

NEW JERSEY



REGISTER

*IN THIS ISSUE—
“INDEX OF PROPOSED RULES”*

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LIBRARY

The New Jersey Register supplements the New Jersey Administrative Code. See the Index of Adopted Rules on Page 167 of the February 7 issue for the Registers that should be retained as an update to the Administrative Code.

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RULE PROPOSALS

BANKING

(a)

DIVISION OF BANKING

Automated Teller Machines

Proposed New Rule: N.J.A.C. 3:6-13

Authorized By: Michael M. Horn, Commissioner,
Department of Banking.
Authority: N.J.S.A. 17:9A-20(g), 17:9A-315 et seq. and
17:9A-333 et seq.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roger F. Wagner, Deputy Commissioner
Department of Banking
Division of Banking
P.O. Box CN 040
Trenton, NJ 08625

The Department of Banking thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-67.

The agency proposal follows:

Summary

The Department of Banking originally proposed rules governing the establishment, maintenance and operation of automatic teller machines (ATMs) in the November 15, 1982 New Jersey Register at 14 N.J.R. 1246(a). In response to public comments on that proposal, the Department of Banking has made substantial changes in the proposed rules which necessitate that new notice of the proposal be given. The current proposal supersedes that which appeared at

14 N.J.R. 1246(a). "Automatic teller machine" has been redefined to parallel the statutory language. Formal notice by the institutions has been replaced by letter notice. The filing fee for on-site ATMs has been lowered to \$10.00. A clarification was made concerning the authority of an institution to establish ATMs within 200 feet of its premises. The filing fee for off-site shared ATMs has been modified. On-site installations have been excluded from the limit of three machines at a site. The notice and fee requirements for additional or eliminated sharing institutions has been amended. All institutions must now provide the Department of Banking with a yearly list, beginning July 1, 1983, of every ATM owned, operated, maintained or shared by that institution, including a list of each institution that shares with that institution.

Social Impact

The proposed rules will facilitate the use of automatic teller machine networks throughout the State of New Jersey. As a result, bank and savings bank customers will benefit from the ease and convenience of 24 hour banking, particularly at strategic automatic teller machines located in airports, supermarkets, shopping malls and resort areas. The interstate access provisions will permit New Jersey residents to have access to funds in their accounts when on vacation or business trips outside of the State. Banks and savings banks will also be able to offer their services to their customers without the expenditure of large amounts of additional capital.

Economic Impact

The proposed rules will have an economic impact on those banks which seek to install automated teller machines since they will be required to furnish filing fees with their applications. These rules will produce additional income for the State through the imposition of such application fees.

Full text of the proposed new rule follows.

SUBCHAPTER 13. AUTOMATED TELLER MACHINES

3:6-13.1 Establishment; operation

(a) For purposes of these regulations an "automated teller machine" means a facility, terminal, space or receptacle at which any business that may be conducted in a principal office of a bank or savings bank may be transacted, and which consists of equipment, structure or systems by means of which information relating to financial services rendered to the public is transmitted and

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BANKING

through which transactions with banks and savings banks are consummated, instantaneously or otherwise, unless restricted to an individual customer's exclusive use.

(b) Any bank or savings bank may establish, maintain or operate an automated teller machine or machines at a location within 200 feet of the premises (measured from the perimeter of any parking area owned, leased or shared by the bank or savings bank) of its principal office, auxiliary office, or any of its full branch or minibranch offices by filing a letter notice with the Commissioner which indicates:

1. The location of the principal office, auxiliary office or minibranch office at which the automated teller machine or machines is to be established.

2. A listing of all other financial institutions which will share access to the machine or machines and the basis on which compensation for such access will be calculated.

3. The date it is anticipated that the automated teller machine or machines will commence operation.

(c) A filing fee of \$10.00 must accompany each such letter notice.

3:6-13.2 Off-site location

(a) Any bank or savings bank may apply to establish, maintain, or operate an automated teller machine or machines at a location more than 200 feet from the premises (measured from the perimeter of any parking area owned, leased or shared by the bank or savings bank) of its principal office, auxiliary or any of its full branch or minibranch offices by filing an application to the Department of Banking on a form prescribed by the Commissioner including the following:

1. The proposed location of the automated teller machine or machines and an executed indicia of title to the property to be used for the machine.

2. A listing of all other institutions which will share access to the machine or machines and the basis on which compensation for such access will be calculated.

3. The number of machines to be established at the location.

4. Such other information as prescribed by the Commissioner.

(b) The following items must accompany each application:

1. A filing fee of \$250.00 plus an additional \$50.00 if one or more other financial institutions will share access to the automated teller machine(s).

2. A certified copy of a resolution of the board of the applying bank authorizing the application.

(c) Within 45 days after receipt of a completed application the Commissioner will issue a decision and order approving or denying the application.

3:6-13.3 Shared access/shared ownership

(a) For purposes of these regulations the term "sharing access" shall encompass the ability of any financial institution, other than the applying bank, to allow its customers to utilize a machine for the purpose of consummating transactions or initiating inquiries on accounts or lines of credit or otherwise conducting business with such financial institution regardless of the financial arrangement between or among the institutions whose customers can use the automated teller machine(s).

(b) An application for the establishment and operation of each automated teller machine shall be made by only one bank or savings bank, provided however, that should any other financial institution share in the ownership, costs of installation or maintenance of the machine, either directly or indirectly (on other than a transaction fee basis) then, in that event the notice or application shall so clearly indicate and a certified board resolution from each such financial institution shall accompany the application. The application fee need only be paid by the applying bank or savings bank, but the machine shall be a branch of every bank or savings bank sharing ownership or costs of installation and maintenance.

3:6-13.4 Additional machines

(a) If at any time a bank or savings bank proposes to install in excess of three automated teller machines at a previously-approved site located at other than its principal office, auxiliary office, a full branch office, or a minibranch office, as defined in N.J.A.C. 3:6-13.1(b), it shall file a formal letter notice with the Commissioner.

(b) A filing fee of \$50.00 for each machine in excess of three at the location must accompany the application.

(c) If within 10 days of the receipt of the formal notice, the Commissioner does not notify the bank or savings bank of his objection, the institution can install such additional machine or machines.

3:6-13.5 Additional access

(a) If at any time after the establishment of any automated teller machine shared access is granted to a financial institution not included in the original notice or application or a financial institution so listed no longer shares access, the applying institution shall so notify the Commissioner in an annual notice to be filed on July 1 of each year beginning July 1, 1983.

(b) A filing fee of \$25.00 shall accompany each such notice regardless of the number of institutions added or eliminated.

3:6-13.6 Interstate access

(a) For purposes of these regulations, a "foreign financial institution" shall mean a State or Federally-chartered bank, savings bank, or savings and loan association with principal offices outside the State of New Jersey.

(b) No foreign financial institution shall establish, operate, maintain or share ownership of an automated teller machine anywhere within the State of New Jersey, except that a foreign financial institution may share access to such a machine on a transactional fee basis or in accordance with any similar arrangement approved by the Commissioner.

(c) No automated teller machine at which a foreign financial institution shares access shall bear any identification of the foreign financial institution except that a generic name or display identifying or associated with a regional or interstate network of automated teller machines is not prohibited.

(d) No interstate deposits shall be allowed through an automated teller machine established, owned or operated within the State of New Jersey. The transfer of funds between accounts shall not be considered a deposit for purposes of these regulations.

(e) No bank or savings bank shall permit a foreign financial institution to share access to an automated teller machine located within the State of New Jersey unless the State in which the foreign financial institution has its principal offices allows New Jersey institutions to share access to automated teller machines established, operated or maintained in that State.

3:6-13.7 Present locations

(a) Every bank and savings bank shall file a list with the Commissioner on or before July 1, 1983 of every automated teller machine owned, operated or maintained by it as of July 1, 1983 whether at its principal office, an auxiliary office, a full branch office, a minibranch office or elsewhere including a listing of all other financial institutions which share access to the machine. No fee shall be required for this filing.

(a)

DIVISION OF BANKING

**Definition of Contingent Reserves
General Lending Limitations**
**Proposed Amendments: N.J.A.C. 3:11-7.2
Proposed New Rules: N.J.A.C. 3:11-7.8 and
7.9**

Authorized By: Michael M. Horn, Commissioner,
Department of Banking.
Authority: N.J.S.A. 17:9A-60 et seq. and 17:9A-62H.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Roger F. Wagner, Deputy Commissioner
Department of Banking
Division of Banking
CN 040
Trenton, NJ 08625

The Department of Banking thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-68.

The agency proposal follows:

Summary

Pursuant to the provisions of federal legislation recently enacted and commonly referred to as The Garn-St. Germain Depository Institutions Act of 1982 (P.L. 97-320), the United States Comptroller of the Currency has proposed a regulation to be effective April 14, 1983 which will basically expand the lending limitation applicable to national banks from 10 percent of capital to 15 percent of capital. A further exception to this lending limitation is a provision whereby a national bank would be able to lend an additional 10 percent of its capital and surplus provided this excess is secured by readily marketable collateral. Additionally, loans secured by a segregated deposit account of the lending institution would not be subject to any lending limitation nor would a loan to another financial institution, provided such loan were approved by the United States Comptroller of the Currency. Restrictions on the use of the reserve for bad debts are also to be removed.

The proposed amendments to existing State rules and the proposed new rules are directed toward creating and maintaining substantial equality between State and national banks by granting State institutions similar expanded lending limitations as those found in the new federal law. The Department further recognizes the merit for expanding these lending limitations which will allow State institutions to better serve their customers.

Social Impact

The expansion of the basic lending limitation in a State bank will allow it to better serve its major customers. Further, within the collateral restraints imposed, a bank will be able to give additional service while maintaining a secure position by requiring collateral protection for any excess loans granted. Specific loans between individual financial institutions would be allowed, if approved by the Commissioner of Banking. Such loans might be needed to accommodate special situations and be beneficial to the overall banking industry.

Maintenance of general lending parity between national and State banks will have a positive social impact by offering the borrowing public the full availability of alternate services.

Economic Impact

By maintaining a competitive parity among institutions, the borrowers in the State will be able to obtain loans at competitive rates rather than being restricted to one source of funding. Further, with State institutions being able to compete on an equal plane, they will be able to grow and expand services to the communities they serve.

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

3:11-7.2 Definition of contingent reserves

(a) Contingent reserves of a bank is defined to include:

1. Reserve the loan losses or bad debts [,less the amount of tax which would become payable with respect to the tax free portion of the reserve if such portion were transferred from the reserve];
- 2.-4. (No change.)

3:11-7.8 General lending limitations

(a) **The total liabilities of any person which are not fully secured, as determined in a manner consistent with (b) below, by collateral having a market value at least equal to the amount of the liability shall not exceed 15 percent of the capital funds of a bank. The 10 percent limitation prescribed in N.J.S.A. 17:9A-62A is increased pursuant to N.J.S.A. 17:9A-62H.**

(b) **The total liabilities of any person fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the amount of the funds outstanding shall not exceed 10 percent of the capital funds of the bank. This limitation shall be separate from and in addition to the limitation contained in (a) above.**

(c) **A liability based on the limitation contained in (b) above shall be secured by readily marketable collateral having a current market value of at least 15 percent greater than the amount of the loan or extension of credit at the time the loan or extension of credit is made. "Current market value" means the closing price listed for an item in a regularly published listing or an electronic reporting service. The bank must make every effort to maintain a collateral margin of 15 percent. However, since collateral values may fluctuate, the current market value of the collateral may, for short periods of time, fall below the 115 percent coverage required. At no time, however, may current market value of the collateral be less than 100 percent of the funds outstanding except as provided in (f) below.**

(d) **For purpose of this section, "readily marketable collateral" means financial instruments which are salable under ordinary circumstances with reasonable promptness at a fair market value based on continuously available daily bid and ask price quotations. "Financial instruments" include stocks, notes, bonds, and debentures traded on a national securities exchange, "OTC margin stocks" (as defined in Regulation U of the Federal Reserve Board), and negotiable certificates of deposit.**

(e) **Collateral must be repriced at least monthly or more frequently as necessary to ensure that margin requirements are maintained. Financial instruments may be denominated in foreign currencies which are freely convertible to U.S. dollars. If collateral is denominated and payable in a currency other than that of the loan or extension of credit which it secures, the collateral must be revalued at least monthly, using appropriate foreign exchange rates, in addition to being repriced at current market value.**

(f) **Each bank must monitor the current market value of**

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COMMUNITY AFFAIRS

collateral held for purposes of compliance with this section. If collateral values fall to or below 100 percent of the outstanding loan, the bank must, within a reasonable period of time; obtain additional collateral in an amount sufficient to provide 115 percent coverage; require reduction of the loan or extension of credit; or sell the collateral and liquidate the debt. Generally, a reasonable period of time is considered no longer than five business days. During this period, the loan or extension of credit will be considered nonconforming. Failure to comply with one of these alternatives will result in violation of law.

(g) The total liabilities of any person secured by a segregated deposit account in the lending bank shall not be subject to any limitation based on the capital funds of the bank.

3:11-7.9 Loans to financial institutions with the approval of the Commissioner of Banking

(a) Loans or extensions of credit to any financial institution or to any receiver, conservator, superintendent of banks, or other agent in charge of the business and property of such financial institution, when such loans or extensions of credit are approved by the Commissioner of Banking, shall not be subject to any limitation based on capital funds.

(b) For purposes of this section, "financial institution" means a commercial bank, savings bank, trust company, savings and loan association, or credit union.

COMMUNITY AFFAIRS

(a)

DIVISION OF HOUSING

Public Housing and Development Authority Limited Dividend and Nonprofit Housing Corporations and Associations

Proposed Amendments: N.J.A.C. 5:13-1.1,
1.5, 1.19, 1.20, 1.25, 1.27

Proposed Repeals: N.J.A.C. 5:13-1.3, 1.21,
1.22, 1.23, 1.24, 1.26

Authorized By: John P. Renna, Commissioner, Department
of Community Affairs.

Authority: N.J.S.A. 55:16-11 and 52:27D-22; P.L. 1981,
c.462.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael L. Tickin, Esq.
Administrative Practice Officer
Division of Housing
CN 804
Trenton, NJ 08625

The Department of Community Affairs thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-58.

The agency proposal follows:

Summary

The proposal amends the Limited Dividend and Nonprofit Housing Corporations and Associations rules to remove a reference

to the State Housing Council made obsolete by P.L. 1981, c.462 which conferred the State Housing Council's powers under the Act upon the Public Housing and Development Authority of the Department of Community Affairs. The proposal also amends and deletes provisions concerning hearings which antedate the creation of the Office of Administrative Law and have been superseded by N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. (as implemented by N.J.A.C. 1:1) creating that Office, deletes a redundant section of the rules and requires prior approval by the Authority of amendments to certificates of incorporation or partnership or association agreements and of sale, transfer, encumbrance or assignment of property of the housing sponsor or of any stock or other ownership interest in the housing sponsor.

Social Impact

Elimination of obsolete references and provisions will update and enhance the usability of the rules. The added filing requirements will provide interested parties with added assurance that the documents in question are in proper form.

Economic Impact

The only economic impact which is anticipated is the cost to sponsors of providing copies of additional documents.

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

5:13-1.1 Definitions

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

["Council" means the State Housing Council within the Department of Community Affairs.]

5:13-1.3 [Formation, operation and management of a housing corporation or association] (Reserved)

[All housing sponsors shall comply with the requirements of Section 1.4 (Formation of a housing corporation or association) of this Chapter et seq. in their formation, operation and management.]

5:13-1.5 Operation of corporation or association

(a) The following acts of the housing sponsor, to be valid and effective shall be subject to the prior approval of the Authority in writing:

1. All bylaws of the housing sponsor and amendments to those bylaws, and to the certificate of incorporation or partnership or association agreement, which shall be filed with the Authority;

2.-4. (No change.)

5. Sale, transfer, encumbrance or assignment of the property of the housing sponsor or of any stock or other ownership interest in the housing sponsor.

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

5:13-1.19 Rights to hearing

Any person or housing sponsor aggrieved by any such order as may be issued under [Section 1.18 (Administrative orders or complaints) of this Chapter.] N.J.A.C. 5:13-1.18 shall be entitled to a hearing before [a hearing officer designated by the State Administrator] the Office of Administrative Law.

5:13-1.20 Request for a hearing

[(a)] An application for a hearing must be filed with the State Administrator within 15 business days of the receipt by the applicant therefor[e] of the notice or order complained of. Such application must be accompanied by a statement of issues of law and of fact which the applicant asserts are germane to the application. [All other interested parties must file with the State Administrator similar statements of issues at least two days prior to a hearing.] Copies of all such statements shall be provided to all parties [of] in interest.

[(b)] Either party may request a postponement of the hearing date if failure to postpone the hearing would result in undue hardship on either party. The hearing examiner will immediately notify each party of interest of his intended action on any such request provided that, any such party may file written objection to such action which shall become part of the record of the proceeding on the application.

[(c)] An indication by either party that a consent order would be acceptable shall be construed as a request for a postponement of the hearing date. Such a postponement may be granted by the hearing examiner if no hardship is imposed on either party and the remedies of the application are preserved; notice of action and right to file objection shall be as provided for in subsection (b) of this Section.]

5:13-1.21 [Notice of hearing] (Reserved)

[(a)] Not less than seven days prior to the date scheduled for the hearing, written notice shall be sent by the hearing officer to all interested parties at their last known address.

[(b)] The notice of hearing shall include:

1. A statement of the time, place and purpose of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the statutes and regulations involved;
4. A short and plain statement of matters asserted.]

5:13-1.22 [Conduct of hearing and evidence] (Reserved)

[(a)] Every party shall have the right to present his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of facts. The parties shall not be bound by rules of evidence whether statutory, common law, or adopted by the rules of court. All relevant evidence is admissible, except as otherwise provided in this Section. The presiding officer may in his discretion exclude any evidence if he finds that its probative value is substantially outweighed by the risk that its admission will either necessitate undue consumption of time or create substantial danger of undue prejudice or confusion.

[(b)] The presiding officer shall give effect to the rules of privilege recognized by law.

[(c)] Notice may be taken of judicially noticeable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The Authority's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (Parties shall be afforded an opportunity to contest material facts of which judicial notice is taken.)

[(d)] Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the matters of notice, including any staff memoranda or data].

5:13-1.23 [Transcript] (Reserved)

[A transcript may be taken at the request of any one of the parties at his own expense.]

5:13-1.24 [Findings] (Reserved)

[(a)] The hearing examiner shall transmit his recommended report and decision in writing to the State Administrator within five days of the hearing.

[(b)] The recommended report and decision shall contain findings of fact and conclusions of law and shall be based exclusively on the evidence and on matters officially noticed.

[(c)] The report and decision shall be part of the record of the case and copies of the same shall be delivered or mailed to the parties of interest.]

5:13-1.25 Stay of action

A request by the applicant for a stay of notice or order complained of may be granted [at the hearing or] by the State Administrator pending final determination; provided that, no such stay shall be granted except upon such terms and conditions as will insure compliance with the provisions of the Act and this chapter.

5:13-1.26 [Final report and order] (Reserved)

[(a)] Each party of record may file exceptions, objections and replies thereto, and may present argument to the State Administrator in writing at any time prior to issuance of final decision and order.

[(b)] Within ten days after the hearing, the State Administrator shall issue an order in which he may adopt, reject or modify the recommended report and decision.

[(c)] Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith by registered or certified mail to each party and to his attorney of record.

[(d)] The administrative adjudication of the State Administrator shall be effective on the date of delivery or on the date of mailing of the final decision to the parties of record, whichever shall occur first, or shall be effective on any date after the date of delivery or mailing as the State Administrator shall provide by the order of the case. The date of delivery or mailing and the effective date of the order shall be stamped on the face of the decision.

[(e)] The final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding.]

5:13-1.27 Declaratory rulings

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

[(d)] Such ruling shall be deemed a [final] decision or action subject to review [in the Appellate Division of the Superior Court] before the Office of Administrative Law.

(c) (No change.)

EDUCATION

(a)

STATE BOARD OF EDUCATION

State Library Assistance Programs
County Library Reorganization

Proposed New Rules: N.J.A.C. 6:64-2.1
through 6:64-2.4

Authorized By: New Jersey State Board of Education,
Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:4-15, N.J.S.A. 40:33-13.2h, i,
j, k, n.

PROPOSALS

EDUCATION

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative
Practice and Procedure
Department of Education
225 West State Street
Trenton, NJ 08625

The State Board of Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-59.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15, proposes to establish new rules concerning County Library Reorganization. The proposed new rules are designed to implement the provisions of Chapter 489, Laws of 1981, embodied in N.J.S.A. 40:33-13h, i, j, k, and n, which sets forth in detail three voluntary options for county library reorganization: the "branch development option", the "service contract option", the "tax base sharing option".

Definitions of the following terms are provided for clarification: branch library, county library system, joint branch library, library services, member of a county library system, patron services and service contract.

Requirements are set forth for each of the three county library options. A requirement for annual reporting to the State Librarian is included for each option, and an appeal procedure is also established.

The proposal is intended to provide guidelines for county and public libraries in counties where citizens vote to reorganize under the provisions of the above-mentioned statutes.

Social Impact

The improvement of library service resulting from county library reorganization is expected to increase greatly the opportunity for access to a wide variety of library materials and information for the residents of any of the 14 counties of New Jersey served by county libraries.

Economic Impact

Agencies affected are those county libraries, county library branches and public libraries contracting for service with county libraries which elect any of the three options provided. Improved financial stability is expected to result for the county library systems electing these options.

All residents within any county served by a library which selects the tax base sharing option will share in payment of the county library tax. Since the reorganization options are voluntary and have yet to be demonstrated, exact financial costs and/or benefits cannot be anticipated. No cost to the State of New Jersey is involved.

Full text of the proposed new rule follows.

SUBCHAPTER 2. COUNTY LIBRARY REORGANIZATION

6:64-2.1 Scope and purpose

The rules set forth in this subchapter provide for the implementation of three options for county library reorganization as provided in N.J.S.A. 40:33-13.2d et seq. The options for county library reorganization are designated as the "branch development option," the "service contract option" and the "tax base sharing option".

6:64-2.2 Definitions

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

"Branch library" means an auxiliary outlet of a county library, funded primarily and administered totally by a county library commission.

"County library system" means a county library established pursuant to N.J.S.A. 40:33-1 et seq. or N.J.S.A. 40:33-15 et seq.

"Joint branch library" means an auxiliary outlet of a county library serving two or more adjacent municipalities, funded primarily and administered totally by a county library commission.

"Library services" means, but is not limited to, acquisition and technical processing of materials, allocations for the purchase of print and non-print library materials, bulk loans of library materials, provision of public relations services, professional staffing, programming and consulting assistance.

"Member of a county library system" means a municipality providing financial support to a county library pursuant to N.J.S.A. 40:33-9, or a municipality receiving first level services pursuant to N.J.S.A. 40:33-15 et seq.

"Patron services" means circulation of library materials, reference assistance, and public programs provided by a county library.

"Service contract" means an agreement for library services negotiated among a county library commission, the governing body of a county, and the governing body of a municipality.

6:64-2.3 General provisions

(a) A county branch library and joint branch library must be under the full-time supervision of a paid certified professional librarian.

(b) There must be a library building adequate to house the collection with a separate meeting room and at least three readers' seats for every 1,000 population of its municipality(ies). The building may be owned by either a municipality or the county or may be rented.

(c) A county branch library and a county joint branch library must meet the quantitative State aid criteria for a public library serving the population of the municipality(ies) (see N.J.A.C. 6:68-1.4 to 1.6). Consideration will be given to an adjustment of these requirements if it can be shown that equivalent centralized services are provided.

(d) After the establishment of a county branch library or a joint branch library, a county library must submit annually to the State Librarian a report certifying that the branch library or joint branch library meets the standards enumerated in (a), (b) and (c) above.

(e) After the adoption of a service contract, a county library must submit annually to the State Librarian a copy of the service contract with a statement certifying that the services provided to a municipality will be at least at the level required by N.J.A.C. 6:68-1.4 to 1.6. Consideration will be given to an adjustment of these requirements if it can be shown that equivalent centralized services are provided.

(f) After the adoption of the tax base sharing option, a county library must submit annually to the State Librarian a report certifying that it complies with N.J.A.C. 6:68-1.4 to 1.6.

6:64-2.4 Appeal procedure

Appeals from any action of the State Librarian regarding the rules in this subchapter may be requested, and opportunity given for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, a formal hearing may be requested pursuant to N.J.S.A. 18A:6-24. Such hearings shall be governed by the provisions of the Administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

(a)

STATE BOARD OF EDUCATION

State Library Assistance Programs
Library Construction Incentive ActProposed Amendments: N.J.A.C. 6:68-4.1
through 6:68-4.9

Authorized By: New Jersey State Board of Education,
Saul Cooperman, Secretary.

Authority: N.J.S.A. 18A:4-15 and 18A:74-14 et seq.,
specifically 18A:74-17.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Lorraine L. Colavita
Executive Assistant for Administrative
Practice and Procedure
Department of Education
225 West State Street
Trenton, NJ 08625

The State Board of Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-60.

The agency proposal follows:

Summary

The State Board of Education, pursuant to the authority of N.J.S.A. 18A:4-15 and 18A:74-14 et seq., proposes to amend N.J.A.C. 6:68-4.1 through 6:68-4.9 concerning State Library Assistance Programs. The proposed amendments update the rules governing the New Jersey Library Construction Incentive Act (P.L. 1973 c.381) which provides funds through grants to assist in the construction, expansion, rehabilitation or acquisition of a public library building. This proposal increases the maximum grant award from \$300,000 to \$500,000, establishes county, joint or municipal libraries as first priority applicants, and eliminates non-essential and sexist language.

Social Impact

The provision of better library facilities will result in improved library services and programs to the citizens served by the libraries whose applications for grants are approved. Approved building projects will provide barrier-free accessibility for handicapped persons, accommodate new forms of library technology, and enable use of the wide range of media now basic to library service.

Economic Impact

The grants will provide an incentive to upgrade library facilities and stimulate the construction industry in New Jersey. The grants will also provide financial aid to those municipalities whose library building projects are approved by the Commissioner of Education. The maximum grant for an eligible project is increased from \$300,000 to \$500,000.

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

6:68-4.1 [Introduction] **Scope and purpose**

(a) Under the provisions of the New Jersey Library Construction

Incentive Act, N.J.S.A. 18A:74-14, the State Librarian, as the designated representative of the Commissioner of Education of the State of New Jersey, is authorized to supervise and administer State funds to assist in the construction [and], expansion, **rehabilitation or acquisition** of a public library building[s].

[(b) The following requirements are not to be interpreted as being standards. They] **The following** are minimum requirements for participation in the grant program and may provide for only basic services.

6:68-4.2 Definitions

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

["Area library" means any library with which the State contracts for specialized services to all residents of an area specified in the contract.]

["Branch library" means an auxiliary public library which has all of the following, but which is administered from a central unit:

- 1.-2. (No change.)
3. A permanent **paid** staff;
4. (No change.)

["County library" means a library established pursuant to N.J.S.A. 40:33-1 to 33-13.2c **and N.J.S.A. 40:33-15 et seq.**

["Regional library" means a library established pursuant to N.J.S.A. 40:33-13.3 [to 33-13.18] **et seq.**

6:68-4.3 Eligible projects

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

[(d) School libraries and public-school library combinations are ineligible to receive construction grants.]

[(e)] **(d)** (No change in text.)

[(f)] **(e)** The []Library Construction Advisory Board may accept for review preliminary applications which, while being innovative, fail to meet the criteria outlined herein. Exceptions may be considered where the public library building program demonstrates initiative and seeks to solve local problems in an original or cost-effective manner. [Examples of possible exceptions to the criteria are the following:

1. A processing center serving a public library system; or
2. A public library system administrative head-quarters.]

[(g)] **(f)** (No change in text.)

6:68-4.5 Project criteria

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

(f) Floor space is meant to include total square footage of space available for public library purposes including outer walls. This shall include areas provided for [mechanical] **mechanical** equipment and maintenance requirements. In calculating square footage, only those areas shall be included that have heat, light and ventilation adequate for public and staff usage, excepting that those areas designated for mechanical, maintenance and storage purposes have heat, light and ventilation and square footage commensurate with their purposes:

1.-3. (No change.)

4. Branch library **of a county or municipal library**: Projects for the construction, acquisition or rehabilitation of a branch library building or an addition to a branch library building, upon submission of evidence to the Library Construction Advisory Board of the necessity and desirability of a reduction in size, may reduce the square footage requirements as determined in Table A [by 15 percent] (subject to the 3,500 square foot minimum). The population to be served by a branch shall be determined by the applicant. Population of branch service area shall be identified with reference to United States Census Tract Reports when possible. Documentation of the size of the population to be served by the branch shall include a plan based on a comprehensive survey of the

municipality (municipalities) showing present and future branch and main library service areas and programs. Generally, the population [for a branch of a county or regional library] shall not be less than 10,000 [nor more than 1/4 of the population served by the county library system].

5. (No change.)

(g) Library buildings and facilities shall be designed in accordance with the minimum standards contained in the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by[, the] Physically Handicapped People, [Number] ANSI A117.1-[1961]1980". **The 1980 edition of this publication with all subsequent amendments and supplements is hereby incorporated by reference and adopted as a rule.**

1. **This document is available for review at the Division of the State Library, Archives and History, Department of Education, 185 West State Street, CN 520, Trenton, New Jersey 08625, or at the Office of Administrative Law, CN 301, Trenton, New Jersey 08625.**

2. **This document may be purchased from the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.**

3. The applicant shall also comply with the rules [and regulations] promulgated by the New Jersey Department of the Treasury implementing Chapter [269] **220**, Laws of [1971] **1975**, "An act to provide facilities for the handicapped in public buildings".

(h) (No change.)

(i) All construction contracts (including equipment procurement over [\$2,500] **\$4,500**) shall be awarded to the lowest qualified bidder on the basis of open competitive bidding as specified in the "Local Public Contracts Law" (N.J.S.A. 40A:11-1 et seq.).

(j) (No change.)

6:68-4.6 Priorities for the receipt of construction grants

(a) General provisions for priorities for the receipt of construction grants include the following:

1. Those applications properly submitted and found to be in an approvable form shall first be assigned to respective priority groupings. All applications of the first priority fulfilling the criteria of these [regulations] **rules** shall be awarded grants before applications of the second priority are funded. [Similarly, all applications in the second priority shall be found before those in the third priority are considered.] Availability of funds and number of applications within each priority grouping shall, within any one fiscal year, determine the projects to be funded.

2. Within each of the [three] **two** priority groupings, all applications shall be ranked in terms of **ability to pay by the municipalities and counties** [ability to pay]. The ratio of the average equalized valuation¹ of the three years preceding the date of the application to the population estimate of the municipality (municipalities) or county (counties) by the New Jersey Department of Labor and Industry for the year preceding the date of application shall be used as the criterion determining this financial ability. The first grant within each priority grouping shall be awarded that applicant demonstrating the least financial resources through the lowest ratio of equalized valuation to population (per capita wealth). Each succeeding grant shall be awarded to the remaining applicant whose ability to pay is lowest.

[(b) First priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to or an addition to, a central building of an area library or a developmental library which qualifies as an area library upon completion of a new or expanded building or the construction of, acquisition of a building adaptable to or an addition to, a central or branch building of a municipal library located in a Federally designated model city or a State designated community development city, provided that the branch building is to serve a population of at least 10,000:]

[1.] **i.** [Second] **First** priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable

to [or] , an addition to, **or rehabilitation** of a central or branch building of a municipal, joint, county or regional library.

[2.] **ii.** [Third] **Second** priority in award of grant shall be given to applications for construction of, acquisition of a building adaptable to [or] , an addition to, **or rehabilitation** of a central or branch building of an association library.

[(c)] **(b)** Any governmental jurisdiction, board of trustees, or library commission which has previously received a construction grant shall be placed automatically in the [third] **second** priority and be ranked last in the priority for two fiscal years succeeding the fiscal year in which the grant was awarded, after which time it shall resume its normal status.

¹Equalized Valuation, as listed in the "Certification of Table of Equalized Valuations" promulgated annually on October 1, by the Division of Taxation, New Jersey Department of Treasury.

6:68-4.7 Amount of grant and method of allocation

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

(c) Should funds be sufficient to allow projects to receive more than 20 percent of eligible project costs, the 20 percent grants shall be considered as base grants and remaining funds shall be distributed to approved applicants on the basis of the ratio of total eligible project cost to ability to pay, subject to a **maximum grant** of [40] **50** percent of eligible project cost or [\$300,000] **\$500,000**, whichever is less. Ability to pay is the ratio of average equalized valuation of property to the population estimate promulgated by the New Jersey Department of Labor and Industry for one year previous to the fiscal year in which application is made.

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

6:68-4.8 Approval procedures

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

(d) The person authorized to submit the application shall be an officer of the body named as applicant. Preferably, this shall be the president or [chairman] **chairperson** of this body. A statement to be signed and completed by the responsible officer of the applicant (for example, secretary of a board of trustees) shall certify this authorization. If the application is jointly submitted, an individual from each body shall be authorized and certified. The signature of each authorized person is required on the application.

(e)-(o) (No change.)

6:68-4.9 Fair hearing

Applicants whose projects have not been approved shall be given upon request, opportunity for an informal fair hearing before the State Librarian. In the event of an adverse decision after such informal hearing, applicants may request a formal hearing pursuant to N.J.S.A. 18A:6-9, 6-24, and 6-27. Such hearings shall be governed by the provisions of the administrative Procedure Act (see N.J.S.A. 52:14B-1 et seq. and 52:14F-1 et seq. as implemented by N.J.A.C. 1:1).

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Flood Hazard Area Delineations Delineated Floodways along Portions of the Swimming River and its Tributaries, Parkers Creek and its Tributaries, Waackaack Creek and its Tributaries, Whale Pond Brook and Jumping Brook

Proposed Amendment: N.J.A.C. 7:13-1.11

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 58:16A-50 et seq.

DEP Docket No. 004-83-01.

A **public hearing** concerning this proposal will be held on March 9, 1983, at 1:00 P.M. at:

Colts Neck Township Municipal
Building
Cedar Drive
Colts Neck, NJ

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clark Gilman
Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-69.

The agency proposal follows:

Summary

The proposed amendment provides for the application of rules and regulations concerning the development and use of land in designated floodways to portions of the Swimming River, Parkers Creek, Waackaack Creek, Whale Pond Brook and Jumping Brook, and some of their tributaries. Regulations of delineated flood hazard areas are designed to preserve flood carrying capacity and to minimize the threat to the public safety, health and general welfare.

Social Impact

The proposed delineation applies added flood protection to the following areas within Atlantic Basin: Boroughs of Eatontown, Shrewsbury, Tinton Falls, and West Long Branch, and the Township of Colts Neck, Holmdel, Ocean and Marlboro, all within Monmouth County.

Economic Impact

The proposed amendment will have only a minor economic impact. The delineation would more clearly define the flood hazard

area, thus resulting in less requirement for flood insurance, and minor reductions in property value could result by restricting future development in the floodway and requiring elevated construction designs in flood fringe areas. However, minor property value diminution would be offset by the savings to governmental bodies and private homeowners due to little or no future rehabilitation and rescue expenditures from flood damage in the delineated area.

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

7:13-1.11 Delineated floodways

(a) (No change.)

(b) A list of delineated streams in the Atlantic Basin follows:

The floodway and flood hazard areas of the Swimming River from Newman Springs Road upstream to Swimming River Road in the Borough of Tinton Falls, and its tributaries including: Yellow Brook from its confluence with Swimming River Reservoir upstream to its upstream corporate limit in Colts Neck, a tributary to Yellow Brook from its confluence with Yellow Brook upstream 3,600 feet in Colts Neck, Mine Brook from its confluence with Yellow Brook upstream to Mercer Road in Colts Neck, Marl Brook from its confluence with Mine Brook upstream 4,950 feet in Colts Neck, and Willow Brook from its confluence with the Swimming River Reservoir upstream through Colts Neck, Marlboro and Holmdel to Shank Road in Holmdel, Hop Brook from its confluence with Willow Brook upstream to Long Street Road in Holmdel, and Pine Brook from its confluence with Swimming River upstream to Water Street in Tinton Falls and Colts Neck, Hockhockson Brook from its confluence with Pine Brook upstream 4,500 feet to Hockhockson Road in Colts Neck, Big Brook from its confluence with Swimming River Reservoir upstream to a point 3,400 feet upstream of Route 34 in Colts Neck, and Barren Neck Creek from its confluence with Swimming River Reservoir upstream approximately 4,600 feet in Colts Neck; Parkers Creek from the downstream corporate limit upstream through Eatontown, Shrewsbury and Tinton Falls to the Conrail Bridge in Tinton Falls, and its tributaries including: Wampum Brook from the western boundary of Fort Monmouth upstream 5,630 feet to Camp Charles Wood Area in Eatontown, and North Branch Parker Creek from its confluence with Parkers Creek upstream to Broad Street in Shrewsbury; and Jumping Brook from Jumping Brook Road upstream 6,150 feet in Tinton Falls; Whale Pond Brook from Norwood Avenue upstream to Hope Road affecting Eatontown, West Long Branch and Township of Ocean; and Waackaack Creek from its downstream corporate limit in Holmdel (approximately 1,300 feet downstream from Middle Road) upstream 3,750 feet to Palmer Avenue, and its tributary, Mahoras Brook from its confluence with Waackaack Creek upstream 5,500 feet in Holmdel.

(c)-(i) (No change.)

OFFICE OF ADMINISTRATIVE LAW: A map delineating the flood hazard area described in this notice was submitted as part of the Department's notice of proposed rule. This map can be inspected at:

Bureau of Flood Plain Management
Division of Water Resources
1911 Princeton Avenue
CN 029
Trenton, NJ 08625; or

Office of Administrative Law
Administrative Filings
88 East State Street
CN 301
Trenton, NJ 08625

PROPOSALS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Shellfisheries

Oyster Dredging Licenses; Oyster Management in Delaware Bay

Proposed Amendments: N.J.A.C. 7:25A-1.1, 1.2, 2.1, 2.3-2.5

Authorized By: Robert E. Hughey, Commissioner,
Department of Environmental Protection.
Authority: N.J.S.A. 50:1-5.

DEP Docket No. 005-83-01.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gale Critchlow, Chief
Bureau of Shellfisheries
Division of Fish, Game and Wildlife
CN 400
Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-70.

The agency proposal follows:

Summary

The proposed amendments add a provision to allow two owners of licensed oyster vessels to exchange use of their vessels without increasing the tonnage or fishing power of the entire licensed fleet. The vessel owners have requested such permission to exchange use of their vessels so that they may be able to utilize the vessels in a more cooperative and efficient manner. Those owners with small vessels will be able to use larger vessels of other owners and vice versa wherever circumstances dictate the use of smaller or larger vessels by individual owners. The amendments also make explicit the previously implied requirement that vessel licenses must be renewed annually, and that a vessel transferred to a new owner must be relicensed in the new owner's name.

The proposed amendments also correct several previous anomalies in the language of the rule.

Social Impact

The proposed changes will serve to make uniform, licensing practices in the oyster management plan without disrupting the lives or businesses of licenses. No effect on the general public is foreseen.

Economic Impact

There will be some additional expense for those few oystermen who have in the past failed to license their vessels every year. The right to lease Section E lots is based on the ownership of a licensed oyster vessel. The division and the Delaware Bay Shellfish Council have reaffirmed that annual renewal of vessel licenses is essential to participation in the Section E leasing program.

Environmental Impact

The proposed changes involve only administrative procedures and will have no effect on the environment.

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

SUBCHAPTER 1. OYSTER DREDGING LICENSES

7:25A-1.1 Licenses

No new [or 1981] oyster licenses authorized by N.J.S.A. 50:3-1 shall be issued except to those vessels validly licensed in either 1978, 1979, [or] 1980, **or 1981**.

7:25A-1.2 Substitution of vessels

(a) Any person who owns a vessel validly licensed in 1978, 1979, 1980 or 1981, pursuant to N.J.S.A. 50:3-1 may substitute a new vessel for the previously licensed vessel, except that no substituted vessel shall [displace more] **have a greater** gross tonnage than the previously licensed vessel.

(b) However, two persons owning validly licensed vessels may exchange their vessels, with the approval of the Commissioner, Department of Environmental Protection, and the Delaware Bay Shellfish Council.

7:25A-1.3 Review (No change.)

SUBCHAPTER 2. OYSTER MANAGEMENT IN DELAWARE BAY

7:25-2.1 Division of Section E

The Division of Fish, Game and Wildlife will divide Section E, as defined in [R.S.] **N.J.S.A. 50:1-23** and consisting of approximately 7,877.7 acres, into 12 acre lots and designate each either an "A" or "B" lot, an "A" lot being in the judgment of the division more suitable for the planting and cultivation of oysters. The coordinates of each corner of each lot shall be determined by the division. All the remaining parcels will be "B" lots.

7:25A-2.2 Leasing of "A" lots (No change.)

7:25A-2.3 Leasing of "B" lots

The owner of an operable vessel which was licensed to dredge oysters pursuant to [R.S.] **N.J.S.A. 50:3-1** in either 1978, 1979, [or] 1980, **or 1981** may lease one "B" lot of his choice for each vessel licensed **in any calendar year**. However, no owner may lease more than two "B" lots per vessel. The initial fee for each "B" lot will be \$1,000 and thereafter shall be the regular lease fee per acre.

7:25A-2.4 Expiration and renewal of "A" and "B" lot leases **and licenses**

(a) Each "A" or "B" lot lease will expire at the end of the calendar year in which it [is] **was** issued. Leaseholders or their heirs and assigns will have the option to renew each year provided the leased lot to be renewed has been, in the judgment of the Council and the division, actively worked by the recorded leaseholder, and an accurate report of the use to which the lot was put is filed with the division on a form provided by the division. Any lot, the lease of which is not renewed, will be classified as a "B" lot.

(b) Oyster dredge boat licenses must be renewed annually. A license not renewed may be retired from the fleet by the division in its discretion with the advice of the Shellfish Council.

7:25A-2.5 Non-transferability of Section E leases; exceptions

(a) No lease in Section E may be sold, rented, assigned or in any manner conveyed or transferred, unless the vessel to which the lot was originally allocated in N.J.A.C. 7:25A-2.2 or 2.3 is dealt with in the same manner thereby becoming part of the same transaction. No lot in Section E may be subleased.

(b) The new owner of a transferred vessel must have its license reissued in his own name.

7:25A-2.6 Power to lease (No change.)

7:25A-2.7 Review (No change.)

(a)

DIVISION OF FISH, GAME AND WILDLIFE

Shellfisheries Oyster Seed Beds

Proposed Amendment: N.J.A.C. 7:25A-3.1

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection. Authority: N.J.S.A. 50:1-5 and 50:3-8.

DEP Docket No. 006-83-01.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Gale Critchlow, Chief Bureau of Shellfisheries Division of Fish, Game and Wildlife CN 400 Trenton, NJ 08625

The Department of Environmental Protection thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-71.

The agency proposal follows:

Summary

The State's oyster seed beds in Delaware Bay are opened every year on the date set by the Delaware Bay Shellfish Council and the Division of Fish, Game and Wildlife, with the advice of the Rutgers Oyster Research Laboratory staff. By law the beds cannot be opened before May 1 or remain open beyond June 30; in practice they are opened and closed within this period as their condition is monitored as described in N.J.A.C. 7:25A-3.1. Because concerned oystermen attend the weekly meetings of the Shellfish Council during bay season, at which the advisory committee's findings are announced, communication between managers and users of the resource is direct, immediate and excellent. The method of setting opening and closing dates defined in this rule has satisfied the needs of both the users and the managers of this delicate resource.

