NEW JERSEY REGISTER

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(Includes rules filed through March 5, 1984)

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RULE PROPOSALS

ADMINISTRATIVE LAW
(a)
OFFICE OF ADMINISTRATIVE LAW

Uniform Administrative Procedure Rules of Practice
Non-Lawyer Representation in Contested Cases

Proposed Amendments: N.J.A.C. 1:1-3.7, 1:2-2.10 and 1:6A-4.2
Proposed New Rules: N.J.A.C. 1:1-3.12 and 3.13

Authorized By: Ronald I. Parker, Acting Director, Office of Administrative Law.
Authority: N.J.S.A. 52:14F-56e, f and g; and R.1:21-1(e).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions and any inquiries about submissions and responses, should be addressed to:

Steven L. Lefelt, Deputy Director
Office of Administrative Law
185 Washington Street
Newark, NJ 07102

At the close of the period for comments, the Office of Administrative Law thereafter may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. The adoption of these rules becomes effective upon publication in the Register of a notice of their adoption.

This proposal is known as PRN 1984-147.

The agency proposal follows:

Summary

Since 1980, the OAL has been maintaining the status quo with regard to representation by non-lawyers in contested cases. N.J.A.C. 1:1-3.7(a) authorized appearances by any non-lawyer who had been permitted to appear in a contested case prior to the establishment of the OAL. The OAL continued the prior practice because the New Jersey Supreme Court committees on Civil Practice and the Unauthorized Practice of Law were considering the question of non-lawyer representation in administrative proceedings.

On September 12, 1983, the New Jersey Supreme Court promulgated R.1:21-1(e), which permits appearances by non-lawyer representatives in contested cases before the OAL under certain circumstances "subject to such limitations and procedural rules as may be established by the Office of Administrative Law . . ." Id. This proposal therefore repeals N.J.A.C. 1:1-3.7(a) and promulgates N.J.A.C. 1:1-3.12 and 3.13 to establish the procedural rules for implementing R. 1:21-1(e).

Proposed new rule N.J.A.C. 1:1-3.12 separates the application procedure for non-lawyer representation into three categories: First, in cases transmitted to the OAL by the Division of Public Welfare, Division of Medical Assistance and Division of Youth and Family Services, oral applications will be permitted at the time of the hearing; Second, in cases transmitted by State agencies where the Attorney General will not provide representation, a notice of appearance must be filed by the non-lawyer employee seeking to represent the state agency; Third, in the remaining circumstances where non-lawyer representation is permitted under R.1:21-1(e), a written application, which may be in letter form, shall be required.

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

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The NEW JERSEY ADMINISTRATIVE CODE is published on a continuing basis by Administrative Publications of the Office of Administrative Law. Subscription rates for this 31-volume, regularly updated set of all State administrative rules are available on request. The Code is sold either in the full set or in one to three volumes depending on the Department coverage desired.

The proposed new rule spells out, for each type of circumstance authorized by R.1:21-1(e), the specific information to be included in applications for non-lawyer representation as well as procedures for review and approval of such applications.

The new rule imposes certain limitations and controls on non-lawyer activities, including the requirement that all written communications be so-signed by the party being represented and that non-lawyers be accompanied at the hearing by the party. This provision is primarily concerned with assuring that the non-lawyers activities and communications are properly authorized.

The presiding judge retains the power to revoke, condition or limit the non-attorney's right to appear in a case to insure that justice results. The proposed new rule establishes some standards of proper non-lawyer behavior and clarifies that non-lawyers will be subject to the OAL Rules of Practice, N.J.A.C. 1:1, and to sanctions which, in addition to those provided in N.J.A.C. 1:1-3.5, may include permanent exclusion from administrative hearings.

Proposed new rule N.J.A.C. 1:1-3.13 sets forth the procedure to be followed when a state agency intends to proceed without representation at the hearing but, instead, relies upon papers submitted to the judge.

The purpose of the proposed amendments to N.J.A.C. 1:2-2.10 and N.J.A.C. 1:6A-4.2 is to conform the rules for representation and assistance in Civil Service conference hearings and Special Education hearings, respectively, to the procedures outlined in this proposal.

Social Impact

The proposed new rules and amendments clarify under what circumstances and in what manner a non-lawyer may represent and assist a party in a contested case hearing. The rules provide standards and guidelines for non-lawyer appearances, which should result in better regulation and somewhat greater participation of non-lawyers in administrative hearings. The rules will allow a party who cannot afford a lawyer and cannot adequately represent him or herself to be aided by an appropriately qualified non-lawyer. The rule should result in more efficient and productive presentations by persons who otherwise might inadequately present their cases or might not be able to present any case at all.

The rules should reduce the scheduling time in cases where a State agency is involved by permitting a non-lawyer employee of the agency to appear, thus alleviating reliance upon the limited number of deputy attorneys general available to appear in these cases.

It is anticipated that the new rules and amendments should have no adverse impact on the practice of law. In most circumstances in which non-lawyers are permitted to appear under R.1:21-1(e), it has been the case that these parties would have prior to R.1:21-1(e) appeared without an attorney.

Economic Impact

The proposed new rules and amendments do not impose any financial burdens on State agencies or private parties and should result in a cost saving to both. Non-lawyer employees will be permitted, in appropriate cases, to represent State agencies if the Attorney General does not provide such representation, which should help expedite the conclusion of contested cases, thus reducing litigation costs. In turn, the time and expense saved by the Attorney General in not providing representation in these cases can be used to handle other cases. Private parties, in appropriate situations, will have the benefit of assistance or representation by non-lawyers, without fee.

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

1:1-3.7 Appearances and representation

(a) [All attorneys, pro se parties, or others permitted by law, by governing federal regulations or by Rule 1:21 et seq. of the New Jersey Court Rules shall be permitted to appear in a contested case and shall be subject to this chapter. However, a non-lawyer representative of a party, including the full-time staff of a state, county or municipal agency shall be permitted to appear in those contested cases where such appearance was permitted prior to the establishment of the Office of Administrative Law.]

A party may represent him or herself, be represented by an attorney authorized to practice law in this State, or subject to N.J.A.C. 1:1-3.12 and N.J.A.C. 1:1-3.13 be represented or assisted by non-lawyer permitted to make an appearance in a contested case by R.1:21-1(e).

(b) (No change.)

1:1-3.12 Representation and assistance by non-lawyers; authorized situations, applications, notice of appearance, approval procedures, limitations, practice requirements

(a) Pursuant to R.1:21-1(e) of the Rules Governing the Courts of the State of New Jersey, a non-lawyer may apply for permission to represent or assist a party at a contested case hearing in the following situations by complying with the following procedures:

1. Oral applications at the hearing may be made in cases transmitted to the OAL by the Division of Public Welfare, Division of Medical Assistance and Division of Youth and Family Services.

i. At the hearing, the non-lawyer applicant seeking to represent a recipient or applicant for services shall affirm and reasonably evidence that he or she satisfies the federal and state requirements for non-lawyer representation.

ii. At the hearing, the non-lawyer applicant seeking to represent a county or municipal welfare agency shall affirm and reasonably evidence that he or she is an employee of the welfare agency, has been assigned to represent the agency in the case, has special expertise or experience in the matter and that the county or municipal counsel has declined representation in the particular matter. The non-lawyer applicant shall also state his or her position at the agency and the name and title of his or her supervisor.

2. A Notice of Appearance on forms supplied by the OAL shall be required in cases where a non-lawyer employee seeks to represent a State agency. The Notice shall be signed by the non-lawyer applicant, filed with the Clerk of the OAL no later than 10 calendar days prior to the scheduled hearing date and served on all parties.

i. The Notice of Appearance shall include a statement that the non-lawyer is an employee of the state agency he or she seeks to represent; his or her position at the agency; his or her supervisor at the agency; and an explanation of his or her expertise or experience in the matter in controversy.

ii. The Notice shall also contain a statement, signed by a Deputy Attorney General for the State agency that the Attorney General will not provide representation for the agency in the case.

3. Written applications shall be made in the following cases. Such applications may be in letter form, and shall be signed by the non-lawyer applicant, filed with the Clerk of OAL no later than 10 calendar days prior to the scheduled hearing date and served on all parties.

i. In special education hearings the non-lawyer applicant shall include in his or her written application reasonable evidence that he or she satisfies the Federal and State requirements for non-lawyer representation.

ii. In cases where a non-lawyer from a Legal Services program seeks to represent an indigent, the non-lawyer applicant shall include in his or her written application a statement that he or she is a paralegal or legal assistant; the name and address of the Legal Services program of which he or she is a part; the name, telephone number and signed authorization of a Legal Services attorney who supervises the applicant; and, a statement that the represented party is indigent.

iii. In cases where a principal seeks to represent a close corporation, the non-lawyer applicant shall include in his or her written application an affirmation that he or she is a principal, his or her position in the corporation; and a copy of the incorporation papers or other papers documenting the close nature of the corporation, describing the corporation's activities and listing the non-lawyer as a principal.

iv. In Civil Service cases, where a union representative seeks to represent a state, county or local government employee, the non-lawyer applicant shall include in his or her written application, a statement that he or she is an authorized representative of a labor organization; that the labor organization is the duly authorized representative of the employee's collective bargaining unit; the name and title of his or her supervisor; and, a signed request from the employee for representation by the union representative.

v. In cases where an individual cannot afford to retain an attorney and cannot obtain free legal representation, the non-lawyer applicant shall include in his or her written application an explanation of why the individual cannot adequately present his or her own case and how the individual would benefit from the assistance of the non-lawyer; an explanation of the non-lawyer's capabilities for rendering such assistance; and a statement by the individual needing assistance that he or she lacks the means to retain an attorney and that representation is not available through a Legal Services program.

4. All non-lawyer applicants whether filing a Notice of Appearance under (a)2 above or applying orally or in writing for permission to represent a party in a contested case shall affirm in the Notice or in the written or oral application that he or she is not a disbarred or suspended attorney and is not receiving a fee specifically for the appearance.

(b) Upon receiving a timely written application by a non-lawyer seeking permission to represent a party in a contested case, a judge shall review the papers. If the judge does not otherwise notify the applicant within 5 days of the application's receipt, the non-lawyer's application to appear at the hearing shall be deemed approved.

(c) The presiding judge may revoke any non-lawyer's right to appear in a case if and when the judge determines that a material statement is incorrect in any Notice of Appearance or in any written or oral application by a non-lawyer or party concerning representation or assistance by the non-lawyer. The judge may also institute any disciplinary or other appropriate action if the judge determines that the incorrect statement was an intentional misstatement.

(d) The judge may, at any time in the proceedings, determine that a specific case is not appropriate for representation by the non-lawyer representative.

1. The judge's determination may be based either on the lack of appropriate experience or expertise of the particular non-lawyer representative, or on the complexity of the legal issues or other factors which make the particular case inappropriate for a non-lawyer representative.

2. The judge shall implement his or her determination by informing the parties of the decision and the reasons therefore. With respect to a county or State agency or a close corporation, the judge may require the party to obtain legal representation. With respect to an individual, the judge may require the individual either to represent himself or to obtain legal representation.

(e) In general, a non-lawyer representative or assistant shall be permitted at the hearing to submit evidence, speak for the party, make oral arguments, and conduct direct examinations and cross examinations of witnesses. However, representation and assistance by non-lawyers is limited as follows:

1. In the interests of an orderly flow of communications,

i. Any written communication or written submission by the non-lawyer shall be co-signed by the individual whom he or she is representing or assisting;

ii. Any oral communications by the non-lawyer on behalf of a party, except requests for information, shall be made in the presence of the party;

iii. The non-lawyer shall be accompanied at the hearing by the individual whom he or she is representing or assisting; and,

iv. These limitations do not apply to non-lawyers representing State and county agencies and close corporations, where the non-lawyer representation is equivalent to a pro se appearance.

2. In the interests of a full, fair, orderly and speedy hearing, the judge may at any time condition, limit or delineate the type or extent of representation or assistance which may be rendered by a non-lawyer. Conditions or limits may include:

i. Requiring any examination and cross examination by the non-lawyer to be conducted through the judge;

ii. Requiring questions from the non-lawyer to be presented to the judge prior to asking;

iii. Requiring the party to speak for him or herself; or

iv. Revoking the right of the non-lawyer to appear if the judge finds that the proceedings are being unreasonably disrupted or unduly delayed because of the non-lawyer's participation.

(f) Non-lawyer representatives and assistants shall be subject to the Rules of Practice of the Office of Administrative Law, N.J.A.C. 1:1 and to the sanctions provided in N.J.A.C. 1:1-3.5, which may include:

1. In the case of a State or county agency employee, reporting any inappropriate behavior to the agency for possible disciplinary action;

2. A determination by the presiding judge that the non-lawyer representative shall be excluded from a particular hearing; and,

3. A recommendation by the presiding judge to the Director of the Office of Administrative Law that a particular non-lawyer representative be permanently excluded from administrative hearings.

1:1-3.13 Appearance without representation: State agencies

(a) In those cases where a State agency does not send a representative to a hearing, but merely rests its case on papers and/or on witnesses presented to the judge:

1. The State agency shall submit with the transmittal form for the case or separately to the clerk no later than five

working days prior to the scheduled date of hearing, a statement which verifies the agency's intention to proceed without a representative and lists the papers and witnesses upon which the agency intends to rely. The State agency shall also notify each other party of its intention to appear without representation.

2. The judge shall, where appropriate, accept into the hearing record the agency's papers and/or witnessess' testimony. In the interests of developing a full hearing record of the dispute, the judge may, where appropriate, permit a witness who does not qualify as an agency representative, under N.J.A.C. 1:1-3.12, to ask questions through the judge or make statements in response to other witnesses' testimony. However, the judge need not permit a witness who does not qualify as an agency representative under these rules, to conduct the examination or cross examination of witnesses or to offer documents in his or her own name.

1:6A-4.2 Representation

(a) At a hearing, any party may be accompanied and advised by legal counsel or by individuals with special knowledge or training with respect to handicapped pupils and their educational needs, or both. [A person who accompanies and advises a party may, at the hearing, submit evidence, speak, make oral arguments, conduct direct and cross-examinations and perform other similar activities for the party.

(b) Any person who accompanies and advises a party shall be bound by these rules and shall comport himself or herself in a manner appropriate to the orderly conduct of a hearing. Any person who does not so act shall be subject to sanctions provided in N.J.A.C. 1:1-3.5.

(c) Any written communication on behalf of a party shall be signed by the party or the party's lawyer. All oral communications by a person accompanying and advising a party shall be made in the presence of the party, except if made by the party's lawyer.]

(b) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-3.12 and shall be bound by the approval procedures, limitations and practice requirements contained therein.

1:2-2.10 Representation and assistance

[(a) Any party may be represented by an attorney. Or a party may be accompanied and assisted by an individual who:

1. Has special knowledge or training in the subject matter of the hearing and in the contested case hearing process;

2. Neither charges nor receives any fee, benefit or other compensation from the party specifically for the assistance in this matter; and

3. Is a full-time employee of the government agency for which he or she is appearing or is a full-time staff person of the public employee union which is representing the employee, and is designated as qualified by that agency or union.]

(a) A non-lawyer seeking to represent a party shall comply with the application process contained in N.J.A.C. 1:1-3.12 and shall be bound by the approval procedures, limitations and practice requirements contained therein.

BANKING
(a)

DIVISION OF BANKING

Executive Officer Participation in Major Policy-Making Functions of a Bank

Proposed Readoption: N.J.A.C. 3:6-3

Authorized By: Michael M. Horn, Commissioner, Department of Banking.
Authority: N.J.S.A. 17:9A-71B.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. 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, New Jersey 08625

The Department of Banking thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 8, 1984. The readoption of these rules becomes effective upon acceptance for filing by the Office of Administrative Law of a notice of their readoption.

