that particular bid letting. If such reservations are placed in the bids, the Commissioner will select which contract or contracts are to be awarded to such bidder within the maximum gross amount reserved.

16:44-5.3 Withdrawal

A bidder may withdraw a bid proposal by executing an NJDOT "Request for Withdrawal of Bid" form prior to the opening of any bid on the project that is the subject of such proposal.

SUBCHAPTER 6. CONTRACTS

16:44-6.1 Contracts

(a) The NJDOT will forward the contract and surety corporation payment and performance bond forms to the contractor for signature and specify the time within which the executed contract and bond forms must be returned.

(b) Each payment and performance bond must be in an amount at least equal to the total contract price less the lump sum bid for the pay item "Performance Bond and Payment Bond."

1. Payment and performance bonds must comply with the requirements of this chapter and relevant State statutes. Bonds covering NJDOT projects must be issued by companies listed in the current United States Treasury Department Circular 570, which Circular will establish the underwriting limitation for any one risk.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

3. Two or more companies may underwrite the payment and performance bonds on a project if the aggregate of their underwriting limitations, as established by United States Treasury Department Circular 570, is not exceeded by the penal sum of the bonds. Each company may limit its liability, upon the face of the bond or power of attorney form, to a definite specified amount within its underwriting limitation. Such obligations must be executed by the principal and sureties jointly and severally.

4. Reinsurance shall be prohibited on NJDOT payment and performance bonds.

(c) If the contractor fails to return the executed contract and bond within the time specified by the NJDOT, the NJDOT will take whatever action is appropriate and authorized by law and specification.

(d) After execution by the Commissioner of Transportation, a copy of the signed contract will be sent to the contractor.

SUBCHAPTER 7. DEFERRED PAYMENTS TO CONTRACTORS FOR MATERIALS SUPPLIED AND WORK PERFORMED IN THE CONSTRUCTION OF STATE HIGHWAYS AND RELATED PROJECTS

Recodify existing N.J.A.C. 16:44-7.2 through 7.10 as N.J.A.C. 16:44-7.1 through 7.9 (No change in text.)

SUBCHAPTER 8. DEBARMENT, SUSPENSION AND DISQUALIFICATION OF A PERSON(S)

Recodify existing N.J.A.C. 16:44-8.2 through 8.5 as N.J.A.C. 16:44-8.1 through 8.4 (No change in text.)

16:44-8.5 Conditions for suspension of a person(s)

(a) The following conditions concerning suspension are to be adhered to:

1. (No change.)

2. The existence of any cause for suspension shall not require that a suspension be imposed, and a decision to suspend shall be made at the discretion of the Commissioner of Transportation and of the Attorney General, and shall be rendered in the best interest of the State.

3.-6. (No change.)

Recodify existing N.J.A.C. 16:44-8.7 and 8.8 as N.J.A.C. 16:44-8.6 and 8.7 (No change in text.)

16:44-8.8 Extent of debarment, suspension or disqualification

The exclusion from State contracting by virtue of debarment, suspension, or disqualification shall extend to all State contracting and subcontracting within the control or jurisdiction of the NJDOT, including any contracts which utilize State funds. When it is determined by the Commissioner of Transportation to be essential to the public interest, and upon filing of a finding thereof with the Attorney General, an exception from total exclusion may be made with respect to a particular State contract.

Recodify existing N.J.A.C. 16:44-8.10 through 8.12 as N.J.A.C. 16:44-8.9 through 8.11 (No change in text.)

SUBCHAPTER 9. CORPORATE REORGANIZATION OF CONTRACTORS

16:44-9.2 (No change in text.)

(a)

DIVISION OF REGIONAL OPERATIONS
REGION V
BUREAU OF MAINTENANCE ENGINEERING

Drawbridge Operations

Readoption with Amendment: N.J.A.C. 16:46-1
Adopted Repeal: N.J.A.C. 16:46-2

Proposed: February 7, 1994 at 26 N.J.R. 755(a).

Adopted: March 10, 1994 by W. Dennis Keck, Acting Assistant Commissioner for Policy and Planning.

Filed: March 24, 1994 as R.1994 d.199, **without change**.

Authority: N.J.S.A. 27:1A-5 and 27:1A-6.

Effective Date: March 24, 1994, Readoption;
April 18, 1994, Amendment and Repeal.

Expiration Date: March 24, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows:

16:46-1.1 Opening and closing of bridges

(a) (No change.)

(b) A copy of the rules and regulations specified in (a) above may be inspected at the Bureau of Maintenance Engineering, Regional Operations—Region V, New Jersey Department of Transportation, CN 600, 1035 Parkway Avenue, Trenton, New Jersey 08625.

[1]A copy of this manual may be inspected in the Bureau of Maintenance Engineering, Regional Operations—Region V, New Jersey Department of Transportation, 1035 Parkway Avenue, CN-600, Trenton, New Jersey 08625.

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TREASURY-TAXATION

(a)

DIVISION OF TAXATION
Alcoholic Beverage Tax
State Licensees
Readoption with Amendment: N.J.A.C. 18:3

Proposed: February 7, 1994 at 26 N.J.R. 758(a).
Adopted: March 9, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: March 14, 1994 as R.1994 d.183, **with a substantive change** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:42-1 and 54:50-1.

Effective Date: March 14, 1994, Readoption;
April 18, 1994, Amendment.
Expiration Date: March 14, 1999.

Summary of Public Comment and Agency Response:
The Division received one comment from Michael Bolen of the Assembly Regulatory Oversight Committee indicating that N.J.A.C. 18:3-3.4 is inconsistent with N.J.S.A. 54:43-1. The rule suggests that the liquor tax is $2.80 a gallon, not $4.40 a gallon as contained in P.L. 1990, c.41.
The Division responded that 18:3-3.4 will be amended to correct the tax rate to $4.40 as a result of statutory amendment.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:3.

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

18:3-3.4 Tax on bitters, grenadine and other mixes
All bitters, grenadine, highballs, cocktails, cordials and other mixes which are classified by the United States Treasury Department, Internal Revenue Service, as intoxicating liquors and which require Federal strip stamps, are taxable at the rate of *[$2.80]* ***$4.40*** a gallon.

(b)

DIVISION OF TAXATION
Cigarette Tax Act Rules
Readoption with Amendments: N.J.A.C. 18:5

Proposed: February 7, 1994 at 26 N.J.R. 759(a).
Adopted: March 9, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: March 14, 1994 as R.1994 d.184, **with substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 54:40A-20.

Effective Date: March 14, 1994, Readoption;
April 18, 1994, Amendments.
Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:
The Division received one comment from Michael Bolen of the Assembly Regulatory Oversight Committee as follows:
COMMENT: N.J.A.C. 18:5-3.4 is inconsistent with N.J.S.A. 54:40A-11 because it does not allow for the purchase of exactly 1,000 cigarette revenue tax stamps in denominations of $0.40.
RESPONSE: The Division will amend N.J.A.C. 18:5-3.4 to allow for the purchase of exactly 1,000 stamps.
COMMENT: N.J.A.C. 18:5-4.1 is inconsistent with N.J.S.A. 54:49-14 which allows a taxpayer to file a refund claim within four years after payment of any original or additional tax assessment, not two years as proposed in the rule.
RESPONSE: The Division will amend N.J.A.C. 18:5-4.1 to allow four years for a refund claim.
COMMENT: N.J.A.C. 18:5-6.2 requires fingerprinting for those retailers operating more than five cigarette vending machines, while N.J.S.A. 54:40A-4 limits fingerprinting to those with more than nine machines.
RESPONSE: The Division will amend N.J.A.C. 18:5-6.2(b) to limit fingerprinting to persons with more than nine vending machines, and, also in compliance with N.J.S.A. 54:40A-4b, to limit fingerprinting to retail dealers who sell cigarettes at more than nine premises.
COMMENT: N.J.A.C. 18:5-8.10 would limit the period to file a protest for any tax assessment to 30 days. P.L.1992, c.175, the Taxpayers Bill of Rights, extends the protest period to 90 days.
RESPONSE: The Division will amend N.J.A.C. 18:5-8.10 to extend the protest period to 90 days.
COMMENT: N.J.A.C. 18:5-12.3 does not conform with N.J.S.A. 54:40A-29 which provides that possession of counterfeit cigarette stamps of 2,000 or more cigarettes is a third degree crime punishable by imprisonment of between three to five years and a fine of $7,500, or both; and N.J.A.C. 18:5-12.3 provides only a fourth degree offense and imprisonment of 18 months maximum.
RESPONSE: N.J.A.C. 18:5-12.2 and 12.3 will now agree with N.J.S.A. 54:40A-29 by providing that the possession of 2,000 or more counterfeit cigarette stamps is a crime of the third degree.

Summary of Changes Upon Adoption:
The Division is amending N.J.A.C. 18:5-3.4, 4.1, 6.2, 8.10, 12.2 and 12.3 to conform them to statute. N.J.A.C. 18:5-3.4 will now agree with N.J.S.A. 54:40A-11 by allowing for the purchase of exactly 1,000 cigarette stamps; N.J.A.C. 18:5-4.1 will now agree with N.J.S.A. 54:49-14 by allowing four years for a refund claim; N.J.A.C. 18:5-6.2 will now agree with N.J.S.A. 54:40A-4 by limiting fingerprinting to persons with more than nine vending machines; N.J.A.C. 18:5-8.10 will conform to the Taxpayer Bill of Rights by extending the protest period to 90 days; and N.J.A.C. 18:5-12.2 and 12.3 will now agree with N.J.S.A. 54:40A-29 by providing that the possession of 2,000 or more counterfeit cigarette stamps is a crime of the third degree. Since these changes are wholly statutory in nature, the Division believes they can be adopted without destroying the value of the original notice of proposal.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:5.

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

18:5-3.4 Purchase of stamps; discount allowed
(a) The following discounts shall be allowed on all sales of cigarette revenue tax stamps to licensed distributors provided the distributor is in compliance with all of the provisions of the Act and these rules:
1. A discount of .01215 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of $0.20 when the number purchased is *[in excess of]* 1,000 stamps ***or more***.
2. A discount of .01125 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of $0.40 when the number purchased is *[in excess of]* 1,000 stamps ***or more***, or in multiples of 30,000 stamps for machine applied stamps.
3. A discount of .009 percent is allowed on all sales of hand applied cigarette revenue tax stamps in denominations of $0.50 when the number purchased is *[in excess of]* 1,000 stamps ***or more***, or in multiples of 7,200 stamps for machine applied stamps.

18:5-4.2 Refunds—in general
(a) A taxpayer may within *[two]* ***four*** years after the payment of any original or additional tax assessed against him under the Act, file a claim for refund (Form A-3730) with the Director setting forth, in detail, the grounds therefor and outlining, in detail, all pertinent circumstances relating thereto.
(b) (No change.)

18:5-6.2 Issuance of license; Director's powers
(a) (No change.)

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(b) The following individuals related to distributors, wholesale dealers, retail dealers operating more than *[five]* ***nine*** cigarette vending machines, and retail dealers who sell cigarettes at retail at more than *[five]* ***nine*** premises, except retail grocery stores and supermarkets primarily engaged in the self-service sale of foods and household supplies for off-premises consumption or to restaurants, hotels and motels operated by national corporations with such premises in six or more states and primarily engaged in the sale of foods for retail consumption or in the rental of rooms for lodging shall submit with applications for a license fingerprints, which shall be processed through the Federal Bureau of Investigation and the New Jersey State Police, and such other information as the Director may require:

1.-6. (No change.)

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

18:5-8.10 Protest against assessments

(a) If any taxpayer is aggrieved by any finding or assessment of the Director, within *[30]* ***90*** days of the giving of the notice of assessment or finding, the taxpayer may file a protest in writing in the form and manner described in N.J.A.C. 18:1-1.8 and, if desired, request an informal or formal hearing.

(b) (No change.)

18:5-12.2 Third degree crimes

(a) The following crimes are considered third degree crimes for purposes of the Act:

1. The forging or counterfeiting cigarette revenue tax stamps; *[or]*

2. The securing or possessing any counterfeit stamping device*[.]***; or***

3. The possession of 2,000 or more counterfeit stamped cigarettes by any person.

18:5-12.3 Misdemeanors

(a) The following misdemeanors are subject to a penalty of not more than $1,000 fine, or imprisonment of not more than one year; or both:

[1. The possession of 2,000 or more counterfeit stamped cigarettes by any person;]

Recodify existing 2. through 4. as ***1.*** through ***3.*** (No change in text.)

(a)

DIVISION OF TAXATION

Unfair Cigarette Sales Act Rules

Readoption: N.J.A.C. 18:6

Proposed: February 7, 1994 at 26 N.J.R. 760(a).

Adopted: March 11, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: March 14, 1994 as R.1994 d.185, **without change**.

Authority: N.J.S.A. 56:7-31.

Effective Date: March 14, 1994.

Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:6.

(b)

DIVISION OF TAXATION

Corporation Business Tax

Readoption with Amendments: N.J.A.C. 18:7

Adopted Repeals: N.J.A.C. 18:7-3.2 through 3.9, 3.11, 3.14, 4.1 through 4.4, 4.8 through 4.10, 4.12 through 4.14, 4.16, 4.17, 5.8, 5.11, 6.1 through 6.12, 7.6, 13.4, 14.7, 16.2 and 16.5

Adopted New Rules: N.J.A.C. 18:7-3.4, 3.6, 8.17 and 13.4

Proposed: February 7, 1994 at 26 N.J.R. 761(a).

Adopted: March 11, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.

Filed: March 14, 1994 as R.1994 d.186, **without change**.

Authority: N.J.S.A. 54:10A-27.

Effective Date: March 14, 1994, Readoption;
April 18, 1994, Amendments, New Rules and Repeals.

Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:

There were no comments received from the general public during the comment period. However, in connection with the legislative oversight function contained in the New Jersey Constitution, Article V, Section IV, paragraph 6, the Assembly Regulatory Oversight Committee raised a question concerning the readoption of N.J.A.C. 18:7-8.10(e) dealing with receipts from the sale of management, administration, or distribution services to a regulated investment company (such as a mutual fund) and the consistency of this rule with the underlying statute.

The committee questioned that "The allocation factor is used to determine the portion of a taxpayer's total income that is to be taxable in New Jersey. The allocation factor is a percentage measured by reference to the business activity of the taxpayer within New Jersey relative to the taxpayer's total business activity. N.J.S.A. 54:10A-6 supplies a formula that uses three measures of business activity, ownership of property in the State, receipts earned in the State, and compensation paid to employees in the State, to determine the allocation factor, N.J.S.A. 54:10A-6 provides a general rule that receipts earned in the State are assigned to the State and specifies that 'receipts from services performed in the State' are to be assigned to New Jersey."

"N.J.A.C. 18:7-8.10 does not appear to assign receipts from the sale of management, administration or distribution services to a regulated investment company (such as a mutual fund) on the basis of where the service is performed by the taxpayer. Instead, the regulation assigns receipts from sales of such services based on where the owners of the taxpayer's customer live or conduct business."

The Division responded that it believes that the rule in question is consistent with and conforms to the legislation. It is also an appropriate and reasonable rule in relation to the intent of the enabling legislation.

The New Jersey corporation business tax uses formulary apportionment to arrive at a fair tax for a taxpayer's right or privilege of doing business in New Jersey (see N.J.S.A. 54:10A-6). The Director has the right and duty to adjust the allocation factor if section 6 does not properly reflect the activity, business, receipts, etc. of a taxpayer reasonably attributable to the State (see N.J.S.A. 54:10A-8). The original statute was adopted during a historical period when manufacturing predominated. In the current era of information and technology, special rules and guidance are needed by taxpayers in particular industries.

The purpose of the receipts fraction is related to and measures the exploitation of the market place by a taxpayer. In the particular instance raised, the market place being exploited is the location where the shareholders are found. The payroll fraction addresses the fact that services are performed in the taxing jurisdiction (New Jersey). Thus, it is the Division's view that these principles are properly applied in the instance presented since the receipts rule relates to the market in question, and the principles are consistent with the legislative intention under the general provisions of the law and the Director's explicit rulemaking authority, N.J.S.A. 54:10A-27.

Accordingly, no change was required to be made at this time.

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Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:7.

Full text of the adopted amendments and new rules follows:

18:7-1.1 Corporation business tax; general provisions

For all returns where the accounting period begins after June 30, 1986, the tax is measured by the portion of entire net income allocable to New Jersey, subject to the minimum tax described in N.J.A.C. 18:7-3.4(c).

18:7-1.2 Total tax self-assessed

The total tax is self-assessed and payable by each taxpayer.

18:7-1.5 Limited partnership associations subject to the Act

Limited partnership associations formed under N.J.S.A. 42:3-1 are subject to tax under the act. No new limited partnership associations shall be formed in New Jersey in accordance with N.J.S.A. 42:3-1 et seq. after September 21, 1988.

18:7-1.8 Foreign corporations subject to tax

(a) Qualifications for subject corporations. The tax is imposed on every foreign corporation having a taxable status as described in N.J.A.C. 18:7-1.6 with specified exceptions, and includes every corporation which does business, employs or owns capital or property, or maintains an office in New Jersey in a corporate or organized capacity, regardless of whether it has formally qualified or is authorized to do business in New Jersey.

Example 1—Example 2. (No change.)

(b) Mandatory submission of affidavit; proof of authorization to do business. A foreign corporation which is subject to tax under the Act must submit an affidavit by a duly authorized corporate officer, stating whether or not the corporation at any time prior to the date of admitted subjectivity under the Act held any authorization to do business in New Jersey or carried on in this State any of the activities set forth in N.J.A.C. 18:7-1.6(b).

18:7-1.9 Doing business in New Jersey; definition and rules of construction

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

(d) If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is not subject to tax in New Jersey, provided it is not subject to tax by virtue of other contacts. (See P.L. 86-272, 15 U.S.C. §381.)

1. For the in-State activities of the foreign corporation to be immune from taxation for the purposes of "doing business," such activities must be limited solely to:

i. Speech or conduct that explicitly or implicitly invites an order; and

ii. Activities that neither explicitly nor implicitly invite an order but that are entirely ancillary to requests for an order.

2. Examples of activities that may be considered non-immune are:

i. Repairs, maintenance, and installations;

ii. Collection or repossession activities;

iii. Credit investigations;

iv. Personnel courses or lectures;

v. Technical assistance;

vi. Customer complaint resolution if the sole purpose is not to ingratiate sales personnel with the customer;

vii. Taking orders or deposits;

viii. Acquiring personnel for other than solicitation activities;

ix. Maintaining a display at a single location in excess of two weeks during the tax year;

x. Carrying samples for distribution for value;

xi. Owning, leasing, or maintaining in-state facilities such as a warehouse or answering service; and

xii. Consignment of personal property.

3. Examples of immune activities are:

i. Solicitation of orders through advertising;

ii. Carrying samples for display or distribution without charge;

iii. Providing automobiles not registered in New Jersey for sales personnel;

iv. Checking customer inventories without charge;

v. Maintaining a display at a single location for less than two weeks during the tax year;

vi. Recruitment, training, or evaluating of sales personnel;

vii. A sales employee's in-home work space that is not paid for by the company; and

viii. Mediating customer complaints if just to ingratiate sales personnel with the customer.

(e) Independent contractors may solicit or make sales or maintain an office without the company's loss of immunity. Sales representatives who represent a single principal would not be considered independent contractors. Immunity would be lost if the independent contractor maintained a stock of goods in the State under consignment or for purposes other than for display and solicitation.

18:7-1.10 Foreign corporations engaged in interstate commerce

(a) A foreign corporation which falls within any of the categories creating a taxable status, as enumerated in N.J.A.C. 18:7-1.6 is subject to the Tax Act notwithstanding its business is wholly or partly in interstate commerce.

(b) Such tax is measured by entire net income allocable to New Jersey, including that derived from or used in interstate commerce.

18:7-1.12 Exempt corporations

(a) Corporations exempted from taxation under the Act include:

1. Telegraph, telephone, cable or telecommunications companies subject to tax under N.J.S.A. 54:30A-16 et seq. (including, without limitation, N.J.S.A. 54:30A-18.6); or any statute or law imposing a similar tax or taxes;

2. Railroad companies subject to tax under N.J.S.A. 54:29A-1, et seq.;

3. Energy, gas and electric companies subject to tax under N.J.S.A. 54:30A-49, et seq.; or any statute or law imposing a similar tax or taxes;

4. Corporations subject to a tax upon the basis of gross receipts, or insurance premiums collected;

5. Railroad, canal corporations, savings banks, agricultural cooperative associations incorporated or domesticated under N.J.S.A. 4:13-1 et seq. and exempt under Section 521 of the Federal Internal Revenue Code (26 U.S.C. 521), or building and loan or savings and loan associations;

6. Cemetery corporations not conducted for pecuniary profit of any private shareholder or individual;

7. Nonprofit corporations, associations or organizations not conducted for pecuniary profit of any private shareholder or individual, and established, organized or chartered without capital stock under the provisions of Titles 15, 15A, 16 or 17 of the Revised Statutes; or a special charter; or any similar general or special law of this or any other state (see N.J.A.C. 18:1-1.4(a) for exemption opinion procedures);

8. Nonstock corporations organized under the laws of this State or of any other state of the United States to provide mutual ownership housing under Federal law by tenants, but:

i. The exemption under this subsection shall continue only as long as:

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

(3) The corporate property is encumbered by a mortgage deed or deed of trust insured under the National Housing Act (48 Stat. 1246) as amended by subsequent Acts of Congress. (See 12 U.S.C.A. §1701, et seq.)

ii. (No change.)

9. A corporation not for profit organized under any law of this State where the primary purpose of it is to provide for its shareholders or members housing in a retirement community as defined under the "Retirement Community Full Disclosure Act," N.J.S.A. 45:22A-1, et seq.;

10. Corporations which are licensed as insurance companies under the laws of another state, including corporations which are surplus

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lines insurers declared eligible by the Commissioner of Insurance pursuant to section 11 of P.L. 1960, c. 32 (N.J.S.A. 17:22-6.45) to insure risks within this State; and

11. Corporations exempt from the corporation business tax by virtue of the provisions of another New Jersey statute.

(b) See N.J.A.C. 18:1-1.4 for the procedure to obtain exemption opinion letters.

18:7-1.13 Regulated investment company; definition

"Regulated investment company" means any corporation which for a period covered by its return is registered and regulated under the Investment Company Act of 1940 (54 Stat. 789), as amended. (See 15 U.S.C.A. §80a-1 et seq.)

18:7-1.15 Investment company; definition

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

(e) A corporation electing to file as an investment company shall make its election on a timely filed original return or on a timely filed amended return, and shall substantiate its claim in accordance with the tests enumerated in this rule. Where the taxpayer does not clearly document its claim to investment company status through attached riders, the claim will be denied. An election made on an amended return shall be filed in accordance with the periods shown in N.J.A.C. 18:7-13.8(a) to be eligible for any refund claimed. An election to file as an investment company, once made, may only be revoked by the taxpayer within four years of the filing of the original return. The election to file as an investment company is a taxpayer election and may not be initiated by the Division of Taxation or granted by the Division outside the time frame prescribed.

(f) In order for a corporation to qualify as an investment company, it must meet the three-part business test and the asset test:

1. Business test (three parts):

i. (Income adjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions as reported for Federal income tax purposes, from cash and/or investment assets. Total income before deductions as reported for Federal income tax purposes must be adjusted as follows:

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

ii. (Income unadjusted): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have derived 90 percent or more of its total income before deductions, as reported for Federal income tax purposes, from cash and/or investment assets plus interest on Federal, State, municipal and other obligations not otherwise included in Federal taxable income and exclusive of any capital loss carryback or carryforward.

(1) A gain resulting from the disposition of an asset and reported on the installment basis for Federal income taxes is considered income for purposes of the investment company statute in the year in which the installment is received under both (c)1i and ii above. Income reported on the installment basis is treated as investment income only if it is generated by the sale of an investment asset. Interest income received in conjunction with each installment is deemed investment income.

iii. (Deductions): For purposes of the 90 percent requirement provided by (a) above, taxpayer, during the entire period covered by its report, must have incurred 90 percent or more of its total deductions as reported for Federal income tax purposes, for holding, investing and reinvesting in cash and/or investment assets.

2. Assets test: For purposes of the 90 percent requirement provided by (b)2i and ii above, at least 90 percent of the taxpayer's gross assets located in New Jersey, valued at cost, must consist of cash and/or investment assets, during the period covered by its report.

Example No. 1—Example No. 8 (No change.)

18:7-2.1 Nature of tax; in general

(a) The Act imposes a franchise tax on every domestic corporation not otherwise exempt; and upon every foreign corporation not otherwise exempt, falling within any of the taxable categories enumerated in N.J.A.C. 18:7-1.6.

(b) (No change.)

18:7-2.11 Component factors of tax base

The tax for the period or partial period prescribed in N.J.A.C. 18:7-2.10 is measured by taxpayer's allocable entire net income.

18:7-2.12 Application of State Franchise Tax to corporations

The franchise tax is imposed for all or any part of each calendar or fiscal year during which the taxpayer possessed a New Jersey franchise or otherwise has a taxable status as set forth in N.J.A.C. 18:7-1.16.

18:7-3.1 General bases for computation of tax

On a return for any accounting period which begins after June 30, 1986, no portion of the tax is measured by net worth.

18:7-3.2 and 3.3 (Reserved)

18:7-3.4 Minimum Tax

(a) The tax paid in the case of an investment company, a regulated investment company or real estate investment trust shall not be less than $250.00. The minimum tax for other corporations is set forth in (b) through (g) below.

(b) For accounting or privilege periods beginning prior to calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $25.00 and in the case of a foreign corporation shall not be less than $50.00.

(c) For accounting or privilege periods beginning in calendar year 1994, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $50.00 and in the case of a foreign corporation shall not be less than $100.00.

(d) For accounting or privilege periods beginning in calendar year 1995, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $100.00 and in the case of a foreign corporation shall not be less than $200.00.

(e) For accounting or privilege periods beginning in calendar year 1996, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $150.00 and in the case of a foreign corporation shall not be less than $200.00.

(f) For accounting or privilege periods beginning in calendar year 1997, the tax paid pursuant to the corporation business tax in the case of a domestic corporation shall not be less than $200.00 and in the case of a foreign corporation shall not be less than $200.00.

(g) The Director shall adjust the minimum tax for accounting or privilege periods beginning in each fifth year following calendar year 1997 and each fifth year thereafter by multiplying the minimum tax for periods beginning in 1997 by an amount equal to one plus 75 percent of the increase, if any, in the annual average United States producer price index for finished goods published by the Federal Department of Labor, Bureau of Labor Statistics, for the year preceding the determination year over such index for calendar year 1996.

18:7-3.5 (Reserved)

18:7-3.6 Net income base

(a) For all fiscal periods beginning on or after January 1, 1980, the net income tax rate is nine percent.

(b) For a foreign corporation acquiring a taxable status in New Jersey on or after January 1, 1980 and filing its New Jersey return on a short period basis, the tax rate is nine percent on adjusted entire net income after proper proration.

(c) In addition, a surtax calculated pursuant to N.J.S.A. 54:10A-5.1 and 5.2 shall be computed and added to the applicable tax.

18:7-3.7 (Reserved)

18:7-3.8 Investment company; tax self-assessed and payable

(a) The tax self-assessed and payable by an investment company entitled and electing to report as such is a tax measured by 25 percent of its entire net income at the rate provided by law.

(b) In no case shall the total tax be less than $250.00.

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18:7-3.9 (Reserved)

18:7-3.11 (Reserved)

18:7-3.12 Method of accounting

In general, the method of accounting, whether cash, accrual or other basis, used in computing net income for Federal income tax purposes is to be used in computing entire net income under the Act.

18:7-3.13 Estimated tax

(a) (No change.)

(b) When the tax liability for the preceding tax year is less than $500.00 a taxpayer may, in lieu of making the installment payments otherwise required, discharge its entire obligation with respect to estimating its tax by making a single payment on or before the original due date for filing its return. The single payment is 50 percent of the tax shown on the face of its return. Such tax must be determined with reference to the tentative return or final return which was filed or should have been filed on or before the original date of such return. The single payment should be computed by taking into account any payment which may have been made on the 15th day of the first month of its current tax year.

(c) For purposes of applying this rule, it is necessary that the preceding tax year be a full calendar or fiscal year, or where such return is for a short period of less than 12 months, the actual tax liability for such short period must be divided by the number of whole months covered by the return and multiplied by 12 to impute a tax for a full calendar or fiscal year. For the purpose of this computation a fraction of a month is to be disregarded.

Recodify existing (e) through (h) as (d) through (g) (No change in text.)