This proposed amendment sets the date for the 1983 season. The Shellfish Council's recommendations were made at their regular monthly meeting, January 4, 1983.

Social Impact

The proposal affects New Jersey's licensed oystermen, as the oyster industry depends on the annual planting of seed oysters for stock to grow to market size on the leased ground in Delaware Bay. The oyster industry is a major employer along the bay coast, and as such its existence is important to the welfare of residents of the area.

Economic Impact

There is no identifiable cost to the State in opening and closing the harvest of seed oysters, but the economic well being of the

oyster industry would be adversely affected by uninformed or inflexible regulation of the beds.

Environmental Impact

There is no adverse environmental impact anticipated as a result of the opening of the State's oyster seed beds, since the condition of the beds is under strict surveillance for the entire length of the season.

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

7:25A-3.1 Oyster seed beds

(a) The season for the taking of seed oysters from the natural seed beds above the Southwest Line in Delaware Bay for [1982] 1983 shall be scheduled for a period of time beginning 7:00 A.M. [May 17, 1982] May 16, 1983 and shall close as determined by (b) below. Daily harvest shall be from 7:00 A.M. to 3:30 P.M.

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

HEALTH

(b)

HEALTH ECONOMICS SERVICES

Standard Hospital Accounting and Rate Evaluation (SHARE) Rate Review Guidelines

Proposed Amendment: N.J.A.C. 8:31A-7

Authorized By: Allen N. Koplin, M.D., M.P.H., Acting State Commissioner of Health, with the approval of the Health Care Administration Board on December 2, 1982.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

James R. Hub, Director Health Economics Services State Department of Health CN 360, Room 600 Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-72.

The agency proposal follows:

Summary

The proposed amendment to the 1983 Standard Hospital Accounting and Rate Evaluation (SHARE) Regulation is made with the intent of relieving specialized and rehabilitation hospitals of the

1979 overspending challenge for 1983 SHARE rates. This adjustment applies to hospitals accepting either the Global or Alternate Rate in 1983. The "Global Rate" is defined as the Final Administrative Payment Rate for 1983 determined by adjusting the 1982 Global Budget by an increment, as described in Section 5A, of the 1983 SHARE Guidelines. The "Alternate Rate" is the 1983 rate determined by applying the 1983 SHARE Guidelines to the lower of the 1981 actual costs or 1981 approved costs, as described in Section 6 of the 1983 SHARE Guidelines. Prior to this rate determination, all costs are reviewed for reasonableness and incremented by a two year (1981-1983) economic factor.

This adjustment will be reduced by any relief of the overspending challenge in the rate years 1981 and 1982. An overspending challenge occurs when the hospital expenditures exceed the total approved costs in any given rate year. The incremental difference or the overspending challenge for 1983, net of any 1981 and 1982 relief, will be reimbursed and included in the approved rate.

Social Impact

The proposed change will impact the specialized and rehabilitation hospitals in the State of New Jersey by eliminating the overspending challenge. The lifting of this financial burden will create additional funds for support of patient services as identified by the hospital. These additional funds will be provided to the hospital through a rate calculation adjustment which will result in a higher approved payment per day by Blue Cross and Medicaid.

Economic Impact

The elimination of the overspending challenge will provide the hospital with additional monies which can be used to relieve the deficit financial position. As a result of this more stable situation, the hospital can initiate a more consistent financial planning process to ensure proper distribution of financial resources in the delivery of health care services. The continued flow of monies will be facilitated through an increase in the per diem reimbursement rates paid by Blue Cross and Medicaid.

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

Section 5. Methodology for Calculating Global Rates

A. (No change.)

B. For specialized and rehabilitation hospitals accepting either the Global or Alternate Rate in 1983, an adjustment will be made to reflect the elimination of the 1979 overspending challenge. The 1979 overspending challenge will be calculated in accordance with Section 6.B.5 of the 1981 SHARE Guidelines and will be increased by a two-year Economic Factor to reflect 1983 dollars. This adjustment will be reduced by any relief of the overspending challenge in the rate years 1981 and 1982. This adjustment shall not exceed the 1981 overspending challenge calculated in accordance with the 1983 SHARE Guidelines, Section 6.B.5.

Section 6. Methodology for Alternative Rates

A. (No change.)

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

4. The hospital will be given an automatic adjustment to its 1981 Actual costs, adjusted in accordance with 1 and 3 above, to provide for management increases in accordance with Section 11 below. Should the hospital determine that the allowed increase is insufficient, the hospital will be required to document the need for additional costs. No further adjustment will be allowed until the hospital can justify the need for all of the management increases allowed in the total approved costs. Should the hospital attempt to document the need for additional monies for management increase, and/or seek an increase of its covered inpatient costs, except as described in Section G-16, it is at risk for the monies allowed through the automatic adjustment.

For example, a hospital may determine it requires an increase of

\$100,000 in a particular cost center which has only been given an increase of \$30,000 through the normal methodology. That same hospital may have been given an automatic global management increase totaling \$250,000. No additional costs will be given in the center requiring the \$100,000 adjustment until the need for all of the allowed \$250,000 has been explained. Should the hospital substantiate the need for only \$200,000 of the automatic adjustment, the remaining \$50,000 will be deducted from the approved costs.

Information relating to the documentation of the need for additional monies for management changes must be submitted to the Analyst in accordance with the time frame established for the detailed review (Section 4.C.).

Any request for additional costs related to legal/management changes approved in 1982 Administrative Payment Rate and not included in the amounts for the automatic adjustments described above will be considered by the Analyst. A presumption of reasonableness of these costs will prevail in those instances where all conditions remain equal.

Over-expenditures in 1981 which are incurred by the hospital without the approval of the Department cannot be appealed in 1983. These expenditures were determined to be unreasonable in 1981 and the hospital had the opportunity to appeal these challenges at the detailed Analyst review and the hearing officer appeal. These expenditures may be specifically identified item by item and requested as new management requests at the 1983 analyst review.

For specialized and rehabilitation hospitals accepting either the Global or Alternate Rate in 1983, an adjustment will be made to reflect the elimination of the 1979 overspending challenge. The 1979 overspending challenge will be calculated in accordance with Section 6.B.5 of the 1981 SHARE Guidelines and will be increased by a two-year Economic Factor to reflect 1983 dollars. This adjustment will be reduced by any relief of the overspending challenge in the rate years 1981 and 1982. This adjustment shall not exceed the 1981 overspending challenge calculated in accordance with the 1983 SHARE Guidelines, Section 6.B.5.

5.-13. (No change.)

(a)

HEALTH ECONOMICS SERVICES

Procedural and Methodological Regulations

Proposed Amendments: N.J.A.C. 8:31B-3.26, 3.27, 3.72 and 3.73

Authorized By: Allen N. Koplin, M.D., M.P.H., Acting State Commissioner of Health, with the approval of the Health Care Administration Board on December 2, 1982.

Authority: N.J.S.A. 26:2H-1 et seq., specifically 26:2H-5b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

James R. Hub, Director
Health Economics Services
State Department of Health
CN 360, Room 600
Trenton, NJ 08625

The Department of Health thereafter may adopt this proposal

without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-73.

The agency proposal follows:

Summary

The following proposed changes to the 1983 Procedural and Methodological Regulations evolved from public comments received from the 1983 proposed regulation.

1. Economic Factor

A. N.J.A.C. 8:31B-3.26(a): In the current regulation, projections vary according to the individual components. Often times one indicator is utilized to project another indicator and this results in a methodology that is unclear. The proposed change enables the Department of Health the freedom to select the most suitable indicator for the New Jersey hospitals on a timely basis. Further, it is believed that the utilization of national price indices will be helpful in predicting trends in New Jersey.

B. N.J.A.C. 8:31B-3.26(b): The regulation, as currently written, explains in detail the methodology for projecting changes from the base year to the rate year. Because the weighted average has been found to be more reflective of economic trends, the present calculation was abandoned. Therefore, the proposed change elaborates on the weighted average (the weight given each component is its share of that hospital's total expenditure) methodology. At the end of each year, the costs are reconciled to actual costs. It is, therefore, in the best interest of the Department to ensure the accuracy of the projections for all concerned.

C. N.J.A.C. 8:31B-3.72(a)1: Currently, the Department recalculates the overall Economic Factor each January for the prior year which is based on three-quarters actual and one-quarter annualized and projected for the following year. The non-labor components are monitored semiannually. The proposed change deletes the mid-year adjustment to the non-labor components of the economic factor which would mean that a hospital's projected economic factor will not change during the rate year. These components will still be adjusted to the actual values of the proxy at final reconciliation. The final economic factor will be based on actual data made available to the public in the first quarter following the year in question. The projected economic factor will utilize as much actual data as is available in conjunction with the timely issuance of the rates.

2. N.J.A.C. 8:31B-3.27—Capital Facilities Allowance: This amendment will ensure that at least half of the Internally Generated Plant Fund balance must be available for an equity contribution for future approved Certificates of Need for Capital expansion/renovation projects. Without this limitation, hospitals are free to spend the entire Plant Fund balance on the annual basis. Over time, this practice would require enormous contributions to the Plant Fund to generate a 20 percent down payment for the eventual replacement of the buildings and fixed equipment.

Social Impact

1. The proposed changes to the economic factor will allow the labor component projection to remain stable throughout the year which will facilitate better management of labor contracts. This is done for the labor factor precisely because labor contracts are set in advance for periods of at least one year. In many cases, the level of the wage settlement is based on the labor component of the economic factor.

Further, this change will provide a more stable economic environment for all the hospitals in the State of New Jersey. This should result in more timely hospital management decisions which will allow for the utilization of improved cost containment measures which ultimately will benefit the consumer through lower costs.

2. The Capital Facilities adjustment will provide a more orderly approach for recognizing the future replacement needs of the hospital.

Economic Impact

1. Changes to the Economic Factor will result in a more accurate cost projection due to actual statistics being utilized rather than a continuation of three-quarters actual data and one-quarter projected data which is currently in use. This change will eliminate large fluctuations between actual and projected statistics at year end which will encourage a more consistent budget process and foster efficient planning for patient care services. Overall, this planning process should allow for the improved allocation of hospital funds which ultimately will benefit the patient and consumer through lower costs.

2. The 50 percent limitation on the use of the Capital Facilities Formula Allowance will allow hospitals to have the necessary funds available for their future replacement needs.

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

8:31B-3.26 Economic factor

(a) An economic factor [is] **shall be** calculated for each hospital [which takes]. **It shall take** into account the [actual] level of hospital expenses and the replacement cost of major moveable equipment [based on] **using** the cost components reported to the New Jersey State Department of Health. The factor [shall account for realized inflation in the general economy up to the end of the calendar year quarter prior to the issuance of the Preliminary Cost Base, annualized inflation for the remainder of the calendar year, and a projection of inflation for the following 12 months, such that the Preliminary Cost Base shall be set at projected average price levels of the 12 months following its issuance.] **is the measure of the change in the prices of goods and services used by New Jersey hospitals. It is to be based, as far as possible, on recorded price changes. For that part of the period covered by the economic factor for which recorded price changes are unavailable, the economic factor shall be based on the best available forecast of price trends.**

(b) The cost components of the economic factor are shown on Appendix II [and its calculation, annualization, and projection are as follows:

1. Each hospital's costs as reported to the New Jersey State Department of Health are increased for inflation based on the proxies and weightings described in Appendix II. The resulting inflated dollars for each component are totaled and divided by the total dollars for the year the costs were reported, resulting in the hospital's economic factor.

2. Data are annualized (adjusted for unavailable data) for the remainder of the calendar year by taking the average of the series for the month(s) available and dividing by the previous year's data for a comparable time period and multiplying the result by the previous year's 12 month actual average.

3. In order to set the PCB at price levels for the 12 months following issuance, inflation rates for the proxies are projected through one of the following methods and are reconciled in accordance with N.J.A.C. 8:31B-3.71 through 3.86.

i. For proxies which represent a large percentage of hospital expenses, predictive equations are developed where a cause and effect relationship between a proxy and a "lead indicator" is supported statistically through regression analysis (i.e., labor).

ii. Where legal or regulatory changes fix the value of the proxy for future years, such values are used as the projection (i.e., FICA).

iii. For proxies derived directly from other industry sources, projected price or rate increases are obtained from the supplier companies or organizations (i.e., malpractice).

iv. For Consumer Price Index or Producer Price Index proxies not forecast by one of the above means, the previous year's value is used where a trend is apparent over the last five years of the series

or, if no trend is apparent, a straightline average of the last five years of the series is used as the projection.] **The hospital specific economic factor is the weighted average of the recorded and projected change in the values of its components. The weight given to each component is its share of that hospital's total expenditure as described in Appendix II. The projection of individual components shall be used where appropriate, on legal or regulatory charges which fix the future value of the proxy (i.e., FICA). Components which are of particular importance may be projected through the use of time series analysis on other relevant indicators.**

8:31B-3.27 Capital facilities

(a) (No change.)

1. (No change.)

i.-v. (No change.)

vi. **For either option, the maximum expenditure from the Plant Fund for each year shall not exceed 50 percent of the difference between the CFA and the capital cash indebtedness. Expenditures from the Plant Fund shall be for approved Certificate of Need items only. A minimum of 50 percent of the yearly amount of the CFFA must be maintained in the Internally Generated Plant Fund to be used only for future replacement.**

2. (No change.)

8:31B-3.72 Periodic adjustments

(a) Certain periodic adjustments are made to the Schedule of Rates which are not dependent upon new submissions of reports. These adjustments are made independently of the yearly reconciliations of the Schedule of Rates, but will affect the calculation of Commission Approved Revenue. [Periodic adjustments shall take place every six or 12 months, beginning July 1 or January 1, as appropriate, following the effective date of the Schedule of Rates.] Periodic adjustments are made [for the economic factor (N.J.A.C. 8:31B-3.26) and] for any adjustments explicitly ordered by the Commission pursuant to N.J.A.C. 8:31B-3.64, Modification of Proposed Schedule of Rates. The following periodic adjustments will be implemented by the Commission and the affected hospitals pursuant to N.J.A.C. 8:31B-3.42, Implementation.

1. Economic factor:

[i. The overall economic factor shall be recalculated as of January first of each year for the prior year (three-quarters actual and one quarter annualized) and projected for the following year. Non-labor components shall be monitored semi-annually against the annualization and projection of the economic factor for the previous two quarters of actual data (weighted by all hospitals' spending, combined) to determine if the actual non-labor component has deviated by one percentage point from the annualization and projection of the non-labor component. Where a misprojection of one percentage point or more has occurred, a periodic adjustment shall be made effective July 1, and the non-labor portion will be projected for the following six months. Schedules of Rates, charge masters, and periodic intermittent payments shall be adjusted for semi-annual misprojections.

ii. The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26, Economic Factor, shall be based on each hospital's reported expenses of the current cost base by classification for the applicable rate period. Percentage differences between the final economic factor and the projection for the same period shall be computed and termed the misprojection component. However, the misprojection component for the non-labor factor shall not account for any six month adjustment already made. The reprojection of the factor for January 1 through December 31 shall be based on each hospital's expenses for the most recent available reporting period.] **The final economic factor shall be calculated for each year as soon as the necessary data are available. The projected economic factor shall be developed for the following year using as much actual data as is compatible with the timely**

issuance of hospital payment rates for the year. The annual recalculation of the economic factor pursuant to N.J.A.C. 8:31B-3.26, shall be based on each hospital's reported expenses of the current cost base by classification for the applicable rate period.

2. (No change.)

3. Application of periodic adjustments to Schedule of Rates: Pursuant to N.J.A.C. 8:31B-3.42 through 3.45 January 1 of each year (staggered as appropriate for hospitals with other than a calendar year reporting period), direct and indirect patient care costs (as offset by the previous year's net income from other sources) shall be adjusted, as appropriate, for the new projection of the economic factor and other adjustments. [The misprojection component shall be added to or subtracted from the new projection and applied to direct and indirect patient care costs for a 12-month period (six month period for semi-annual non-labor adjustments).] Initial Working Cash Adjustment and Capital Facilities Allowance portions of the Schedule of Rates are also adjusted accordingly, and a compliance adjustment to the Rate Order determined by the Commissioner and implemented by the hospitals and payors.

8:31B-3.73 Reconciliation: Hospitals

(a) (No change.)

1. (No change.)

i.-ii. (No change.)

iii. **At reconciliation, base year costs must be adjusted to take account of inflation in the period between the base year and the rate year. Each component of Non-Labor costs shall be adjusted using the final economic factor values for each proxy developed in the period between the base year and the rate year. Labor components shall be adjusted using the value for each proxy which was applied in calculating the hospital's PCB in that rate year.**

2.-4. (No change.)

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

County Colleges

General Education Requirements

Proposed Amendment: N.J.A.C. 9:4-1.6

Authorized By: Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Authority: N.J.S.A. 18A:3-14(e), 18A:64A-7(b)(4).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
CN 542
Trenton, NJ 08625

The Board of Higher Education thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-76.

The agency proposal follows:

Summary

The proposal clarifies the general education courses required for the completion of an associate's degree at county colleges, and is consistent with a strengthening of the general education requirements for the public four-year colleges adopted by the Board of Higher Education in 1981 (N.J.A.C. 9:2-8). Additionally, the proposal restricts students from concentrating courses in a single discipline, and compels them to take a minimum number of courses in other academic areas such as communications, mathematics, sciences, social sciences and humanities.

Social Impact

The new general education requirements will assist students in making the transfer from two-year colleges to four-year colleges. Presently, some two-year college students may have a tendency to overspecialize in an academic discipline. Frequently when such students transfer to four-year institutions, they find they need to take a considerable number of general education courses to meet the four-year degree program requirements, as well as requirements for additional advanced courses in their major. The new requirements will prevent this overspecialization and improve articulation between the two-year and four-year colleges.

Economic Impact

The proposed amendment should save students tuition costs by directing their course enrollments, permitting them to graduate within the normal number of years of college attendance, and avoiding additional semesters at increased costs. The proposal will also permit colleges to plan enrollment patterns with assurance that students will take specific courses.

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

9:4-1.6 Educational programs

(a) Each community college shall be authorized to award associate in arts degrees, associate in science degrees, associate in applied science degrees, certificates and diplomas to students who shall have completed approved programs:

1.-2. (No change.)

3. The associate in applied science (A.A.S.) degree is to be awarded to those who successfully complete programs which emphasize preparation in the applied arts and sciences for careers, typically at the technical or semiprofessional level. Such programs are designed to prepare students for job entry at the completion of the two-year program, notwithstanding any [career ladder arrangements] **articulations agreements with four-year programs** that may be in effect for a particular A.A.S. program.

(b) (No change.)

(c) An associate degree program shall be a course of study which requires not less than 60 nor more than 66 semester hours, or the equivalent, except when required for licensure or accreditation by a recognized agency or when required for transfer of full junior status, where applicable. In addition, exceptions may be made above the maximum when requested by the institution and approved by the curriculum coordinating committee. Each program shall provide for the following:

1. The [acquisition] **demonstration** of the basic skills of [oral and written] communication [;] **and mathematics. Basic skills courses shall not be used to satisfy the general education requirements.**

2. (No change.)

(d) General education and other requirements for the associate degree **shall** include the following:

1. All programs leading to an associate degree shall include a broad **distribution** of courses contributing to the student's general education [, drawn from such fields as language and literature, the humanities, the social sciences, mathematics and the sciences, and/ or such other courses as may be specified in the college catalog;] **which emphasize the acquisition of knowledge, comprehension**

and evaluation of ideas, the ability to think constructively and creatively, and the capacity to communicate effectively. For the purposes of this section, general education shall be grouped into the major categories of:

i. Communications, defined as courses designed to enhance facility in the English language;

ii. Mathematics and sciences, defined as courses designed to enhance mathematical and scientific conceptual understanding and application, including computer science;

iii. Social sciences, defined as courses designed to promote social awareness, including understanding social, economic and political problems and the responsibilities of citizenship in an interdependent world; and

iv. Humanities, defined as courses in literary, philosophical, foreign language, historical, aesthetic, or other humanistic studies to promote the understanding and transmission of values of one's own and other cultures.

[2. The general education requirements indicated in this section shall total not less than 45-semester-credit hours, or the equivalent, in associate in arts (A.A.) degree programs; not less than 30-semester-credit hours, or the equivalent, in associate in science (A.S.) programs; and 20-semester-credit hours, or the equivalent, in associate in applied science (A.A.S.) programs.]

2. The minimum general education requirements for each associate degree shall be as follows:

i. For the associate in arts (A.A.) degree programs, the general education requirements shall total not less than 45 semester credit hours, or the equivalent, in an array of representative courses in each of the following categories: communications, mathematics and sciences, social sciences, and humanities.

ii. For the associate in science (A.S.) degree programs, the general education requirements shall total not less than 30 semester credit hours, or the equivalent, in an array of representative courses from each of the following categories: communications, mathematics and sciences, social sciences, and humanities.

iii. For the associate in arts (A.A.) and associate in science (A.S.) degree programs, no student shall accumulate more than 16 of the required general education credits in any one discipline, except in the fine and performing arts where the curriculum can demonstrate specific articulation to a program or programs at senior institutions.

iv. For the associate in applied science (A.A.S.) degree programs, the general education requirements shall total not less than 20 semester credit hours, or the equivalent, in an array of representative courses from the communications category and at least one course from each of the three following categories: mathematics and sciences, social sciences, and humanities.

3. The array of general education courses in associate in arts (A.A.) and associate in science (A.S.) curricula shall be designed to prepare the student for transfer into a baccalaureate program.

4. A general education course shall be taught only by faculty qualified in the discipline.

5. Theoretically-based physical education courses may be counted as general education if they are a requirement of the college.

(e) A certificate or diploma program shall be a course of study which, by virtue of educational content or duration, does not satisfy [standards] **requirements** for an associate degree program, but which is specifically designed to offer content and skill acquisition and other experience appropriate to the objectives of such a program:

[1. A certificate program shall offer fewer than 36-semester-credit hours of instruction, or the equivalent, and need not require any general education courses.]

1. A certificate program shall be designed as a one year program of 30-36 semester credit hours of instruction and shall include

at least six, preferably nine semester credit hours of general education, with at least one communications course.

2. A diploma program shall offer at least 30 semester credit hours, which need not meet associate degree [standards] requirements and shall include at least 10 semester credit hours, or the equivalent, of general education courses.

(f)-(h) (No change.)

(a)

STUDENT ASSISTANCE BOARD

Student Assistance Programs Verification of Enrollment and Academic Performance

Proposed Amendment: N.J.A.C. 9:7-2.10

Authorized By: Student Assistance Board, Luis Nieves,
Chairman.

Authority: N.J.S.A. 18A:71-26.6, 18A:71-26.8, 18A:71-47(a) and 18A:71-48.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
CN 542
Trenton, NJ 08625

The Student Assistance Board thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-77.

The agency proposal follows:

Summary

The proposed amendment establishes standards for determining minimum academic progress that students must attain in order to continue to be eligible for student assistance grants administered under the Student Assistance Board. Those standards include academic performance and progress, class standing, and matriculation requirements. The amendments also designate the amount of grant awards permissible. Educational institutions are also provided appeal rights from the denial of financial aid.

Social Impact

The proposed amendment provides student aid recipients and institutions with a clear policy statement stipulating the minimum academic progress requirements for the renewal eligibility for State student aid assistance.

Economic Impact

The proposed amendment will enhance the fiscal integrity of the student aid programs and insure that minimum standards are met by the eligible students that receive grants. No precise dollar figure is available.

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

9:7-2.10 Verification of enrollment and academic performance

(a) Before payment may be made to an eligible student, the institution must have satisfactory evidence that the student is eligible for State grant and/or scholarship assistance, and has registered as a full-time student for an academic term, and that the student is meeting the minimum standards for academic performance and academic progress at the institution. Each institution must provide copies of its minimum standards for academic performance, [and] satisfactory academic progress, **and standards for determining class standing** to the Department of Higher Education at the beginning of each academic year. **The Student Assistance Board shall recognize minimum standards for academic performance, satisfactory academic progress, and standards for determining class standing that an institution adopts for purposes of academic administration applicable for all students, but it shall not recognize a separate standard in these areas developed solely for purposes of determining financial aid eligibility. These standards shall state auditable requirements that all students must achieve in order to advance to each successive class level (commonly understood as freshman, sophomore, junior, and senior class levels) and they shall provide that students designated by the institution as being in the last class level before receiving a degree (sophomore for an associate degree, senior for a bachelor's degree) are within one year's academic course work of receiving a degree.**

(b) For the purpose of determining good academic standing and satisfactory academic progress towards a degree, the following minimum standards must be achieved by students being aided or being considered for financial aid under the student aid programs administered by the Student Assistance Board:

1. Good academic standing shall be defined by the institution which the student is attending.

2. In order for a student to remain eligible to receive assistance, satisfactory academic progress must be made. A student will be eligible to receive two grant awards for each class level designated by the institution providing the institution certifies that the student is making progress toward the completion of a degree or certificate. An institution may request a third award for a designated class level once during a student's academic career. At no time will a student be eligible to receive more than eight semesters of grant payment, except for a student enrolled in an undergraduate program regularly requiring five years for completion, and students receiving assistance through the Educational Opportunity Fund (EOF) Program will be permitted to receive 10 semesters of grant payment, with such students eligible to receive two grant awards for each class level designated by the institution, with institutional certification of progress as above. For such EOF students an institution may request a third award for two designated class levels during a student's academic career. Additional grants for such EOF students up to a maximum of 12 semesters of grant payment may be approved under the provisions of N.J.A.C. 9:12-1.11.

(c) Students who fail to achieve the above minimum standards shall be ineligible to receive financial aid under the programs administered by the Student Assistance Board until such time as the institution certifies that they are in good academic standing and are achieving satisfactory academic progress. Institutions shall have the right to appeal the denial of financial aid based upon these guidelines through the established appeal procedures. The Appeals Committee of the Department of Higher Education will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.

(d) This section will become effective for record keeping and class level determination for the 1983-84 academic year, and effective for determination of grant eligibility for the 1984-85

academic year.

(a)

STUDENT ASSISTANCE BOARD

**Tuition Aid Grant Program
1983-1984 Award Table**

Proposed Amendment: N.J.A.C. 9:7-3.1

Authorized By: Student Assistance Board, Luis Nieves, Chairman.

Authority: N.J.S.A. 18A:71-47(b) and 18A:71-48.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
CN 542
Trenton, NJ 08625

The Student Assistance Board thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-75.

The agency proposal follows:

Summary

The proposal establishes an increased award table for the Tuition Aid Grant program for the 1983-84 academic year. Approximate increases are as follows: County Colleges-\$25.00; State Colleges-\$100.00; Independent Institutions-\$100.00; Rutgers and N.J.I.T.-\$260.00; Out of State-No change.

Social Impact

The Tuition Aid Grant program provides awards based on financial need to enable students to obtain an undergraduate degree from both public and private colleges in New Jersey.

Economic Impact

The proposed award table is consistent with the fiscal year 1984 budget request of the Department of Higher Education and provides increased awards over the existing table, reflecting increased tuition rates and related college costs.

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

9:7-3.1 Tuition Aid Grant Award Table

The value of the grant is related to the tuition charges of the various institutional sectors in New Jersey and the student's ability to pay for educational costs. The award table below shows approximate award levels depending upon tuition and ability to pay.

(Delete the existing table in the New Jersey Administrative Code at N.J.A.C. 9:7-3.1 and replace it with the following table.)

**TUITION AID GRANT (TAG)
AWARD TABLE FOR 1983-84**

APPROXIMATE TUITION AID GRANT VALUES*

NEW JERSEY COLLEGES AND UNIVERSITIES

New Jersey Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions	Rutgers U. & NJ Inst. of Tech.	Renewal** Out-of-State Colleges & Universities
A	B	C	D	E	F
Under 750	\$625	\$960	\$1600	\$1366	\$450
750-1049	525	860	1500	1260	260
1050-1349	425	760	1400	1160	260
1350-1649	325	660	1300	1060	260
1650-1949	225	560	1200	960	200
1950-2249	200	460	1100	860	0
2250-2549	0	360	1000	760	
2550-2849		260	900	660	
2850-3149		200	800	560	
3150-3449		0	700	460	
3450-3749			600	360	
3750-4049			500	260	
4050-4349			400	200	
4350-4649			300	0	
4650-4949			200		
Over 4949			0		

*In accordance with State guidelines, the value of your grant may decrease dependent upon appropriated funds, your college budget, your available resources and your Estimated Family Contribution. You will be notified of any increase in your grant if additional funds become available.

***"Renewals" are students who received a Tuition Aid Grant in a prior year.

(b)

EDUCATIONAL OPPORTUNITY FUND BOARD

**Financial Aid Guidelines
Undergraduate Grants; Graduate Grants**

**Proposed Amendments: N.J.A.C. 9:11-1.5
and 1.16**

Authorized By: Educational Opportunity Fund Board, T. Edward Hollander, Chairman.

Authority: N.J.S.A. 18A:71-33 through 18A:71-36.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins, Esq.
Administrative Practice Officer
Department of Higher Education
225 West State Street
CN 542
Trenton, NJ 08625

The Education Opportunity Fund Board thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-61.

The agency proposal follows:

Summary

The proposal amends the EOF rules to permit individuals to qualify for the EOF program if they come from families with incomes in excess of \$12,000. The existing \$12,000 limitation is retained for families of two or three persons. The income limitation is increased thereafter according to the number of persons in the family. The proposal also amends the EOF graduate program rules to require additional family income documentation for program applicants who did not receive awards as undergraduates. This information is required to prevent program abuse.

Social Impact

The EOF program provides financial assistance and support services to undergraduate and graduate students who come from backgrounds of historical poverty and educational deprivation. The proposal will increase the number of individuals who are eligible for the program, recognizing that a large family requires increased amounts of money for every day living expenses and will accordingly have fewer dollars available to cover college costs.

Economic Impact

The proposal provides increased student services in accordance with requested appropriations. If adequate appropriations are not received, awards amounts may be reduced or the program may make awards on a first come first serve basis until appropriations are exhausted.

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

9:11-1.5 Financial eligibility for undergraduate grants

(a) A dependent student is financially eligible for an initial EOF grant if the gross income of his or her parent(s) or guardian(s) [is \$12,000 or below] **does not exceed the applicable amount set forth below in the EOF Income Eligibility Scale**, and said parent(s) or guardian(s) cannot contribute more than \$625.00 toward educational expenses as determined by the College Scholarship Service, Uniform Methodology. Where the dependent student's parent(s) or guardian(s) are receiving welfare as the primary means of family support, the student is presumed to be eligible without regard to the amount of primary welfare support.

1. EOF Dependent Student Eligibility Scale:

Applicants With a Household of:	Gross Income (Not to Exceed):
2-3 Persons	\$12,000
4	13,670
5	15,340
6	16,820
7	18,300
8	19,780

For each additional member of the household, \$1,480 shall be added to this amount in order to determine eligibility for EOF.

(b) A dependent student who comes from a family with both parent(s) or guardian(s) working whose combined income [exceeds \$12,000] **exceeds the applicable amount set forth in the EOF Income Eligibility Scale above**, but whose Parents' Contribution does not exceed \$625.00 may be eligible for EOF, only if:

1. [When 50% of the income of the smaller wage earner is subtracted from the gross, combined income of the two wage earners, the total is no more than \$12,000.] **The total income does not exceed the applicable amount set forth in the EOF Income Eligibility Scale when 50 percent of the income of the smaller wage earner is subtracted from the gross combined income of the two wage earners.**

2. (No change.)

(c) An independent student is financially eligible for an EOF grant if the gross income of his or her parent(s) or guardian(s) does not exceed income limits set for dependent students.

1.-4. (No change.)

5. Independent students who have attained the age of 25 are required to provide verification of their household income only.

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

1.-4. (No change.)

5. Add [\$1,180] **\$1,480** for each additional dependent to a maximum of the income limit set for dependent students.

6. (No change.)

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

9:11-1.16 Eligibility requirements for graduate grants

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

(c) Priority in the granting of EOF graduate grants shall be given to those students who received EOF undergraduate grants. **Graduate students who did not receive an undergraduate grant must supply copies of their parents' income documentation and verification of historical poverty.**

(d) (No change.)

OFFICE OF ADMINISTRATIVE LAW NOTE: In the adopted proposal found at 14 N.J.R. 691(a), the current text of N.J.A.C. 9:11-1.6 was deleted. N.J.A.C. 9:11-1.7 to 9:11-1.22 have been renumbered as **9:11-1.6 to 9:1-1.21.**

(a)

EDUCATIONAL OPPORTUNITY FUND BOARD

Program Support Academic Progress Requirements

Proposed Amendment: N.J.A.C. 9:12-1.11

Authorized By: Educational Opportunity Fund Board, T. Edward Hollander, Chairman.
 Authority: N.J.S.A. 18A:71-33 through 36.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Eric M. Perkins, Esq.
 Administrative Practice Officer
 Department of Higher Education
 225 West State Street
 CN 542
 Trenton, NJ 08625

The Educational Opportunity Fund Board thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-74.

The agency proposal follows:

Summary

The proposed amendment establishes standards for

determining minimum academic progress that Educational Opportunity Fund students must attain in order to continue to be eligible for Educational Opportunity Fund (Article III) grants administered under the Educational Opportunity Fund Board. Those standards include: completion of 12 credits per semester; completion of nine credits instead of 12 credits if a "good faith" academic effort is demonstrated; and completion of all remedial courses. Appeal rights from the denial of financial aid are also provided.

Social Impact

The proposed amendment provides Educational Opportunity Fund recipients and institutions with a clear policy statement stipulating the minimum academic progress requirements for the renewal eligibility for Educational Opportunity Fund student aid assistance.

Economic Impact

The proposed amendment will enhance the fiscal integrity of the Educational Opportunity Fund program and insure that minimum standards are met by the eligible students that receive grants. No precise dollar figure is available.

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

9:12-1.11 Academic progress

(a) (No change.)

(b) To remain eligible for EOF Program Support Services, students shall maintain satisfactory academic progress according to the **institution's** established policy for the academic progress of EOF students.

(c) **Eligibility criteria for EOF Article III Student Grants:**

1. **EOF students must complete 12 credits, or their equivalent, in a semester. The only exception is that upon demonstration of a "good faith" academic effort, and with the written approval of the EOF campus director, a student may, for academic reasons, complete no less than nine credits in a semester. Directors approving such circumstances must maintain documentation on file which assures that students have made a "good faith" academic effort during the semester.**

i. **"Good faith" academic effort is defined as participation in no less than 60 percent (for example, eight-12 weeks) of the course and participation in scheduled tutorial activities and regular counseling sessions.**

ii. **The provision in (c)1 above permitting completion of less than 12 credits in a semester through documentation may only be used during the first 48 credits of a degree course and in the first year of transfer for transfer students.**

2. **EOF students will be required to complete all remedial courses within the first 48 credit hours, or their equivalent, excluding the pre-freshman summer program. Approval for additional remedial developmental work beyond the 48 credits may be granted upon formal request to and approval by the Executive Director of EOF.**

3. **Students and institutions shall have the right to appeal the denial of financial aid based upon these guidelines through the established appeal procedures in N.J.A.C. 9:11-1.19. The Executive Director of EOF will consider individual cases and shall have the authority to make such exceptions as unusual circumstances may warrant.**

[c] (d) EOF students must be matriculated as full-time students according to the institutional definition.

[d] (e) Students must comply with the established EOF Program policies as stipulated in the EOF Financial Aid Guidelines, N.J.A.C. 9:11-1.

HUMAN SERVICES

(a)

COMMISSIONER

Social Services Block Grant (Title XX)

Proposed New Rule: N.J.A.C. 10:5

Proposed Repeal: N.J.A.C. 10:123-1, 10:125 and 10:126

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:1-12, P.L. 97-35.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Larry J. Lockhart
Special Assistant to the Commissioner
Department of Human Services
CN 700
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-62.

The agency proposal follows:

Summary

This proposed new rule provides background information regarding the Social Services Block Grant program conducted under the Federal Omnibus Reconciliation Act of 1981 (P.L. 97-35), and provides public information regarding the availability of the Social Services Pre-Expenditure Report and amendments thereto in accordance with Federal law. For each fiscal year, the State must prepare a pre-expenditure report stating the intended use of the payments the State is to receive, including information of the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary of Health and Human Services and made public within the State in such manner as to facilitate comment. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted under this title.

The rules being deleted include a State administrative plan (N.J.A.C. 10:123-1), an annual services plan (N.J.A.C. 10:125), and a training plan (N.J.A.C. 10:126). These rules are now obsolete and no longer required by Federal law or regulation.

Social Impact

The State services program is directed to the following goals:

1. Achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;
2. Achieving or maintaining self-sufficiency, including reduction or prevention of dependency;
3. Preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating, or reuniting families;
4. Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

5. Securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions.

The Social Services Block Grant is the primary Federal funding source for social services delivered by the Department of Human Services. Services are provided for individuals and families whose eligibility is based on income. Information and referral and protective services for victims of neglect and/or abuse are provided without regard to income by the Division of Youth and Family Services and private provider agencies. Other major services include child day care, homemaker/home health care, residential or foster home placement, and community mental health services.

The delivery of client services will not be affected by the proposal. The opportunity for public input will be maintained as the Department will continue to hold public hearings on the Block Grant Program and circulate the draft Pre-Expenditure Report for review and comment.

Economic Impact

In response to changes in the Federal law allowing greater State flexibility in the provision of social services, the economic impact of this rule will be positive. Federal planning requirements have been simplified and more attention can be directed to specific State needs. Eligibility for social service recipients is not changed by this rule. The only economic impact may be realized in lower administrative costs to the Department, as the production of extensive planning documents for the Federal government is no longer required.

Full text of the rules proposed for repeal can be found in the New Jersey Administrative Code, as amended in the New Jersey Register.

Full text of the proposed new rule follows.

CHAPTER 5 SOCIAL SERVICES BLOCK GRANT (TITLE XX)

SUBCHAPTER 1. ADMINISTRATION

10:5-1.1 State social services administration

The social services program is conducted under Title XX of the Social Security Act which provides Federal funds to deliver services administered by the Department of Human Services as the single State agency. Services are provided directly by divisions within the Department of Human Services, by private and public provider agencies under contract with a division and by interdepartmental agreements with other State agencies. The county welfare agencies' social services programs are under the supervision of the Division of Youth and Family Services.

10:5-1.2 Social services Pre-Expenditure Report and updates: availability

Pursuant to the requirements of Title XX of the Social Security Act, as amended by the Omnibus Reconciliation Act of 1981, establishing minimum Federal planning requirements and maximum State flexibility to develop a social services system that best meets the State's needs, New Jersey has developed a Pre-Expenditure Report required under the block grant. The report outlines the major places for the services to be provided and individuals to be served. Copies of the Pre-Expenditure Report and amendments and updates may be obtained from:

Department of Human Services
Office of Policy, Planning and Advocacy
CN 700
Trenton, NJ 08625

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmacy Manual Pharmaceutical Assistance to the Aged and Disabled Program, and Institutional Pharmacy Permits

**Proposed Readoption: N.J.A.C. 10:51-5, with
amendments to 5.9 and 5.12**

Proposed Expiration: N.J.A.C. 10:51-6

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-22, 24.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The readoption becomes effective upon acceptance for filing by the Office of Administrative Law.

This proposal is known as PRN 1983-6.

The agency proposal follows:

Summary

The program called Pharmaceutical Assistance to the Aged and Disabled (PAAD) was established to aid New Jersey residents whose level of income disqualifies them for medical assistance under the Medical Assistance and Health Services Act (commonly known as Medicaid), but who have significant needs for prescribed legend drugs (those drugs whose labels include the legend "Caution: Federal Law Prohibits Dispensing Without a Prescription") and/or insulin, insulin needles and insulin syringes.

Subchapter 5 of the Pharmacy Manual is being proposed for readoption because the current text is scheduled to expire on May 25, 1983, pursuant to Executive Order No. 66 (1978), commonly known as the "sunset" Executive Order. The proposed readoption includes two changes in the current text, which will be explained in more detail below. The Chief, Bureau of Pharmaceutical Services, within the Division of Medical Assistance and Health Services, has reviewed the existing rules and found them necessary for the continued operation of the PAAD Program. These rules insure continuity of services to the PAAD beneficiaries and establish a uniform system of reimbursement methodology for pharmaceutical providers. The absence of a uniform reimbursement system would inhibit the Division's ability to adequately provide services and/or effectively monitor the expenditure of over 60 million dollars in State funds. In addition, these rules are periodically reviewed and amended to keep pace with the realities of the market place.

In addition to the two specific changes, all references to Pharmaceutical Assistance to the Aged (PAA) should be amended (throughout the text) to read "Pharmaceutical Assistance to the Aged and Disabled (PAAD)", pursuant to L.1981 c.499 which included qualified disabled individuals as eligible beneficiaries.

This language change does not effect the provider requirements contained in this subchapter.

Subchapter 5 identifies eligible pharmacies, which must possess the appropriate valid permit, either retail or institutional, and which must also sign an agreement to participate in the PAAD Program. Approximately 98 percent of the 1,500 pharmacies in New Jersey participate in the PAAD Program. Out-of-state pharmacies are not eligible to participate in PAAD. This subchapter also specifies the quantity of medication, dosage and directions, refill policies, payment policies, instructions for completing the Prescription Claim Form (MC-6), etc. These issues are technical and pertain mainly to participating pharmaceutical providers, the contractor responsible for processing the claims (New Jersey Blue Cross) and the Division administrative staff, including pharmaceutical consultants. The ultimate objective of subchapter 5 is to fulfill the statutory mandate that the Commissioner develop regulations to establish a system of payment or reimbursement (N.J.S.A. 30:4D-24).

Subchapter 6, entitled Institutional Pharmacy Permits, is not being readopted because the provisions are mostly redundant and are contained in subchapter 5. The need for subchapter 6 was the result of an Attorney General Formal Opinion 1978, No. 3, which indicated persons financially eligible for PAAD benefits could receive these benefits if they were hospitalized or in long term care (LTC) facilities. The deletion of subchapter 6 will not in any way deny PAAD benefits to institutionalized eligibles. The only valid statutory limitations were excess income and/or coverage by another third party prescription plan, such as Medicare, Medicaid, or Blue Cross. These limitations still remain in effect.

The Division originally believed it was necessary to have a separate manual governing pharmacies with institutional permits, because a separate billing system had to be established for hospitals and long term care (LTC) facilities holding such permits. While the PAAD Program was enacted (L.1975, c.194) as a supplement to the New Jersey Medical Assistance and Health Services (Medicaid) Act (N.J.S.A. 30:4D-1 et. seq.), hospitals and LTC institutional pharmacies were not able to bill the Medicaid Program directly. Instead, this type of pharmaceutical provider was reimbursed indirectly by having their costs included in the per diem rate computation.

However, the PAAD Program reimburses providers directly for each claim submitted. Pharmacies holding valid retail permits are reimbursed at a cost plus dispensing fee, less the \$2.00 co-payment. Pharmacies holding valid institutional permits are reimbursed at the institutional cost of purchasing the drug plus 75 percent of the established dispensing fee. The rationale for the fee differential is that institutional pharmacies can usually buy in larger quantities, and in all probability, did not have to increase staff and/or services as a result of the Attorney General's opinion.