This proposal is known as PRN 1984-118.

The agency proposal follows:

Summary

The subchapter proposed for readoption has been reviewed in compliance with Executive Order No. 66(1978) and has been found to be necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which it was promulgated. Pursuant to the authority vested in the Commissioner of Banking by Section 71(B) of the Banking Act of 1948, as amended, N.J.S.A. 17:9A-71B, the Commissioner adopted this rule (N.J.A.C. 3:6-3) on May 8, 1979. At that time, the regulation was written to define those officers of a bank who should be considered as representing the operating management of a bank. Such officers were defined as individuals who were involved in major policy-making functions of the bank and therefore should be subject to the lending limitation imposed on such officers by the banking statutes.

Subsequently, the banking statute was modified and established an executive officer of a bank as being one who is involved in major policy-making functions of the bank. Therefore, in July of 1982, N.J.A.C. 3:6-3.1 was modified to update its provisions to tie into the executive officer designation contained in the law (see 14 N.J.R. 491(a), 14 N.J.R. 834(c)). In October of 1983, the three Federal regulators (Fed-

eral Reserve; Federal Deposit Insurance Corporation and the Comptroller of the Currency), in their varied supervisory roles over state and national commercial banks, adopted rules expanding their allowable lending limitations to bank executive officers. After reviewing the action by these agencies, and concluding that the limited expansion in lending limitations involved was warranted, and in line with his responsibility to maintain parity between state and national banks, the Commissioner adopted new rules N.J.A.C. 3:6-3.2 and 3.3 effective January 3, 1984 (see 15 N.J.R. 1786(a), 16 N.J.R. 45(a)). The regulation, as presently written, establishes substantial parity between state and national banks relative to loans these institutions may grant to executive officers and therefore, the rule is proposed for readoption without change.

Social Impact

The proposed readoption of this rule should have no negative social impact but should allow State chartered banks to continue to offer their executive officers similar lending opportunities as are available to executive officers in national banks.

The original adoption of this regulation in 1979 established criteria to monitor loans in banks which were made to officers who were involved in major policy-making decisions of the bank. Through such monitoring, stockholders, depositors and the public in general were assured that loans to such insiders were within controlled limits. In 1982, the legislature modified the definition of officer to the term "executive officer". This tied such a designation into that recognized throughout both the State and national banking community and thereby assured a consistency in comparing individuals with similar responsibilities and therefore subject to similar standards and controls.

In 1983, both the Federal regulators and the Commissioner of Banking recognized the need to adopt standards that would allow for the varying capacity of different institutions to offer loans to their executive officers. In this regard, the maximum loan level was increased from $10,000.00 to $25,000.00 or 2.5 percent of capital funds of the bank, whichever is greater, with an overall cap of $100,000.00. Such limits retain monitoring and controls on such insider loans, to protect the public's interests, while recognizing that banks with greater capital bases, may conservatively grant loans of a differing amount than those with lower capital positions. The maximum "cap" retained, assures controls and limits well below the level which such institutions may lend to the general public.

However, recognizing the social needs of an institution's executive officers, loans to provide for the education of their children and allowance for a mortgage loan on their primary residence are excluded from the general lending limits.

Relating the dollar level of the loans which an individual institution may make to its executive officers to the capital base of the institution, rather than a strict dollar limitation, should allow the loan level to float in proportion to the capacity of an institution to offer increased loans, as it now does with the institutions general borrowers. This provision should also preclude the need for making periodic adjustments in the lending limitation. This will allow institutions to provide for both the needs of their executive officers and the needs of the community they serve.

Economic Impact

There should be no major impact on the State through the readoption of this rule. However, continuing to afford State chartered institutions general parity with national banks in granting executive officers educational loans for their children and other loans, within the prescribed limits, should allow State institutions to offer these officers comparable loans which national banks may offer their executive staff.

The banking law, upon which the regulation is based, in 1948, set a limit of $2,500.00 on loans which could be made to employees and officers of a bank. Over the years, recognizing economic changes, the legislature in 1966 raised this level to $5,000.00 and in 1979 $10,000.00. During this period, the legislature removed employees from the restrictions of the law, as well as officers not involved in policy making decisions. However, controls have been maintained over loans granted to executive officers who are involved in major policy making decisions and, therefore, could influence the granting of loans. This has had a beneficial economic impact on banks by removing unnecessary constraints while retaining controls in areas which are deemed necessary.

The latest modification in the regulation, adopted on January 3, 1984, recognized changing economic conditions which warranted increasing the basic loan level to its current $25,000.00 with a maximum of $100,000.00. That modification also recognizes the propriety of relating the allowable loan level to the capital base of the institution. This recognizes the potential for changes in economic conditions and growth factors which will affect the lending capacity of an institution. While this should avoid the need for constant regulatory changes in the base lending level, it will retain appropriate constraints which will protect the interests of depositors, stockholders and the general public.

Full text of the proposed readoption may be found in the New Jersey Register at 14 N.J.R. 491(a), 14 N.J.R. 834(c), 15 N.J.R. 1786(a) and 16 N.J.R. 45(a).

COMMUNITY AFFAIRS

(a)

OFFICE OF THE OMBUDSMAN FOR THE INSTITUTIONALIZED ELDERLY

Ombudsman Practice and Procedure and Public Notice Requirements

Proposed Repeal: N.J.A.C. 5:100-1
Proposed New Rule: N.J.A.C. 5:100-1

Authorized By: John J. Fay, Jr., Ombudsman.
Authority: N.J.S.A. 52:27G-1 et seq., specifically 52:27G-5d.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack R. D'Ambrosio, Jr.
General Counsel
State of New Jersey
Office of the Ombudsman for the
Institutionalized Elderly
CN 808
Trenton, New Jersey 08625

The Office of the Ombudsman for the Institutionalized Elderly 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 1984-138.

The agency proposal follows:

Summary

Executive Order No. 66(1978) provides that an agency rule adopted after May 15, 1978, shall expire no later than five years after its effective date. The purpose of this "sunset provision" is to ensure that the State's administrative agencies periodically review and update their rules. The rule contained in N.J.A.C. 5:100-1 was reviewed by the Office of the Ombudsman and was found to be in need of revision in light of the objective stated in the executive order "to promulgate only necessary, adequate, reasonable, efficient, understandable, and responsive administrative rules."

After careful review, the Office determined that much of the text of the existing rule was redundant in light of the accessibility of the statute, N.J.S.A. 52:27G-1 et seq. Based on that determination, and in accordance with Executive Order No. 66(1978) the Office has attempted to streamline this rule to better and more efficiently serve itself and the general public. The rule as proposed, will cover: the purpose of the Office; procedures for contacting the Office; procedures for investigatory actions; procedures for the conducting of hearings; and information as to the Office's availability to the community.

Social Impact

The Office believes that a clear understanding of its purposes and procedures is necessary to best serve the general public. Such an understanding will be more easily attained with the revision and streamlining of the proposed new rule. A better understanding of the Office will encourage greater involvement with the problems of the institutionalized elderly and should ultimately lead to a higher level of effectiveness in carrying out its mandated duties and responsibilities.

Economic Impact

The Office believes that the proposed new rule will provide increased accessibility to the public and to the institutionalized elderly due to its revision and streamlining. Increased accessibility should result in economic advantage to those served by the Office because more of these persons may be inclined to use the services of the Office to resolve their disputes and problems at no cost to them. To accomplish this end, proper Office staffing must be maintained.

Full text of the proposed repeal may be found in the New Jersey Administrative Code at N.J.A.C. 5:100-1.

Full text of the proposed new rule follows.

SUBCHAPTER 1. GENERAL PROVISIONS

5:100-1.1 Purpose of the Office of the Ombudsman

(a) The Office of the Ombudsman will advocate for the health, safety and welfare, and the civil and human rights of the institutionalized elderly, age 60 or over; and will take necessary actions to secure the same.

(b) The Office of the Ombudsman will receive, investigate, and resolve complaints concerning facilities offering health related services for the institutionalized elderly, age 60 or over.

5:100-1.2 Contact with the Office

(a) Any person may contact the Office to lodge a complaint or to report any information concerning the health, safety and welfare, and the civil and human rights of institutionalized elderly persons.

(b) The Office may be contacted by calling a toll-free telephone number: 800-792-8820; or by writing to: The Office of the Ombudsman for the Institutionalized Elderly, CN 808, Trenton, New Jersey 08625.

(c) The Office can and will maintain confidentiality with respect to information received from a complainant, if so requested.

5:100-1.3 Investigations

(a) The Office will respond to complaints and other information received.

(b) Prior to the initiation of an investigation, a jurisdictional determination will be made:

1. If the Office lacks jurisdiction, the complaint or information received will be referred to the appropriate agency.
2. If the Office has jurisdiction, it will initiate a prompt and thorough investigation.

(c) At the completion of the investigation, the Office will notify the complainant of its findings.

(d) The Office may take the following action on substantiated complaints:

1. Attempt to resolve the matter through negotiations;
2. Refer the results of the investigation to an appropriate government agency, prosecuting agency or professional licensing board;
3. Initiate appropriate legal and/or equitable actions;
4. Make its findings known through the media;
5. Recommend the adoption of regulations or the introduction of legislation;
6. Conduct private and public hearings; and
7. Take any other appropriate action.

5:100-1.4 Hearings

(a) The Office may hold private or public hearings pursuant to N.J.S.A. 52:27G-8(d)(2).

(b) In holding a hearing, the Office will use the following procedure:

1. Any individuals and/or agencies who may bear a relation to the subject of the inquiry or investigation will be given at least 20 days notice prior to the convening of the hearing. Such notice will indicate the nature and scope of hearing.
2. The hearing will be held at a time and place to be determined by the Office.
3. The chairperson will conduct the hearing and will act as final arbiter on all questions, disagreements and/or rulings made throughout the hearing. The chairperson shall be designated by the Ombudsman.
4. An oath will be administered by a person authorized by law to any individual giving testimony.
5. Every individual who testifies may be accompanied by counsel who shall be permitted to advise the individual of his rights, subject to reasonable limitations to prevent obstruction of or interference with the orderly conduct of the hearing.
6. Prior to any testimony being taken, but after an oath is administered, any individual shall be allowed to give a opening statement to the chairperson.
7. The rules of evidence shall be relaxed for the purpose of obtaining as much information as possible. Any objections shall be noted in the record, but will not necessarily work to exclude relevant testimony.

8. During the course of the hearing, all questions and/or requests for information shall be directed to the chairperson. Similarly, written sworn statements may be directed to the chairperson upon request.

9. At all hearings, a record will be kept either by an electronic recording device or by transcription. Upon completion of the hearing, any individual and/or agency may request, at its own expense, a transcript of the proceedings.

10. At the completion of the hearing, the chairperson will prepare written findings, based on the facts presented and the conclusions drawn during the hearing.

5:100-1.5 Community Service

The Office will make itself available for the purpose of informing and educating interested individuals and groups about general issues of concern affecting the civil and human rights of the institutionalized elderly.

HEALTH

(a)

ENVIRONMENTAL AND OCCUPATIONAL HEALTH SERVICE

Worker and Community Right to Know Act Workplace Hazardous Substance List

Proposed New Rule: N.J.A.C. 8:59-1

Authorized By: J. Richard Goldstein, M.D., Commissioner, Department of Health.

Authority: L.1983, c.315, N.J.S.A. 34:5A-1 et seq., specifically 34:5A-30.

Three public hearings concerning this proposal will be held from 2:00 to 5:00 P.M. and 7:00 to 10:00 P.M., or until all persons have been heard, at:

April 4, 1984
Vogt Theatre
Bloomfield Library
90 Broad Street
Bloomfield, New Jersey 07003

April 10, 1984
New Jersey Department of Health
Auditorium - First Floor
Health-Agriculture Building
John Fitch Plaza
Trenton, New Jersey 08625

April 11, 1984
New Jersey Department of Health
Southern Region Office
1012 Haddonfield Road
Cherry Hill, New Jersey 08002

Interested persons may submit in writing, data views or arguments relevant to the proposal on or before April 19, 1984. Submissions must be received by this date or they will not be considered. These submissions, and any inquiries about submissions and responses, should be addressed to:

Kathleen O'Leary, Chief
Occupational Health Program
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625
(609) 984-1863

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 1984-145.

Due to its length, Appendix A of the proposed regulation containing the list of hazardous substances on the Workplace Hazardous Substance List and the list of referenced sources, has not been printed in the New Jersey Register. In addition, the Department of Health has prepared a Basis and Background document describing the referenced sources which have been used to support inclusion of substances on the List. Copies of Appendix A and the Basis and Background document may be obtain from:

Kathleen O'Leary, Chief
Occupational Health Program
New Jersey Department of Health
CN 360
Trenton, New Jersey 08625

Copies of the full text of the proposed regulation, including Appendix A, and the Basis and Background document, may also be reviewed at the following depositories:

Office of Administrative Law
88 East State Street
Trenton, New Jersey 08625

Reference Department
New Jersey State Library
185 West State Street
Trenton, New Jersey 08625

New Jersey Department of Health
Northern Region Office
20 Evergreen Place
East Orange, New Jersey 07018

New Jersey Department of Health
Southern Region Office
1012 Haddonfield Road
Cherry Hill, New Jersey 08002

County Libraries

County	Municipality
Burlington	Mount Holly
Camden	Voorhees
Cape May	Cape May Court House
Cumberland	Bridgeton
Hunterdon	Flemington
Monmouth	Freehold
Morris	Whippany
Ocean	Toms River
Somerset	Somerville
Sussex	Newton

Public Libraries

Bloomfield, Cherry Hill, East Brunswick, East Orange, Elizabeth, Hackensack, Jersey City, Linden, New Brunswick, Newark, Paterson, Phillipsburg, Plainfield, Ridgewood, Salem, Trenton, Wayne, Woodbridge, and Woodbury.

The agency proposal follows:

Summary

The Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq., enacted on August 29, 1983, establishes a comprehensive system for the disclosure and dissemination of information about hazardous substances in the workplace and the environment. The widely used phrase "right-to-know" refers to the right of employees and the general public to know the true identity of chemicals (generic chemical names) used in workplaces and discharged into the ambient environment.

The Act requires certain employers to report hazardous substances present at their business premises, maintain a file of safety and health information sheets about these substances for their employees use, provide their employees with education and training on how to handle these substances, and label containers with the chemical identity of their contents. Employers are also required to disclose basic information concerning the storage, treatment and emission of certain hazardous substances into the environment.

All disclosed information on hazardous substances will be available to employees at the workplace and to members of the public at county health departments and from the State Department of Health and the State Department of Environmental Protection. Local fire and police departments will also receive this information to help them plan for emergencies involving hazardous substances.

The law is being jointly implemented by the Department of Health, Environmental Protection, and Labor, with the advice of a Right to Know Advisory Council consisting of citizen members representing business, labor, environmental, community, firefighter, and scientific interests. Implementation of the law is funded by a fee assessed against employers.

The Department of Health is responsible for developing a workplace hazardous substance list which consists of substances which, based on documented scientific evidence, pose a threat to the health or safety of employees. The new rule being proposed herein establishes the Workplace Hazardous Substance List developed by the Department of Health.

Substances which pose a "threat to the health or safety of an employee" include, but are not limited to, substances which are flammable, explosive, corrosive, reactive, or possess other physical properties which pose a threat to the health or safety of an employee, and substances which are known to cause, or are suspected of causing cancer, genetic mutations, malfunctions in reproduction, acute or chronic disease, or other physiological malfunctions, in humans and animals.