18:7-3.14 (Reserved)

18:7-3.15 Interest on under payment of installment payments

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

(c) The rate to be used in (b) above is an annual rate of five percent above the prime rate, compounded daily from the date the tax was originally due and payable until the date of payment. On and after July 1, 1993, the rate is three percent above the prime rate compounded annually. Each such underpayment shall bear interest at the rate prescribed above. The following is an example of underpayment interest computation:

1. Assume the average predominant prime rate for January 1, 1994 is six percent. Therefore, the applicable interest on underpayment pursuant to this subsection is six percent plus three percent or nine percent on the amount of any underpayment of estimated tax due on or after April 1, 1994 but before July 1, 1994. The method prescribed for computing the addition to the tax may be illustrated by the following example:

i. A corporation reporting on a calendar year basis estimated on its Statement of Estimated Tax for 1994, estimated tax in the amount of $50,000.00. It made payments of $12,500.00 each on April 15, 1994, June 15, 1994, September 15, 1994 and December 15, 1994. On April 15, 1995, it filed its tax return, CBT-100, showing a total tax of $200,000.00. Since the amount of each of the four installments paid by the last date prescribed for payment thereof was less than 90 percent of the tax shown on the return, the addition to the tax under this rule is applicable and is computed as follows, assuming that no exception applies:

Item (1)	Tax on return for 1994	$200,000
Item (2)	Ninety percent of item (1)	180,000
Item (3)	Amount of estimated tax required to be paid on each installment date (25 percent of $180,000)	45,000
Item (4)	Deduct amount paid on each installment date	12,500
Item (5)	Amount of underpayment for each installment date (item (3) minus item (4)) ...	$ 32,500
Item (6)	Interest shall be charged on each underpayment at the rate as prescribed in this subsection	

First installment: Interest period April 15, 1994 to April 15, 1995
Second installment: Interest period June 15, 1994 to April 15, 1995
Third installment: Interest period September 15, 1994 to April 15, 1995
Fourth installment: Interest period December 15, 1994 to April 15, 1995

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

18:7-3.16 Banking corporations and financial business corporations

N.J.A.C. 18:7-3.13, 3.15, 11.12 and 13.6 apply to banking corporations and financial business corporations. See N.J.S.A. 54:10A-34 et seq. regarding their general taxability under the Corporation Business Tax Act.

18:7-4.1 through 4.4 (Reserved)

18:7-4.5 Indebtedness owing directly or indirectly

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

(d) Direct indebtedness: In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness is includible by reason of direct holding of taxpayer's stock by the creditor whether or not the creditor is functioning as a mere conduit of funds from a third party source.

(e)-(f) (No change.)

18:7-4.7 Governmental obligations and securities

In the determination of net income, interest and other income from governmental obligations and securities are includible.

18:7-4.8 through 4.10 (Reserved)

18:7-4.11 Subsidiary corporations; definition

(a) A subsidiary is defined as any corporation in which the taxpayer is the owner of:

1.-3. (No change.)

(b) (No change.)

18:7-4.12 through 4.17 (Reserved)

18:7-5.2 Entire net income; how computed

(a) "Taxable income before net operating loss deduction and special deductions," hereinafter referred to as Federal taxable income, is the starting point in the computation of the entire net income. After determining Federal taxable income, it must be adjusted as follows:

1. Add to Federal taxable income:

i.-iv. (No change.)

v. All New Jersey franchise taxes paid or accrued under the Corporation Business Tax Act, whether measured by net worth, net income or otherwise, to the extent such taxes were deducted in computing Federal taxable income; and, with respect to accounting years beginning after July 7, 1993, taxes paid or accrued to a possession or territory of the United States, a state, a political subdivision thereof, or the District of Columbia on or measured by profits or income, or business presence or business activity including, without limitation, the Michigan Single Business Tax and taxes measured in whole or in part by "net taxable capital" to the extent such taxes were deducted in computing Federal taxable income;

vi.-ix. (No change.)

x. In any year or short period which ends after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any depreciation or cost recovery (ACRS or MACRS) which was deducted in arriving at Federal taxable income and which was determined in accordance with Section 168 of the Federal Internal Revenue Code in effect after December 31, 1980. See (a)2iv below for depreciation allowable in computing entire net income.

xi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any interest, amortization or transactional costs, rent, or any other deduction which was claimed in arriving at Federal taxable income as a result of a "safe harbor leasing" election made under Section 168(f)8 of the Federal Internal Revenue Code;

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provided, however, that for a fiscal year or short period which begins in 1981 and ends in 1982, any such amount which relates to property placed in service during that part of the return year which occurs in 1981 shall be allowed as a deduction in arriving at entire income for that year only; and provided further that any such amount with respect to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be allowed in any event.

(1) (No change.)

xii. (No change.)

xiii. The amount deducted from Federal taxable income for any civil, civil administrative, or criminal penalty or fine, including a penalty or fine under an administrative consent order, assessed and collected for violation of a State or Federal environmental law, an administrative consent order, or an environmental ordinance or resolution of a local governmental entity, and any interest earned on the penalty or fine, and any economic benefits having accrued to the violator as a result of a violation, which benefits are assessed and recovered in a civil, civil administrative, or criminal action, or pursuant to an administrative consent order. The provisions of this subsection shall not apply to a penalty or fine assessed or collected for a violation of a State or Federal environmental law, or local environmental ordinance or resolution, if the penalty or fine was for a violation that resulted from fire, riot, sabotage, flood, storm event, natural cause, or other act of God beyond the reasonable control of the violator, or caused by an act or omission of a person who was outside the reasonable control of the violator.

xiv. The amount deducted from Federal taxable income of treble damages paid to the Department of Environmental Protection and Energy pursuant to subsection a of section 7 of P.L. 1976, c.141 (N.J.S.A. 58:10-23.11f) for costs incurred by the Department in removing, or arranging for the removal of, an unauthorized discharge upon failure of the discharger to comply with a directive from the Department to remove, or arrange for the removal of, the discharge.

2. Deduct from Federal taxable income:

i.-iii. (No change.)

iv. Depreciation on property placed in service after 1980 but prior to taxpayer fiscal or calendar accounting years beginning on and after July 7, 1993 on which ACRS or MACRS has been disallowed under (a)1x above using any method, life and salvage value which would have been allowable under the Federal Internal Revenue Code at December 31, 1980. A method, once adopted, must be used for all succeeding years for purposes of computing depreciation on that particular recovery property, except only that a taxpayer may make a change in method which would not have required the consent of the Commissioner of Internal Revenue. Personal property placed in service during any year after 1980 must be treated using the half year convention by claiming a half year of depreciation in the year that property is placed in service. No depreciation is allowable in the year of disposal. Aggregate depreciation claimed under this paragraph for all years is limited to the basis for depreciation under the Federal Internal Revenue Code at the date the property is placed in service less whatever salvage value would have been required to be considered under the Federal Internal Revenue Code at December 31, 1980.

v. (No change.)

vi. In any year or short period ending after 1981, with respect to property placed in service on and after January 1, 1981, but prior to taxpayer fiscal or calendar accounting years beginning on or after July 7, 1993, any item of income included in arriving at Federal taxable income solely as a result of a "safe harbor leasing" election made under Section 168(f)(8) of the Federal Internal Revenue Code; provided, however, that for the accounting period which begins in 1981 and ends in 1982, such income which relates to property placed in service during 1981 is not to be excluded; and provided, further, that any such income which relates to a qualified mass commuting vehicle pursuant to Federal Internal Revenue Code Section 168(f)(8)(D)(v) (formerly 168(f)(8)(D)(iii)) shall be included in entire net income in any event.

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

vii. (No change.)

18:7-5.4 Factors not adjustable to Federal taxable income

(a) No adjustment to Federal taxable income is permitted under this rule for:

1. Gains or losses not recognized for Federal income tax purposes under Section 351 or similar sections of the Internal Revenue Code but only to the extent that recapture or other provisions of the Code are not paramount to these sections.

2. The general business credit allowed or allowable for Federal income tax purposes under Section 38 of the Internal Revenue Code.

i. (No change.)

ii. Upon disposition of assets which qualified for a general business credit under Section 38 of the Internal Revenue Code, taxpayer must use the same basis for computing gain or loss for New Jersey net income tax purposes as employed for Federal income tax purposes.

3. Depreciation attributable to a decrease in the basis of depreciable property for Federal income tax purposes, as a result of the general business credit allowed or allowable under Section 38 of the Internal Revenue Code.

i.-ii. (No change.)

18:7-5.6 Adjustment of entire net income to period covered by return; how computed

(a) (No change.)

18:7-5.7 Right of director to independently determine net income

If in the opinion of the Director the method employed in N.J.A.C. 18:7-5.6 does not properly reflect the taxpayer's net income properly apportionable to New Jersey under the Act for the period covered by its New Jersey return, the Director may determine entire net income solely on the basis of the taxpayer's income during such period.

18:8-5.8 (Reserved)

18:7-5.10 Right of Director to correct distortions of net income allocation factors; adjustments and redeterminations

(a) Whenever it shall appear to the Director that any taxpayer fails to maintain its records in accordance with sound accounting principles or conducts its business or maintains its records in a manner so as either directly or indirectly to distort its true entire net income or the proportion thereof properly allocable to this State, or whenever any taxpayer maintains a place of business outside this State, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or any person or firm, for the purpose of evading tax under the Act, or whereby the activity, business, receipts, expenses, assets, liabilities, or net income of the taxpayer are improperly or inaccurately reflected, the Director is authorized and empowered, in his or her discretion and in whatever manner he or she may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the State and the allocation of entire net income or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under the Act.

1.-10. (No change.)

(b) The application of this section is not limited to an agreement, understanding or arrangement existing between a taxpayer and any other corporation or any person or firm for the purpose of avoiding or evading tax under the Act. It is also applicable where adjustments and redeterminations relate to transfer pricing and other transactions between related persons or entities where evasion or tax avoidance are not a consideration. The Director may initiate adjustments under this section solely in the interests of determining a fair and reasonable tax, and without respect to any benefit arising out of intercorporate relationships or the relationships of any person holding a substantial portion of the stock of a taxpayer. The Division shall not be limited to indices, trade practices, cost sheets, Internal Revenue Reports or any other factor in determining the appropriate transfer price for goods, services, intangibles or other dispositions

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made to related parties. Where the Director determines that there is an adjustment to net income under this section, he or she may also make a corresponding adjustment to the allocation factor.

(c)-(e) (No change.)

(f) Whenever the Director deems it necessary, in order properly to reflect entire net income of the taxpayer, he or she may determine the year or period in which an item of income, deduction, asset or liability shall be included, without regard to the method of accounting used by the taxpayer.

(g) (No change.)

18:7-5.11 (Reserved)

18:7-5.12 Net operating loss deduction

A taxpayer may deduct a New Jersey net operating loss carryover as defined in N.J.A.C. 18:7-5.13 in computing its entire net income before exclusions and before the net operating loss deduction.

18:7-5.13 New Jersey net operating loss carryover

(a) A New Jersey net operating loss as defined in N.J.A.C. 18:7-5.15 for any taxable year ending after June 30, 1984 becomes a net operating loss carryover. The net operating loss carryover is carried to each of the succeeding taxable years and is reduced in each such succeeding year by the amount of entire net income before net operating loss deduction and before exclusions, and is further reduced to zero seven years following the year of the loss, taking into account the normal or extended due date for filing the return for the seventh year succeeding the year of the loss. The net operating loss carryover may not be carried back to any year preceding the year of the loss. For this purpose, taxable year shall mean the accounting period covered by the taxpayer's return. In no event may a net operating loss carryover be used for a net operating loss deduction on the eighth return succeeding the loss year.

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

SUBCHAPTER 6. (RESERVED)

18:7-7.1 General instructions regarding allocation of net income

(a) No corporation, foreign or domestic (other than a corporation entitled and electing to report as an investment company, regulated investment company or real estate investment trust) is entitled to allocate any part of its entire net income outside New Jersey unless during the period covered by the return it maintained a regular place of business outside the State.

(b) In the absence of a regular place of business 100 percent of its entire net income must be allocated to New Jersey.

(c) The mere ownership of assets outside New Jersey does not constitute a basis for allocating less than 100 percent of the taxpayer's net income to New Jersey.

(d) (No change.)

18:7-7.3 "Allocating" and "non-allocating" companies; definition

(a) A taxpayer which allocates a portion of its entire net income outside this State is referred to as an "allocating" taxpayer.

(b) A taxpayer which does not allocate any part of its entire net income outside this State is referred to as a "non-allocating" taxpayer.

18:7-7.4 Allocation factor; definition

"Allocation factor" means the proportionate part of a taxpayer's entire net income used to determine a measure of its tax under the Act.

18:7-7.5 Allocation factor; application

If the taxpayer had a regular place of business outside New Jersey during the period covered by the return, its tax liability under the New Jersey Corporation Business Tax Act is measured by that part of its entire net income allocated to New Jersey according to a formula called the business allocation factor.

18:7-7.6 (Reserved)

18:7-8.12 Other business receipts

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

(c) For treatment of receipts from sales of capital assets, see N.J.A.C. 18:7-8.9.

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

Example: (No change.)

(f) For treatment of non-operational income, see N.J.A.C. 18:7-8.17.

18:7-8.13 Business allocation factor; payroll fraction

(a) (No change.)

(b) The percentage of the taxpayer's payroll allocable to New Jersey is determined by dividing the wages, salaries and other personal service compensation of the taxpayer's employees within New Jersey during the period covered by the return by the total amount of compensation of all the taxpayer's employees during the period.

1. (No change.)

2. In general, a taxpayer reporting to the Division of Employment Security in the New Jersey Department of Labor must allocate to New Jersey all wages, salaries and other personal service compensation, and other items reportable to that Division, including the portions thereof, in individual cases, over $6,200 for the calendar year 1978 and $6,600 for the calendar year 1979 and for subsequent years the amount prescribed by the New Jersey Department of Labor. (As a point of reference, such base wage amount for 1992 was $15,300 and for 1993 was $16,000.)

(c) (No change.)

18:7-8.16 Allocation; International Banking Facilities

Any banking corporation, having an international banking facility, which maintains a regular place of business (other than a statutory office) outside of New Jersey, which elects to take the deduction from entire net income provided by N.J.A.C. 18:7-5.2(a)2vii, shall complete the allocation factor under this subchapter in the usual way. For the purpose of allocation, however, all amounts attributable, directly or indirectly, to the production of the eligible net income of an international banking facility as defined in N.J.A.C. 18:7-16.1, shall be included in both the numerator and denominator of the fractions described in this subchapter, whether or not such international banking facility income amounts are otherwise attributable to New Jersey.

(See: N.J.A.C. 18:7-16 regarding international banking facilities.)

18:7-8.17 Non-operational income

Non-operational income of taxpayers other than those that have their principal place from which the trade or business of the taxpayer is directed or managed in this State is not subject to allocation. See N.J.S.A. 54:10A-6.1.

18:7-11.1 Returns; corporations required to file

(a) Returns are required to be filed annually by the following:

1. Every corporation subject to tax, regardless of the amount of its entire net income.

2. (No change.)

18:7-11.4 Amended return

Any taxpayer filing an amended return with the United States Treasury Department shall also file an amended return with the Division of Taxation. See N.J.A.C. 18:7-11.8.

18:7-11.6 Forms of returns

(a) Returns are required to be made on forms prescribed by the Director.

1. In the case of all taxpayers, annual returns are required to be filed on Form CBT-100 or CBT-100S. As used in these rules, references to CBT-100 may be interpreted to include CBT-100S, as the context may require.

2. In the case of all taxpayers entitled and electing to allocate entire net income, the supplemental sheet, to be used in conjunction with Form CBT-100 and containing the allocation schedules, must be completed and annexed to Form CBT-100.

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

18:7-11.7 Time for filing returns

(a) (No change.)

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(b) A return is timely filed and deemed delivered on the date of the United States postmark stamped on the envelope. See N.J.S.A. 54:49-3.1.

(c) A return is timely filed when it is mailed to the Division of Taxation on the next business day, if the due date falls on a Saturday, Sunday or State holiday.

18:7-11.8 Time to report change or correction in Federal net income

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

(c) After the filing of a report of change or correction on an IRA-100, or CBT-100-X, the Director may, within the time prescribed by law, audit the return and compute and assess the tax based upon the issue or issues set forth in the revenue agent report, but neither the Director nor the taxpayer may change the allocation of entire net income within and without New Jersey as theretofore computed.

(d) (No change.)

18:7-11.12 Extension of time to file return; interest and penalty

(a) No extension will be granted unless request is made on Tentative Return Form CBT-200T and is actually received by the Division or postmarked on or before the due date of the return. The Tentative Return must:

1.-3. (No change.)

(b) (No change.)

(c) Banking and financial corporations may request an extension of time to file return subject to the following conditions.

1. No extension will be granted unless request is actually received by the Division or postmarked on or before the due date of the return;

2.-6. (No change.)

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

(f) Interest and penalty are chargeable as follows:

1. (No change.)

2. Any unpaid portion of the tax on the final return which is in excess of the amounts paid shall bear interest at the rate of one and one-half percent per month, or fraction thereof from the original due date of the return to the date of actual payment or December 8, 1987. On and after December 9, 1987 the unpaid portion of the tax shall bear interest at the annual rate of five percentage points above the prime rate, compounded daily from the date the tax was originally due or December 9, 1987, whichever is later, to the date of actual payment. On and after July 1, 1993, the unpaid portion of the tax shall bear interest at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

3. In addition, if the amounts paid up to and including the time for filing of the tentative return total less than the lesser of 90 percent of the amount of tax due, or for a taxpayer that had a preceding fiscal or calendar accounting year of 12 months and filed a return for that year showing a tax liability equal to the tax computed at the rates applicable to the current accounting year applied to the facts shown on the return for and the law applicable to the preceding accounting year, the taxpayer shall be liable for a penalty of five percent per month, or fraction thereof, on the amount of underpayment. In this context, "filing of the return" means filing its tentative return incident to its request for extension, "the time for filing" means the original due date for filing the return, and "amount of underpayment" means the difference between 100 percent of the tax shown on the final return and the total of all installments of estimated tax paid on or before the original due date for filing the return, as well as any amount paid with the tentative return.

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

Statutory Reference

See N.J.S.A. 54:10A-15 as to the requirement to file an annual return; 10A-17 as to penalties for late filing of returns; 10A-15 as to necessity of certification of taxpayer's return by an authorized corporate officer; 10A-19 as to extension of the due date and interest to be assessed during such extension period; and 49-6 as to right of Director to issue deficiency assessments or reassessments after final return is filed.

18:7-11.16 Return to be filed by an S Corporation

(a) Except as may be provided otherwise by this Section, an S corporation, that is, one which has made an election under Section 1361 et seq. of the Internal Revenue Code of 1954 as amended and supplemented, must complete its New Jersey Corporation Business Tax Return on its own separate basis as though no election had been made under the Federal Statute.

(b) Except as may be provided otherwise by this section, in preparing its Corporation Business Tax Return the taxpayer cannot assume that ordinary income or loss (Federal taxable income) is equal to Federal taxable income before net operating loss deduction and special deductions for New Jersey Corporation Business Tax purposes, when the taxpayer has elected Federal S corporation treatment. Certain amounts not necessarily limited to I.R.C. Section 179 expenses, and 1120-S dividends that qualify for the dividend exclusion are not included as part of the S corporation's ordinary income (loss) computation, but rather are passed directly through to the shareholder on the Federal Form K-1 Schedule. For Corporation Business Tax purposes these amounts are included in the computation of entire net income, as if the corporation were a C corporation and no Federal S corporation election were made.

Examples 1.-2. (No change.)

(c) With respect to tax years beginning after July 7, 1993, S corporation status may be elected for New Jersey purposes by the shareholders of a Federal S corporation. The filing of an election form CBT-2553 with the Division to be recognized as a New Jersey S corporation is required. A New Jersey S corporation is entitled to pay its tax at a preferential rate as provided in N.J.S.A. 54:10A-5(c)(2) and (3) and to report and pay its tax liability on Form CBT-100S.

18:7-11.18 Reproduction of forms

(a) Subject to conditions and requirements of this section, the Director will accept for filing purposes reproductions of the New Jersey Corporation Business Tax Return Forms CBT-100, CBT-100-X, and CBT-200T in lieu of the official forms printed and furnished by the Director. Anyone contemplating the use of reproduced forms is cautioned to observe that the conditions herein stated may vary from the Federal regulations relating to reproduction of Federal tax forms.

(b) In order to be acceptable for filing purposes, reproduction of Forms CBT-100, CBT-100-X, and CBT-200T must meet the following conditions and requirements:

1.-11. (No change.)

18:7-12.1 Short period returns; when required

(a) In general, every corporation must file a return for each fiscal or calendar accounting period or part thereof during which it has or had a taxable status in New Jersey. In certain cases, the taxpayer will be required to file a return covering an accounting period of less than 12 months. This may necessitate an adjustment of entire net income.

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

18:7-12.2 Short period returns; proration procedures

(a) Where a short period return is required, the entire net income is permitted to be prorated as follows:

1. For any short period return, the minimum tax for a New Jersey corporation and for a foreign corporation may not be prorated and at least the proper minimum tax amount must be paid.

Recodify existing (f) and (g) as 2 and 3. (No change in text.)

4. Where a taxpayer is entitled and elected to allocate less than the full amount of its entire net income to New Jersey the allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return. For treatment of allocation on a short period return, see N.J.A.C. 18:7-12.3.

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18:7-12.3 Short period returns; allocation

(a) In the case of a taxpayer entitled and electing to allocate less than the full amount of its entire net income to New Jersey, the applicable allocation factors must reflect, both in the numerator and denominator, only the period covered by the short period return.

(b) In that case, the allocation factor shall be applied to entire net income only after such entire net income or entire net worth shall have been prorated as indicated in N.J.A.C. 18:7-12.2.

(c) (No change.)

18:7-13.1 Assessment and reassessment

(a) On its return, the tax payer must compute the amount of tax payable under the law and must remit the amount of the indicated tax.

1.-2. (No change.)

3. There shall be added to the amount of any deficiency assessment or reassessment, interest at the rate of one and one-half percent per month or fraction thereof to be calculated from the date the tax was originally due and payable until December 8, 1987. On and after December 9, 1987, interest shall be calculated at the annual rate of five percentage points above the prime rate, compounded daily until the date of actual payment. On and after July 1, 1993, interest shall be calculated at the rate of three percentage points above the prime rate assessed for each month or fraction thereof, compounded annually at the end of each year from the date such tax was originally due to the date of actual payment.

4. If the failure to pay tax when due is explained to the satisfaction of the Director, the Director may abate the payment of any interest charge in excess of the annual rate of three percentage points above the prime rate.

(b) The Director may assess an additional tax at any time within five years from the date of the filing of the return or amended return. For returns filed on and after July 1, 1993, the Director may assess an additional tax at any time within four years from the date of the filing of the return or amended return.

1. In the case of a false or fraudulent return with intent to evade the tax, the Director may assess the tax at any time.

2. (No change.)

3. Where a return is filed before or after the due date prescribed in the statute, the Director may assess an additional tax, recompute and reassess the tax at any time within five years from the due date of the return, or from the date of filing of the return or amended return, whichever is later. For returns filed on and after July 1, 1993, the period to assess additional tax is four years.

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

(e) At any time thereafter, within five years from the date of filing the report of change or correction or an amended return, the Director may reexamine the return, recompute and reassess the tax, but without changing the allocation of entire net income within and without New Jersey as previously computed, and shall so notify the taxpayer. For returns filed on or after July 1, 1993, the period of limitation to make a deficiency assessment runs for an additional four year period from the date that taxable income is finally changed by the Commissioner of Internal Revenue. The additional period of limitation will only be applicable to the increase or decrease in tax attributable to the adjustments in the changed or corrected income.

Statutory Reference

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under the Act should a change, correction, or recomputation of federally taxable income occur, and 49-6 as to Director's right to recompute and reassess any such deficiency assessment filed by taxpayer.

18:7-13.2 Hearing; protest

(a) Rules concerning the right of taxpayer to a hearing are:

1. Any taxpayer aggrieved by any finding or assessment of the Director may, within 90 days of the date of the notice of assessment or finding, file a protest in writing, in the form and manner described in N.J.A.C. 18:1-1.8, and may request a hearing;

2. (No change.)

(b) (No change.)

18:7-13.4 Service of notice on taxpayers

(a) Any notice required to be given by the director pursuant to the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., may be served personally or by mailing the same to the person for whom it is intended, addressed to such person at the address given in the last report filed by that person pursuant to the provisions of the State Tax Uniform Procedure Law, or of any State tax law, or if no report has been filed, then to such address as may be obtainable. The mailing of such notice shall be presumptive evidence of the receipt of the same by the person to whom it was addressed. A notice may at the prescription of the director include on its face a designation which shall identify the notice for purposes of communication.

(b) An assessment notice pursuant to N.J.S.A. 54:49-5, N.J.S.A. 54:49-6 or N.J.S.A. 54:49-7 shall contain the statements required pursuant to subsections a, b, and f of N.J.S.A. 54:48-6.

(c) An assessment notice pursuant to N.J.S.A. 54:49-5, 54:49-6 or 54:49-7 shall include a statement of the reason for the assessment sufficient to inform a reasonable lay person of the statutory requirements which in the opinion of the Director require the assessment, the actions or omissions of the taxpayer which require the assessment, or the nature of the insufficient documentary evidence, if any, which has prompted the assessment, including:

1. In the case of an underpayment or failure of payment, a statement of the corresponding alleged correct amount and correct date of payment; and

2. In the case of a failure to file a return, a statement of the alleged required filing date.

(d) A refund determination notice pursuant to N.J.S.A. 54:49-15 shall include the statements required pursuant to subsections b, d and f of N.J.S.A. 54:49-6.

(e) A final determination notice pursuant to N.J.S.A. 54:48-18 shall include the statements required pursuant to subsections c and f of N.J.S.A. 54:48-6.

(f) The lack of any statement otherwise required to be included with a notice pursuant to this section or the lack of any description otherwise required pursuant to (c) of above shall not invalidate such notice.

(g) All notices of assessment related to final audit determination and "Notice and Demand for Payment of Tax" letters will be sent by registered or certified mail.

18:7-13.5 Closing agreements

(a) The Director is authorized to enter into a written agreement with any taxpayer relating to the liability of such taxpayer in respect to any tax, fee, penalty or interest imposed by the Act, which agreement shall be final and conclusive, and except upon a showing of fraud, malfeasance, or misrepresentation of a material fact:

1. (No change.)

2. In any suit, action or proceeding, the above agreement, or any determination, assessment, collection, payment, cancellation, refund, abatement or credit made in accordance with it shall not be annulled, modified, set aside or disregarded.

Statutory Reference

See N.J.S.A. 54:53-1 through 54:53-6 as to effect of closing agreements between Director and taxpayer.

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18:7-13.6 Time for payment of tax

(a) The annual franchise tax must be paid to the Director in full on or before the due date of the return. For accounting periods ending on or after December 31, 1980, the annual franchise tax, including any estimated or installment payments required to be made pursuant to N.J.A.C. 18:7-3.13 must be paid to the Director in full on or before the due date of the return.

1.-2. (No change.)

(b) (No change.)

(c) A taxpayer which ceases to be subject to tax under the Act must pay the entire tax for each fiscal or calendar accounting period or part of a period during which it had a taxable status. See N.J.A.C. 18:7-11.11.

18:7-13.7 Additional tax; change in Federal tax; interest to be charged

(a) If the taxpayer is notified by the Director that an additional tax is payable as a result of an amended Federal return or a change or correction in taxable income by the Commisioner of Internal Revenue or other office of the United States or other competent authority, or where a renegotiation of a contract or subcontract with the United States or a recovery of a war loss results in a computation or recomputation of any tax imposed by the United States, within 15 days after the date of the Division's assessment letter to the taxpayer, the taxpayer must remit that additional tax together with interest thereon at the rate of three quarters of one percent per month or fraction thereof from the original due date of the New Jersey Corporation Business Tax Return for the accounting period involved to the date of payment on December 8, 1987, whichever is earlier, and on or after December 9, 1987 at the annual rate of five percentage points above the prime rate to be compounded daily from the date such tax was originally due to the date of actual payment, and on or after July 1, 1993 at the rate of three percentage points above the prime rate assessed for each month or fraction thereof compounded annually at the end of each year, from the date such tax was originally due to the date of actual payment.

(b) However, if the taxpayer failed to notify the Director of any change in Federal net income within 90 days as required by the Act and its provision, any additional tax resulting from a change, plus interest thereon computed as indicated in (a) above, shall be deemed to have been due within 15 days after notification was required to be filed with the Director.

(c) For penalties in case of failure to pay tax when due see N.J.A.C. 18:7-14.1 and 14.2.

Statutory Reference

See N.J.S.A. 54:10A-13 as to requirements and time limits for filing amended tax returns under this Act should a change, correction, or recomputation of Federally taxable income occur, and 49-6 as to possible deficiency assessments and attendant penalties and interest after final tax report is filed.

18:7-13.8 Claims for refund, when allowed

(a) The two year statute of limitations period for filing a claim for refund commences to run from the later of the payment of tax for the taxable year or from the filing of the final return for the taxable year. For returns filed on or after July 1, 1993, the statute of limitations period for filing a claim for refund is four years. The due date of the return is deemed the payment date if filing and payment are made prior to the due date. A claim for refund is considered filed on the date it is received by the Division of Taxation (contrast N.J.A.C. 18:7-11.7(b)).