However, there are more similarities than differences, so one subchapter 5 in the Pharmacy Manual devoted to PAAD is sufficient. All PAAD pharmaceutical providers utilize the same claim form, billing procedures, and the same list of authorized legend drugs, etc. Any actual differences are already explained in the existing rules. For example, the respective permits are mentioned in N.J.A.C. 10:51-5.3, and the reimbursement procedures in N.J.A.C. 10:51-5.18.

Only one statement will need to be added to subchapter 5, and the text appears in the proposal. Essentially a disclaimer has to be added to N.J.A.C. 10:51-5.9, Prescription Drug Policies, and N.J.A.C. 10:51-5.12, Telephone Ordered Original Prescriptions, indicating that pharmacies with institutional permits do not have to follow the substitution procedures of the Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) if they have their own substitution mechanism pursuant to N.J.S.A. 24:6E-12.

For additional discussion of the PAAD Program, especially as it relates to the beneficiaries, please refer to the proposed re-adoption of N.J.A.C. 10:69A at 15 N.J.R. 211(a):

Social Impact

The re-adoption of these rules is essential for the continued success and operation of the PAAD Program. Said rules insure prompt payment to pharmaceutical providers of PAAD claims, thereby insuring that services will be available to PAAD beneficiaries.

Economic Impact

No new economic impact is associated with this proposal, because there is no change in reimbursement methodology and/or amounts. Re-adoption of the rules insures that pharmacies will continue to be reimbursed at their current rate.

PAAD beneficiaries are still required to pay the \$2.00 co-payment.

In Fiscal Year 1983, 65 million dollars was appropriated for the PAAD Program, which is wholly State-funded.

Any reference in the current text of this rule to Pharmaceutical Assistance to the Aged (PAA) will be changed to read Pharmaceutical Assistance to the Aged and Disabled (PAAD).

Full text of the proposed re-adoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:51-5.

Full text of the rule proposed for expiration may be found in the New Jersey Administrative Code at N.J.A.C. 10:51-6.

Full text of the proposed amendments follows (additions indicated in boldface **thus**).

10:51-5.9 Prescription drug policies

(a) The choice of prescription drugs, insulin, insulin syringes and/or needles shall be at the discretion of the prescriber within limits of applicable laws and as listed herein.

1. Exceptions: Pharmaceutical services not eligible for payment (see N.J.A.C. 10:51-5.16).

(b) To be eligible for reimbursement under PAAD, a prescription must contain:

1. Full name and address of client; or
2. PAAD number of client.

(c) The Prescription Drug Price and Quality Stabilization Act (N.J.S.A. 24:6E-1) shall apply to the PAAD/Medicaid Program. This law requires that every prescription blank contain the statements "Substitution Permissible" and "Do Not Substitute". The prescriber must initial one of the statements in addition to signing the prescription blank.

1.-5. (No change.)

(d) Pursuant to N.J.S.A. 24:6E-12, the provisions of (c) above, 1 through 5 inclusive, do not apply to pharmacies with institutional permits if they have their own substitution mechanism.

10:51-5.12 Telephone ordered original prescriptions

(a) Telephone orders from prescribers for original prescriptions will be permitted in accordance with all applicable Federal and State laws and regulations.

(b) For purposes of reimbursement, telephone authorization to refill an original prescription is considered a new order and requires a new written prescription with a new prescription number. Stamping or writing a new number on the original prescription order does not constitute a new prescription under the PAAD Program.

(c) When a prescriber chooses not to allow product interchange on a telephone order, the statement "Substitution not permitted by prescriber-telephoned R_x" plus the pharmacist's full signature next to or below the statement, must appear on the prescription order. A rubber stamp bearing the statement is acceptable.

1. Pursuant to N.J.S.A. 24:6E-12, the provisions of this subsection do not apply to pharmacies with institutional permits if they have their own substitution mechanism.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Pharmaceutical Assistance to the Aged and Disabled Eligibility Manual

Proposed Readoption: N.J.A.C. 10:69A

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 30:4D-20, 24.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-7.

The agency proposal follows:

Summary

The purpose of this proposal is to readopt existing regulations known as the Pharmaceutical Assistance to the Aged and Disabled (PAAD) Eligibility Manual (N.J.A.C. 10:69A). The current text of this chapter is scheduled to expire on May 30, 1983, pursuant to Executive Order No. 66 (1978), commonly known as the "sunset" Executive Order. The proposed readoption does not include any changes in the current text. The Chief, Bureau of Pharmaceutical Assistance for the Aged and Disabled, within the Division of Medical Assistance and Health Services, has reviewed the existing rules and found them necessary for the continued operation of the PAAD Program. Said rules establish a uniform system of determining eligibility for all applicants, and serve to fulfill the statutory mandate requiring the Commissioner to establish, by regulation, a system for determining eligibility, including provisions for submission of proof of income, and evidence of coverage of prescription drug costs by any other assistance or insurance plans (N.J.S.A. 30:4D-24).

The New Jersey PAAD Program was established by P.L. 1975, c.194, effective August 21, 1975. The intent of this program was to extend assistance to certain persons whose level of income disqualified them for medical assistance under the Medical Assistance and Health Services Act (Medicaid) but who had a significant need for prescribed drugs and drug products and were unable to fully pay for them.

The current eligibility standards as set forth in the law are as follows:

N.J.S.A. 30:4D-21 Eligibility— Any single resident of this State who is either disabled pursuant to the Federal Social Security Act (42 U.S.C. section 416(i)) or 65 years of age and over whose annual income is less than \$12,000, or any married resident whose annual income combined with that of his spouse is less than \$15,000, shall be eligible for "Pharmaceutical Assistance to the Aged and Disabled" if he is not

otherwise qualified for assistance under the act to which this act is a supplement. (P.L. 1981, c.499, approved January 12, 1982.)

In essence, a person who qualifies as an eligible PAAD beneficiary must be a New Jersey resident, age 65 years or disabled, within the income limits, and not able to be covered by Medicaid (Title XIX), or any other plan equal or superior to PAAD coverage.

The above cited amendment was significant for two reasons. First, it included the disabled as a new category of eligibles. Second, it raised the income levels from the previous standard of \$9,000 for single individuals and \$12,000 for married persons (P.L. 1975, c.312, effective February 19, 1976).

Income, as defined in the regulations, includes all income from whatever source derived, including, but not limited to, salaries, wages, dividends, interest, and pensions, annuities, retirement benefits, etc. (N.J.A.C. 10:69A-2.1 Definitions).

The other significant change in the PAAD legislation was the requirement that each beneficiary pay a co-payment for each prescription. The co-payment was originally \$1.00 (see P.L. 1977, c.268 effective January 1, 1978) but was raised to \$2.00 (P.L. 1978, c.171, effective December 22, 1978). The legislative rationale for establishing the \$2.00 co-payment was to increase the share paid by eligible beneficiaries and reduce anticipated increases in State contributions. However, it is significant that the New Jersey Legislature considered co-payment a long-term legislative solution which would place this excellent and salutary program on a sound fiscal basis which would enable it to continue without further substantial modification (N.J.S.A. 30:4D-25).

For additional information about the pharmaceuticals available, billing procedures, and participating providers, please refer to the readoption of Subchapter 5 of the Pharmacy Manual which appears in this Register at 15 N.J.R. 209(a).

Social Impact

According to the New Jersey Legislature, the PAAD Program has been an "overwhelming success" (N.J.S.A. 30:4D-25). Currently there are approximately 300,000 persons enrolled in the PAAD Program. The vast majority are aged 65 and over, although approximately 25,000 are disabled individuals who qualified under the recent amendment (P.L. 1981, c.499, approved January 12, 1982). Those persons who qualify are able to obtain prescription drugs, paid for by the State, with only a minimal cost (\$2.00 co-payment per prescription) to themselves.

If this Program were not available, many persons living on a fixed income, such as social security retirement and/or disability benefits, would have to assume the full cost of their prescription drugs, or do without them.

In addition, pharmaceutical providers who fill the prescriptions, and bill the PAAD Program correctly, will be reimbursed. For additional information concerning the impact on providers, reference is again made to the readoption of Subchapter 5 of the Pharmacy Manual.

Economic Impact

There is no change in reimbursement to pharmaceutical providers associated with this proposal.

PAAD beneficiaries are still required to pay the \$2.00 co-payment per prescription.

In Fiscal Year 1983, 65 million dollars was appropriated for the PAAD Program, which is wholly state-funded.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 10:69A.

(a)

DIVISION OF PUBLIC WELFARE**General Assistance Manual
Household Size****Proposed Amendment: N.J.A.C. 10:85-3.1**

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 44:8-111(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

G. Thomas Riti, Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-80.

The agency proposal follows:

Summary

N.J.A.C. 10:85-3.1 was revised previously (see 13 N.J.R. 927(a)) to eliminate a provision whereby a person who purchased food separately was automatically classified as a household size of one regardless of relationship to other members of the household. That change, upon adoption, effective May 1, 1982, inadvertently reduced grants to persons who were totally unrelated to other household members as well as those who were related. Many of those so affected were deinstitutionalized persons sharing households under supervision of various agencies concerned with the successful movement of those persons into self-sufficient status. Because of a belief that the earlier amendment has a broader scope than the Department had intended and that it had an unanticipated damaging impact, the current proposal is designed to allow unrelated persons to function as households of one with grants calculated accordingly.

Social Impact

There will be no social impact on persons who currently constitute a one-person household. Since grants of assistance will be calculated on the basis of one person, without application of an economy of scale concept, there will be a beneficial impact on multiple member households in which the members are not related to each other.

Economic Impact

There will be a slight economic impact as a result of minimal upward grant adjustments for those individuals whose needs are budgeted on the basis of single person households. The impact on the public treasury is expected to be imperceptible.

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

10:85-3.1 Persons eligible for General Assistance

(a) (No change.)

(b) Eligibility for general assistance is determined according to the number of persons applying as a unit (eligible unit) and the number of persons with whom such person(s) lives (household size).

1. (No change.)

[2. Household size: The number of persons living together without regard to relationship by blood or marriage or to eligibility for other public assistance programs.

i. Roomers, table-boarders and roomer-boarders are not counted in the household size. (See N.J.A.C. 10:85-3.3(e)2 regarding income received from such persons.) The household sizes of roomers, table-boarders, and roomer-boarders, when they, themselves, are applicants/recipients are separately determined. (See N.J.A.C. 10:85-3.3(f)4.)

ii. Recipients of SSI who are not roomers, roomer-boarders, or table-boarders are counted in the household size even through not includable in the eligible unit.

iii. Children in foster placement or otherwise under supervision of the Division of Youth and Family Services for whom payments are received by a member of the household are counted in the household size but not in the eligible unit. (See this subchapter for consideration of the DYFS payments.)]

2. Definition of household size: Household size is defined as the number of persons living together as a family unit. It is not necessarily the same as the eligible unit size.

i. A person shall be counted in the household size of an applicant/recipient if that person shares the same shelter unit and:

(1) **Is a spouse or person in spousal relationship; or**

(2) **Is a minor child (under age 18) of the applicant/recipient; or**

(3) **Is a child of any age of an applicant/recipient and the latter is under age 60, or is a child living with two natural or adoptive parents who are applicant/recipients and both parents are under age 60; or**

(4) **Is a parent under age 60 of an applicant/recipient or if the applicant/recipient lives with both natural or adoptive parents, both are under age 60.**

ii. A person shall not be counted as a member of an applicant/recipient's household if that person is not covered in any of the categories in (b)2i above and:

(1) **Is a roomer, roomer-boarder or table boarder; or**

(2) **Is, or would be upon application, considered a member of a separate General Assistance household.**

3. (No change.)

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

(b)

DIVISION OF PUBLIC WELFARE**Food Stamp Program****Resource Exclusions: Inaccessible Trust
Funds, Vehicle Necessary for Transportation
of Physically Disabled Household Member,
and Resources Excluded by Federal Law****Proposed Amendments: N.J.A.C. 10:87-4.8,
4.12 and 5.5**

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.

Authority: N.J.S.A. 30:4B-2, 7 CFR 273.8(e)(8) and
(11), (h), 7 CFR 273.9(b)(2) and the 1980 Amendments
to the Food Stamp Act of 1977 (P.L. 96-249).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

PROPOSALS

HUMAN SERVICES

G. Thomas Riti, Director
 Division of Public Welfare
 CN 716
 Trenton, NJ 08625

The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-79.

The agency proposal follows:

Summary

The United States Department of Agriculture (USDA) has adopted final Federal regulations amending its policy regarding the treatment of trust funds in regard to the Food Stamp Program, as a result of the **Whye v. Bergland** lawsuit filed in the State of New Jersey. The consent order required that the Department cease the practice of counting, as resources, court-administered trust funds established as a result of accident or injury settlements for the benefit of a minor or incompetent. This proposal sets forth the particulars of the order and further clarifies conditions under which a trust fund may be considered inaccessible to the household and, therefore, excluded from consideration as a resource for Food Stamp purposes. This amendment allows for a resource exclusion of irrevocable trust funds established from household funds to pay for the medical expenses of a household member and exclusion of trust funds established by a nonhousehold member from nonhousehold funds (third party), when the trust fund is administered by a court or other specific entity. Furthermore, the proposal amends the unearned income regulations to require that withdrawals or dividends which are or could be received by the household from trust funds be considered as income to the household in the month such withdrawals or dividends become available to the household.

As required by the 1980 amendments to the Food Stamp Act of 1977 (P.L. 96-249), this proposal adds language to clarify the exemption from resources of a specially equipped vehicle, or special type vehicle, necessary to transport a physically disabled household member.

Other technical amendments required by P.L. 96-249 include the deletion of the time-limited exclusion from resources of earned income tax credits and the addition of resource exclusions for payments made to certain American Indians as required by Federal law.

Social Impact

The clarifying language amending the treatment of irrevocable trust funds as countable resources will continue to permit the exclusion of such trusts when determining food stamp eligibility as required by the **Whye** consent order. Although such cases are rare among food stamp households, these regulations ensure that households will not be determined resource ineligible due to the counting of a trust fund which is not available for use by the household.

The amendment regarding the exclusion of a licensed vehicle necessary to transport a physically disabled household member assures equitable treatment when determining the value of a household's licensed vehicles which may have special equipment or be of a special type, thus increasing its value, to meet the needs of a disabled household member.

These situations are unusual, but USDA has amended its regulations since a determination was made that disqualification due to these circumstances was not intended under the Food Stamp Act.

Economic Impact

These amendments will result in only a very slight increase, if any, in the number of Food Stamp participants. Since this is a

Federal program, any increase in program participation will result in some additional Federal funds being made available through Food Stamp benefits to residents of this State.

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

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the county welfare agency:

- 1.-12. (No change.)
- 13. Inaccessible resources: Resources[, whose] **having** a cash value **which** is not accessible to the household, such as[,] but not limited to, **irrevocable trust funds (see (a)14 below for treatment of irrevocable trusts), security deposits on rental property or utilities, property in probate, and real property** which the household is making a good faith effort to sell at a reasonable price and which has not been sold.

i. Good faith effort: The CWA shall verify that the property is actually for sale and the household [is willing to accept] **has not declined** a reasonable offer. Verification may be obtained through a collateral contact or documentation, such as an advertisement for public sale in a newspaper of general circulation or a listing with a real estate broker.

14. Irrevocable trusts: Any funds in a trust or transferred to a trust, and the income produced by that trust **to the extent it is not available to the household**, shall be considered inaccessible if all of the following criteria apply:

i. Controlled by the trustee: [The trust is under the control and management of an institution, corporation, or organization (the trustee) which is not under the direction or ownership of any household member:] **The trustee administering the funds is either:**

(1) A court, or an institution, corporation or organization which is not under the direction or ownership of any household member; or

(2) An individual (who may be a household member) appointed by the court who has court imposed limitations placed on his or her use of the funds which meet the requirements of this paragraph.

ii. [Trustee acts in a fiduciary capacity: The trustee uses the funds solely to make investments on behalf of the trust or to pay educational expenses of any person named by the household creating the trust:] **Funds held in irrevocable trust: The funds held in an irrevocable trust are either:**

(1) Established from the household's own funds, if the trustee uses the funds solely to make investments on behalf of the trust or to pay the educational or medical expenses of any person named by the household creating the trust; or

(2) Established from household funds by a nonhousehold member.

iii. Trust investments: [The trust] **Trust investments made on behalf of the trust** do not directly involve or assist any business or corporation under the control, direction, or influence of a household member;

iv.-v. (No change.)

15.-16. (No change.)

17. Resources excluded by Federal law: Resources which are excluded for food stamp purposes by express provision of Federal law. Resources currently excluded by this provision appear below.

i. WIC benefits: Benefits received from the Special Supplemental Food Program for Women, Infants and Children (WIC) (**Public Law 92-433**);

ii. Federal relocation reimbursements: Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (**Public Law 91-646**);

iii. [Earned income tax credits: Earned income tax credits, including advances on such credits, received before January 1, 1980, as a result of Public Law 95-600, the Revenue Act of 1978.]

Payments to Ottawa Indians: Payments received from the disposition of funds to the Grand River Band of Ottawa Indians (Public Law 94-540);

iv. Payments from certain Federal programs: Payments received from the Youth Incentive Entitlement Pilot Projects, the Youth Community Conservation and Improvement Projects, and the Youth Employment and Training Programs under Title IV of the Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524)[.];

v. Alaska native claims: Payments received under the Alaska Native Claims Settlement Act (Public Law 92-203) or the Sac and Fox Indian Claims Agreement (Public Law 94-189);

vi. Payments received by certain Indian tribe members: Payments received by certain Indian tribal members regarding submarginal land held in trust by the United States (Public Law 94-114)[.];

vii. Payments from Community Service Administration: Payments received from the Energy Crisis Assistance and Crisis Intervention Programs administered by the Community Service Administration[.];

viii. Energy assistance payments: Payments or allowances made under any Federal, State, or local law for the purpose of energy assistance. In order to qualify for this exclusion, the payments or allowances must be clearly identified as energy assistance by the legislative body authorizing the program or the funds. The State programs of Lifeline and Home Energy Assistance qualify for this exclusion[.];

ix. Payments from Indian Claims Commission: Payments received by the Confederated Tribes and Bands of the Yakima Indian Nation and the Apache Tribe of the Mescalero Reservation from the Indian Claims Commission as designated under Public Law 94-433; and

x. Payments from Maine Indians Claims Settlement: Payments to the Passamoquaddy Tribe and the Penobscot Nation or any of their members received pursuant to the Maine Indian Claims Settlement Act of 1980 (Public Law 96-420).

10:87-4.12 Treatment of licensed vehicles

(a) The value of licensed vehicles shall be excluded or counted as a resource as follows:

1. Vehicles totally excluded: The entire value of any licensed vehicle shall be excluded if the vehicle meets one of the criteria below. If found to apply, this exclusion shall continue when the vehicle is not in use because of temporary unemployment, such as when a taxi driver is ill and cannot work, or when a fishing boat is frozen in and cannot be used.

i.-v. (No change.)

vi. Vehicle necessary to transport a physically disabled household member: The vehicle is necessary to transport a physically disabled household member regardless of the purpose of such transportation. This exclusion is limited to one vehicle per physically disabled household member. The vehicle need not have special equipment or be used primarily by or for the transportation of the physically disabled household member. **A vehicle shall be considered necessary for the transportation of a physically disabled household member if the vehicle is:**

(1) A special type of vehicle that makes it possible to transport the disabled person (such as a van large enough to accommodate a wheelchair); or

(2) Specially equipped to meet the specific needs of the disabled person.

2.-5. (No change.)

10:87-5.5 Unearned income

(a) For the purposes of determining Net Food Stamp Income, unearned income shall include, but not be limited to:

1.-7. (No change.)

8. Trust withdrawals and dividends: Monies which are withdrawn or dividends which are or could be received by a household from trust funds which are considered to be excludable resources (see N.J.A.C. 10:87-4.8(a)14).

i. Trust withdrawals: Trust withdrawals shall be considered income in the month received unless excluded in accordance with N.J.A.C. 10:87-5.9;

ii. Trust dividends: Dividends which the household has the option of either receiving as income or reinvesting in the trust are to be considered income in the month they become available to the household unless excluded in accordance with N.J.A.C. 10:87-5.9.

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

(a)

DIVISION OF YOUTH AND FAMILY SERVICES

Child Care

Manual of Standards for Child Care Centers for Children from 2 1/2 through Five Years of Age

Proposed Amendments: N.J.A.C. 10:122-1.1, 1.2, 1.3, 2.1, 2.2, 2.4, 2.5, 2.6, 3.1, 3.2, 3.3, 4.4, 4.6, 5.1, 5.2, 5.3, 5.4, 6.1, 6.3, 6.4, 6.8, 6.9, 7.1, 7.2, 7.6 and 7.7

Proposed Repeal: N.J.A.C. 10:122-3.4, 3.5, 3.6, 6.2, 6.5, 6.6 and 6.7

Proposed New Rules: N.J.A.C. 10:122-3.4, 6.2, 6.5, 6.6 and 6.7

Authorized By: George J. Albanese, Commissioner,
Department of Human Services.
Authority: N.J.S.A. 18A:70-1 to 9.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Richard Crane, Chief
Bureau of Licensing
Division of Youth and Family Services
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CN 717
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The Department of Human Services thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-63.

The agency proposal follows:

Summary

On September 20, 1982, Governor Thomas H. Kean signed into law amendments to N.J.S.A. 18A:70-1 to 9, the State's child care licensing law. The law expands the definition of child care center to include centers caring for children under the age of two years and centers caring for children between the age of five and six years. Previously, only centers caring for children two, three and four years of age were required to be licensed by the State. To implement the provisions of N.J.S.A. 18A:70-1 to 9, the Division's proposal amends the current child care licensing regulations from the existing Manual of Standards for Child Care Centers, which regulates those centers caring for children two, three and four years

of age, to the Manual of Standards for Child Care Centers for Children from 2 1/2 Through Five Years of Age, which will increase the protection of licensure to children through five years of age. Since inclusion of children five years of age in this chapter would result in some minor revisions, the Division has chosen to propose such amendments at this time. In addition, the Division is currently developing regulations that will shortly be proposed as a new chapter to provide for those centers caring for children under the age of 2 1/2 years.

The revised regulations also include a clarification of the requirements under the State's Uniform Construction Code (UCC) that places child care centers with an occupancy of fewer than 50 persons in BOCA Basic Building Code use group classification B, rather than the A-4 classification in which larger centers are categorized. The B group classification generally calls for less restrictive life-safety and physical facility requirements because of the lower occupancy.

In response to passage of N.J.S.A. 18A:30-20.1, the revised regulations also clarify the requirement that centers transporting children to and from related center activities in a private vehicle with a capacity of eight or fewer persons do not have to meet the State school bus driver licensing and vehicle specification requirements.

The amended law also requires centers to be licensed regardless of whether they charge a tuition fee, board or other form of compensation for the care of the children. Previously, only centers that charged a tuition fee, board or other form of compensation had to be licensed by law. This amendment will require, for the first time, the licensing of more than 200 New Jersey-based Head Start centers, although such centers have been licensed during the past several years on a voluntary basis.

In addition to the proposed changes in this chapter necessitated by the amended child care licensing law, various technical changes are proposed to improve the readability and clarity of the chapter.

Social Impact

The proposal will have a positive social impact by providing the protections of licensure to children five years of age in attendance at child care centers required to be licensed in accordance with N.J.S.A. 18A:70-1 to 9. In addition, children who attend child care centers that do not charge a tuition fee, board or other form of compensation for the care of children will also be protected by the required licensing of such centers.

Economic Impact

There will be no additional expenditures required by the Division's Bureau of Licensing for the implementation of the proposal. There should be no adverse economic impact on child care centers required to be licensed since the amendments to the regulations are not more stringent or costly requirements than are those currently in effect.

In fact, for centers with an occupancy of fewer than 50 persons, the revised regulations have a positive economic impact, since these centers are now classified in the BOCA use group B classification, rather than the A-4 use group, in keeping with the provisions of the UCC. The B use group imposes a number of less stringent and less costly physical facility requirements because of the lower occupancy, making it easier and less expensive for smaller centers to meet the life-safety requirements.

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

10:122-1.1 Legal authority

(a) This chapter is promulgated pursuant to the State's child care licensing law (N.J.S.A. 18A:70-1 to 9) and N.J.S.A. 30:1-25. [Under the law, certain privately operated, non-sectarian child care centers providing care for six or more children over the age of two years and under the age of five years and charging a tuition fee,

board or other form of compensation for the care of the children must be licensed by the Department of Human Services in order to open and operate. In order to be eligible for a license, a child care center shall demonstrate to the satisfaction of the New Jersey Department of Human Services through such methods and procedures as may be prescribed that it complies with the provisions of State child care licensing law and with this chapter, which constitutes minimum standards only. Responsibility for insuring that centers comply with the provisions of this chapter is hereby delegated by the Department of Human Services to the Bureau of Licensing of Youth and Family Services.]

(b) Under N.J.S.A. 18A:70-1 to 9, the Department of Human Services is authorized to license certain privately operated non-sectarian child care centers providing care for six or more children under the age of six years for less than 24-hours-a-day.

(c) Under N.J.S.A. 30:1-25, the Department of Education's functions, powers and duties pertaining to the licensing of child care centers was transferred to the Department of Institutions and Agencies, which is now referred to as the Department of Human Services (N.J.S.A. 30:1A-1).

(d) The rules and regulations contained in this chapter are for those centers caring for children over the age of 2 1/2 years and under the age of six years.

(e) In order to be eligible for a license, a child care center shall demonstrate to the satisfaction of the Department of Human Services or its duly authorized agent through such methods and procedures as may be prescribed that it complies with the rules and regulations contained in this chapter, which constitute minimum standards only.

(f) Responsibility for insuring that centers comply with the provisions of the statutes cited in (a) above and of this chapter is hereby delegated by the Department of Human Services to the Bureau of Licensing of the Division of Youth and Family Services.

10:122-1.2 Definitions

[For the purpose of the State child care licensing law and of this chapter, the following definitions shall apply:]

The following words and terms, when used in this chapter, shall have the following meanings:

"Bureau" means the Bureau of Licensing of the Division of Youth and Family Services, New Jersey Department of Human Services.

"Child" means any person over the age of [two] 2 1/2 and under the age of [five] six years.

"Child Care Center" or "Center" means any facility, by whatever name known, which is maintained for the care, development [or] and supervision of six or more children **over the age of 2 1/2 years and under the age of six years** for less than 24-hours-a-day. This term shall include, but shall not be limited to, such programs as day care centers, drop-in centers, night care centers, nursery schools, play schools, cooperative child centers and centers for handicapped children or children with special needs. [In centers where the educational tuition for a handicapped pupil is being paid by a board of education, the private facility shall meet the additional criteria of N.J.A.C. 6:28-1.1 et seq. (Special Education) and 6:3-2.1 et seq. (pupil records) (Authority N.J.S.A. 18A:46-1 et seq., 18A:36-19 and Public Law 94-142).] The term "Child Care Center" or "Center" shall not include [] any:

1. Public or private **family day care homes**, foster homes, group homes, residential [treatment] **child care** facilities and children's shelter[s]; **facilities or homes**;

2. Centers operated by a properly organized and accredited church or an aid society of a properly organized and accredited church;

3. Centers operated by any fraternal society organized for aid and relief of its members;

4. Centers operated by the Department of Human Services or any [other public agency] **centers** operated by a county, city, municipality or school district;

5. [Any c]Children's home, orphan asylum, children's aid

society, of society for the prevention of cruelty to children, incorporated under the laws of this State and subject to visitation or supervision by the [State] Department of Human Services, except in the conduct of a philanthropic day nursery;

6. Special activities programs for children, including athletics, hobbies, art, music, dance, or craft instruction;

7. Youth camps required to be licensed under the Youth Camp Safety Act of New Jersey (N.J.S.A. 26:12-1 et seq.); or

8. Day training centers operated by the Division of Mental Retardation within the Department of Human Services.

[“Commissioner” means the Commissioner of Human Services.]

“Department” means the New Jersey Department of Human Services.

“Director” means any person responsible for the actual operation and management of a child care center.

“Division” means the Division of Youth and Family Services [of the], New Jersey Department of Human Services.

“Parent” means a [natural or adoptive] parent, guardian, or any other person having responsibility for, or custody of, a child.

“Person” means any individual, agency, corporation, company, association, organization, society, firm, partnership, joint stock company, the State or any political subdivision thereof.

“Regular License” means a certificate in writing issued by the Bureau which indicates that the child care center is in full compliance with the [State child care licensing law and] provisions of this chapter.

“Revocation of a license” means a rescinding of a center’s current license to operate for failure or refusal to comply with the provisions of [the State child care licensing law and] this chapter.

“Shall” denotes a provision of this chapter that a child care center must meet to qualify for a license.

“Should” denotes a recommendation reflecting goals towards which a center is encouraged to work for the improvement of the program.

“Sponsor” means any person owning a child care center. [This term shall include public and private owners, as well as those of religious, fraternal, charitable or other voluntary organizations.] The “sponsor” also may serve as the director.

“Staff member” means any [individual] person employed by or working for or with a child care center on a regularly scheduled basis. This shall include full-time, part-time, voluntary and substitute staff, whether paid or unpaid.

“Suspension of a license” means a temporary rescinding of a center’s current license to operate, which can be reinstated by the Bureau upon the center’s compliance with the provisions of [the State child care licensing law and] this chapter.

“Temporary license” means a certificate in writing issued by the Bureau which indicates the child care center is in substantial compliance with the [State child care licensing law and] provisions of this chapter, provided that [there are] no serious or imminent hazard[s in the center] affecting the children exists, and on the condition that the center comes into full compliance with [State child care licensing law and] the provisions of this chapter by the expiration date of the temporary license.

[The use of the word “shall” in this chapter denotes requirements that must be met by a center to qualify for a license. The use of the word “should” in this chapter denotes recommendations reflecting goals towards which a center is encouraged to work for the improvement of the program.]

10:122-1.3 Program descriptions

(a) A licensed child care center shall offer one or more of the following types of program:

1.–3. (No change.)

4. Special needs: A program serving regularly enrolled children, 50 percent of more of whom have a physical, emotional or intellectual handicap, of learning disorder. [This shall include privately operated centers approved by the State Department of Education.]

(b) When a child care center operates a program which falls within more than one of the program categories, as [defined] specified in (a) above, the Bureau shall make an individual assessment and determination, based on the nature and type of the program combination, as to which standards shall govern.

(c) Hours of care:

1. Pre-school, drop-in and special needs programs: No child shall be cared for at a center for more than 12 hours within a 24-hour period.

2. Night care programs: No child shall be cared for at a center for more than 16 hours within a 24-hour period.

10:122-2.1 Application for license

(a) No person shall conduct, maintain or operate a child care center unless the center first secures a license to do so from the Bureau, pursuant to the provisions of the child care licensing law (N.J.S.A. 18A:70-1 to 9) and of this chapter. Operation of a child care center without a valid license as required by [law] N.J.S.A. 18A:70-8 constitutes a misdemeanor.

(b) Filing of application with the Bureau:

1. A [completed application] person applying to the Bureau for a new or renewed license for a child care center shall [be filed with the Bureau] submit a completed application form (supplied by the Bureau) at least 45 days prior to the anticipated opening of a new center or the expiration of an existing center’s license.

2. Applicants for an initial or renew[al]ed license shall submit the following with the completed application form:

i. A \$75.00 licensing fee in the form of a check or money order made payable to “The Treasurer, State of New Jersey.”

(1) In the event the application is denied, or the center does not open, the Bureau shall return this fee to the applicant. [The licensing fee shall be payable with each application to renew a license. Once a license is issued, the]

(2) The licensing fee, or any portion thereof, shall not be refundable if the center discontinues operating voluntarily or involuntarily; and

ii. Written certification from the municipality or county in which the child care center will operate stating that the physical facility meets local government code approval as specified in N.J.A.C. 10:122-5.1[;].

[iii. Written documentation of employee qualifications and credentials, including written verification of previous employment experience for those staff members, as required by N.J.A.C. 10:122-4.3; and

iv. A written outline of the center’s program, which shall include the philosophy, goals and objectives of the program, and plans for implementing the program offered at the center.]

10:122-2.2 Issuance of a license

(a) The Bureau shall review the application for a license and materials submitted with it, and shall conduct an on-site physical facility [inspection] and program [evaluation] inspection of the child care center to determine whether the center meets all of the provisions of [the law and of] this chapter, and if so, the Bureau shall issue a regular license to the center.

(b) The Bureau shall provide notice if the license will not be granted or renewed [.] and shall specify reasons for such action.

(c) If the Bureau determines that a child care center is in substantial compliance with, but does not meet all of the applicable provisions of [the law and of] this chapter, and provid[ing]ed that the extent of the center’s deviation from such requirements is not deemed serious or imminently hazardous to the health, safety, well-being and proper development of the children, the Bureau shall issue a temporary license.

(d) When a temporary license is issued, the Bureau shall provide a written statement explaining what the center must do to achieve a regular license.

(e) [Such a] A temporary license may be issued for a period not to exceed six months. The Bureau may renew the temporary license

as often as it deems necessary; provided, however, that a center shall not operate pursuant to temporary licenses for more than a total of 18 months.

[(b)] (f) Each licensing period, which may include the issuance of one or more temporary licenses and/or one regular license, shall be three years.

1. In determining the expiration date of the first regular license, the Bureau shall compute the three-year period of licensure from the date of issuance of the first temporary or regular license.

2. In determining the expiration date of a renewed regular license, the Bureau shall compute the three-year period of licensure from the date on which the center's previous regular license expired, unless the center ceased to operate for a period of at least six months following the expiration date of its previous regular license.

[(c)] (g) The license shall be issued to a particular child care center sponsor at a particular location and shall not be transferable.

1. Any change in sponsorship, location or program type of the center shall necessitate application for and receipt of a license reflecting the change.

2. An application fee shall not be required in cases of a change in location, sponsorship or program during any period in which a license is in effect: provided, however, that this license shall be given the same expiration date as that of the previous license.

[(d)] (h) The license shall be posted and displayed by the sponsor at all times in a location of prominence within the center.

[(e)] (i) When two or more child care centers are **[to] or will** be operated at different locations by the same sponsor, the sponsor shall submit to the Bureau a separate application for a license and licensing fee for each center. **[Each such center, if it qualifies for licensure, shall receive a license from the Bureau.]**

[(j)] When two or more child care centers are to be operated on the same premises by the same sponsor, the sponsor shall submit to the Bureau a single application for a license and licensing fee.

[(f)] (k) [No] A child care center shall **not** make claims either in advertising or in any written or verbal announcement or presentation contrary to its licensing status or **contrary** to any type of program **[not]** authorized by the license.

10:122-2.3 Causes for denial, suspension or revocation of a license

(a) A child care center's license may be denied, suspended or revoked for good cause, including[,] but not limited to the following:

1. Failure to comply with **the** provisions of the State's child care licensing law or of this chapter;

2. Violation of the terms and conditions of a license;

3. Use of fraud or dishonesty in obtaining a license or in the subsequent operation of the center;

4. Refusal to furnish the Bureau with files, reports or records as required by this chapter;

5. Refusal to permit an authorized representative of the Division to gain admission to the center; or

6. Any activity, policy or conduct that adversely affects or presents a serious or imminent hazard to the health, safety and well-being of any child attending the child care center, or that otherwise demonstrates unfitness or inability to operate a child care center.

(b) If a child care center's license is suspended, it shall be reinstated by the Bureau once the center achieves compliance with **the** provisions of **the** State child care licensing law and of this chapter. In such a case, it is not necessary for the center to submit a new application for a license and application fee.

[(c)] [However, if] If the Bureau revokes a center's license to operate, the center shall submit to the Bureau a new application for a license and application fee, meet the provisions of **the** State child care licensing law and of this chapter and secure a new license to operate prior to resuming operations.

[(c)] (d) Each license issued by the Bureau to a child care center remains the property of the State of New Jersey. If a center's license is suspended or revoked or upon the permanent closing of the center

by the sponsor, the sponsor shall return the center's license(s) to the Bureau immediately.

10:122-2.4 Administrative hearings[; appellate review]

[(a)] The Bureau shall have the authority to request the scheduling and conducting of an administrative hearing whenever it determines that a hearing is necessary to effectuate the purpose of the State child care licensing law or of this chapter.

(b) The Bureau, before denying, suspending, or revoking a license or refusing to renew a license an opportunity for an administrative hearing. If the applicant or licensee does not request an administrative hearing and the center remains out of compliance with the State child care licensing law or this chapter, the Bureau shall refer the matter to the Attorney General, New Jersey Department of Law and Public Safety. A center that has not made application for a license may not be afforded an opportunity for an administrative hearing.

(c) Hearings shall be conducted by the Office of Administrative Law, in accordance with the Administrative Procedure Act (N.J.S.A. 52:14B-1, et seq.) and rules of practice and procedures governing administrative hearings conducted by the Office of Administrative Law. Any center scheduled for a hearing shall receive a notice of such hearing. Hearings are governed by the rules of practice and procedure in accordance with N.J.A.C. 1:1-3.1 et seq.

(d) All administrative hearings shall be held before an Administrative Law Judge designated by the Office of Administrative Law.

(e) The Administrative Law Judge shall render a written Initial Report and Decision and shall submit copies of such report and decision to all parties of record present at the hearing within the time period established in keeping with the provisions of the Administrative Procedure Act. Any party to the hearing may submit for the permanent record objections, corrections, or proposed modifications to the written Initial Report and Decision to the Director of the Division. These must be submitted within the time allowed for by the hearing rules. The Division Director shall review the Administrative Law Judge's Initial Report and Decision and any objections, corrections or proposed modifications that have been filed and shall render a Final Decision within the time period allowed for in the hearing rules, resolving the disputed issues.

(f) Any child care center aggrieved by a Final Decision of the Division Director may seek judicial review in the Appellate Division of the New Jersey Superior Court. All petitions for review shall be filed in accordance with the Rules Governing the courts of the State of New Jersey. Unless otherwise ordered by a court of competent jurisdiction, the Division Director's decision shall not be stayed pending appeal.]

(a) To effectuate the purposes of this chapter, the Bureau may initiate an administrative hearing in the interest of justice.

(b) When the Bureau proposes not to license or not to continue licensure of a child care center, the Bureau shall afford the child care center notice and opportunity for an administrative hearing.

(c) All administrative hearings shall be conducted pursuant to the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.) and the Uniform Administrative Procedure Rules of Practice (N.J.A.C. 1:1).

10:122-2.5 Complaints

(a) Whenever the Bureau receives a report questioning the licensing status or conditions affecting a child care center, the Bureau shall promptly investigate the allegation and determine whether the complaint **[can be]** is substantiated and shall notify the center in question accordingly; if the complaint is substantiated or if any other violations are found as a result of the investigation, the center shall be required to abate the violations and come into full compliance with **the** provisions of the State child care licensing law and of this chapter.

(b) Any individual filing a complaint may do so anonymously [if she/he chooses]. If the complainant reveals his/her identity, the name of the complainant, together with a **description** of the complaint and its status, shall be included in the center's records and shall be available for public review upon completion of the investigation by the Bureau, in keeping with the State Public Records Law (N.J.S.A. 47:1A-1 to 4).

10:122-2.6 Public access to licensing records

(a) Licensing files maintained by the Bureau are public records and shall be readily accessible for examination by any person, **under the direction and supervision of the Bureau**, except when public access to records is restricted [in certain circumstances or situations] in keeping with the State Public Records Law or other appropriate statutes. [The following records pertaining to child care centers shall not be available for public disclosure or examination:

1. A report, correspondence or other informational materials pertaining to a complaint investigation while the investigation is still in progress;

2. Medical records on any child or staff member served or employed by a child care center unless written authorization to release those records is submitted by the child's parent or, in the case of staff members, the staff member or center director;

3. All information secured in the course of the investigation of suspected child abuse/neglect allegations, in accordance with the provisions of N.J.S.A. 9:6-8.10 and 11, which are governed by the confidentiality of records in accordance with N.J.S.A. 9:6-8.10(a). Such records are not open to public disclosure or access, regardless of whether the investigation is in progress or has been completed. Such information shall be made available only to those individuals authorized under this statute to have access to the information; or

4. Other records whose disclosure would be detrimental to the public interest. The State Public Records Law permits certain records to be restricted when, in the determination of the regulatory authority, such disclosure would be detrimental to the public interest.

(b) Every person shall have the right, during regular business hours and under the supervision of a representative of the Bureau, to inspect records open to the public, to copy those records by hand and to purchase copies of those records in accordance with the Bureau's schedule of fees for reproducing public records. Copies of records shall be made available upon payment of the price established by law or by policy of the Department, Division or Bureau.]

(b) The Bureau shall establish policies governing the review by the public of center records.

SUBCHAPTER 3. ADMINISTRATION [OF THE CHILD CARE CENTER]

10:122-3.1 Administrative responsibility

(a) The sponsor of the child care center shall have responsibility for the overall administration of the center and the quality of child care, development and supervision, and staff training provided therein.

(b) The sponsor may serve as, or appoint, a director, who shall be responsible for the actual management and operation of the center.

10:122-3.2 Reporting requirements

(a) The center shall notify the Bureau of any of the following changes or events within 24 hours after any of them occur[, to be followed by written notice not later than five working days after any of them occur]:

1. Unanticipated **temporary or permanent** closing of the center;
2. [Any legal] **Legal** action against a center or staff member which involves or affects any child or the operation of the center;
3. [Any damage] **Damage** to the premises of the center caused by fire, accident or the elements; and
4. [Any injury] **Injury** requiring hospitalization or resulting in the

death of any child which occurred while the child was on the premises of the center or in the care of center personnel.

[(b) The center shall report to the Bureau in writing any change in name or location of the center within 14 working days prior to the change.]

[(c) (b) The center shall [report to] **notify** the Bureau in writing [any of the following proposed changes within 30 working days of the change:] **at least 30 days prior to any of the following proposed changes and events:**

1. Sponsorship of the center;
2. Program category;
3. **Name, location and/or [T]telephone number** of the center;
4. [The utilization of space not previously approved in the center;]

Capacity of the center;

5. Director, head teacher, group teacher and all other staff; and
6. Anticipated [long range] **temporary** or permanent closing of the center (temporary closings, such as for holidays and vacation, need not be reported).

[(d) (c) [Any person who has reason to] **A center shall notify the Division immediately if it** believes that a child has been or is being abused or neglected [is required to report this directly to the Division] **by a staff member(s) or any other person**, as required by [provisions of] the Child Abuse and Neglect [Statute (N.J.S.A. 9:6-8.21 et seq.)] **Law (N.J.S.A. 9:6-8.9, 8.10, 8.13 and 8.14)**. Copies of the law and information about it are available from the Division, upon request.

10:122-3.3 Records

(a) [All records required to be maintained by the center pursuant to this chapter shall be open to inspection by an authorized representative of the Bureau, except as described in subsection (f) of this section.] **General requirements:**

1. Records required to be maintained by the center pursuant to this chapter shall be kept on file at the center. If the sponsor operates more than one center and maintains records in a central file, a duplicate individual file for each child shall also be kept at each center.