Several public agencies and private organizations have developed lists of substances used in the workplace which pose a threat to employee health or safety. The department has examined these lists and has determined that substances on the lists cause a threat to employee health or safety. Hazardous substances from the following lists are included on the Workplace Hazardous Substance List (with exceptions noted):

Toxic and Hazardous Substances list of the Occupational Safety and Health Administration, Title 29 Code of Federal Regulations (CFR) Part 1910-Occupational Safety and Health Standards for General Industry, Subpart z, (as required by the Right to Know Law);

Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment . . . for 1983-1984 (inclusive of intended changes for 1983-1984) (except for nuisance dusts) adopted by the American Conference of Governmental Industrial Hygienists (ACGIH);

Table of hazardous materials developed by the United States Department of Transportation, Title 49 CFR Part 172.102, except for those substances on the list which represent general classes or nongeneric chemicals and do not represent specific chemicals, and do not have CAS numbers;

Recommendations for Occupational Safety and Health Standards by the National Institute for Occupational Safety and Health (NIOSH);

Third Annual Report on Carcinogens by the National Toxicology Program;

Chemicals, Industrial Processes and Industries Associated with Cancer in Humans, developed by the International Agency for Research on Cancer (IARC);

Chemicals Having Substantial Evidence of Carcinogenicity compiled by the Carcinogens Assessment Group, U.S. Environmental Protection Agency (EPA).

Other hazardous substances which have been included on the Workplace Hazardous Substance List because of their threat to employee health and safety are supported by the documents which are referenced on the Workplace Hazardous Substance List. In addition, substances on the Environmental Hazardous Substance List developed by the New Jersey Department of Environmental Protection are included on the Workplace Hazardous Substance List as required by the Right to Know Law.

Additional information about the above lists and other scientific documentation supporting the inclusion of hazardous substances on the Workplace Hazardous Substance List is contained in the "Basis and Background Document" which is available from the department at the address listed above.

The Workplace Hazardous Substance List identifies the Chemical Abstracts Service number, chemical name, synonym, and the source or sources which provides scientific evidence supporting selection of the substance to the list, for each substance.

The Workplace Hazardous Substance List will be reviewed periodically and revised once a year unless special circumstances warrant an earlier revision. The department will review the seven main lists identified above and the Department of Environmental Protection's Environmental Hazardous Substance List for possible revisions to the Workplace Hazardous Substance List. The department will continually review new scientific evidence for documentation to justify the addition or deletion of a hazardous substance to the List. Suggestions for revisions may also be made by the Right to Know Advisory Council and the public.

When the department decides to revise the Workplace Hazardous Substance List the proposed revision shall be published in the New Jersey Register to allow for public comment. Employers shall, in addition, be notified of any changes to the Workplace Hazardous Substance List through the workplace survey which they will receive each year. A complete list of synonyms for the substances on the List will be distributed with the workplace survey.

The proposed new rule is the first of several to be promulgated by the Department of Health to implement the Right to Know Law. Rules covering trade secrets, the workplace survey, education and training programs, labelling, and other subjects will be proposed in the coming months.

Social Impact

The social impact of the Worker and Community Right to Know Act will be to reduce and prevent injuries and diseases to workers and their offspring. Many hazardous substances used in the workplace are flammable, explosive, corrosive, reactive, or cause cancer, genetic mutations, malfunctions in reproduction, acute or chronic disease, or other physiological malfunction.

Workers have been exposed to hazardous substances in the workplace since the industrial revolution. Only in the past forty years have governmental agencies such as the Federal Occupational Safety and Health Administration and private professional organizations such as the American Conference of Governmental Industrial Hygienists begun to set standards for exposure to airborne substances at a level which will not impair the health of employees. The United States Department of Transportation has also set labeling requirements to identify the physical hazards of substances. Not all hazardous substances are covered by these agencies.

The rules being proposed establish a Workplace Hazardous Substance List of substances which the New Jersey Department of Health has determined are hazardous to the health or safety of employees. As a result of being included on the List, an employer will be required to identify all substances on the List which are present at his facility; maintain fact sheets on these substances which identify the health and safety risks and proper procedures for handling the substances; and label within six months every container at his facility which contains a substance on the List. As a result of this information and training, an employee will be able to minimize exposure to hazardous substances and resulting injuries and diseases, and will have greater knowledge of possible causes of injuries and diseases to which he or she may be subject.

The magnitude of the occupational disease and injury problem is significant. In 1972, the President's Report on Occupational Safety and Health estimated there were 100,000 deaths per year due to occupation nationwide and 390,000 new cases of disabling occupational disease. The 1980 census reported that the New Jersey labor force was 3.582 million, 3.42 percent of the nation's labor force. It has been estimated that 1.3 million of New Jersey's workers will be covered by the Worker and Community Right to Know Act. Extrapolating from these figures, one would expect at least 3,420 deaths due to occupation and 13,338 new cases of disabling occupational disease in New Jersey each year. Potentially a substantial number of the deaths and occupational diseases could be prevented by these proposed rules.

There are approximately 30,000 new cases of cancer reported each year in New Jersey. In the United States, it has been estimated that from 4 to 40 percent of all cancers are related to occupation. Extrapolating this for New Jersey results in a range of 1,200 to 12,000 new cancers that are potentially related to occupation each year in New Jersey. Again, a substantial number of these cancers could be prevented.

A unique category of workers, firefighters, face a great risk of illness and disease from hazardous substances which they must combat in their work. Many times firefighters have faced unknown hazardous substances which have caused acute (immediate) or chronic (long-term) injuries and illnesses. Knowledge of what they are combatting would enable them to take proper precautions to minimize adverse exposure to hazardous substances.

Over a million workers will benefit from the knowledge they will gain as a result of substances being included on the Workplace Hazardous Substance List which will enable them to eliminate or reduce exposure and therefore prevent possible illness and injury from hazardous substances which they must handle or may come in contact with in their workplace.

Economic Impact

The rules implementing the Worker and Community Right to Know Act will economically impact workers and employers, the two groups most directly affected by the Act.

Workers will significantly benefit from the proposed rules. The increased knowledge of the effects and proper handling of hazardous substances and consequent minimization of exposure and injuries to workers will result in a savings of many millions of dollars in medical bills from illnesses, injuries, death, and lost wages by workers. Employers will also benefit from the rules by a reduction in health benefit costs, workers compensation awards, worker absenteeism and turnover, and increased productivity by its employees.

Claims have been made that the law will result in exorbitant costs to employers to comply. The Department of Health does not believe there will be significant costs to employers as a result of the law's requirements.

Employers will be required to expend funds to identify the hazardous substances on the Workplace Hazardous Substance List which are present at their facilities on the workplace survey, to maintain a file of fact sheets on the hazardous substances indicated on the survey, to conduct education and training programs regarding these substances and their proper handling for employees, and to label containers which contain these substances.

The department believes that most of the 40,000 employers who are regulated by the law will have few of the hazardous substances on the Workplace Hazardous Substance List at their facility. Those that have a large number of the substances are the large companies that have already identified the hazardous substances present at their facilities and can easily identify these substances on the list. The remainder of the workplace survey will contain few additional questions and require minimal time to answer.

Maintaining a file of fact sheets in the employer's office for distribution to employees when requested will not take up much space nor time of office staff.

The cost of conducting education and training programs is unknown at this time. Employers may decide to conduct programs with existing personnel or hire outside consultants. The informational content of education and training programs can be found on the hazardous substance fact sheets. Many large employers already conduct such programs and, if they meet the requirements of the department, will be certified as acceptable in their present form.

The cost of labeling containers which contain any of the hazardous substances on the Workplace Hazardous Substance List by March 1, 1985, is also unknown, but is not expected to be significant. All containers are currently labeled. There will be a one time cost spread out over two years involved in changing labels from trade to generic names.

The economic benefits to 1.3 million employees in savings on medical bills and lost wages, and to 40,000 employers in reduced benefit costs, worker's compensation awards and increased productivity, will offset the expenses to employers to comply with the law.

Full text of proposed new rule follows.

CHAPTER 59

WORKPLACE HAZARDOUS SUBSTANCES

SUBCHAPTER 1. WORKPLACE HAZARDOUS SUBSTANCE LIST

8:59-1.1 Authority

N.J.A.C. 8:59-1 is promulgated pursuant to the authority of the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.

8:59-1.2 Purpose

It is the purpose of N.J.A.C. 8:59-1 to establish a workplace hazardous substance list as required by Section 5 of the Act, N.J.S.A. 34:5A-5.

8:59-1.3 Definitions

(a) The following words and terms shall have the following meanings unless the context clearly indicates otherwise:

"Act" means the Worker and Community Right to Know Act, N.J.S.A. 34:5A-1 et seq.

"Chemical Abstracts Service number" means the unique identification number assigned by the Chemical Abstracts Service to chemicals.

"Chemical name" is the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry or the Chemical Abstracts Service rules of nomenclature.

"Common name" means any designation or identification such as a code name, code number, trade name, brand name or generic name used to identify a chemical other than by its chemical name.

"Department" means the New Jersey Department of Health unless the usage clearly indicates otherwise.

"Employer" means any person or corporation in the State engaged in business operations having a Standard Industrial Classification, as designated in the Standard Industrial Classification Manual prepared by the Federal Office of Management and Budget, within Major Group numbers 20 through 39 inclusive (manufacturing industries), numbers 46 through 49 inclusive (pipelines, transportation services, communications, and electric, gas, and sanitary services), number 51 (wholesale trade, nondurable goods), number 75 (automotive repair, services, and garages), number 76 (miscellaneous repair services), number 80 (health services), number 82 (educational services), and number 84 (museums, art galeries, botanical and zoological gardens). Except for purposes of the Worker and Community Right to Know Fund (N.J.S.A. 34:5A-26), "employer" means the State and local governments, or any agency, authority, department, bureau, or instrumentality thereof.

"Environmental hazardous substance" means any substance on the environmental hazardous substance list.

"Environmental hazardous substance list" means the list of environmental hazardous substances developed by the Department of Environmental Protection which includes, but is not limited to, substances used, manufactured, stored, packaged, repackaged, or disposed of or released into the environment of the State which, in the Department of Environmental Protection's determination, may be linked to the incidence of cancer; genetic mutations; physiological malfunctions, including malfunctions in reproduction; and other diseases; or which, by virtue of their physical properties, may pose a threat to the public health and safety. The environmental hazardous substance list is based on the list of substances developed and used by the department for the purposes of the Industrial Survey Project, established pursuant to N.J.S.A. 13:1D-1 et seq. and N.J.S.A. 58:10A-1 et seq., and may include other substances which the Department of Environmental Protection, based on documented scientific evidence, determines pose a threat to the public health and safety.

"Hazardous substance" means any substance, or substance contained in a mixture, included on the workplace hazardous substance list developed by the Department of Health, introduced by an employer to be used, studied, produced, or otherwise handled at a facility. "Hazardous substance" shall not include:

1. Any article containing a hazardous substance if the hazardous substance is present in a solid form which does not pose any acute or chronic health hazard to an employee exposed to it;

2. Any hazardous substance constituting less than 1 percent of a mixture unless the hazardous substance is present in an aggregate amount of 500 pounds or more at a facility;

3. Any hazardous substance which is a special health hazard substance constituting less then the threshold percentage established by the Department of Health for that special health hazard substance when present in a mixture; or

4. Any hazardous substance present in the same form and concentration as a product packaged for distribution and use by the general public to which an employee's exposure during handling is not significantly greater than a consumer's exposure during the principal use of the toxic substance.

"Hazardous substance fact sheet" means a written document prepared by the Department of Health for each hazardous substance and transmitted by the department to employers.

"Mixture" means a combination of two or more substances not involving a chemical reaction.

Substances which pose a "threat to the health or safety of an employee" include, but are not limited to, substances which are flammable, explosive, corrosive, reactive, or possess other physical properties which pose a threat to the health or safety of an employee; substances which are known to cause, or are suspected of causing cancer, genetic mutations, malfunctions in reproduction, acute or chronic disease, or other physiological malfunctions, in humans or animals.

"Workplace survey" means a written document, prepared by the Department of Health and completed by an employer pursuant to the Act, on which the employer shall report each hazardous substance present at his facility.

(b) The definition of other terms contained in these rules shall be governed by the definitions contained in the Worker and Community Right to Know Act, N.J.S.A. 35:5A-3.

8:59-1.4 Contents of the workplace hazardous substance list

(a) The Workplace Hazardous Substance List consists of the hazardous substances listed in Appendix A, which includes:

1. Any substance or substance contained in a mixture regulated by the Occupational Safety and Health Administration, United States Department of Labor, under Title 29 Code of Federal Regulations (CFR) Part 1910-Occupational Safety and Health Standards for General Industry, Subpart Z-Toxic and Hazardous Substances, July 1, 1983.

2. Environmental hazardous substances contained in the "Environmental Hazardous Substance List" adopted by the New Jersey Department of Environmental Protection pursuant to the Act and codified in the New Jersey Administrative

Code as N.J.A.C. _____. (to be promulgated at a future date)

3. Additional substances which the department has determined pose a threat to the health or safety of employees. The scientific evidence documenting the health or safety threat of the substances listed in Appendix A is contained in the referenced sources listed at the end of Appendix A.

(b) The Workplace Hazardous Substance List identifies the Chemical Abstracts Service number, chemical name, synonym, and the source or sources which provides scientific evidence supporting selection of the substance to the list, for each substance.

8:59-1.5 Application

(a) Every employer shall:

1. Report to the department the hazardous substances listed in the Workplace Hazardous Substance List which are present at its facility on workplace survey forms. The workplace survey forms shall be updated annually by the employer.

2. Maintain at its facility hazardous substance fact sheets for each hazardous substance reported on the workplace survey form.

3. Establish an education and training program for its employees about the hazardous substances reported on the workplace survey form.

4. Label every container at its facility containing a hazardous substance reported on the workplace survey form with the chemical name and Chemical Abstracts Service number of the substance or the trade secret registry number assigned to the substance, by March 1, 1985.

(b) Substances not included on the Workplace Hazardous Substance List shall not be subject to the reporting provisions of the Act. However, the absence of any substance from the Workplace Hazardous Substance List or the provision of any information by an employer to an employee or any other person pursuant to the provisions of the Act, shall not in any way affect any other liability of an employer with regard to safeguarding the health and safety of an employee or any other person exposed to the substance, nor shall it affect any other duty or responsibility of an employer to warn ultimate users of a substance of any potential health hazards associated with the use of the substance pursuant to the provisions of any law or rule or regulation adopted pursuant thereto.

8:59-1.6 Modification of the list

(a) The department shall periodically review the Workplace Hazardous Substance List and shall make any necessary revisions in accordance with the procedures set forth in N.J.A.C. 8:59-1.6. The lit shall be revised by the department, if necessary, once a year unless the department determines that special circumstances warrant an earlier revision.

(b) The Workplace Hazardous Substance List shall be reviewed to consider revisions to the following sources:

1. (Source #1) OSHA regulations contained in Title 29, CFR Part 1910, subpart z;

2. (Source #2) "Threshold Limit Values (TLVs) for Chemical Substances in the Work Environment Adopted by ACGIH for 1983-1984" (inclusive of intended changes for 1983-84), American Conference of Governmental Industrial Hygienists (ACGIH), 1983.

3. (Source #3) Materials Transportation Bureau, U.S. Department of Transportation, Title 49 Code of Federal Regulations (CFR) Part 172.102–Optional Hazardous Materials Table, amended in Federal Register, Vol. 48, No. 211, October 31, 1983, p.50234-50279.

4. (Source #4) "NIOSH Recommendations for Occupational Health Standards," National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, Morbidity and Mortality Weekly Report Supplement, Vol. 32, No. 1S, October 7, 1983.

5. (Source #5) "Third Annual Report on Carcinogens," National Toxicology Program, U.S. Department of Health and Human Services, December 1982.

6. (Source #6) The environmental hazardous substance list developed by the New Jersey Department of Environmental Protection;

7. (Source #7) "Chemicals, Industrial Processes and Industries Associated with Cancer in Humans," Supplement 4, Groups 1, 2A and 2B, International Agency for Research on Cancer (IARC), World Health Organization, 1982 (multivolume).