(b) The two year period for filing a claim for refund relating to an amended return ("additional self-assessment") commences on the later of payment of the additional self-assessment or the filing of an amended return reflecting the additional self-assessment. For amended returns filed on and after July 1, 1993, the refund claim period is four years.

(c) For purposes of the application of this rule only:

1.-2. (No change.)

3. A Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) (or a CBT-100-X) is an amended return.

(d) Where a taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service pursuant to N.J.A.C. 18:7-11.8(a) that results in a diminution of entire net income for any year, the two year limitation period for filing a claim for refund based on that diminution for the return year at issue begins on the date that the timely filed Form IRA-100 is filed with the Division. For reports filed on and after July 1, 1993, the limitation period is four years. Unless the IRA-100 or CBT-100-X is filed in timely fashion under N.J.A.C. 18:7-11.8(a), the refund claim will not be considered.

(e) Where a taxpayer files an amended return with the Internal Revenue Service (Form 1120X) and files an amended return with the State of New Jersey within 90 days pursuant to N.J.A.C. 18:7-11.8(b), to be considered a timely refund claim such claim must be filed with the Division of Taxation within two years of the later of filing or payment of the original return self-assessment (CBT-100). On and after July 1, 1993, the claim for refund must be filed within four years.

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

(h) If a taxpayer believes that it is entitled to relief pursuant to N.J.S.A. 54:10A-8, and it believes that a remedy based upon the rationale explicitly addressed by N.J.A.C. 18:7-8.3(b) is not adequate, such relief request is deemed a refund claim. The taxpayer is required to file its return and pay its tax in accordance with the statute, plainly noting on the filed return its claim for "Section 8 relief" and supplying supporting materials in accordance with N.J.A.C. 18:7-10.1. In addition, a copy of form CBT-100-X, Claim for Refund, must accompany the return as filed. This application constitutes a refund claim and is subject in any event to the same period of limitations as any other claim for refund.

(i) Unless these rules provide otherwise, the claim for refund required to be filed with the director is made on Form CBT-100-X and is addressed to:

Audit Adjustment Branch
50 Barrack Street, CN 019
Trenton, NJ 08646-0019

The following examples apply to returns filed on or after July 1, 1993:

Example 1: Taxpayer is delinquent in filing its final return. However, the installment payments of estimated tax were sufficient to pay the tax appearing on the return. If taxpayer subsequently learns that the amount shown on the delinquent final return as filed was in excess of its true liability, a claim for refund of such overpayment is considered timely if filed within four years of the filing of the delinquent CBT-100. A penalty for late filing of the CBT-100 may be imposed under N.J.S.A. 54:49-4.

Example 2: One year after filing a CBT-100 and paying the tax liability shown thereon, a taxpayer discovers an error in its payroll figures and thereupon files a Form 1120X with the Internal Revenue Service reflecting a larger expense deduction. Within 90 days of filing the Form 1120X, taxpayer files a Form CBT-100-X claiming a refund for an overpayment of tax. Upon audit and verification the refund will be granted. Any taxpayer filing an amended return with the Internal Revenue Service must file an amended return with New Jersey within 90 days. N.J.S.A. 54:10A-13. If the CBT-100-X claiming a refund had not been filed within 90 days of filing the Form 1120X (see N.J.S.A. 54:10A-13), the refund would not be granted regardless of whether the claim was received prior to the expiration of the applicable refund statute of limitation period.

Example 3: Taxpayer receives a deficiency assessment with which it disagrees. It does not contest the assessment with the Division or in Tax Court within 90 days. It pays the assessment and subsequently discovers that the identical issue upon which the assessment was based was decided in favor of another taxpayer and adversely to the State. It files a claim for refund within four years of having made its payment of the assessment. Since it did not contest its assessment in a timely fashion in accordance with N.J.S.A. 54:10A-19.2, the claim must be rejected. The assessment proceeding is not converted to a refund action by filing a refund claim.

Example 4: Taxpayer did not contest an estimated tax assessment (N.J.S.A. 54:49-5). More than four years after having paid it, the

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taxpayer concludes that it was erroneous. Subsequently, taxpayer files a Report of Changes in Corporate Taxable Net Income by the U.S. Internal Revenue Service (IRA-100) or CBT-100-X relating to the same tax year and upon which additional tax is due. Taxpayer may no longer claim a refund of any portion of the tax paid on the estimated tax assessment, nor have such funds applied to the self-assessment arising out of changes by the Internal Revenue Service to its income for that year.

Statutory Reference

See N.J.S.A. 54:49-14 as to claims for refunds.

18:7-13.9 Payment of refunds; rejection of claims; interest on overpayments

(a) If upon examination of a claim for refund, it shall be determined by the Director that there has been an overpayment of tax, the amount of the overpayment and the interest on the overpayment if any, shall be credited against any liability of the taxpayer under any state tax law.

(b) If there is no liability the taxpayer shall be entitled to a refund of the tax so overpaid and the interest on the overpayment, if any.

(c) (No change.)

(d) For tax paid with respect to reports or returns due on or after January 1, 1994, interest will be paid on overpayments not refunded within six months after the last date prescribed, or permitted by extension of time, for filing the return or within six months after the return is filed, whichever is later. The interest will be paid at a rate determined by the Director to be equal to the prime rate, determined for each month or fraction thereof, compounded annually at the end of each year, from the date the interest begins to accrue to the date of the refund. The interest will begin to accrue on the later of the date of the filing by the taxpayer of the refund claim or requested adjustment, the date of the payment of the tax, or the due date of the report or return. No interest will be paid on an overpayment of less than $1.00. Interest will not be paid on an overpayment if the taxpayer requests that the overpayment be applied to future tax liabilities.

Statutory Reference

See N.J.S.A. 54:49-15 as to procedures required of the Director should he determine subsequent to the taxpayer's filing of a claim for refund, either that an overpayment has been made or that the claim should be rejected, and 54:49-15.1 as to interest on overpayments.

18:7-14.7 (Reserved)

18:7-14.12 Personal liability of officers or directors for unpaid taxes

(a) Any officer or director of any corporation who shall be instrumental in the following corporate violations shall be personally liable for payment of that corporation's unpaid taxes, fees, penalties and interest:

1.-2. (No change.)

(b) (No change.)

18:7-14.17 Tax Clearance Certificate

(a) (No change.)

(b) The following words and terms, when used in this section, have the following meanings (unless the context clearly indicates otherwise):

(No changes in definitions.)

(c)-(e) (No change.)

(f) A Tax Clearance Certificate may be issued under any one of three conditions:

1.-2. (No change.)

3. Solely in the case where:

i. (No change.)

ii. The application is accompanied by a written undertaking by the corporation or corporations which either own 50 percent or more of all classes of the applicant corporation's capital stock, or are a party together with the applicant corporation in the type of reorganization described at Section 368(a)(1)(C) of the Federal Internal Revenue Code, and the application is accompanied by a legal opinion signed by an attorney at law of the State of New Jersey who states that he or she is familiar with the facts of the transaction to the effect that all of the above requirements are met.

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

18:7-15.3 Net worth tax benefits

(a) Section 17 of the Urban Enterprise Zones Act (N.J.S.A. 52:27H-76) is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 17 applicable when the enterprise zone was designated. Section 17 provides that any qualified business (as defined in N.J.A.C. 18:7-15.2) employing a larger number or persons at a place of business within a designated enterprise zone than at all other places of business of the taxpayer within New Jersey, shall be exempt from the net worth tax under N.J.S.A. 54:10A-5(a) and from the tax imposed by N.J.S.A. 54:10A-5(f) for a period of 20 tax years from the date of designation of the enterprise zone, or for a period of 20 years from the date upon which taxpayer first became subject to the Corporation Business Tax Act (N.J.S.A. 54:10A-1 et seq.), whichever date is later. The 20 year benefit period, once properly granted, is not affected by the termination of the enterprise zone after 20 years. The net worth tax exemption applies to any tax year during the 20 year period during which the qualified business is carried on in an enterprise zone for at least one day. The provisions for this section are subject to the phase-out of the net worth tax under N.J.S.A. 54:10A-5(a). For accounting or privilege periods beginning on or after July 1, 1986, the net worth tax does not exist.

(b) See N.J.A.C. 18:7-15 for applicable minimum taxes.

18:7-15.4 Credits against total tax for new employees in urban enterprise zones

(a) Section 19 of the Urban Enterprise Zones Act (N.J.S.A. 52:27H-78) is applicable to a qualified business in an enterprise zone, only if the Urban Enterprise Zone Authority specifically made section 19 applicable when the enterprise zone was designated. Under section 19, any qualified business (as defined in N.J.A.C. 18:7-15.2) which is actively engaged in the conduct of a business from a location within an enterprise zone (as defined in N.J.A.C. 18:7-15.2), which business in that location consists primarily of manufacturing or other business which is not primarily considered as a retail sales business, or as a warehousing business, shall receive an enterprise zone employees tax credit against the amount of tax imposed under N.J.S.A. 54:10A-5 (N.J.S.A. 54:10A-1, et seq., the Corporation Business Tax Act). The credit shall only be available for new employees hired on or after the date of designation of the enterprise zone, or the date of commencement of business in the enterprise zone, whichever is later.

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

(d) See N.J.S.A. 52:27H-78c for alternate tax benefit. The statute allows a corporation tax credit to qualified small businesses (under 50 employees) that were in business in the zone prior to designation of the zone and that make an investment in the zone. These businesses may obtain an eight percent investment credit, to be applied against corporation business tax, by entering into an agreement, approved by the Urban Enterprise Zone Authority, with the zone city, to make an investment in the zone which contributes substantially to the economic attractiveness of the zone. These expenditures may include improvement of the appearance or customer facilities of its place of business or improvements in landscaping, recreation, police and fire protection, etc., in the zone.

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

18:7-15.5 Qualification for benefits

(a) There is no formal procedure for registration as a qualified business for the purpose of obtaining the corporation tax benefits. However, each annual CBT-100 Corporation Business Tax Return which claims any urban enterprise zone corporation tax benefits must include proof that it is a qualified business. This proof may consist of a certificate or other proof of status as a qualified business for sales tax purposes under N.J.A.C. 18:24-31. If a sales tax certificate or some other form of proof has not been obtained, the taxpayer

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should attach a statement setting forth how it qualifies as a "qualified business" as defined in N.J.A.C. 18:7-15.2, with sufficient detail to permit verification by the Division of Taxation.

(b) (No change.)

18:7-16.2 and 16.5 (Reserved)

(a)

DIVISION OF TAXATION

Motor Fuels Tax

Readoption: N.J.A.C. 18:18

Proposed: February 7, 1994 at 26 N.J.R. 777(a).
Adopted: March 11, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: March 14, 1994 as R.1994 d.187, **without change**.

Authority: N.J.S.A. 54:39-10 and 54:50-1.

Effective Date: March 14, 1994.
Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:18.

(b)

DIVISION OF TAXATION

Motor Fuels Retail Sales

Readoption: N.J.A.C. 18:19

Proposed: February 7, 1994 at 26 N.J.R. 778(a).
Adopted: March 11, 1994 by Robert K. Thompson, Acting Director, Division of Taxation.
Filed: March 14, 1994 as R.1994 d.188, **without change**.

Authority: N.J.S.A. 56:6-6.

Effective Date: March 14, 1994.
Expiration Date: March 14, 1999.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption can be found in the New Jersey Administrative Code at N.J.A.C. 18:19.

OTHER AGENCIES

(c)

NEW JERSEY ECONOMIC DEVELOPMENT AUTHORITY

Hazardous Discharge Site Remediation Fund

Adopted New Rules: N.J.A.C. 19:31-8

Proposed: September 20, 1993 at 25 N.J.R. 4468(a).
Adopted: December 7, 1993 by New Jersey Economic Development Authority.
Filed: March 18, 1994 as R.1994 d.192, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3) **and with the definition of "innocent party" (see N.J.A.C. 19:31-8.2), N.J.A.C. 19:31-8.3(b), 8.3(f) and 8.8 not adopted.**

Authority: N.J.S.A. 34:1B-1 et seq., specifically 34:1B-5(l).

Effective Date: April 18, 1994.
Expiration Date: August 20, 1995.

Summary of Changes upon Adoption:

1. A definition of "Members" has been added to N.J.A.C. 19:31-8.2.
2. The words "as amended" have been added to paragraphs N.J.A.C. 19:31-8.3(a)1 and (a)2 for accuracy.
3. The word "municipal" has been added to paragraph N.J.A.C. 19:31-8.3(c)2 for consistency of use throughout the rule.
4. A 45 day time period to make a determination on an application has been added to N.J.A.C. 19:31-8.7(h).
5. The words "financial assistance or a grant" have been substituted for direct loan in N.J.A.C. 19:31-8.10(a). Direct loan has no meaning in this context since it is a type of financial assistance as defined in the rule.
6. The words "financial assistance or" have been added to N.J.A.C. 19:31-8.10(d)1i. This was inadvertently omitted from the proposal.
7. The words "calendar" has been inserted after both 90 and 180 in N.J.A.C. 19:31-8.10(e) to eliminate any potential misunderstanding between calendar and working days.
8. The words "by the Authority and the Department" have been added in N.J.A.C. 19:31-8.11(b) to clarify who must have access to the property.

Summary of Public Comments and Agency Responses:

The proposed new rules were published on September 20, 1993. During the comment period, which closed on October 20, 1993, comments were received from New Jersey Business and Industry Association and Norris, McLaughlin and Marcus, a law firm.

COMMENT: The proposed new rules, at N.J.A.C. 19:31-8.2 and 8.7(a), suggest that there is a procedure or process prior to the submission of an application to the New Jersey Economic Development Authority ("NJEDA") by which the Department of Environmental Protection and Energy ("DEPE") must determine eligibility. No regulations concerning eligibility are referenced or included.

RESPONSE: On August 26, 1993, the DEPE released interim procedures for obtaining financial assistance and grants from the Hazardous Discharge Site Remediation Fund. These procedures outline what information DEPE will use to identify eligible proposals. In response to several comments made to the proposal, DEPE has modified the August 26, 1993 interim procedures. DEPE plans to continue to use these procedures, with changes acknowledging certain comments made to this proposal, until formally proposing regulations in the New Jersey Register. There is a public notice elsewhere in this issue of the New Jersey Register regarding how these procedures can be obtained.

COMMENT: The Industrial Site Recovery Act ("ISRA") does not require any predetermination of eligibility by DEPE, therefore any eligibility procedure that must be satisfied by DEPE prior to submission of an application to EDA should be set forth in the proposed rules and developed in conformity with ISRA.

RESPONSE: The DEPE and NJEDA agree that these procedures should be set forth in proposed regulations. DEPE and NJEDA intend to use comments on the interim procedure and on this regulatory proposal as the basis for the development of those regulations. However, in order to continue to process proposals for financial assistance, in the interim, DEPE plans to continue to use the interim procedures.

COMMENT: The definition of innocent party at N.J.A.C. 19:31-8.2 includes the phrase "and who can demonstrate that he or any person with operational control at that site . . .". This seems to have no meaning and purpose in the definition. Another commenter noted that the definition of innocent party at N.J.A.C. 19:31-8.2 is unclear and textually incomplete. This commenter recommended that the wording found at P.L. 1993, c.139, Section 28a(6) be used.

RESPONSE: NJEDA agrees that this definition is unclear as proposed and has proposed a revised definition elsewhere in this issue of the New Jersey Register to clarify this point. The definition as reproposed, has been modified to read: "Innocent Party" means a person who: 1) acquired the property prior to December 31, 1983; 2) who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by that person or by any person that had permission to use the site from the person applying for an innocent party grant; and 3) who can certify that he or any person that had permission to use the site from the person applying for the innocent party grant did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.

For example, if Party A purchases a property prior to December 31, 1983, but leased the property to party B who discharged hazardous substances at the property, then, Party A is not eligible for an innocent party grant.

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The NJEDA intends to clarify the proposed language by adding the phrase "or any person that had permission to use the site from the person applying for the innocent party grant." The addition of this phrase clarifies that a person may not be considered an innocent party if that person allowed the property to be used by a person who discharged hazardous substances or hazardous wastes at the property.

COMMENT: One commenter noted that there appeared to be some confusion as to the availability of financial assistance in instances in which a remediation funding source pursuant to N.J.A.C. 7:26C and N.J.S.A. 58:10B-1 et seq. can, in fact, be established. The commenter pointed out that N.J.A.C. 19:31-8.3(b) provides that no person shall be eligible for financial assistance from the Hazardous Discharge Site Remediation Fund "to the extent that person is capable of establishing a remediation funding source" except that this provision does not apply to municipal governmental entities and voluntary remediators. The commenter noted that this language was taken directly from P.L. 1993, c.139, Section 28(c). The commenter explained that this section of the law appears to be inconsistent with Sections 27a(1) and (2) of P.L. 1993, c.139. Section 27a(2) states that financial assistance rendered to persons who voluntarily undertake a remediation may "only be made for that amount of the cost of the remediation that the person cannot otherwise fund by any of the authorized methods to establish a remediation funding source."

RESPONSE: In response to this comment and NJEDA's re-review of the applicable statutory sections, NJEDA has, in this issue of the New Jersey Register, proposed an amendment to N.J.A.C. 19:31-8.3(b) to clarify this issue. To help clarify the confusion which resulted from the proposed rule, NJEDA has reviewed the applicable statutory sections to determine what, if any, requirements the Legislature placed upon "persons who voluntarily undertake a remediation" and municipal governmental entitites" when applying for financial assistance.

There are three sections of P.L. 1993, c.139 which reference persons who voluntarily undertake a remediation and municipal governmental entities: 27a(1), 27a(2) and 28c.

Section 27a(1) of P.L. 1993, c.139, provides that financial assistance from the remediation fund is only available to the extent that the applicant cannot establish a remediation funding source for the full amount of the remediation. By its terms, this section of the statute does not apply to persons who voluntarily undertake a remediation or to municipal governmental entities. This does not mean, however, that this requirement does not apply to this class of applicants, only that it is not required by this section. It is, in fact, required of persons who voluntarily undertake a remediation by the very next statutory section.

Section 27a(2) specifically limits the amount of financial assistance available from the remediation fund for a person who voluntarily undertakes a remediation. Financial assistance under this section is limited to that portion of the remediation costs which "a person who voluntarily undertakes a remediation ... cannot otherwise fund by any of the authorized methods to establish a remediation funding source."

Section 28c focuses on the eligibility of persons, "other than a municipal governmental entity, or a person engaging in a voluntary remediation," for financial assistance from the remediation fund. This eligibility is not available to those persons who are "capable of establishing a remediation funding source for the remediation ..."

These three provisions are not as clear as they might have been. Nonetheless, the NJEDA believes that the Legislature intended to require in Section 27a(2), notwithstanding sections 27a(1) and 28c, that the public monies in the remediation fund would be available to anyone who voluntarily undertakes a remediation only to the extent that that person is not able to otherwise obtain the money for the remediation from one of the "authorized methods to establish a remediation funding source." In this way, the Legislature sought to ensure that the limited public funds for this purpose are available where they are needed the most—when the applicant has no other source of these funds.

Because there is no provision similar to Section 27a(2) which addresses municipal governmental entities, there is no requirement under this law that a municipal governmental entity demonstrate an inability to establish a remediation funding source in order to be eligible for financial assistance or a grant from the fund.

COMMENT: It is inequitable to allow municipalities to be able to obtain financial assistance from NJEDA for all or part of the invetigation and remediation if they can otherwise fund these activities by any of the authorized methods for establishing remediation funding sources.

RESPONSE: ISRA is clear that municipal governmental entities are eligible to receive financial assistance without the requirement to demonstrate that they cannot establish a remediation funding source by any of the authorized methods.

COMMENT: There is confusion concerning who must certify that they cannot establish a remediation funding source for all or part of the remediation costs in accordance with N.J.A.C. 19:31-8.3(f).

RESPONSE: ISRA in Section 30b(1) is clear that in the case of grants to innocent parties and financial assistance and grants to municipal governmental entities, proof of the inability to establish a remediation funding source for all or part of the remediation costs is not required. Financial assistance to persons remediating a site under DEPE's voluntary cleanup program was also exempted in the proposed rules at N.J.A.C. 19:31-8.3(b) and 8.3(f). This has been omitted from the adoption since it would conflict with the amendments proposed to N.J.A.C. 19:31-8.3(b) and 8.3(f).

COMMENT: The specific criteria for the reallocation of funds referred to in proposed N.J.A.C. 19:31-8.6(a)2 should be set forth in these rules or in joint rules by DEPE and NJEDA.

RESPONSE: The allocation of moneys for specific purposes within the fund are set forth in Section 28(a) of ISRA. In addition, there are provisions to reallocate moneys among and between certain purposes. It is not practical to establish criteria for the reallocation of moneys, prior to the receipt of applications and the determination of need. The reallocation can only be done in accordance with the provisions of ISRA; therefore, it is not necessary to set forth the criteria ahead of time.

COMMENT: ISRA states that upon a written joint determination by DEPE and NJEDA, that is in the public interest, moneys dedicated to certain purposes may be obligated to other persons. This written determination is to be sent to the Senate Environmental Committee and the Assembly Energy and Hazardous Waste Committee. These requirements should be made a part of the proposed rules.

RESPONSE: The purpose of the proposed rules is to inform the public of the requirements for obtaining financial assistance and grants from the Hazardous Discharge Site Remediation Fund. The requirements mentioned in the comment are administrative in nature. DEPE and NJEDA must comply with these; however, this requirement does not add anything to the understanding of the rules.

COMMENT: The requirement that an applicant submit a reconciliation of source and application of funds is burdensome since it is not maintained in the ordinary course of business and would require an investment to obtain.

RESPONSE: It is standard commercial lending practice to obtain a reconciliation of source and application of funds and is consistent with the requirements of all of NJEDA's lending programs. Financial statements prepared in accordance with generally accepted accounting principles contain this or a similar statement.

COMMENT: The requirement that an applicant submit three years of projected financial statements is burdensome since these are not normally maintained.

RESPONSE: It is standard commercial lending practice to obtain three years of projected financial statements and is consistent with the requirements of all of NJEDA's lending programs.

COMMENT: The requirement to supply a list of the applicant's five largest customers is an intrusive practice and could undermine the relationship of the applicant with the customers.

RESPONSE: This is standard commercial lending practice and is consistent with the requirements of all of NJEDA's lending programs.

COMMENT: The requirement to supply a list of the applicant's five largest suppliers would advise the suppliers of the loan and they could potentially lose confidence in the applicant.

RESPONSE: This is standard commercial lending practice and is consistent with the requirements of all of NJEDA's lending programs.

COMMENT: The requirement that all officers, directors and 10 percent or more stockholders be identified and submit resumes and personal financial statements is intrusive and offensive.

RESPONSE: This is standard commercial lending practice and is consistent with the requirements of all of NJEDA's lending programs.

COMMENT: The amount of sensitive information required from the applicant may be a problem since it becomes part of the public record and is subject to discussion at a public meeting. The proposed rules should contain confidentiality provisions.

RESPONSE: Section 30c indicates that information submitted as part of a loan or grant application or agreement shall be deemed a public record subject to the provisions of P.L.1963 c.73 (C.47:1A-1 et seq.)

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COMMENT: The proposed rules indicate that applications are processed through several layers of staff review. The rules should set forth a specific schedule for the review of applications.

RESPONSE: NJEDA concurs with this comment and has made a change to N.J.A.C. 19:31-8.7(h) to indicate that within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the application.

COMMENT: The requirement in the proposal at N.J.A.C. 19:31-8.8 that grants shall be conditioned upon an agreement that the grant will be repaid to the fund at the time of the disposition of the property is inconsistent with the provisions of ISRA.

RESPONSE: NJEDA recognizes that this is not a provision of ISRA and this section is not being adopted as a part of the rules at this time.

COMMENT: The proposed rule at N.J.A.C. 19:31-8.10(a) states that only the members can approve a direct loan; however, the term direct loan is not defined.

RESPONSE: This was an error in the publication of the rule. A technical change has been made to replace the term "direct loan" with "financial assistance or grant"

COMMENT: The requirement at N.J.A.C. 19:31-8.10(d)1ii that the owners of 10 percent or more of the applicant are usually required to provide a personal guarantee is onerous.

RESPONSE: NJEDA expects the owners of the applicant to have as much faith in the business as they are asking NJEDA to have. This requirement insures the owners' commitment to the business. This is standard commercial lending practice and is consistent with the requirements of all of NJEDA's lending programs.

COMMENT: The requirement at N.J.A.C. 19:31-8.10(d)1i that life insurance on the applicant's principal officer(s) in the amount of the Authority's guarantee be provided will be costly and is unnecessary.

RESPONSE: This is standard commercial lending practice and is consistent with the requirements of all of NJEDA's lending programs. This is an important protection for NJEDA since the officer(s) may be the only one(s) that can operate the applicant successfully. This does not have to be new life insurance. NJEDA will accept the assignment of existing life insurance.

COMMENT: The proposed rules at N.J.A.C. 19:30-8.11 set forth a system for the disbursement of financial assistance and grants which is inconsistent with spirit of ISRA. The money should be issued to the applicant and subsequent proof provided by the applicant to NJEDA of the application of it.

RESPONSE: Section 30a(1) requires that the applicant provide evidence that the financial assistance or grants are being spent for the purposes for which they were made. This indicates a current accounting for the use of the funds, not subsequent. It is prudent lending practice to insure that money is being used for the purposes for which it was provided.

COMMENT: There appears to be a typographical error at N.J.A.C. 19:31-8.6(b). The reference should be to ISRA section 28a(7), rather than 28a(3).

RESPONSE: NJEDA believes the reference is correct. The priority mentioned at N.J.A.C. 19:31-8.6(b) comes from ISRA section 28a(7); however, the priority conditions which will be determined by DEPE are those in ISRA section 28a(3).

COMMENT: ISRA requires NJEDA to submit a report to the Senate Environment Committee and Assembly Energy and Hazardous Waste Committee prior to March 1 of each year. The obligation to submit this report should be included in the proposed rules.

RESPONSE: The purpose of the proposed rules is to inform the public of the requirements for obtaining financial assistance and grants from the Hazardous Discharge Site Remediation Fund. The requirement mentioned in the comment is administrative in nature. NJEDA must comply with this; however, this requirement does not add anything to the understanding of the rules as they apply to prospective applicants for financial assistance and grants.

COMMENT: The proposed rules do not address whether a person who qualifies as an innocent party can receive a 50 percent grant from the fund and financial assistance for the remaining 50 percent of the remediation costs and if they can, will two applications be required?

RESPONSE: A person who is eligible for a 50 percent innocent party grant may receive financial assistance for the remaining 50 percent of the remediation costs if that person is eligible for financial assistance pursuant to P.L.1993, c.39 and this subchapter. Two applications will not be required. The DEPE interim procedures outline what information must be submitted in order to request both an innocent party grant and financial assistance simultaneously.

COMMENT: The proposed rules do not address how the Spill Fund will interfere with the Hazardous Discharge Site Remediation Fund. If financial assistance or grants are obtained from the Hazardous Discharge Site Remediation Fund, will disbursements for the Spill Fund reimburse NJEDA? Will an innocent party who receives monies from the Hazardous Discharge Site Remediation Fund be eligible to receive disbursements from the Spill Fund?

RESPONSE: The NJEDA did not address the relationship between the two funds in the proposed rules because there is no relationship. They are two distinct funds created by two separate statutes for different purposes. Eligibility under either fund does not affect eligiblity under the other fund. Eligibility will vary under each of the funds depending on relevant factors.

COMMENT: The application process could be simplified if the application were submitted directly to the NJEDA. NJEDA would then solicit input, comments, recommendations and approval from DEPE, rather than DEPE making an initial determination of eligibility.

RESPONSE: The DEPE is not reviewing any financial information or reviewing the actual financial assistance application to NJEDA. Rather, DEPE is making a determination as to whether the proposal is in compliance with site remediation regulations, and whether or not the applicant is eligible pursuant to Sections 28 and 31 of P.L.1993, c.139.

NJEDA and DEPE jointly developed this protocol as the most effective and efficient manner for both agencies to administer this program. This protocol is also consistent with the DEPE's and NJEDA's current relationship with respect to implementation of the Underground Storage Tank Improvement Fund.

COMMENT: The term Members is used at N.J.A.C. 19:31-8.7(h) and is not defined.

RESPONSE: A change has been made in the proposed rule to include the definition of Members at N.J.A.C. 19:31-8.2.

COMMENT: The full repayment of a loan or loan guaranteed by the fund should not be required when the proceeds of sale of the property are less than the total funds awarded.

RESPONSE: ISRA section 28b requires that the unpaid balance of the loan become immediately payable in full.

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

SUBCHAPTER 8. HAZARDOUS DISCHARGE SITE REMEDIATION FUND

19:31-8.1 Applicability and scope

The rules in this subchapter are promulgated by the New Jersey Economic Development Authority to implement those sections of P.L. 1993, c.139 which pertain to the Hazardous Discharge Site Remediation Fund. This Act established the Hazardous Discharge Site Remediation Fund, a special, revolving fund for the purpose of financing remediation activities at sites at which there is, or is suspected of being, a discharge of hazardous substances or hazardous waste.