2. Records shall be open for inspection by an authorized representative of the Bureau.

3. The center shall ensure the confidentiality of records, in accordance with State law.

(b) Children's records: The center shall maintain in its files an up-to-date record on each child and it shall include:

1. The child's full name, address, birth date, date [or] of enrollment[,] and date of termination, [and reason for termination,] except drop-in centers, which shall not be required to maintain the date of termination [and reason for termination];
2. Name, home address, employment address, and telephone number of parent(s);
3. Instructions for reaching parent(s);
4. Names, addresses, and telephone numbers of [properly identified] person(s) authorized **by the parent(s)** to take the child to or from the center and to assume responsibility for the child in an emergency if the parent(s) cannot be reached immediately;
5. Name, address, and telephone number of the child's physician;
6. Health information, as specified in N.J.A.C. 10:122-6.1;
7. Written authorization from parent(s) for emergency medical care; and
8. Injury and illness record, including reports of any accidents, of treatment by a physician, or of injury or death of a child while on the premises or in the care of the center[.]; **and**

[(c) The center shall record daily the time of arrival and time of departure for each child.]

[(d) Any] **9. For a center [which] that serves any child having a physical, emotional or intellectual handicap, including mental retardation, social maladjustment, perceptual impairment, neurological impairment, auditory handicap, emotional problems, communication handicap, or orthopedic handicap, a statement**

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from a physician, nurse, psychologist, therapist, teacher or other professional qualified to diagnose such a child. [shall obtain, prior to the child's admission to such program, or as soon as possible following admission, and retain in the center's files, a statement from a physician or other professional qualified to diagnose such a child.] **The statement shall be obtained prior to or as soon as possible following the child's admission.** The statement shall indicate the particular nature of the child's handicap and any program or environmental modification that [would be] is required to meet the exceptional child's needs.

[(e)] (c) Staff records: The center shall maintain in its files an up-to-date record of every staff member for as long as that individual is working at the center. The record shall include:

1. Staff member's name, address, and telephone number;
2. Information on health, as specified in N.J.A.C. 10:122-4.2; and
3. Dates of employment or work.

[(f)] (d) Administrative records: The center shall maintain the following records in its files:

1. A copy of the center's insurance coverage including:
 - i. Comprehensive liability insurance; and
 - ii. If applicable, vehicle insurance as specified in N.J.A.C. 10:122-7.1(d)5;
2. Transportation records, if the center provides transportation, as [described] **specified** in N.J.A.C. 10:122-7.1(c)4;
3. A written record of the performance of required monthly fire drills, [including the date and time of day, the number of children and staff members who participated, the total amount of time necessary to evacuate the center for each fire drill, and the name of the fire official or Bureau representative present at the fire drill that must be attended by such person annually] **as specified in N.J.A.C. 10:122-5.2(b)9;**
4. A **current** copy of [the current child care licensing law and of] this chapter[:] (**Manual of Standards**);
5. Employee work schedules and time sheets;[and]
6. Daily attendance records for the children enrolled[.];
7. **A written plan specifying the procedures to be followed in the event that the parent(s) or other person(s) authorized by the parent(s) fails to pick up or is late in picking up a child at the time of the center's daily closing. The plan shall insure that:**
 - i. **The child is supervised at all times by center staff members;**
 - ii. **Every effort is made by center staff members to contact the parent(s) and/or other person(s) authorized by the parent(s) to care for the child; and**
 - iii. **Whenever the parent(s) and/or other person(s) authorized by the parent(s) fails to pick up the child one hour or more after closing time, a center staff member shall call the Division's 24-hour Child Abuse Hotline (800-792-8610) to seek assistance in caring for the child until his/her parent(s) or other person(s) authorized by the parent(s) is available to care for the child; and**
8. **For a drop-in center, a record of the daily time of arrival and time of departure for each child.**

[(g)] Access to records: Confidentiality:

1. A parent or authorized representative shall have access to the child's record at any time during the child's enrollment at the center. Upon the permanent departure of a child from a center, the parent shall be provided, upon request, with a copy of all records concerning the child. Such records shall be maintained by the center for a minimum of 30 days following the child's departure.
2. The Bureau shall have access to any child's individual records, provided that such access shall be solely for the purpose of determining compliance with this chapter.
3. The center shall not release the individual record of any child to any person not authorized to receive such records without prior written consent of parent(s), except pursuant to court order.]

[(h)] Location of records:

1. If a sponsor operates more than one center and maintains records in a central file, a duplicate individual file for each child, including information as required in subsection (b) of this section,

shall also be kept at each center.]

[10:122-3.4 Emergency plan, first aid and equipment

(a) Emergency plan: A written plan specifying the procedures and manner in which emergencies, evacuations and injuries are handled shall be posted in a location of prominence within the center. All staff members shall review the plan periodically. The plan shall contain at least the following:

1. The location of the first aid kit and any additional first aid supplies;
2. The name, address and telephone number of the physician retained by the center or health facility used in emergency situations;
3. The procedure for obtaining emergency transportation;
4. The hospital and/or clinic to which injured or ill will be taken;
5. The telephone numbers of the local police, fire department and ambulance service;
6. Location of written authorization from parent(s) for emergency medical care for each child; and
7. A description of how the center is to be evacuated in case of emergency.

(b) First aid: A staff member who has current certified basic knowledge of first aid principles as defined by a recognized health organization (such as the American Red Cross) shall be in the center during periods of operation.

(c) Equipment: First aid equipment shall be located in a convenient, accessible location in the center and shall include:

1. A standard first aid kit recommended by the American Red Cross or the local or state health department; and
2. The Red Cross First Aid Manual or its equivalent.]

[10:122-3.5 Fire drills

(a) The director of the center shall conduct fire drills at least once a month to familiarize the staff and children with the procedures for leaving the building in an emergency situation, and a record of such drills shall be maintained in the center's files. Fire drills should be conducted at different times of the day, including periods when the children are resting and sleeping. A fire official or a representative of the Bureau shall be present at a fire drill at least once a year.

(b) All staff members shall be instructed in the use of fire extinguishers.]

10:122-3.[6]4 Telephone

(a) The center shall have a telephone.

(b) The telephone number should be listed in the public telephone directory under the name of the center, not the name of the facility in which the center is located (such as a church, shopping center, etc.).

SUBCHAPTER 4. STAFF REQUIREMENTS

10:122-4.1 General requirements for staff
(No change.)

10:122-4.2 Health requirements for staff
(No change.)

10:122-4.3 **Job responsibilities and [E]education and experience requirements for staff**

(a) **Job responsibilities and [E]education and experience requirements for the director shall include the following:**

1.-2. (No change.)

3. The director may also serve as the head teacher, providing s/he possesses the qualifications for that position as specified in N.J.A.C. 10:122-4.3(b)2i,ii and iii.

(b) **Job responsibilities and [E]education and experience requirements for the head teacher shall include the following:**

1. The head teacher shall be responsible for:

- i. Developing and implementing the center's educational, child development and activities program; and
- ii. Supervising the implementation of the program.

2. The head teacher shall possess the qualifications as specified in (b)2i, ii and iii below for the appropriate program category.

- i. Pre-school program: The head teacher shall:
 - (1)-(3) (No change.)

(4) For Montessori [child] centers, possess a Montessori Diploma (AMI-USA) or a Montessori Pre-primary Credential (AMS) and have two years of teaching experience in a group program for pre-school age children.

- ii.-iii. (No change.)

(c) **Job responsibilities and [E]education** and experience requirements for the consulting head teacher shall include the following:

- 1.-2. (No change.)

(d) **Job responsibilities and [E]education** and experience requirements for the group teacher shall include the following:

- 1.-2. (No change.)

(e) **Job responsibilities and [E]education** and experience requirements for the assistant shall include the following:

- 1.-2. (No change.)

10:122-4.4 Types of staff

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

(h) Centers that meet the types of staff requirements, as specified in (a) through (g) above, do not have to meet additional types of staff requirements when also serving children under the age of 2 1/2 years.

[(h)] (i) Centers serving more than 30 children should also utilize a full-time group teacher for every 30 children beyond the first 30 children served.

[(i)] (j) In a center where 50 percent or more of the children have limited English proficiency, a bilingual staff member should be utilized.

10:122-4.6 Staff/child ratios

- (a) The children shall be supervised at all times.**

[(a)] (b) A minimum of two staff members **who are involved in the care and supervision of the children** shall be on the premises at all times while children are present. [The children shall not be left unattended at any time.]

[(b)] (c) When the head teacher is off the premises temporarily, for reasons such as illness, field trips, vacations and attending meetings, s/he shall be responsible for insuring that the program continues to function adequately in his/her absence.

[(c)] (d) The following staff/child ratios shall apply for each program category listed below:

- 1. Pre-school and drop-in programs:

i.	2 1/2 year olds	10 children	1 staff member
ii.	3 year olds	10 children	1 staff member
iii.	4 year olds	15 children	1 staff member
iv.	5 year olds	15 children	1 staff member

- 2. Night care programs:

i.	2 1/2 year olds	8 children	1 staff member
ii.	3 year olds	8 children	1 staff member
iii.	4 year olds	12 children	1 staff member
iv.	5 year olds	15 children	1 staff member

- 3. (No change.)

[(d)] (e) In computing the required staff size for a center, the Bureau shall apply the staff/child ratios, [noted in subsection (d) of this section,] **as specified in (d) above**, for each program category to the actual number of children in attendance at the center. The total number of staff required for a center shall be the cumulative number of staff required per room. The number of staff per room shall be computed by dividing the number of children in attendance

per room by the staff/child ratio required for the age of the children served. When this resulting figure is not a whole number, the computation for required staff shall be determined by rounding the figure to the nearest whole number. If the resulting figure is below .5, an additional staff member shall not be required; if it is .5 or above, an additional staff member shall be required. See example below:

Program Category	Children In Attendance Per Room	Age
Pre-School or Drop-In	30	2 1/2
	28	3
	34	2 1/2 and 3
	30	4 and 5
Staff-Child Ratio Required	Computation	Required Staff
1:10	$\frac{\text{No. of Children (30)}}{10} = 3$	3
1:10	$\frac{\text{No. of Children (28)}}{10} = 2.8$	3
1:10	$\frac{\text{No. of Children (34)}}{10} = 3.4$	3
1:15	$\frac{\text{No. of Children (30)}}{15} = 2$	2
Total Staff Required for Center		11

[(e)] (f) When children of mixed ages requiring different staff/child ratios are in one room, the Bureau shall compute the staff/child ratios applicable for each age group separately to the nearest tenth decimal. If the resulting cumulative figure for both age groups is below .5, an additional staff member shall not be required; and if it is .5 or above, an additional staff member shall be required. See example below:

Program Category	Children In Attendance Per Room 31	Age
Pre-School or Drop-In	13	2 1/2 and 3
	18	4 and 5
Staff-Child Ratio Required	Computation	
1:10	$\frac{\text{No. of Children (13)}}{10} = 1.3$	
1:15	$\frac{\text{No. of Children (18)}}{15} = 1.2$	
Cumulative Total = 2.5		
Total Staff Required for This Room		=3

[(f)](g) Staff members not meeting the educational and/or experience requirements for head teacher or group teacher may be counted in computing a center's staff-child ratios, but must work under the direct supervision of the head teacher or group teacher.

[(g)] (h) For purposes of determining whether a required staff-child ratio is met, only those staff members who are involved in the care and supervision of children shall be counted. Non-teaching directors as well as clerical, housekeeping and maintenance staff shall not be counted for such purposes, although they may be used as substitutes in the classroom in cases of emergency.

[h)] (i) Staff members under 16 years of age working in the center shall not be counted for purposes of computing the staff-child ratio. Any individual under 18 years of age working at the center must be under direct supervision of a head teacher or group teacher.

10:122-4.7 Staff training and development
(No change.)

SUBCHAPTER 5. PHYSICAL FACILITIES REQUIREMENTS

[10:122-5.1 Local government code enforcement approval

(a) Any child care center in existence and operation as such before or on January 1, 1977 (the date the State Uniform Construction Code, hereinafter referred to as the UCC, went into effect) shall submit to the Bureau, upon the first application for renewal of its license after January 1, 1977, a copy of the building's certificate of continued occupancy issued by the municipality in which it is located, stating the center is approved to operate as a child care center, in accordance with local government code requirements in effect prior to implementation of the UCC on January 1, 1977. In addition, the center shall also submit a copy of the municipal health inspection approval for the building, based on an inspection conducted within the preceding 12 months. The local health official shall certify that the center meets all local health codes and the State Sanitary Code and poses no health hazard to the children served. In lieu of the certificate of continued occupancy, a copy of the municipal fire and building inspection approvals (based upon inspections conducted within the preceding 12 months) shall be submitted to the Bureau. Upon every subsequent application for renewal of licensure, any center that had previously submitted the building's certificate of continued occupancy to the Bureau shall be required to submit a copy of the current local health inspection approval as specified above. However, if the municipality in which the center is located has enacted an ordinance governing the maintenance of buildings, including child care centers, the center shall also submit to the Bureau a statement from the municipal enforcing agency certifying that the center is in compliance with such ordinance.

(b) Any child care center that seeks to begin operation as such after January 1, 1977 shall submit to the Bureau, upon application for its license, a copy of the building's certificate of occupancy issued by the municipality in which it is located, stating that the center is approved to operate as a child care center, in accordance with provisions of the UCC. In addition, such center shall also submit to the Bureau a copy of the municipal health inspection approval for the building as specified in subsection (a) of this section. Upon application for renewal and for every subsequent application for renewal of licensure, the center shall be required to submit to the Bureau only a copy of the current local health inspection approval, as specified in subsection (a) of this section. However, if the municipality in which the center is located has enacted an ordinance governing the maintenance of buildings, including child care centers, the center shall also submit to the Bureau a statement from the municipal enforcing agency certifying that the center is in compliance with such ordinance.

(c) The child care center shall submit to the Bureau, upon completion of the actions noted below, a copy of a new certificate of occupancy issued by the municipality in which it is located, reflecting the center's conformity with the provisions of the UCC, when any child care center either:

1. Seeks to change its use group to one other than that prescribed on its original certificate of occupancy; or
2. Seeks to make a major alteration or renovation, as defined by the UCC, of the building or premises in which the center is located; or
3. Seeks to increase its floor area or the number of stories to the building or premises in which the center is located.]

10:122-5.1 Local government physical facility requirements

(a) An applicant seeking a license to open and operate a child care center for the first time as such shall:

1. For newly constructed buildings, existing buildings whose construction code use group classification would change from that which it had been or existing buildings that require major alteration or renovation, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located, reflecting the center's compliance with the provisions of the State Uniform Construction Code (N.J.A.C. 5:23, hereinafter referred to as UCC, for use group classification A-4 for buildings accommodating children 2 1/2 years of age and/or older or for use group classification B for buildings having a total occupancy children and adults) that is fewer than 50;

2. For existing buildings whose construction code use group classification is already A-4 or B and which has not had major alterations or renovations to make it suitable for use as a center, submit to the Bureau a copy of the building's certificate of occupancy issued by the municipality in which it is located at the time the building as originally constructed or approved for use in the A-4 or B use group classifications, or a certificate of continued occupancy issued by the municipality in which it is located, reflecting the center's compliance with the municipality's construction code requirements that were in effect at the time it was originally constructed or converted to use group classification A-4 or B; and

3. Submit to the Bureau a copy of the municipal or county health inspection approval for the building, based on an inspection conducted within the preceding 12 months. The local or county health official shall certify that the center meets the provisions of all local or county health codes and Chapter 12 of the State Sanitary Code (N.J.A.C. 8:24-1), and poses no health hazard to the children served.

(b) An applicant seeking renewal of a license to operate a child care center shall:

1. Submit to the Bureau a copy of the municipal or county health inspection approval for the building, as specified in (a)3 above; and

2. If the municipality in which the center is located has enacted an ordinance governing the maintenance of buildings, including child care centers, submit to the Bureau a statement from the municipal enforcing agency certifying that the center is in compliance with such ordinance.

(c) The child care center shall submit to the Bureau a copy of a new certificate of occupancy issued by the municipality in which it is located, reflecting the center's compliance with the provisions of the UCC whenever it takes any of the following actions:

1. Changing the building's use group classification to one other than the one prescribed on its original certificate of occupancy; or

2. Making a major alteration or renovation, as defined by the UCC, of the building or premises in which the center is located; or

3. Increasing the floor area or the number of stories to the building or premises in which the center is located.

10:122-5.2 General life/safety requirements

(a) Exiting requirements:

1. Exits:

i. Exit shall be maintained in proper operating condition and the center shall insure that:

[i.] (1) There are two independent unobstructed exits from every floor of a building which allows exiting from the building or room in two separate directions;

[ii.] (2) The maximum travel distance to an outside exit door or exit stairway does not exceed [100] 150 feet. (Buildings equipped

with [an automatic sprinkler] a **fire suppression** system may have a maximum travel distance of [150] **200 feet**; and

[iii. Exiting shall not be permitted through boiler, furnace or storage areas.]

(3) An exit access shall not pass through a boiler room, furnace room, toilet facility or storage room.

[2.]ii. Exits above or below the first floor:

i. In buildings of noncombustible construction, existing from a room(s) used by the children through a corridor shall be acceptable if the corridor leads to at least two stairways located in opposite directions from the room(s). The stairways shall be enclosed with a two hour fire rated material and equipped with B-label (1 1/2 hour) doors which lead to an approved exit way or directly to the outside.

ii. In buildings of combustible construction, each room used by the children shall have at least two exits. One exit shall open directly to the outside, to an outside fire escape, to an exterior stairway or lead to a room providing one of the previously mentioned exits. A corridor that leads to a stairway which is completely enclosed with a one hour fire rated material with a C-label (3/4 hour) door shall be acceptable as a second exit.]

(1) Exiting from a room(s) used by the children through a corridor shall be acceptable if the corridor leads to at least two stairways located in opposite directions from the room(s). The interior stairways shall be enclosed in fire separation assemblies of the fire resistance rating of the building's construction type.

[3. Doors:

i. Doors used for exits shall:

(1) Be unobstructed;

(2) Be unlocked from the inside of the building while children are at the center; and

(3) Swing outward when leading directly to the outside.]

2. Doors:

i. The exit access travel distance in a room shall not be greater than 50 feet. (Buildings equipped with a fire suppression system may have an exit access travel distance of 100 feet.)

ii. Every room with an occupancy of more than 50 or which exceeds 2,000 square feet in area shall have at least two egress doorways leading from the room to an exit or corridor.

iii. Doors used for exits shall:

(1) Be unobstructed;

(2) Be unlocked from the inside of the building while children are at the center;

(3) Swing outward when serving an occupancy of more than 50;

(4) Stair doors shall swing outward and have self-closing devices and not block the egress of people utilizing the floors above.

(5) Doors shall be operable by a single effort with a maximum push pull of eight pounds of pressure.

[ii.]iv. Bathroom and closet doors may be locked; however, locked doors shall be designed to permit opening from the inside and outside in case of emergency.

[4.]3. Stairways:

i. Stairways used for exits shall be unobstructed.

ii. Interior stairways:

(1) The maximum height of risers shall be eight inches and the minimum width of tread shall be [nine] **11 inches** [plus one inch nosing].

(2) Winding staircases shall not be counted for purposes of meeting the exit requirements of this [Manual of Standards] **chapter**.

(3) A space below a stairway shall be enclosed with a one-hour fire-rated material.

iii. Exterior stairways:

(1) Exterior stairways conforming to the interior stairway requirements, as noted in (a)3ii above, shall be acceptable as required exits in child care centers [not exceeding three stories in height].

(2) Exterior stairways shall be constructed of [wood not less than

two inches thick or of approved] noncombustible materials **or of wood not less than two inches thick.**

iv. Handrails and guardrails:

(1) Handrails shall be provided for all stairs which have three or more risers.

(2) All stairways shall have a handrail on at least one side. Stairways more than 44 inches wide shall have continuous handrails on both sides. Stairways more than 88 inches wide shall also have an intermediate handrail dividing the stairway.

(3) Handrails shall be 30 to 34 inches above the nosing of treads.

(4) Guardrails shall not be less than 42 inches in height measured vertically above the nosing of treads.

[(4)](5) Guardrails shall be provided with intermediate guards spaced six inches apart or with screening.

[5.]4. Special requirements for centers serving nonambulatory children:

i. (No change.)

(b)Fire protection:

1. Child care centers shall not be located in the vicinity of high hazard areas (such as welding shops, paper storage areas, gasoline storage areas, etc.).

2. [There shall be a]At least one [10-rated ABC or 10-rated BC] **10BC-rated** fire extinguisher shall be located in the kitchen area and one [10 rated ABC or BC fire extinguisher] shall be located directly outside or near the boiler or furnace room.

3. [Every] **All floors** [of the center] shall be [equipped] **provided** with at least one 2 1/2-gallon water-pressurized fire extinguisher **or its equivalent** for every 3,000 square feet of floor area.

4. [Fire] **All** extinguishers shall be serviced at least once a year [or] **and** recharged; if necessary.

[3.]5. Fire exit signs shall be provided at all doors used as exits, with directional signs at locations where the exit may not be readily visible or understood. Any door, stairway or passageway that is not an exit, but may be mistaken for an exit, shall be identified with a sign that reads "NOT AN EXIT."

[4.]6. Interior drapes, curtains, panelling, mattresses, etc., shall be made of fire retardant materials.

[5.]7. Storage areas containing highly flammable materials shall be segregated from areas used by the children with a minimum one-hour fire-rated material.

8. The center shall conduct fire drills at least once a month to familiarize all the staff members working at and all children being served at the center with the procedures for leaving the building in an emergency situation.

9. The center shall maintain a record of each fire drill. The record shall include:

i. The date and time of day of the drill;

ii. The number of children and staff members who participated; and

iii. The total amount of time necessary to evacuate the center.

10. All staff members shall be instructed in the use of fire extinguishers.

(c)Electricity:

1.--2. (No change.)

(d)Maintenance and sanitation:

1. (No change.)

2. Indoor maintenance and sanitation requirements:

i.--iii. (No change.)

iv. Carpeting shall be secured to the floor to avoid tripping.

[iv.]v. Garbage shall be removed from the interior of the building daily. **The center shall utilize [R]receptacles for food waste disposal [shall be] that are made of [noncorrosive,] durable materials that are [impervious, sufficient in size and number] nonabsorbent, leak proof[,] and [provided with tight-fitting covers] easily cleanable.** Food waste receptacles shall be lined **and cleaned daily and more frequently when necessary.**

[v.]vi. The center shall [arrange for qualified persons to] take necessary action to protect the facility from rodent, insect and related infestations. [Such treatment shall be provided not less than

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once a year, and more frequently when there is evidence of infestation.] **Extermination services and the application of pesticides shall be in accordance with the regulations of the State Department of Environmental Protection, as specified in N.J.A.C. 7:30-1 through 10.**

[vi.]vii. Toilets, wash basins, kitchen sinks, and other plumbing shall be maintained in good operating and sanitary condition at all times and shall be kept free of materials that might clog or impair their operation.

[vii.]viii. All corrosive agents, insecticides, bleaches, detergents, polishes, any products under pressure in an aerosol spray can and any other toxic [(poisonous)] substance, shall be stored in a locked cabinet or in an enclosure located in an area not accessible to the children.

3. Outdoor maintenance and sanitation requirements:

i. The building, land and the outdoor play area shall be maintained in good repair and be free from any hazards to the health, safety or welfare of the children.

ii. The land, including the outdoor play area, shall be properly graded and provided with drains to dispose of surface water.

iii. The building structure shall be maintained to prevent water from entering, excessive drafts, or heat loss during inclement weather, and to provide protection against infestation from rodents, insects, etc.

iv. Railings of balconies, landings, porches, or steps shall be maintained in good repair and capable of supporting the weight of any person leaning against them.

v. The center shall [have a sufficient number of] **utilize** garbage receptacles to accommodate its waste disposal needs. The receptacles[,] shall be made of [non-corrosive] **durable** materials **that are nonabsorbent and leak proof.** [and be maintained in sanitary condition.] **The receptacles shall be provided with covers and be maintained in a sanitary condition.**

vi. The area in which the garbage receptacle(s) are located shall be maintained in a sanitary manner.

(e) Glass surfaces:

1. All glass surfaces that are not made of safety glass and that are located [in areas where there may be possible impact by the children] **within 48 inches above the floor** shall have protective guards.

(f) (No change.)

(g) Heating:

1. A minimum temperature of 68 degrees F shall be maintained in all rooms used by the children. [(child care centers that install new heating units shall insure that the heating capacity is calculated in accordance with the current edition of the American Society of Heating, Refrigeration and Air Conditioning Engineers (ASHRAE) guide and date book)].

2. (No change.)

(h) Ventilation:

1. Natural or mechanical ventilation shall be provided in all rooms used by children.

[i.]2. All mechanical ventilation systems shall exhaust directly to the outside.

[ii.]3. Rooms not having windows with an openable area of at least [five] **four** percent of the floor space shall be equipped with a ventilating or air conditioning system with a capacity equal to that required for natural ventilation.

[iii.]4. Corridors shall be provided with natural or mechanical ventilation equivalent to two percent of the floor area.

[iv.]5. Crawl spaces and attic spaces shall be provided with a cross ventilation system.

[v.] 6. All openable windows and doors used for natural ventilation shall be provided with insect screening in good condition.

7. **All floor or window fans that are accessible to the children shall have a grille, screen, mesh or other protective covering that prevents a child from tampering with the blades of the fan.**

[vi.]8. Kitchens provided with a stove with more than four burners

shall be vented with a mechanical system having a capacity of at least three cubic feet per minute per square foot of floor area but not less than 150 cubic feet per minute.

[vii.]9. [Bathrooms] **Toilet facilities** with a mechanical ventilation system shall have a minimum capacity of 50 cubic feet per minute when only one toilet is provided, or 40 cubic feet per minute per toilet when more than one toilet is provided.

10. **There** shall be at least one inch of space between the floor and the bottom of the **toilet room door when providing mechanical ventilation.**

(i) [Bathroom] **Toilet facilities:**

1. General requirements:

i. There shall be sufficient [bathrooms] **toilet facilities** (toilets and [wash basins] **sinks**) to accommodate the bathroom needs of the children. The minimum number of toilets and [wash basins] **sinks** required shall be in accordance with the following table:

No. of Children	No. of Toilets	No. of [Wash Basins] Sinks	Maximum Effective Ratio
6-15	1	1	1/15
16-35	2	2	1/17.5
36-60	3	3	1/20
61-80	4	4	1/20
81-100	5	5	1/20
101-125	6	6	1/25
126-150	7	7	1/25
151-175	8	8	1/25
176-200	9	9	1/25
200 plus			1/25

ii. Urinals may be counted in determining the center's toilets and [wash basins] **sinks** per children ratio, provided that[:] **(the Bureau shall determine on a center by center basis whether and to what extent urinals may be counted in meeting the requirements, based upon a number of factors, including but not limited to the number and sex of the children enrolled at the center, availability of separate toilet facilities for boys and girls, and the number and availability of toilets):**

(1) A minimum of two toilets shall be available at the center before a urinal may be counted towards the [bathroom] **toilet** facility requirements;

(2) Only child size urinals or adult size urinals that are accessible to the children being served may be utilized; and

(3) A urinal may not be counted as more than half of a toilet towards the effective ratio. [The Bureau shall determine on a center by center basis whether and to what extent urinals may be counted in meeting the requirements, based upon a number of factors, including, but not limited to: the number and sex of the children enrolled at the center; availability of separate bathroom facilities for boys and girls; and the number and availability of toilets.]

iii. A supply of hot and cold running water shall be provided.

iv. A supply of soap, toilet paper[,], and individual hand towels or disposable paper towels shall be provided. [Also, mirrors, dispensers, and other equipment shall be fastened securely.]

v. **Children shall not use common towels.**

vi. **Mirrors, dispensers, and other equipment shall be fastened securely.**

[v.]vii. Platforms shall be available for use by the children when adult size toilets and [wash basins] **sinks** are used.

[vi. Bathrooms shall be sanitized on a regular basis.]

2. Location of [bathroom] **toilet facilities:** [Bathroom] **Toilet** facilities shall be easily accessible to the children:

i. Pre-school, drop-in and night care programs:

(1) There shall be a minimum of one toilet and one [wash basin] **sink** located on the same floor as the playroom(s).

(2) Any [additional bathroom] **toilet facilities in addition to those stated in (i)2i(1) above** shall be located on the same floor as the

playroom(s) or within one floor above or below the floor level used by the children.

ii. Special needs programs:

(1) For ambulatory children, there shall be a majority of the [bathroom] **toilet** facilities located on the same floor as the playroom(s). Any additional [bathroom] **toilet** facilities shall be located on the same floor as the playroom(s) or within one floor above or below the floor level used by the children.

(2) For non-ambulatory children, all of the [bathroom] **toilet** facilities shall be located on the same floor as the playroom(s).

3. Additional [bathroom] **toilet** facility requirements:

i. Special needs programs:

(1) The width and height of toilets and [wash basins] **sinks** shall be appropriate to meet the needs of the children served.

(2) (No change.)

ii. (No change.)

(j) Kitchen facilities:

1. Centers [required to have] **utilizing** kitchen and food preparation areas, as specified in N.J.A.C. 10:122-6.3, shall meet the following requirements:

i. [Food shall be prepared in a kitchen with proper equipment and clean-up facilities.] **The cooking and kitchen facilities and equipment shall be kept clean and sanitary and be in compliance with the provisions of Chapter 12 of the State Sanitary Code (N.J.A.C. 8:24).**

ii. (No change.)

iii. Storage space shall be clean and well ventilated, and containers of food shall be covered and stored above the floor on shelves or other clean surfaces.

iv. Food requiring refrigeration shall be stored in a refrigerator at not more than 45 degrees F.

v. When single service utensils are used, they shall be stored and handled in a sanitary manner and shall be discarded after a single use.

vi. The cooking and kitchen facilities and equipment shall be kept clean and sanitary and be in compliance with provisions of the New Jersey State Department of Health, State Sanitary Code, Chapter 12, Construction, Operation and Maintenance of Retail Food Establishments.]

(k) Lead paint:

1. Lead paint shall not be used on and shall be removed by the sponsor from any interior or exterior surfaces of a building used as a center, or on any furniture, toys, or other equipment used therein, in accordance with the State Lead Paint Law (N.J.S.A. 24:14A-1 et seq.) and with the [New Jersey State Sanitary Code, Chapter 13, Lead Poisoning, promulgated thereunder.] **provisions of Chapter 13 of the State Sanitary Code (N.J.A.C. 8:51-7.1 through 7.5).**

2. When lead paint is found in areas of a center not specified under [the State Lead Paint Law and Sanitary Code (as noted in paragraph 1 of this subsection).] **N.J.A.C. 8:51-7.1 through 7.5**, the Bureau shall determine whether the lead paint is hazardous to the health, safety and well-being of the children served and, if considered to be hazardous, the sponsor shall remove the lead paint hazard.

(l) Asbestos:

1. Coatings containing asbestos shall not be sprayed-on any interior or exterior surfaces of a building used as a center, or on any equipment used therein, in accordance with regulations of the State Department of Environmental Protection [(DEP) (N.J.A.C. 7:27-17.2, entitled "Control and Prohibition of Air Pollution by Toxic Substances").], **as specified in N.J.A.C. 7:27-17.2.**

2. [If sprayed-on asbestos-containing materials appear to be present in a center, the Bureau shall require the sponsor to have the material tested (through laboratory analysis) to determine the contents of the material. When sprayed-on asbestos-containing materials are found at the center, the sponsor shall insure that it is removed from the building structures or premises, in a manner consistent with all federal, state and local regulations and guidelines concerning asbestos removal.] **If sprayed-on asbestos-containing materials appear to be present in a center, the Bureau shall**

notify the New Jersey Department of Health. The material shall be tested, through laboratory analysis, to determine its contents. When test results reveal the presence of sprayed-on asbestos-containing materials, and the State Health Department determines that action must take place to minimize exposure potential, the sponsor shall follow the recommendation of the State Health Department for enclosure, removal or other action.

(m) Swimming pools:

1. Any swimming pool used by the children shall comply with the requirements pertaining to swimming pools, as specified in the New Jersey Youth Camp Safety Act Standards (N.J.A.C. 8:25-5.1 through 5.4 and N.J.A.C. 8:25-6.9).

(n) Emergency plan, first aid and equipment:

1. **Emergency plan:** A written plan specifying the procedures and manner in which emergencies, evacuations and injuries are handled shall be posted in a location of prominence within the center. All staff members shall review the plan periodically. **The plan shall contain at least the following:**

i. **The location of the first aid kit and any additional first aid supplies;**

ii. **The name, address and telephone number of the physician retained by the center or health facility used in emergency situations;**

iii. **The procedure for obtaining emergency transportation;**

iv. **The hospital and/or clinic to which injured or ill children will be taken;**

v. **The telephone numbers of the local police, fire department and ambulance service;**

vi. **Location of written authorization from parent(s) for emergency medical care for each child; and**

vii. **A description of how the center is to be evaluated in case of emergency.**

2. **First aid:** A staff member who has current certified basis knowledge of first aid principles and cardiopulmonary resuscitation (CPR) as defined by a recognized health organization (such as the American Red Cross) should be in the center during periods of operation.

3. **Equipment:** First aid equipment shall be located in a convenient, accessible location in the center and shall include:

i. **A standard first aid kit recommended by the American Red Cross or the local or State health department; and**

ii. **The Red Cross First Aid Manual or its equivalent.**

[(m)] (o) Supplemental requirement:

1. In addition to all of the above requirements, the Bureau shall also require the center to take whatever steps are necessary to correct any conditions in the facility that may endanger in any way the health, safety and well-being of the children served.

10:122-5.3 Additional life/safety requirements for centers in existence before January 1, 1977

(a) Centers, as defined in N.J.A.C. 10:122-5.1(a), in existence and operation before or on January 1, 1977 shall be inspected by the Bureau prior to renewal of its license to insure that the center has been maintained in accordance with [the following standards:] **(a)1 through 4 below.**

1. Exit requirements: Doors, stairways, fire escapes and corridors used for exits shall be unobstructed and maintained as follows:

i. Doors:

(1) One of the exits shall be a minimum of 30 inches clear width and 80 inches in height. The second exit shall be a minimum of 28 inches clear width. Rooms that do not have a second exit, as [described] **specified** in N.J.A.C. 10:122-5.2(a)1, shall provide a window with a minimum clear opening of two feet wide by two feet six inches high that leads directly to the outside or to a fire escape. When a window is used, stairs with handrails shall be provided for access to the exit.

ii. (No change.)

2. Fire protection:

i. Boiler or furnace rooms shall be separated from the child care areas by a minimum one-hour fire-rated material with a C-label (3/4 hour) door. If the boiler or furnace rooms are in the basement and there are no child care areas on that floor level, the ceiling shall be provided with a one-hour fire-rated material placed directly over the furnace or boiler and extending beyond the furnace or boiler by a minimum perimeter of three feet.

ii.-iii. (No change.)

3. Electricity:

i. The electrical wiring and equipment shall comply with local or municipal requirements in effect at the time the structure first became a child care center and shall be maintained in good operating condition.

ii. Any new equipment and wiring installed in the center shall be in compliance with the Electrical Sub-Code of the UCC.

4. Plumbing:

i. All plumbing shall comply with local or municipal requirements in effect at the time the structure first became a child care center and shall be maintained in good operating condition.

ii. Any new plumbing installed in the center shall be in compliance with the Plumbing Sub-Code of the UCC.

[ii.]iii. The temperature level of the water from all water taps accessible to the children shall not exceed 125 degrees F.

10:122-5.4 Additional life/safety requirements for centers beginning operation after January 1, 1977

(a) Any center, as [defined] **specified** in N.J.A.C. 10:122-5.1[(b)](a), beginning operation after January 1, 1977 and approved to operate as a center, in accordance with provisions of the UCC, shall be inspected by the Bureau prior to beginning its operation or renewal of its license to insure that the center is being maintained in accordance with the UCC and [that it meets the following requirements:] **(a) 1 through 4 below.**

1. (No change.)

2. Fire protection:

i. General requirements:

(1) Boiler or furnace rooms shall be separated from the child care areas by a minimum one-hour fire-rated material with a C-label (3/4 hour) door. Those boilers carrying more than 15 lbs. per square inch in pressure and having a rating in excess of 100 square feet of heat transfer surface shall be enclosed in a minimum two-hour rated material with a B-label (1 1/2 hour) door.

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

ii. Pre-school and drop-in programs: [i]In addition, these programs shall meet the following requirements:

(1) A manual fire alarm system shall be installed and maintained in full operating condition[.] **when buildings are three or more stories in height or the total occupancy of the building is 50 or greater.**

(2) (No change.)

iii. Special needs and night care programs: [i]In addition, these programs shall meet the following fire protection requirements:

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

3.-4. (No change.)

SUBCHAPTER 6. PROGRAM REQUIREMENTS

10:122-6.1 Health

(a) Health certificate:

1 Pre-school, night care and special needs programs:

i. [Every] **The center shall have on file for each child a health examination certificate from a physician [for each child] certifying that the child's health is satisfactory. Proof of such examination shall be on file at the center within 30 days of the child's admission [to the center].**

ii. The health examination certificate shall [state] **include:**

[i.](1) The child's medical history;

[ii. Information regarding immunizations and testing as required by the New Jersey Department of Health, State Sanitary Code,

Chapter 14, Immunization of Pupils in Schools. This information shall be updated as additional immunizations and testing are required; and

iii. The presence of any condition or handicap affecting the general health of the child and any recommendations for needed medical treatment or special requirements as to diet, rest, avoidance of certain activities and other care.]

(2) Information on any condition or handicap affecting the general health of the child and any recommendations for needed medical treatment or special requirements as to diet, rest, avoidance of certain activities and other care; and

(3) Information regarding immunizations, in accordance with the provisions of Chapter 14 of the State Sanitary Code (N.J.A.C. 8:57-4.1 through 4.16).

2. Drop-in programs: [In lieu of the above health certificate requirements, drop-in programs shall be required to obtain a brief statement from the child's parents describing any particular condition, handicap, or allergy affecting the general health of the child and indicating any special requirements for the child and attesting that the child is free from communicable disease.]

i. **The center shall either:**

(1) Comply with the requirements as specified in (a)1 above; or

(2) Obtain a statement from the child's parent indicating that the child's immunizations are up-to-date and that the child's health is satisfactory, describing any particular condition, handicap or allergy affecting the general health of the child and indicating any special requirements for the child and attesting that the child is free from communicable disease.

3. Any child whose parent(s) object to a physical examination, immunization or medical treatment for their child(ren) on grounds that it conflicts with the tenets and practice of a recognized religion of which the parent(s) or child(ren) are an adherent or member shall be exempt from complying with such requirements, provided that the parents [submit to the center a signed statement requesting such an exemption.] **sign a statement requesting such an exemption and submit it to the center. The statement shall also indicate that the child(ren) is in good health and free from communicable disease.**

(b) Communicable disease control:

1. The center shall **report and** make every effort to control the [spread] **outbreak** of a communicable disease[s], [as specified in the New Jersey State Department of Health, State Sanitary Code, Chapter 2, Reportable Disease.] **in accordance with the provisions of Chapter 2 of the State Sanitary Code (N.J.A.C. 8:57-1.1 et seq.).**

[2. The center shall report any outbreak of communicable disease to the local health official without delay.]

[3]2. A child who is ill at the center shall be isolated from other children in a separate area of the center, as [described] **specified** in N.J.A.C. 10:122-6.2(e)5(f), where s[he]/he can be cared for until arrangements [can be] **are** made for the child's return to a parent or other authorized [individual] **person.**

[4.]3. Staff members **and/or children** with a disease in a communicable state shall not be permitted at the center.

(c) [The center staff shall check each child upon arrival at the center everyday.] **Staff members shall visually inspect each child upon his/her arrival at the center every day in an effort to determine the child's general health condition.**

(d) (No change.)

(e) If any child demonstrates unusual behavior or shows signs of possible illness while attending the center, a staff member shall report this information to the parent at the time of the child's departure from the center.

[(e)](f) Any child who has been absent for more than five days because of illness or injury shall be readmitted only with a certificate from a physician.

[(f)](g) Pets kept by the center shall be domesticated and free from disease. Pets shall be inoculated as prescribed by law or as

recommended by a veterinarian.

[(g)](h) Medication:

1. Medication shall [not] be administered to a child [by a staff member unless] at the center [has received a] **only upon** written approval from the child's parent(s).

2. [Only authorized and designated staff members of the center or physicians, nurses or other qualified medical health personnel may administer medication to children.] **The director of the center shall authorize and designate those staff members at the center who may administer medication to those children whose parent(s) have authorized it.**

3. All prescription medicine shall be authorized by the child's physician, labeled with the child's name, the name of the medication, and directions for its administration and storage, and shall be refrigerated, if appropriate. Such medication shall be kept in a secured area inaccessible to the children. Unused medicine shall be discarded or returned to the parent(s) when no longer being administered.

4. The center shall keep a chart posted in a conspicuous place, preferably near the medicine cabinet, which shall include information on the special health and medication needs of all children in the center and which shall contain a record of administration of medication to children.

5. Staff members shall note in the records of each child and shall advise the parent(s) of the occurrence of any health problems, such as diarrhea, vomiting, continuous hunger, refusal to eat, nose bleeds, injuries, skin rash, or high temperature.]

3. Any prescription medication for a child shall be:

i. Prescribed by the child's physician;

ii. Stored in its original container according to the directions on the container;

iii. Labeled with the child's name, the name of the medication, date prescribed and directions for its administration.

4. All medication shall be kept in a secured area that is inaccessible to the children.

5. Unused medication shall be discarded or returned to the parent(s) when no longer being administered.

6. The center shall post a medication chart in a conspicuous place. The chart shall include:

i. Information about the medication needs of each child at the center; and

ii. A record of each time and by whom medication was administered to a child.

[10:122-6.2 Enrollment and space

(a) At no time shall a center allow more children in attendance than the number specified on its license.

(b) A center may enroll up to 15 percent more children than the maximum number of children permitted to be served, as specified on its license, providing that it documents in writing to the satisfaction of the Bureau that its rate of absenteeism is such that an over-enrollment would not result in more children attending the center on a given day than is permitted by its maximum number, as specified on its license.

(c) Every child care center shall provide sufficient space to allow for the implementation of the center's program. The center shall include:

1. A sufficient number of play rooms and/or areas to accommodate the various program activities and sleeping needs of the children served;

2. An isolation room/area to accommodate children too ill to remain in the group;

3. Sufficient space for the children's recreational/physical activities;

4. Sufficient bathroom facilities to accommodate the needs of the children served; and

5. A kitchen and/or food preparation/processing area, if the center is preparing and/or serving food.

(d) Space requirements for play rooms/sleep rooms: the minimum

net square footage shall be determined by excluding the space used in hallways, bathrooms, lockers, offices, storage rooms, the isolation area, staff rooms, furnace rooms, kitchen areas and any other areas which children do not use for sleep or play.

1. Pre-school and drop-in programs: A minimum of 30 square feet of net indoor floor space per child served shall be required for play rooms.

2. Night care programs: A minimum of 50 square feet of net indoor floor space per child served shall be required for all rooms utilized by the children.

3. Special needs programs:

i. A minimum of 40 square feet of net indoor floor space per child served shall be required for play rooms.

ii. The Bureau shall require more indoor floor space than indicated in the above-noted provisions for children with special needs if such space is needed to meet the needs of non-ambulatory children and/or children using wheelchairs or orthopedic aids and devices.