8. (Source #8) "Chemicals Having Substantial Evidence of Carcinogenicity", Carcinogens Assessment Group, Office of Health and Environmental Assessment, U.S. Environmental Protection Agency (EPA), Chemical Regulation Reporter, Bureau of National Affairs, August 15, 1980, pages 647-649.

(c) The department shall add to the workplace hazardous substance list any substance which it determines poses a threat to the health or safety of any employee and is based on documented scientific evidence.

(d) The Right to Know Advisory Council shall advise the department of its recommendations for proposed revisions to the Workplace Hazardous Substance List. Revisions to the Workplace Hazardous Substance List proposed by the department shall be submitted to the Advisory Council for review and published in the New Jersey Register as a notice of preproposal for a rule pursuant to the requirements of N.J.A.C. 1:30-3.2.

(e) The department shall consider relevant scientific information in evaluating a revision to the Workplace Hazardous Substance List. For substances which cause health effects, this information may include, but is not limited to, short-term *in vitro* tests, animal toxicity tests, human epidemiological studies, clinical studies, and scientifically documented reports of symptoms or adverse health effects among employees. The department may investigate the situation surrounding any studies or reports in order to obtain additional information regarding a revision.

1. All evidence from scientific studies must be based on properly designed studies for endpoints indicating health effects in humans, for example, carcinogenicity, mutagenicity, neurotoxicity, organ damage and/or effect, physiologic changes.

2. For purposes of this subchapter, animal data is admissible and generally indicative of potential effects in humans. The absence of a particular category of studies shall not be used to prove the absence of risk.

3. Negative results generally indicate the absence of statistically positive results in appropriate studies. As all tests for toxicological effects have inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

4. In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

(f) Notice of proposed revisions to the Workplace Hazardous Substance List shall be published once a year, or more frequently if warranted by special circumstances, in the New Jersey Register as a proposed amendment to these rules in accordance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq. At least 30 days shall be allowed for public

comment. A public hearing shall be held, if, in the department's determination, there is significant public interest in the proposal.

(g) Employers will be notified of any revisions to the Workplace Hazardous Substance List through the annually updated workplace survey.

8:59-1.7 Severability

If any provision of these rules or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of these rules and to this end, the provisions of these rules are declared to be severable.

HUMAN SERVICES

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Hospital and Special Hospital Services Manual Covered and Non-Covered Inpatient Hospital Services

Proposed Amendment: N.J.A.C. 10:52-1.2 and 10:53-1.2 and 1.3

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 30:4D-6(a)(1), 7 & 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposed rule on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Henry W. Hardy, Esq.
Administrative Practice Officer
Division of Medical Assistance
and Health Services
CN 712
Trenton, NJ 08625

At the close of the period for comments, the Department of Human Services may adopt this proposal, with any minor changes not in violation of the rulemaking procedures at N.J.A.C. 1:30-3.5. Upon adoption of these rules, a notice of adoption shall be published in the Register. The adopted rules shall become effective upon publication of that notice of adoption in the Register.

This proposal is known as PRN 1984-85.

The agency proposal follows:

Summary

For purposes of this proposal, the term "hospital" means an acute care general hospital as defined in N.J.A.C. 10:52-1.1, entitled "Definitions". The term "special hospital" means a facility approved under one of the classifications (A, B, or C) set forth at N.J.A.C. 10:53-1.1, "Definitions". Both sections cited above may be found in the New Jersey Administrative Code, but they are not included with this proposal because they are not being amended. This proposal does not pertain to governmental psychiatric hospitals.

This proposal is designed to implement Section 2173 of the Medicare Medicaid Omnibus Reconciliation Act of 1981, which requires states to pay for inpatient hospital patients receiving an "inappropriate" level of care at lower reimbursement rates reflecting the level of care actually received.

The federal law, and this proposal, deal with a long standing problem concerning those Medicaid patients who require placement in a long term care (LTC) facility following admission to an acute care hospital. Most patients whose condition is chronic and require LTC placement cannot be transferred immediately. Instead, they must remain hospitalized until a vacant LTC bed can be located. This proposal will enable hospitals to be reimbursed for services rendered to patients awaiting LTC placement provided the patients require at least skilled and/or intermediate nursing level care. There will be no reimbursement for patients who are classified as "custodial."

In addition, the hospital must demonstrate due diligence in seeking alternate placement. The standards for due diligence, which are contained in this amendment are being proposed pursuant to the New Jersey Supreme Court's decision rendered in the case of Monmouth Medical Center v. State, 80 N.J. 299, 314 (1979). The opinion advised the Director, Division of Medical Assistance and Health Services, to develop regulations governing placement efforts by hospitals.

The proposal also provides for up to twelve calendar days coverage for patients awaiting discharge to other than a LTC facility if certain conditions, including due diligence in placement, are met.

Both hospitals and special hospitals are governed by this proposal.

Social Impact

Hospitals will be required to maintain sufficient documentation to verify the patient required nursing level care and that alternate placement was diligently sought.

Medicaid recipients will be able to receive medically necessary services and providers will be reimbursed for rendering these services, thereby facilitating the transfer from one level of care to another.

Economic Impact

The proposal will impact mainly on hospitals, who will be reimbursed at nursing home rates for nursing level care. Hospitals participating in the DRG (Diagnosis Related Group) system will be reimbursed in accordance with regulations promulgated by the New Jersey Department of Health. The current regulation (N.J.A.C. 8:31B-3.79(b)ii) authorizes reimbursement at the statewide average skilled nursing facility (SNF) rate.

Hospitals not participating in the DRG system will be reimbursed at either an average skilled nursing or intermediate level IV-A rate depending on the patient's level of care.

The Division will pay for administrative days from appropriated funds, which are subject to federal matching.

There is no cost to the Medicaid patient.

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

10:52-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital care and services shall include:

1. through 18. (No change.)

19. Inpatient hospital services rendered after the day it is medically necessary only under the following conditions:

i. For patients awaiting discharge or transfer to other than a long-term care facility, a hospital may be reimbursed for up to 12 calendar days following the period established as being medically necessary for acute care if special circumstances (social necessity) prevent the discharge or transfer of the patient and the hospital has taken effective actions to stimulate discharge of the patient.

(1) Effective action is defined as telephone notification to the county welfare agency, Division of Youth and Family Services district office or other responsible officials, as may be designated, within 48 hours of the time that the stay has been determined to be no longer medically necessary. This telephone contact must be then confirmed in writing within three working days. A copy of the written notification must be submitted with all claims for which reimbursement is claimed for special circumstances (social necessity).

ii. Payment for social necessity days will be made to hospitals participating in the Diagnosis Related Group (DRG) Program according to regulations promulgated under the Department of Health N.J.A.C. 8:31B-3.79(b)ii (Hospital Rate Setting) as currently exists or may be amended hereafter.

iii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hospital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized;

(2) The care and services provided are medically necessary, i.e., the patient requires skilled nursing or intermediate levels A or B care in a long-term care facility; the inpatient hospital form (MC-1) was submitted to the appropriate Medicaid District Office upon admission;

(3) Discharge planning was initiated upon admission of the patient to the hospital, reviewed, and updated regularly;

(4) The attending physician has written a discharge order from acute care; or made a written entry in the Medical Record that the patient can be transferred to a long-term care facility;

(5) Placement could not be made in a long-term care facility as substantiated by documentation of timely and continuous contact with family members, long-term care facilities and placement agencies;

(6) Notification that the patient requires placement in a long-term care facility is to be made to the appropriate county welfare agency (CWA). Verbal notifications must take place within two working days of the time that acute inpatient care is no longer medically necessary, to be followed by a written notification within 72 hours.

iv. Upon satisfaction of all the conditions set forth in iii(1) thru (6), payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the average skilled or IV A rate determined by the patient's level of care as assessed by the Division of Medical Assistance and Health Services or its authorized agents.

v. Payment to hospitals participating in the Diagnosis Related Group (DRG) Program will be reimbursed according to regulations promulgated under the Department of Health N.J.A.C. 8:31B-3.79(b)ii (Hospital Rate Setting) as currently exists or as may be amended hereafter.

10:52-1.3 Noncovered inpatient hospital services

(a) Benefits are not payable for any services rendered or items dispensed or furnished in connection with:

1. through 8. (No change.)

9. Inpatient hospital services rendered after the day it is medically necessary, except when special circumstances (social necessity) prevent the discharge or transfer of the patient. **(See 10:52-1.2(a)19. for special circumstances.)**

[i. The contractors may reimburse a hospital up to 12 calendar days following the period established as being medically necessary if special circumstance (social necessity) prevent the discharge or transfer of the patient to his/her home or sheltered boarding home and the hospital has taken effective action to stimulate placement of the patient.

(1) Effective action is defined as telephone notification to the county welfare agency, Division of Youth and Family Services district office or other responsible officials within one working day of the time that the stay has been determined to be no longer medically necessary. This telephone contact must be then confirmed in writing.

(2) A copy of the written notification must be submitted with all claims for which reimbursement is claimed for special circumstance (social necessity).

ii. Payment is specifically precluded for:

(1) Patients awaiting placement in a skilled nursing home or intermediate care facility;

(2) Patients for whom the entire hospital claim has been denied for lack of any medical necessity;

(3) Patients who were not eligible recipients.]

10. through 15. (No change.)

16. Patients for whom the entire inpatient hospital claim has been denied for lack of any medical necessity.

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

10:53-1.2 Covered inpatient hospital services

(a) Subject to the general limitations and exclusions and those hereinafter specified, hospital care and services shall include:

1. through 18. (No change.)

19. Inpatient hospital service rendered after the day it is medically necessary only under the following conditions:

i. For patients awaiting discharge or transfer to other than a long-term care facility, a hospital may be reimbursed for up to 12 calendar days following the period established as being medically necessary for acute care, if special circumstances (social necessity) prevent the discharge or transfer of the patient and the hospital has taken effective action to stimulate discharge of the patient.

(1) Effective action is defined as telephone notification to the county welfare agency, Division of Youth and Family Services district office or other responsible officials, as may be designated, within 48 hours of the time that the stay has been determined to be no longer medically necessary. This telephone contact must be then confirmed in writing within three working days. A copy of the written notification must be submitted with all claims for which reimbursement is claimed for special circumstances (social necessity).

ii. For patients awaiting placement in a long-term care facility (Skilled Nursing Facility, Intermediate Care Facility A or B) if the hospital can demonstrate that:

(1) All possible third party liability, including Medicare benefits, have been utilized;

(2) The care and services provided are medically necessary, i.e., the patient requires skilled nursing or intermediate levels A or B care in a long-term care facility; the Inpatient Hospital Form (MC-1) was submitted to the appropriate Medicaid District Office upon admission;

(3) Discharge planning was initiated upon admission of the patient to the hospital, reviewed, and updated regularly;

(4) The attending physician has written a discharge order from acute care; or made a written entry in the Medical Record that the patient can be transferred to a long-term care facility;

(5) Placement could not be made in a long-term care facility as substantiated by documentation of timely and continuous contact with family members, long-term care facilities and placement agencies;

(6) Notification that the patient requires placement in a long-term care facility is to be made to the Medicaid District Office in the hospital area. Verbal notifications must take place within two working days of the time that acute inpatient care is no longer medically necessary, to be followed by a written notification within 72 hours.

iii. Upon satisfaction of all the conditions set forth in ii(1) through (6) payment will be made at the rate of the appropriate level of care of Medicaid participating long-term care facilities as determined on January 1, of each year. Payment will be made at the average skilled or IV A rate determined by the patient's level of care as assessed by the Division of Medical Assistance and Health Services or its authorized agents.

iv. Payment to hospitals participating in the Diagnosis Related Group (DRG) Program will be reimbursed according to regulations promulgated under the Department of Health N.J.A.C. 8:31B-3.79(b)ii. (Hospital Rate Setting) as currently exists or as may be amended hereafter.

10:53-1.3 Noncovered inpatient special hospital services.

(a) Benefits are not payable for any services rendered or items dispensed or furnished in connection with:

1. through 8. (No change.)

9. Inpatient hospital services rendered after the day it is medically necessary, except when special circumstances prevent the discharge or transfer of the patient. **(See 10:53-1.2(a) 19. for special circumstances.)**

[i. The contractors may reimburse a hospital up to 12 calendar days following the period established as being medically necessary if special circumstances (social necessity) prevent the discharge or transfer of the patient to his/her home or sheltered boarding home and the hospital has taken effective action to stimulate placement of the patient.

(1) Effective action is defined as telephone notification to the county welfare agency, Division of Youth and Family Services district office or other responsible officials within one working day of the time that the stay has been determined to be no longer medically necessary. This telephone contact must be then confirmed in writing.

(2) A copy of the written notification must be submitted with all claims for which reimbursement is claimed for special circumstances (social necessity).

ii. Payment for special circumstances is specifically precluded for

(1) Patients awaiting placement in a skilled nursing home or intermediate care facility;

(2) Patients for whom a claim has been denied for lack of medical necessity;

(3) Patients who were not eligible recipients at the date of admission.]

10. through 15. (No change.)

16. Patients for whom the entire inpatient hospital claim has been denied for lack of any medical necessity.

(a)

DIVISION OF MEDICAL ASSISTANCE AND HEALTH SERVICES

Manual for Physicians Services Procedure Code Manual

Proposed Readoption: N.J.A.C. 10:54-3

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

Authority: N.J.S.A. 30:4D-6a(3), (5)b, (7), (8), (9), (10), 7 and 7b.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions and responses, should be addressed to:

Henry W. Hardy, Esq.
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). Pursuant to Executive Order No. 66(1978), this rule would otherwise expire on June 5, 1984. The readoption of this rule becomes effective upon acceptance for filing by the Office of Administrative Law of the notice of its readoption.

This proposal is known as PRN 1984-141.

The agency proposal follows:

Summary

The Procedure Code Manual was promulgated to prepare an organized and uniform system of coding certain medical and/or surgical procedures to enable practitioners to prepare claim forms correctly for submission to the Medicaid program for reimbursement. Each procedure code contains three basic elements: the number, a brief description of the medical and/or surgical procedure, and the corresponding fee schedule. The physician, or other practitioner, must use the appropriate procedure code and a brief narrative description of the services rendered when submitting a claim to the Medicaid program.

The procedure codes cover procedures involving surgery, radiology, laboratory and medicine. These codes are not reproduced in the New Jersey Administrative Code. Instead, providers utilizing these codes receive an individual copy of the Procedure Code Manual which is issued by the Prudential Insurance Company, the fiscal agency responsible for its compilation. This manual is updated periodically to add new medical procedures and to delete inappropriate procedures. These additions and deletions are also published in the New Jersey Register in the usual manner. Consequently, this rule is under constant administrative review.

The rule is necessary, reasonable, adequate and responsive to the purpose for which it was created, i.e., to assist in the development of a uniform claim processing system. The rule should be continued to insure the existing system remains intact.

There are no changes associated with the readoption. The rule has been amended periodically, and providers have been

notified either by newsletters or by updates to their manual. A detailed discussion of the several amendments would serve no purpose on readoption.

Social Impact

The rule impacts mainly on certain providers who are reimbursed on a fee-for-service basis. These providers include physicians, chiropractors, podiatrists, optometrists, psychologists, and independent laboratories. Since these providers render medical care and services to Medicaid patients, and need to know which services are covered under the Medicaid program, the rule should be continued in its present format.

The rule indirectly impacts on Medicaid patients, who receive the necessary medical treatment which is covered by the New Jersey Medicaid Program.

Economic Impact

Providers who render services to eligible Medicaid patients are reimbursed for all claims correctly submitted in accordance with the fee schedule which corresponds to the appropriate procedure code.