19:31-8.2 Definitions

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

"Act" means P.L. 1993, c.139.

"Authority" means the New Jersey Economic Development Authority.

"Applicant" means a corporation, partnership, individual or municipal governmental entity which has been determined by the Department to be eligible for financial assistance or a grant.

"Department" means the Department of Environmental Protection and Energy.

"Discharge" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Eligible project" means a project determined by the Department to be eligible to apply to the Authority to receive financial assistance or a grant from the Hazardous Discharge Site Remediation Fund.

"Financial assistance" means loans and loan guarantees.

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"Fund" means the Hazardous Discharge Site Remediation Fund.

"Innocent party" *[means a person who acquired the property prior to December 31, 1983, who can demonstrate that the hazardous substance or hazardous waste that was discharged at the property was not used by the person, or any person with operational control, and who can demonstrate that he or any person with operational control at that site, and that person certifies that he, or any person with operational control, did not discharge any hazardous substance or hazardous waste at an area where a discharge is discovered.]* ***(Reserved)***

"Members" means the members of the Authority.

"Preliminary assessment" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

"Remediation funding source" means the methods of financing the remediation of a discharge.

"Site investigation" shall have the same meaning as set forth at N.J.A.C. 7:26E.

19:31-8.3 Eligibility

(a) Financial assistance from the fund may be made for eligible projects to:

1. Owners or operators of industrial establishments who are required to perform remediation activities pursuant to P.L. 1983, c.330***, as amended,*** (N.J.S.A. 13:1K-6 et seq.), upon closing operations or prior to the transfer of ownership or operations of an industrial establishment;

2. Persons who have discharged a hazardous substance or who are in any way responsible for a hazardous substance pursuant to P.L. 1976, c.141***, as amended,*** (N.J.S.A. 58:10-23.11 et seq.);

3. Persons who voluntarily undertake the remediation of a discharge of a hazardous substance or hazardous waste, pursuant to the Department's voluntary cleanup program, and who have not been ordered or directed to perform the remediaton by the Department or by a court pursuant to section 27b(3) of the Act; or

4. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste pursuant to section 27c of the Act.

(b) *[No person, other than a municipal governmental entity, or a person engaged in a voluntary remediation, shall be eligible for Financial Assistance from the Remediation Fund to the extent that person is capable of establishing a remediation funding source.]* ***(Reserved)***

(c) Grants from the fund may be made to:

1. Municipal governmental entities that own or hold a tax sale certificate on real property on which there has been a discharge or on which there is a suspected discharge of a hazardous substance or hazardous waste. These grants may be utilized to perform preliminary assessments and site investigations on these properties; and

2. Persons other than ***municipal*** governmental entities who own real property on which there has been a discharge of a hazardous substance or a hazardous waste and that person qualifies for an innocent party grant pursuant to section 28 of the Act.

(d) The determination of eligibility will be made by the Department in accordance with sections 28 through 31 of the Act.

(e) No financial asssistance or grant from the Remediation Fund shall be rendered to a person who is currently in violation of an administrative or judicial order, judgment or consent agreement regarding violation or threatened violation of an environmental law regarding the subject property, unless the violation, fee, penalty or assessment is currently being contested by the applicant in a manner prescribed by law or unless the violation resulted from a lack of sufficient money to perform the required remediation activities.

(f) *[An applicant for financial assistance or a grant shall certify to the Department and to the Authority that they cannot establish a remediation funding source for all or part of the remediation costs. This requirement does not apply to grants to innocent parties or to financial assistance or grants to municipal governmental entities or financial assistance to persons remediating a site under the Department's voluntary cleanup program.]* ***(Reserved)***

19:31-8.4 Terms of financial assistance

(a) Loans from the Fund or loans guaranteed by the Fund shall be for a term of not more than 10 years.

(b) Interest on loans from the Fund shall be equal to the lower of the Federal Discount Rate at the time of approval (see N.J.A.C. 19:31-8.10) or at the time of the loan closing, with a minimum of five percent.

(c) Upon transfer of ownership of any real estate for which a loan was made from the Fund or a loan was guaranteed by the Fund, the unpaid balance of the loan shall become immediately due and payable.

19:31-8.5 Amount of financial assistance and grants

(a) Financial assistance and grants may be for up to 100 percent of the estimated applicable Remediation Costs, except that the cumulative maximum amount of financial assistance and grants to a person other than a municipal governmental entity in any calendar year, for one or more properties, shall be $1,000,000.

(b) Financial assistance and grants to any one municipal governmental entity shall not exceed $2,000,000 in any calendar year.

(c) Grants to an innocent party may be for up to 50 percent of the remediation costs except that no grant may exceed $1,000,000.

(d) The amount of financial assistance or grant shall be based upon a scope of work for remediation which is in compliance with N.J.A.C. 7:26D, 7:26E, 7:26B and 7:14B as applicable.

19:31-8.6 Priority system for financial assistance and grants

(a) An eligible proposal, as determined by the Department, for financial assistance or a grant from the Fund shall be given priority for financial assistance or a grant by the Authority based on the date of receipt by the Authority of a completed application and the availability of sufficient moneys in the Fund for the purpose of the financial assistance or grant, subject to credit approval by the Authority and other criteria as established by this rule.

1. Availability of sufficient moneys in the Fund will be determined in accordance with the allocation method required by section 28(a) of the Act.

2. The Executive Director of the Authority and the Commissioner of the Department, or their designees, shall, from time to time, review the allocation of moneys in the Fund and the requirements of applicants for money from the fund and reallocate the moneys to the extent permissible under section 28(a) of the Act.

(b) Notwithstanding (a) above, top priority for financial assistance or grants will be given to persons or municipal governmental entities for remediation activities at sites which involve an imminent and significant threat of a discharge of a hazardous substance or hazardous waste and the discharge or threatened discharge poses an imminent and significant threat to a public water source, to human health or to a sensitive and significant ecological area as determined by the Department in accordance with section 28(a)3 of the Act.

19:31-8.7 Application for financial assistance

(a) Upon determination of eligibility by the Department, the Department will notify the Authority of the eligibility of the applicant, and the total amount of remediation costs and the amount of remediation costs for which the applicant is unable to establish a remediation funding source.

(b) The Authority will send an application to the applicant indicating what information is required.

(c) The applicant will be given priority for financial assistance based on the date of receipt by the Authority of a completed application.

(d) If the application is determined by the Authority to be incomplete, the applicant will have 30 days from receipt of written notice of incompleteness to file any additional information required by the Authority.

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(e) If the applicant fails to file the additional information within the 30 day period, the filing date for the application shall be the date the additional information is received by the Authority.

(f) A completed application shall include, if applicable as determined by the Authority:

1. A history and description of the applicant's business;

2. A description of the proposed project and a detailed breakdown of the use of the loan proceeds;

3. Annual financial statements for the three most recent years, including the balance sheets, operating statements and reconciliations of the source and application of funds, or, for an individual, copies of tax returns for the three most recent years.

4. A current interim statement, if the most recent annual financial statement is more than six months old;

5. Three years of projections, including the balance sheets, operating statements, reconciliation of the source and application of funds, and a detailing of the assumptions used in preparing the projections;

6. A list of the applicant's five largest customers, including the customer name, address, telephone number, and contact person;

7. A list of the applicant's five largest suppliers, including the supplier name, address, telephone number and contact person;

8. A schedule of all officers, directors and stockholders (owning 10 percent or more of the stock), including resumes and signed, dated personal financial statements; and

9. In the case of a loan guarantee, a formal commitment letter from the lender providing the loan, including the terms, conditions, collateral and a statement of the requirement for the Authority guarantee.

(g) The Authority may also require:

1. Appraisal(s) on real property and/or machinery and equipment;

2. Aging of accounts receivable;

3. Aging of accounts payable; and/or

4. Any additional information deemed necessary to evaluate the application.

(h) Applications are processed through several layers of staff review, and may then be recommended for consideration and official action of the Authority Members at a public meeting. ***Within 45 days of the receipt of a completed application, a determination will be made to recommend approval to the Members or deny the association.*** The applicant has no right to have its application presented to the Members.

*[19:31-8.8 Application for grants

Grants shall be conditioned on an agreement with the municipal governmental entity or the innocent party that the grant will be repaid to the Fund at the time of disposition of the property.]*

19:31-*[8.9]****8.8*** Evaluation process for financial assistance

(a) When all of the required information is received, the Authority will perform its own credit evaluation based on the following:

1. Visitation to the applicant's place of business;

2. An analysis of historic and projected financial statements and a comparison to industry peers;

3. An independent industry study using source material such as the U.S. Department of Commerce's Industrial Outlook and the Standard & Poor's Industry survey, comparing the applicant's projections to the study, and considering the short term and long term outlook for the industry;

4. Contact with applicant's customers to ascertain the quality of the product or service provided, the competitiveness of the pricing, reliability and timeliness of delivery, length of the relationship, likelihood of the relationship being continued, and the customers' opinions of the applicant's management;

5. Contact with applicant's suppliers to ascertain the length of the relationship, the amount of credit extended, the amount of purchases, payment history, the likelihood of the relationship being continued, and possibly an opinion of applicant's management;

6. Contact with applicant's bank(s) to ascertain credit history and an opinion of the applicant's management;

7. An analysis of collateral available to secure the requested financing as to adequacy of amount, quality, condition and marketability; and

8. Independent credit investigations of the applicant and its principals, which may include real estate searches, financing statement searches, and judgment and lien searches.

(b) After completing (a) above, a determination shall be made as to the merits of the request, the likelihood of repayment, and the adequacy of the collateral available to secure the requested financial assistance.

(c) If a positive determination is made, the requested financial assistance shall be presented to the members for approval.

19:31-*[8.10]****8.9*** Approval process for financial assistance

(a) Only the Members can approve a *[direct loan]* ***financial assistance or a grant***.

(b) When the Members approve financial assistance or a grant, the minutes of the meeting at which such approval occurs are submitted to the Governor.

(c) The Members' approval is effective 10 working days after the Governor's receipt of the minutes, provided no gubernatorial veto of this action has occurred.

(d) If there has been no veto, a formal commitment letter, notice of approval of financial assistance or grant, is issued to the applicant.

1. The notice of approval will contain all terms, conditions and collateral required by the Authority and will include, among other things, that:

i. Usually, life insurance on the applicant's principal officer(s) is required in an amount equal to the Authority's ***financial assistance of*** guarantee. The life insurance must name the Authority as beneficiary and collateral assignee; and

ii. Personal guarantees of owners of 10 percent or more of the applicant are usually required, and there may be a requirement for collateral apart from the applicant's collateral to secure the personal guarantees.

(e) Within 90 ***calendar*** days for a private entity, or within 180 ***calendar*** days for a municipal governmental entity, of receipt of the notice of approval of financial assistance or grant application, an applicant shall submit to the Authority an executed contract for the remediation activities for which the financial assistance or grant application was made. Failure to submit an executed contract within the time provided, without good cause, shall constitute grounds for alteration of the applicant's priority ranking for the awarding of financial assistance or a grant.

(f) When the notice of approval has been accepted by the applicant and returned to the Authority, a list of closing instructions shall be mailed to the attorney for the applicant.

(g) When all required documentation is prepared, in form and content satisfactory to the Authority, a loan closing shall be scheduled and the funds made available to the applicant subject to approval by the Department.

19:31-*[8.11]****8.10*** Disbursement of financial assistance and grants

(a) All requests for disbursements of the financial assistance or grant must be submitted by the applicant with a certification from the contractor or consultant that the requested moneys have been spent in accordance within a Department approved scope of work.

(b) The recipient of the financial assistance or grant must provide access***, by the Authority and the Department,*** at reasonable times to the subject property to determine compliance with the terms and conditions of the financial assistance or grant.

(c) In the case of a grant, payment will be conditioned upon the subrogation to the Department of all rights of the recipient to recover remediation costs from the discharger or other responsible party.

(d) Where financial assistance to a person other than a municipal governmental entity is for a portion of the remediation cost, the applicant will be required to provide evidence that all moneys for which a remediation funding source has been established, have been expended, before the proceeds of the financial assistance will be disbursed.

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19:31-*[8.12]***8.11*** Attorney General review

All financing documents, including the application, are subject to review by the Attorney General.

19:31-*[8.13]***8.12*** Fees

(a) Fees for financial assistance will be charged in accordance with the Authority's fee rules (see N.J.A.C. 19:30-6).

(b) A non-refundable application fee of $500.00 shall accompany every application for a grant.

19:31-*[8.14]***8.13*** Public record

All information submitted to the Department and/or the Authority as part of an application for financial assistance or grant shall be deemed a public record subject to the provisions of P.L. 1963, c.73 (N.J.S.A. 47:1A-1 et seq.).

INSURANCE
(a)

DIVISION OF ADMINISTRATION
Public Adjusters' Licensing
Adopted New Rules: N.J.A.C. 11:1-37

Proposed: December 6, 1993 at 25 N.J.R. 5432(a) (see also 26 N.J.R. 327(a)).

Adopted: March 28, 1994 by Andrew J. Karpinski, Acting Commissioner, Department of Insurance.

Filed: March 28, 1994 as R.1994 d.207 **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-4.3).

Authority: N.J.S.A. 17:1C-6(e) and 17:22B-20.

Effective Date: April 18, 1994.

Expiration Date: January 31, 1996.

Summary of Public Comment and Agency Response:

The proposed new rules were published on December 6, 1993 at 25 N.J.R. 5432(a). On January 18, 1994, a Notice of Public Hearing and Extension of Comment Period was published in the New Jersey Register at 26 N.J.R. 327(a). A public hearing was scheduled on February 9, 1994 at the request of the Senate Commerce Committee, for the purpose of receiving comments on the proposal. The comment period was extended from January 5, 1994 to February 9, 1994. Eight people appeared at the public hearing to present comments on the proposal.

In accordance with N.J.S.A. 52:14B-4(g), the hearing officer issued a report on March 11, 1994 making recommendations to the Commissioner. The report also includes a summary of the public comments received at the hearing as well as the hearing officer's evaluation of the comments. The hearing officer's report is incorporated herein by reference and made a part of this rule file.

The eight individuals who appeared and commented at the public hearing include: Anthony Pasquarelli and John Methfessel of the law firm of Methfessel and Werbel; Michael F. Chazkel, counsel to the New Jersey Association of Public Insurance Adjusters; Anthony DiSimone, President, New Jersey Association of Public Insurance Adjusters; Frank Chwastek, a public adjuster; Ira Straff, President, Insurance Adjustment Bureau; Eileen Kean, Independent Insurance Agents of New Jersey; and Jeffrey Bronster, a member of the public.

The major issues raised at the public hearing and decided by the Hearing Officer are as follows:

Two commenters indicated that public adjusters should be required to disclose, to prospective clients, any information regarding the public adjuster's interest in a vendor which may be hired, referral fees paid to or from a public adjuster and whether a public adjusting firm had formerly conducted business under a different company name.

The commenter stressed that in many cases public adjusters' contingency fees may be negotiated downward. If an insured were aware of any of the above-factors, he or she would be in a better position to negotiate a public adjuster's fee. One commenter stressed that the costs associated with the foregoing, increases costs associated with the adjusting process and that those costs are passed on to insureds who hire public adjusters as well as to the premium paying public. The Hearing Officer concluded that the above are noteworthy considerations which would more properly be dealt with in future amendments. The Hearing Officer, therefore, did not recommend an amendment at this time.

Several commenters objected to the provision which permits the cancellation of a contract upon 20-days written notice. Generally, commenters noted that most of the critical adjusting process occurs within the first few days following a loss and, as written, the rules do not provide adequate compensation to adjusters who have done their job, where a contract is later cancelled by an insured. One commenter suggested that the provision may delay the commencement of the adjusting process until the 20-day period has expired.

The Hearing Officer found the 20-day cancellation period to be impractical and that it could impede an adjusters' ability to provide the type of services customarily required within a reasonably short period of time following a loss. The Hearing Officer, therefore, recommended that the 20-day cancellation period should presently be deleted from these rules until the Department can properly analyze the circumstances surrounding the need for a cancellation period.

One commenter suggested that a public adjuster contract should be executed by the insured, the public adjuster and other parties in interest and also requested that the Department consider the effect of a contract where only one spouse signed the contract or where a married couple separates. The Hearing Officer found that these questions are beyond the scope of the Department's authority.

One commenter objected to the requirement that a list of services to be rendered should be provided to an insured pursuant to N.J.A.C. 11:1-37.13(b)3. The Hearing Officer found that the public interest in knowing which services are to be rendered outweighs the burdens imposed on public adjusters to disclose such information. The Hearing Officer, therefore, recommended the adoption of N.J.A.C. 11:1-37.13 as proposed.

One commenter stated that the posting of a $10,000 bond by public adjusters is excessive in comparison to the requirements of other states. The Hearing Officer noted that the amount of the bond is mandated by N.J.S.A. 17:22B-12 and can only be changed by legislation.

A commenter indicated that N.J.A.C. 11:1-37.4(a)2i is confusing because it does not establish the type of documentation required to establish the length of a public adjuster's experience in order to be exempt from the written examination. Notwithstanding that the Hearing Officer found the provision to be adequate as drafted, the Department has amended the rule to include a list of information to be submitted with the application.

One commenter objected to the requirement that an insured's funds must be deposited into an interest-bearing account. He claimed that clients' funds are generally disbursed immediately and that N.J.A.C. 11:1-37.11(b) should be amended to provide that funds need not be deposited into an interest-bearing account unless the client's funds exceed $5,000 or are held for more than 30 days. The Hearing Officer noted that the Department does not have the authority to make such an amendment because N.J.S.A. 17:22B-13(e) requires the deposit of such funds into an interest-bearing account.

The record of the public hearing may be reviewed by contacting Donald Bryan, Acting Assistant Commissioner, Legislative and Regulatory Affairs, New Jersey Department of Insurance, CN 325, Trenton, NJ 08625.

Summary of Agency-Initiated Changes of Limited Duration:

The Public Adjusters' Licensing Act (the "Act") is effective as of March 8, 1994. The rules which implement the Act were proposed on December 6, 1993. The Department anticipated that the rules would be adopted by February 1994, giving persons sufficient opportunity to obtain public adjuster licenses by March 8, 1994. However, shortly after publication of the proposed rules, the Department received a request from the Senate Commerce Committee that the Department conduct a public hearing on the proposed rules.

A public hearing was scheduled for February 9, 1994, the first available date, and the time in which to file comments was also extended. A hearing was held on that date and the record closed on February 9, 1994.

Because of the public hearing and the extension of comment period, the adoption of the proposed rules has been delayed beyond the effective date of the Act. In light of this delay, the Department has added a new provision at N.J.A.C. 11:1-37.4(d), which provides for the issuance of a public adjuster license to any person who was in business as a public adjuster on March 7, 1994, who files an application for a license no later

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than 60 days after the date the rules are adopted and who otherwise complies with the requirements and qualifies for the issuance of a license.

The Department has become aware that some applicants have encountered difficulties in obtaining the bond required by N.J.S.A. 17B:22-12. Because of these difficulties which are attributable to the newness of the program, the Department amends N.J.A.C. 11:1-37.9 to permit an applicant, during this initial year, as an alternative to the bond, to provide other security in a form acceptable to the Commissioner and in accordance with the provisions of N.J.A.C. 11:2-32.2. However, any applicant who is utilizing an alternate form must submit an affidavit to the Commissioner that he or she was unable to secure a bond. Public adjusters who initially provide alternative security to fulfill the legislative requirements set forth at N.J.S.A. 17:22B-12 will be required to replace the security with the required bond, in accordance with these rules, within one year from the effective date of their licenses. Pursuant to N.J.A.C. 11:1-37.9, an applicant is required to file a bond or evidence of the alternative security with the Department.

N.J.A.C. 11:1-37.4(a)2i has been amended to conform the date set forth in the rule with the effective date of the statute.

The bond form in the appendix has been amended to include a cancellation provision which provides for not less than 30 days written notice of cancellation to both the Commissioner and the public adjuster. This amendment was made to correct an oversight in the original bond form and is intended to provide greater flexibility and ease in obtaining the required bond.

The Department received 11 written comments from insurance companies (American International Companies, The Prudential Property and Casualty Insurance Company and Selective Insurance Company) an insurance trade association (New Jersey Association of Mutual Insurance Companies), an agent trade association (Independent Insurance Agents of New Jersey) an audit and consulting company (Worldwide Auditing Services, Inc.) an attorney (Joel N. Werbel, Esq. of Methfessel & Werbel) adjusting firms (The Insurance Adjustment Bureau, Inc. and South Jersey Adjustment Bureau) a public adjusters' association (New Jersey Association of Public Insurance Adjusters) and a member of the general public (Rafael Galiana, Jr.).

COMMENT: Several commenters requested clarifications as to which individuals actually require public adjuster licenses. One commenter inquired whether a licensed producer who refers insureds to public adjusters and receives a referral fee or commission must be licensed as a public adjuster in accordance with the definition of public adjuster set forth at N.J.A.C. 11:1-37.2. The definition of public adjuster includes any individual "who, for money, commission or other thing of value, solicits . . . in whole or in part, on behalf of any public adjuster." The commenter stated that a referral fee can be as high as half of the public adjuster's total fee.

Another commenter inquired as to whether these rules apply to "any person who acts or aids in any manner" in adjusting a claim, such as a builder hired by the insured to negotiate the scope or extent of damages, or appraisers hired by an insured as permitted under the insurance policy. The commenter suggested that the rules should not cover such activities.

Another commenter inquired whether it required a license; it is a cost containment company which provides auditing and rehabilitation services to injured claimants. The company performs services on behalf of insurance companies, TPAs and self-insured risks in New Jersey. The company does not handle any money and only provides medical information to the payor.

RESPONSE: Any person who provides a service related to negotiating a claim, or a portion of a claim, on behalf of an insured, unless explicitly exempted pursuant to N.J.S.A. 17:22B-4 and N.J.A.C. 11:1-37.1(c), must be licensed as a public adjuster. A person who performs repairs or other services necessary to effectuate repairs does not require a license. Fee sharing between persons licensed as public adjusters is permissible. Persons who provide services to the insurer, rather than the insured, need not be licensed.

COMMENT: One commenter stated that it believed that the Federal Savings and Loan Insurance Corporation (FSLIC) is no longer in existence and the definition of "financial institution" should be amended to eliminate this language and instead it should track the language at N.J.A.C. 11:1-37.11(a).

RESPONSE: The Department has amended the definition to include that a "financial institution" must be insured by an agency of the Federal government.

COMMENT: A commenter suggested that the definition of "Resident (of New Jersey)" should be amended to include "and maintains a current New Jersey State tax identification number," and that N.J.A.C. 11:1-37.4(b) should require a corporation, firm, association, or partnership to "produce a current, active New Jersey State tax identification number."

RESPONSE: The Department disagrees. The standard for the types of entities listed in the comment is whether they maintain a home or business address in New Jersey.

COMMENT: One commenter stated that the term "sublicensee" should be amended to include employees of public adjustment firms so as to relieve the burden of the cost of having each employee bonded. As an alternative, the commenter suggested a bond of a lesser amount for individuals who could prove employment with a licensed public adjustment firm. Generally the commenter recommended that the bond amount should be reduced to $5,000.

RESPONSE: The Department disagrees. The definition of sublicensee interprets the language set forth at N.J.S.A. 17:22B-5. Moreover, the amount of the bond is established by law at N.J.S.A. 17:22B-12.

COMMENT: One commenter suggested that a definition of the phrase "direct supervision," used with regard to temporary sublicenses, should be defined in these rules.

RESPONSE: The phrase "direct supervision" is not a term of art but rather is meant to have its common meaning. A similar provision in the producer licensing rules has not created any problems with its interpretation. The Department, therefore, does not anticipate any problem with this provision in the public adjuster rules.

COMMENT: Several commenters referred to a typographical error at N.J.A.C. 11:1-37.16(c)5vii which makes reference to an "insurance producer."

RESPONSE: The section has been corrected and the term "public adjuster" has been substituted.

COMMENT: Several commenters noted the error at N.J.A.C. 11:1-37.14(a)8 which makes reference to N.J.A.C. 11:1-37.3(c) rather than N.J.A.C. 11:1-37.13.

RESPONSE: The provision is amended accordingly.

COMMENT: One commenter requested a clarification as to the effect that a suspension or revocation of a public adjuster's license will have on work which is already in progress.

RESPONSE: A determination will be made by the Department on a case-by-case basis. The Department will have to examine the severity of the offense involved, the extent of the work accomplished and whether the circumstances warrant the transfer of the adjustment to another person. The Department also notes that once a person is no longer licensed as a public adjuster, they are not entitled to compensation in accordance with the definition of "public adjuster" set forth at N.J.A.C. 11:1-37.2.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.4(a)1 should be amended to clarify that the applicant must provide his or her New Jersey State Tax identification number.

RESPONSE: The Department disagrees. The applicant may be a nonresident applicant without a New Jersey State Tax identification number.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.4(a)2i should clarify the specific information which must be provided when seeking a waiver from the written examination.

RESPONSE: The Department agrees. A list of information which must be submitted has been included with the application and N.J.A.C. 11:1-37.4(a)2i has been amended accordingly.

The type of information which must be submitted includes an affidavit which sets forth the person's experience as a public adjuster for the past five years, educational background, other related licenses, employment record, membership in professional organizations, State tax identification numbers, and State tax returns; or, if the tax returns are unavailable, alternative information.

COMMENT: One commenter suggested that there should not be a waiver from the written examination and that all applicants should be required to take the examination to demonstrate their competence.

RESPONSE: N.J.S.A. 17:22B-8 specifically exempts certain individuals from taking a written examination, but only if the individuals may demonstrate their "trustworthiness and competence to act as an adjuster to the satisfaction of the commissioner."

COMMENT: One commenter objected to the fingerprint requirement claiming it was an unconstitutional violation of his civil rights. He inquired whether his license would be denied if he committed a crime

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as a teenager over 35 years ago. Another noted that there is no time cut-off which would prevent the loss of licensure for commission of an illegal act more than 20 years ago.

RESPONSE: N.J.S.A. 17:22B-6b requires that all applicants be fingerprinted. Any decision to deny a license will depend on the individual circumstances of each case. For example, the Department will consider the nature of the crime and the applicant's current conduct in conjunction with the standards set forth in the Rehabilitated Convicted Offenders Act, N.J.S.A. 2A:168A-1 et seq. Applicants are nevertheless, required to disclose the existence of any convictions on the application for a license.

COMMENT: A commenter recommended that N.J.A.C. 11:1-37.10 should be amended to require public adjusters to report any lawsuits and any complaints filed against the public adjuster.

RESPONSE: The Department requires public adjusters to advise the Department of all relevant actions by any state or government under N.J.A.C. 11:1-37.14(a)10, 14 and 16.

COMMENT: One commenter suggested that an escrow or trust agreement which is executed pursuant to N.J.A.C. 11:1-37.11(b) should include a copy of the public adjuster contract. The commenter suggested that this rule should be amended accordingly.

RESPONSE: Public adjusters may include the information required to be in the escrow agreement in the contract. As long as the information required by both N.J.A.C. 11:1-37.11 and 37.13 is provided to an insured, two separate documents are not necessary.

COMMENT: One commenter seemed to suggest that any provisions which apply to trust accounts should also apply to escrow accounts and that N.J.A.C. 11:1-37.11 should be amended to make such clarification.

RESPONSE: The Department has used these terms interchangeably and amends this section for purposes of clarity.

COMMENT: One commenter stated that the minimum recordkeeping requirements set forth at N.J.A.C. 11:1-37.12 are too burdensome and in some instances the information requested is unnecessary. The commenter recommended eliminating some provisions, eliminating portions of other provisions and editorial changes to some provisions. The commenter indicated that N.J.A.C. 11:1-37.12(b)8 and (g)5 are unclear.

RESPONSE: These recordkeeping requirements are identical to those set forth in the producer licensing rules. The requirements are therefore not unduly burdensome or unnecessary. N.J.A.C. 11:1-37.12(b)8 refers to a receipt which may be issued by a public adjuster upon receiving any payment from an insurer or an insured in connection with a claim. If such a receipt is issued it should contain a "receipt number." This information, if available, must be recorded and maintained by a public adjuster. N.J.A.C. 11:1-37.12(g)5 has been amended to clarify the meaning of the term "controlled" to: "an officer, director, or owner of 10 percent or more..."

COMMENT: One commenter suggested that insureds should have the option to pay public adjusters on either an hourly basis or a contingency basis.

RESPONSE: While the rules do not bind public adjusters to any form of payment, such clarification must be made in future amendments to the rules. In all cases, a public adjuster's fees must be reasonably related to the services provided and must be set forth in the contract.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.13 should be amended to clarify that the right to compensation includes a contingent fee or a percentage recovery as an appropriate form of compensation.

RESPONSE: The Department disagrees. Such a change is unnecessary. The term right to compensation encompasses different types of fee arrangements. As noted above, the fee need only be reasonably related to the services rendered.