(e) Space requirements for isolation room/area: There shall be a small isolation room in a separate section of the center or a small isolation area in a section of a room in the center where children too ill to remain in the group may be cared for until they can be taken home or suitably cared for elsewhere. This area shall be furnished with sleeping equipment and clean bedding. All items used by the ill child, including sleeping equipment, bedding, utensils and toys, shall not be used by any other person until they have been properly cleaned and sanitized.

(f) Space requirements for recreational/physical activities: In programs where children are in attendance for three or more consecutive hours, the center shall provide a minimum of 75 square feet of net outdoor space per child utilizing the area. The outdoor area shall be adjacent to or within close proximity of the center and available for use by the children. Outdoor areas located near or adjacent to hazardous areas determined by the Bureau to be unsafe (such as, but not limited to, streets, roads, driveways, parking lots, railroad tracks, swimming pools, rivers, streams, steep grades, cliffs, open pits, high voltage boosters or propane gas tanks) shall be fenced or otherwise protected by a natural or man made barrier or enclosure.

1. If a center can demonstrate to the satisfaction of the Bureau that it cannot meet the outdoor space requirement, the center shall provide, in addition to space for playrooms, a minimum of 75 square feet of net indoor space per child utilizing the area. The indoor space may be either on the site of the center or at another nearby indoor facility, such as a gymnasium, exercise room or other recreational facility.

(g) Space requirements for bathroom facilities: See N.J.A.C. 10:122-5.2(i) for the space requirements for bathroom facilities.

(h) Space requirements for kitchen facilities: See N.J.A.C. 10:122-5.2(j) for the space requirements for kitchen facilities.

(i) Smoking shall be prohibited in all rooms occupied by children.]

10:122-6.2 Hygiene

(a) Clothing:

1. A child's clothing shall be changed when wet or soiled.

2. The center shall insure that a change of clothing is provided for each child, as needed.

(b) Diapering:

1. The center shall insure that the diapers of children are changed when wet or soiled.

2. A staff member shall wash and dry each child during each diaper change with an individual sanitary wash cloth or paper towel.

3. Areas used for changing children's diapers shall be cleaned after each child has been changed by:

i. Sanitizing the area with a disinfectant solution; or

ii. Using a clean paper or cloth covering for the area and discarding or laundering the covering after each use.

4. A supply of clean diapers shall always be available.

5. A toilet shall be available for emptying soiled diapers.

6. Used diapers shall be placed in a closed container that is lined. Such diapers shall be removed daily.

7. Staff members changing children's diapers shall wash their hands with soap and water after each diaper change.

(c) Toilet training:

1. The center shall inform parents of the center's policy for toilet training children. The center and parent shall consult together to develop a mutual plan regarding the individual toilet training of each child.

2. The center shall not force toilet training on any child.

3. The center shall provide child-size (potty) toilet training chairs or children's toilet seats for children being toilet trained.

4. Toilet training chairs shall be emptied after each use and sanitized.

5. Toilet training chairs shall be located in rooms/areas separate from those used for cooking, eating, playing and sleeping.

10:122-6.3 Food and nutrition

(a) General requirements: [In meeting the requirements below, the center may provide the food for consumption by the children by cooking on-site or by catering or by a parent providing the food from home or through a combination of the above.]

1. The center shall provide food for consumption by the children by:

i. Cooking on-site; or

ii. Catering; or

iii. A parent providing the food from home; or

iv. Any combination of the above.

[1]2. Breakfast, lunch and/or dinner shall be made available to all children who are present at the center during the normal mealtime hours. Normal mealtime hours include: breakfast (7:00 A.M. to 9:00 A.M.); lunch (11:00 A.M. to 1:00 P.M.); and dinner (5:00 P.M. to 7:00 P.M.).

[2.]3. Children under care for three to five consecutive hours shall receive a nutritious snack.

[3.]4. Children under care for five to eight consecutive hours shall receive at least one nutritious meal and at least one nutritious snack; if a substantial proportion of children arrive at the center after the normal breakfast hour and have not eaten breakfast, the center should serve a mid-morning snack no later than 10:00 A.M.

[4.]5. In a night care program, a nutritious snack shall be made available by the center to all children prior to bedtime.

[5.]6. Food provided for meals and snacks shall be selected, stored, prepared[,] and served in a sanitary manner [in accordance with the specifications cited] , as specified in N.J.A.C. 10:122-5.2(j).

[6.]7. If the center's policy permits food for a child [brings a breakfast, lunch or dinner] to be brought from home, the center shall provide suitable storage facilities for such food.

[7.]8. Drinking water shall be available to the children. Any private well water supply shall be approved by the appropriate health authority before it is used.

9. The center staff members shall not force-feed or otherwise coerce a child to eat against his/her will, except by order of a physician.

(b) Nutrition requirements:

1. The meal shall provide a sufficient amount and variety of nutritious food to satisfy the child; children shall be served small sized portions and permitted to have additional serving(s) as needed.

2. The center shall prepare and post a weekly menu of food to be served to the children.

[2.]3. Content of meals:

i. Breakfast shall consist of:

(1) Milk as a beverage and/or on cereal [or as a beverage and on cereal];

(2) A serving of fruit or vegetable or full-strength fruit or vegetable juice; and

(3) A serving of enriched or whole grain bread, [a serving of] a bread product [made of enriched or whole grain meal or flour, or a serving of enriched] or [whole grain] cereal.

ii. (No change.)

[3.]4. The center shall make available, as necessary, an alternate choice of food for each meal served in order to accommodate the needs of:

i. Children on special diets (e.g. due to health reasons, religious belief or parental request); and/or

ii. Children who might find the meal offered to be unappetizing that day.

[4.]5. Individualized diets and feeding schedules that are submitted to the center by the child's parent(s) or physician shall be posted and followed. The center shall not be obligated to provide the food for a child on an individualized diet. However, such food, when supplied by the parent(s) shall be properly stored and served to the child at the center, [in keeping with the requirements spelled out] as specified in (b)3 above.

[5.]6. Snacks that have a high sugar content, such as candy and soda, should be avoided, as well as juice drinks that are distinguished from juice that is full strength.

(c) Furniture: Furniture appropriate to the maturity of the children shall be provided at mealtime, including:

1. Feeding chairs that have a wide sturdy base and safety straps.

[Children shall be placed in feeding chairs only for meals]; and

2. (No change.)

10:122-6.4 Rest and sleep

(a) General:

1. During designated rest or sleep periods, the center shall provide each child with his/her own sleeping equipment, such as a crib, bed, cot (plastic molded contoured cots are acceptable) or mat. (Mats are permitted for night care programs only when used in conjunction with a cot, as specified in subsection (c) of this section.)

2. Every crib, bed, cot or mat shall be equipped with a clean sheet and blanket. Sheets and blankets shall be replaced as frequently as needed when wet, soiled or damaged. Sheets and blankets shall be stored separately and laundered at least once a week.

3. Sheets and blankets shall be individually labeled with the children's name. (Drop-In centers shall not be subject to this requirement.)

4. At no time shall two or more children simultaneously share the same crib, bed, cot or mat. A child shall not be permitted to rest on the same crib, bed, cot or mat that another child has occupied without changing the sheet and blanket.

5. Cribs, beds, cots or mats shall be placed at least one foot apart and shall be arranged so as to provide each child with direct access to a three feet wide aisle which leads to an unobstructed exit(s).

6. Beds and cribs shall have firm mattresses. If the crib slats are more than 2 1/2 inches apart, bumper pads shall be provided. The top of the crib rail shall be at least 19 inches above the mattress.

7. A water proof mattress cover shall be provided for use on mattresses that are non-waterproof.

8. Whenever a child's parent(s) or physician advises the center in writing that special restraints for resting purposes, specified timing of rest periods, or special placement of the child's sleeping equipment is required, the center shall comply with such requirements.

9. The staff responsible for supervising the children during rest or sleep periods shall be awake at all times in the vicinity of the children, so that they are readily available to insure that the needs of the children are being met.

10. Natural or artificial light shall be provided during the rest and sleep period to enable staff members to observe the children at all times.

(b) Pre-school, drop-in and special needs programs:

1. There shall be an opportunity for a mid-session rest and/or sleep period in programs where the same group of children are in attendance for more than four consecutive hours.

2. Water proof rest mats shall be approved as an acceptable substitute for cribs, beds or cots, providing that the following conditions are met:

- i. The floor or surface on which the mat is placed is not cold or damp.
- ii. The floor or surface on which the mat is placed is cleaned on a regular basis, as appropriate (washed, vacuumed, etc.).
- iii. Floor drafts are eliminated.
- iv. Mats are at least one inch thick.
- v. Mats are stored in such a way as to prevent the sleeping surface of one mat from coming into contact with the floor surface side of another mat, and to prevent the sleeping surface of two mats from coming into contact with each other.

(c) Night care programs:

1. The center shall provide the necessary equipment and conditions to insure that the children can sleep during the normal night time sleeping hours.
2. During designated rest or sleep periods, the center shall use sleeping equipment, such as a crib, bed or cot. When cots are utilized as sleeping equipment, they shall be provided with a minimum one inch, waterproof rest mat secured with a fitting sheet.
3. Rest mats utilized with cots shall be stored in such a way as to prevent the sleeping surface of two mats from coming into contact with each other.
4. Each child shall be provided with an individual washcloth, towel, toothbrush, comb or brush, and comfortable night clothing. Individual storage space shall be provided for the above items and other personal belongings.
5. The center shall insure that the scheduled hours for admitting children and for picking them up are arranged so that no child is deprived of needed sleep or has it unnecessarily interrupted. The center shall insure that the grouping of children is arranged so that sleeping children are not disturbed by the arrival or the pick-up of other children.]

(a) Pre-school, drop-in and special needs programs:

1. The center shall provide an opportunity for a rest and/or sleep period for each child in attendance for more than four consecutive hours or according to the child's individual physical needs.
 2. The center shall provide each child with a crib/bed, cot or mat for use during rest and sleep.
 3. Each crib/bed shall be equipped with a waterproof mattress. The top of the crib rail shall be at least 19 inches above the mattress.
 4. A center providing a mat for rest and sleep shall insure that the mat is:
 - i. Waterproof;
 - ii. At least one inch thick; and
 - iii. Stored so that there is no contact with the sleeping surface of another mat.
 5. A center providing a mat for rest and sleep shall insure that the floor or surface on which the mat is placed is warm, dry, clean and draft free.
 6. Each crib/bed, cot and mat shall be equipped with a clean sheet and blanket.
- (b) Night care programs:
1. The center shall provide an opportunity for sleep for each child in attendance during the normal night time sleeping hours.
 2. The center shall provide each child with a crib/bed or cot for use during sleep.
 3. A center providing a crib/bed for sleep shall comply with the requirements, as specified in (a)3 and 6 above.
 4. A center providing a cot for rest and sleep shall comply with the requirements, as specified in (a)6 above. In addition, a cot shall be provided with a minimum one inch, waterproof rest mat secured with a fitted sheet.
 5. The center shall provide or arrange for the provision and storage of comfortable sleeping garments and personal

belongings for each child.

(c) Other requirements:

1. Sheets and blankets used with sleeping equipment shall:
 - i. Be individually labeled with the child's name;
 - ii. Be replaced as frequently as needed when wet, soiled or damaged;
 - iii. Be stored separately; and
 - iv. Be laundered at least once a week.
2. Each crib/bed, cot or mat shall be maintained in a clean and sanitary condition at all times.
3. During rest and sleep periods, no more than one child shall occupy a crib/bed, cot or mat.
4. A child shall be permitted to rest or sleep on the same crib/bed, cot or mat that another child has occupied only after the sheet and blanket have been changed.
5. Cribs/beds, cots or mats shall be placed at least one foot apart and shall be arranged so as to provide direct access to a three-foot-wide aisle that leads to an unobstructed exit(s).
6. The center shall comply with any special conditions for rests and sleep that have been provided in writing from a child's parent(s) or physician.
7. The staff members responsible for supervising the children during rest and sleep periods shall be awake at all times and have visual contact with the children.
8. To insure visual contact with the children during rest or sleep periods, natural or artificial light shall be provided in the room or area.
9. The center shall insure that no child is deprived of needed sleep or has it unnecessarily interrupted. The center shall arrange the scheduled hours for admitting children and for picking them up so that sleeping children are not disturbed by the arrival or the pick-up of other children.

10:122-6.5 Enrollment and space

- (a) At no time shall a center allow more children in attendance than the number specified on its license.
- (b) A center may enroll up to 10 percent more children per session than the maximum number of children permitted to be served, as specified on its license.
- (c) A center may enroll from 11 percent up to 15 percent more children per session than the maximum number of children permitted to be served, as specified on its license, provided that it documents in writing to the satisfaction of the Bureau that its rate of absenteeism is such that an over-enrollment would not result in more children attending the center on a given day than is permitted by its maximum number, as specified on its license.
- (d) The center shall provide sufficient space to allow for the implementation of the center's program. The center shall include:
 1. Play rooms/sleep rooms and/or areas to accommodate the various play activities and sleeping needs of the children served;
 2. An isolation room/area to accommodate children too ill to remain in the group;
 3. Space for the children's physical activities;
 4. Toilet facilities to accommodate the needs of the children served; and
 5. A kitchen and/or food preparation area, if the center is preparing and/or serving food.
- (e) Space requirements for playrooms/sleeprooms:
 1. The minimum net square footage shall be determined by excluding the space used in hallways, toilet facilities, lockers, offices, storage rooms, the isolation area, staff rooms, furnace rooms, kitchen areas and any other areas that children do not use for sleep or play.
 2. Pre-school, drop-in and special needs programs: There shall be a minimum of 30 square feet of net indoor floor space in play rooms for each child.
 3. Night care programs: There shall be a minimum of 50

square feet of net indoor floor space for each child in all rooms utilized by the children.

(f) Space requirements for isolation room/area:

1. There shall be a small isolation room in a separate section of the center or a small isolation area in a section of a room in the center where ill children shall be cared for until they can be taken home or suitably cared for elsewhere.

2. The isolation room/area shall be furnished with sleeping equipment and clean bedding.

3. All items used by the ill child, including sleeping equipment, bedding, utensils and toys, shall be cleaned and sanitized prior to being used by another child.

(g) Space requirements for physical activities:

1. For children in attendance for three or more consecutive hours, the center shall provide a minimum of 150 square feet of net outdoor space. When more than five children are using such space at one time, there shall be 30 square feet of net outdoor space for each additional child.

2. The outdoor area shall be adjacent to or within close proximity of the center and available for use by the children.

3. Outdoor areas located near or adjacent to hazardous areas determined by the Bureau to be unsafe (such as, but not limited to, streets, roads, driveways, parking lots, railroad tracks, swimming pools, rivers, streams, steep grades, cliffs, open pits, high voltage boosters or propane gas tanks) shall be fenced or otherwise protected by a natural or man made barrier or enclosure.

4. If a center can demonstrate to the satisfaction of the Bureau that it cannot meet the outdoor space requirement, the center shall provide, in addition to space for playrooms, a minimum of 150 square feet of net indoor space. When more than five children are using such space at one time, there shall be 30 square feet of net indoor space for each additional child. The indoor space may be either on the site of the center or at another nearby indoor facility, such as a gymnasium, exercise room or other recreational facility.

(h) Space requirements for toilet facilities: See N.J.A.C. 10:122-5.2(i) for the space requirements for toilet facilities.

(i) Space requirements for kitchen facilities: See N.J.A.C. 10:122-5.2(j) for the space requirements for kitchen facilities.

(j) Smoking shall be prohibited in all rooms occupied by children.

10:122-6.[5]6 Activities

(a) General:

1. The center shall provide a variety of planned activities and sufficient equipment and supplies so that each child attending the center will have adequate stimulation.

2. [and] **The center shall provide children with [an] opportunity[y]ies to choose materials freely [for many learning experiences] during the program activities.** [Activities shall be provided in a manner that encourages personal independence, feelings of self-worth, group interaction and communication and development of personal skills. The program and activities shall be geared to the age level of the children served and shall promote the physical, emotional, social, and intellectual development of the children served. The center shall make available to the parent(s) of children served and the public a written description of the activities program it offers, upon request.]

3. **Daily activities shall promote the development of personal skills, social competence, self-esteem and positive self-identity and shall be geared to the age levels of the children served.**

4. **The center shall develop and keep on file a written plan of daily activities.**

5. **Activities shall be planned and conducted so that children are not sitting for long periods of time.**

(b) Pre-school, drop-in and special needs programs: The center shall include in its program a minimum of five activities from those listed below.

1.-3. (No change.)

4. Dramatic activities: Suggested supplies include toy telephones, toy ironing boards and irons, dress-up cloth[ers]ing, large mirror placed at child's level, puppets and material for costumes.

[(c) Additional requirements:

1. Drop-in programs: The activities shall be planned in such a way that the continual arriving and departing of children are not disruptive to the over-all program.

2. Special needs program: The program and activities for special needs children shall be organized according to each child's potential for development. The program shall provide opportunity and utilize equipment and supplies in a setting that meets the diagnostic needs of each child.]

[(d)] (c) Night care programs:

1.-2. (No change.)

(d) Additional requirements:

1. **When groups of children are taken for outdoor walking trips, the staff members shall insure that all safety precautions are followed for the protection of the children.**

2. **Centers serving identified handicapped children shall provide a program and activities for each child according to his/her identified strengths and needs. The program shall provide opportunities and utilize equipment and supplies in a setting that meets the diagnostic needs of each child.**

3. **The activities in drop-in programs shall be planned in such a way that the continual arriving and departing of children are not disruptive to the over-all program.**

10:122-6.[6]7 Program equipment

(a) [Indoor and outdoor: Equipment] **Play equipment, materials and [furnishings] furniture for indoor and outdoor use** shall be of sturdy and safe construction, non-toxic, easy to clean and free of hazards that may be injurious to young children.

(b) [Child-size durable] **Play equipment, materials and child-size furniture** shall be provided in [sufficient] **such quantity so as to meet the needs of the children.**

(c) [Low open shelves shall be provided for storage of play materials. Supplies stored on high shelves shall have a protective barrier around them.] **Toys or toys with removable parts that are small enough to swallow, plastic bags and styrofoam objects shall be inaccessible to the children.**

[10:122-6.7 Diapering and toilet training

(a) For centers enrolling children not yet toilet trained, the following requirements shall be met:

1. Diapering:

i. The center shall insure that the diapers of children are changed when soiled and shall wash and dry each child during each diaper change with sanitary individual washing material.

ii. Areas used for changing children's diapers shall be sanitized after each child has been changed.

iii. An adequate supply of clean diapers shall always be available.

iv. A toilet shall be available for rinsing soiled diapers.

v. Diapers shall be placed in closed containers when wet or soiled and removed daily.

vi. Staff changing children's diapers shall wash their hands after each diaper change.

2. Toilet training:

i. Toilet training shall be undertaken only in accordance with a plan requested by and acceptable to the parent(s).

ii. The center shall not force toilet training on any child.

iii. The center shall provide an adequate supply of child-size (potty) toilet training chairs or children's toilet seats.

iv. Toilet training chairs shall be emptied after each use and sanitized.]

10:122-6.8 Discipline

- (a) (No change.)
- (b) There shall be no use of [physical] hitting, corporal punishment, abusive language, ridicule, or harsh humiliating or frightening treatment.
- (c) (No change.)
- (d) Children shall not be isolated [as a punishment, confined] without supervision[, or forced to take an uncomfortable position or to repeat physical movements].
- [(e) Physical exercises shall not be based as a means of punishment or discipline.
- (f) Group punishments of children for the misbehavior of one or more individual children shall be prohibited.]
- [(g)](e) Discipline shall not be associated with the withholding of emotional response or stimulation and shall not require a child to remain silent for long periods of time.

10:122-6.9 Parent participation

- (a) At the time of enrollment and thereafter as the need arises or at the request of the parent(s), the director or staff member shall discuss with each parent the child's habits, activities and schedules while at home and at the center and any special concerns about the child's behavior and development.
- (b) The center shall bring special problems concerning a child to the parent's attention as soon as possible.]

SUBCHAPTER 7. TRANSPORTATION REQUIREMENTS

10:122-7.1 General

- (a) Any child care center providing or arranging for the provision of transportation for children to or from their homes and a center and/or in connection with an activity conducted by or through the auspices of a center shall meet the transportation requirements of this subchapter[, as listed below.]
- (b)-(c) (No change.)
- (d) The center sponsor may authorize center staff members and/or parents who have a New Jersey automobile driver's license to transport children to and from related center activities (such as, visits to the zoo, museum or other field trips) or to transport children to a doctor's office for medical treatment in a private passenger vehicle with a capacity of eight or fewer persons. A person providing such transportation shall not be required to have a New Jersey school bus driver's license and the vehicle used for such transportation shall not be required to meet the registration, equipment, inspection and maintenance requirements for a school bus.**

10:122-7.2 Driver requirements

- (a) The driver of a vehicle used for the purpose [noted] **specified in N.J.A.C. 10:122-7.1(a)** shall comply with the school bus driver's license requirements of the State motor vehicle law(s) and/or regulations.
- (b) (No change.)

10:122-7.3 Safety practices

(No change.)

10:122-7.4 Transportation records

(No change.)

10:122-7.5 Insurance

- (a) (No change.)
- (b) In the event that the transportation services are provided by a private individual or firm under contract or other arrangement with the center or parents, the center must maintain a file copy of that individual's or firm's insurance coverage in the amounts specified **in (a)** above and make a copy of such coverage available to the Bureau upon request.

10:122-7.6 Special regulations

- (a) The following additional regulations shall be required for centers serving specially handicapped, non-ambulatory children:
1. A ramp device **or a hydraulic lift** shall be provided to permit entry and exit of a child from the vehicle. [A hydraulic lift may be utilized provided that a ramp is also available in case of emergency.]
 2. (No change.)
 3. The arrangements of the wheelchairs shall not impede access to the exit [door] **emergency door**.

10:122-7.7 Vehicle requirements

- (a) The following vehicle requirements shall apply to any center where transportation services are provided for the children, to those activities specified in N.J.A.C. 10:122-7.1 **(a) through (c)**, whether provided directly or indirectly by or through the auspices of a center or its sponsor or otherwise with the knowledge and/or concurrence of a center or its sponsor.

1. Vehicle definitions:

- i. Type I vehicles with a capacity of 17 [or more persons] **to 58 passengers.**
- ii. Type II vehicles are vehicles with a capacity of fewer than 17 [persons] **passengers.**

2. Vehicle specifications:

- [i. Inspection requirements: Any vehicle used for the purposes noted in N.J.S.A. 10:122-7.1 shall be registered with the Office of the County Superintendent of Schools and shall be inspected semiannually by the New Jersey Division of Motor Vehicles.]

[(1)]i. The center shall conduct a daily check of the vehicle, which shall include all safety equipment, in order to insure that the vehicle is in sound operating condition.

ii. Vehicles manufactured after April 1, 1977:

(1) (No change.)

(2) All Type II vehicles with a capacity of more than six but fewer than 10 [persons] **passengers** shall comply with the specifications for Type II vehicles [prescribed below in this section.], **as specified in (a)iv and v below.**

(3) All Type II vehicles with a capacity of 10 or more [persons] **passengers** shall comply with the requirements of the Federal Motor Vehicle and School Bus Safety Amendments of 1974.

iii. Vehicles manufactured before April 1, 1977:

(1) (No change.)

(2) All Type II vehicles with a capacity of more than six [persons] **passengers** shall comply with the specifications for Type II vehicles contained in the Standards for Approval of Child Care Centers in force at the time the vehicle was manufactured.

iv. (No change.)

v. Requirements for Type II vehicles manufactured after April 1, 1977: All vehicles with a capacity of more than six but fewer than 10 [persons] **passengers** shall comply with the following requirements:

(1)-(5) (No change.)

(6) There shall be [emergency equipment, including a spare tire, jack and at least] three triangular portable red reflector warning devices[.] **secured at the front and to the right of the driver.**

(7) There shall be a fire extinguisher, fully charged, with minimum underwriters' rating of B-2, C-2 or 1/2BC, located at the front and to the right of the driver and [placed] **securely mounted** so that it does not constitute an obstruction or hazard to the persons in the vehicle.

(8) [There shall be a clearly marked standard first-aid kit containing first-aid equipment recommended by the American Red Cross or the local or State health department.] **There shall be a clearly marked first-aid kit securely mounted near the driver containing the following items as a minimum:**

(A) 6 - single units sterile pads 3x3 inches;

(B) 2 - 1 inch x 10 yds. bandages;

(C) 12 - pastic strip bandages;

(D) 1 - triangular bandage;

(E) 1 - 1 inch x 2 1/2 yds. adhesive;

- (F) 1 - scissors; and
- (G) 1 - First Aid guide booklet approved by the American Red Cross or local or State health department.
- (9)-(10) (No change.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance Nonrenewal of Automobile Insurance for Private Passenger Cars

Proposed Amendments: N.J.A.C. 11:3-8

Authorized By: Joseph F. Murphy, Commissioner,
Department of Insurance.
Authority: N.J.S.A. 17:1-8.1, 17:1C-6(e), 17:22-6.14a1,
2 and 3, 39:6A-3 and 39:6A-19.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake
Executive Director of Insurance
New Jersey Department of Insurance
CN 325
Trenton, NJ 08625

The Department of Insurance thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-78.

The agency proposal follows:

Summary

The proposed amendments to N.J.A.C. 11:3-8 revise the existing rule in several respects, and include substantive changes in the scope of the rule and its requirements, changes which clarify the authority of the rule or which remove ambiguities in the existing language, and technical and editorial modifications.

The proposed amendment, N.J.A.C. 11:3-8.1 (Scope), extends the requirements of this subchapter to all coverages provided to automobiles, as defined therein, whether or not such coverages are included in a policy providing statutorily required personal injury protection and liability coverage. The proposed amendment, N.J.A.C. 11:3-8.2(b), provides that an insurer must furnish the insured with the reason for nonrenewal and eliminates the insurer's option of simply naming the person giving cause for the nonrenewal in its notice.

Proposed amendments to N.J.A.C. 11:3-8.3(a)1i and ii increase the dollar threshold for property damage accidents from \$200.00 to \$400.00 and eliminate, as a specified basis for nonrenewal, the establishment of a loss reserve for either a bodily injury or a property damage accident. References throughout N.J.A.C. 11:3-8.3(a) to "insured" and "customary operator" have been modified as indicated to effect greater consistency in the language of the rule.

The proposed amendment, N.J.A.C. 11:3-8.3(a)6i requires that a nonrenewal based upon the physical or mental impairment of the insured or customary operator must be supported by a report of the

current medical examination. If not otherwise available, this report must be secured by the insurer at its own expense.

The proposed amendment, N.J.A.C. 11:3-8.3(a)11i, indicates that the failure of a terminated agent to request a renewal as provided in N.J.S.A. 17:22-6.14(a) shall only be considered as a request for nonrenewal in the context of this rule if coverage has been replaced in the admitted market.

Finally, the procedures to be followed by an insurer in requesting authorization from the Department to nonrenew a policy for reasons other than those contained in this rule are set forth in the amendment cited as N.J.A.C. 11:3-8.3(b).

Social Impact

The proposed amendments extend to all automobile policies, the kinds of safeguards which have in the past been applicable only to policies which included statutorily mandated coverages, such as PIP coverage. Thus, the requirements of the amended rule will apply, for instance, to policies which provide only physical damage coverages.

The increase in the property damage accident threshold from \$200.00 to \$400.00 reflects the effect in inflation and will ensure that individuals will not forfeit their coverage in the voluntary market as a result of relatively minor occurrences. Similarly, the elimination of loss reserves as a specified basis for nonrenewal provides that only paid losses will be considered in determining whether an insured's policy should be nonrenewed.

The modifications to the provision which concern a nonrenewal based on physical or mental impairment will require that such nonrenewals be conditioned upon an objective medical evaluation. Finally, the amendment N.J.A.C. 11:3-8.1(a)11i, will serve to ensure that, in the case of agency termination, the rights of the insured to continued renewal in the voluntary market will not be impaired.

Economic Impact

The cost to insurers of achieving compliance with the revised rule should be relatively small. These costs are expected to be substantially outweighed by the benefits which the revised rule provides to the public.

The Department of Insurance will not require additional personnel to enforce the regulation. Any additional costs resulting from enforcement of the rule are expected to be absorbed within current budget resources.

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

SUBCHAPTER 8. NONRENEWAL OF AUTOMOBILE INSURANCE POLICIES [FOR PRIVATE PASSENGER CARS]

[11:3-8.1 General provisions

FOREWORD

This rule applies to all private passenger automobiles as defined in N.J.S.A. 39:6A-2a which are required to have PIP coverage, excluding those owned by business entities and fleets. (Effective January 1, 1978; but penalties for noncompliance will not be imposed before March 1, 1978.)

11:3-8.1 Scope

This subchapter applies to all automobiles as defined in N.J.S.A. 39:6A-2a, excluding those owned by business entities and fleets, and to all policies or contracts of insurance insuring such automobiles.

11:3-8.2 General provisions

(a) Every insurer shall make an offer to the insured named in a policy [providing the coverage required by the New Jersey Automobile Reparation Reform Act] **subject to this subchapter** to

renew such policy upon its expiration date, unless a valid notice of nonrenewal has been sent by the insurer to the insured in accordance with this [regulation] **subchapter**. Such renewal offer shall be in the usual form of either a renewal policy, a certificate, or a renewal bill and shall offer coverage at least as favorable to the insured as the expiring policy and at the same limits and terms including duration [of contract] of the policy as apply to the expiring policy, subject to changes approved by the commissioner that had become effective since the commencement of the current policy period. Payment by the insured in accordance with the[ir] terms stated in the billing notice or in accordance with terms agreed to with the company or producer shall constitute acceptance of the offer by the insured. The words "same limits" shall not preclude the insurer from offering physical damage coverage with a higher deductible than that in the expiring policy, provided the insured is informed that a lower deductible is available at an appropriate rate. Insurers must permit insureds to return to their prior duration of policy term upon request.

(b) No notice of nonrenewal shall be valid unless it is mailed or delivered by the insurer to the insured no less than 60 days and no more than 90 days prior to the expiration of the current policy, setting forth the reason(s) for such nonrenewal. [In lieu of stating such reason(s), the notice may name the person or persons giving cause for the nonrenewal, in which case the reason for nonrenewal shall be communicated in a separate letter to such person or persons.]

1. No notice of nonrenewal shall be valid unless it includes the text of the designated [portion] **provision(s)** of this [rule] **subchapter** under which action is being taken and the correct facts which bring the insured under the [rule], **provision(s)** including dates and any other facts necessary for identification of the incidents. In the event action is being taken under [subsection (e)1 of this section,] **N.J.A.C. 11:3-8.3(a)1**, the text of the exceptions under [subsection (e)2] **N.J.A.C. 11:3-8.3(a)2** must be included together with a statement[, if true,] that none of these exceptions are applicable. (Effective February 21, 1977, for notices sent on or after that date.)

(c) Nothing in this [regulation] **subchapter** shall be construed as prohibiting a renewal policy from being issued for higher limits of coverage and/or additional coverage(s), provided that such additional protection is specifically requested by the insured and the insurer is willing to provide it. Conversely, nothing shall prohibit the renewal policy from being issued for lower limits of coverage and/or fewer coverages provided that such reduction in protection is specifically requested by the insured [person] and **further** provided [further] that coverage in no case shall fall below the level or levels otherwise required by law.

[(d) Notice of nonrenewal based upon one or more of the reasons stated below shall be deemed to have the consent of the Commissioner of Insurance required under Section 3 of the New Jersey Automobile Reparations Act. Any refusal to renew an automobile insurance policy not based upon such reasons shall be submitted to the Commissioner of Insurance no later than 90 days prior to the expiration of the policy and shall only be issued to the insured with the consent of the Commissioner.]

(d) No notice of nonrenewal for any coverage subject to this subchapter shall be valid unless it is based upon one or more of the reasons set forth in N.J.A.C. 11:3-8.3(a) or is otherwise authorized by the Commissioner of Insurance pursuant to N.J.A.C. 11:3-8.3(b).

[(e) No nonrenewal shall be valid unless it is based on one or more of the following:]

11:3-8.3 Reasons for nonrenewal

(a) An insurer may issue notice of nonrenewal based upon one or more of the following reasons:

1. Accident involvement: The named insured or any operator [of an automobile resident in the same household] who customarily operates the automobile [or any other operator who customarily

operates the automobile] has been involved during the 36 months period ended 90 days prior to the expiration of the current policy in:

i. More than one bodily injury accident if there is one car in the household or an average of more than one accident for all cars in the household, provided a loss payment has been made [or a loss reserve has been established] for such accidents **other than a payment [or reserve] for the personal injury protection benefits[.]; or**

ii. More than one accident involving damage to any property including his own of [\$200.00] **\$400.00** or more for which accident a payment was made [or a loss reserve was established] if there is one car in the household, or an average of more than one such accident for all cars in the household, provided that loss payments [or reserves] under the comprehensive physical damage coverage shall not be counted[.]; or

iii. A combination of more than one such bodily injury or property damage accident[.]; or

iv. [If the named insured or anyone customarily operating the automobile has been involved in more] **More** than two such accidents regardless of the number of cars in the household.

2. Exceptions: Accidents under i. to iv. above shall not be counted if the accident occurred under the following circumstances:

i. **The accident [involved] resulted in** a claim or payment only under the Personal Injury Protection Coverage;

ii. **The automobile was lawfully parked at the time of the accident** (an automobile rolling from a parked position shall not be considered as lawfully parked, but shall be considered as **in** the operation of the last operator);

iii. **The named insured or [other operator residing in the same household], anyone customarily operating the automobile, has been reimbursed by, or on behalf of, a person responsible for the accident or has a judgment against such persons;**

iv. **The automobile of the named insured or other customary operator [resident in the same household] was struck in the rear by another vehicle, and the operator has not been convicted of a moving traffic violation in connection with the accident;**

v. **The operator of [the other] another automobile involved in such accident was convicted of a moving traffic violation and the named insured or other customary operator [resident in the same household] was not convicted of a moving traffic violation in connection therewith;**

vi. **The automobile operated by named insured or [other operator resident in the same household] anyone who customarily operates the automobile is damaged as a result of contact with a "hit and run" driver, [if] provided that the accident [was] has been reported to legal authority within a reasonable time thereafter;**

vii. **The accident[s] [involving damage by] resulted from contact with animals or fowl.**

3. Convictions concerning motor vehicle law: The named insured or any operator [of an automobile resident in the same household] who customarily operates the automobile [or any other operator who customarily operates the automobile].

i. (No change.)

ii. Has been convicted, entered a plea of guilty or nolo contendere, or forfeited bail bond or other security for other moving traffic violations during the 36 months period ended 90 days prior to the expiration of the current policy which result in the accumulation of an average of nine points or more, as defined in the New Jersey Motor Vehicle Law, per car in the household or which result in an accumulation of nine or more points for any one such operator, provided that any operator who has been involved in such motor vehicle law violations continues to be an operator of the automobile at the time of renewal.

4.-5. (No change.)

6. Physical or mental impairment of the named insured or anyone customarily operating the automobile which adversely affects the ability to operate the automobile safely, unless a physical disability is compensated for **by corrective measures.**

i. **A nonrenewal premised upon physical or mental**

impairment must be supported by a current medical examination. The medical examination report must clearly state the nature of the impairment and, in the case of a physical disability, the extent to which such disability adversely affects the ability to safely operate the automobile. In the event such a current medical examination report is not otherwise available, it must be secured by the insurer at its own expense.

7.-8. (No change.)

9. In the case of companies which limit their writing to members of a church, profession or occupation or similar group, loss of the qualification for such group by the owner of the automobile. In such case an additional 12 months of nonrenewal notice shall be given. [Termination of membership in an] **The membership of an automobile or travel club [shall not fall under this provision] does not constitute a qualified group subject to this paragraph.**

10. (No change.)

11. Request by producer of record not to renew the policy, provided [such] the request is accompanied by a true statement by the producer that he has replaced like coverage at approved rates in the voluntary market with an admitted carrier, specifying the name of the carrier; provided also that the transferor carrier has advised the insured in writing of his right to renewal in the same company before obtaining the insured's consent to transfer, and of the insured's right to renew if he or she is cancelled by the new carrier for reasons other than nonpayment or suspension or revocation of registration or driver's license. The producer's request for nonrenewal shall be made no later than 90 days prior to the expiration of the policy and a copy thereof shall be sent by the producer to the named insured. A nonrenewal based on such request shall be invalid and the company shall renew the policy at the request of the insured through an active agent and/or broker, or directly if the replacement policy is cancelled by the carrier for any reason other than the reasons allowed for cancellation by N.J.S.A. 17:29C-7 (nonpayment of premium or suspension or revocation of registration or driver's license).

[(f)] i. Failure by a terminated agent to request renewal during the period of nine months from the effective date of termination as provided in N.J.S.A. 17:22- 6.14(a) shall be construed as request not to renew in the context of this [regulation] **subchapter provided the terminated agent has replaced the coverage at approved rates in the voluntary market with an admitted carrier.**

[(g)] This rule shall apply to all private passenger automobile coverages when included in a policy providing for statutorily mandated personal injury protection and liability coverage.]

(b) **Any refusal to renew which is not based upon the reasons set forth in (a) above shall be submitted to the Commissioner of Insurance for review no later than 90 days prior to the expiration of the policy. No insurer shall issue such a nonrenewal to the insured unless the insurer has received the authorization of the Commissioner.**

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS

Private Employment Agencies Temporary Help Service Firms

Proposed New Rule : N.J.A.C. 13:45B-4

Authorized By: Irwin I. Kimmelman, Attorney General
of the State of New Jersey.

Authority: N.J.S.A. 56:8-1.1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

James J. Barry, Jr., Director
Division of Consumer Affairs
1100 Raymond Boulevard, Room 504
Newark, NJ 07102

The Division of Consumer Affairs thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-64.

The agency proposal follows:

Summary

Recent amendments to the statutes governing private employment agencies, N.J.S.A. 34:8-24 et seq., exempt temporary help service firms from the rules which regulate private employment agencies. N.J.S.A. 56:8-1.1 requires the Attorney General to promulgate regulations concerning the operation of temporary help service firms whose services are considered to be "merchandise" pursuant to N.J.S.A. 56:8-1 et seq. The proposed rules establish requirements for temporary help service firms, require that the firm be operated separately from any private employment agency and prescribe fees for license, and require firms to post bonds.

Social Impact

The proposed rules implement legislation designed to provide an exemption for temporary health service firms from the requirements and regulations imposed on private employment agencies. The extent and nature of the regulations differ from those required of private employment agencies due to the different nature of the businesses.

Economic Impact

The proposal creates the limited economic impact of fees and the posting of bonds which are required for licensure as temporary help service firms.

Full text of the proposed new rule follows.

SUBCHAPTER 4. TEMPORARY HELP SERVICE FIRM

13:45B-4.1 Definition

Temporary help service firm means and includes any person, firm or entity who operates a business which consists of employing individuals directly for the purpose of assigning his employers to assist his customers in the handling of his customers' temporary excess or special work loads and who in addition to the payment of wages or salaries to his employees, pays Federal social security taxes and State and Federal unemployment insurance, carries workmen's compensation insurance as required by State law, and sustains responsibility for the actions of his employees while rendering services to his customers.

13:45B-4.2 Temporary help service firm requirements

(a) All temporary help service firms must meet the following requirements:

1. Each temporary help service firm operating within the State of New Jersey shall, prior to commencement of operation and annually thereafter, notify the Division of Consumer Affairs as to its appropriate name, if applicable; the trade name of its operation; its complete address, including street and street number of the building and place where its business is to be conducted; and the names and resident addresses of its officers, principals and owners. Any changes should promptly be reported to the Division of

Consumer Affairs. Each principal and owner shall provide an affidavit to the Division of Consumer Affairs setting forth whether such principal or owner has even been convicted of a crime. If any principal or owner is convicted of a crime subsequent to providing such affidavit a new affidavit setting forth the circumstances of the conviction must be provided to the Division of Consumer Affairs. If and when the firm obtains any new principal or owner, he or she must provide an affidavit setting forth whether he or she has even been convicted of a crime.

2. When a temporary help service firm utilizes any location other than its primary location for the recruiting of applicants, including mobile locations, it shall notify the Division of Consumer Affairs of such fact in writing or by telephone, and subsequently confirm in writing prior to the utilization of such facility.

3. Each temporary help service firm shall at the time of its initial notification to the Division of Consumer Affairs, and annually thereafter, post a bond of \$1,000 with the Division of Consumer Affairs to secure compliance with P.L. 1960, c. 39 (C. 56:8-1 et seq.) as amended and supplemented, provided however that the Division of Consumer Affairs may waive such bond for any corporation or entity having a net worth of \$100,000 or more. In order to obtain such a waiver the firm must provide a copy of its annual report or a certification of a certified public accountant that the firm has a net worth of \$100,000 or more.

(b) In order to operate as a temporary help service firm and to be excluded pursuant to N.J.S.A. 34:8-25 from the requirements of the Private Employment Agency Act, any firm operated by any person, firm or entity who also operates an employment agency must comply with the above listed requirements or the requirements contained in N.J.A.C. 13:45B-4.3 it shall be licensed and regulated as a private employment agency.

13:45B-4.3 Separation from private employment agency

(a) Any temporary help service firm which is operated by any person, firm or entity who also operates an employment agency can be excluded from employment agency licensing provided that the temporary help service firm shall not commingle its function with those of an employment agency and shall conduct its business operation separate from employment agency operations as follows:

1. The business office space utilized by a temporary help service firm shall be independent and separated from the business office space utilized by an employment agency. This shall not be interpreted to prohibit the use of adjoining office space with a common reception area subject to approval by the Division of Consumer Affairs or its duly authorized representative. If adjoining office space is utilized to conduct the business operation of a temporary help service firm and an employment agency, the respective spaces must be clearly identifiable to all visitors to the facility either by signs and/or brochures.

2. The business and trade name utilized by a temporary help service firm shall be independent and separate from the business and trade name utilized by an employment agency.

3. The business and personnel records utilized by a temporary help service firm shall be independent and separate from the records utilized by an employment agency.

4. The telephone numbers utilized by a temporary help service firm shall be independent and separate from those telephone numbers utilized by an employment agency.

5. The recruiting and business advertising utilized by a temporary help service firm shall be independent and separate from the advertising utilized by an employment agency.

6. A temporary help service firm shall not split permanent placement fees with businesses licensed as private employment agencies or any other business engaged in permanent placement.

13:45B-4.4 Information required

Information required by these rules shall be provided to the Temporary Help Service Firm section of the Division of Consumer Affairs. Application forms shall be supplied by the Temporary Help

Service Firm section. Completed forms shall be accompanied by the affidavit required in N.J.A.C. 13:45B-4.2(a) and proof of having met the bonded requirement set forth in N.J.A.C. 13:45B-4.2(c).

13:45B-4.5 Fees

In order to operate as a temporary help service firm, such a firm shall pay a fee of \$240.00 per primary location annually, and a fee of \$10.00 for operation of any location other than a primary location. A primary location is defined as an address used by a temporary help service for 90 or more calendar days to interview or accept applications from prospective applicants or to solicit job orders from client companies.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

**Restricted Parking and Stopping
Route 87**

Proposed Amendment: N.J.A.C. 16:28A-1.81

Authorized By: John P Sheridan Jr., Commissioner,
Department of Transportation.

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-138.1 and
39:4-199.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
Trenton, NJ 08625

The Department of Transportation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-65.