Payments made to providers by the New Jersey Medicaid program are subject to federal matching funds. The rule should be continued because it provides a basis for claiming federal funding, and aids in program management.

The Medicaid patient is not required to contribute to the cost of medical services covered by the procedure codes.

A copy of the **full text** of the proposed readoption may be obtained from:

Administrative Practice Officer
Division of Medical Assistance and
Health Services
CN-712
Trenton, New Jersey 08625

A copy is also on file with:

The Office of Administrative Law
88 East State Street
Trenton, New Jersey 08625

(a)

DIVISION OF PUBLIC WELFARE

Assistance Standards Handbook Resource Eligibility in the Aid to Families with Dependent Children Program

Proposed Amendment: N.J.A.C. 10:82-3.1, 3.2 and 3.7
Proposed Repeal: N.J.A.C. 10:82-3.3, 3.4, 3.5 and 3.6

Authorized By: George J. Albanese, Commissioner, Department of Human Services.
Authority: N.J.S.A. 44:7-6 and 44:10-3.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Audrey Harris, Acting Director
Division of Public Welfare
CN 716
Trenton, New Jersey 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 1984-140.

The agency proposal follows:

Summary

As a result of discussions with the United States Department of Health and Human Services regarding interpretation of Federal regulations, two resource policies are being revised. Previously, savings were limited to an amount not to exceed three times the eligible unit's public assistance allowance. Any such savings could be accumulated only during receipt of Aid to Families with Dependent Children (AFDC) benefits. This amendment eliminates the previous specific limit on savings. The amended rule provides that savings, together with all other countable resources, are subject to a $1,000 resource maximum. Additionally, the distinction between applicants and recipients in regard to savings is being removed. Applicant as well as recipient families are resource eligible so long as their total countable resources, including savings, do not exceed $1,000.

Further, resource policy relevant to treatment of potential resources is being repealed. Previously, eligibility could be established and assistance granted pending liquidation of real or personal property, the value of which exceeded the resource maximum. This amendment requires that the equity value of real or personal property, unless specifically exempted from consideration, shall be countable toward the resource maximum of $1,000.

Language has been added to further clarify treatment of resources for cases in which a resource is owned by more than one individual. In cases in which a resource is owned solely by a member (or members) of the eligible unit, the countable value of the resource shall be fully attributed to the eligible unit. In situations in which joint ownership is shared with a person not in the eligible unit, the applicant/recipient may rebut the presumption of unrestricted access to the resource. If the applicant/recipient can demonstrate that ownership is factually, legally, or otherwise in a different proportion, only that share attributable to the eligible unit shall be counted toward the resource limit.

Social Impact

This amendment eliminates the distinction made between applicants and recipients with regard to savings and uniformly applies the $1,000 resource limit to both. Repeal of the rules regarding establishment of eligibility pending liquidation of real or personal property in excess of the resource maximum will result in the denial of assistance to families with resources in excess of $1,000 until such time as their resources are below that limit. It is anticipated that these amendments will have little or no impact on the number of individuals eligible for the AFDC program.

The amended rule provides for equitable treatment of jointly owned resources by allowing applicants and recipients to rebut the presumption of unrestricted ownership so that

only that proportion actually owned by the eligible unit will be used in determining resource eligibility.

Economic Impact

These amendments will not result in an adverse economic impact to applicants and recipients. Clients who were previously eligible pending liquidation of a resource were required to repay assistance granted from funds resulting from the liquidation. Under the amended rules, families must exhaust existing resources in excess of program requirements prior to the establishment of eligibility for AFDC. Since this requirement replaces that of repaying the assistance granted pending resource liquidation, there should be no net economic impact. The amendment providing equal treatment of applicants and recipients with regard to savings may be of some economic benefit to a very few number of applicants who may have some small amount of savings.

The rule clarifying treatment of jointly owned resources allows applicants or recipients to rebut the presumption that a resource is fully countable toward the resource limit by demonstrating that the resource is factually, legally, or otherwise attributable in a different proportion.

These changes will have no adverse economic impact on the Department or county welfare agencies administering the program.

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

10:82-3.1 General provisions

(a) **The resource policy set forth in this subchapter applies equally to program applicants and recipients.** State and Federal law [s] requires that the [agency consider all income and] resources of the eligible unit **be considered** in [determining the amount of assistance to be granted] **the determination of eligibility or continued eligibility for AFDC.** [Available resources include cash and other forms of income immediately obtainable to meet the needs of the eligible unit. These are considered in N.J.A.C. 10:82-4.

(b) Resources as recognized in this chapter are either exempt or potential. They are defined as real or personal property which is within the control of one or more members of the eligible unit, or to which the member(s) may have a valid claim, and certain benefits and other contributions of support which may become available.]

(b) Resources include cash or other liquid assets or any real or personal property that a member of the eligible unit owns or could convert to cash to be used for his or her support or maintenance. Unless a resource is specifically exempt in accordance with this subchapter, the equity value of the resource shall be counted toward the resource limit. The fact that the resource cannot be readily or immediately liquidated (except as stated in (b)1 below) is not relevant to the resource eligibility determination.

1. If a member of the eligible unit does not have the right, authority, or power to liquidate the property, or his or her share of it, its value shall not be counted toward the resource limit.

(c) (No change.)

(d) The total equity value of all nonexempt resources together with savings [(as specified below)] shall not exceed $1,000.00.

[(e) Savings (see N.J.A.C. 10:82-3.2(b)6vi) may be accumulated only once the family is in fact receiving AFDC and may be accrued from the AFDC payment or other income.]

(e) When a resource is owned solely by a member of the eligible unit or is jointly owned by members of the eligible unit, the countable value of such resource shall be fully attributed to the resource limit.

1. When a resource is owned jointly with a person or persons not in the eligible unit and the applicant's or recipient's access to the resource is unrestricted, the resource shall be presumed to be available to the eligible unit, and the full countable value attributed to the resource limit. If the applicant or recipient can demonstrate that ownership is factually, legally, or otherwise in a different proportion, only that share attributable to the eligible unit shall be counted toward the resource limit.

2. When a resource is owned jointly with a person or persons not in the eligible unit and the ownership is restricted (that is, the applicant or recipient needs approval of the other owner(s) to dispose of his or her share) the applicant or recipient shall be presumed to own a proportionate share of the resource. If the applicant/recipient demonstrates that ownership is factually, legally, or otherwise in a different proportion, only that share attributable to the eligible unit shall be counted toward the resource limit.

10:82-3.2 Exempt resources

(a) Exempt resources [are not subject to any requirement for liquidation and] are not considered in determining the assistance grant. When any resource is not or is no longer exempt, it shall be [considered as either available income or a potential resource, according to its nature. (See N.J.A.C. 10:82-4 regarding income.)] **evaluated in accordance with N.J.A.C. 10:82-3.1(c) above and considered in the determination of eligibility or continued eligibility for AFDC.**

(b) The exempt resources are as follows:

1.-5. (no change.)

6. Resources designated for special purposes as follows:

i.-v. (No change.)

[vi. Savings: Those funds set aside by an eligible unit which is in fact receiving public assistance so long as the amount thus accumulated does not exceed the total of three months' public assistance allowance standard for that eligible unit.]

Renumber vii.-viii. as **vi.-vii.** (No change.)

7. Occasional gifts and contributions of nominal amount or value, such as those received on birthdays, Christmas or other holidays. A gift received by an applicant or recipient has exempt status only during the month in which it is received [and the calendar month immediately following]. Thereafter, it becomes a resource [but may continue to be exempt if (b)6vi is applicable] **subject to the conditions of this subchapter**.

8. (No change.)

9. Certain lump sum proceeds: At the discretion of the county welfare agency, up to $500.00 of lump sum proceeds resulting from settlement of claims based on accidents or negligence in order to cover expenses incurred as a direct result of the incident for which the settlement is made. Such exemption shall be recorded in the case file. Unless applied to this exemption, all funds so received are subject to reimbursement to the CWA in accordance with N.J.A.C. 10:82-3.7(a)4. [Neither the exemption of $500.00 nor the remainder of funds, if any, shall be applied to savings.]

10. (No change.)

10:82-3.3 [Potential resources defined] **(Reserved)**

[Potential resources are resources which are neither exempt nor currently available for expendable use.]

10:82-3.4 [Principles affecting potential resources] **(Reserved)**

[(a) When total countable equity value of all nonliquid resources exceeds $1,000, eligibility for AFDC is contingent on the development and fulfillment of a plan of liquidation of potential resources. Liquidation or conversion of potential resources shall be undertaken and completed as promptly as the nature of the resource and the circumstances permit. Such liquidation or conversion to an expendable form creates available income as defined in N.J.A.C. 10:82-4.1(a), and the agency shall take prompt and appropriate action to redetermine eligibility or adjust the payment as indicated.

(b) If a member of an eligible unit willful fails or refuses, within a period of 30 days after being requested in writing, to consent to or to take any action necessary in connection with a plan for liquidation, ineligibility shall be determined in accordance with N.J.A.C. 10:81-3.38(b).]

10:82-3.5 [Responsibilities regarding potential resources] **(Reserved)**

[(a) The county welfare agency shall:

1. Inform the member(s) of the eligible unit at the time of application or as promptly thereafter as possible that all potential resources must be liquidated;

2. Develop with the member(s) of the eligible unit a plan for the liquidation of resources and for the use of the proceeds; and

3. Assist in carrying out the plan

(b) Members of the eligible unit shall:

1. Develop with the agency a plan for the liquidation of resources and for the use of the proceeds; and

2. Consent to and cooperate in carrying out the plan.]

10:82-3.6 [Liquidation of real property] **(Reserved)**

[(a) The eligible unit shall be required to offer real property, other than that which is exempt, for sale at an asking price named by the unit but not lower than the price set by an independent appraisal paid for by the CWA.

(b) The eligible unit shall be required to sell such property within a period of six months at the highest offer, provided such offer is not less than the independent appraisal.

(c) Whenever the eligible unit presents evidence that such property cannot be sold, or that all efforts have failed to provide a buyer who is willing to buy the property at the appraisal price, the property must be reevaluated.

(d) If the eligible unit has used reasonable diligence in seeking a purchaser and is unable to sell the property at any price, such property may be evaluated as having no present substantive value, pending any change which might give value to the property.

(e) If encumbrances against the property, plus the cost of sale, equal or exceed the price at which it can be sold, the property need not be considered as a potential resource.]

10:82-3.7 [Liquidation of personal property] **Suits and Claims**

[(a) Liquidation of personal property which is not exempt shall be handled in such a way as to assure the highest net revenue. The CWA and the eligible unit may use such methods as are appropriate and mutually agreeable in determining an acceptable sale price. These include but are not necessarily limited to: professional appraisal, competitive bids, and public auction.

1. Automobiles subject to liquidation shall be sold at or above the higher of two or more bids from reputable buyers.

2. Securities, stocks and bonds can usually be liquidated through reputable local brokers at market prices. The holding of such securities in the hope of a higher price is speculation and is not an appropriate activity for either the agency or its clients.

3. Mortgages, notes receivable and other less liquid securities shall be sold as quickly and advantageously as possible.]

[4.] **(a)** [Suits and Claims:] Where a member of the eligible unit is, at time of application, or subsequently becomes the owner of an interest in a suit or claim arising out of an accident, inheritance or legacy, insurance on the lives of relatives or others, statutory benefits or pensions, unfulfilled contracts or obligations, and so forth, such interests constitute personal property and are [potential resources which must be recognized] **subject to the rules governing agreement to repay at N.J.A.C. 10:81-3.40, 3.41, and 3.46.**

Renumber i.-iii. as **1.-3.** (No change in text.)

INSURANCE

(a)

DIVISION OF ADMINISTRATION

Automobile Insurance
Automobile Reparation Reform Act

Proposed Amendment: N.J.A.C. 11:3-7.8 and 7.9

Authorized By: Joseph F. Murphy, Commissioner, Department of Insurance.

Authority: N.J.S.A. 17:1-8.1, 17:1C-6(c) and P.L. 1983, c.212.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

W. Morgan Shumake
Executive Director of Insurance
Department of Insurance
CN 325
Trenton, New Jersey 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 1984-144.

The agency proposal follows:

Summary

P.L. 1983, c.212, which supplements the New Jersey Automobile Reparation Reform Act, provides that in any instance in which a named insured is the owner and only designated operator of two or more automobiles and the only licensed driver residing in the household, the insured shall be charged a reduced personal injury protection (RIP) premium for each

automobile listed in addition to the principal automobile, in an amount determined by the Commissioner. The statute further specifies that three years after this initial premium reduction the premium charges for such additional automobiles shall be determined by the loss experience of the rate filer.

The Department's proposed amendments, N.J.A.C. 11:3-7.8, implement the specific provisions of the statute. In addition, the proposal extends the required reduction in PIP premium to include any instance wherein the number of automobiles insured by the carrier exceeds the number of licensed operators customarily operating the insured automobiles.

This proposal requires that each insurer shall, for the initial three-year period, provide a fifty percent reduction in the basic PIP premium, exclusive of expense fees and policy constants and residual market equalization charges, for all additional automobiles. The reduction in premium shall apply to all affected policies which are either in force or issued on or after the effective date of the amendment. The proposal further provides each automobile filer shall segregate and maintain loss experience with respect to the payment of any PIP benefits which are attributable to these automobiles. The loss experience may be examined by the Commissioner or his designee and must be reported annually to the Department.

Filings reflecting the actual loss experience of the filer shall be submitted to the Department for review and approval three years after the effective date of the amendment.

Social Impact

In those instances in which the number of insured automobiles exceeds the number of licensed drivers customarily operating such automobiles, exposure to loss is significantly reduced. This lessened exposure has not heretofore been reflected in the PIP premium charged on additional automobiles.

Accordingly, the statute and this implementing rule will provide more equitable insurance rates for those policyholders who qualify for the reduction in PIP premium based upon an excess of insured automobiles over licensed customary operators.

Economic Impact

The proposal will result in reduced premiums on basic PIP coverages for qualifying additional automobiles.

Insurers, rating and statistical organizations, will experience certain increased costs as a result of effecting compliance with the recordkeeping requirements of the rule. Insurer revenues will also decline slightly as a result of the reduced PIP premium on additional automobiles. This reduction, however, is expected to be commensurate with the actual loss experience for such vehicles.

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

11:3-7.8 Personal injury protection coverage; reduced PIP premium charge for additional automobiles

(a) In any instance in which the number of automobiles insured by the same insurer exceeds the number of licensed operators customarily operating such automobiles, the insurer shall provide a reduced basic PIP premium charge for each automobile insured in excess of the number of licensed operators. For the three-year period commencing with the effective date of this section, the reduced basic PIP premium charge shall be equal to 50 percent of the approved charge for the applicable territory of garaging for the additional automobile(s), exclusive of expense fees and policy constants or residual market equalization charges.

1. A reduced premium charge for PIP coverage as specified in (a) above shall apply to all policies which are issued or are in force on or after the effective date of this section.

2. Each automobile filer shall submit to the Commissioner for approval filings of rates and manual rules implementing the reduced PIP premium charge for additional automobiles required by this section.

3. Each statistical organization shall submit to the Commissioner for approval amendments to its statistical plan designed to effectuate the purposes of P.L. 1983, c.212 and this section.

(b) Every insurer, rating organization and statistical organization shall segregate and maintain the exposure, premium, loss and expense statistics with respect to the payment of PIP benefits which are attributable to additional automobiles.

1. Such statistics shall be subject to examination by the Commissioner or his designee and shall be reported annually to the Department.

(c) Three years after the effective date of this section, each automobile filer shall submit to the Commissioner for approval filings of rates or manual rules reflecting the actual loss experience of the filer with respect to the payment of PIP benefits which are attributable to additional automobiles.