COMMENT: One commenter suggested that the bond required in accordance with N.J.A.C. 11:1-37.9 should be increased to $100,000; another commenter suggested that it be reduced to $5,000.

RESPONSE: The Department has set the bond amount in accordance with the requirements of the N.J.S.A. 17:22B-12.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.11 should be amended to provide that all funds held in an escrow account should be held pursuant to a written contract which shall be governed by contract law.

RESPONSE: The written agreement required under N.J.A.C. 11:1-37.11(b)1 is a contract. All applicable laws of this State and the Federal government, though not specifically set forth in these rules, including the law on contracts, apply to public adjusters.

COMMENT: One commenter stated that the requirement that numerous sub-accounts be maintained under a main escrow account or that trust accounts be kept for each individual client and that interest should accrue on these accounts, would cause public adjusters to incur substantial costs to maintain these separate accounts. Two commenters stated that the interest which would accrue on such accounts would be minimal or non-existent. One commenter stated that generally funds are disbursed from the account upon the clearance of a deposited check. The minimal amount of interest which accrues thereon does not justify the cost imposed on the public adjuster.

One commenter suggested that N.J.A.C. 11:1-37.11(b) should be revised to read that an escrow or trust account need not bear interest unless the individual client's funds exceed a minimum threshold amount of $5,000 and that the funds are held for more than 30 days.

RESPONSE: N.J.A.C. 11:1-37.11 was established for the benefit of insureds. This section only requires a public adjuster to maintain one escrow or trust account in a financial institution. The public adjuster must maintain its books and records in a manner sufficient to identify which funds belong to each individual insured.

N.J.S.A. 17:22B-13e requires that any money accepted or held by a public adjuster towards the settlement of a claim for loss or damage on behalf of an insured must be deposited in an interest-bearing escrow account and that any such funds together with the interest accumulated thereon, is the property of the insured.

N.J.A.C. 11:1-37.11(b), therefore, requires the deposit of insureds' funds into an "interest bearing" account. Since a public adjuster is only required to maintain one account, interest must be prorated among insureds for whom funds are held in escrow. The rules have been amended accordingly for purposes of clarification.

COMMENT: One commenter submitted a form of contract which he uses in Pennsylvania. He sought the Department's approval for the use of the contract in New Jersey. The commenter also suggested that N.J.A.C. 11:1-37.13(b)11 should be revised to eliminate the requirement that public adjusters provide, in the contract, a list of the services to be rendered and the maximum fees to be charged for those services. Instead, the commenter suggested that an explanation of the services to be rendered should be provided, for example "advise and assist in the preparation and presentation of a claim of insurance."

RESPONSE: The rules do not require that a public adjuster's contract be filed for approval with the Department. Nevertheless, the commenter's contract, as drafted, does not meet the standards set forth in the rules because the contract does not contain a list of services and fees. Rather, it contains a broad statement that the public adjuster will "advise and assist in the adjustment of the claim." As is evident from the language in the commenter's contract, an insured cannot ascertain which services will actually be performed. An insured has the right to be informed, in advance, of the services to be performed by the public adjuster and the charges for those services. Notwithstanding that an insured may agree to a contingency fee or percentage fee arrangement, the fees must be reasonably related to the services performed. An insured cannot evaluate whether the terms of the contract are fair or reasonable unless he or she knows exactly which services will be performed by the adjuster and what will be charged for those services.

COMMENT: One commenter required a clarification as to which types of books and records noted at N.J.A.C. 11:1-37.12(a)1 must have sequentially numbered pages.

RESPONSE: The intent of this section is to prevent the fraudulent entry of any notations or the substitution of pages in any records for fraudulent purposes. Therefore, any books or records identified in N.J.A.C. 11:1-37.12(a) and (b) and any logs or similar books or records must contain sequentially numbered pages. For example, receipt books that have multiple receipts on each page contain sequentially numbered pages.

COMMENT: One commenter requested a clarification as to the difference between "written contract" and "memorandum" at N.J.A.C. 11:1-37.13.

RESPONSE: The reference to "written memorandum" is set forth in the law at N.J.S.A. 17:22B-13. The Department is not attempting to dictate the form of agreement which a public adjuster must use, just the minimum standards for the agreement. For example, the agreement must be in writing and must contain certain minimum information, such as a list of services to be rendered and the fees to be charged.

COMMENT: One commenter recommended that N.J.A.C. 11:1-37.13(b)1 should be amended to provide that a contract should be

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executed in triplicate and that a copy should also be forwarded to the insurer. The result of such a requirement would be to put the insurer on notice as to the extent of the public adjuster's authority, whether the public adjuster's fee constitutes a lien on the insurance proceeds and to whom payment should be made from the insurance proceeds.

RESPONSE: The Department will consider this suggestion for future amendments to the rule. Insurers, however, may request copies of the contracts from either their insureds or the public adjusters.

COMMENT: One commenter suggested that the N.J.A.C. 11:1-37.13(b)4 should be amended to read that where a contract is cancelled by an insured a public adjuster is only entitled to the reasonable and necessary out-of-pocket expenses substantiated and listed in the contract.

RESPONSE: Such an amendment may not be accomplished on adoption and will be considered for future amendments.

COMMENT: One commenter requested clarification as to whether the signature of one insured is sufficient to bind all interested persons, including a named mortgagee. Another commenter recommended that this section should be clarified and should identify which individuals are required to sign the public adjuster contract.

RESPONSE: As drafted, the rules require the signature of the insured on the contract. A legal interpretation of the effect of missing signatures to the contract is beyond the scope of these rules. The Department will consider a future amendment to the rule which would require a public adjuster to provide notice to mortgagees or other parties in interest.

COMMENT: Several commenters noted that the provision set forth at N.J.S.A. 17:22B-13a, which prohibits public adjusters from entering into any agreements, oral or written, between the hours of 6:00 P.M. and 8:00 A.M. for the 24 hours after a loss has occurred, does not appear in the rules. Another commenter suggested that in light of this prohibition, N.J.A.C. 11:1-37.13(b)3iii should be amended to include that the contract must disclose the time, as well as the date, of the execution of the contract. Another commenter recommended that the contract itself should contain a statement that the contract cannot be signed between the hours of 6:00 P.M. and 8:00 A.M. for 24 hours following the loss and that the insured should notify the Department of any violation of this rule.

RESPONSE: The Department notes that the current law specifically prohibits the entry of any contract between the hours of 6:00 P.M. and 8:00 A.M. within 24 hours of a loss. The omission of this provision from the rules was inadvertent. Because this provision is law, the rules are amended to include this prohibition at N.J.A.C. 11:1-37.13(c). N.J.A.C. 11:1-37.13(b)2iii has also been amended to provide that the contract shall include the time of its execution.

COMMENT: Several commenters recommended that the rules should require public adjusters to disclose to insureds, in writing, any referral fees paid either to or from a public adjuster or any other fee-sharing, so that the insured is aware of who is receiving insurance proceeds paid to the public adjuster. With this information an insured can negotiate a more favorable rate for services being rendered by the public adjuster. One commenter noted that all money spent for referrals reduces the amount of the insurance proceeds remaining to repair a loss.

A commenter also recommended that insureds should be apprised when the public adjuster has a financial interest in a vendor recommended by the adjuster, or when the adjuster receives referral fees from the vendors it uses.

RESPONSE: The Department agrees with this recommendation. However, this type of a change must be accomplished through a proposed amendment to these rules. The Department will closely scrutinize the manner in which business is conducted and may propose changes to the rules in future amendments to protect the public.

COMMENT: The commenters recommended many stylistic and editorial changes to N.J.A.C. 11:1-37.14. The intent of the suggested revisions appears to be to clarify that a license can only be revoked or suspended for "serious" or "willful" violations by a licensee. The commenter also recommended that penalties should only be imposed if there is factual, documented evidence to subtantiate the claims.

RESPONSE: The rules provide for the due process protections of proper notice of the charges against a public adjuster and an opportunity to be heard on those charges. N.J.S.A. 17:22B-5 charges the Commissioner with the responsibility of ensuring that only persons who are "trustworthy and competent" to act as adjusters in a manner so as to safeguard the interests of the people of this State are licensed as public adjusters. The provisions set forth at N.J.A.C. 11:1-37.14 through 37.16 interpret that language and are intended to ensure just such a result.

The Department notes that the violations set forth at N.J.A.C. 11:1-37.14 are similar to those set forth in the producer licensing rules and carry out the provisions of the Public Adjuster Act at N.J.S.A. 17:22B-14. Because these provisions have proven to be effective under the producer licensing rules, the Department anticipates that they will also work well in licensing public adjusters. Therefore, there is no reason to amend these provisions.

COMMENT: One commenter stated that N.J.A.C. 11:1-37.17(a)2 should be amended to eliminate "and reference number of employees" as information deemed a part of the public record.

RESPONSE: The Department disagrees. The term "reference number" refers to an employee's "license number." The law in New Jersey regarding public records, N.J.S.A. 47:1A-2, requires "that all records which are required by law to be made, maintained or kept on file by any ... agency ... shall ... be deemed to be public records." The license number is part of the license which is a public record. The information which the commenter seeks to have eliminated is, by law, considered a public document.

COMMENT: One commenter stated that many portions of these rules are not required of other similar licensees in this state or by public adjuster regulations in other states. The commenter complained that the rules contain language that is "ambiguous, confusing, overbearing, supremely constricting, unqualified, unnecessary [and] suspicious ...."

RESPONSE: The Department disagrees with this commenter. These rules are largely based on the producer licensing rules in this State. The regulatory system of these two groups of licensees are similar for purposes of reducing the costs of implementation. Moreover, the Department has determined that this detail was necessary in the producer licensing rules to set forth a comprehensive regulatory scheme under which the Department can carry out its statutory responsibilities.

Finally, a comparison of this State's rules to those of the neighboring states of New York and Pennsylvania reveals that New Jersey's rules are less stringent. While several commenters, based on their own personal experiences, suggested that portions of the rules should be more stringent, the Department is limited by the mandates of the New Jersey Public Adjuster Act at N.J.S.A. 17:22B-1 et seq.

COMMENT: One commenter stressed that the penalty set forth at N.J.A.C. 11:1-37.16 is not severe enough for the offenses listed at N.J.A.C. 11:1-37.14. The commenter suggested that, at minimum, a five year period of suspension or revocation is more appropriate. The commenter stated that allowing for a one year period prior to reinstatement of a license effectively nullifies the deterrent effect that these rules should convey.

RESPONSE: The Department agrees that a one-year period may not be a sufficient penalty for many of the offenses set forth at N.J.A.C. 11:1-37.14. However, N.J.S.A. 17:22B-15 establishes the length of a license revocation. In order to be reinstated as a public adjuster after a suspension or revocation, a person must comply with the requirements of N.J.A.C. 11:1-37.16.

COMMENT: One commenter suggested that the items set forth at N.J.A.C. 11:1-37.17(b) should be considered a part of the public record and would be of interest to insureds in choosing a public adjuster.

RESPONSE: This provision is similar to the producer licensing rule governing public records which has proven to be effective. The Department notes that because some of the information in the Department files may not be updated by a licensee, it may not be accurate and should not be released to the general public. For example, if a criminal complaint or judgment has been expunged from an applicant's record or a civil suit has been dismissed, but not reported to the Department, the Department could inadvertently pass along improper information. Members of the public may, nevertheless, obtain some of the information set forth at N.J.A.C. 11:1-37.17(b) from other agencies of the State.

The Department does not maintain the information listed at N.J.A.C. 11:1-37.17(b) in the normal course of business. It is required for limited purposes and is not thereafter relevant to the Department's functions. The Department cannot be required to make a determination in each instance as to whether a public adjuster's privacy rights may be violated by the release of such information. The information set forth at N.J.A.C. 11:1-37.17(b) is, therefore, not considered public information.

COMMENT: One commenter suggested that business cards, contracts or correspondence utilized by public adjusters should contain a public adjuster's license number to facilitate an interested person's ability to confirm whether the public adjuster is in good standing with the Department.

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RESPONSE: Public adjusters may include this information once reference numbers are assigned by the Department. However, the Department may only incorporate such a change through a proposed amendment and may consider doing so, or requiring language which indicates that the adjuster is licensed in New Jersey, in a future proposal.

COMMENT: One commenter suggested that these rules should require public adjusters to present their licenses upon the request of an insured or a claims representative.

RESPONSE: Such an amendment may not be accomplished on adoption and will be considered for future amendments.

COMMENT: One commenter suggested a streamlined process for resolving disputes between insureds and public adjusters to avoid the need for litigation.

RESPONSE: The Public Adjusters licensing law does not provide for such a procedure. Such a recommendation is beyond the Department's statutory duties and authority.

COMMENT: One commenter stated that the proposed rules are not stringent enough to protect insureds from acts of harassment by public adjusters. The commenter claimed that often public adjusters use radio scanners to learn of fires and in fact may appear on the scene while a fire is still raging. The commenter stated that public adjusters prey on fire victims when they are at their most vulnerable by promising immediate relief on their claims. The insureds enter into contracts, under duress, without even knowing the extent of their losses. Thereafter, they are bound for all future claims, are charged exorbitant fees and often are unable to cancel their contracts without being threatened with a lawsuit by the public adjuster.

The commenter recommended that public adjusters should be prohibited from using radio scanners and that they should not be permitted to contact insureds for five days after a fire. The commenter also recommended that no persons should be exempt from taking and passing the public adjuster examination.

RESPONSE: N.J.S.A. 17:22B-13a prohibits a public adjuster from entering into a contract with an insured between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after a loss has occurred. The Department does not have the authority or the ability to prohibit individuals from monitoring radio scanners.

Finally, with respect to the commenter's suggestion that no one should be exempt from taking and passing the written examination, N.J.S.A. 17:22B-8 specifically exempts certain persons who have been employed as or acted as a public adjuster as his or her principal business for five years immediately prior to the effective date of the Act. The person must demonstrate his or her trustworthiness and competence to act as a public adjuster to the satisfaction of the Commissioner. The exemption is only applicable for one year from the effective date of the Act.

COMMENT: One commenter stated that once public adjusters are convicted of crimes and their licenses are either suspended or revoked, they are no longer trustworthy or competent to have licenses. Public adjusters should therefore not be relicensed.

RESPONSE: The Rehabilitated Convicted Offenders Act at N.J.S.A. 2A:168A-1 et seq. recognizes that individuals may be rehabilitated and it, therefore, prohibits any licensing authority from discriminating against a person because of any conviction for a crime unless among other reasons, the conviction relates adversely to the occupation, trade, vocation or profession or business for which the license or certificate is sought. Therefore, each application for a license must be reviewed on its own merits, in accordance with N.J.S.A. 2A:168A-1 et seq.

COMMENT: One commenter recommended that officers and directors should be held responsible for the acts of their employees when the license held by the corporation, firm or association is suspended or revoked.

RESPONSE: The Department must determine on a case-by-case basis whether the circumstances leading to the suspension or revocation of the license warrant imposing administrative penalties against the officers or directors. N.J.A.C. 11:1-37.16(d) permits these individuals to demonstrate that they are not personally responsible for certain acts of their employees.

COMMENT: A commenter inquired as to whether he was prohibited under N.J.A.C. 11:1-37.14 from quoting something to a client such as "the Unfair Claim Practices Act."

RESPONSE: Individuals are prohiited from engaging in the unauthorized practice of law. N.J.A.C. 11:1-37.14(a)13 specifically prohibits advising persons on questions of law in conjunction with the business of a public adjuster. The commenter's question is not clear as to whether he would be providing advice on a question of law. Nevertheless, it is beyond the scope of the Department's authority to determine whether someone is engaging in the unauthorized practice of law.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.8(f) should be amended to include that if the Commissioner orders an applicant to retake a licensing examination and the order is not issued in good faith, then the licensee should be entitled to the costs associated in appealing the decision and should be entitled to reimbursement for the loss of earnings associated with the appeal process.

RESPONSE: The Department does not agree with this suggestion. The appropriate costs to be awarded in the types of situation posed by the commenter is beyond the scope of the rules. It is a question for determination by the courts.

COMMENT: The commenter inquired as to the consequences if no entry is required pursuant to N.J.A.C. 11:1-37.12(a)2.

RESPONSE: The commenter's question is unclear. This rule provides that "required entries" must be made. If a required entry is not made, it is a violation of N.J.A.C. 11:1-37.12.

COMMENT: One commenter stated that he did not see a section regarding the appeal process for penalties imposed under these rules.

RESPONSE: N.J.A.C. 11:1-37.14(c) refers to N.J.A.C. 11:17D-2.1, the section of the Department's rules which governs the administrative procedures for the imposition of administrative penalties and the right to a hearing. Any right to an appeal from an administrative agency decision is governed by the New Jersey Court Rules on appellate procedure.

COMMENT: Commenters were both opposed to and in favor of the provision which permits the cancellation of a contract by either party upon 20 days written notice. One commenter recommended that the provison should read that the contract can be cancelled within 20 days written notice "without cause." Other commenters recommended shorter cancellation periods. One commenter suggested that a cancellation clause is unnecessary because New Jersey State law already provides sufficient protections under contract law. The commenter indicated that the inclusion of the provision is an attempt to legislate by the rule-making process.

One commenter indicated that a 20-day period is ludicrous because most claims are settled within that time period. The commenter suggested a three day period would be reasonable, similar to the cancellation clause of real estate contracts.

Another commenter noted that the rule fails to specify the point from which the 20 days starts to run.

RESPONSE: The Department amends N.J.A.C. 11:1-37.13(b)3iv by deleting the cancellation provision as written. The Department recognizes an individual's right to cancel any contract which he or she has entered into and also recognizes that an individual may retain certain obligations upon such cancellation. N.J.A.C. 11:1-37.13(b)3 and (b)4 are, therefore, amended to provide that a public adjuster contract shall include a section which specifically details an individual's obligation under the contract if he or she chooses to cancel the contract at any time. Public adjusters will have 60 days after the effective date of the rules (until June 17, 1994), in which to conform their public adjuster contracts to these standards.

COMMENT: One commenter suggested that N.J.A.C. 11:1-37.14(a)12 should be amended to include a penalty for insurers, agents, brokers or other insurers' representatives should they attempt to induce the cancellation of a contract between an insured and a public adjuster.

RESPONSE: This subchapter only regulates the activities of public adjusters. The commenter's suggestion is, therefore, beyond the scope of these rules.

COMMENT: One commenter complained that New Jersey public adjusters had no input into these rules nor did they receive an advance copy of the regulations.

RESPONSE: The Department notes that in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B and the rules promulgated thereunder, N.J.A.C. 1:30, the Department has provided all persons interested in these rules with the opportunity to present any comments through both a public hearing and written comments. Moreover, in addition to the foregoing and while not required by the regulatory process, on at least six occasions, attempts were made to discuss these rules with members of the public adjuster industry in order to receive input into the promulgation of these rules. Contact was made directly through the attorney for the New Jersey Association of Public Insurance Adjusters. However because of conflicting business and trial schedules of certain key members of the public adjusters association and

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their lawyer as well as the unavailability of certain members of the Department's staff on certain dates, meetings could not be scheduled during the formative stages of these rules. Some of the difficulty in scheduling a meeting with this association may have been caused by the association's attempts to independently draft its own version of proposed regulations. A copy of the association's draft was forwarded to the Department after the Department's rules were in the process of being readied for publication in the New Jersey Register.

Once the Department completed its proposed draft of these rules, the draft was immediately forwarded to all interested persons, including the aforementioned association.

Summary of Agency-Initiated Change:

At N.J.A.C. 11:1-37.9(a), the Department clarified the type of company that can serve as a surety for a public adjuster as an "A rated" insurer. With the implementation of new financial examination rules promulgated in the fall, the Department anticipates that an insurer would not be viewed as approved to transact the business of sureties in New Jersey if not qualified to be A rated. This clarification's purpose is to protect the public, and is not viewed as a restriction on public adjusters but a qualification of who may act as their sureties.

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

SUBCHAPTER 37. LICENSING OF PUBLIC ADJUSTERS

11:1-37.1 Purpose and scope

(a) The purpose of this subchapter is to establish procedures for the examination, licensing and conduct of persons acting as public adjusters in this State.

(b) This subchapter applies to any person, who for money, a commission or anything of value, acts or aids in any manner on behalf of an insured in negotiating for or effecting, the settlement of claims; or for money, a commission or anything of value, solicits or adjusts claims, in whole or in part, on behalf of any public adjuster.

(c) This subchapter shall not apply to:

1. Any employee, agent or other representative of any authorized insurer who acts in that capacity in the adjustment of claims, nor to any licensed insurance producer who is designated by the insurer to act as an adjuster for a client of the producer without any compensation for those services as adjuster. Insurance representatives and licensed insurance producers shall not advertise or publicly solicit the adjustment of claims in a manner likely to mislead the public into believing that he or she is offering services as a public adjuster;

2. Any licensed attorney of this State who acts or aids in adjusting insurance claims as an incident to the practice of his or her profession and who does not advertise him or herself as a public adjuster;

3. Any licensed insurance producer who acts as an adjuster with respect to any loss involving insurance contracts under which he or she was the broker of record in placing the insurance, whether or not designated in writing to act for the insured;

4. Any other duly licensed producer who has been designated to act for the insured in writing before a loss occurs; or

5. An auto body repair facility licensed pursuant to N.J.S.A. 39:13-1 et seq. that acts or aids in adjusting a motor vehicle insurance claim as an incident to the performance of duties for which it is licensed.

11:1-37.2 Definitions

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

"Catastrophic loss occurrence" means an occurrence designated by the President of the United States, the Federal Emergency Management Agency, the Governor of New Jersey, the State Office of Emergency Management in the Division of Law and Public Safety, or any other authorized Federal, State or local agency, as an emergency or a disaster and includes, but is not limited to, a flood, hurricane, storm or earthquake.

"Commissioner" means the New Jersey Commissioner of the Department of Insurance.

"Department" means the New Jersey Department of Insurance.

"Financial institution" means a Federal or State chartered bank, savings bank or savings and loan institution which is a member of the Federal Deposit Insurance Corporation (FDIC) or *[the Federal Savings and Loan Insurance Corporation (FSLIC)]* ***is otherwise insured by an agency of the Federal government***.

"First time applicant" means a person who has not been licensed as a public adjuster within the 12-month period prior to application.

"Person" means any individual, corporation, organization, firm, association, partnership or other legal entity.

"Public adjuster" or "adjuster" means any individual, firm, association or corporation, except as excluded at N.J.A.C. 11:1-37.1(c), who, or which, for money, commission or any other thing of value, acts or aids in any manner on behalf of an insured in negotiating for, or effecting, the settlement of claims for loss or damage caused by, or resulting from, any accident, incident or occurrence covered under a property insurance policy, including but not limited to, a flood, transit, inland marine or ocean marine policy; or who, or which, advertises for, or solicits employment as an adjuster of those claims. It shall also mean any individual, who, for money, commission or any other thing of value, solicits or adjusts those claims, in whole or in part, on behalf of any public adjuster.

"Resident (of New Jersey)" means a person who either resides in New Jersey or maintains an office in New Jersey where business is transacted.

"Statutory trust" means a trust in accordance with the provisions of N.J.S.A. 17:22B-13.

"Sublicensee" means an individual who is licensed as a public adjuster and is an officer or director of a corporation which is a licensed public adjuster or who is a member of a firm, association or partnership which is a licensed public adjuster.

"Temporary sublicensee" means an individual who, as the result of a catastrophic loss occurrence, is acting as a public adjuster and is sponsored by and works directly under the supervision of a licensed public adjuster in accordance with a temporary sublicense issued by the Commissioner pursuant to N.J.A.C. 11:1-37.7.

11:1-37.3 General licensing requirements

(a) No person shall act as a public adjuster in this State on behalf of an insured unless licensed pursuant to this subchapter.

(b) The Commissioner may issue or renew a public adjuster's license to any individual, firm, association or corporation who complies with the requirements of this subchapter and is competent to act as a public adjuster in a manner so as to safeguard the interests of the people of this State.

(c) A license issued by the Commissioner shall only be valid until the expiration date indicated on the license.

1. For applications filed on or before March 7, 1995, the initial license term shall expire January 31, 1999.

2. For applications filed after March 7, 1995, the standard term of initial and renewal public adjusters licenses shall be 16 licensing quarters. Licensing quarters shall begin on the first day of February, May, August and November of each year. Licenses shall expire in the fourth year on the last day of the quarter before the quarter in which the license was effective.

11:1-37.4 Licensing applications and renewals

(a) A first time applicant for an individual public adjuster license shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; home address; date of birth; business mailing address and location address; home and business telephone numbers; the applicant's State tax identification number; and responses to questions concerning the applicant's character and fitness for licensing. This information together with all requested attachments shall be certified as being accurate by the applicant;

2. Proof that the applicant has taken and passed the State licensing examination within the 12 months preceding the date of application.

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i. For applications received on or before March 7, 1995, the licensing examination shall be waived if the applicant provides proof that he or she has been employed or has acted as a public adjuster as his or her principal business for a period of at least five years prior to March *[7]* **8***, 1994. Persons applying for a waiver as provided in this subsection shall submit the information on a form prescribed by the Commissioner together with supporting documentation. ***The information shall include:**

(1) An affidavit which states that the applicant has been employed as or has acted as a public adjuster as his or her principal business for the last five years and shall also include the applicant's:

(A) Educational background;

(B) Information on other related licenses held (certifications of current license status);

(C) Employment record for, at minimum, the past five years;

(D) Membership in associations or other professional organizations and any specific designations held by the applicant; and

(E) State tax identification number;

(2) State tax returns for the past five years; and

(3) Any additional information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(4) Where an applicant is unable to provide copies of State tax returns for the last five years, the applicant shall state the reasons therefore and may submit the following documentation in the form of affidavits or letters, for consideration by the Department:

(A) Verification of employment from prior or current employer(s) of the past five years;

(B) Verification from clients of work performed for the past five years;

(C) Verification from licensed New Jersey insurance agents or brokers of work performed;

(D) Verification of work performed from New Jersey licensed insurance companies; and

(E) Any other information which the applicant chooses to provide or which the Commissioner may find relevant to clarify any of the above information.

(5) The information submitted in accordance with (4) above shall be reviewed by the Department for sufficiency on a case-by-case basis.*

ii. For applications requesting issuance of a license to an individual who is not a resident, the licensing examination may be waived if the applicant provides proof that he or she is currently licensed in his or her home state in which the licensing provisions for public adjusters are substantially similar to the laws of this State;

3. Any documents or statements required to verify or explain responses to questions concerning the applicant's character, fitness or financial responsibility;

4. Fingerprint impressions taken on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with the fees required for processing;

5. A bond conforming to the requirements of N.J.A.C. 11:1-37.9, unless the applicant is applying as a sublicensee.

i. If applying as a sublicensee, proof of coverage under the existing bond of the licensed public adjuster for whom the applicant is or shall be a sublicensee;

6. Two passport-size photographs; and

7. A check or money order made payable to State of New Jersey—General Treasury for the license fee, application processing fee and fingerprint form processing fee in accordance with the fees set forth at N.J.A.C. 11:1-37.18.

(b) A first time applicant for a public adjuster license which is a corporation, firm, association or partnership, shall submit the following:

1. A properly executed and dated application requesting issuance of a public adjuster license which shall contain the applicant's legal name; trade name, if any; business mailing address and location address; business telephone number; State tax identification number; and all requested attachments, all of which shall be certified as being accurate;

2. A resident New Jersey corporation, partnership, association or firm shall file with the Commissioner a copy of its Certificate of Incorporation or of the partnership or association documents, stamped "filed" by the Office of the Secretary of State, County Clerk or other applicable authority, confirming that the business name has been properly recorded;

3. A foreign corporation, partnership or association applying for a resident license to open an office in New Jersey shall file with the Commissioner a certificate filed by the Office of the New Jersey Secretary of State authorizing the applicant to transact business in New Jersey;

4. Fingerprint impressions on New Jersey State Police and Federal Bureau of Investigation fingerprint cards, together with required processing fees for all sublicensees; officers, directors and/or partners which are not sublicensees and all owners of five percent or more of the business;

5. A bond in accordance with N.J.A.C. 11:1-37.9 in an amount sufficient to cover the applicant and all sublicensees; and

6. A check or money order made payable to Treasurer of New Jersey for all licensing, application and processing fees.

(c) The application and applicable fees in accordance with N.J.A.C. 11:1-37.18 shall be sent to:

Attention: Public Adjuster Licensing
License Processing Unit
New Jersey Department of Insurance
20 West State Street
CN 327
Trenton, NJ 08625-0325

***(d) A public adjuster license, with an effective date of March 8, 1994, shall be issued to an applicant who was in the business as a public adjuster on March 7, 1994 and:**

1. Files an application for a license no later than June 17, 1994; and

2. Complies with the requirements of this subchapter and otherwise qualifies for the issuance of a license.*

*[(d)]****(e)*** All licenses shall at all times be the property of the State of New Jersey and upon any suspension, revocation, nonrenewal, expiration or other termination shall no longer be in force and effect.