The agency proposal follows:

Summary

This proposal will establish "no parking" zones along Route 87 in Atlantic City, Atlantic County in areas designated as bus stops. Appropriate signs will be erected advising the motoring public.

Social Impact

This amendment will restrict parking in the areas designated, enhance the safety of the populace at established bus stops and provide for the safe and efficient on/off loading of passengers.

Economic Impact

The Department will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements.

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

16:28A-1.81 Route 87

(a) (No change).

(b) The certain parts of the State highway Route 87 described in this section are designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provision of N.J.S.A. 39:4-199, permission is granted to erect appropriate signs at the following established bus stops:

1. Along the southerly (eastbound) side in Atlantic City, Atlantic County.

i. Beginning at a point 55 feet west of Atlantic City Electric Utility Pole No. A-18051 and extending 135 feet easterly therefrom.

2. Along the northerly (westbound) side in Atlantic City, Atlantic County.

i. Beginning at a point 50 feet east of the easterly right-of-way line of Massachusetts Avenue and extending 135 feet westerly therefrom.

TREASURY-GENERAL

(a)

DIVISION OF BUILDING AND CONSTRUCTION

Classification of Bidders Prequalification

Proposed Amendment: N.J.A.C. 17:19-2

Authorized By: Morton A. Siegler, Director, Division of Building and Construction, Department of the Treasury.

Authority: N.J.S.A. 52:35-1 et seq., specifically 52:35-11.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Morton A. Siegler, Director
 Division of Building and Construction
 Department of the Treasury
 CN 235
 Trenton, NJ 08625

The Division of Building and Construction thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-84.

The agency proposal follows:

Summary

Contractor classifications establishing bid prequalification parameters allowing contractors to bid on State public works construction projects have been based primarily on a fiscal evaluation. There has been inadequate emphasis on performance standards. The evaluation process, under the terms of these amendments, will include contractors' past performance levels as a major consideration in prequalifying contractors for State construction projects.

The new formula allows a contractor an "aggregate" rating based upon the financial condition of the individual contractor. In addition, a "single" rating, based on performance and the highest dollar value project completed within a three year period, will be

established. Consequently, for each individual trade discipline for which prequalification is requested and documented, contractors will be given a rating in an aggregate amount, as well as a single amount limitation for bidding purposes. The single rating, which will be based essentially on experience, shall never exceed the aggregate rating, which will be based on the contractor's financial condition.

Social Impact

This proposal will affect all persons and firms proposing to submit bids to the Division of Building and Construction on public works projects for the State and its agencies. Performance evaluations will be a vital determining factor, limiting the scope of work on which each contractor may bid. This revision will prevent unrealistic bidding ratings based solely on the financial condition of inexperienced contractors. After the implementation of these amendments, the State and its agencies will be reasonably assured that the contractor chosen will be called upon to perform only within the limitations of its past experience.

Economic Impact

The revised rating system will encourage submission of responsible and realistic bids by contractors qualified both by financial condition and experience. The quality of contract performance will improve and the State will be less vulnerable to default by inexperienced contractors. Increased emphasis on experience in contractor prequalification should therefore promote efficiency and economy in public works construction projects.

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

17:19-2.1 Statements required from prospective bidders; contents

(a) Any person proposing to submit bids on public work shall submit to the Director a statement under oath on a form designated as DBC-36 (Contractor's financial statement and experience questionnaire). The DBC-36 shall develop fully the financial ability, responsibility, description of plant and equipment, organization, ownership and prior experience of the prospective bidder. **Specifically, the DBC-36 shall contain:**

1. A statement as to financial ability, which statement shall show current assets and current liabilities, and which shall include verifications of lines of credit extended by lending institutions and the cash surrender value of life insurance;

2. A statement as to plant and equipment which shall give complete details as to cost, age, condition and book value;

3. A statement as to organization which shall develop the adequacy of such organization, including key personnel, to undertake a project in the classification desired;

4. A statement as to prior experience, which shall show the number of years the prospective bidder has been engaged in the contracting business and shall further disclose his experience over that period;

5. A statement which shall give an accurate and complete record of work completed in the past three years, giving the name of the projects, type of work, location, contract price and the name of the architect/engineer in charge of the owner, and which shall list in detail any liens, stop notices or claims filed against any project within the past three years. This statement shall also disclose any labor problems experienced, any failure or failures to complete a contract or contracts on schedule, and any penalties imposed by reason of any contract undertaken within the said three year period. The prospective bidder shall explain such items;

6. A statement that the applicant has adopted or will comply with an Affirmative Action Program for Equal Opportunity in accordance with New Jersey and federal laws and regulations;

7. A statement setting forth any other pertinent material and facts that will justify the rating requested; and

8. All financial data submitted to obtain single ratings over \$50,000 and aggregate ratings over \$100,000 must be certified by a Certified Public Accountant.

(b) The DBC-36 shall also contain the following statement: The statute governing classification of bidders provides:

“Any person who makes, or causes to be made, a false, deceptive or fraudulent statement in the questionnaire required to be submitted or in the course of any hearing under this chapter, shall be guilty of a misdemeanor, and upon conviction shall be sentenced to pay a fine of not less than \$100.00 nor more than \$1,000 and shall be permanently disqualified from bidding on all public work of the State; or, in case of an individual or the officer or employee charged with the duty of making such questionnaire for a person, firm, copartnership, association or corporation, to pay such fine or undergo imprisonment, not exceeding six months, or both.” (N.J.S.A. 52:35-9).

17:19-2.2 Bidders to be classified; notice

(a) Upon receipt of the completed DBC-36, the director or his designee shall classify the [prospective bidder] applicant as to the trade and character of the public work on which the applicant shall be qualified to submit bids. [and bids shall be accepted only from persons qualified in accordance with such classification.] The trades for which an applicant may qualify are:

- C007 Acoustical
- C008 Air Balance
- C010 Asbestos Removal/Treatment
- C011 Athletic Fields/Tracks/Courts
- C014 Boilers (New/Repairs)
- C016 Caulking, Waterproofing
- C018 Communication Systems
- C019 Concrete/Foundation/Footings/Masonry Work
- C020 Control Systems
- C021 Demolition
- C024 Marine Construction
- C025 Doors & Hardware
- C026 Dredging
- C027 Dust Collectors -- Fixed
- C028 Electrical
- C029 Elevators
- C035 Fencing
- C036 Fire Alarm Signal Systems
- C038 Flooring
- C039 Food Service Equipment
- C041 General Construction
- C042 General Construction/Alterations
- C043 Generators/Diesels/Turbines
- C046 Guniting
- C047 HVAC
- C050 Incinerators
- C051 Insulation
- C053 Lab Furniture-Equipment
- C054 Landscaping Construction
- C061 Millwork
- C062 Oil & Gas Burners
- C065 Painting
- C066 Painting-Tanks & Structural Steel
- C067 Painting-Historical Sites
- C068 Parking-Control Systems
- C069 Partitions-Ceilings
- C071 Pile Driving
- C073 Plumbing
- C074 Prefabricated Buildings
- C075 Prefab, Music/Sound/Clean Rooms
- C076 Pre-Cast Concrete
- C077 Prison Equipment
- C083 Road Construction & Paving

- C084 Roofing/Built-Up
- C085 Roofing-Metal
- C086 Roofing-Tile/Slate/Shingles
- C087 Roofing-Membrane
- C088 Roofing-Urethane
- C089 Sandblasting
- C091 Seating-Auditorium & Bleachers
- C093 Security Intrusion Alarm
- C095 Service Station Equipment
- C096 Sewage & Water Treatment
- C097 Sewer (Piping) & Storm Drains
- C100 Siding/Gutters
- C101 Signage & Graphics
- C102 Site Work
- C103 Solar Installation
- C106 Storage Tanks
- C107 Structural Steel
- C110 Test Borings
- C111 Test Laboratories
- C112 Title Contractors
- C114 Underground Water & Utilities
- C117 Waste Disposal - Hazardous
- C120 Well Drilling
- C121 Windows
- C123 Pumping Stations
- C124 Underpinning

(b) [Immediate notice of such classification shall be sent by the Director to the prospective bidder.] The director or his designee shall determine for each applicant a “single” rating and an “aggregate” rating based upon an analysis of the completed DBC-36. The “single” rating shall be the dollar amount of the largest project for that trade or trades for which the contractor qualifies. The “aggregate” rating shall be the total amount of public work which the contractor is permitted to perform at any one time in all trades.

17:19-2.3 Single rating limit

(a) The initial single rating under this system shall be determined by the dollar amount of the largest project completed by the contractor within the last three years for each trade for which he is applying for rating. The single rating, however, shall not exceed the contractor’s aggregate rating, calculated under N.J.A.C. 17:19-2.5. This procedure shall also apply to subsequent renewals, extensions or amendments for which no performance evaluations prepared pursuant to N.J.A.C. 17:19-2.4 are on file.

(b) In the instances where performance evaluations are on file with the DBC, the formula below shall apply in awarding prequalification extensions, amendments or rating reinstatement. In such instances variable “A” is defined as the previous single rating awarded under this system. In those cases in which a revised DBC-36 is submitted by a contractor for the purpose of revising a rating previously awarded under this system and where performance evaluations are on file, the formula below shall also apply, however the variable “A” shall be defined as the largest single project successfully completed within the last three years as shown in the revised DBC-36.

Performance Factor	Formula
0 to 2.9	50% (A) = B
3.0 to 4.9	$A - A \left[\frac{40\% - PF(40\%)}{10} \right]$
7.0 to 10	150%(A) = B

NOTE: A = See subsection (b) above
 B = New single rating
 PF = Performance factor

PROPOSALS

TREASURY-GENERAL

EXAMPLES:

1. Performance Factor = 1.2
 Previous Single Rating = \$500,000
 50% (500,000) = \$250,000 (New Single Rating)
2. Performance Factor = 3.2
 Previous Single Rating = \$500,000
 500,000 - 500,000 =
 (40% - 3.2 X 40%)
 10
 500,000 - 500,000 (.272) =
 500,000 - 136,000 = \$364,000 (New Single Rating)
3. Performance Factor = 6.2
 Previous Single Rating = \$500,000
 500,000 500,000 =
 (6.2 x 40%)
 10
 500,000 500,000 x .248 =
 500,000 124,000 = \$624,000 (New Single Rating)
4. Performance Factor = 8.2
 Previous Single Rating = \$500,000
 150% (500,000) = \$750,000 (New Single Rating)

(c) The single rating shall be effective for a period of seven months from date of the closing of the financial period reflected in the contractor's financial statement presented. Thereafter, an applicant may request one extension of this single rating for an additional seven month period. In requesting an extension, the applicant must submit a signed affidavit stating that the applicant's financial and performance status has not substantially changed since the last submittal of a DBC-36. The DBC may verify this statement and request additional documents before an extension is granted.

(d) Thirty days prior to the expiration of any rating period, the applicant must file an updated DBC-36 in order to remain prequalified. The information on this updated form shall be analyzed by DBC, and a single rating shall be determined. This new rating shall be valid for seven months and may be extended for a seven month period.

(e) If a Performance Evaluation report is received during a rating period which is judged by the director or his designee as disclosing facts having a substantial impact on the contractor's ability to perform State work at the existing single rating level, the director or his designee may, in his discretion, issue an "amended" rating based upon the single rating formula. This rating shall be used until the expiration of the contractor's then current rating period.

17:19-2.4 Performance Evaluation Reports

(a) On every public project, a DBC representative, the architect/engineer or a responsible public official, as the director may designate, shall complete a Performance Evaluation Report on each of the prime contractors on the project. Such report (on DBC Form 67) shall be filed with the Bureau of Contractor Services of DBC within 30 days of final completion of the contractor's work.

(b) The performance evaluation form shall contain ratings on a scale of 0 to 10 for the following categories of performance, bearing the stated weight in calculation of the final performance evaluation rating:

1. Schedule adherence, including job planning, manning and submissions - 15%;
2. Workmanship - 20%;
3. Supervision - 10%;
4. Subcontractor performance - 15%;
5. Compliance with specified materials and procedure - 10%;
6. Cooperation with other prime contractors - 10%;

7. Completion of punch list items and prompt furnishing of close-out documents - 15%;
8. Reasonable and cooperative processing of Change Orders - 5%.

(c) The final performance evaluation rating, calculated as the weighted average of the individual performance category ratings, shall be the performance factor (PF) referred to in N.J.A.C. 17:19-2.3(a).

17:19-2.5 Aggregate rating limit

(a) The aggregated rating shall be the net current assets reported on the form DBC-36, multiplied in accordance with the following schedule:

Net Current Assets	Multiplier
\$0 - \$25,000	3
\$25,001 - \$50,000	5
\$50,001 - \$100,000	7
\$100,001 - and over	8

Should the applicant present evidence of a valid line of credit available to him from a responsible lending institution, the net funds available from such line of credit shall be added to the result of the multiplication process to determine the final aggregate rating.

EXAMPLE: \$ 80,000 current assets
 x7 multiplier

 \$560,000
 50,000 confirmed line of credit

 \$610,000 aggregate rating

(b) The following are not to be considered as net current assets:

1. Those which are not in the name of the applicant;
2. Past due accounts;
3. Items which are not liquid, including but not limited to prepaid expenses, fixed assets and other assets not readily convertible to cash;
4. Securities which are not readily saleable;
5. Securities which have been pledged;
6. Cash surrender value of life insurance policies which are not verified by a letter from the insurance company; and
7. Lines of credit.

(c) The aggregate rating shall be effective for a period of seven months from date of issuance. Thereafter, an applicant may request one extension of this aggregate rating for an additional seven month period. In requesting an extension, the applicant must submit a signed affidavit stating that the applicant's financial status has not changed since the last submittal of a DBC-36. The DBC may verify this statement and request additional supporting documents before an extension is granted.

(d) Thirty days prior to expiration of any rating period, the applicant must file an updated DBC-36 in order to remain prequalified. The information on this updated form shall be analyzed by DBC and a new aggregate rating shall be determined. This new rating shall be valid for seven months and may be extended for a seven month period.

[17:19-2.3 Hearing before the director or classification of bidder; change of classification]

17:19-2.6 Classification notice and hearing

(a) The director shall give notice of both the single and aggregate ratings granted to the applicant by first class mail within 15 days after receipt of a fully executed DBC-36 or within

15 days after receipt of additional information requested, whichever is later.

(a) (b) Any person or firm, after being notified of [his classification] a rating or a re-rating by the director and being dissatisfied therewith, or [with the classification] wishing to challenge a rating or re-rating of any other bidder, may request in writing a hearing before the director for the purpose of presenting further evidence with respect to [himself] his rating or that of any other bidder as [might tend to] he believes will justify a [different classification] change of the rating granted. This request must be made within 15 days of the date of notice of classification.

(b) (c) Where request is made [for the change of classification] to challenge the rating of another bidder, the director shall notify such other bidder of the nature, time and place of the hearing and afford the party an opportunity to be present.

(c) (d) Following any such hearing, the director may, in his discretion, retain or change the [classification] rating of any bidder.

(e) During this hearing process, the contractor shall be allowed to bid on State projects, limited by the rating or re-rating for which notice has been given under N.J.A.C. 17:19-2.6(a). If there is a change in rating as a result of a hearing, the rating change shall only be effective for a project which has a date for submission of bids at least 20 days after notification of final hearing determination is mailed.

[17:19-2.4 Time for submission of form DBC-36]

17:19-2.7 Bidding upon prequalification

[No person shall be qualified to bid on any contract who shall not have submitted form DBC-36 within a period of seven months preceding the date of opening of bids for such contract.]

(a) When a contractor has been assigned a single and aggregate rating, the contractor shall be qualified to bid on any project within the trade and dollar limitation assigned by the DBC and may bid for a period not exceeding seven months from the date of notice of prequalification. If, however, a re-rating has been issued during this period, the contractor shall be limited by this reclassification for the unexpired remainder of the seven month period.

(b) No bid will be accepted from any contractor unless the bidder shall have been qualified and assigned ratings at least 20 days before the date for submission of such bid.

(c) When a doubt arises as to whether a bid is within the contractor's prequalification limitations, the bid will be opened provisionally, and if it appears that the bid is in fact in excess of the contractor's rating limits as to dollar amounts or trade, the bid may be rejected.

17:19-2.[5]8 Rejection of bid upon subsequent development affecting bidder's responsibility

The director [shall have the right to] may reject any [bidder] bid and deny contract award, at any time prior to the actual award of a contract where there have been developments subsequent to the [classification] rating and qualification of such bidder, which in the opinion of the director, would substantially affect the [responsibility] prequalification of the bidder. Prior to taking any such action, the director shall notify the bidder and afford him an opportunity to present any additional information which might tend to substantiate the existing rating and qualification.

17:19-2.9 Award of projects exceeding the rating limits

In the event that a prequalified contractor submits proposals on two or more Division of Building and Construction projects and is the successful bidder on a combination of projects which together with the value of existing uncompleted public contract work would exceed his aggregate rating, he shall be notified that he is eligible for award of only that contract or combination of contracts which fall within his classification. Award of

contracts shall be made in order of date of receipt of bids until the total value of awarded contracts reaches the aggregate rating of the contractor.

17:19-2.10 Joint Venture rating

Two or more prospective bidders holding valid ratings from the Division of Building and Construction may file a request to form a Joint Venture for the purpose of submitting a proposal on a specific project. The Joint Venture Statement must be filed with the Bureau of Contractor Services of DBC at least five days prior to the date set for receipt of bids on the projects. The single rating applicable to the joint venture shall be the total of the individual single ratings of the joint venturers.

[17:19-2.6]17:19-2.11 Removal of bidder from approved list

If the director shall determine that a prospective bidder is unqualified to submit bids on public work, he shall so notify the prospective bidder [who may request in writing a hearing before the Director on such determination.] of his debarment, suspension or disqualification. In such circumstances, the provisions of N.J.A.C. 17:19-3 shall be followed.

[17:19-2.7 Form – Contractor's financial statement and experience questionnaire]

[This form is available from the Department of Treasury, State House, Trenton, New Jersey.]

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

**Recordkeeping Procedures
Receipt, Review and Maintenance of
Confidential Information**

Proposed New Rule: N.J.A.C. 19:40-3

Authorized By: Casino Control Commission, Walter N. Read, Chairman.

Authority: N.J.S.A. 5:12-63(c), 69 and 74(d), (e) and (f).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

David C. Missimer, Esq.
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN-208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-87.

The agency proposal follows:

Summary

The proposed rules concern the receipt, review and maintenance by the commission and the Division of Gaming Enforcement of all

confidential information which has been disclosed by an applicant, licensee or registrant as a condition of licensure or registration, or which has been obtained from any other source. To a great extent the proposed rules formally declare and express the present practices and policies of the commission and the division.

These rules are the direct result of the New Jersey Supreme Court's decision in *In re Martin*, 90 N.J. 295 (1982). This case involved a challenge to the constitutionality of certain sections of the Casino Control Act and certain license application forms of the commission. Rejecting these challenges, the Court held that the commission may constitutionally require disclosures of certain personal information as a precondition to licensure. The Court further held, however, that the commission may not require execution of the information release authorization, included as part of the commission's application forms, unless adequate safeguards are established to preserve the confidentiality of any information obtained as a result of its use. The Court concluded that these safeguards should be formalized through the promulgation of rules under the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. These rules are intended to comply with the Court's directives in this regard.

The rules address the following issues: determination of confidential status; access; retention; storage; copying; release and penalties for disclosure.

Social Impact

The proposed new rules will assure that information which is considered confidential is received, processed and maintained in a confidential manner. The formal declaration of safeguards and procedures should allay any fears of actual and would-be applicants, licensees and registrants that confidential information submitted as a condition of initial or continued licensure or registration would be improperly revealed. The proposed rules apply to all confidential information which is received by the commission and the division, and thus concern all persons and entities who must file such information to obtain or retain licensure and registration.

The proposed rules will standardize confidential recordkeeping procedures within both agencies.

Pursuant to the established records retention schedule, and the agreement between the State Records Storage Center and the commission, confidential information that is considered "inactive" may be transferred to the possession of the Center for storage. Controls and procedures are also being established for materials so transferred.

Economic Impact

The rules will require the commission and the division to incur certain minor administrative costs associated with the additional security procedures which have been developed (e.g., identification badges, security equipment). To the extent that staff time is directed toward new and specialized security procedures, additional costs will be incurred.

There will be no economic impact upon the general State budget because the additional minor administrative costs are ultimately recoverable from the casino industry and not from the General Fund of the State of New Jersey.

There will be no economic impact upon any other State agencies because these rules do not affect their operations. Confidential information that will be transferred to the Records Storage Center will be so transferred according to a previously agreed upon records retention schedule.

Full text of the proposed new rule follows.

SUBCHAPTER 3. CONFIDENTIAL INFORMATION

19:40-3.1 Definitions

The following words and terms, when used in this subchapter,

shall have the following meanings unless the context clearly indicates otherwise.

"Authorized personnel" means any member or employee of the commission or any employee or agent of the division.

"Confidential information" means any information or data, furnished to or obtained by the commission or division from any source, which is considered confidential pursuant to the provisions of N.J.S.A. 5:12-74(d) and (e), or which is otherwise confidential pursuant to applicable statutory provision, judicial decision or rule of court.

"Secure storage facility" means any area, room, furniture, equipment, machinery or other device used by the commission or division for the storage of confidential information, access to which is limited to authorized personnel at all times by locks, alarms, codes or other appropriate security precautions.

19:40-3.2 Determination of confidential status

(a) Except as provided by N.J.S.A. 5:12-74(h), all information and data furnished to or obtained by the commission or division which relates to the internal controls specified in N.J.S.A. 5:12-99(a), or to the earnings or revenue of any applicant, registrant or licensee, or which pertains to an applicant's criminal record, family or background, shall be presumed to be confidential and shall not be released or disclosed to any person except in accordance with the provisions of this subchapter.

(b) Any question concerning whether or not a specific item of information or data within the possession of the commission or division is deemed to be confidential information under N.J.S.A. 5:12-74(d) and (e) shall be submitted to the commission or its designee for determination.

19:40-3.3 Access

Except as otherwise provided in N.J.A.C. 19:40-3.4 and N.J.A.C. 19:40-3.8, access to confidential information within the possession of the commission or division shall be restricted to authorized personnel who require such information in the performance of their official duties.

19:40-3.4 State Records Storage Center: retention schedule; storage; destruction

(a) With the approval of the State Records Committee, the commission and division shall establish and maintain a records retention schedule for all confidential information within their possession.

(b) Confidential information considered to be inactive by the commission or division but required to be retained pursuant to the provisions of (a) above, may be transferred to the possession of the State Records Storage Center in accordance with N.J.S.A. 47:3-8.1 et seq., as implemented by N.J.A.C. 6:66, provided that:

1. The commission is satisfied that access to any confidential information stored with the State Records Storage Center shall be limited to employees of the Center and authorized personnel of the commission and division;

2. A log is maintained of all authorized personnel who are granted access to or who remove confidential information stored with the State Records Storage Center, which log shall include the information required by N.J.A.C. 19:40-3.6(b);

3. Any confidential information transferred to the State Records Storage Center is contained in transfer cartons, sealed and marked in such a manner so as to preclude the undetected examination of the confidential information contained therein by any person other than authorized personnel; and

4. The commission and division periodically inspect and review any such stored confidential information to assure that it has not been disclosed or removed in violation of N.J.S.A. 52:13D-25, N.J.S.A. 47:3-29 and the provisions of this subchapter.

(c) Any confidential information in the possession of the commission, division or State Records Storage Center shall be promptly destroyed in accordance with the provisions of the applicable records retention schedule required by (a) above.

19:40-3.5 Retention in secure storage facilities; access

(a) Confidential information which is not presently being utilized by authorized personnel shall be stored in secure storage facilities designated for such purpose by the commission or division. No one except authorized personnel may gain access to designated secure storage facilities except in accordance with the provisions of this subchapter.

(b) All commission and division offices in which secure storage facilities are located shall be protected from unauthorized intrusion at all times. Proper security precautions during business hours shall include a requirement that all visitors to such offices be required to identify themselves and wear a visitor pass in a conspicuous location. Proper security precautions during non-business hours shall include the use of alarm or security guard systems.

(c) Every secure storage facility shall be placed under the direct supervision and control of an appropriate section or unit supervisor who shall periodically review for their effectiveness all security procedures and precautions pertaining to the confidential information stored therein. Security procedures and precautions that are determined to be ineffective shall be immediately corrected.

(d) Confidential information may be stored in secure storage facilities on micrographics, hard copy (paper), magnetic media or any other suitable medium, provided adequate security measures are maintained to prevent unauthorized access to or use of such information.

1. A coded filing system shall be utilized whenever practicable to prevent unauthorized access to stored confidential information.

2. Access to confidential information stored on computer or magnetic media shall be restricted to authorized personnel who have obtained the required operating key, code manual or access code from the appropriate section or unit supervisor. Operating keys, code manuals and access codes shall be limited in number and shall be controlled by the appropriate section or unit supervisor.

19:40-3.6 Temporary custody by authorized personnel

(a) Authorized personnel shall not remove confidential information from designated secure storage facilities unless such removal is necessary to the fulfillment of their official commission or division duties. Confidential information which is not presently being utilized by authorized personnel shall be promptly returned to its secure storage facility.

(b) A record shall be maintained of all confidential information which is removed from secure storage facilities other than those which utilize computer or magnetic media. This record shall include:

1. The name of the person removing the information;
2. The name of the person for whom the information is being obtained;
3. The date of removal;
4. A description of the information removed or the number of the file which has been removed; and
5. The date the information is returned.

(c) Confidential information shall not be removed from the offices of the commission or division without the prior approval of an appropriate section or unit supervisor. Such approval shall only be granted where removal of the confidential information is necessary to the performance of the official duties of authorized personnel.

(d) The integrity of confidential information in the possession of authorized personnel shall be preserved at all times. It shall be the personal responsibility of any individual granted temporary custody of confidential information to insure that the information is not shown, released or disclosed to any unauthorized person or to any otherwise authorized person who does not require such information in the performance of their official duties. Confidential information temporarily stored outside designated secure storage facilities shall be maintained in a locked desk or filing cabinet, or protected by other appropriate security precautions.

19:40-3.7 Copies

A hard copy of confidential information stored on computer or magnetic media, or any other copy of confidential information within the possession of the commission or division, shall only be made where absolutely necessary to the administration of the act, or where an authorized release of the confidential information is made pursuant to the provisions of N.J.A.C. 19:40-3.8.

19:40-3.8 Release; notice

(a) Confidential information within the possession of the commission or division shall not be released or disclosed in whole or in part to any person, except:

1. In the course of the necessary administration of the act; or
2. Upon lawful order of a court of competent jurisdiction; or
3. With the approval of the Attorney General, to a duly authorized law enforcement agency; or
4. Upon presentation of proper identification, to the applicant, registrant or licensee who furnished the confidential information to the commission or division; or
5. Upon presentation of a duly executed and notarized release authorization by the applicant, registrant, or licensee who furnished the confidential information, to any person making a written request for specifically identified confidential information.

(b) If confidential information is released or otherwise disclosed to any person under any circumstances other than those identified in (a) 3 through (5) above, written notice of such release or disclosure shall be given to any applicant, registrant or licensee affected, unless such notice would otherwise imperil the integrity of casino operations in this State. To the extent known, the notice shall include:

1. The name and address of the person to whom the information was released or disclosed;
2. A description of the information released or disclosed; and
3. The date of the release or disclosure.

(c) Whenever possible, any such notice of confidential information to be released or disclosed shall be given prior to the release or disclosure.

19:40-3.9 Penalties

(a) Any direct or indirect willful disclosure of confidential information by authorized personnel of the commission under circumstances other than those identified in N.J.A.C. 19:40-3.8 shall be a violation of the commission's Code of Ethics and shall subject such person to the penalties provided by N.J.S.A. 52:13D-23(d). Such violations shall be heard by the Executive Commission on Ethical Standards in accordance with N.J.S.A. 52:13D-21(h).

(b) The unauthorized release or disclosure of confidential information may also be a violation of N.J.S.A. 52:13D-25 or N.J.S.A. 47:3-29.

(c) Any violation of the provisions of this subchapter by authorized personnel may result in appropriate disciplinary action by the commission or division.

(a)

CASINO CONTROL COMMISSION**Accounting and Internal Controls****Proposed Readoption: N.J.A.C. 19:45**

Authorized By: Casino Control Commission, Walter N. Read, Chairman.

Authority: N.J.S.A. 5:12-63(c), and (f), 5:12-69, 5:12-70(g), (j), (l), (m), (n); 5:12-99 and 5:12-101.

PROPOSALS**OTHER AGENCIES**

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Francis X. Fee, Director
Division of Financial Evaluation and Control
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-86.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order No. 66 (1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:45 concerning accounting and internal controls. These rules were originally filed with the Office of Administrative Law and became effective on May 25, 1978. The rules implement the applicable provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) concerning the commission's obligation to regulate and monitor: the fiscal affairs of licensees (Section 70(l)); the practice and procedures for negotiable transactions (Section 70(g)); a uniform standard of accountancy methods (Section 70(m)); financial reports (Section 70(n)); and the operations of casinos for the purposes stated in Section 63(f) of the Act.

In extending State regulation to the general area of accounting and internal controls, the commission initially sought the assistance of the accounting firm of Deloitte, Haskins and Sells. Members of this firm worked closely with commission staff and members of the Division of Gaming Enforcement of the Department of Law and Public Safety to devise a workable set of rules which would benefit the interests of the public, the industry and the commission. This cooperative effort included a review of the auditing standards promulgated by the American Institute of Certified Public Accountants, the financial disclosure requirements of the Securities and Exchange Commission, the relevant Nevada statutes and the regulations of the Nevada State Gaming Control Board. Controls and procedures used by other jurisdictions, including England, Tasmania, Canada, Italy and Monaco were also reviewed. This lengthy and exhaustive review culminated in the promulgation of N.J.A.C. 19:45.

Since the effective date (May 25, 1978) of the initial rules, professional members of both the commission staff and the Division of Gaming Enforcement have continually reviewed, monitored and assessed the merits and viability of the system in operation. This review has always included comments received from the industry or other interested persons, filed pursuant to Section 69(c) of the Act and the applicable provisions of the Administrative Procedure Act (N.J.S.A. 52:14B-1 et seq.). Indeed, such comments have often been the catalyst and inspiration for change. As a result of this review process, changes have been made to these rules when the commission found that they would be in the best interest of the public, casino operations and the proper administration of the Act. In effecting change, the commission has always been responsive to changing social and economic conditions, and has exercised its regulatory and review powers in a flexible manner. Because these rules are continually reviewed, they are presently proposed for readoption without any substantive or technical amendments.

The major purpose of these rules is to implement those provisions of the Act which require the commission to establish industry standards for accounting and internal controls in order to preserve the financial integrity of casino operations (see, e.g., N.J.S.A. 5:12-1(b)(6)). To accomplish this purpose, the rules create a

minimal system of accounting and internal controls which the industry must maintain and which the commission and division must monitor. This system includes standards and procedures designed to: prevent the misuse of funds; require the maintenance of a complete and accurate record of accounts and financial affairs; require the maintenance of appropriate security; require the retention of appropriate personnel; control the distribution and use of gaming chips; and generally, to control all financial procedures relating to the operations of gaming and the gaming industry.

Significantly, the standards and procedures created by these rules implement the provisions of Section 99 of the Act. This section of the Act requires all casino licensees, as a condition to the commencement or continuation of gaming operations, to establish systems of accounting and internal controls to comply with the standards established by the commission. The existence of these standards is therefore essential to the existence and continuation of casino gaming operations in this State.

It should be noted that the continuation of the rules also fulfills the public policy and legislative findings expressed in the underlying legislation (see, e.g., N.J.S.A. 5:12-1(b)(14)). To wit:

Confidence in casino gaming operations is eroded to the extent the State of New Jersey does not provide a regulatory framework for casino gaming that permits and promotes stability and continuity in casino gaming operations. (emphasis added)

These rules are absolutely essential to the maintenance of casino operations as required by the Casino Control Act. The failure to readopt these rules would require the State to reexamine the viability of the continued operation of casino gambling within the regulatory vacuum which would thereby be created.

Social Impact

The continuation of these rules will have positive social benefits for the public, the industry and the regulatory agencies which implement them.

An integral and essential element of the regulation and control of casino gaming by the State rests in the public confidence and trust in the credibility and integrity of the regulatory process and of casino operations (see N.J.S.A. 5:12-1(b)(6)). Through the controls provided by these rules, the public can be assured that State government is fulfilling its regulatory obligations under the Act in such a manner as to promote public confidence and trust. (see N.J.S.A. 5:12-1 and 70(g), (j), (l) and (m)). Thus, although these rules generally relate to the fiscal operations of the industry and therefore may not directly affect the public, the procedures they provide to protect against nefarious business practices produce a healthy social climate for the presence of casino gaming and respond to the public policy pronounced in the Act.

These rules benefit the industry because the controls bring uniformity and continuity to the system of accounting and internal controls which they establish, and provide procedures for the safeguarding of a casino's assets. Without such procedures, attempts at fraud, embezzlement or other such negative business practices would increase. Thus, these rules provide and foster a healthy business climate for the industry as well as for the public. To the extent that these procedures continue to foster this climate it can be assumed that the industry will continue to grow, and the concomitant social benefits to be derived from its prosperity by citizens of Atlantic City and the State will also increase. In this regard, there is a direct relation between the size and prosperity of the industry and the amount of economic and social investment in the State under the Act (see N.J.S.A. 5:12-144(b)).

Economic Impact

The casino industry benefits by the continuation of these rules because they enable a casino to plan and maintain its fiscal operations in a logical, systematic way. This enables the industry to avoid the costs associated with a substantial overhaul of its fiscal systems and procedures. The rules impose a certain financial

burden on the casinos which are obligated to institute these systems, including the hiring of personnel to maintain them. To the extent that minimal requirements may be modified to reduce these costs of operation and enforcement to lessen the financial burden on the industry, changes have been and will continue to be made.

These rules provide an efficient procedure for implementing the provisions of the Act which require the commission and division to control and monitor the fiscal affairs of the casino industry. Without these rules and the standardized, efficient procedures that they provide, the State would incur a significantly higher cost for the enforcement of the relevant provisions of the Act than is presently the case. Although these rules require the expenditure of time by commission and division personnel to assure proper implementation and compliance, this cost is far less to the State and the industry than that which would be incurred were a less efficient or no system to be employed. Perhaps more than any other rules of the commission, this chapter has been the subject of review and amendment in response to changing social and economic conditions and public and industry comment. The clear result of this scrutiny has been to achieve an increasingly cost-efficient procedure.

Full text of the rules proposed for re-adoption appear in the New Jersey Administrative Code, as supplemented by the New Jersey Register.

(a)

CASINO CONTROL COMMISSION

Gaming Equipment

Slot Machine Purchase: The 50 Percent Rule

Rule Pre-Proposal: N.J.A.C. 19:46-1.32

Authorized By: Casino Control Commission, Walter N. Read, Chairman.
Authority: N.J.S.A. 5:12-66, 70(i), 72 and 52:14B-4(e) as implemented by N.J.A.C. 1:30-3.2.

A **public hearing** concerning this pre-proposal will be held on Wednesday, March 2, 1983 (and, if necessary, on Thursday, March 3, 1983) at 10:00 A.M. at:

Casino Control Commission
Atlantic City Commission Office
Public Meeting Room, Second Floor
Tennessee and Boardwalk
Atlantic City, NJ 08401

Anyone interested in presenting testimony at the hearing(s) should submit a synopsis of their statement, including an estimate of the time needed for presentation, by February 28, 1983. This material should be submitted to:

Steve Crist, Applications Analyst
Licensing Division
Arcade Building
Atlantic City, NJ 08401

Additionally, on the day of the hearing participants may give the Commission six copies of their written statement.

Interested persons may submit in writing, data, views or arguments relevant to this pre-proposal on or before March 24, 1983 to:

Michael A. Santaniello
Deputy Director, Operations
Division of Financial Evaluation & Control
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, NJ 08625

This is a notice of pre-proposal for a rule (see N.J.A.C. 1:30-3.2). Any rule concerning the subject of this pre-proposal must still comply with the rulemaking provisions of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as implemented by the Office of Administrative Law's Rules for Agency Rulemaking, N.J.A.C. 1:30.

This pre-proposal is known as PPR 1983-1.

The agency pre-proposal follows:

Take notice that the Casino Control Commission will conduct a hearing concerning the "50 Percent Rule" (N.J.A.C. 19:46-1.32). This rule presently prohibits licensed casinos from acquiring more than 50 percent of their slot machines from any one manufacturer.

Anticipated areas of discussion include reasons for the retention, amendment or repeal of the rule.

This notice of pre-proposal and hearing has been previously publicized so as to comply with the provisions of N.J.A.C. 1:30-3.3(b)2. A notice of Petition for Rulemaking was published in the October 4, 1982 issue of the New Jersey Register at 14 N.J.R. 1103(d). The Commission has individually notified the casinos by letter of the proposed action.

(b)

CASINO CONTROL COMMISSION

Rules of the Games

Craps; Point Throw

Proposed Amendments: N.J.A.C. 19:47-1.10

Authorized By: Casino Control Commission, Walter N. Read, Chairman.
Authority: N.J.S.A. 5:12-63(c), 5:12-69(a), 5:12-70(f).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

Michael A. Santaniello
Deputy Director, Operations
Division of Financial Evaluation & Control
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, NJ 08625

The Casino Control Commission thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1983-88.

The agency proposal follows:

Summary

The proposed amendment is an addition to N.J.A.C. 19:47-1.10. The proposed amendment clarifies which side of a "cocked" die is to be considered uppermost in the event that the disc does not lay flat after a throw.

PROPOSALS

OTHER AGENCIES

Social Impact

The proposed amendment is expected to greatly reduce the number of disputes, between casino personnel and casino patrons, as to which side of a cocked die should be considered uppermost. By reducing these disputes, the proposed amendment may provide a more enjoyable game to patrons and lessen the number of formal complaints filed with the Commission.

Economic Impact

The casinos may experience a slight economic benefit. The reduction of the number of disputes at the table may allow for more decision rolls per hour thus increasing the casino win.

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

19:47-1.10 Point throw[n]; settlement of wagers

(a) When the dice come to rest from a valid throw, the Stickman shall at once call out the sum of the numbers on the high or uppermost sides of the two dice. Only one face on each die shall be considered skyward.

1. In the event either or both of the dice do not land flat on the table (i.e., one edge of the die is resting cocked on a stack of chips), the side directly opposite the side that is resting on the chips or other object shall be considered uppermost and skyward. If more than one side of a die is resting on a stack of chips or other object, the roll shall be void and the dice shall be re-thrown.

2. In the event of a dispute as to which face is uppermost, the Boxman shall have discretion to determine which face is uppermost or to order the throw be void and the dice be re-thrown.

(b) (No change.)

RULE ADOPTIONS

EDUCATION

(a)

STATE BOARD OF EDUCATION

Teacher Education and Academic Credentials Fees for Certificates and Transcript Evaluation

Adopted Amendment: N.J.A.C. 6:11-3.3

Proposed: November 1, 1982 at 14 N.J.R. 1188(b).
Adopted: January 5, 1983 by State Board of Education, Saul Cooperman, Secretary.
Filed: February 3, 1983 as R.1983 d.40, with **substantive changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 18A:4-15 and 18A:6-38.

Effective Date: February 22, 1983.
Expiration Date pursuant to Executive Order No. 66 (1978): January 1, 1986.

Summary of Public Comments and Agency Responses:

One professional association questioned the need to raise the fee and requested that proper notification be made prior to raising a fee. The Department responded that the change was to align the New Jersey Administrative Code with the governing statute, N.J.S.A. 18A:6-38, and that the State Board of Education will not adopt any resolution for fee change until 30 days after introduction.

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

6:11-3.3 State Board of Education responsible for rules; fees required

(a) The State Board of Education may make and enforce rules and regulations for the granting of appropriate certificates of licenses to teach or to administer, direct, or supervise, the teaching, instruction or educational guidance of pupils in public schools operated by boards of education. For each certificate, a fee of **not less than \$20.00 shall be charged; said fee shall be subject to change from time to time by formal resolution of the State Board. *The resolution cannot be adopted less than 30 days after it is introduced.***

(b) Rules for fees for transcript evaluation include the following:

1. A request for evaluation of credentials for the purpose of obtaining information concerning qualification for issuance of any particular certificate shall be accompanied by a fee of **not less than \$10.00 for each certificate to be considered; said fee shall be subject to change from time to time by formal resolution of the State Board *[*]* * . The resolution cannot be adopted less than 30 days after it is introduced.***

2. A formal application for certification shall be accompanied by a fee of **not less than \$20.00 for each certificate requested; said fee shall be subject to change from time to time by formal resolution of the State Board *[*]* * . The resolution cannot be adopted less than 30 days after it is introduced.***

3. In the case of persons who file a formal application for certification and who are found not to meet certification requirements, a fee of **not less than \$10.00 shall be deducted from each separate refund to that person; said fee shall be subject to change from time to time by formal resolution of the State Board. *The resolution cannot be adopted less than 30 days after it is introduced.***

(c) The State Board may establish a fee schedule for services related to the issuance of certificates, including but not limited to fees charged for a duplicate certificate and for renewal of a substandard certificate; said fee schedule shall be subject to change from time to time by formal resolution of the State Board. ***The resolution cannot be adopted less than 30 days after it is introduced.***

HEALTH

(b)

CONSUMER HEALTH SERVICES

Permit to Obtain Nitrous Oxide Permit Requirements for Person Using Nitrous Oxide

Adopted New Rule: N.J.A.C. 8:21-3.25

Proposed: November 1, 1982 at 14 N.J.R. 1190(a).
Adopted: February 4, 1983 by Allen N. Koplin, M.D., M.P.H., Acting State Commissioner of Health.
Filed: February 4, 1983 as R.1983 d.41, with **technical and language changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 24:2-1.

Effective Date: February 22, 1983.
Expiration Date pursuant to Executive Order No. 66 (1978): March 30, 1986.

Summary of Public Comments and Agency Responses:

1. COMMENTS:

Comments were received from Burlington County Memorial Hospital, CPC North American Co., AGL Welding Supply, Inc., and New Jersey Dental Association. All comments asked to list in the regulation those persons or firms specifically exempted by the law, and also to remove the necessity for issuing a permit each time nitrous oxide was to be sold.

2. RESPONSE:

The Department responded in all cases that the two concerns would be addressed in the final regulation upon adoption. The first

ADOPTIONS

TREASURY-GENERAL

would add clarity to those required to obtain permits and those who are exempted. The second was accomplished by amended language in the final signed bill which differed from the proposed legislative version which required a permit for each purchase.

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

8:21-3.25 Permit for nitrous oxide

(a) Every person or firm*, **except a duly licensed physician, dentist, veterinarian, nurse, hospital, sanitarium or other medical institution, or a resident physician or intern of a hospital, sanitarium or other medical institution,*** desiring to use nitrous oxide shall request a permit from the Department of Health. Such permit shall include but not be limited to:

1.-8. (No change from proposal.)

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

(e) A permit shall be issued for *[each sale or purchase of nitrous oxide]* ***a period of two years***.

TREASURY-GENERAL

(a)

DIVISION OF PENSIONS

Administrative Procedures Bankruptcy and Subsequent Loans

Adopted New Rule: N.J.A.C. 17:1-12.3

Proposed: December 20, 1982 at 14 N.J.R. 1447(b).