(d) All filings submitted pursuant to this section, and all changes and amendments thereto, shall be prepared in accordance with insurance laws and regulations, including the applicable provisions of N.J.S.A. 17:29A-1 et seq. and, N.J.A.C. 11:1-2 and the Department's filing procedures.

[11:3-7.8] **11:3-7.9** Cancellation of automobile coverage for nonpayment of premium

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

(a)

REAL ESTATE COMMISSION

Rules and Regulations Salespersons License and Educational Requirements

Proposed Amendments: N.J.A.C. 11:5-1.2, 1.27 and 1.28

Authorized By: Division of the New Jersey Real Estate Commission, Daryl Bell, Director.

Authority: N.J.S.A. 45:15-9; 45:15-10; 45:15-16 and 45:15-17.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Daryl G. Bell, Director
New Jersey Real Estate Commission
201 East State Street
Trenton, New Jersey 08625

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

This proposal is known as PRN 1984-120.

The agency proposal follows:

Summary

To comply with Senate Bill 3401 signed into law by the Governor on January 17, 1984 it became necessary to revise certain regulations in order to effectively carry out its provisions. On February 7, and 13, 1984 the Commission voted to adopt these changes in certain sections of Subchapter 1.

N.J.A.C. 11:5-1 contains regulations promulgated by the New Jersey Real Estate Commission pursuant to the authority conferred upon it by N.J.S.A. 45:15-16 and 45:15-17 (Real Estate License Act).

To comply with R.S. 45:15-9 and 45:15-10.1(A) which were amended by Senate Bill 3401, supervising staff members or operating units were requested to bring to the Commission's attention suggested language changes or problems in the administration of the specific subsections with which they deal. The Commission itself reviewed each subsection at advertised public meetings on February 7, and 13, 1984. On the latter date the Commission voted to amend N.J.A.C. 11:5-1 as proposed herein. The language was altered in this subchapter to reflect the following:

1. N.J.A.C. 11:5-1.2 was revised to show increase in education requirements for salesperson licensure from eighth grade education or its equivalent to high school education or its equivalent. Other changes refer to effective date of requirement and exceptions.

2. Changes proposed in N.J.A.C. 11:5-1.27 reflect change in removing surplus verbage as well as reflect in outline form an increase of class hour education for salesperson license from 45 class hours to 75 class hours. Verbage was corrected to conform with S. 3401. Brokers course outline had minor revisions incorporating an additional topic to the area of study previously required.

3. Very minor changes in language were made in N.J.A.C. 11:5-1.28. These changes were made to conform with S. 3401.

Social Impact

The revised regulations will have a favorable impact upon licensed brokers and salespersons and the public that buys, sells or leases real estate. The brokers will have salespeople who are more knowledgeable by virtue of the increased educational requirements. The increase ensures that the people serving the public in the real estate industry are qualified in both knowledge and integrity. The complexity of the real estate industry requires the upgrading of basic educational requirements as well as an increase in professional training to serve the public interest.

Implementation of S. 3401 will involve some additional cost to license applicants to pay for the education. This is not a cost imposed by these amendments, but by statute.

Economic Impact

The additional education cost that may be incurred by applicants for a salesperson's license in relation to other professional and semi-professional licensees is minimal. There are programs which assist applicants in achieving high school equivalency at a nominal cost. Colleges, Universities and proprietary schools approved by the Commission to teach the required real estate courses for licensure have maintained a competitive stance and this is expected to keep school tuition costs at a relatively modest level as compared to other professions.

The increase of overall educational requirements will result in greater knowledge and proficiency which will ultimately benefit the public who deal in real whether they be investors or home buyers.

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

11:5-1.2 Salesperson's license; age limit

(a) No salesperson's license shall be issued to any person who has not attained the age of 18 years.

(b) Every applicant for licensure as a salesperson shall present with his/her application for licensure a certificate of satisfactory completion of a course of education in real estate subjects at a school approved by the Commission as prescribed under N.J.S.A. 45:15-10.1(a) and N.J.A.C. 11:5-1.28 and N.J.A.C. 11:5-1.27, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:25-10.2.

(c) An applicant must apply for and request the issuance of a salesperson's license not later than one year after the date of successful completion of the prescribed course. Any person who fails to apply for the issuance of salesperson's license within the one year period shall be required to retake and successfully complete the prescribed course in real estate and the examination.

(d) All applications for salesperson shall be submitted with satisfactory evidence of a high school education or equivalency. Satisfactory evidence shall include, but not be limited to, a photocopy of a high school diploma or transcript.

(e) On and after June 1, 1984 every applicant shall present with his/her application for licensure examination evidence of satisfactory completion of course of education in real estate subjects prescribed under N.J.S.A. 45:15-10.1(A) and Sections 27 and 28 of this Subchapter, unless waived by the Commission in accordance with the provisions of N.J.S.A. 45:15-10.2. Holders of a current school certificate which bears an issue date within one year as defined by (c), above, will be permitted to take the salesperson's exam and secure a license, provided said certificate is in compliance with (c), above.

(f) Subsection (e) of this regulation shall not apply to any applicant who has obtained a waiver of educational requirements pursuant to N.J.S.A. 45:15-10.2.

11:5-1.27 Educational requirements for salesperson and brokers in making applications for licensure examination

(a) To establish an applicant's satisfactory completion of the educational requirements prescribed in N.J.S.A. 45:15-10.1, all applicants who apply for a salesperson's or broker's license shall present with their application [a certificate from a school approved by the Commission, evidencing] **evidence of** satisfactory completion of a course of education in real estate subjects in accordance with the requirements of said Act and within the meaning of the rules and regulations applicable thereto.

(b) The course of education in real estate subjects to qualify an applicant for licensure examination for a salesperson's license shall consist of a minimum of [45] **75** hours and for a broker's license a minimum of 90 hours in the areas of study at a school approved by the Commission as meeting the stan-

dards of responsible ownership, administration, curriculum, instruction and physical facilities specified hereinafter.

(c) No person shall receive credit for satisfactory completion of the prescribed 90 hours **broker's** course, unless that person was the holder of a salesperson's license at the time of enrollment in said course.

(d) "Hour" means a period of 50 minutes of actual classroom instruction. The time allotted by any school for a final examination, 50 minutes or more in duration, covering real estate subjects shall not be applicable toward the minimum hours of course study [above] **unless** prescribed **in approved course of study.**

(e) The provisions of this rule and regulation shall not apply to the following applicants for licensure examinations:

1. Applicants for licensure examination for either a salesperson's or broker's license made by certain disabled veterans pursuant to the provisions of N.J.S.A. 45:15:11;

2. Any applicant who has held a real estate broker's license issued by another state [within five years of date of application] **and actively engaged in the real estate business for two years or more immediately preceding date of application,** provided, [however] that the Commission shall determine that the experience [of such applicant] is substantially equivalent to such educational requirements **pursuant to the provisions of N.J.S.A. 45:15-9; N.J.S.A. 45:15-10.1B and N.J.A.C. 11:5-1.3;**

[3. An applicant producing evidence that applicant was previously the holder of a broker's license in this State, provided, however, that the Commission shall determine that the experience of such applicant is substantially equivalent to such educational requirements;]

[4.] **3.** Attorneys-at-law admitted to the practice in the State of New Jersey;

[5.] **4.** An applicant who has satisfactorily completed a course of education in real estate subjects in any accredited institution of higher education; provided, however, that the Commission shall determine that the course of education is substantially equivalent to the educational requirements prescribed herein **and courses were completed within one year of such request.**

(f) The salesperson's course of [45] **75** hours shall include:

1. Property rights ([6] **9** hours):
2. Contracts and other property instruments ([7] **12** hours);
3. Leases and landlord-tenant relations ([3] **6** hours);
4. Mortgages **and other liens** ([7] **12** hours);
5. Business opportunity sales (2 hours);
6. The law of agency ([9] **12** hours);
7. **Appraising (2 hours);**

[7] **8.** License Act and regulations (9 hours);

[8] **9.** Other state and municipal laws and regulations ([2] **5** hours);

10. Salesperson duties and pitfalls in the real estate business (3 hours);

11. Quizzes and examinations (3 hours);

(g) The broker's course of 90 hours shall include:

1. Review of salesperson's course and additional terminology (12 hours);
2. Review of contracts and other property instruments (3 hours);
3. Advanced finance (8 hours);
4. Real estate investments (6 hours);
5. Zoning (4 hours);
6. Subdivisions and developments (8 hours);
7. Property taxes and tax appeals (3 hours);
8. Appraisals and evaluations (9 hours);
9. Urban redevelopment (4 hours);
10. Property management and landlord-tenant relations (5 hours);
11. Tax implications or real estate transactions (5 hours);
12. Closing settlement problems (3 hours);
13. License law, civil rights law, [and] regulations **and antitrust laws** (20 hours).

(h) A complete syllabus for the salesperson and broker courses shall be maintained at the offices of the Real Estate Commission and be open to the public for inspection. [This complete syllabus is incorporated as a part of these regulations.]

(i) All course hours are suggested and may be modified at the discretion of the director of the approved school subject to **written** notice to and **written** approval by the Real Estate Commission.

(j) For purposes of the Real Estate Commission, the salesperson's course shall be equivalent to [three] **five** credits and the broker's course shall be equivalent to [five] **six** credits.

11:5-1.28 Approved schools; requirements

(a) The following regulations are applicable to schools seeking approval to conduct a course of education in real estate subjects as prescribed under N.J.S.A. 45:15-10.1(A) and (B) and N.J.A.C. 11:5-1.[26] **27.**

(b) The Commission shall require any school in making application to submit certain documents, statements and forms prior to approval, which shall form the basis for the Commission's judgment whether to approve or grant a hearing upon request when approval would be denied to conduct a school in the best interests of the general public. Application for approval to conduct a school in real estate courses is to be made on Form A as prescribed by the Commission.

(c) Colleges and universities approved as such by the State Department of Education shall be presumed to be of good moral character and responsible sponsors of a course of education in real estate subjects.

(d) All other sponsors of a proposed or existing school, and in the case of a corporation, firm or limited partnership, each member or each stockholder, officer or director of a corporation, who would have an interest or be connected with the program of education to conduct real estate courses, shall be at least [21] **18** years of age with a background of good moral character, including the absence of any conviction for the certain crimes, or other like offense or offenses, specified under the provisions of N.J.S.A. 45:15-12.1. Each sponsor, member, stockholder, officer or director embraced in this paragraph shall complete Form D and shall furnish letters of reference from responsible persons with information relating to such person's integrity, character and responsibility.

(e) Applications for school approval, except from accredited colleges and universities, and schools operated by boards of education, shall be accompanied by a surety bond (Form F suggested) as issued by an insurance company authorized to do business in this State, conditioned for the protection of the contractual rights of real estate students enrolled in such school in an amount computed in accordance with the following formula:

1. The sum of:

i. The maximum number of students to be enrolled in the school's broker courses at any one time during the calendar year as set forth in the certification submitted pursuant to (f) below, multiplied by the amount of tuition for brokers' course; plus

ii. The maximum number of students to be enrolled in the school's salesperson courses at any one time during the calendar year as set forth in the certification submitted pursuant to

(f) below, multiplied by the amount of tuition for salespersons' course.

2. However, if the amount computed in accordance with the prescribed formula is less than $10,000, the amount of the bond shall be not less than $10,000.

(f) The director of each school required to submit a surety bond as set forth in (e) above, shall submit with initial and renewal applications, on a form prescribed by the Commission, an affidavit setting forth the maximum number of students to be accepted for enrollment in the school's broker and salesperson courses at any one time during the forthcoming year of operation, and the maximum number of students actually accepted for enrollment in the school's broker and salesperson courses at any one time during the preceding year of operation. The director shall include in the affidavit an explanation for any decrease in enrollment figures.

(g) If such school is the owner of the premises to be utilized, then it shall furnish to the Commission an affidavit setting forth the names of the true owners, book and page and county where deed is recorded. Where premises are leased, then such school shall furnish a copy of the lease and a receipted statement executed by the owner or lessor that all rent has been paid for the term of course of instruction for which it seeks approval.

(h) Where a school is to be conducted in the name of a corporation, then a certified copy of said certificate of incorporation shall accompany the application. Where a school is to be conducted under a trade name, whether sole proprietorship, firm, partnership, or limited partnership, then a true copy of the certificate of trade name or articles of the limited partnership as filed in the office of the county clerk, shall accompany the application. A school shall not apply to itself either as part of its name or in any manner, the designation of "College" or "University", unless it, in fact, meets the standards and qualifications and has been approved by the State Agency having jurisdiction.

(i) The administration requirements are as follows:

1. Each application for school approval shall designate an individual as director of the school, who shall be in responsible charge of all its operations and the specific course of education to be conducted.

2. Such director shall file with Commission Form C, and also letters from previous employers showing previous experience in educational administration or supervision or other activities related to education and possessing experience in these fields of at least three years.

3. In the case of a college or university, the head of the real estate department shall be conclusively presumed to meet the foregoing requirements. This presumption shall also apply to the director of any existing school, who has acted in said capacity for the past three years and written evidence thereof is filed with the Commission.

(j) The maximum teaching load per teacher or instructor shall not exceed the ratio of one teacher or instructor to sixty students per class. Each course of instruction herein provided shall be under the supervision of an instructor qualified as provided for herein who shall be present in the classroom at all sessions. Additional instructors [possessing the qualifications elsewhere herein required] **or guest speakers** may be utilized for instruction with respect to given subjects provided that not more than twenty-five percent (25%) of the prescribed respective instruction is done by persons other than the instructor in whom overall responsibility is vested. [This limitation shall not apply where courses in real estate subjects cover two hundred (200) classroom hours or more.]

(k) Each staff member shall:

1. In the case of a college or university, have qualified as an instructor or professor in subjects dealing with, or related to, real estate and such other required subjects as are to be taught; or

2. Have actively practiced as an attorney at law for a minimum of five years in the areas of study he proposes to teach; or

3. Hold a degree as evidence of having majored in real estate from an accredited college or university; or

4. Hold a degree from an accredited college with at least two years of teaching experience and possess a minimum of 200 classroom hours in the areas of study he proposes to teach; or

5. Be a licensed real estate broker in the State of New Jersey within a minimum of five years of experience in the areas of study he proposes to teach.

NOTE: The above requirements shall not apply to any guest speaker as heretofore provided. Individuals qualifying within requirements 1 to 5 above shall file Form "E", together with evidence of past experience in the area of study proposed to be taught.

(l) Every school, except any correspondence schools approved by the Commission, shall have and maintain facilities meeting the following standards:

1. The premises, equipment and facilities of the school shall comply with all local, city, county and State regulations, such as fire codes, building and sanitation codes. A certificate from proper authority covering these requirements shall accompany application for school approval.

2. A certificate applicable to fire safety based upon the maximum number of students which may be accommodated shall be procured from the proper authority and accompany application for school purposes.

3. There shall be adequate space, seating, equipment and instructional material. Facilities are subject to inspection by one or more representatives of the Commission prior to approval or subsequent thereto during regular school hours.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Issuance of Special Permits By Director

Proposed Readoption: N.J.A.C. 13:2-5

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-39, 1-42 and 1-74.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April

19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

The proposal is known as PRN 1984-127.

The agency proposal follows:

Summary

N.J.A.C. 13:2-5 addresses three specific areas where the Director issues special permits to authorize alcoholic beverage activity not otherwise encompassed by licenses provided for in the Alcoholic Beverage Law. N.J.A.C. 13:2-5.1 outlines the requirements for and privileges attendant to a social affair permit, which is basically a one day retail license issued to not-for-profit civic, religious, charitable, fraternal, social, educational or recreational organizations under N.J.S.A. 33:1-74. N.J.A.C. 13:2-5.2 outlines the requirements for and privileges attendant to a special concessionaire permit, which is an annual license to sell alcoholic beverages from facilities which are classified as public buildings and only permitted under N.J.S.A. 33:1-42. Examples of such permits include private concessionaires at municipally owned golf courses and State owned sports, educational or marina facilities. N.J.A.C. 13:2-5.3 identifies one of several other special permits that the Director is empowered to issue under N.J.S.A. 33:1-74 that authorizes what would otherwise be illegal activity. In N.J.A.C. 13:35-5.3, a judgment creditor, trustee, receiver or other court authorized person can sell alcoholic beverages with this permit in furtherance of the execution of legal responsibilities authorized by law or court order.