1. Upon any suspension, revocation or other termination of a license, the licensee or any other person having custody of the license shall immediately deliver it to the Commissioner by personal delivery or by registered or certified mail.

2. Where a license is lost, stolen or destroyed, the Commissioner may accept in lieu of the return of the license, an affidavit of the licensee or other person responsible for the license, setting forth the facts which prevent the return of the license.

3. Failure to pay any requested fee for any reason including, but not limited to, a check being dishonored, shall render a license null and void.

4. A license which was voluntarily cancelled by a licensee may be reinstated for the balance of the license term upon written request of the licensee and payment of the processing fee.

*[(e)]****(f)*** Where a current licensee seeks to renew a license, the licensee shall, at least 15 days before the license expiration date, submit a properly completed renewal application together with a check or money order for the license fee in accordance with N.J.A.C. 11:1-37.18. The renewal application shall be signed, dated and certified to be correct by the licensee or a licensed officer, partner or member of a licensed organization. The licensee shall certify that he, she or it continues to be qualified in accordance with the Act and this subchapter.

1. Failure to submit the renewal application for receipt by the Department by the date of expiration of the license shall be deemed to establish that the license expired on the date shown on the license and that the licensee was not thereafter authorized to engage in any activities for which the license is required.

2. Any licensee who does not desire renewal shall notify the Department by submitting the renewal application marked "Do Not Renew."

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3. An application for renewal may be submitted within 12 months of the date of the expiration of the license.

i. Nothing in this section shall be construed to permit a person to engage in the business of public adjuster without a valid license.

11:1-37.5 Denial of license

(a) Where it appears from an application, the attached documents or Department records that an applicant has not demonstrated the qualifications prescribed in the Act or this subchapter, the Department shall advise the applicant in writing that the license request is denied; shall specify the reasons for the denial; and shall advise the applicant of the right to request a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1, and of the procedures for filing the request.

1. A request for a hearing shall be filed within 20 days of receipt of the letter denying the request for a license.

2. The request for a hearing shall be forwarded to:

Director of Licensing and Insurance Education
New Jersey Department of Insurance
20 West State Street
CN 325
Trenton, NJ 08625-0325

3. The request for a hearing shall include a statement of the legal and factual basis upon which the applicant disagrees with the denial of a license and all documentation in support thereof.

(b) Upon receipt of a request for a hearing on a license denial, the Department shall review the application and attachments, the Department's records and any additional information submitted and shall determine whether the license will be issued or the matter transmitted to the Office of Administrative Law as a contested case.

11:1-37.6 Sublicensees

(a) Any applicant for a public adjuster license which is a corporation, partnership, firm or association shall have at least one officer, director, partner, or member licensed as a public adjuster.

(b) Only the officers or directors of a corporation or the members of a firm, association or partnership shall be sublicensees.

(c) A licensed public adjuster which is a corporation, firm or association may employ persons as public adjusters who are not sublicensees only where the persons are individually licensed public adjusters or temporary sublicensees and are bonded in accordance with this subchapter.

(d) Each sublicensee shall obtain and maintain an individual public adjuster license in accordance with N.J.A.C. 11:1-37.4.

i. The license document shall indicate that the individual is a sublicensee. The license shall authorize the sublicensee to transact business only for the public adjuster named in the license, that is, the licensee for whom the individual is a sublicensee.

(e) A licensed public adjuster shall file a notice with the Commissioner, which sets forth any change in its sublicensees within 20 days of the change.

1. The notice shall include the name and New Jersey reference number of the sublicensee and the reason for the change, for example, whether an individual was hired, terminated, retired or moved from the State.

i. Where an additional sublicensee is added, the notice shall be signed by an existing sublicensee and the new sublicensee.

ii. Where a sublicensee has been terminated because he or she has violated any of the provisions of this subchapter the reason for the termination shall be described in the notice.

2. The licensed public adjuster shall return a terminated sublicensee's license document together with the notice.

3. The licensed public adjuster shall include a new bond or endorsement whenever the change requires an increase in the principal amount of its bond.

11:1-37.7 Temporary sublicensee

(a) In the event of a catastrophic loss occurrence, a licensed public adjuster may apply to the Commissioner for the issuance of a temporary sublicense for an individual temporarily hired or retained to act as a public adjuster.

1. The licensed public adjuster shall sponsor the temporary sublicensee who shall be its agent and work under its direct supervision.

2. The sponsoring public adjuster shall bear the full responsibility for the actions of its temporary sublicensee undertaken in the course of acting as a public adjuster.

3. The sponsoring public adjuster shall ensure that the temporary sublicensee complies with the Act and this subchapter.

(b) Upon the submission of a properly executed application and the fee required in accordance with N.J.A.C. 11:1-37.18, the Commissioner may issue a temporary sublicense which may be valid for an initial period not to exceed 90 days from the date of the declaration of the catastrophic loss occurrence. In order to evaluate the adequacy and competency of the temporary sublicensee, the following information shall be filed with the Commissioner:

1. Proof of licensing in another state or proof of five years employment experience as a public adjuster in any state; and

2. Evidence that the individual is covered by a bond in accordance with N.J.A.C. 11:1-37.9.

(c) At the discretion of the Commissioner, a temporary sublicense may be renewed for one additional 90-day period upon the submission to the Commissioner of the fee required in accordance with N.J.A.C. 11:1-37.18. The Commissioner shall consider:

1. The nature, duration and/or continuation of the catastrophic loss occurrence;

2. The continued need for temporary sublicensees; and

3. The conduct of the particular temporary sublicensee.

(d) A temporary sublicense shall only be valid for the duration required by the specific catastrophic loss occurrence for which the temporary sublicensee has been issued or as determined by the Commissioner, but in no event for a period longer than that designated in the license.

11:1-37.8 Licensing examination

(a) Except as expressly provided by N.J.A.C. 11:1-37.4(a)2i and ii, all individual applicants, including sublicensee applicants, seeking a public adjuster license shall take and pass the State licensing examination, which may be administered by the Department or by a vendor under contract to the Department.

(b) Examinations shall be administered at such times and places as may be designated by the Commissioner. If a contract vendor is utilized it shall provide the Commissioner with at least 60 days prior notice of the dates and times of the scheduled examinations.

(c) As determined by the Commissioner, at least one examination administration center may be located in the geographical areas comprising North, South and Central New Jersey.

(d) Whenever a contract vendor is utilized it shall:

1. Establish at least one examination administration center within each geographical area designated by the Commissioner;

2. Provide sufficient examination center personnel for the administration of the examination;

3. Collect from applicants taking the examination a fee approved by the Commissioner which covers the costs of developing and administering the examination;

4. Score examinations promptly and provide scored reports to all candidates within 60 days after the test date; and

5. Provide to the Department:

i. Alphabetically arranged lists containing the candidates' names, addresses, identification numbers and scores of passing and failing candidates; and

ii. Summary statistics for each test, indicating the number of candidates registered, tested and absent, and passing or failing.

(e) The Department shall have the sole responsibility for establishing minimum qualification and passing requirements for candidates taking the licensing examination. The qualification and passing requirements shall be on file at the offices of the Department and shall be made available for public inspection.

(f) For good cause shown the Commissioner may, by order, require an applicant for licensure or a licensee to retake the State licensing examination. The order shall specify the factual circumstances upon which it is based. In the case of a licensee, a license

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shall remain effective pending the results of the new examination unless the license is otherwise subject to revocation or suspension.

1. A licensee or applicant for licensure may appeal the decision of the Commissioner within 10 days of receipt of the order, by filing with the Commissioner a written statement and supporting documentation, if any, disputing with specificity the allegations in the order.

2. Upon a review of the record, the Commissioner shall either rescind the order or require the licensee or applicant for licensure to retake the examination within a prescribed period of time.

i. If a licensee fails to retake the examination within the prescribed period of time, the Commissioner shall issue an Order to Show Cause why the license should not be revoked and shall advise the licensee of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

ii. If an applicant for licensure fails to retake the examination within the prescribed period of time, the Commissioner shall refuse to issue the license for which application is made and shall advise the applicant for licensure of his or her right to a hearing pursuant to the provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-37.9 Bond***; alternative security***

(a) An applicant for a public adjuster's license, renewal license or temporary license shall file with the Commissioner a bond, executed by the applicant and by an ***A rated*** insurer approved to transact the business of sureties in New Jersey, in the penal sum of $10,000 per licensee. The bond shall be filed with the License Processing Unit at the address set forth at N.J.A.C. 11:1-37.4(c). Where a license names sublicensees, a $10,000 bond shall be required for the licensee and for each sublicensee.

(b) The bond shall be made to the State of New Jersey for the use and benefit of any person injured by a willful, malicious or wrongful act by a public adjuster in connection with the transaction of its business.

(c) The bond shall be in the form set forth in Appendix A to this subchapter which is incorporated herein by reference.

(d) If a bond is cancelled or withdrawn, the licensee shall immediately return its license to the Commissioner. Upon the filing of a new bond and payment of the required fees in accordance with N.J.A.C. 11:1-37.18, the license shall be returned to the licensee. No person shall engage in the business of a public adjuster in New Jersey after its bond is cancelled or withdrawn, until the person is properly relicensed in accordance with this subchapter.

***(e) Where an applicant has been unable to procure a bond after contacting at least three approved sureties, the applicant may deposit with the Commissioner, as alternative security, $10,000 in the form of either:**

1. Cash;

2. Certificates of deposit; or

3. Irrevocable letters of credit.

(f) Any security listed in (e) above shall be deposited in accordance with the provisions of N.J.A.C. 11:2-32.3 and the applicant shall:

1. File evidence of compliance with this provision in accordance with (a) above;

2. File an affidavit that he or she was unable to obtain a bond from at least three approved sureties (which shall be identified in the affidavit) in this State; and

3. Within one year from the effective date of the applicant's license, obtain a replacement bond which conforms to the requirements of this subchapter.*

11:1-37.10 Administrative reporting requirements

(a) Licensed public adjusters shall file with the License Processing Unit of the Department:

1. Complete and accurate business and home addresses, and notice of any change thereto within 20 days;

2. Upon a form prescribed by the Commissioner, notice of the opening or closing of any office in this State within 20 days of the action;

3. Notice of a change of business name within 20 days; and

4. Notice of change in ownership of a company or of the officers, directors, partners or sublicensees within 20 days.

(b) An organization licensed as a public adjuster shall maintain copies of all licenses of its sublicensees in at least one office with an address on file with the Department.

11:1-37.11 Escrow ***or trust*** accounts

(a) Any public adjuster who receives, accepts or holds any moneys, on behalf of an insured, towards the settlement of a claim for loss or damage, shall deposit such moneys in an ***interest bearing*** escrow or trust account in a financial institution in this State which is insured by an agency of the Federal government.

(b) Any funds held in an escrow or trust account and interest accruing thereon shall be the property of the insured.

1. Such moneys shall be held pursuant to a written agreement signed by the insured and by the public adjuster which shall clearly specify:

i. The services rendered or to be rendered; and

ii. The amount of any services to be paid from the escrowed funds.

(c) In the event of the insolvency and/or bankruptcy of a public adjuster, the claim of an insured for any settlement moneys received, accepted or held by a public adjuster shall constitute a statutory trust as provided at N.J.S.A. 17:22B-13e.

11:1-37.12 Minimum recordkeeping requirements

(a) Each licensee shall maintain accurate files, books and records reflecting all insurance-related transactions in which the licensee or his or her employees take part in accordance with the standards set forth in this subchapter. These records shall be maintained by either separate books of record or by one or more consolidated books of record for a period of five years from the date of the closing of the claim.

1. All books and records shall consist of sequentially numbered pages and shall be maintained in such a manner that they can be produced for examination at any time.

2. Appropriate and required entries shall be made at least once every 30 days.

(b) Each licensee shall maintain a register of all monies received, deposited, disbursed or withdrawn in connection with a transaction with an insured, including, but not limited to: fees, transfers and disbursements from a trust account; and all transactions concerning, including the balance of, all interest bearing accounts. The minimum information required to be maintained in the register includes the following:

1. The name and location of the financial institution in which the funds are deposited;

2. The account number of the trust or escrow account;

3. The date monies are received, deposited, disbursed or withdrawn;

4. The amount of money received, deposited, disbursed or withdrawn;

5. An itemized record of the allocation of the funds;

6. The name of the insured, insurance producer, insurer or other account to or from whom monies are disbursed or received;

7. The claim number;

8. The receipt number, when available; and

9. The method of payment, such as, cash, check, money order or draft.

(c) For each disbursement, the number of the check shall be recorded in the register.

(d) All entries for receipts and disbursements shall be supported by evidential matter as provided in (b) and (c) above. The evidential matter shall be referenced in the entry so that it may be traced for verification.

(e) Each licensee shall prepare and maintain a monthly reconciliation of the trust account.

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(f) Each licensee shall maintain a file for each claimant with whom a contractual relationship has been established. The minimum items required to be maintained in the file include:

1. Correspondence received or sent with respect to any insurance or insurance related transaction;

2. All of the client's contracts; and

3. All claim files.

(g) The licensee shall also maintain the following records for a period of five years:

1. Escrow or trust account statements;

2. Names and addresses of all licensees and sublicensees;

3. Copies of all new and renewal applications submitted to the Department by an individual, the company, all sublicensees and temporary sublicenses;

4. All fees received, if not deposited in a trust or escrow account; and

5. All records of transactions with persons or entities owned *[or controlled]* by the licensee *[or its officers and directors,]* ***or by one or more of its officers or directors or an owner of 10 percent or more of the licensee*** that are construction firms, salvage firms or appraisal firms.

(h) Failure to keep, maintain or make available for inspection by the Commissioner, those records which the Commissioner shall require to be maintained in accordance with this subchapter, or any other violations by a licensee, shall result in the imposition of administrative fines comparable to the fines set forth at N.J.A.C. 11:17D-2.4.

11:1-37.13 Right to compensation

(a) No individual, firm, partnership, association or corporation licensed under this subchapter shall have any right to compensation from any insured for or on account of services rendered to an insured as a public adjuster unless the right to compensation is based upon a written contract or memorandum between the adjuster and the insured and specifying or clearly defining the services to be rendered and the amount or extent of the compensation.

(b) The written memorandum or contract between a licensed public adjuster and an insured:

1. Shall be executed in duplicate and a fully executed copy shall be provided to the insured upon execution;

2. Shall be kept on file by the public adjuster, available at all times for inspection without notice by the Commissioner; and

3. Shall contain the following:

i. The signatures of the insured and the public adjuster;

ii. A list of services to be rendered and the maximum fees to be charged, which fees shall be reasonably related to services rendered; ***and***

iii. The ***time and*** date of execution of the contract (day, month, year) by each party; *[and]*

*[iv. Notice that the contract can be cancelled by either party upon 20 days written notice.

(1) A copy of the notice of cancellation shall be forwarded immediately to the insurer;

4. Where a contract is cancelled by an insured, a public adjuster may hold the insured liable for reasonable and necessary out-of-pocket expenses which are paid for and substantiated by the public adjuster.

i. Where the public adjuster chooses to recoup such charges, it shall prominently set forth in the contract the expense for which the insured may remain liable upon cancellation of the contract.]*

4. Shall conform to the requirements of the Consumer Contracts Act at N.J.S.A. 56:12-1 et seq. and, as applicable, the Federal Trade Commission Act as set forth at 15 U.S.C. 41, and 16 C.F.R. subsection 429.1 (1993).

5. Shall prominently include a section which specifies:

i. The procedures to be followed by the insured if he or she seeks to cancel the contract, including any requirement for a written notice;

ii. The rights and obligations of the parties if the contract is cancelled at any time; and

iii. The costs to the insured or the formula for the calculation of costs to the insured for services rendered in whole or in part.

(c) No public adjuster shall enter into any contract or agreement, oral or written, with an insured, to negotiate or settle claims for loss or damage occurring in this State between the hours of 6:00 P.M. and 8:00 A.M. during the 24 hours after the loss has occurred.*

11:1-37.14 Violations and penalties

(a) The Commissioner may deny, suspend, revoke or refuse to renew a public adjuster's license based on any violation of the Act or this subchapter, or for the commission or omission of any act by a public adjuster which demonstrates that the applicant or licensee is not competent or trustworthy to act as a public adjuster, or where the person has:

1. Violated any provision of this State's insurance laws, including any rules promulgated thereunder;

2. Violated any law in the course of acting as a public adjuster;

3. Committed a fraudulent or dishonest act;

4. Demonstrated the licensee's lack of integrity, incompetency, bad faith, dishonesty, financial irresponsibility or untrustworthiness to act as a public adjuster;

5. Aided, abetted or assisted another person in violating any insurance law of this or any other State;

6. Withheld material information or made a material misstatement in the application for the license;

7. Failed to pay any fine or restitution imposed by an order of the Commissioner;

8. Collected from any client any fee other than that agreed to in the employment contract in a form required by N.J.A.C. 11:1-*[37.3(c)]***37.13***;

9. Misappropriated, converted or illegally withheld, money which was received in the conduct of business that belonged to insurers, clients or others;

10. Failed to notify the Commissioner within 30 days of a conviction for any crime, indictment or the filing of any formal criminal charges, or the suspension or revocation of any insurance license or authority by a state, other than this State, or failed to supply any documentation that the Commissioner may request in connection therewith;

11. Failed to appear in response to any subpoena issued by the Commissioner or his authorized designee; failed to produce any documents or other material requested in a subpoena; or refused or failed to cooperate with an investigation by the Commissioner of the activities of the person or any other licensee;

12. Induced the cancellation of a duly executed written memorandum between an insured and a public adjuster;

13. Made any misrepresentation of facts or advised any person on questions of law in conjunction with the business as a public adjuster;

14. Had any professional license suspended or revoked in this or any other state;

15. Engaged in the business of a public adjuster in New Jersey with an invalid or expired license; or

16. Committed any other act, or omission which the Commissioner determines to be inappropriate conduct by a licensee of this State.

(b) Any person which violates any provision of this subchapter shall, in addition to any other penalties provided by law, be liable for a civil penalty of not more than $2,500 for a first offense and not more than $5,000 for the second and each subsequent offense. Each transaction or statutory violation shall constitute a separate offense.

(c) The procedures for the imposition of administrative penalties shall be governed by N.J.A.C. 11:17D-2.1.

11:1-37.15 Effect of suspension or revocation of public adjuster license

(a) Upon service of any final order suspending or revoking a public adjuster license, the public adjuster shall immediately return to the Commissioner for cancellation any license in the public adjuster's possession.

(b) No other licensed individual or organization shall advertise, display or conduct any business as a public adjuster using the legal

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or business name of any person whose license has been suspended or revoked.

(c) No person whose public adjuster license has been suspended or revoked shall be entitled to any refund of license fees for the unexpired term of any license issued.

11:1-37.16 Reinstatement after suspension or revocation of a public adjuster license

(a) No individual, firm, association or corporation whose license has been revoked and no firm or association of which the individual is an officer or director, shall be entitled to any license or renewal license under this subchapter for a period of one year after the revocation.

(b) A person whose license has been suspended or revoked may, after one year from the effective date of any order revoking a public adjuster license or upon completion of the period of suspension, apply for reinstatement of the license on the form of application used for initial public adjuster license applicants and shall fulfill all of the requirements set forth therein.

(c) The applicant shall submit with the application a copy of the order of suspension or revocation and an executed affidavit that states:

1. That the period of suspension or revocation has been completed or in the case of a revocation one year has elapsed from the date of the revocation;

2. That all required conditions for reinstatement as described in the order of suspension or revocation have been met;

3. That documents confirming that all conditions have been met, such as receipts for fines or restitution, satisfactions of judgment, etc. are attached to the affidavit; and

4. That the applicant has complied with all restrictions imposed by the order of suspension or revocation.

5. The applicant shall also include with the application an affidavit containing the following information concerning the applicant's activities since suspension or revocation:

i. An employment history;

ii. A statement concerning the other business interests, if any, of the applicant;

iii. The manner of disposition of the applicant public adjuster's business upon suspension or revocation of his or her public adjuster license;

iv. Whether restitution has been made as a result of the activities that led to the suspension or revocation, including the names and addresses of the persons or entities to whom restitution was made and amounts of restitution made;

v. Whether the applicant currently holds any other business, professional or occupational licenses in this or any other state;

vi. Whether the applicant, or any business in which he or she owns five percent or more, is or has been a party to any legal or administrative proceedings in this or any other state and, if so, a statement concerning the nature of the proceedings, the parties and the result or current status; and

vii. A written statement by the applicant describing the manner in which he or she has improved, during the period of suspension or revocation, his or her reputation, character, trustworthiness, competency and worthiness to be *[an insurance producer]* ***a public adjuster***.

(d) If any license held by a firm, association or corporation is suspended or revoked, no member or partner of the firm, association or partnership and no officer or director of the corporation shall be entitled to a license or to be named as a sublicensee in a license for the same period of time unless it is demonstrated to the Commissioner that the member or officer or director was not personally responsible in the matter for which the license was suspended or revoked.

(e) If the suspension or revocation was based upon the conviction of a crime or if the applicant was convicted of a crime since the suspension or revocation, the applicant shall submit with his or her application for licensing, a certificate in accordance with N.J.S.A. 2A:168A-3, of the Federal or state parole board or of the chief probation officer of a United States district court or a county who has supervised the applicant's probation, certifying that the applicant has achieved a degree of rehabilitation which indicates that the granting of a license is not incompatible with the welfare of society.

(f) The Commissioner, or his or her designee, shall review the application to determine whether reinstatement is warranted, based on the information provided in (c) through (e) above, and that the applicant has proven that he or she is trustworthy and competent to act as a public adjuster in a manner so as to safeguard the interests of the people in this State. The review of the application may include further investigation or inquiry, may require the applicant to provide additional information, and may further include a conference with Department personnel.

(g) If the Department is satisfied that reinstatement is warranted, the Department shall issue the license. If the Department is not satisfied that reinstatement is warranted, the Department shall deny the license and the applicant shall be given notice and opportunity for a hearing in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1.

11:1-37.17 Public records

(a) The following licensee records maintained by the Department shall be public records in accordance with N.J.S.A. 47:1A-1 et seq.:

1. For an individual licensee, his or her name; license reference number; business mailing and location address; date of birth; license authorities; date first licensed; date last licensed or current license expiration date; names and reference numbers of licensed organizations for which the public adjuster is a sublicensee, date became a sublicensee and date terminated, if any; names and reference numbers of employers, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against the licensee by the Department.

2. For a licensed organization, the legal name of the public adjuster; license reference number; other business name, if any; business mailing and location address; license authorities; date first licensed; date last licensed or current expiration date; names and reference numbers of sublicensees, and reference numbers of employees, date relationship began and terminated; the institution of formal administrative proceedings; and the disposition of any final action taken against licensed organization by the Department.

(b) The following licensee records are specifically determined to be nonpublic records in accordance with N.J.S.A. 47:1A-1 et seq.;

1. Criminal complaints, indictments, judgments of conviction and other separate documents submitted in connection with a license application concerning whether an applicant is disqualified by reason of conviction of a crime;

2. Criminal history records obtained as the result of any fingerprint check;

3. Copies of judgments, orders or pending actions of any civil penalty or fine or order of restitution, pursuant to any unfair trade practice statute, insurance fraud statute *[or similar statute]***,* consumer fraud or consumer protection statute, ***or any similar statute*** in this or any other state or by the Federal government submitted in connection with a license application;

4. Copies of orders of suspension or revocation issued by professional or occupational licensing authorities, and other separate documents submitted in connection with a license application;

5. Records concerning the medical disability of any licensee;

6. Investigative files in any matter pending investigation, or in any completed investigation in which no administrative action was instituted or taken; and

7. Records concerning the contents of the licensing examination questions.

(c) Upon request by any person, the Department may issue a certification of the license status of any currently licensed public adjuster licensed within the preceding four years. Such certification shall contain the licensee's name, date of birth, license reference number, whether currently licensed or expired, whether qualified by examination or the equivalent, and whether any formal disciplinary action was taken during the last four years.

(d) Nothing in this section shall compel the Department to maintain licensee records beyond normal retirement or destruction schedules as approved by the Division of State Library, or to retrieve

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and provide a copy of any written record required to be filed with the Department when the information requested is available as a certified abstract of information contained in the Department's electronic data processing system.

11:1-37.18 Fees

(a) The following nonrefundable fees shall apply:

1. License fee: $300.00.
2. Temporary sublicense fee: $150.00.
3. Renewal temporary sublicense fee: $150.00.
4. Processing fee: $20.00.
5. Fingerprint processing fees: as currently established by State or Federal jurisdictions.

(b) The examination fee shall be the amount authorized by the Commissioner to be charged by the contract vendor administering the examination on behalf of the Department.

(c) Disabled war veterans of the United States military service may apply to the Commissioner for a waiver of the above licensing and processing fees by submitting proof of a service related disability. Fees for fingerprint processing shall not be waived.

(d) Amendments to the fee schedule set forth in (a) and (b) above may be promulgated subsequent to March 7, 1995.

(e) All checks or money orders shall be made to: State of New Jersey—General Treasury.

APPENDIX
BOND NO. _____
PUBLIC ADJUSTER BOND

We, _____ [licensee], of _____ [street address], city of _____, State of _____, as principal, and_____, a corporation incorporated under the laws of the State of New Jersey, and duly licensed to transact a surety business in the State of New Jersey, as surety, are indebted to the State of New Jersey, obligee, in the penal sum of $_____, for which payment we bind ourselves and our respective heirs, legal representatives, successors, and assigns, jointly and severally.

The principal has applied to the Commissioner of Insurance of the State of New Jersey for issuance of a license under the provisions of the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B-1 et seq.), as a public adjuster.

Pursuant to the Public Adjusters' Licensing Act, P.L. 1993, c.66, (N.J.S.A. 17:22B-1 et seq.), every licensee shall file with the Commissioner of Insurance a surety bond in the penal sum of $_____ applicable to the licensee, and each of the sublicensees named in the license, and any temporary sublicensee sponsored by the licensee, if any, said bond to be issued by an approved surety, conditioned on faithful and honest conduct as a public adjuster, before the license will be issued. The bond must be maintained during the term of the license.

The condition of this bond is that if the principal, licensee, or any sublicensees of the licensee, if any, conducts her, his or its business as a public adjuster faithfully, honestly, and in accordance with law, and if the principal, licensee, or any sublicensees of the licensee, if any, faithfully complies with and abides by the provisions of N.J.S.A. 17:22B-1 et seq., and all rules and regulations promulgated pursuant thereto, and any amendments thereto, and will commit no willful, malicious or wrongful act, and perform all obligations and undertakings when engaging as a public adjuster in this State, and will pay to the State any and all money that may become due and owing to the State under and by virtue of the provisions of N.J.S.A. 17:22B-1 et seq., then this obligation will be null and void; otherwise it shall remain in full force and effect.

This bond is issued subject to the following express conditions, fulfillment of which shall be precedent to all rights of recovery hereunder.

1. This bond shall be deemed continuous in form and shall remain in full force and effect and shall run concurrently with the term for which the license is granted and each and every succeeding term or terms during which the license may be renewed, after which liability shall cease except as to any liability of indebtedness incurred or accrued hereunder*[.]****, subject however, to cancellation. If the surety herein shall so elect, this bond may be cancelled at anytime, by filing with the Commissioner and principal a 30-days written notice of such cancellation. However, surety shall not be discharged from any liability already accrued under this bond or which shall accrue before the expiration of the 30-day period.***

2. Every person damaged as a result of any willful, malicious or wrongful act of the principal, licensee, or any sublicensees of the licensee, if any, in the conduct as a public adjuster, may bring an action in a proper court on this bond for the amount of such damage.

3. The aggregate liability of the surety shall not exceed the sum set forth above.

4. The State of New Jersey, acting through the Commissioner of Insurance, reserves the right, at any time, to terminate this bond, except as to any liability already incurred or accrued hereunder, by written notice of such termination to surety delivered or mailed by certified or registered mail. On expiration of the period designated in such notice, which period shall not be less than 3 days from the time the notice was mailed, this bond shall terminate and be of no further force or effect except as to any liability incurred or accrued prior to the termination.

5. In the event that the principal and the surety, or either of them, is served by the notice of any action brought against the principal or the surety under this bond, written notice of the filing of such action shall be immediately given by the principal or the surety, as each is served with notice to the action, to the Commissioner of Insurance.

The premium for which this bond is written is $_____.

Executed at this_____ day of _____, 19____, effective immediately.

_____
[Name of Licensee]

signed, sealed this
____ day of _____,
19____, in the presence of

_____
[_____ President—if corp.]

_____
[Individual or Partner]

attest_____
[_____ Secretary—if corp.]
[Witness—if individual or partnership]

_____
[Surety company]

By:_____
[Attorney in Fact]

to
The State of New Jersey
Under the Public Adjusters' Licensing Act
P.L. 1993, c.66 (N.J.S.A. 17:22B-1 et seq.)