Adopted: January 25, 1983 by William J. Joseph, Director,
Division of Pensions.

Filed: February 3, 1983 as R.1983 d.39, **without
change.**

Authority: N.J.S.A. 52:18A-96.

Effective Date: February 22, 1983.

Expiration Date pursuant to Executive Order No. 66 (1978):
May 15, 1983.

**Summary of Public Comments and Agency Responses:
No comments received.**

MISCELLANEOUS NOTICES

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

Bulk Commodities Application

Public Notice

Take notice that Clifford W. Snedeker, Director, Division of Motor Vehicles pursuant to the authority of N.J.S.A. 39:5-E.11, hereby lists the names and addresses of applicants who have filed an application for a common carrier's certificate of public convenience and necessity and/or a contract carrier permit to engage in the business of transporting bulk commodities in intrastate commerce.

COMMON CARRIER
(NON-GRANDFATHER)

Ronnie Guerrieri Trucking
RD 3 1832 10th Avenue
Toms River, NJ 08757

CONTRACT CARRIER
(NON-GRANDFATHER)

Louis Roerig
RD 1
Pittstown, NJ 08867

Any or all the above applications may be inspected in full by interested parties at the office of the Division of Motor Vehicles, Bureau of Motor Carriers, 25 S. Montgomery Street, Trenton, New Jersey 08666, on business days between 9:00 A.M. and 4:00 P.M.

Protests in writing and verified under oath may be presented by interested parties to the Director of Motor Vehicles within 20 days following the publication date of an application.

EMERGENCY

ADOPTIONS

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program New Rules and Amendments Required by the Omnibus Budget Reconciliation Act of 1982 and the Food Stamp and Commodity Distribution Amendments of 1981

**Adopted Emergency New Rule and Concurrent
Proposal: N.J.A.C. 10:87-2.38, 7.18 and
12.7**

**Adopted Emergency Amendment and
Concurrent Proposal: N.J.A.C. 10:87-2.2,
2.3, 2.21, 2.32, 2.34, 2.35, 3.23, 3.24, 4.3,
4.8, 5.5, 5.10, 6.2, 6.3, 6.15, 6.16, 6.17,
6.18, 12.5 and 12.6**

Emergency New Rule and Amendment Adopted: January 26, 1983 by George J. Albanese, Commissioner, Department of Human Services.

Gubernatorial Approval (see: N.J.S.A. 52:14B-4(c)): January 31, 1983.

Emergency New Rule and Amendment Filed: January 31, 1983 as R.1983 d.38.

Authority: N.J.S.A. 30:4B-2, the Omnibus Budget Reconciliation Act of 1982 (P.L. 97-253), the Food Stamp and Commodity Distribution Amendments of 1981 (P.L. 97-98, Title 13), 47 FR 53309 issued November 26, 1982, 47 FR 53828 issued November 30, 1982, 47 FR 55463 issued December 10, 1982, 47 FR 55903 issued December 14, 1982 the 47 FR 57666 issued December 28, 1982.

Emergency New Rule and Amendment Effective Date: January 31, 1983.

Emergency New Rule and Amendment Operative Date: February 1, 1983.

Emergency New Rule and Amendment Expiration Date: April 1, 1983.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 24, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

G. Thomas Riti, Director
Division of Public Welfare
CN 716
Trenton, NJ 08625

This new rule and amendment was adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by

N.J.A.C. 1:30-4.4). The provisions of this emergency new rule and amendment are being proposed concurrently for re-adoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The re-adopted rule becomes effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).

This proposal is known as PRN 1983-89.

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Human Services is mandated by Federal law and regulations to implement the following new rules and amendments.

The Food Stamp Program emergency rule, operative January 1, 1983 (see 15 N.J.R. 97(a)), added language which clarified "elderly" as including persons becoming 60 years of age in the month of application and expanded the definition of "disabled" to include persons receiving certain Supplemental Security Income, disability or blindness payments under other Titles of the Social Security Act in addition to blindness payments under other Titles of the Social Security Act in addition to Title II. Under existing regulations elderly and disabled individuals meeting these requirements receive special consideration in the areas of household definition, income eligibility, and income deductions. This definition of disabled persons excluded disabled recipients of Veteran's benefits. Federal regulations at 47 FR 55903 (issued December 14, 1982) require that, effective February 1, 1983, the definition of "elderly or disabled" include disabled veterans and their disabled surviving spouses and children, thus entitling this group to the special considerations mentioned above. Therefore, the new rule at N.J.A.C. 10:87-2.38 specifically defines who may be considered elderly or disabled under the Social Security Act and expands the definition of disabled to include who may be considered a disabled veteran, surviving spouse, or surviving child for Food Stamp purposes.

The existing definition of elderly or disabled as defined in N.J.A.C. 10:87-2.2, 2.3, 5.10 and 6.15 (the full text of which can be found at 15 N.J.R. 97(a)) has been amended to read "elderly or disabled as defined in N.J.A.C. 10:87-2.38" in order to properly reference the new rule which expands the definition of disabled.

N.J.A.C. 10:87-2.2 has been amended to provide that elderly individuals (and their spouses) who are unable to purchase and prepare meals because they suffer from disabilities considered permanent under the Social Security Act or some other permanent physical or mental nondisease-related disabilities may qualify as separate households even if living with others. This exception is limited to cases in which the income of the individuals with whom the elderly, disabled person(s) reside does not exceed 165 percent of the poverty level as set forth in the rule at N.J.A.C. 10:87-12.7 (Table VII). For purposes of clarification, also included is a definition of the term "spouse" which previously appeared at N.J.A.C. 10:87-2.3. This regulation also amends the rule regarding separate household status to provide that siblings living together must also be considered one household unless at least one sibling is elderly or disabled.

N.J.A.C. 10:87-2.3 has been restructured for the purpose of clarity. In addition, language has been revised to state that boarder status shall not be extended to the same individuals who do not qualify for nonhousehold member status or separate household status as described in N.J.A.C. 10:87-2.2. Amendments to the regulation on disqualified individuals provide that an individual may be disqualified for being an ineligible alien and clarify that the income and

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resources of disqualified individuals, including individuals disqualified as ineligible aliens, shall be counted in determining the eligibility and benefit level of any remaining household members.

At N.J.A.C. 10:87-2.21 (the current text can be found at 15 N.J.R. 97(a)) language has been added pertaining to verification requirements for household composition. Specifically, individuals claiming separate household status shall be responsible for proving they are a separate household. Elderly individuals claiming separate household status shall be responsible for obtaining the cooperation of individuals with whom they reside in providing the necessary income information and for providing a physician's statement that they are unable to purchase and prepare their own meals. Additionally, any surviving spouse or child of a veteran claiming a permanent disability that is questionable (not apparent) shall be responsible for providing a statement from a physician or licensed psychologist which substantiates the claim of disability.

Amendments to N.J.A.C. 10:87-2.32, 2.34, 2.35, 6.16, 6.17, and 6.18 revise regulations or expedited service and destitute households. These changes impose a maximum allowable limit of \$100.00 in liquid resources for households entitled to expedited service and limit expedited service to households with less than \$150.00 in gross monthly income, or to destitute migrant or seasonal farmworker households. The destitute provisions are limited solely to migrant or seasonal farmworker households. Expedited service is redefined as providing food stamp benefits no later than five calendar days from the application date instead of the current time frame of two to three working days. The expedited service verification procedure paragraph has been restructured for clarity. Except for the new emphasis placed on verification of liquid resources, other verification requirements in current procedures for expedited service remain basically unchanged.

Amendments to N.J.A.C. 10:87-3.23 limited participation of students with dependents to those students with dependent children under the age of six or with dependent children age six, but under age 12, for whom adequate child care is not available.

At N.J.A.C. 10:87-3.24 existing regulations require that a household participating or applying for participation in the Food Stamp Program provide the county welfare agency with the Social Security number for each household member 18 years or older and each child under 18 who receives countable income. The revised regulation requires that, as a condition of eligibility, the household must provide the county welfare agency with the Social Security number (or apply for one prior to certification) for every household member regardless of age. If individuals have more than one Social Security number, all such numbers shall be provided. Participation while waiting for the Social Security Administration to issue a number is limited to 30 days from the first day of the first full month of participation. If a household member can show good cause why a Social Security number has not been provided in a timely manner, he or she shall be allowed to participate for an additional 30 days.

The resource provisions pertaining to certain retirement plans at N.J.A.C. 10:87-4.3 and 4.8 have been revised. The current resource exclusion for Individual Retirement Accounts (IRAs) and Keogh plans is no longer applicable. Funds held in IRAs and in Keogh plans which do not involve the household member in a contractual relationship with individuals who are nonhousehold members shall be counted as liquid resources. The total cash value of the account or plan minus the amount of the penalty, if any, assessed for the early withdrawal of the entire amount of the plan or account, shall be counted toward the household's resource limit.

At N.J.A.C. 10:87-4.3 and 5.5 references are made to deeming of an alien sponsor's resources and income and refer the reader to the new rule at N.J.A.C. 10:87-7.18 for regulations regarding the deeming of income and resources.

Amendments at N.J.A.C. 10:87-6.2 and 6.3 redefine "initial month" as the first month for which a household is certified for participation in the Food Stamp Program. For ongoing cases, an "initial month" is the first month for which the household is certified for participation following any period of time during which the

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household was not certified. This amendment also requires that initial month's benefits resulting in an allotment of less than \$10.00 or prorated to less than \$10.00 shall not be issued. The current \$10.00 minimum benefit for one and two-person households shall not apply to initial month's benefits.

Under existing regulations, two different income eligibility standards are used. For households with elderly or disabled members, a net income standard is used to determine eligibility. For all other households, a gross income standard is used to determine eligibility. Effective February 1, 1983 households with no elderly or disabled members are subject to both the gross and net income eligibility tests. To be eligible, these households must meet both the gross and net income standards. This amendment revises regulations at N.J.A.C. 10:87-6.15. Additional language has also been added to clarify the determination of gross monthly income.

The new rule at N.J.A.C. 10:87-7.18 requires that a portion of the income and resources of an alien's sponsor and the sponsor's spouse (if living with the sponsor) be deemed as unearned income and resources of the alien. The amount of deemed income and resources are to be considered in determining the eligibility and benefit level of the household of which the alien is a member. The procedure would be used for a period of three years from the date the alien entered the United States as a lawful permanent resident and shall apply to those sponsored aliens on behalf of whom the sponsor signed an affidavit of support or similar statement (as a condition of the alien's entry into the United States as a lawful permanent resident) on or after February 1, 1983. The rule details procedures for deeming of the sponsor's income and resources, responsibilities of the sponsored alien, verification requirements, overissuances due to incorrect sponsor information, collecting claims against sponsors and against alien households.

The food stamp allotment proration rule at N.J.A.C. 10:87-12.5 is amended to remove the proration multiplication factors and include the food stamp proration formula. This change is technical in nature and aligns a manual computation with current computer system calculation. This change does not affect the product of this calculation. However, new Federal regulations require that after using the formula to determine the prorated allotment, the product be rounded down to the nearest lower whole dollar if it ends in one through ninety-nine cents. This downward rounding amends current rounding procedures.

Additionally, the formula for proration (N.J.A.C. 10:87-12.5) and the formula for determining monthly coupon allotment (N.J.A.C. 10:87-12.6) have been amended to reflect the elimination of issuances of less than \$10.00 for initial month's benefits.

Social Impact

Amendments to the household definition and definition of disabled allow certain individuals, previously denied eligibility, to participate in the Food Stamp Program and may increase allotment levels to such households. The amendments to the household definition expand that definition to provide that certain elderly and disabled individuals may be considered a separate household, even if living with others. The amended rule affords special consideration to elderly and disabled individuals who are unable to purchase and prepare meals because of a disability so that such persons may, whenever possible, remain in private homes in the community rather than be institutionalized.

The previous definition of elderly and disabled persons excluded disabled recipients of Veteran's benefits from special consideration. To correct the resulting inequity, the expanded definition of elderly or disabled includes disabled veterans and their disabled surviving spouses and children. These amendments to household definition and definition of disabled provide such persons with special income and deduction considerations, thus increasing program participation and benefit levels for this population.

Revised regulations simplify tests for expedited service, limit its availability to persons who have no access to resources and who have limited income to meet their immediate food needs, and ex-

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tend the expedited service timeframe to five calendar days. These rules simplify administration of expedited service procedures while still protecting applicants by requiring the county welfare agency to complete the expedited service process within five days.

The requirement that Social Security numbers be provided for all household members may result in disqualification of individual household members if a delay in obtaining a number exceeds 60 days. However, significant noncompliance with the requirement is not expected as the Social Security number application process is not unduly burdensome.

Student eligibility criteria further restricts food stamp participation by post-secondary school students. Previous regulations authorized eligibility for students with a dependent spouse or school age children. Participation of students with dependents is now limited to those students with dependent children under age six or between age six and 12 for whom adequate child care is not available. However, the rule is revised to include eligibility for students receiving benefits from the Aid to Families with Dependent Children (AFDC) program.

Changes in resource rules require that Individual Retirement Accounts and certain Keogh plans be counted as available resources and as such, be considered in the determination of resource eligibility. Some households maintaining such funds may be found ineligible for program benefits dependent on the amount of other countable resources.

As a result of revisions to the methods of determining income eligibility and benefit levels, some decrease in program participation and level of benefits is anticipated. Specifically, use of the gross and net income eligibility tests for all households not containing an elderly or disabled member will render some households ineligible. Due to the elimination of issuance of initial month's benefits of less than \$10.00, dependent on the date of application filing and the amount of countable household income, certain households will receive no food stamp benefits in the initial month of eligibility.

The rule on sponsored aliens requires a portion of the gross income and resources of an alien's sponsor be deemed available as unearned income and resources of the sponsored alien in determining eligibility and allotment level of certain sponsored aliens. This procedure will be used for a period of three years from the date the alien entered the United States as a lawful permanent resident. This rule will reduce allotment levels to sponsored aliens and preclude program eligibility for others.

Overall, these federally mandated changes affect a moderate number of households and should serve to reduce program costs and abuse.

Economic Impact

The amendments regarding household definition and definition of disabled result in a slight increase in program participation and level of benefits for certain elderly and disabled persons. Any increase in Food Stamp benefit costs will be fully met by the Federal government.

The rule requiring provision of Social Security numbers for all household members may result in a loss of benefits for some individuals, contingent upon noncompliance or any processing delays by the Social Security Administration. In the long term, this requirement will facilitate computer matches and also reduce the potential for benefit duplication, thus reducing program expenditures.

Other federally mandated changes restricting expedited service, student eligibility criteria and participation of sponsored aliens as well as changes in resource provisions, income eligibility criteria, determination of benefits and elimination of issuance of less than \$10.00 in initial months are intended to reduce program costs. However, any reduction in benefit levels is contingent on specific household circumstances. Therefore, it is not possible to determine the overall loss of benefits. It is anticipated that these changes will not impact significantly on administrative costs of State and county welfare agencies.

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

10:87-2.2 Household defined

(a) A household may be composed of any of the following individuals or groups of individuals:

1.-3. (No change.)

4. Elderly and disabled individual living with others: An individual who is 60 years of age or older (and the spouse of such individual) living with others who is unable to purchase and prepare meals because he or she suffers from a disability considered permanent under the Social Security Act or suffers from some other physical or mental nondisease-related, severe, permanent disability (see definition of elderly or disabled in N.J.A.C. 10:87-2.38 and verification requirements in N.J.A.C. 10:87-2.21(a)8ii). However, the gross monthly income of the household with which the individual resides cannot exceed the gross monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7. This income determination shall be made in accordance with the following procedures:

i. The gross monthly income of the others with whom the elderly, disabled person resides shall be determined as if they were applying for participation in the program. The income of the elderly, disabled person and his or her spouse is not included in th calculation. The elderly, disabled person and his or her spouse are not to be considered household members for this purpose;

ii. The gross monthly income of the others shall then be compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.7 (Appendix A, Table VII) to determine if the income is within the prescribed limit. The elderly, disabled person and his or her spouse would not be considered as household members for this comparison.

(b) (No change.)

(c) In no event shall nonhousehold member status or separate household status be granted to:

1. [Either parents or natural or adoptive children or stepchildren who live together unless at least one parent is 60 years of age or older (or becomes 60 in the month of application) or receives Supplemental Security Income (SSI) benefits under Title XVI or disability or blindness benefits under Titles I, II, X, XIV or XVI of the Social Security Act] **Parents living with their natural, adopted, or stepchildren or such children living with such parents, unless at least one parent is elderly or disabled as defined in N.J.A.C. 10:87-2.38;**

2. Children under 18 years of age under the parental control of an adult member of the household[:]; [or]

3. A spouse of a member of the household. **For the purposes of this program the term "spouse" shall include persons recognized by applicable State law as such and persons representing themselves as husband and wife to the community, relatives, friends, neighbors or trades people; or**

4. Siblings (natural, adopted, half or stepbrothers and sisters), unless at least one sibling is elderly or disabled as defined in N.J.A.C. 10:87-2.38.

10:87-2.3 Nonhousehold members [and], boarders and disqualified individuals

(a) Nonhousehold members: The [following] individuals in **(a)1 and 2 below** residing with a household shall not be considered household members in determining a household's eligibility or allotment. [Nonhousehold members who are otherwise eligible may participate in the program as separate households.]

[1. Roomers: Individuals to whom a household furnishes lodging, but not meals, for compensation.

2. Live-in-attendants: Individuals who reside in a household to provide medical, housekeeping, child care or other similar personal services.

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3. Ineligible aliens: Individuals who do not meet the citizenship or eligible alien status criteria in N.J.A.C. 10:87-3.5.

4. Ineligible student of an institution of higher education: Persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria in N.J.A.C. 10:87-3.23(a).

5. Disqualified individuals: Individuals disqualified for fraud (see N.J.A.C. 10:87-11.1) or for failure to comply in providing or applying for a Social Security number (see N.J.A.C. 10:87-3.23(a)3).

6. Other individuals: Other individuals who share living quarters with the household but who do not customarily purchase and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.]

1. The following nonhousehold members who are otherwise eligible may participate in the program as separate households.

i. **Roomers: Individuals to whom a household furnishes lodging, but not meals, for compensation.**

ii. **Live-in-attendants: Individuals who reside in a household to provide medical, housekeeping, child care or other similar personal services.**

iii. **Other individuals: Other individuals who share living quarters with the household but who do not customarily purchase and prepare meals with the household. For example, if the applicant household shares living quarters with another family to save on rent but does not purchase and prepare food together with that family, the members of the other family are not members of the applicant household.**

2. The following nonhousehold members are ineligible to participate in the program as separate households.

i. **Ineligible aliens: Individuals who do not meet the citizenship or eligible alien status criteria in N.J.A.C. 10:87-3.5 through 3.7 such as, but not limited to, alien visitors, tourists, diplomats, and students, as described in N.J.A.C. 10:87-3.9.**

ii. **Ineligible student of an institution of higher education: Persons enrolled in an institution of higher education who are ineligible because they fail to meet the eligibility criteria in N.J.A.C. 10:87-3.23(a).**

(b) **Boarders: Boarders are defined as individuals or groups of individuals residing with a household and paying reasonable compensation to the household for lodging and meals.**

1. (No change.)

2. [Spouse, children, or parents: Boarder status shall not be extended to a spouse of a member of the household or to children under 18 years of age if under parental control of an adult member of the household, or to either parents or natural or adoptive children or stepchildren who live together unless at least one parent is 60 years of age or older (or becomes 60 in the month of application), or receives Supplemental Security Income (SSI) benefits under Title XVI, or disability or blindness benefits under Title I, II, X, XIV or XVI of the Social Security Act.] **Parents, children, spouse or sibling: In no event shall boarder status be granted to those individuals or groups of individuals described in N.J.A.C. 10:87-2.2(c).**

3.-5. (No change.)

(c) **Disqualified individuals: Individual household members disqualified for fraud (see N.J.A.C. 10:87-11.1) or for failure to obtain or refusal to provide a Social Security number (see N.J.A.C. 10:87-3.24(a)3) or for being an ineligible alien (see N.J.A.C. 10:87-3.8 for listing of eligible aliens). During the period of time that such household members are ineligible, the income and resources of such individuals shall be counted in accordance with N.J.A.C. 10:87-7.14 when determining the eligibility and benefit level of any remaining household members.**

10:87-2.21 Mandatory verification

(a) The CWA shall verify the following information prior to certification for households initially applying for food stamp benefits.

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1.-7. (No change.)

8. Verification of questionable information: With the exception of liquid resources and loans, the CWA shall verify all other factors of eligibility prior to certification only if they are questionable and affect the household's eligibility or benefit level. Procedures for verifying loans and liquid resources are described in paragraph 8 of this subsection below.

i. (No change.)

ii. Household composition: The CWA shall verify any factors affecting the composition of a household if questionable[, such as household size and boarder status. However, due to the difficulty in verifying whether or not a group of individuals customarily purchases and prepares meals together and, therefore, constitute a household, the CWA shall generally accept the household's statement regarding food preparation and purchase].

(1) Individuals who wish to be a separate household from those with whom they reside shall be responsible for proving a claim that they are a separate household to the satisfaction of the CWA.

(2) Elderly and disabled individuals as described in N.J.A.C. 10:87-2.2(a)4 who wish to be a separate household, shall be responsible for obtaining the cooperation of the individuals with whom they reside in providing necessary income information to the CWA, and for providing (at the CWA's request) a physician's statement that they cannot purchase and prepare their own meals.

(3) For any surviving spouse or child of a veteran claiming a permanent disability that is questionable (not apparent) to the CWA, under N.J.A.C. 10:87-2.38(a)7 of the definition of "elderly or disabled member", the household shall provide (at the CWA's request) a statement from a physician or licensed or certified psychologist which substantiates the applicant's claim of disability.

iii.-v. (No change.)

9. (No change.)

10:87-2.32 Expedited service

[If otherwise eligible, households with zero net monthly income (as computed in N.J.A.C. 10:87-6.1) and households who are destitute (as defined in N.J.A.C. 10:87-6.16) are entitled to expedited service.]

(a) The following households are entitled to expedited service provided that the household's liquid resources (for example, cash on hand, checking or savings accounts, savings certificates and lump sum payments as described in N.J.A.C. 10:87-5.9(a)10) do not exceed \$100.00:

1. Households with less than \$150.00 in monthly gross income, as computed in N.J.A.C. 10:87-6.15; or

2. Migrant or seasonal farmworker households who are destitute as defined in N.J.A.C. 10:87-6.16.

10:87-2.34 Processing standards

(a) Except as specified in subsections (b), (c) and (e) below, for households entitled to expedited service, [an ATP shall be mailed no later than the close of business of the second working day following the date the application was filed or, if the household desires, the ATP shall be available for the household or its authorized representative to pick up no later than the start of business of the third working day] **the ATP shall be mailed or be available for pickup by the household no later than the close of business on the fifth calendar day following the [date] day the application was filed.**

(b) (No change.)

(c) Out-of-office interviews: If a household is entitled to expedited service and is also entitled to a waiver of office interview (see N.J.A.C. 10:87-2.19(a)4), the CWA shall conduct the interview (unless the household cannot be reached) [by the first working day following the date the application was filed] **and complete the application process within the expedited service standards. The first day of this count is the calendar day following application filing.**

1. Incomplete applications: If the application is not complete, and [a telephone interview is conducted, the CWA shall, at a minimum, be required to complete the application for the household during such interview and mail the complete application the same day to the household for signature] **the CWA conducts a telephone interview and must mail the application to the household for signature, the mailing time involved will not be counted toward the expedited service standards. Mailing time shall only include the days the application is in the mail to and from the household and the days the application is in the household's possession pending signature and mailing.**

[2. Processing standards: The CWA shall act on the application for these households within the standards specified in subsections (a) and (b) of this section **except** that the processing standards shall be calculated from the date a completed and signed application is received rather than the date the application was filed.]

(d)-(f) (No change.)

10:87-2.35 Special procedures for expediting service

(a) The CWA shall use the following procedure when expediting certification and issuance.

[1. Postponement of verification: To expedite the certification process, the CWA shall postpone the verification required in N.J.A.C. 10:87-2.21. However, the applicant's identity and household's residency shall be verified through a collateral contact or readily available documentary evidence. Examples of acceptable documentary evidence which the household may provide, include but are not limited to, a driver's license, work or school I.D. card, voter registration card, or birth certificate. All reasonable efforts shall be made to verify the household's income statements, including a statement that the household has no income, within the expedited processing standards, through a collateral contact or readily available documentary evidence. However, benefits shall not be delayed beyond the delivery standards described in N.J.A.C. 10:87-2.34(c) solely because income has not been verified. The CWA may also verify factors other than identity, residency, and income provided that such verification can be accomplished within expedited processing standards. CWAs shall attempt to obtain as much additional verification as possible during the interview, but shall not delay the household's entitlement to expedited service. Households entitled to expedited service may be asked to furnish or apply for a Social Security number, but shall not be required to do so until after they have received their first allotment. However, such households shall be required to furnish a Social Security number before their next issuance in accordance with N.J.A.C. 10:87-3.24(a)1.]

1. Verification procedure: In order to expedite the certification process, the CWA shall use the following verification procedures:

i. In all cases the applicant's identity shall be verified through a collateral contact or readily available documentary evidence:

(1) Documentary evidence: Examples of acceptable documentary evidence which the household may provide include, but are not limited to, a driver's license, work or school I.D. card, voter registration card, or birth certificate.

ii. All reasonable efforts shall be made to verify, within the expedited processing standards, the household's residency, income statements (including a statement that the household has no income), liquid resources and all other verification factors required in N.J.A.C. 10:87-2.21 through collateral contacts or readily available documentary evidence:

(1) Benefits shall not be delayed beyond the delivery standards prescribed in N.J.A.C. 10:87-2.34 solely because these eligibility factors have not been verified.

iii. CWAs shall attempt to obtain as much additional verification as possible during the interview, but shall not delay the certification of households entitled to expedited service for the full time frame prescribed in N.J.A.C. 10:87-2.34 when the CWA has determined it is unlikely that other verification can be obtained within the expedited processing standards; and

iv. Households entitled to expedited service shall be asked to furnish or apply for a Social Security number for each household member before the first full month of participation. Those households unable to provide the required Social Security numbers or who do not have a SSN prior to their next issuance shall be allowed 30 days from the first day of the first full month of participation to obtain the SSN, in accordance with N.J.A.C. 10:87-3.24.

2.-5. (No change.)

10:87-2.38 Elderly or disabled defined

(a) Elderly or disabled member is defined as a member of a household who:

1. Is 60 years of age or older (or becomes 60 in the month of application);

2. Receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act (including emergency benefits based on presumptive eligibility);

3. Receives disability or blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act;

4. Is a veteran with a service-connected disability rated or paid as total under Title 38 of the United States Code (USC) or is considered in need of regular aid and attendance or permanently housebound under Title 38 of the United States Code;

5. Is a surviving spouse of a veteran and considered in need of aid and attendance or permanently housebound under Title 38 of the United States Code;

6. Is a surviving child of a veteran and considered to be permanently incapable of self-support under Title 38 of the United States Code;

7. Is a surviving spouse or child of a veteran and entitled to (but not necessarily receiving) compensation for a service-connected death or pension benefits for a nonservice-connected death under Title 38 of the United States Code and has disability considered permanent under Section 221(i) of the Social Security Act. Entitled as used in this definition refers to those veterans' surviving spouses and children who are receiving the compensation or benefits or have been approved for such payments, but are not receiving them.

10:87-3.23 Procedures for students in an institution of higher education

(a) Student in an institution of higher education defined: Any person who is between the ages of 18 and 60 who is physically and mentally fit and is enrolled at least half time in an institution of higher education. Excluded from this definition are persons who are attending high school, participating in on-the-job training programs and training programs which are not institutions of higher education.

1. Institution of higher education defined: An institution of higher education is any institution which normally requires a high school diploma or equivalency certificate for enrollment, including, but not limited to, colleges, universities and vocational or technical schools at the post-high school level.

2. Enrollment defined: A student shall be considered "enrolled" in an institution of higher education beginning on the first day of the school term. Such enrollment shall be deemed to continue through normal periods of class attendance, vacation and recess, unless the student graduates, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer school).

[1.](b) Student eligibility requirements: In order to be eligible to participate in the Food Stamp Program, any student (as defined in (a) above) must meet at least one of the following criteria:

[i.]1. Be employed [at least] for a minimum of 20 hours per week and be paid for such employment or, if self-employed, be employed for a minimum of 20 hours per week and receive weekly earnings at least equal to the Federal minimum wage multiplied by 20 hours;

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[ii.]2. Participate in a federally financed work study program (funded in full or in part under Title IV-C of the Higher Education Act of 1965 as amended) during the regular school year;

[iii. Be enrolled in an institution of higher education as a result of participation in the Work Incentive Program (WIN); or

iv. Be the head of a household or married to the head of a household which contains one or more persons dependent on the household head because he/she supplies more than half of their support.]

3. Be responsible for the care of a dependent household member under the age of six;

4. Be responsible for the care of a dependent household member between the ages of six and 12 for whom adequate child care is not available:

i. The availability and adequacy of child care shall be determined by the CWA on a case by case basis.

5. Be receiving benefits from the Aid to Families with Dependent Children (AFDC) program.

[2. Head of household concept: In determining whether a head of household furnishes more than half of the support of a dependent, the following principles apply:

i. The head of household must furnish over half of the dependent's total support during the calendar year. Total support is the sum of the fair rental value of lodging furnished, all items of expenses paid or incurred directly by or for the dependent, such as clothing, food, transportation, education, recreation, dental and medical expenses; and a proportionate share of expenses that cannot be attributed directly to the particular individual, such as cost of food for the entire household.

ii. The person providing the support is the person to be evaluated for head of household status. Need-based Federal, State or local assistance payments on behalf of a household member are considered as being provided by the person receiving such payments in determining head of household status. For example, a mother with a five year old child would qualify for the head of household exemption, even if the primary source of income is AFDC.

iii. The only restriction on who may be claimed as a dependent is that the dependent must be a member of the same household. A person can claim a spouse as a dependent.

iv. Circumstances not covered by these general principles are to be evaluated with reference to Sections 151 and 152 of the Internal Revenue Code.]

(c) Ineligible student living with household: The income and resources of an ineligible student living with a household shall not be considered in determining eligibility or level of benefits of the household (see N.J.A.C. 10:87-5.9(a)9).

10:87-3.24 Social Security numbers

(a) The CWA shall require that a household participating or applying for participation in the Food Stamp Program provide the CWA with the Social Security number (SSN) [for] of each household member [18 years or older and each child under 18 who receives countable income] **or apply for one before certification. If individuals have more than one number, all numbers shall be required.** The CWA shall explain to applicants and participants that refusal **or inability** to provide [or apply for] a SSN will result in disqualification of the individual for whom the number has not been provided.

1. Participation while awaiting a Social Security number: Household members required to provide a SSN shall be eligible to participate while waiting for the Social Security Administration (SSA) to issue a number [so long as the member can document that he/she has filed a completed Form SS-5, Application for a SSN]. Such participation is permitted for [90] **30 days** from the [date of eligibility determination] **first day of the first full month of participation** while awaiting receipt of the SSN. [Households entitled to expedited service shall not be required to furnish or apply for a SSN until after they have received their first coupon allotment. However, household members who have SSNs must provide them to the CWA before the next issuance. Household members who do not have

SSNs shall provide or apply for a SSN within 90 days of the original date of certification.] **Households entitled to expedited service will be asked to furnish a Social Security number for each household member or apply for one for each household member before the first full month of participation. Those households unable to provide the required SSNs or who do not have one prior to their next issuance shall be allowed 30 days from the first full month of participation to obtain the SSN.**

2. Obtaining a SSN: [The household member who is required to apply for a SSN may either have the CWA submit a completed and verified SS-5 form to the local SSA office on his/her behalf, or apply directly to the SSA for a SSN. In situations where the client elects to apply directly, the CWA shall inform him/her where to apply and what information will be needed. The CWA shall also request that the household member ask SSA for proof of application for a SSN, in the event that the application for a SSN is not processed within 90 days from the eligibility determination date.] **For those household members who do not have a SSN and must apply for one, the CWA shall complete Form SS-5 and submit it to the appropriate SSA office. The CWA shall retain a copy of the completed SS-5 in the case file. Upon receipt of the SSN, the CWA shall record it in the case record.**

i. When a household member states that he or she has already applied for a SSN, the CWA shall make note of this in the case file. The CWA shall also request that the household member ask for proof of application from SSA in the event that his or her application is not processed within the 30 day time period described in (a) above. If the member has not received the SSN within 30 days of the first day of the first full month of participation, it shall be the member's responsibility to demonstrate good cause as outlined in (a)4 below.

3. Failure to comply: When a household member required to provide or apply for a SSN refuses to do so, he/[or] she shall be ineligible to participate in the Food Stamp Program. The disqualified household member may become eligible upon providing the CWA with a SSN, or demonstrating that an application has been made for a SSN. If the CWA determines that an individual who was required to provide a SSN within [90 days of the date of certification] **30 days of the first day of the first full month of participation has failed to do so without good cause, that individual shall be ineligible until he/[or] she complies.**

4. Determining good cause: To determine good cause for failure to provide a SSN, the CWA shall consider information from the household member, SSA or the CWA itself (especially if the CWA was designated to submit Form SS-5 to SSA and either did not process the form or did not process it in a timely manner). Documentary evidence or collateral information that indicates the individual has applied for a SSN, or made every effort to supply SSA with the necessary information, shall be considered good cause for not complying with this requirement in a timely manner. **If the household member(s) can show good cause why a SSN has not been provided in a timely manner, he or she shall be allowed to participate for an additional 30 days.** If the individual applying for a SSN has been unable to obtain the documents required by SSA, the certification worker must make every effort to assist the individual in obtaining the necessary documents.

10:87-4.3 Resources defined

(a) The resources of a household shall include the following which shall be recorded by the county welfare agency in sufficient detail to permit verification as necessary (see N.J.A.C. 10:87-2.20 and 4.5).

1. Liquid resources: Liquid resources such as cash on hand, money in checking or savings accounts, savings certificates, stocks and bonds, [and] lump-sum payments as described in N.J.A.C. 10:87-5.9(a)10, **funds held in Individual Retirement Accounts (IRAs), and funds held in Keogh plans which do not involve the household member in a contractual relationship with individuals who are not household members.**

i. In counting resources of households with IRAs or includable Keogh plans, the CWA shall include the total cash value of the account or plan minus the amount of the penalty (if any) assessed for the early withdrawal of the entire amount in the account or plan.

ii. Keogh plans which do involve a contractual relationship with a nonhousehold member shall be excluded as a resource (see N.J.A.C. 10:87-4.8(a)6).

2. (No change.)

3. **Deemed resources:** Resources shall include resources deemed to an alien from his or her sponsor in accordance with N.J.A.C. 10:87-7.18.

10:87-4.8 Identification of resource exclusions

(a) Only the following shall be classified as resource exclusions by the county welfare agency:

1.-5. (No change.)

6. Pension funds: The cash value of pension plans or funds, [including funds in pension plans with interest penalties for early withdrawals, such as Keogh plan or an Individual Retirement Account (IRA)] as long as the funds remain in the pension plans, **except that Keogh plans which involve no contractual relationship with individuals who are not household members and Individual Retirement Accounts (IRAs) shall not be excluded.**

i. Keogh plans involving a contractual relationship with a non-household member (such as Keogh plans established for the self-employed person(s) and employees) shall be excluded. However, if the Keogh plan is such that individual participants may make withdrawals without affecting the other parties in any way (for example, without any contractual obligation to the other participants), then the household member's funds in the Keogh plan will be counted as a resource.

7.-17. (No change.)

10:87-5.5 Unearned income

(a) For the purposes of determining Net Food Stamp Income, unearned income shall include, but not be limited to:

1.-8. (No change.)

9. **Deemed income:** Income deemed to an alien from his or her sponsor in accordance with N.J.A.C. 10:87-7.18.

10:87-5.10 Income deductions

(a) Deductions from income will be allowed only for the following expenses of the household:

1.-2. (No change.)

3. Excess medical deduction: That portion of medical expenses in excess of \$35.00 per month, excluding the cost of special diets, incurred by any household member who is [60 years of age or over (or who becomes 60 in the month of application) or who receives Supplemental Security Income (SSI) benefits under Title XVI of the Social Security Act or disability or blindness benefits under Titles I, II, X, XIV or XVI of the Social Security Act] **elderly or disabled as defined in N.J.A.C. 10:87-2.38.** Spouses or other persons (i.e., essential persons) receiving benefits as dependents of the SSI or disability or blindness recipient are not eligible to receive this deduction but persons receiving "emergency" SSI benefits based on presumptive eligibility are eligible for this deduction.

i. (No change.)

4. (No change.)

5. Shelter cost deduction: Monthly shelter costs in excess of 50 percent of the household's income after the deductions in (a)1, 2, 3, and 4 above have been allowed, shall be deducted. However, in no event shall the shelter deduction alone or in combination with the dependent care deduction in (a)4 above, exceed the amount in N.J.A.C. 10:87-12.1 (Appendix A, Table I) unless the household contains a member who is [age 60 or over, (or who becomes 60 in the month of application), or who receives SSI (including emergency benefits based on presumptive eligibility) under Title XVI, or disability or blindness payments under Titles I, II, X, XIV,

or XVI of the Social Security Act] **elderly or disabled as defined in N.J.A.C. 10:87-2.38.** These households shall receive an excess shelter deduction for the monthly cost that exceeds 50 percent of the household's monthly income after all other applicable deductions. Households receiving Title II disability payments for dependents of a disabled individual are not eligible for the unlimited excess shelter deduction unless the disabled individual is a member of the household.

i.-iv. (No change.)

10:87-6.2 Month of application

(a) The month of application for all households [including households that were not certified for participation following any period of more than a month) submitting an initial application] is the calendar month in which the household filed its application. **This includes households submitting an application following any period of time during which the household was not certified for participation in the program.** In most cases, the month of application will be the [first] **initial** month of the household's [initial] certification period (see definition of initial month in (b) below). The CWA shall determine a household's eligibility [and benefit level] during the month of application based on the household's circumstances for the entire calendar month in which the household filed its application, even if the household filed its application on the last day of that calendar month.

(b) **Initial month defined:** The term initial month means the first month for which the household is certified for participation in the Food Stamp Program or for ongoing cases the first month for which the household is certified for participation following any period of time during which the household was not certified for participation.

1. If the household submits an application for recertification prior to the expiration of its certification period and is found eligible for the first month following the end of the certification period, then that month shall not be an initial month.

[1.]2. Determining benefit level for initial month [of application]: A household's benefit level for the initial month [of application] will be based on the day of the month it applies for benefits. Using a 30 day calendar month, households shall receive benefits prorated from the day of application to the end of the month. A household applying on the 31st of the month will be treated as though it applied on the 30th of the month. The \$10.00 minimum benefit for one and two person households shall be prorated. To determine the amount of the prorated allotment for the month of application the CWA shall use the Allotment Proration Table found in N.J.A.C. 10:87-12.5 (Appendix A, Table V). **If the allotment for the initial month is less than \$10.00 the CWA shall not issue benefits to that household.**

10:87-6.3 Recertification

(a) Eligibility and the level of benefits for recertification shall be determined on circumstances anticipated for the certification period starting the month following the expiration of the current certification period [If an application for recertification is not received until after the current certification period has expired, the month of application shall be the month in which the application was filed, as for any initial application.]

(b) Untimely application for recertification: If an application for recertification is not received until after the current certification period has expired, **unless good cause exists**, the month of application shall be the month in which the application was filed, as for any initial application. **The initial month's benefits shall be prorated as outlined in N.J.A.C. 10:87-6.2(a)2.**

1. **Good cause shall be determined on a case by case basis and shall include, but not be limited to, failure to receive a timely notice of expiration and personal illness.**

2. **If the application for recertification is received prior to the end of the certification period but an eligibility determination is not made until after the beginning of the next month, the benefits shall not be prorated.**

10:87-6.15 Calculating net and gross income and benefit levels

(a) The procedures below shall be used to calculate net and gross income and benefit levels.

1. Net and gross monthly income: To determine a household's net monthly income, the CWA shall follow steps in (a)1i through viii below. To determine a household's total gross income the CWA shall [follow step (a)1i only] **add the gross monthly income earned by all household members and the total monthly unearned income of all household members minus income exclusions (see N.J.A.C. 10:87-5.9). The total gross monthly income shall be used to determine the household's eligibility in accordance with (a)3ii below.**

i.-viii. (No change.)

2. (No change.)

3. Eligibility and benefits: Except for **migrant and seasonal farmworker** households considered destitute in N.J.A.C. 10:87-6.16, the [household's net monthly income as calculated in N.J.A.C. 10:87-6.15(a)1i-viii shall be compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 (Appendix A, Table III) to determine eligibility for the month for households containing a member who is 60 years of age or over (or who becomes 60 in the month of application) or who receives SSI or disability or blindness payments under Titles I, II, X, XIV or XVI of the Social Security Act. For all other households, the CWA shall compare a household's gross income to the monthly income eligibility standards in N.J.A.C. 10:87-12.4 (Appendix A, Table IV) for the appropriate household size to determine eligibility for the month. The amount of the household's benefit is determined in accordance with N.J.A.C. 10:87-12.6 (Appendix A, Table VI).] **following eligibility and benefit determinations shall apply:**

i. **Household's having an elderly or disabled member: Households which contain an elderly or disabled member (as defined in N.J.A.C. 10:87-2.38) shall have the household's net income as calculated in N.J.A.C. 10:87-6.15(a)1i-viii compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 (Appendix A, Table III) to determine eligibility for the month.**

ii. **Household subject to gross and net monthly income tests: Households which do not contain an elderly or disabled member shall have their gross monthly income compared to the monthly income eligibility standards in N.J.A.C. 10:87-12.4 (Appendix A, Table IV) for the appropriate household size and shall have their net monthly income as calculated in (a)1i through viii above compared to the monthly income eligibility standard for the appropriate household size in N.J.A.C. 10:87-12.3 (Appendix A, Table III) to determine eligibility for the month.**

iii. **Benefits: After eligibility has been determined in accordance with (a)3i or ii above, the CWA shall use the household's net monthly food stamp income to determine the amount of the household's benefit in accordance with N.J.A.C. 10:87-12.6 (Appendix A, Table VI).**

(1) **If the allotment for an initial month is less than \$10.00, or is prorated to less than \$10.00 in accordance with N.J.A.C. 10:87-6.2(b)2 no benefits shall be issued to the household for the initial month.**

(2) **Except during an initial month, all eligible one and two person households shall receive a minimum monthly allotment of \$10.00 and all eligible households with three or more members entitled to \$1.00, \$3.00 and \$5.00 allotments shall have their allotments rounded to \$2.00, \$4.00 and \$6.00 respectively.**

10:87-6.16 Destitute households

[Certain] **Migrant or seasonal farmworker** households may have little or no income at the time of application and may be in need of immediate food assistance, even though they receive income at some other time during the month of application. The fol-

lowing procedures shall be used to determine when **migrant or seasonal farmworker** households in these circumstances may be considered destitute and, therefore, entitled to expedited service and special income calculation procedures. Destitute households shall have their eligibility determined by computing either their gross or net income, as appropriate, and comparing either the gross or net income to the corresponding income eligibility standard. **Households other than migrant or seasonal farmworker households shall not be considered destitute.**

10:87-6.17 **Destitute households with [Income] income from a terminated source**

(a) **Migrant or seasonal farmworker [Households] households** whose only income for the month of application was received prior to the date of application, and was from a terminated source, shall be considered destitute households and shall be provided expedited service. [These households may have lost their sole source of income because of layoffs, a termination of public assistance or unemployment compensation benefits, or other comparable circumstances. These households also include migrant households which have received their last wages from an agricultural grower. These households shall be provided expedited service because they may be without income for some time and may not be able to wait as long as 30 days for food assistance.]