The provisions of Executive Order No. 66(1978) involving sunset of administrative regulations, became applicable in consequence of amendments to N.J.A.C. 13:35-5.1 and 5.2 adopted April 4, 1979, effective May 1, 1979 (see: 11 N.J.R. 143(a), 11 N.J.R. 259(c)). These amendments clarified the lawful sources for permittees to acquire alcoholic beverages and the types of information necessary to provide the Division in seeking a permit.

The provisions in Subchapter 5 have been reviewed within the Division and are necessary, adequate, reasonable, efficient, understandable and responsive to achieve an orderly, systematic method of issuing statutorily identified special permits.

Social Impact

In 1983 the Division issued 4,273 social affairs permits to qualified organizations to permit the conduct of outings, dinners, fundraisers, carnivals, picnics and other celebrations where alcoholic beverages could be provided to attendees. This figure has remained constant over the past five years. These events assist these organizations in furthering their activities which are often elyomosinary in purpose and part of the social fabric of a community. The annual concessionaire permits, of which 44 were issued in 1983, allow limited alcoholic beverage activity for visitors to State, County or municipal recreational facilities, as well as at State operated Colleges and University facilities. With the increase in the lawful age to purchase and consume alcoholic beverages in New Jersey to twenty-one, the appropriateness of issuance of permits at State run educational facilities must be reevaluated in the near future.

Economic Impact

The provisions of N.J.A.C. 13:35-5 identify the procedure to apply for specific types of permits. The issuance of these permits generate revenue for the State and presumably the permit holders by holding social affairs. In 1983, the State collected approximately $424,000 from such permits and such figure has remained constant over the past five years. The specific regulatory provisions in Subchapter 5 simply reflect the economic impact of the statute by reiterating the established statutory fees. More importantly, Subchapter 5 seeks to insure that qualified persons obtain permits upon proper advance notice to the public and local governing body.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-5.1 to 5.3, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Transfers of State and Municipal Licenses

Proposed Readoption: N.J.A.C. 13:2-7

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-5, 1-10, 1-11, 1-12, 1-13, 1-14, 1-19, 1-20, 1-23, 1-24, 1-25, 1-26, 1-27, 1-35, and 1-39.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

The proposal is known as PRN 1984-125.

The agency proposal follows:

Summary

N.J.S.A. 33:1-26, which incorporates N.J.S.A. 33:1-25, by reference, sets forth the basic procedure, fees and requirements to seek to transfer a liquor license to another person

and/or another location. N.J.A.C. 13:2-7 reiterates the statutory requirements and expands the basic legislative provisions to address other related legislative provisions which, in toto, form a uniform, comprehensive standardization of license transfer procedures and requirements. Objectives sought by Subchapter 7 and specified in each section include provisions which establish notice to the public of an application for transfer, Statewide uniform procedures and forms, provide review standards of applicants and their qualifications for licensure, specific opportunity for objectors to be heard and standard recordkeeping by local issuing authorities concerning actions taken on transfer applications.

The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today. An amendment on April 4, 1979, effective May 1, 1979, (11 N.J.R. 143(a), 11 N.J.R. 259(c)) which added specific requirements upon the local issuing authority to certify applicant's qualifications for licensure, has resulted in this Subchapter sunsetting on May 1, 1984 pursuant to Executive Order No. 66(1978). The most recent amendment to this Subchapter was on October 25, 1983 (15 N.J.R. 1557(a), 15 N.J.R. 1945(b)), which amendment modified Section 10 to eliminate a requirement for certifications concerning debts by the seller and buyer of a retail license. This provision became unnecessary because of a contemporaneous amendment to N.J.A.C. 13:2-24.4. Upon readoption the former address for the Division's offices noted in N.J.A.C. 13:2-7.5 will be deleted.

Social Impact

This Subchapter directly affects municipalities, licenses, transferees and the citizenry. The standardized format for dealing with transfer applications in the 525 municipalities that issue liquor licenses in New Jersey insures uniform treatment of licensees in a procedural due process context. Citizens are guaranteed a right to object and be meaningfully heard on the qualifications and fitness of individuals who seek licensure. Past experience has established that this subchapter provides safeguards against improper action by preventing conflicts of interest and/or licensure of unqualified persons. Absent the provisions of N.J.A.C. 13:2-7 there would be a fragmented and chaotic transfer system which would run contrary to the legislative intent in the Alcoholic Beverage Law.

Economic Impact

Other than the requirements for publication and recitation of certain license fees, which are all mandated by stature, the provisions proposed for readoption have no additional intrinsic economic impact. The $50.00 filing fee generates approximately $30,000 per year on average. Municipal issuing authorities, licensees and the State Division have administered the essential notice, hearing and decision making provisions for approximately 50 years. Absent these regulations, the administrative and subsequent investigative expenses incurred by the State Division in its overall supervision and control of the sale of alcoholic beverages at retail in both its computerized record processing of all retail licenses in the State and investigations and review of retail license issuance would significantly increase.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-7.1 to 7.24, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Club Licenses

Proposed Readoption: N.J.A.C. 13:2-8

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-12, 1-23, 1-25, 1-26, 1-31.2, 1-39, 1-40, 1-40.3, 1-44, 1-45, 1-45.1, 1-46, 1-46.1 et seq., 1-47, 1-47.1.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-126.

The agency proposal follows:

Summary

The provisions of N.J.S.A. 33:1-12 establish a club license which entitles the holder, subject to rules and regulations, to sell any alcoholic beverage but only for immediate consumption on the licensed premises and only to bona fide club members and their guests. It further sets forth the fee for such license, provides the local governing body of a municipality the option not to issue any club licenses and defines the type of not for private gain corporations, associations and organizations which can qualify for a club license.

The provisions in N.J.A.C. 13:2-8 that are now proposed for readoption without change reiterate the basic statutory provisions and further detail specifically the actual requirements and qualifications to obtain a club license. Section 1, 2, 3, 4, 5 & 7 define club, club member and guests and set forth eligibility requirements and exceptions for a club or proposed club licensed premises. Section 6 is derivative of N.J.S.A. 33:1-25 and incorporates the basic requirements that club officers and governing body members be qualified to have an interest in a retail license. It was an amendment to this section on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)) that caused this Subchapter to sunset May 1, 1984 pursuant to Executive Order No. 66(1978). Section 8, 9 and 10 reiterate statutory provisions concerning persons to whom alcoholic beverages can be sold, prohibiting sales for off-premises consumption and prohibiting sales during hours not authorized by municipal regulation or referendum. Sections 11 and 13 address the limited nature of the club license and proscribe sale and advertisements to non-members or not

bona fide guests except when a Social Affairs permit has been obtained pursuant to N.J.S.A. 33:1-74. Section 12 and 14 encompass statutory provisions applicable to all liquor license holders (maintain true books of account, permit inspections of records, bear responsibility for agents and employees acts).

The overall objective of N.J.A.C. 13:2-8 is to properly reflect the limited nature of club licenses as determined by the Legislature and insure that only properly qualified organizations obtain the license and that once obtained, the licensee operates within its statutory privileges. The subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Social Impact

There are presently 1451 club licenses issued in the State of New Jersey. Because of the community based nature of these organizations and the benefits they can provide in civic, charitable, fraternal, religious and recreational activities, they are often a significant social force in a municipality or region. The regulations proposed for readoption will not in any way negate the ability of a bona fide club to continue to achieve its purposes. The limitations of club licenses, as compared to a retail consumption license, are outlined and explained to preserve legislative intent. In that regard, it is noted that when club licensees are involved in functions where alcoholic beverages are dispensed and the general public is invited, the club must obtain a Social Affairs permit. Finally, since a club licensee is a retail dispenser of alcoholic beverages, all of the social ramifications that may flow from the abuse of that privilege require enforcement monitoring and responsibility is fixed upon the licensee for its agents or employees acts.

Economic Impact

The regulations proposed for readoption have no intrinsic economic impact on the Division or State. The statutory fee which cannot exceed $50.00 per license is paid to the municipality and such fees vary. Absent these clear uniform procedures for eligibility for licensure and limitation on alcoholic beverage activities, significant increased State and municipal enforcement and investigative resources would be required to insure compliance with the provisions and intent of the Alcoholic Beverage Law.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-8.1 to 8.14, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Petition Proceedings; Discrimination Against Wholesalers

Proposed Readoption: N.J.A.C. 13:2-18

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-23, 1-39, 1-93.6 et seq.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-128.

The agency proposal follows:

Summary

N.J.A.C. 13:2-18 is essentially a reiteration of the provisions of N.J.S.A. 33:1-93.6 through 93.10. Under these statutory provisions, no importer, blender, distillers, rectifier or winery can discriminate in the sale of any nationally advertised brand of alcoholic beverage, other than malt alcoholic beverage, to duly licensed New Jersey wholesalers of alcoholic beverages who have been authorized to sell the nationally advertised brand in New Jersey. A procedure is set forth to initiate a claim of discrimination and several specific interim and final enforcement powers are vested in the Director. The validity of this statute was recently upheld by the New Jersey Supreme Court in Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400 (1983).

A substantial amendment to N.J.A.C. 13:2-18.1 on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)) has resulted in the sunset of this Subchapter on May 1, 1984, pursuant to Executive Order No. 66(1978). That amendment incorporated Division determinations and judicial case law which specified certain events, occurances or reasons that would not represent discrimination if a supplier refused to sell a nationally advertised brand to a previously authorized New Jersey wholesaler.

To the extent that provisions concerning the hearing procedure in this Subchapter are now inconsistent with the amendments to the Administrative Procedure Act and the creation of the Office of Administrative Law, those inconsistent sections will be amended shortly. The regulations are proposed now without change to avoid the sunset on May 1, 1984.

Except as noted above, the Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsible to the objectives and purposes that exist today.

Social Impact

These regulations affect importer, blenders, distillers, rectifiers and wineries. The general concept of the statute which is reflected in the Subchapter, has social impact in many areas, including the stability of the alcoholic beverage industry, preservation of a sound tax base, employment, and availability and price of product to consumer. These regulations repeat statutory provisions and reference existing Division and judicial decisions concerning the law.

Economic Impact

As indicated in the Social Impact statement, while the law itself has economic consequences to the industry by providing

stability and citizens of the State of New Jersey by providing a sound tax base, employment and alcoholic products to consumers Subchapter 18 does not, in and of itself, have economic impact. The only economic expense to the Division and the Office of Administrative Law would be in conducting hearings and rendering decisions on petition proceedings instituted under the law. In this context, the regulations save money in administrative costs by providing an efficient procedure in processing discrimination petitions.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-18.1 to 18.8, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Diversion, Transshipment and Registered Distribution

Proposed Readoption: N.J.A.C. 13:2-25

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-3, 1-11, 1-23, 1-39, 1-43 and 1-79.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-129.

The agency proposal follows:

Summary

The provisions of N.J.A.C. 13:2-25 are basically concepts concerning warehousing of inventory and registered distribution of alcoholic beverages that pre-existed the amendment on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)). N.J.A.C. 13:2-25.1 requires a plenary or wine wholesale licensee to warehouse its product in a New Jersey warehouse for no less than 24 continuous hours before delivery to a retail licensee. N.J.A.C. 13:2-25.2 and 3 basically set forth the requirement that in order to sell a product to a New Jersey retail or wholesale licensee a wholesale class licensee must either be registered as an authorized distributor by the brand owner or its agent or acquire the product from a New Jersey wholesale licensee so authorized.

An amendment was made to N.J.A.C. 13:2-25.1 and 2 on February 11, 1980 (11 N.J.R. 285(b), 12 N.J.R. 156(a)) which involved changes not effecting the general concept of the regulation. It was the amendment effective May 1, 1979 which will sunset this Subchapter on May 1, 1984 pursuant to Executive Order No. 66(1978).

The subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today and which objectives and purposes are noted hereinafter.

Social Impact

The concepts and specific provisions in Subchapter 25 have been subject to both judicial and administrative review as to validity and purpose. N.J.A.C. 13:2-25.1 was affirmed by the New Jersey Supreme Court to be a proper regulatory provision which implements N.J.S.A. 33:1-11 and ". . . serves the valid purpose of preventing the diversion of alcoholic beverages and assuring the proper collection of taxes under the Alcoholic Beverage Tax Law, N.J.S.A. 54:43-1." Heir v. Degnan, 82 N.J. 109, 125 (1980). The provisions of N.J.A.C. 13:2-25.2 and 25.3 were subject to extensive hearings on June 1, 1983 and July 6, 7, 8, 11, 12, 13 & 14, 1983 before the Director which resulted in Findings and Conclusions Confirming Validity of Regulations, N.J.A.C. 13:2-25.2(a), 13:2-25.3(b) and 13:2-33.1. In the Matter of Petition Proceedings of Todd Seifert, t/a Seifert Distributing Company, et al., Bulletin 2433, Item 3 (decided December 5, 1983). Within that declaratory ruling, now subject to review in the New Jersey Superior Court - Appellate Division, there was full and complete development of the public purposes and goals served by the regulation and the impact of the regulations. Stability of the industry, enhanced interbrand competition with concommitant price competition, protection of the significant tax base alcoholic beverage sales provide the State and recognition of product quality control systems, which are all fostered or insured through a registered distribution regulation, were some of the objectives, goals and impacts identified.

Economic Impact

The comments noted in the Social Impact Statement above intertwine economic consideration which are incorporated herein. The Division has determined that whatever adverse economic constraints a wholesaler, retailer or licensee experiences as a consequence of these regulations is significantly outweighed by the numerous public purposes and benefits achieved for all citizens and licensees of this State through a registered distribution system.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-25.1 to 25.3, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Retail Cooperative Purchases

Proposed Readoption: N.J.A.C. 13:2-26.1

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-3, 1-12, 1-12.31, 1-13, 1-23, 1-28, 1-31, 1-39, 1-39.2, 1-74, 1-89, 1-90 and 1-93.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-130.

The agency proposal follows:

Summary

N.J.A.C. 13:2-26.1 was a new regulation adopted April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)), permitting retail licensees to form a cooperative for the purposes of jointly purchasing and transporting alcoholic beverages. It is this amendment which will cause the Subchapter to sunset on May 1, 1984 pursuant to Executive Order No. 66(1978). An amendment on February 11, 1980 (11 N.J.R. 285(b), 12 N.J.R. 156(a)) redefined the standard to establish the maximum number of retailers that could be in any one cooperative to be no greater than the largest number of plenary retail distribution licenses issued to any one person or entity. An amendment on July 3, 1980 (12 N.J.R. 343(b), 12 N.J.R. 494(b)) expanded the former requirement of "cash purchases only" by cooperatives to allow sale, if otherwise permitted, on credit terms subject to adequate assurances. That amendment also provided for the issuance of a cooperative permit by the Division to identify the members of a cooperative and provide a specific registration identifying number for invoice and recordkeeping purposes.

Subchapter 26 initially permits cooperative purchasing and transporting of alcoholic beverages and then sets forth 11 standards, limits or obligations referable to that activity. Areas covered include the number of retail licensees that can form a cooperative, the assurance of flexibility in joining other cooperatives or leaving a cooperative, the prohibition against management of a cooperative in purchase or transportation of alcoholic beverages by an unlicensed person or entity, the conditions required for credit sales and invoicing, and the responsibility of licensees for improper activity in a cooperative purchase or transportation.