Filed _____, 19____

Commissioner of Insurance

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PUBLIC NOTICES

ADMINISTRATIVE LAW

(a)

OFFICE OF ADMINISTRATIVE LAW

Request for Information
Official Rules Publications

The Office of Administrative Law is seeking information for the enhancement and improvement of the New Jersey Register and the New Jersey Administrative Code, for both print and electronic media, to provide wider and more timely dissemination of administrative rules and the rulemaking process in New Jersey. An **informal vendor meeting** will be held at **10:00 A.M. on Thursday, April 21, 1994** at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey. A Request for Information packet can be obtained by telephoning 609-588-6605.

EDUCATION

(b)

STATE BOARD OF EDUCATION

Notice of Public Hearings
Professional Development

Take notice that the Professional Development Committee of the New Jersey State Board of Education is sponsoring **three public hearings** to secure input from the public and interested parties concerning the issue of professional development for all professional employees, teachers and administrators in New Jersey's public schools. Information acquired during these hearings will be used in developing a professional development proposal for consideration by the State Board.

The hearings will be held from 6:30 P.M. to 8:30 P.M. at the following locations:

Date	Location	Room
Tuesday, April 26	Trenton State College	Forcina Hall
Thursday, April 28	Kean College	Multi Purpose Room I Green Lane Complex
Thursday, May 5	Atlantic Community College	Room J204 and J205

Participation is open to all who register no later than noon on April 22, 1994. We ask that testifiers speak no longer than five minutes and that one copy of testimony be provided to us on the day of the hearings. To register for a hearing or for more information, call Joan M. Boggs, at (609) 292-0739.

Individuals who wish to express views but who are unable to attend any of the public forums may submit written comments by Friday, May 6, 1994 to Sharon McAtee:

Department of Education
State Board Office
CN 500
Trenton, NJ 08625

ENVIRONMENTAL PROTECTION AND ENERGY

(c)

WATER SUPPLY ELEMENT

Notice of Availability of Loan Funds
Water Supply Rehabilitation and Interconnection Loan Programs

Take notice that the Department of Environmental Protection and Energy (Department) announces the availability of the following State loan funds:

A. Name of Program: Water Supply Rehabilitation and Interconnection Loan Programs.

B. Authority: Water Supply Bond Act of 1981, P.L. 1981, c.261, as amended, and the Water Supply Loan Programs Rules, N.J.A.C. 7:1A.

C. Purpose: The purpose of the Water Supply Rehabilitation and Interconnection Loan Programs is to provide financial assistance in the form of low-interest loans to local units for projects involving the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply facilities, and/or the interconnection of unconnected or inadequately connected water supply systems.

D. Amount of money in the program: To date, the Legislature has appropriated to the Department $100 million in bond funds from the Water Supply Fund to fund water supply rehabilitation projects, and has appropriated $8.068 million in bond funds to fund water supply interconnection projects. The Department will apply the uncommitted balance of these loan funds to projects for which it has received applications during all previous funding periods, up to and including the Fiscal Year 1993 application period. Because the Department estimates that the total amount of funding required to fund projects for which it has already received rehabilitation loan applications exceeds the uncommitted balance of rehabilitation loan funds by approximately $200,000, funding will not be available for 1994 rehabilitation loan applications without further legislative appropriations. Accordingly, the Department has submitted a request to the Legislature for an additional $20 million appropriation for rehabilitation loans. In addition, a balance of approximately $4.75 million will be available to fund 1994 interconnection loan applications. Any loans issued by the Department under these programs are subject to this appropriation and the availability of funds.

E. Individuals or organizations who may apply for funding under this program: Any political subdivision of the State or agency thereof may apply for a loan under these programs.

F. Qualifications needed by an applicant to be considered for the program: Loans awarded under the Water Supply Rehabilitation and Interconnection Loan Programs are governed by the Water Supply Loan Programs Rules at N.J.A.C. 7:1A. These rules define eligible rehabilitation and interconnection projects, prescribe procedures and standards for obtaining loans from these programs, and establish minimum standards of conduct for borrowers.

G. Procedures for potential applicants: Applications for water supply rehabilitation and interconnection loans may be requested from:

Philip Royer
Department of Environmental Protection and Energy
Water Supply Element
CN 426
Trenton, New Jersey 08625-0426
(609) 292-5550

Pursuant to N.J.A.C. 7:1A-2.3(a), all applicants must schedule an informal pre-application conference with the Water Supply Element prior to submitting a formal application for a water supply rehabilitation and/or interconnection loan.

H. Deadline by which applications must be submitted: Applications for funding during calendar year 1994 must be submitted by June 30, 1994.

I. Date by which applicants will be notified of preliminary approval or disapproval: Within one month of submission, the Department will send applicants for water supply rehabilitation and interconnection loans a status letter regarding their applications.

(d)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Tri-County Water Quality Management Plan
Public Notice

Take notice that on March 8, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Tri-County Water Quality Management Plan was adopted by the Department. The amendment adopts the Florence Township Wastewater Management Plan (WMP). This WMP

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expands the sewer service area of the Florence Township Sewage Treatment Plant (STP) to serve additional portions of Florence Township including the Route 130 corridor and vacant land north-east of the New Jersey Turnpike Extension. Based on the sewer service area expansion, a projected future wastewater planning flow of 2.5 million gallons per day for the Florence Township STP is proposed. This proposal did not include a wastewater flow projection from a future Regional Food Distribution Center to be located in Florence and Burlington Townships. A separate Water Quality Management Plan amendment would be required to allow the Florence Township STP wastewater flow or sewer service area to expand beyond what is identified in this WMP.

The WMP also identified all existing NJPDES permitted wastewater dischargers. A general manufacturing zone near Interstate Route 295 has been designated to be served by ground water discharge disposal of less than 20,000 gallons per day (GPD). The remainder of the Township, within the Florence Township Planning Area, has been designated as individual on-site ground water disposal service area of less than 2,000 GPD.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(a)

OFFICE OF LAND AND WATER PLANNING

Amendment to the Monmouth County Water Quality Management Plan

Public Notice

Take notice that on March 16, 1994, pursuant to the provisions of the New Jersey Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and the Statewide Water Quality Management Planning rules (N.J.A.C. 7:15-3.4), an amendment to the Monmouth County Water Quality Management Plan was adopted by the Department. The amendment modifies the Township of Middletown Sewerage Authority (TOMSA) Wastewater Management Plan by expanding the sewer service area of the TOMSA Sewage Treatment Plant to include a 48.69 acre parcel located at Block 486, Lots 17 through 22, just south of Kings Highway East in Middletown Township. The parcel includes a small portion of the Chapel Hill Historical District on part of Lots 21 and 22 which presently receives sewer service. The remaining area of the amendment will service 30 proposed single family homes, each with individual grinder pump stations. The maximum amount of projected wastewater flow from the project site is 12,000 gallons per day.

This amendment represents only one part of the permit process and other issues will be addressed prior to final permit issuance. Additional issues which were not reviewed in conjunction with this amendment but which may need to be addressed may include, but are not limited to, the following: antidegradation; effluent limitations; water quality analysis; exact locations and designs of future treatment works (pump stations, interceptors, sewers, outfalls, wastewater treatment plants); and development in wetlands, flood prone areas, designated Wild and Scenic River areas, or other environmentally sensitive areas which are subject to regulation under Federal or State statutes or rules.

(b)

SITE REMEDIATION PROGRAM

Notice of Availability of Revised Procedures for Requesting Financial Assistance and Grants from the Hazardous Discharge Site Remediation Fund

Take notice that the Department of Environmental Protection and Energy's Site Remediation Program has revised its procedures for requesting financial assistance and grants from the Hazardous Discharge Site Remediation Fund. Copies of the revised procedures may be obtained by calling the Site Remediation Program at (609) 633-7141. Written requests may be sent to:

Division of Responsible Party Site Remediation
CN 028
Trenton, NJ 08625
Attention: Funding Procedures Request

HEALTH

(c)

DIVISION OF ALCOHOLISM, DRUG ABUSE AND ADDICTION SERVICES

Notice of Grant Availability
Gambler's Treatment and Prevention Program

Take notice that, in compliance with N.J.S.A. 52:14B-34.4, 34.5 and 34.6, the Department of Health announces the following availability of funds:

Name of Grant Program: Gambler's Treatment and Prevention Program.

Purpose for which the Grant Program funds will be used:

(1) To provide out-patient intervention, assessment and treatment to compulsive gamblers, "problem bettor's" and their significant others; and

(2) To provide for Statewide awareness, public information and referral services regarding compulsive gambling.

Amount of money in the Grant Program: The availability of funds for this program is contingent on appropriation of funds to the department. Contact the person identified in this notice to determine whether the funds have been awarded and to receive further information.

Groups or entities which may apply for the Grant Program: County governments, not-for-profit corporations and other local government organizations.

Qualifications needed by an applicant to be considered for a grant: Ability to demonstrate expertise in area of compulsive gambling treatment/prevention programming; ability to meet guidelines of Requests for Proposal. Priority will be given to Statewide, regional and county initiatives.

Procedures for eligible entities to apply for Grant Funds: Submit a concept paper (five pages or less) including: (1) an agency description; (2) CG services to be provided (with measurable goals and objectives); (3) implementation methods; (4) needs description; (5) implementation time frames; (6) site description; (7) target population; (8) operating budget with source of funds. A copy must be submitted to the County Local Advisory Committee on Alcoholism and Drug Abuse.

For information contact:

Mr. Matthew Martin
Division of Alcoholism, Drug Abuse and Addiction Services
CN 362
Trenton, NJ 08625
(609) 292-4414

Deadline by which applications must be submitted: Concept paper due to funding program by April 22, 1994.

Date by which applicant shall be notified whether they will receive funds: Applicant will be notified 30 days prior to start date of grant.

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HUMAN SERVICES

(a)

DIVISION OF FAMILY DEVELOPMENT

Notice of 1994 Federal Poverty Guidelines

Take notice that, in accordance with N.J.A.C. 10:15B-1.2(b)1, the Department of Human Services announces the following 1994 Federal Poverty Guidelines as published in the Federal Register, Vol. 59, No. 28, dated February 10, 1994, page 6277.

1994 Federal Poverty Guidelines

Size of family unit	Poverty guideline
1	$ 7,360
2	9,840
3	12,320
4	14,800
5	17,280
6	19,760
7	22,240
8	24,720

For family units with more than eight members, add $2,480 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

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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 March 7, 1994 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 promulgation of the rule and its chronological ranking in the Registry. As an example, R.1993 d.1 means the first rule filed for 1993.

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 FEBRUARY 22, 1994

NEXT UPDATE: SUPPLEMENT MARCH 21, 1994

Note: If no changes have occurred in a Title during the previous month, no update will be issued for that Title.

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N.J.R. CITATION LOCATOR

If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register	If the N.J.R. citation is between:	Then the rule proposal or adoption appears in this issue of the Register
25 N.J.R. 1621 and 1796	April 19, 1993	25 N.J.R. 4813 and 4980	November 1, 1993
25 N.J.R. 1797 and 1912	May 3, 1993	25 N.J.R. 4981 and 5382	November 15, 1993
25 N.J.R. 1913 and 2150	May 17, 1993	25 N.J.R. 5383 and 5728	December 6, 1993
25 N.J.R. 2151 and 2620	June 7, 1993	25 N.J.R. 5729 and 6084	December 20, 1993
25 N.J.R. 2621 and 2794	June 21, 1993	26 N.J.R. 1 and 280	January 3, 1994
25 N.J.R. 2795 and 3050	July 6, 1993	26 N.J.R. 281 and 520	January 18, 1994
25 N.J.R. 3051 and 3276	July 19, 1993	26 N.J.R. 521 and 878	February 7, 1994
25 N.J.R. 3277 and 3582	August 2, 1993	26 N.J.R. 879 and 1178	February 22, 1994
25 N.J.R. 3583 and 3884	August 16, 1993	26 N.J.R. 1179 and 1272	March 7, 1994
25 N.J.R. 3885 and 4360	September 7, 1993	26 N.J.R. 1273 and 1416	March 21, 1994
25 N.J.R. 4361 and 4540	September 20, 1993	26 N.J.R. 1417 and 1554	April 4, 1994
25 N.J.R. 4541 and 4694	October 4, 1993	26 N.J.R. 1555 and 1738	April 18, 1994
25 N.J.R. 4695 and 4812	October 18, 1993		

N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
ADMINISTRATIVE LAW—TITLE 1				
1:1-9.4	Accelerated proceedings	26 N.J.R. 284(a)	R.1994 d.173	26 N.J.R. 1493(a)
1:1-11.1	Subpoenas	26 N.J.R. 1276(a)		
1:10-1.1, 9.1, 9.2, 14.1, 14.2, 14.3, 18.1	Family Development hearings	25 N.J.R. 3888(a)		
1:13A	Lemon law hearings	25 N.J.R. 5387(a)	R.1994 d.107	26 N.J.R. 1223(a)
1:13A-11.1	Subpoenas	26 N.J.R. 1276(a)		
1:14-10	BRC ratemaking hearings: discovery	26 N.J.R. 3(a)		
1:14-10	BRC ratemaking hearings: extension of comment period regarding discovery process	26 N.J.R. 883(a)		

Most recent update to Title 1: TRANSMITTAL 1993-2 (supplement September 20, 1993)

AGRICULTURE—TITLE 2				
2:2	Animal Disease Control Program	25 N.J.R. 5387(b)	R.1994 d.108	26 N.J.R. 1223(b)
2:6	Animal health: biologics for diagnostic or therapeutic purposes	25 N.J.R. 4985(a)		
2:32-2.1, 2.7, 2.9, 2.27	Sire Stakes Program conditions	26 N.J.R. 1181(a)		
2:33	Agricultural fairs	26 N.J.R. 285(a)		
2:76	Agriculture Development Committee	26 N.J.R. 1419(a)		
2:76-6.11	Farmland Preservation Program: correction to proposal and extension of comment period regarding acquisition of development easements	25 N.J.R. 4697(a)		

Most recent update to Title 2: TRANSMITTAL 1994-1 (supplement January 18, 1994)

BANKING—TITLE 3				
3:1-2.17, 2.25, 2.26	Closing of branch offices	26 N.J.R. 883(b)		
3:1-2.25, 2.26	Charter conversions	26 N.J.R. 286(a)		
3:4-3	Banking institutions: sale of alternative investments	25 N.J.R. 5733(a)		
3:6-8.2, 8.3, 17	Charter conversions	26 N.J.R. 286(a)		
3:6-15.2	Disqualification of savings bank directors	25 N.J.R. 3586(b)		
3:11-7.11	Disqualification of bank directors	25 N.J.R. 3586(b)		
3:13-5	Mutual holding companies	26 N.J.R. 1213(a)		
3:14	Bank service corporations	26 N.J.R. 3(b)	R.1994 d.117	26 N.J.R. 1223(c)
3:32-3	Mutual holding companies	26 N.J.R. 1213(a)		
3:38-1.1, 1.10, 5.1	Mortgage banker non-servicing	25 N.J.R. 1035(a)	R.1993 d.295	25 N.J.R. 2687(a)
3:38-5.3	Mortgage referrals by real estate agents	26 N.J.R. 6(a)		
3:38-5.3	Mortgage referrals by real estate agents: extension of comment period	26 N.J.R. 884(a)		
3:41-12	Cemetery Board: service contractors and service contracts	26 N.J.R. 6(b)		

Most recent update to Title 3: TRANSMITTAL 1994-1 (supplement January 18, 1994)

CIVIL SERVICE—TITLE 4

Most recent update to Title 4: TRANSMITTAL 1992-1 (supplement September 21, 1992)

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N.J.A.C. CITATION		PROPOSAL NOTICE (N.J.R. CITATION)	DOCUMENT NUMBER	ADOPTION NOTICE (N.J.R. CITATION)
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4A:1-2.3	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:2-2.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
4A:2-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:3-3.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.1	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:4-2.9	Make-up examinations	25 N.J.R. 4823(a)	R.1994 d.114	26 N.J.R. 1225(a)
4A:4-2.9	Make-up examinations	26 N.J.R. 1183(a)		
4A:6-1.1, 1.8, 1.10, 1.21A	Family and medical leave	26 N.J.R. 1183(b)		
4A:6-4.2	Department use of Social Security numbers	26 N.J.R. 287(a)		
4A:7-1.3, 3.3	Sexual harassment; discrimination complaints	26 N.J.R. 1182(a)		
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COMMUNITY AFFAIRS—TITLE 5				
5:11	Relocation assistance and eviction	26 N.J.R. 289(a)	R.1994 d.174	26 N.J.R. 1493(b)
5:15	Emergency shelters for the homeless	26 N.J.R. 1421(a)		
5:18-3.2, 3.3, 3.13, 3.19, App. 3A	Fire Prevention Code: junk yards, recycling centers, and other exterior storage sites	25 N.J.R. 1315(b)		
5:18-4.3, 4.7	Fire Safety Code: fire suppression systems in hospitals and nursing homes	25 N.J.R. 1316(a)		
5:23-3.4, 3.20A	Indoor air quality subcode	25 N.J.R. 5918(a)		
5:23-4.4, 4.5, 4.5A, 4.12, 4.14, 4.18, 4.20	Uniform Construction Code: private on-site inspection agencies	25 N.J.R. 2162(a)		
5:23-5.5	Licensed electrical inspectors: administrative correction	_____	_____	26 N.J.R. 1495(a)
5:80-3.2	Housing and Mortgage Finance Agency: return on equity for housing project sponsors	26 N.J.R. 1186(a)		
5:80-5.10	Housing and Mortgage Finance Agency: prepayment of project mortgage	26 N.J.R. 1187(a)		
5:80-8	Housing and Mortgage Finance Agency: occupancy income requirements	26 N.J.R. 8(a)		
5:80-9.14, 9.15	Housing and Mortgage Finance Agency: rent increases for projects without Federal rent subsidies and for low/market rate projects	26 N.J.R. 1188(a)		
5:80-23.7, 23.9	Housing Incentive Note Purchase Program: fees; subordinate financing	26 N.J.R. 9(a)		
5:80-23.9	Housing and Mortgage Finance Agency: Housing Incentive Note Purchase Program fees	25 N.J.R. 3053(a)		
5:80-29	Housing and Mortgage Finance Agency: investment of housing project funds	25 N.J.R. 4830(a)		
5:91-1.3	Counseling on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:92-1.1, 13.1	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
5:93	Council on Affordable Housing: substantive rules	25 N.J.R. 5763(a)		
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5A:6	Veterans' programs and services: policies and procedures	26 N.J.R. 530(a)		
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6:1 et seq.	Title 6, New Jersey Administrative Code: opportunity for public comment	25 N.J.R. 4369(b)		
6:28	Special education	25 N.J.R. 5734(a)	R.1994 d.127	26 N.J.R. 1495(b)
6:28-2.10, 3.6, 4.3	Special education	26 N.J.R. 1422(a)		
6:29-1.7	Eye protection in public schools	26 N.J.R. 537(a)		
6:29-9.1, 9.2	Reporting of allegations of child abuse	26 N.J.R. 538(a)		
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7:0	Regulated Medical Waste Management Plan: public hearing and opportunity for comment	25 N.J.R. 1654(b)		
7:0	Site Remediation Program: analysis of strict, joint and several liability under the New Jersey Spill Compensation Act	25 N.J.R. 3694(a)		
7:0	Management of waste oil: request for public comment	26 N.J.R. 1466(a)		
7:1C-1.1, 1.2, 1.5	Ninety-day construction permits: fees	26 N.J.R. 787(a)		
7:1C-1.1, 1.3, 1.5	Ninety-day construction permits: fees	26 N.J.R. 913(a)		

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7:1E	Discharges of petroleum and other hazardous substances: request for public comment on draft amendments	25 N.J.R. 2636(a)		
7:1G	Worker and Community Right to Know	26 N.J.R. 123(a)		
7:1G-1.2	Community Right to Know Survey: administrative correction	———	———	26 N.J.R. 1337(a)
7:5D	State Trails System	26 N.J.R. 1459(a)		
7:6	Repeal (see 13:82)	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1673(a)
7:7	Coastal Permit Program	26 N.J.R. 917(a)		
7:7	Coastal Permit Program	26 N.J.R. 918(a)		
7:7E	Coastal zone management	26 N.J.R. 943(a)		
7:7E	Coastal zone management: public meetings and opportunity for comment on proposed revisions to planning and growth region policies	26 N.J.R. 1003(a)		
7:9-1.1	Treatment works approval, sewer bans and sewer ban exemptions	25 N.J.R. 3282(a)		
7:9B-1.15	Surface water classifications: administrative corrections	———	———	26 N.J.R. 1226(a)
7:11-2.1-2.4, 2.9, 2.10, 2.13	Delaware and Raritan Canal—Spruce Run/Round Valley Reservoirs System: sale of water	25 N.J.R. 5742(a)		
7:11-4.3, 4.4, 4.9	Manasquan Reservoir Water Supply System: sale of water	25 N.J.R. 5744(a)		
7:12-1.2, 2.1, 2.2, 3.2, 4.1, 9.1	Shellfish growing water classifications	26 N.J.R. 789(a)	R.1994 d.201	26 N.J.R. 1632(a)
7:13	Flood hazard area control	26 N.J.R. 1009(a)		
7:13	Flood hazard area control	26 N.J.R. 1036(a)		
7:14	Water Pollution Control Act rules	26 N.J.R. 1038(a)		
7:14-8.3	Clean Water Enforcement Act: financial assurance for penalty payment schedules	25 N.J.R. 5395(a)		
7:14A	NJPDES Program: extension of comment period for interested party review of permitting system	25 N.J.R. 1863(a)		
7:14A	New Jersey Pollutant Discharge Elimination System	26 N.J.R. 1332(a)		
7:14A-1.9, 12, 22, 23	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:14A-2.15, 6.14, 6.17, 12.4	Contaminated site remediation: NJPDES permit program	26 N.J.R. 158(a)		
7:15	Statewide Water Quality Management Planning Rules: public meetings and opportunity for comment on draft amendments	26 N.J.R. 792(a)		
7:15-5.18	Treatment works approval, sewer bans and exemptions	25 N.J.R. 3282(a)		
7:23	Flood Control Bond Grants	26 N.J.R. 1334(a)		
7:25-4	Implementation of Wild Bird Act of 1991	26 N.J.R. 1040(a)		
7:25-6.22	1994-95 Fish Code: snapping turtles, bull frogs and green frogs	26 N.J.R. 1047(a)		
7:25-7.13, 14.1, 14.2, 14.4–14.8, 14.10–14.13	Crab management	25 N.J.R. 4831(a)	R.1994 d.152	26 N.J.R. 1337(b)
7:25-18.1, 18.2	Marine fisheries: size and possession limits; pound nets	26 N.J.R. 291(a)		
7:25-18.5, 18.6, 18.12	Delaware Bay gill net permits	25 N.J.R. 5397(a)	R.1994 d.202	26 N.J.R. 1633(a)
7:26-1.4	Hazardous waste transportation: informal meeting on draft "10-day in-transit holding rule"	26 N.J.R. 294(a)		
7:26-1.4, 9.3	Hazardous waste management: satellite accumulation areas	25 N.J.R. 1864(a)		
7:26-8.2, 8.14	Hazardous waste from specific sources: removal of K053 through K059 and K074 from list	26 N.J.R. 1464(a)		
7:26-8.8, 8.12, 8.19	Handling of substances displaying the Toxicity Characteristic	25 N.J.R. 753(a)	R.1993 d.300	25 N.J.R. 2718(a)
7:26C	Site Remediation Program: opportunity for comment on draft remedial priority system	25 N.J.R. 4551(c)		
7:27-1, 8, 18, 22	Air pollution control: facility operating permits	25 N.J.R. 3963(a)		
7:27-1, 8, 18, 21, 22	Air pollution control: extension of comment period regarding facility operating permits, emission statements, and penalties	25 N.J.R. 4836(a)		
7:27-1, 8, 18, 22	Air Operating Permits and Reconstruction Permits: public roundtable on proposed new rules and amendments	26 N.J.R. 793(a)		
7:27-15.1, 15.2, 15.4-15.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
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7:27-15.4	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27-16.1	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27-21.1–21.5, 21.8, 21.9, 21.10	Air pollution control: facility emission statements	25 N.J.R. 4033(a)		
7:27-25.1, 25.3	Oxygenated fuels program	26 N.J.R. 1148(a)		
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7:27-25.1, 25.3, 25.8	Redesignation of carbon monoxide nonattainment areas and amendments regarding oxygenated fuels: public hearing time change	26 N.J.R. 1336(a)		
7:27-26	Low Emission Vehicles Program	26 N.J.R. 1467(a)		
7:27-27	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27A-3.2, 3.5, 3.10	Air pollution control: administrative penalties and requests for adjudicatory hearings	25 N.J.R. 4045(a)		
7:27A-3.10	Air pollution control: facility emission statement penalties	25 N.J.R. 4033(a)		
7:27A-3.10	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:27A-3.10	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27A-3.10	Control and prohibition of air pollution by VOS	25 N.J.R. 6002(a)		
7:27A-3.10	Control and prohibition of mercury emissions	26 N.J.R. 1050(a)		
7:27B-4.1, 4.5–4.10	Air quality management: enhanced inspection and maintenance program	25 N.J.R. 3322(a)		
7:27B-4.1, 4.5, 4.6, 4.9	Enhanced I/M program	25 N.J.R. 5400(a)		
7:27B-4.5, 4.6, 4.9	Air quality management: enhanced Inspection and Maintenance program	25 N.J.R. 5130(a)		
7:28-48	Non-ionizing radiation producing sources: registration fees	25 N.J.R. 5422(a)		
7:28-48	Non-ionizing radiation producing sources: extension of comment period regarding registration fees	26 N.J.R. 793(b)		
7:50-2, 3, 4, 5, 6, 7	Pinelands Comprehensive Management Plan	26 N.J.R. 165(a)		

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8:8	Collection, processing, storage and distribution of blood	26 N.J.R. 1057(a)		
8:31B-2.1, 2.3, 2.4, 2.5	Hospital reporting of uniform bill—patient summaries (inpatient)	26 N.J.R. 10(a)		
8:31B-3.3, 3.70	Health care financing: monitoring and reporting	26 N.J.R. 12(a)		
8:31B-4.37	Charity care audit functions	26 N.J.R. 13(a)		
8:33L	Home Health Agency Policy Manual	26 N.J.R. 1065(a)		
8:44-2.1, 2.14	Clinical laboratory licensure: HIV testing	25 N.J.R. 2184(a)		
8:44-2.5	Clinical laboratory Proficiency Testing Program	26 N.J.R. 1070(a)		
8:44-2.11	Clinical laboratories: reporting of blood lead levels	26 N.J.R. 294(b)		
8:44-2.11	Clinical laboratories: reopening of comment period on reporting of blood lead levels	26 N.J.R. 1190(a)		
8:59-App. A, B	Worker and Community Right to Know Hazardous Substance List	26 N.J.R. 540(a)		
8:71	Interchangeable drug products (see 25 N.J.R. 1970(c), 2881(b), 4497(b), 6060(b))	25 N.J.R. 875(a)	R.1993 d.155	26 N.J.R. 1347(a)
8:71	Interchangeable drug products (see 25 N.J.R. 2881(a), 4496(a))	25 N.J.R. 1814(b)	R.1993 d.676	25 N.J.R. 6061(a)
8:71	Interchangeable drug products	25 N.J.R. 1815(a)	R.1993 d.334	25 N.J.R. 2879(c)
8:71	Interchangeable drug products (see 25 N.J.R. 4495(b), 6062(a))	25 N.J.R. 2802(b)	R.1994 d.40	26 N.J.R. 364(b)
8:71	Interchangeable drug products (see 25 N.J.R. 6060(c))	25 N.J.R. 3906(a)	R.1994 d.39	26 N.J.R. 364(a)
8:71	Interchangeable drug products (see 26 N.J.R. 362(b))	25 N.J.R. 4844(a)	R.1994 d.156	26 N.J.R. 1347(b)
8:71	List of Interchangeable Drug Products	26 N.J.R. 13(b)	R.1994 d.157	26 N.J.R. 1348(a)
8:71	List of Interchangeable Drug Products	26 N.J.R. 14(a)		
8:71	List of Interchangeable Drug Products	26 N.J.R. 69(a)		
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9:2-2	Minority Undergraduate Fellowship Program	26 N.J.R. 80(a)		
9:2-11	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1323(a)		
9:5-2.1, 2.2, 2.3, 2.5, 2.7	Job training program: unemployed persons tuition waiver	25 N.J.R. 3593(a)		
9:9-1.23	NJHEAA reporting of loan status credit bureaus	26 N.J.R. 893(a)		
9:11	Educational Opportunity Fund program: procedures and policies	26 N.J.R. 711(a)		
9:12	Educational Opportunity Fund program support	26 N.J.R. 711(a)		
9:18	Implementation of Higher Education Facilities Trust Fund Act	26 N.J.R. 1486(a)		

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10:15A-1.2	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1637(a)