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

10:87-6.18 **Destitute households with [Income] income from a new source**

(a) **Migrant or seasonal farmworker [Households] households** whose only income for the month of application is from a new source shall be considered destitute and shall be provided expedited service if income of more than \$25.00 from the new source will not be received by the 10th calendar day after the date of application. [These households may expect to start receiving income from a new job or may have applied for, but not yet begun to receive, benefits from public assistance, unemployment compensation, SSI, disability benefits, RSDI or a similar program. These households may be totally without income for a number of weeks before the new income begins and, therefore, be unable to meet their current food needs.]

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

[(g) Households with averaged income: Households whose income must be averaged on an annual basis, or averaged over the period the income is intended to cover, as required in N.J.A.C. 10:87-6.9(a)4 and 6, shall have the income averaged and assigned to the appropriate months of the certification period (see sections 19 through 23 of this subchapter) before determining whether a household is destitute. If the averaged income does not come from a new or terminated source and is assigned to the month of application, the household shall not be considered destitute.

1. Example: A self-employed household whose total annual income is received in a few months of the year shall not be considered destitute simply because it does not receive payments in those other months. However, if the income which must be averaged is itself from a new or terminated source, the receipt of the income in the month of application may result in a destitute determination. For example, a student with no other income for the month of application anticipates receipt of a deferred educational loan at the end of the month. After appropriate exclusions, the balance of the loan is averaged over the period it is intended to cover, including the month of application. The student may be destitute and the portion of the loan for the month of application disregarded if it is from a new source and will not be received by the 10th day after the date of application.]

[(h)(g) Source of income: A household member who changes jobs but continues to work for the same employer shall be considered as still receiving income from the same source. [Similarly, a self-employed household member who secures contracts or other work from different customers shall still be considered as receiving in-

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come from the same source.] A migrant farmworker's source of income shall be considered to be the grower for whom the migrant is working at a particular point in time, rather than the crew chief. A migrant who travels with the same crew chief but moves from one grower to another is considered to have moved from a terminated to a new source.

[(i)](h) (No change in text.)

10:87-7.18 Deeming of income and resources of alien sponsors

(a) Portions of the gross income and resources of an alien's sponsor (and the sponsor's spouse if living together regardless of whether or not they were married at the time the affidavit of support was signed) shall be deemed available to the alien for a period of three years following the date established by the Immigration and Naturalization Service as the date the alien was admitted for permanent residence.

1. Aliens admitted for permanent residence: The deeming of income and resources of a sponsor applies only to an alien lawfully admitted for permanent residence as an immigrant as defined in sections 101(a)(15) and 101(a)(20) of the Immigration and Nationality Act and for which a sponsor signed an affidavit of support or similar statement as a condition of the alien's entry into the United States as a lawful permanent resident on or after February 1, 1983.

2. Deeming rules inapplicable: Deeming does not apply to the following aliens:

- i. Any alien participating in the Food Stamp Program as a member of the sponsor's household;
- ii. Any alien sponsored by a group or organization instead of an individual; or
- iii. Any alien not required to have a sponsor under the Immigration and Nationality Act, such as, but not limited to, a refugee, a parolee, an alien granted asylum, or a Cuban or Haitian entrant.

(b) Deeming of income: To determine the amount of income deemed available to the alien:

1. Compute the total gross monthly earned income of the sponsor (and sponsor's spouse if applicable) at the time the household containing the sponsored alien applies or is recertified for food stamp participation and multiply by 82 percent.

2. Add the monthly unearned income of the sponsor (and the sponsor's spouse if applicable) at the time the household containing the sponsored alien applies or is recertified for food stamp participation.

3. Subtract the monthly gross income eligibility limit (N.J.A.C. 10:87-12.4 Appendix A Table II) for a household equal in size to the sponsor, the sponsor's spouse and any other person who is claimed or could be claimed by the sponsor or sponsor's spouse as a dependent for Federal income tax purposes.

4. The remaining amount shall be counted as unearned income in determining eligibility and benefit level for the household containing a sponsored alien whether or not the monies are actually available to the household.

5. If the alien has already reported his or her sponsor's gross income in accordance with AFDC sponsored alien rules, that income amount shall be used for food stamp deeming purposes. However, allowable reductions to be applied to the total gross income of the sponsor and the sponsor's spouse prior to attributing an income amount to the alien shall be limited to those stated in (b)1 and 3 above.

6. Actual money paid to the alien by the sponsor or the sponsor's spouse will not be considered as income to the alien unless the amount paid exceeds the amount deemed to the alien under this section. Only the amount paid that actually exceeds the amount deemed would be considered additional income to the alien.

(c) Deeming of resources: To determine the amount of resources deemed available to the alien:

1. Determine the total amount of resources of the sponsor (and sponsor's spouse if applicable) in accordance with N.J.A.C. 10:87-4 and reduce the amount of \$1,500. The remainder shall be deemed available to the household which contains the sponsored alien.

2. If an alien who is eligible for AFDC has already reported information regarding his or her sponsor's resources for AFDC purposes, the amount attributed to the alien for AFDC purposes shall be used for Food Stamp purposes.

(d) Multiple sponsorship: If a sponsored alien can demonstrate that his or her sponsor also sponsors other aliens, the amount of income deemed available in (b) above and the amount of resources deemed available in (c) above shall be divided among the aliens sponsored and that amount shall be used to determine eligibility and benefit level of the household containing the sponsored alien.

(e) Change in sponsor: If the alien changes sponsors within a certification period, the deemed income and resources shall be recalculated based on information on the new sponsor as soon as possible.

(f) Verification: The sponsored alien and his or her spouse are responsible for providing the CWA with any information necessary to determine the income and resources of the alien's sponsor and the sponsor's spouse. The alien and his or her spouse shall also be responsible for demonstrating to the CWA that the sponsor also sponsors other aliens, how many, and for obtaining any necessary cooperation from the sponsor.

1. The CWA shall obtain from the alien or alien's spouse the following information:

- i. The income and resources of alien's sponsor and the sponsor's spouse (if living with the spouse);
- ii. The number of other aliens for whom the sponsor has signed an affidavit of support or similar agreement;
- iii. The provision of the Immigration and Nationality Act under which the alien was admitted;
- iv. The date of the alien's entry or admission as a lawful permanent resident as established by INS;
- v. The alien's date of birth, place of birth, and alien registration number;
- vi. The number of dependents for Federal income tax purposes of the sponsor and the sponsor's spouse;
- vii. The name, address, and phone number of the alien's sponsor.

2. The CWA shall verify the information obtained pursuant to (f)1i and ii above. The CWA shall verify the information which the CWA determines is questionable and which affects household eligibility and benefit level in accordance with procedures established at N.J.A.C. 10:87-2.21(a)8 for verifying questionable information.

3. If information necessary to carry out these deeming provisions is not received or verified on a timely basis, the sponsored alien and his or her spouse shall be ineligible until such time as all necessary facts are obtained. The eligibility of any remaining household members shall be determined.

i. The income and resources of the ineligible alien and his or her spouse (excluding the attributed income and resources of the alien's sponsor and the sponsor's spouse) shall be treated in the same manner as a disqualified member and considered available in determining the eligibility and benefit level of remaining household members.

ii. If information or verification is subsequently received, the CWA shall act on the information as a reported change in household membership in accordance with the timeliness standards in N.J.A.C. 10:87-9.7(a)2ii.

(g) Claims for overissuance:

1. Liability for overissuance: Any sponsor of an alien and the alien shall be jointly and severally liable for repayment of any overissuance of coupons as a result of incorrect information provided by the sponsor. However, if the alien's sponsor had

good cause was without fault for supplying the incorrect information, the alien's household shall be solely liable for repayment of the overissuance.

i. For the purpose of this section, "good cause" shall include but is not limited to circumstances in which the sponsor did not knowingly or willfully provide incorrect information.

ii. For the purpose of this section "without fault" shall include but is not limited to circumstances in which the alien misrepresented or misstated the financial status of the sponsor.

2. Claims against the household and sponsor: Where the sponsor did not have good cause, the CWA shall decide whether to establish a claim for the overissuance against the sponsor or the alien's household, or both. The CWA may choose to establish claims against both parties at the same time or establish a claim against the party it deems most likely to repay first. If a claim is established against the alien's sponsor first, the CWA shall ensure that a claim is established against the alien's household whenever the sponsor fails to respond to the CWA's demand letter within 30 days of receipt. The CWA shall return to the alien's sponsor and/or the alien's household any amount repaid in excess of the total amount of the claim.

3. Claims against sponsors: The CWA shall initiate against a sponsor by sending a written demand letter which informs the sponsor of the amount owed, the reason for the claim, how the claim may be repaid, and that the sponsor will not be held liable if he or she can demonstrate that he or she was not at fault or had good cause for providing incorrect information. The CWA shall follow the demand letter with a personal contact if possible.

i. The CWA may pursue other means of collection if the sponsor fails to respond to the demand letter.

ii. The CWA may terminate collection action against the sponsor at any time if it can document that the sponsor cannot be located or that the cost of further collection is likely to exceed the amount that can be recovered.

iii. If the sponsor responds to the demand letter and is financially able to pay the claim at one time, the CWA shall collect a lump sum cash payment. If the sponsor is not financially able to repay the claim at one time, a repayment schedule may be negotiated as long as the payments are provided in regular installments. Funds collected shall be forwarded to DPW in accordance with N.J.A.C. 10:87-11.28(a)4.

4. Claims against alien households: Prior to initiating collection action against the household of a sponsored alien for repayment of an overissuance caused by incorrect information having been supplied concerning the alien's sponsor or sponsor's spouse, the CWA shall determine whether such incorrect information was supplied due to inadvertent error, intentional misrepresentation or fraud on the part of the alien. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

i. If sufficient documentary evidence exists to substantiate that the incorrect information concerning the alien's sponsor or sponsor's spouse was provided due to intentional misrepresentation or fraud on the part of the alien, the State agency shall pursue the case in accordance with the procedures specified in N.J.A.C. 10:87-11.26 for misrepresentation and fraud disqualifications. The claim against the alien's household shall be handled as an inadvertent household error claim prior to the determination of intentional misrepresentation or fraud by an administrative law judge or a court of appropriate jurisdiction.

ii. If the CWA determines that the incorrect information was supplied due to misunderstanding or unintended error on the part of the sponsored alien, the claim shall be handled as an inadvertent household error claim in accordance with the procedures specified in N.J.A.C. 10:87-11.23. These actions shall be taken regardless of the current eligibility of the sponsored alien or the alien's household.

10:87-12.5 Food stamp allotment proration

[(a) To determine a prorated food stamp allotment, multiply the full month's benefit times the multiplication factor for the appropriate date of application found in (a)1 below:

1. Food stamp allotment proration multiplication factors:

Date of Application	Multiplication Factor
1	1.000
2	.9666
3	.9333
4	.9000
5	.8666
6	.8333
7	.8000
8	.7666
9	.7333
10	.7000
11	.6666
12	.6333
13	.6000
14	.5666
15	.5333
16	.5000
17	.4666
18	.4333
19	.4000
20	.3666
21	.3333
22	.3000
23	.2666
24	.2333
25	.2000
26	.1666
27	.1333
28	.1000
29	.0666
30	.0333
31	.0333]

(a) The formula for determining food stamp proration follows:

$$\text{Full month's benefits} \times \frac{(31 \text{ minus date of application})}{30} = \text{allotments}$$

[(b) After determining the prorated allotment using the steps in (a) above, the CWA shall round the product down if it ends in 1 through 49 cents and up if it ends in 50 through 99 cents. If the computation results in an allotment of \$1.00, \$3.00, or \$5.00, the allotment shall be rounded up to \$2.00, \$4.00, or \$6.00, respectively.]

(b) After using the formula in (a) above to determine the allotment, the CWA shall round the product down to the nearest lower whole dollar if it ends in 1 through 99 cents;

(c) If the computation results in an allotment of less than \$10.00, then no issuance shall be made for the initial month.

10:87-12.6 Monthly coupon allotment

(a) The formula for determining the monthly coupon allotment follows:

1. Benefit determination without the tables: To determine the benefit households shall receive:

i.-iii. (No change.)

iv. If the computation results in an allotment of \$1.00, \$3.00, or \$5.00, round up to \$2.00, \$4.00, or \$6.00 respectively except when [prorating the] determining initial month's benefits [If prorating the initial month's benefits, the actual full month's allotment of \$1.00, \$3.00 or \$5.00 shall be used to prorate];

v. If the allotment is for a one or two-person household and is less than \$10.00, round up to the minimum monthly allotment of \$10.00 [.] except when determining initial month's benefits;

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vi. If the calculation of benefits for an initial month would result in an allotment of less than \$10.00 for the household, no benefits shall be issued to the household for the initial month.

10:87-12.7 165 percent of poverty level

(a) The following table is to be used when determining separate household status for elderly and disabled individuals in accordance with N.J.A.C. 10:87-2.2(a)4.

**TABLE VII
165% of Poverty Level**

Household Size	Maximum Allowable Income
1	\$ 644
2	856
3	1067
4	1279
5	1491
6	1702
7	1914
8	2216
9	2428
10	2640
Each additional member	+212

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(a)

CASINO CONTROL COMMISSION

**Junkets
Fees, License and Reporting Requirements**

**Adopted Emergency New Rules and
Concurrent Proposal: N.J.A.C. 19:41-9.9A;
19:49**

**Adopted Emergency Amendments and
Concurrent Proposal: N.J.A.C. 19:45-1.1,
1.9**

**Adopted Emergency Repeal and Concurrent
Proposal: N.J.A.C. 19:45-1.8**

Emergency New Rules, Amendments and Repeal Adopted:
January 11, 1983, by Casino Control Commission,
Walter N. Read, Chairman.

Gubernatorial Approval (see N.J.S.A. 52:14B-4(c)):
January 27, 1983.

Emergency New Rules, Amendments and Repeal Filed:
January 27, 1983 as R.1983 d.37.

Authority: N.J.S.A. 5:12-63(c), 69 and 102.

Emergency New Rules, Amendments and Repeal Effective
Date: January 27, 1983.

Emergency New Rules, Amendments and Repeal Expiration
Date: March 28, 1983.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before March 9, 1983. These submissions, and any inquiries about submissions and responses, should be addressed to:

David C. Missimer, Esq.
Casino Control Commission
3131 Princeton Pike Office Park
Building No. 5, CN 208
Trenton, NJ 08625

These rule proposals were adopted on an emergency basis and became effective upon acceptance for filing by the Office of Administrative Law (see N.J.S.A. 52:14B-4(c) as implemented by N.J.A.C. 1:30-4.4). Concurrently, the provisions of these emergency new rules, amendments and repeal are being proposed for readoption in compliance with the normal rulemaking requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. The readopted rule proposals become effective upon acceptance for filing by the Office of Administrative Law (see N.J.A.C. 1:30-4.4(d)).
The concurrent proposal is known as PRN 1983-57.

OFFICE OF ADMINISTRATIVE LAW NOTE: The following emergency adoption from the Casino Control Commission is reproduced as a matter of convenience and public information. These rules were proposed in the February 7, 1983 issue of the New Jersey Register at 15 N.J.R. 135(a). These rules were subsequently adopted on an emergency basis and became effective on January 27, 1983. See the emergency adoption notice at 15 N.J.R. 166(b).

The agency emergency adoption and concurrent proposal follows.

Summary

The emergency rules are being adopted as a result of the enactment of Assembly Bill A-1945. This legislation substantially amends those provisions of the Casino Control Act which govern the operation of junkets to licensed casino hotels. The Commission's existing regulations governing the licensing and reporting of junket activities have either been invalidated or are insufficient to implement the statutory requirements created by the enactment of A-1945. Therefore, without these new regulations, the Commission might be required to severely restrict, or even prohibit, further junket activities by casino licensees until the necessary regulatory controls could be adopted. This would likely impose a severe economic hardship upon casino licensees and the State tax revenues which are derived therefrom. The adoption of these rule proposals on an emergency basis will permit the junket activities of casino licensees to continue without disruption.

Casino licensees will be notified of the emergency rulemaking by letter and supplied with a copy of the adopted regulations. The casinos will be requested to provide a copy of the regulations to all junket enterprises with whom they do business. In addition, a press release will be issued concerning the emergency rulemaking advising the public that a copy of the regulations may be obtained from the Commission.

The emergency rules primarily address four areas: fees; scope of activities governed; licensure requirements; and reporting requirements. The proposed new rule N.J.A.C. 19:41-9.9A specifies the fee which will be required for the issuance or renewal of a junket enterprise license, a new licensure category created by the statutory amendments. The fees for this license will be the same as those presently required for Section 92(c) casino service industry enterprises.

An entirely new chapter of rules, N.J.A.C. 19:49, will be devoted to the licensure and operation of junkets. The scope of activities included within the new statutory definition of junket is described in N.J.A.C. 19:49-1.2. Under the new statutory amendments, a gaming arrangement with a casino licensee will not be considered a junket unless the participant has been "selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble"; this requirement is interpreted by N.J.A.C. 19:49-1.2.

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Subchapter 2 of N.J.A.C. 19:49 addresses the licensure requirements created for individuals or enterprises engaged in activities related to junkets. It specifies the licensure requirements, qualifications for licensure, and limitations on activities for junket representatives, junket enterprises and sole owner/operator junket enterprises.

Subchapter 3 of N.J.A.C. 19:49 sets forth the various junket reporting requirements created pursuant to A-1945. A detailed description of the activities which must be reported and the information which must be contained in these reports is included in each proposed rule. The existing rule governing the reporting of junket activities, N.J.A.C. 19:45-1.8, is being proposed for repeal since it is predicated upon junket categorizations which will be eliminated by the new statutory amendments.

Finally, amendments to N.J.A.C. 19:45-1.1 and 1.9 are being proposed which will clarify the means by which complimentary services or items provided by casino licensees are to be valued.

Social Impact

The emergency rules, consistent with the statutory amendments, should permit the more effective use of junkets as a marketing tool by casino licensees while preserving the integrity and law enforcement interests essential to the State's supervision of this area of casino operations. The proposed changes will allow persons interested in becoming licensed as junket representatives or junket enterprises to do so more quickly and conveniently than is presently possible. It is therefore anticipated that the number of such applications filed with the Commission will increase significantly, and that more competition among such persons will be created. These changes will also allow the casino industry in New Jersey to compete more effectively with other jurisdictions for gaming patrons throughout the world.

Economic Impact

As indicated above, it is anticipated that these statutory and regulatory amendments will allow the casino industry in New Jersey to more effectively utilize junkets as a marketing tool. As a result, these changes may possibly increase the amount of gross revenue received by the casino industry in New Jersey, and consequently, the amount of taxes received by the State from these revenues. The amount of any such increase, however, would be entirely speculative and incapable of estimation.

The new licensing and fee structure created by these amendments will make it significantly less expensive for a person to be licensed as a junket representative or junket enterprise. Some of the cost of the licensing process will therefore be shifted to the casino industry through the Commission's annual deficiency fee assessment. It is not anticipated that the overall operating expenses of either the Commission or the Division of Gaming Enforcement will increase appreciably as a result of these amendments.

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

19:41-9.9A Junket enterprise license fees

(a) In accordance with Section 102(c) of the Act, all junket enterprises shall meet the standards established for casino employees in order to be licensed. Under Section 94(d) of the Act, such a license shall be issued for a three year period and shall be renewable for additional three year periods.

(b) The issuance fee for a three year junket enterprise license shall be as follows:

- 1. A minimum application charge of \$1,000, which shall be credited to the total fee;**
- 2. Payment for the efforts of professional agents and employees of the Commission and the Division at the rate of \$30.00 per hour spent on matters directly related to the applicant; and**

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3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division in investigating and considering the application; provided, however, that the amount of the issuance fee shall not exceed \$3,000 unless the Division notifies the applicant and the Commission within 75 days of receipt of the application that the Division's expenses shall exceed \$3,000 and unless the Commission approves the charging of more than the \$3,000 maximum to the applicant.

(c) The renewal fee for a three year junket enterprise license shall be as follows:

- 1. A minimum application charge of \$750.00, which shall be credited to the total fee; and**
- 2. Payment for the efforts of professional agents and employees of the Commission and the Division at the rate of \$30.00 per hour spent on matters directly related to the licensee; and**
- 3. Payment for all unusual or out of pocket expenses incurred by the Commission or the Division in matters directly related to the licensee; provided however, that the amount of the renewal fee shall not exceed \$3,000 unless the Division notifies the licensee and the Commission as soon as it appears that the Division's expenses will exceed \$3,000 and unless the Commission approves the charging of more than the \$3,000 maximum to the licensee.**

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.

...
 ...“Complimentary services or items” is defined in N.J.A.C. 19:45-1.9.
 ...

...
 [“Junket” is defined in N.J.A.C. 19:45-1.8.]
 ...

19:45-1.8 [Junkets] **Reserved**

[a) Junkets shall be defined as an arrangement or arrangements, made prior to arrival, the primary purpose of which is to induce any person to come to a licensed casino hotel for the purpose of gambling, and pursuant to which, and as consideration for which, over \$200.00 of the cost of transportation, food, lodging, and entertainment for said person is directly or indirectly paid by a casino licensee or employee or agent thereof. For purposes of this section, the furnishing of any of the above items on a complimentary basis shall be deemed to constitute the indirect payment for such items in the amount of the retail price normally charged for such items.

(b) Each licensee involved in organizing and operating junkets shall file with the Commission and the Division either:

1. A report in advance of each junket, filed not less than 15 calendar days prior to the arrival date of the junket participants at the licensee's premises, and including but not limited to a listing of the names of the participants, scheduled arrival and departure dates, deposits required from the participants, complimentary services to be offered, the junket origin, and organizing junket representatives. If any of the participants change from the report originally submitted, notice of any new or substituted participants must be given to the Commission and Division prior to the arrival of the junket.

2. A proposal of junkets involving fewer than five persons to be offered on a continuing basis.

i. Such proposal must be approved by the Commission in advance of the organization and operation of any junket contemplated by the proposal. The approval by the Commission does not prohibit the Commission from requiring a report in advance of each junket;

ii. Such proposal shall describe separately each type of junket proposal, including the expected frequency, expected range in the number of participants, origin or source of participants, deposit required, and complimentary services to be offered; and

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iii. Amendments to such proposal must be approved by the Commission in advance of the organization and operation of any junket contemplated by the amendment. Amendments may state only the nature of the amendment and need not restate the original proposal.

(c) The licensee shall maintain on file a report for each junket operated by the licensee.

1. The report shall include a sequential junket number assigned by the licensee, the responsible junket representative, junket origin, number of participants, arrival and departure dates, deposit required, complimentary services offered, and the name of each participant.

2. Attached to the report shall be acknowledgment by each participant that he understands the terms of the particular junket. The acknowledgment shall clearly explain the junket arrangements and be signed and dated by the participant on or prior to the arrival date of the junket.

(d) Each licensee, unless exempted by the Commission under the provisions of N.J.A.C. 19:45-1.6, shall file a quarterly report with the Commission and the Division which lists the junkets operated during the quarter, the responsible junket representative, junket origin, arrival and departure dates, number of participants, deposit required, and complimentary services offered.]

19:45-1.9 Complimentary services or items

(a) [Complimentary services shall be defined as the sale value of rooms, food, beverage, travel, and other services provided without charge, or the cost of services paid to a third party.] A complimentary service or item is a service or item provided directly or indirectly by a licensee at no cost or at a reduced price.

(b) [All complimentary services provided by the licensee shall be recorded at the full retail value, if the service is normally provided by the licensee, or cost if the licensee pays a third part for providing the service.] All complimentary services or items shall be recorded as follows:

1. A complimentary service or item provided directly to patrons in the normal course of a licensee's business shall be recorded at an amount based upon the full retail price normally charged for such service or item by the licensee;

2. A complimentary service or item not offered for sale to patrons in the normal course of a licensee's business but provided directly by the licensee shall be recorded at an amount based upon the actual cost to the licensee of providing such service or item;

3. A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by a third party not affiliated with the licensee shall be recorded at an amount based upon the actual cost to the licensee of having the third party provide such service or item;

4. A complimentary service or item provided directly or indirectly to a patron on behalf of a licensee by a third party who is affiliated with the licensee shall be recorded by the licensee in accordance with the provisions of this section as if the affiliated third party were the licensee.

(c) (No change.)

**CHAPTER 49
JUNKETS**

SUBCHAPTER 1. GENERAL PROVISIONS

19:49-1.1 Definitions

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

"Agent" means any person, including a junket representative or junket enterprise, acting directly or indirectly on behalf of a casino licensee.

"Compensation" means any form of remuneration

whatsoever, including, but not limited to, the payment of cash, the forgiveness or forbearance of a debt, or the direct or indirect provision of a product, service or item without charge or for less than full value.

"Complimentary guest room accommodations" means a guest room provided to a person at no cost, or at a reduced price not generally available to the public under similar circumstances; provided, however, that the term shall include any guest room provided to a person at a reduced price due to the anticipated or actual gaming activities of that person.

"Complimentary service or item" is defined in N.J.A.C. 19:45-1.9.

19:49-1.2 Definition of junket: scope of activities included

(a) A junket, as defined in N.J.S.A. 5:12-29, is an arrangement the purpose of which is to induce any person, selected or approved for participation therein on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble or on any other basis related to his propensity to gamble, to come to a licensed casino hotel for the purpose of gambling and pursuant to which, and as consideration for which, any or all of the cost of transportation, food, lodging, entertainment and other services and items of value for said person is directly or indirectly paid by a casino licensee or employee or agent thereof.

(b) For purposes of (a) above, a selection or approval of a person "on the basis of his ability to satisfy a financial qualification obligation related to his ability or willingness to gamble" shall be deemed to occur whenever a person, as an element of the arrangement, is required to:

1. Establish gaming credit with a casino licensee;
2. Establish a customer deposit with a casino licensee;
3. Demonstrate to a casino licensee or employee or agent thereof the availability of a specified amount of cash, cash equivalent or gaming chips;
4. Gamble to a predetermined level at the establishment of a casino licensee; or
5. Comply with any similar obligation.

(c) For purposes of (a) above, a selection or approval of a person on a "basis related to his propensity to gamble" shall be deemed to occur whenever that person has been selected or approved on the basis of:

1. The previous satisfaction of a financial qualification obligation in accordance with the provisions of (b) above;
2. A rating for gambling performance; or
3. An evaluation that the person has a tendency to participate in gambling activities as the result of:
 - i. An inquiry concerning said person's tendency to gamble; or
 - ii. Some other means of determining that the person has a tendency to participate in gambling activities.

(d) For purposes of (a) above, but without limitation of (c) above, a rebuttable presumption that a person has been selected or approved for participation in an arrangement on a basis related to his propensity to gamble shall be created whenever said person is provided with:

1. Complimentary guest room accommodations as part of the arrangement; or
2. Complimentary services or items which have a value of \$200.00 or more calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.

19:49-1.3 Open-ended or conditional complimentary offers

An offer by a casino licensee to pay for the cost of transportation, food, lodging, entertainment and other services and items of value for a person in an amount to be determined by the actual gaming activities of that person after his arrival at the casino hotel shall be deemed to be an offer of complimentary services or items for the purposes of determining whether an arrangement involving such an offer

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is a junket within the meaning of Section 29 of the Act and these regulations.

SUBCHAPTER 2. LICENSURE REQUIREMENTS

19:49-2.1 Junket representative licensure

(a) Unless exempted pursuant to (b) below, a junket representative, as defined in the Act, is any natural person who negotiates the terms of, engages in the referral, procurement or selection of persons who may participate in, or accompanies for purposes of monitoring or evaluating the participants on, any junket to a licensed casino, regardless of whether or not those activities occur within the State of New Jersey.

1. If a person performs any one of the functions listed above in connection with a junket to a licensed casino, that person is a junket representative for the purposes of the Act and these regulations.

(b) Any person who performs the services of a junket representative but receives no direct or indirect compensation from any person for performing such services shall not be considered a junket representative for the purposes of the Act and these regulations.

1. In applying the provisions of this subsection, the term "compensation" shall not include the receipt by a junket participant of the same complimentary services and items of value provided by a casino licensee to other participants pursuant to the terms of the particular junket.

2. The fact that a person may not be considered a junket representative pursuant to the provisions of this subsection does not excuse the casino licensee or any other person from meeting any other licensing or reporting obligation which may exist as a result of the conduct of the junket activity.

(c) No person shall act as a junket representative in connection with a junket to a licensed casino unless:

1. He has been licensed as a junket representative in accordance with the provisions of the Act and is employed by either:

- i. A licensed casino; or
- ii. A licensed junket enterprise; or

2. He has been licensed as a sole owner/operator junket enterprise in accordance with the provisions of the Act and these regulations; or

3. He is the holder of a current and valid casino key employee license or casino employee license in a position directly related to gaming activity and is currently employed by the casino licensee for whom such junket representative services are being rendered.

(d) A junket representative may only be employed by one casino licensee or junket enterprise at a time. For the purposes of this section, a junket representative shall only be considered "employed" by a casino licensee or junket enterprise if:

1. All compensation which that junket representative receives for his services are reflected on, and received through, the payroll account of the employer; and

2. All other appropriate indicia of genuine employment, including Federal and State taxation withholdings, are present.

(e) No casino licensee or junket enterprise shall employ or otherwise engage the services of a junket representative except in accordance with the provisions of this section.

19:49-2.2 Junket enterprise licensure

(a) A junket enterprise, as defined in the Act, is any person who employs or otherwise engages the services of a junket representative in connection with a junket to a licensed casino, regardless of whether or not such activities occur within the State of New Jersey.

(b) A junket enterprise shall be licensed in accordance with the provisions of Section 102 of the Act prior to conducting any business whatsoever with a casino licensee, its employees or agents. No casino licensee or junket enterprise may engage the

services of a junket enterprise who has not been so licensed, except as otherwise provided in N.J.A.C. 19:49-2.3.

19:49-2.3 Sole owner/operator junket enterprise

(a) Any licensed junket representative who is the sole owner and operator of a junket enterprise shall not be required to obtain a junket enterprise license in order to engage in the activities of a junket enterprise if his junket representative license has been endorsed as a sole owner/operator junket enterprise.

(b) In order to qualify for a sole owner/operator junket enterprise endorsement:

1. No person other than the licensed junket representative may hold any equity interest in, or share in the profits or losses of, the junket activities of the junket enterprise; and

2. The licensed junket representative may not employ any other junket representative.

(c) Except as otherwise provided in (b) above, a properly licensed sole owner/operator junket enterprise shall be considered, and may perform the functions of, a licensed junket enterprise.

SUBCHAPTER 3. REPORTING REQUIREMENTS

19:49-3.1 Junket prearrival reports

(a) A prearrival report shall be prepared by a casino licensee for each junket which involves either:

- 1. A junket enterprise; or
- 2. A sole owner/operator junket enterprise; or
- 3. An offer of complimentary services or items which have a value in excess of \$500.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.

(b) A prearrival report shall be filed with the Division by the casino licensee at least five days prior to the scheduled arrival date of the junket. If a junket for which a prearrival report is required by (a) above is arranged within five days of its scheduled arrival date, the prearrival report on said junket shall be immediately filed with the Division by the casino licensee.

(c) Prearrival reports shall be verified by an authorized agent of the casino licensee and shall include:

- 1. The name of every junket enterprise and junket representative involved in the junket;
- 2. The scheduled arrival date of the junket;
- 3. The scheduled departure date of the junket;
- 4. The origin of the junket;
- 5. The terms of any direct or indirect compensation arrangement with junket enterprises or junket representatives;
- 6. The value and type of complimentary services and items to be provided to the junket participants calculated in accordance with the provisions of N.J.A.C. 19:45-1.9;
- 7. A description of the financial qualification obligations to be imposed on junket participants, if any; and
- 8. A sequential junket number assigned by the casino licensee consisting of three entries: the last two digits of the year in which the junket arrived; a sequential number assigned by the casino licensee to each particular junket to be reported; and a coded entry to indicate if a junket enterprise or sole owner/operator junket enterprise was involved in the junket.

(d) Any change in the information required by (c)(1) or (2) above which occurs after the filing of a prearrival report with the Division shall be immediately reported in writing to the Division by the casino licensee. These changes, plus any other material change in the information provided in a prearrival report, shall also be noted on the arrival report filed pursuant to N.J.A.C. 19:49-3.2.

(e) All filings required by this section shall be made at locations to be designated by the Division.

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19:49-3.2 Junket arrival reports

(a) An arrival report shall be prepared by a casino licensee for each junket which involves either:

1. A junket enterprise; or
2. A sole owner/operator junket enterprise; or
3. An offer of complimentary services or items which have a value in excess of \$200.00 per participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; or
4. Complimentary guest room accommodations.

(b) Arrival reports shall be filed by the casino licensee, at locations to be designated by the Division, in accordance with the following:

1. An arrival report on a junket involving complimentary guest room accommodations shall be filed with the Division within 12 hours of the registration of the junket participant.
2. An arrival report on a junket required by (a)1 through 3 above shall be filed with the Division by 5:00 P.M. of the next calendar business day following arrival. A junket arrival which occurs after 12:00 A.M. but before the close of gaming operations shall be deemed to have occurred on the preceding calendar day. For the purposes of this section, a business day shall be defined as any day except a Saturday, Sunday or State and Federal holiday.

(c) Arrival reports shall be verified by an authorized agent of the casino licensee and shall include:

1. A junket guest manifest listing the names and addresses of junket participants; and
2. Any information required by N.J.A.C. 19:49-3.1(c) which has not been previously provided to the Division in a prearrival report pertaining to that particular junket, or an amendment thereto filed pursuant to N.J.A.C. 19:49-3.1(d).

19:49-3.3 Junket final reports

(a) A final report shall be prepared by a casino licensee for each junket engaged in on its premises for which the casino licensee was required to prepare either a prearrival or an arrival report pursuant to N.J.A.C. 19:49-3.1(a) or 3.2(a).

(b) A final report shall be prepared by a casino licensee and placed in its files within seven days of the completion of the junket.

(c) Final reports shall include:

1. The actual amount of complimentary services and items provided to each junket participant calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; and
2. Any information required by N.J.A.C. 19:49-3.1(c) or 3.2(c).

(d) Attached to each final report on a junket involving complimentary guest room accommodations shall be an acknowledgment by each participant that he understands the terms of the particular junket. The acknowledgment shall clearly explain the junket arrangement and be signed and dated by the participant on or prior to the arrival date of the junket.

19:49-3.4 Monthly reports: non-junket gaming arrangements

(a) A casino licensee shall prepare a report on those arrangements in which it participates which would be junkets but for the fact that the arrangements do not include a selection or approval of participants in accordance with the provisions of Section 29 of the Act and N.J.A.C. 19:49-1.2; provided, however, that such report shall only include those arrangements which involve either:

1. Complimentary services or items furnished directly or indirectly by the casino licensee which have a value in excess of \$100.00 per person calculated in accordance with the provisions of N.J.A.C. 19:45-1.9; or
2. Compensation paid directly or indirectly by the casino licensee to any person who is not an employee of the casino licensee (other than the same complimentary services and items

of value provided by the casino licensee to other participants pursuant to the terms of the particular arrangement); or

3. Complimentary transportation furnished directly or indirectly by the casino licensee for a group of 10 or more persons.

(b) The report required by (a) above shall be filed on a monthly basis with the Division by the casino licensee on or before the 15th of the following month.

(c) The report required by (a) above shall be prepared in tabular form and shall include:

1. The name and address of any person, other than an employee of the casino licensee, receiving direct or indirect compensation from the casino licensee pursuant to the arrangement (other than the same complimentary services or items of value provided by the casino licensee to other participants pursuant to the terms of the particular arrangement);
2. The terms of any compensation agreement with a person identified in (1) above;
3. The arrival and departure dates of each visit to the casino hotel;
4. The name, address and basis of affiliation of any group participating in the arrangement;
5. The number of persons participating in the arrangement;
6. The means of transportation utilized; and
7. The value of complimentary services or items to be provided to the participants, calculated in accordance with the provisions of N.J.A.C. 19:45-1.9.

19:49-3.5 Purchases of patron lists

(a) Each casino licensee, junket representative or junket enterprise shall file a report with the Division with respect to each list of names of junket patrons or potential junket patrons purchased from any source whatsoever.

(b) The report required by (a) above shall include:

1. The name and address of the person or enterprise selling the list;
2. The purchase price paid for the list, or any other terms of compensation related to the transaction; and
3. The date of purchase of the list.

(c) The report required by (a) above shall be filed as soon as is practicable at a location to be designated by the Division, but in no event shall such report be filed later than seven days after the receipt of the list by the purchaser.

(d) If a list of names of junket patrons or potential junket patrons has been compiled in whole or in part by selecting the names included therein on a "basis related to their propensity to gamble," as that phrase is defined in N.J.A.C. 19:49-1.2, the seller of such list shall be appropriately licensed in accordance with the provisions of N.J.S.A. 5:12-102 prior to engaging in such sale. No casino licensee, junket enterprise or sole owner/operator junket enterprise shall purchase a list of names compiled in such fashion unless the seller has been so licensed.

19:49-3.6 Monthly reports: employee junket activities

Each casino licensee shall, on or before the 15th day of the month, file a report with the Division listing the name and license number of each person employed by that casino licensee who performed the services of a junket representative during the preceding month, but whose license was not endorsed as such. The report shall be filed at a location to be designated by the Division.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between February 16, 1982 and February 7, 1983, and which have not been adopted and filed by February 4, 1983. The index does not contain rules proposed in this Register and listed in the *Table of Rules in This Issue*. These proposals will appear in the next *Index of Proposed Rules*.

A proposed rule listed in this index may be adopted no later than one year from the date the proposal was originally published in the Register. Failure to timely adopt the proposed rule requires the proposing agency to re-submit 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 of the Office of Administrative Law (N.J.A.C. 1:30).

The *Index of Proposed Rules* appears in the second issue of each month, complementing the *Index of Adopted Rules* which

appears in the first Register of each month. Together, these indices make available for a subscriber to the Code and Register all legally effective rules, and enable the subscriber to keep track of all State agency rulemaking activity from the initial proposal through final promulgation.

The proposed rules are listed below in order of their Code citation. Accompanying the Code citation for each proposal is a brief description of its contents, the date of its publication in the Register, and its Register citation.

The full text of the proposed rule will generally appear in the Register. If the full text of the proposed rule was not printed in the Register, it is available for a fee from:

Administrative Filings
CN 301
Trenton, New Jersey 08625

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4:2-15.2	Repeal: Lateral title change	9-7-82	14 N.J.R. 940(b)
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7:11-2	Consolidated Rate Schedule: D&R Canal and Spruce Run-Round Valley	2-7-83	15 N.J.R. 122(a)
7:11-4	Repeal Spruce Run-Round Valley rates	2-7-83	15 N.J.R. 122(a)
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7:13-1.11	Floodway delineations in Ocean-Monmouth Counties	11-1-82	14 N.J.R. 1189(a)
7:13-1.11	Floodway delineations in Burlington County	12-20-82	14 N.J.R. 1434(a)
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8:71	Additions to generic drug list (see 14 N.J.R. 1160(b), 1392(a); 15 N.J.R. 91(a))	7-6-82	14 N.J.R. 690(a)
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17:10-3.1	Judicial Retirement: Computation of benefits	11-15-82	14 N.J.R. 1299(a)
17:16-17.2, 17.3	State Investment Council: Applicable funds; equity investments	2-7-83	15 N.J.R. 133(a)
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19:8-2.12	Emergency service fees on Parkway	2-7-83	15 N.J.R. 134(a)
19:17	Appeal Board on representation fees	8-16-82	14 N.J.R. 903(a)
19:75	Rules of operation: Atlantic County Transportation Authority	3-15-82	14 N.J.R. 272(a)
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19:41-9.9A	Junkets (with Emergency Adoption)	2-7-83	15 N.J.R. 135(a)
19:45-1.1, 1.8, 1.9	Junkets (with Emergency Adoption)	2-7-83	15 N.J.R. 135(a)
19:45-1.11	Line of authority; reporting of violations	10-4-82	14 N.J.R. 1087(b)
19:45-1.36	Slot machine entry	9-20-82	14 N.J.R. 1052(a)
19:45-1.39	Resetting of progressive slot machines	9-20-82	14 N.J.R. 1053(a)
19:46-1.1, 1.6	Gaming chips and plaques	8-2-82	14 N.J.R. 828(a)
19:46-1.2	Gaming plaques	7-6-82	14 N.J.R. 708(a)
19:46-1.16, 1.18	Use of cards and dice	8-2-82	14 N.J.R. 829(a)
19:46-1.17	Use of cards in baccarat	7-19-82	14 N.J.R. 754(a)
19:46-1.19	Blackjack equipment	6-7-82	14 N.J.R. 559(b)
19:47-2.1	Exclusion of card counting in blackjack	5-17-82	14 N.J.R. 467(a)
19:47-2.1-2.7	Blackjack play and wagering (see 14 N.J.R. 841(b), 991(a))	6-7-82	14 N.J.R. 559(b)
19:47-2.2	Correction: Double shoe in blackjack		14 N.J.R. 832(a)
19:47-2.5	"Shuffle-at-will" in blackjack	5-17-82	14 N.J.R. 469(a)
19:47-2.8, 2.13, 2.23-2.26	Blackjack rules	8-16-82	14 N.J.R. 907(a)
19:47-2.9-2.12, 2.15, 2.16	Blackjack play and wagering (see 14 N.J.R. 841(b))	6-7-82	14 N.J.R. 559(b)
19:47-2.16-2.19	Card counting exclusion	5-17-82	14 N.J.R. 467(a)
19:47-2.20-2.22, 5.7	Blackjack play and wagering (see 14 N.J.R. 841(b))	6-7-82	14 N.J.R. 559(b)
19:49	Junkets (with Emergency Adoption)	2-7-83	15 N.J.R. 135(a)
19:52-1.4	Casino room entertainment	2-7-83	15 N.J.R. 139(a)

The following rules were proposed in the New Jersey Register, but have not been timely adopted and therefore have expired pursuant to N.J.A.C. 1:30-4.2(c).

1:1-17.3	Return of cases	1-4-82	14 N.J.R. 4(b)
8:71	Generic drug list (portions adopted; see 14 N.J.R. 389(c), 655(b), 1159(a))	1-4-82	14 N.J.R. 22(a)
10:122-5.1-5.4	Child care centers	1-18-82	14 N.J.R. 82(a)
13:30-6.2	Dental hygiene schools	1-18-82	14 N.J.R. 89(a)
13:30-6.3	Oral hygiene schools	2-1-82	14 N.J.R. 135(a)
13:30-6.6	Repeal dormitory requirement	2-1-82	14 N.J.R. 136(a)
13:30-8.7	Law test requirement	1-18-82	14 N.J.R. 89(b)
13:70-3.35	Thoroughbred racing	1-18-82	14 N.J.R. 91(a)
17:28	Contributions and payroll deductions	1-18-82	14 N.J.R. 109(a)



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Adoptions **February 18**

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