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10:31	Mental Health Screening and Screening Outreach Programs	26 N.J.R. 1424(a)		
10:37-5.37–5.43	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:37-6.1–6.4, 6.8, 6.9, 6.25, 6.26, 6.30–6.33, 6.37, 6.38, 6.58, 7.1–7.9	Repeal (see 10:37D)	26 N.J.R. 1277(a)		
10:37A	Community residences for mentally ill adults	25 N.J.R. 2672(a)		
10:37B	Psychiatric community residences for youth	25 N.J.R. 2197(a)		
10:37C	Community mental health clinical case management	25 N.J.R. 4845(a)		
10:37D	Division of Mental Health and Hospitals: management and governing body standards for provider agencies	26 N.J.R. 1277(a)		
10:39	Repeal (see 10:37A)	25 N.J.R. 2672(a)		
10:41	Division of Developmental Disabilities: administration	26 N.J.R. 81(a)	R.1994 d.196	26 N.J.R. 1656(a)
10:41	Division of Developmental Disabilities: extension of comment period regarding records confidentiality and human rights committees	26 N.J.R. 725(a)		
10:48-1	Division of Developmental Disabilities: appeal procedure	26 N.J.R. 1280(a)		
10:50-1.2, 1.3, 1.4, 1.6, 1.7, 2.2	Transportation services for Medicaid recipients	26 N.J.R. 1425(a)		
10:53A-3.2, 3.4	Hospice Services Manual: determination of Medicaid eligibility	26 N.J.R. 1283(a)		
10:63-3.21, 3.22, 3.23	Nursing facility relief	26 N.J.R. 894(a)		
10:65-1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 2.1, 2.2, App. H	Pediatric medical day care services	26 N.J.R. 1427(a)		
10:66-6.5	Independent clinic services; HealthStart: administrative correction	_____	_____	26 N.J.R. 235(a)
10:69A-1.2, 6.2	PAAD eligibility: exclusion of reparation payments as countable income	25 N.J.R. 5750(a)	R.1994 d.191	26 N.J.R. 1658(a)
10:81-2.2, 2.3, 5.1, 7.40-7.47, 15	Fraudulent receipt of AFDC assistance; disqualification penalties	25 N.J.R. 3408(a)		
10:81-2.6, 3.4, 11.2, 11.3	Public Assistance Manual: client Social Security numbers	26 N.J.R. 324(a)		
10:81-11.2, 11.4, 11.18A	Public Assistance Manual: assignment of right to support; wage withholding	26 N.J.R. 896(a)		
10:81-11.7, 11.9	Automated Child Support Enforcement System	26 N.J.R. 84(a)	R.1994 d.159	26 N.J.R. 1349(a)
10:81-14.18A	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:82-5.3	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:84-1.2	Program administration: administrative correction	_____	_____	26 N.J.R. 1657(b)
10:85-3.3	General Assistance Manual: administrative correction regarding income exclusions	_____	_____	26 N.J.R. 1658(a)
10:85-8.4	General Assistance Manual: administrative correction regarding referral to State agencies	_____	_____	26 N.J.R. 1657(b)
10:86-10.2, 10.6	Child care payment rates and co-payment fees in Family Development service programs	26 N.J.R. 296(a)	R.1994 d.206	26 N.J.R. 1636(a)
10:89-2.3, 3.1, 3.2, 3.3	Home Energy Assistance: income eligibility guidelines	26 N.J.R. 256(a)	R.1994 d.109	26 N.J.R. 1227(a)
10:97	Commission for the Blind and Visually Impaired: Business Enterprise Program	26 N.J.R. 725(b)		
10:122	Manual of Requirements for Child Care Centers	25 N.J.R. 4987(a)		
10:127-6.5	Residential child care facilities: money and allowance	25 N.J.R. 5751(a)	R.1994 d.158	26 N.J.R. 1350(a)
10:133-1.3	DYFS: initial response and service delivery definitions	26 N.J.R. 1285(a)		
10:133C-2	Eligibility for DYFS services	26 N.J.R. 897(a)		
10:133H-3	Review of children in out-of-home placement	25 N.J.R. 5752(a)		
10:140	Disability discrimination grievance procedure regarding compliance with Americans with Disabilities Act (ADA)	25 N.J.R. 1326(a)		
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		

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10A:4-1.2, 1.3	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)	R.1994 d.182	26 N.J.R. 1506(a)
10A:4-4.1	Inmate discipline: administrative correction regarding prohibited acts	_____	_____	26 N.J.R. 1228(a)
10A:4-4.1	Inmate prohibitions: failure to keep scheduled appointment	26 N.J.R. 1287(a)		

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10A:9-4.6	Gang minimum and full minimum custody status: criteria for consideration	26 N.J.R. 728(a)	R.1994 d.197	26 N.J.R. 1658(b)
10A:16-8.1, 8.2, 8.3	Medical clemency	26 N.J.R. 326(a)	R.1994 d.154	26 N.J.R. 1350(b)
10A:19	Public information	26 N.J.R. 1287(b)		
10A:22	Inmate and parolee records	25 N.J.R. 5754(a)	R.1994 d.113	26 N.J.R. 1228(b)
10A:31-1.3, 16.1, 16.2, 21.4	Adult county correctional facilities: disciplinary procedures and sanctions	26 N.J.R. 727(a)	R.1994 d.182	26 N.J.R. 1506(a)
10A:33	Manual of Standards for Juvenile Detention Commitment Programs	25 N.J.R. 5749(a)		
10A:71-3.21	State Parole Board: future parole eligibility terms	25 N.J.R. 4703(a)		
10A:71-3.47	State Parole Board: victim input	25 N.J.R. 4705(a)	R.1994 d.180	26 N.J.R. 1507(a)
10A:71-3.51	State Parole Board: interstate corrections compact and serving time out-of-State cases	26 N.J.R. 1191(a)		
10A:71-8.2	State Parole Board: eligibility for Certificate of Good Conduct	26 N.J.R. 1193(a)		

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11:1-7	Medical malpractice reporting requirements	26 N.J.R. 1433(a)		
11:1-37	Public adjusters' licensing	25 N.J.R. 5432(a)	R.1994 d.207	26 N.J.R. 1711(a)
11:1-37	Public adjusters' licensing: public hearing and extension of comment period	26 N.J.R. 327(a)		
11:3-2A	Automobile Full Insurance Underwriting Association: deferral of payment of residual bodily injury claims	26 N.J.R. 898(a)		
11:3-2B	Market Transition Facility of New Jersey: suspension of claims payments	Emergency (expires 4-30-94)	R.1994 d.164	26 N.J.R. 1393(a)
11:3-3	Limited assignment distribution servicing carriers	25 N.J.R. 1327(b)		
11:3-15.7	Automobile insurance Coverage Selection Form	26 N.J.R. 85(a)	R.1994 d.195	26 N.J.R. 1659(a)
11:3-16.7	Automobile insurers rate filing requirements	26 N.J.R. 900(a)		
11:3-29.2, 37.10	Automobile insurance PIP coverage: application of medical fee schedules to acute care hospitals and other facilities	25 N.J.R. 4706(a)		
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11:3-42.2, 42.9	Producer Assignment Program: request for exemption	25 N.J.R. 2215(a)	R.1994 d.112	26 N.J.R. 1229(a)
11:5-1.15, 1.23	Real Estate Commission: discriminatory conduct prohibitions	26 N.J.R. 729(a)		
11:5-1.15, 1.23	Real Estate Commission: correction to proposal concerning discriminatory conduct prohibitions	26 N.J.R. 1194(a)		
11:5-1.15, 1.23, 1.28, 1.44, 2.5, 4.9	Real Estate Commission: extension of comment periods for proposals published February 7	26 N.J.R. 1222(a)		
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11:5-1.43	Real Estate Commission: licensee provision of Agency Information Statement	25 N.J.R. 1948(a)		
11:5-1.43	Real Estate Commission: extension of comment period regarding licensee provision of Agency Information Statement	25 N.J.R. 2645(a)		
11:5-1.44	Real Estate Commission: collection of licensee Social Security numbers	26 N.J.R. 735(a)		
11:5-2.5	Real Estate Commission: access to commission records	26 N.J.R. 736(a)		
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11:10-1.4, 1.12, 1.13, App. A, B	Dental plan organizations: renewal of certificate of authority	26 N.J.R. 738(a)	R.1994 d.200	26 N.J.R. 1661(a)
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11:17C-2.6	Insurance producers: record maintenance	26 N.J.R. 328(a)	R.1994 d.160	26 N.J.R. 1351(a)
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11:20-2.17	Individual Health Coverage Program: assessments for reimbursable net paid losses	26 N.J.R. 1200(a)	R.1994 d.165	26 N.J.R. 1507(b)
11:20-8, 9, 13	Individual Health Coverage Program: certification and audit requirements; exemptions; non-member status	26 N.J.R. 1294(a)	R.1994 d.177	26 N.J.R. 1509(a)
11:20-10	Individual Health Coverage Program: performance standards and filing requirements	26 N.J.R. 1202(a)	R.1994 d.142	26 N.J.R. 1351(b)
11:21-4.2, 4.3, 17.3, App. Exh. BB	Small Employer Health Benefits Program: certification of utilization compliance	26 N.J.R. 741(a)	R.1994 d.153	26 N.J.R. 1352(a)

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12:18	Temporary Disability Benefits	26 N.J.R. 1326(a)		
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12:23-3	Workforce Development Partnership Program: application and review process for individual training grants	25 N.J.R. 884(a)	R.1994 d.166	26 N.J.R. 1512(a)
12:23-4	Workforce Development Partnership Program: application and review process for approved training	25 N.J.R. 886(a)	R.1994 d.167	26 N.J.R. 1514(a)
12:23-5	Workforce Development Partnership Program: application and review process for additional unemployment benefits during training	25 N.J.R. 887(a)	R.1994 d.168	26 N.J.R. 1515(a)
12:23-6	Workforce Development Partnership Program: application and review process for employment and training grants for services to disadvantaged workers	25 N.J.R. 1054(a)	R.1994 d.190	26 N.J.R. 1663(a)
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12A:10-2	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		
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12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: allocation of direct loan assistance	25 N.J.R. 5759(a)		
12A:31-1.4	Development Authority for Small Businesses, Minorities' and Women's Enterprises: reopening of comment period regarding allocation of direct loan assistance	26 N.J.R. 1434(a)		
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13:3-3.4	Legalized Games of Chance Control Commission: maximum fee for games participation	26 N.J.R. 1297(a)		
13:10	Division on Civil Rights: multiple dwelling reports	26 N.J.R. 901(a)	R.1994 d.203	26 N.J.R. 1666(b)
13:18-6.1, 6.2	Division of Motor Vehicles: insurance verification	25 N.J.R. 3925(b)		
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13:20-39.1, 39.2, 39.3, 39.5, 39.9	Special automobile registration plates for non-profit organizations	26 N.J.R. 331(a)	R.1994 d.175	26 N.J.R. 1516(a)
13:20-43	Enhanced motor vehicle inspection and maintenance program: pre-proposal	25 N.J.R. 3418(a)		
13:23	Division of Motor Vehicles: driving schools	26 N.J.R. 1299(a)		
13:27-3	Board of Architects: scope of architectural services	25 N.J.R. 5439(a)	R.1994 d.169	26 N.J.R. 1517(a)
13:27-5.8, 8.15	Board of Architects: licensure examination fees	26 N.J.R. 1490(a)		
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13:27-8.13	Landscape architects: advertisements and listings	25 N.J.R. 5440(a)	R.1994 d.118	26 N.J.R. 1230(a)
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13:31-1.9	Board of Examiners of Electrical Contractors: identification of licensee vehicles	26 N.J.R. 1218(b)		
13:34-1.1	Board of Marriage Counselor Examiners: examination fee	26 N.J.R. 1301(a)		
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13:35-6.5	Board of Medical Examiners: permissible charges for copies of patient records	25 N.J.R. 4862(a)	R.1994 d.119	26 N.J.R. 1522(a)
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13:35-6.21	Hair replacement techniques: stay of operative date	_____	_____	26 N.J.R. 1354(a)
13:35-8.7, 8.8	Board of Medical Examiners: fitting and dispensing of deep ear canal hearing aid devices	26 N.J.R. 1301(b)		
13:35-11	Board of Medical Examiners: Alternative Resolution Program	25 N.J.R. 2824(b)		
13:36-7.1	Board of Mortuary Science: handling and embalming bodies dead of infectious or contagious disease	26 N.J.R. 1302(a)		
13:37-7	Certification of nurse practitioners/clinical nurse specialists	25 N.J.R. 2829(a)		
13:37-12.1	Board of Nursing: fees for certification of nurse practitioner	26 N.J.R. 1490(b)		
13:37-12.1, 14	Board of Nursing: certification of homemaker-home health aides	25 N.J.R. 1950(a)		
13:37-14	Homemaker-home health aide competency evaluation: public hearing	25 N.J.R. 3704(b)		
13:38-6.1	Board of Optometrists: release of contact lens specification to patient	26 N.J.R. 1220(a)		
13:39-5.2	Board of Pharmacy: information on prescription labels	25 N.J.R. 1667(a)		
13:39-10.2, 11	Board of Pharmacy: sterile admixture services in retail pharmacies	26 N.J.R. 1303(a)		
13:40-7.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:40A-2A.3	Board of Real Estate Appraisers: certification as residential appraiser	26 N.J.R. 902(a)		
13:40A-4.1–4.9	Board of Real Estate Appraisers: licensee continuing education	26 N.J.R. 903(a)		
13:41-4.2	Boards of Professional Engineers and Land Surveyors, Architects, and Professional Planners: depiction of existing conditions on a site plan	26 N.J.R. 1221(a)		
13:42-1.1, 1.2, 4.5, 9.9	Board of Psychological Examiners rules	25 N.J.R. 4937(a)		
13:44D-4.1, 4.2	Advisory Board of Public Movers and Warehousemen: bill of lading and insurance legal liability	25 N.J.R. 5449(a)		
13:44E-1.1	Board of Chiropractic Examiners: scope of chiropractic practice	25 N.J.R. 3931(b)		
13:44E-2.1	Board of Chiropractic Examiners: licensee advertising	25 N.J.R. 3932(a)		
13:44E-2.6	Board of Chiropractic Examiners: practice identification educational requirements	25 N.J.R. 3934(a)		
13:44E-2.8	Board of Chiropractic Examiners: duties of unlicensed assistants	25 N.J.R. 3935(a)		
13:44E-2.9	Board of Chiropractic Examiners: notification of change of address; service of process	25 N.J.R. 3936(a)	R.1994 d.120	26 N.J.R. 1230(b)
13:44E-2.10, 2.11	Board of Chiropractic Examiners: display of license; right to licensure hearing	25 N.J.R. 3936(b)	R.1994 d.121	26 N.J.R. 1231(a)
13:44E-2.13	Board of Chiropractic Examiners: overutilization of services; excessive fees	25 N.J.R. 3937(a)	R.1994 d.122	26 N.J.R. 1231(b)
13:44E-2.13	Board of Chiropractic Examiners: overutilization; excessive fees	26 N.J.R. 1231(b)		
13:44E-2.14	Board of Chiropractic Examiners: referral of patients to physical therapists	25 N.J.R. 3938(a)	R.1994 d.123	26 N.J.R. 1234(a)
13:44G-1–5, 7, 8	Board of Social Work Examiners rules	25 N.J.R. 3081(a)	R.1994 d.189	26 N.J.R. 1524(a)
13:45A-14.7	Office of Consumer Protection: unit price labeling	26 N.J.R. 1306(a)		
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13:47B	Weights and measures	25 N.J.R. 5102(a)	R.1994 d.124	26 N.J.R. 1235(a)
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13:70-12.4	Thoroughbred racing: claimed horse	25 N.J.R. 1059(a)	R.1994 d.134	26 N.J.R. 1354(b)
13:70-14A.1	Thoroughbred racing: intent of medication rules	25 N.J.R. 3099(a)	R.1994 d.125	26 N.J.R. 1236(a)
13:70-14A.8	Thoroughbred racing: possession of drugs or drug instruments	26 N.J.R. 1315(a)		
13:70-14A.9	Thoroughbred racing: administering medication to respiratory bleeders	25 N.J.R. 3100(a)	R.1994 d.129	26 N.J.R. 1237(a)
13:70-19.44	Thoroughbred racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5107(a)		
13:70-20.11	Thoroughbred racing: limitations on entering or starting	25 N.J.R. 3101(a)	R.1994 d.130	26 N.J.R. 1238(a)
13:70-20.13	Thoroughbred racing: trainer fees	25 N.J.R. 5107(b)	R.1994 d.135	26 N.J.R. 1355(a)
13:70-21.4	Thoroughbred racing: medication	25 N.J.R. 3102(a)	R.1994 d.131	26 N.J.R. 1238(b)

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13:71-9.5	Harness racing: conflicts of interest involving veterinary practitioner and spouse	25 N.J.R. 5108(a)		
13:71-23.1	Harness racing: intent of medication rules	25 N.J.R. 3104(a)	R.1994 d.126	26 N.J.R. 1238(c)
13:71-23.8	Harness racing: administering medication to respiratory bleeders	25 N.J.R. 3105(a)	R.1994 d.128	26 N.J.R. 1240(a)
13:71-23.9	Harness racing: possession of drugs or drug instruments	26 N.J.R. 1316(a)		
13:71-29	Harness racing: sulky	26 N.J.R. 95(a)	R.1994 d.143	26 N.J.R. 1357(a)
13:75	Violent Crimes Compensation Board: practice and procedure	26 N.J.R. 1491(a)		
13:82	Boating rules	26 N.J.R. 744(a)	R.1994 d.205	26 N.J.R. 1674(a)

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14:18-3.24	Cable television: late fees and charges	26 N.J.R. 105(a)		
14:18-10.5	Cable television: performance monitoring	25 N.J.R. 2700(a)		
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16:28-1.67	Speed limit zones along U.S. 202 in Somerset County	26 N.J.R. 1316(b)		
16:28A-1.33	No stopping or standing zones on Route 47 in Gloucester County: administrative correction	———	———	26 N.J.R. 1537(a)
16:28A-1.34, 1.71	Restricted parking along Route 49 in Millville and Route 67 in Fort Lee	25 N.J.R. 5760(a)	R.1994 d.149	26 N.J.R. 1358(a)
16:28A-1.41	Time limit parking on Route 77 in Bridgeton: correction to proposal	25 N.J.R. 3944(a)		
16:30-3.10	Lane usage along I-287 in Morris County	26 N.J.R. 107(a)	R.1994 d.116	26 N.J.R. 1241(a)
16:30-3.10	Lane usage along I-287 in Morris County: administrative correction	———	———	26 N.J.R. 1690(a)
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships	26 N.J.R. 908(a)		
16:30-3.11	Left turn lane along Route 38 in Lumberton and Southampton townships: correction to proposal and extension of comment period	26 N.J.R. 1317(a)		
16:30-10.16	Midblock crosswalks along Route 71 in West Long Branch and Eatontown	25 N.J.R. 5762(a)	R.1994 d.150	26 N.J.R. 1358(b)
16:31-1.34	Turn prohibitions along Route 52 in Ocean City	26 N.J.R. 332(a)	R.1994 d.179	26 N.J.R. 1537(b)
16:41D	Motorist service signs on non-urban interstate and limited access highways	25 N.J.R. 2836(a)	R.1994 d.148	26 N.J.R. 1359(a)
16:44	Construction services	25 N.J.R. 1954(a)		
16:44	Construction Services: waiver of sunset provision of Executive Order No. 66(1978)	25 N.J.R. 2227(a)		
16:44	Construction services	25 N.J.R. 4727(a)	R.1994 d.198	26 N.J.R. 1690(b)
16:46	Drawbridge operations	26 N.J.R. 755(a)	R.1994 d.199	26 N.J.R. 1694(a)
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16:53	Regulation of autobuses and transportation public utilities: pre-proposal	26 N.J.R. 1317(b)		
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17:2-4.3	Public Employees' Retirement System: school year members	26 N.J.R. 108(a)	R.1994 d.162	26 N.J.R. 1537(c)
17:3-1.1	Teachers' Pension and Annuity Fund: conduct of Board meetings	25 N.J.R. 5762(b)	R.1994 d.161	26 N.J.R. 1537(d)
17:3-4.3	Teachers' Pension and Annuity Fund: school year members	26 N.J.R. 108(b)	R.1994 d.163	26 N.J.R. 1538(a)
17:9-4.1, 4.5	State Health Benefits Program: appointive officer eligibility	26 N.J.R. 109(a)		
17:13	Goods and services contracts for small businesses, minority businesses, and female businesses	25 N.J.R. 4889(a)		
17:14	Minority and female contractor and subcontractor participation in State construction contracts	25 N.J.R. 4461(b)		

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18:5	Cigarette Tax Act rules	26 N.J.R. 759(a)	R.1994 d.184	26 N.J.R. 1695(b)
18:6	Unfair Cigarette Sales Act rules	26 N.J.R. 760(a)	R.1994 d.185	26 N.J.R. 1696(a)
18:7	Corporation Business Tax	26 N.J.R. 761(a)	R.1994 d.186	26 N.J.R. 1696(b)
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18:18	Motor Fuels Tax	26 N.J.R. 777(a)	R.1994 d.187	26 N.J.R. 1706(a)
18:19	Motor fuels retail sales	26 N.J.R. 778(a)	R.1994 d.188	26 N.J.R. 1706(b)
18:22	Public Utility Corporation Tax	26 N.J.R. 335(a)	R.1994 d.145	26 N.J.R. 1370(a)
18:23	Railroad Property Tax	26 N.J.R. 110(a)	R.1994 d.132	26 N.J.R. 1371(a)
18:35-1.14, 1.25	Gross Income Tax: partnerships; net profits from business	25 N.J.R. 677(a)	R.1994 d.110	26 N.J.R. 1241(a)
18:35-1.17	Gross Income Tax: Workforce Development Partnership Fund and Health Care Subsidy Fund withholding	26 N.J.R. 336(a)	R.1994 d.146	26 N.J.R. 1372(a)
18:35-1.27	Gross Income Tax: interest on overpayments	26 N.J.R. 112(a)	R.1994 d.133	26 N.J.R. 1372(b)
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19:30-7	Economic Development Authority: Disability discrimination complaint procedure	25 N.J.R. 4864(b)	R.1994 d.111	26 N.J.R. 1248(a)
19:31-8	Economic Development Authority: Hazardous Discharge Site Remediation Fund	25 N.J.R. 4468(a)	R.1994 d.192	26 N.J.R. 1706(c)

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19:40-1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:40-3.3	Establishment of qualification by required individuals	26 N.J.R. 782(a)		
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19:41-1.4	Casino operation certificate	25 N.J.R. 5893(a)		
19:41-1.5, 1.6, 1.7	Casino employment requirements	26 N.J.R. 779(a)		
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19:41-5.6, 5.6A	Business entity disclosure forms	26 N.J.R. 1437(a)		
19:41-6.1–6.5	Statements of compliance	26 N.J.R. 1319(a)		
19:41-7.1A, 7.1B, 7.7	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)		
19:41-9.8, 9.9, 9.9A, 9.11A, 9.12, 9.13, 9.14, 14.6	License periods and fees	26 N.J.R. 780(a)		
19:41-9.16	Listing of endorsements on casino employee licenses	26 N.J.R. 911(a)		

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19:41-11.1–11.4	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)		
19:43-2.2–2.7A	Establishment of qualification by required individuals	26 N.J.R. 782(a)		
19:43-6.1–6.9	Casino hotel facility requirements	26 N.J.R. 1206(a)		
19:43-6.2, 7, 9.1, 10.1, 14.1	Casino operation certificate	25 N.J.R. 5893(a)		
19:43-9.4	Employee experiential hours	26 N.J.R. 783(a)		
19:43-9.5	Applications for issuance of employee licenses or registration and natural person qualification	26 N.J.R. 1321(a)		
19:43-10.4, 10.6	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)		
19:43-14.2	Casino simulcasting facility: advertising prohibitions	26 N.J.R. 1209(a)		
19:44-6.1	License periods and fees	26 N.J.R. 780(a)		
19:44-8.3	Poker	25 N.J.R. 5906(a)	R.1994 d.141	26 N.J.R. 1380(a)
19:45-1	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:45-1.1	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:45-1.1, 1.1A, 1.2, 1.8, 1.10, 1.11, 1.12, 1.15, 1.19, 1.33, 1.46–1.51	Keno	26 N.J.R. 115(a)		
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19:45-1.1, 1.8, 1.16, 1.18, 1.46	Match play coupons	25 N.J.R. 5902(a)	R.1994 d.137	26 N.J.R. 1373(b)
19:45-1.3, 1.10, 1.11, 1.14, 1.32, 1.34	Casino operation certificate	25 N.J.R. 5893(a)		
19:45-1.8	Records retention	25 N.J.R. 5905(a)	R.1994 d.138	26 N.J.R. 1376(a)
19:45-1.9, 1.9B	Complimentary services or items; cash and noncash gifts	26 N.J.R. 113(a)	R.1994 d.139	26 N.J.R. 1377(a)
19:45-1.11	Casino licensee's organization	26 N.J.R. 784(a)		
19:45-1.11A	Jobs compendium submission	26 N.J.R. 114(a)	R.1994 d.140	26 N.J.R. 1379(a)
19:45-1.17, 1.42	Transportation of slot cash storage boxes, slot drop buckets and drop boxes	26 N.J.R. 1440(a)		
19:45-1.18, 1.46	Use of match play coupons in craps	26 N.J.R. 1441(a)		
19:45-1.19	Card-o-lette	25 N.J.R. 2230(a)		
19:45-1.27	Approval of patron credit limits	26 N.J.R. 912(a)		
19:45-1.41	Filling of slot machine hopper or hopper storage area: administrative correction	_____	_____	26 N.J.R. 1538(c)
19:45-1.43	Count room procedure	26 N.J.R. 1209(b)		
19:45-1.45	Maintenance of signature cards	26 N.J.R. 912(b)		
19:45-1.46	Inventory of coin coupons	26 N.J.R. 1322(a)		
19:46-1.1, 1.2, 1.4, 1.5	Gaming chips and plaques	26 N.J.R. 1441(b)		
19:46-1.1, 1.8, 1.9, 1.13F, 1.20	Card-o-lette	25 N.J.R. 2230(a)		
19:46-1.4, 1.5	Match play coupons	25 N.J.R. 5902(a)	R.1994 d.137	26 N.J.R. 1373(b)
19:46-1.5, 1.26, 1.33–1.36	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:46-1.5, 1.20, 1.33	Keno	26 N.J.R. 115(a)		
19:46-1.10, 1.16, 1.19, 1.20	Casino operation certificate	25 N.J.R. 5893(a)		
19:46-1.13B, 1.19	Pai gow poker: automated shuffling devices and dealing shoes	26 N.J.R. 344(a)		
19:46-1.13E, 1.17, 1.18	Poker	25 N.J.R. 5906(a)	R.1994 d.141	26 N.J.R. 1380(a)
19:46-1.13F, 1.17, 1.19	Double Down Stud: temporary adoption of amendments and new rules	_____	_____	26 N.J.R. 1390(a)
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19:47-2.3, 2.17, 3.2, 6.5, 7.2, 10.5, 11.7	Match play coupons	25 N.J.R. 5902(a)	R.1994 d.137	26 N.J.R. 1373(b)
19:47-2.5, 2.6, 5.2, 8.5	Casino operation certificate	25 N.J.R. 5893(a)		
19:47-3.5, 4.4, 7.5	Shuffle and cut of the cards in baccarat-punto banco, baccarat-chemin de fer, minibaccarat	26 N.J.R. 1210(a)		
19:47-8.2, 15	Card-o-lette	25 N.J.R. 2230(a)		
19:47-11.2, 11.4–11.8, 11.8A, 11.8B, 11.8C, 11.10, 11.11	Pai gow poker: automated shuffling devices and dealing shoes	26 N.J.R. 344(a)		
19:47-14	Poker	25 N.J.R. 5906(a)	R.1994 d.141	26 N.J.R. 1380(a)

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19:47-16	Keno	26 N.J.R. 115(a)		
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19:47-17	Double Down Stud	26 N.J.R. 1323(a)		
19:50-1.4, 1.5, 2.2, 3.1, 3.6	Casino simulcasting facility: alcoholic beverage control	26 N.J.R. 1211(a)		
19:51	Persons doing business with casino licensees	26 N.J.R. 1212(a)		
19:51-1.1	Match play coupons	25 N.J.R. 5902(a)	R.1994 d.137	26 N.J.R. 1373(b)
19:51-1.1, 1.2	Slot tokens, prize tokens, slot machine hoppers	26 N.J.R. 1447(a)		
19:51-1.2, 1.2A, 1.2B	Casino licensees, applicants, and casino service industry enterprises	26 N.J.R. 339(b)		
19:51-1.8	License periods and fees	26 N.J.R. 780(a)		
19:53-1.2, 5.5, 5.7	Disbursement credit for goods and services with certified MBEs and WBEs; commercial buyers	26 N.J.R. 785(a)		
19:65-1.2, 2.2, 2.4–2.11, 6.1, 6.2	Hotel development and corridor region projects	25 N.J.R. 4476(a)		
19:65-2.5	Approval criteria for hotel development projects	25 N.J.R. 5455(a)		

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