The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today and which are set forth hereinafter.

Social Impact

N.J.A.C. 13:2-26.1 was generally subject to review and determined to be within the power and authority of the Director to promulgate in Heir v. Degnan 82 N.J. 109 (1980) and the purpose of this regulation to ". . . improve the small retailers competitive position in relation to chain store operations" was specifically identified in N.J. Retail Liquor Stores Ass'n. v. Degnan, 180 N.J. Super. 475, 477 (App. Div. 1981). The regulation, therefore, specifically impacts on small retailers by improving their competitive position. By permitting retail licensees to join in a purchase cooperative, an individual retail license who could not independently acquire the most favorable wholesale quantity discount price, can obtain that price by joining with other similarly situated retailers. The smaller retailer would then have the ability to acquire goods competitively with the largest commonly owned chain of 34 licenses. Consumers in this State would then have a broader range of retail licensees who could effectively compete with each other in the sale of alcoholic beverages.

Consumers are impacted because as competition increases prices are lowered.

Economic Impact

The regulation provides a tool for individual retail licensees to take advantage of quantity discount prices offered by wholesalers. Small retailers who buy in quantity as a group are able to buy at a discount. Those that cooperatively purchase may have been better able to readjust to the competitive retail price situation established in 1979 commonly called "deregulation". Other retailers who for various reasons cannot or choose not to become involved in cooperative purchase groups suffer from the disadvantage of higher costs to purchase products. Continual evaluation is occurring in the Division to identify and address the merits and liabilities of cooperative group purchases and the related advertising and trade practice activities that have developed from this concept.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-26.1, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Labeling and Standards of Fill; Deposit Marked Containers

Proposed Readoption: N.J.A.C. 13:2-27

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-23, 1-39, 1-39.1 and 1-88.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-131.

The agency proposal follows:

Summary

N.J.A.C. 13:2-27.1 was enacted in its present form on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)) and incorporates Federal regulations relating to the label and standards of fill concerning all types of alcoholic beverages. Previous regulations had incorporated the Federal label requirements but had prohibited sale of any alcoholic beverage in a size smaller than 200 milliliters. The amendment in 1979 had the effect of permitting sale of what is commonly called "miniatures".

N.J.A.C. 13:2-27.2 is currently a proposed new rule that has been published in the January 3, 1984 New Jersey Register (16 N.J.R. 31(a)), adopted by the Director on February 9, 1984 and it is expected will be promulgated prior to the within proposed readoption of Subchapter 27. That proposal is fully outlined in the notice and can briefly be summarized as prohibiting the sale of alcoholic beverage containers which are marked for deposit of another State.

The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today. The Subchapter will sunset on May 1, 1984 pursuant to Executive Order No. 66(1978) because of the amendment effective May 1, 1979 involving N.J.A.C. 13:2-27.1.

Social Impact

Label requirements often serve a consumer protection objective providing information about the product contained therein, including size, type, brand, alcohol content by volume, country of production and producer. Size of fill involves the amount of fluid a particular bottle contains. Consumer awareness is an objective. Consideration will continue to be given to those persons who have questioned the need or necessity to permit the sale of miniatures and who have also expressed concern that this small size can be easily hidden by persons under the legal age who may unlawfully obtain them.

The impact of N.J.A.C. 13:2-27.2 involving deposit marked containers is fully set forth at 16 N.J.R. 31(a) and need not be reiterated.

Economic Impact

Label and bottle size are strictly regulated by the Federal Government. Those entities that produce and bottle alcoholic beverages do so now under these standards and this regulation, because it does not impose additional labeling requirements and has no additional economic impact. Costs are reduced because the industry follows uniform standards. As to N.J.A.C. 13:2-27.2, reference is made to the comments noted in that pending proposal.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-27.1 to 27.2, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Records

Proposed Readoption: N.J.A.C. 13:2-29

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-23, 1-35, 1-37, 1-39 and 47:1A-1 et seq.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-132.

The agency proposal follows:

Summary

N.J.A.C. 13:2-29.1 identifies those records which the Division has categorized as public records and includes all license or permit applications, all price and product information filings and all pleadings, transcripts and orders generated in the quasi-judicial activities of the Director. N.J.A.C. 13:2-29.2 specifies those documents and records which the Division considers confidential and includes initial reports or complaints alleging violations, investigative reports, documents or questionnaires, intergovernmental reports and solicitors' statements of compensation required to be filed under N.J.A.C. 13:2-37.2. The provision of N.J.A.C. 13:2-29.3 reiterates the right of every citizen of this State to inspect public records at the Division offices during normal business hours and obtain copies of public records upon payment of stated fees. N.J.A.C. 13:2-29.4 permits upon prior approval of the Director the storage of records at locations other than the licensed premises and in alternative modes (usually computerized records) provided the information is readily retrievable and accurate (both terms defined).

The regulations were first adopted on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)) and have not been subsequently amended. Certain references in N.J.A.C. 13:2-29.1 to "Hearers Reports" will be modified to reflect the elimination of Division appointed Hearing Officers with the creation of Administrative Law Judges and the Office of Administrative Law. The proposed readoption is submitted without change at this time to prevent a sunset on May 1, 1984, pursuant to Executive Order No. 66(1978). Subject to the anticipated change noted, the Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Social Impact

The provisions in N.J.A.C. 13:2-29 reflect and implement the public policy of this State to make public records readily accessible for examination by citizens of this State, with certain exceptions, for the protection of the public interest. N.J.S.A. 47:1A-1. Access to licensure, adjudicative and informational records and filings afford citizens and journalists the opportunity to access information which may thereafter serve meaningful public and private interests. N.J.A.C. 13:2-29.4 recognizes the reliance on computerization in the efficient operation of businesses, subject to the State's right and need to access required information.

Economic Impact

The Division has had no difficulty from a personnel or budget standpoint in servicing requests for access to and photocopying of public records; nor has any complaints from the public been received in these areas. Since requests for photocopying and inspection are minimal, costs to the Division are negligible. By permitting licensees to utilize computer record-keeping and invoice systems, the cost efficiencies of such usage generally reduce operational expenses, which savings can insure to the benefit of the licensed industry and ultimate consumer.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-29.1 to 29.4, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Product Information Filing; Brand Registration

Proposed Readoption: N.J.A.C. 13:2-33

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-3, 1-10, 1-11, 1-12, 1-23, 1-39, 1-43, 1-79 and 1-88.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-133.

The agency proposal follows:

Summary

By amendments on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)), almost all of the then existing provisions of N.J.A.C. 13:2-33, which dealt with a system of filing the minimum price of every alcoholic beverage to be sold at retail to the consumer, was deleted. Retained and supplemented on April 4, 1979 were the current provisions contained in N.J.A.C. 13:2-33.1, which requires specific information as to each and every alcoholic beverage product to be sold or offered for sale at wholesale or retail in New Jersey. The information required includes identification of the brand, type, age and proof, sizes of containers to be sold and standard number of units per case size, and the name of all New Jersey licensees authorized to distribute the product at wholesale. The person or entity who shall file the product and brand information is then set forth. N.J.A.C. 13:2-33.2 provides for the Director to establish the filing date for receipt of this information which is now known as the Brand Registration form.

An amendment on July 3, 1980 (12 N.J.R. 343(b), 12 N.J.R. 494(b)) deleted N.J.A.C. 13:2-33.3 and held open that section as "reserved". The former section 3 had retained certain provisions involving the old minimum consumer resale price system because of the transition provisions contained in N.J.A.C. 13:2-41.

It was the amendment effective May 1, 1979 which will sunset this Subchapter on May 1, 1984 pursuant to Executive Order No. 66(1978). The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today, and which objectives and purposes are noted hereinafter.

Social Impact

The concept and specific provisions in N.J.A.C. 13:2-33 have been subject to both judicial and administrative review as to validity and purpose. In Joseph H. Reinfeld, Inc. v. Schieffelin & Co., 94 N.J. 400, 411 (1983), the New Jersey Supreme Court reiterated the Division's previous determination that Subchapters 25 and 33 ". . . are designed to assist the State in identifying the distributive network of alcoholic beverages to insure tax integrity." See also Heir v. Degnan, 82 N.J. 109 (1980) which affirmed the regulatory authority of the Director to adopt most of the "deregulation" amendments in April 1979, of which N.J.A.C. 13:2-33.1 and 33.2 were a part. The provisions of N.J.A.C. 13:2-33.1 were recently subject to extensive hearings on June 1, 1983 and July 6, 7, 8, 11, 12, 13 and 14, 1983, before the Director which resulted in Findings and Conclusions Confirming Validity of Regula-

tions, N.J.A.C. 13:2-25.2(a), 13:2-25.3(b) and 13:2-33.1. In the Matter of Petition Proceedings of Todd Seifert, t/a Seifert Distributing Company, et al., Bulletin 2433, Item 3 (decided December 5, 1983). Within that declaratory ruling, now subject to review in the New Jersey Superior Court - Appellate Division, there was a full and complete development of the public purposes and goals served by the regulation and the impact of the regulations. Identification of products, stability of the industry, enhanced interbrand competition with concommitant price competition, protection of the significant tax base alcoholic beverage sales provide the State and recognition of product quality control systems, which are all fostered or insured through a product and entity identified registered distribution regulation, were some of the objectives, goals and impacts identified.

Economic Impact

The comments noted in the Social Impact statement above intertwine economic consideration which are incorporated herein. The Division has determined that whatever economic constraints a wholesaler, retailer or licensee experiences as a consequence of these regulations is significantly outweighed by the numerous public purposes and benefits achieved for all citizens and licensees of this State through a registered distribution system. Additionally, the State has a need to know and an obligation to the citizens of New Jersey to specifically identify what alcoholic beverage products are being sold or offered for sale in this State to insure their fitness as a beverage alcohol.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-33.1 and 33.2, as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Requests for Advisory Opinions

Proposed Readoption: N.J.A.C. 13:2-36.1

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-3, 1-23, 1-39 and 1-93.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-134.

The agency proposal follows:

Summary

N.J.A.C. 13:2-36.1 incorporates longstanding Division policy of considering requests for advisory opinions under stated conditions. Such inquiries must identify the parties, reference a present or contemplated actual situation, concern Division regulations, policies or practices, and deal with issues not previously articulated or which involve substantial questions of general applicability. It is not known how many written or verbal opinions are made each year since the Division does not keep track of the numbers.

This regulation was adopted July 3, 1980 (12 N.J.R. 343(b), 12 N.J.R. 494(b)). The Subchapter will sunset on May 1, 1984, pursuant to Executive Order No. 66(1978) because of an earlier amendment made on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)). That amendment deleted all of the then existing provisions concerning wholesale price filings as part of the concept commonly designated as "deregulation" and relocated certain provisions elsewhere involving registered distribution, trade practices and returns of alcoholic beverages.

The subchapter has been reviewed within the Division and the existing regulation is necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Social Impact

In fulfilling the duty to insure the "fair, impartial, stringent and comprehensive" administration of the Alcoholic Beverage Law and its regulations (N.J.S.A. 33:1-23), the Director must address bona fide questions from licensees and the public concerning permissible and impermissible activities, practices or conduct. In many cases, the preliminary review and advice rendered by the Division and the Office of the Attorney General deter prohibited actions. Greater awareness of the law, regulations and policies concerning alcoholic beverage activity in this State is fostered through the mechanism provided for in N.J.A.C. 13:2-36.1, and the readoption of this Subchapter will continue to enhance regulatory compliance within the regulated industry and provided citizens with meaningful opportunities to obtain information and bring to the attention of the Division problems and concerns.

Economic Impact

There is no great intrinsic economic impact involved in the administrative compliance with N.J.A.C. 13:2-36.1. Administrative costs in personnel time are insignificant because providing advice is part of the nature of the Division's business. Significant economic consequences are adverted when opinions are obtained which identify and correct actual or contemplated impermissible activities, not the least of which is the avoidance of Division investigatory and adjudicatory activities, the savings of time and funds which can be directed to other Division responsibilities.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-36.1 as amended in the New Jersey Register.

(a)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Contracts of Employment and Conduct of Solicitors

Proposed Readoption: N.J.A.C. 13:2-37

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-23, 1-35, 1-39, 1-43, 1-67 and 1-90.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

The proposal is known as PRN 1984-135.

The agency proposal follows:

Summary

N.J.A.C. 13:2-37.1 requires that all contracts between manufacturers or wholesalers engaged in the sale of alcoholic beverages, other than malt alcoholic beverages, and their solicitors must be in writing, set forth the true terms of compensation and be maintained for three years by the employer and available for inspection. N.J.A.C. 13:2-37.2 requires the manufacturer or wholesaler employing a solicitor to file annually, on or before April 1, a true statement listing all compensation and expense reimbursements paid to each solicitor for the prior calendar year. N.J.A.C. 13:2-37.3 reiterates the recognition that the holder of a solicitor's permit is an employee of a manufacturer or wholesaler and he or she cannot engage in any conduct, directly or indirectly, which the employer cannot engage in because it would violate the Alcoholic Beverage Law or regulations. Specifically noted is the prohibition against soliciting, selling or offering to sell alcoholic beverages upon terms or conditions or under promotions or contests not contained for the operative period in the employer's Current Price List or Marketing Manual.

An amendment on April 4, 1979, effective May 1, 1979 (11 N.J.R. 143(a), 11 N.J.R. 259(c)) resulted in the language of this Subchapter in its current form and its sunset on May 1, 1984, pursuant to Executive Order No. 66(1978). The 1979 amendment basically refined the previous language used as it related to those concepts and referenced prohibited activities in general terms with specific emphasis to the manufacturer and wholesaler trade practice provisions in N.J.A.C. 13:2-24. N.J.A.C. 13:2-37.4 was reserved in the 1979 amendment.

The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Social Impact

In 1983, the Division issued 2,490 solicitor's permits pursuant to N.J.S.A. 33:1-67. This figure has remained, on average, constant over the last five years. By statute, such permit is required if an individual seeks to offer for sale or solicit an order for alcoholic beverages in this State, except for retail licensees and their employees. In addressing the solicitor's activities as representatives of manufacturers and wholesalers, the Division has by regulation since 1941 required submission of financial records and reports concerning solicitor's compensation and prohibited solicitors from engaging in impermissible trade practices. The disclosure of financial information, which is a confidential record under N.J.A.C. 13:2-29.2, is a valuable investigatory tool to insure compliance with Division trade practice, marketing, advertising and pricing regulations, and is intended to function as a deterrent against cash rebates, bonuses or inducements by solicitors to retailers.

Economic Impact

This regulation impacts on salesmen who must take out a solicitor's permit each year. The permit fee is between $15.00 and $25.00 set by statute. In 1983, these permit fees generated $40,000 in revenue which figure has been a constant average over the past five years. The Division incurs administrative expenses in issuing permits, investigating applicants and maintaining files.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-37.1 to 37.3, as amended in the New Jersey Register.

(b)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Credit Terms; Requires Records; Returns; Notices

Proposed Readoption: N.J.A.C. 13:2-39

Authorized By: John F. Vassallo, Jr., Director, Division of Alcoholic Beverage Control.
Authority: N.J.S.A. 33:1-3, 1-23, 1-28.1, 1-35, 1-39, 1-39.2, 1-49, 1-50, 1-89, 1-90 and 1-93.

Interested persons may present in writing, statements or arguments relevant to the proposed action on or before April 19, 1984. These submissions and any inquiries about submissions and responses should be addressed to:

John F. Vassallo, Jr., Director
Division of Alcoholic Beverage Control
Richard J. Hughes Justice Complex, CN 087
Trenton, New Jersey 08625

The Director, Division of Alcoholic Beverage Control, may thereafter adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 1, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-136.

The agency proposal follows:

Summary

N.J.A.C. 13:2-39.1, 39.2 and 39.5 set forth the basic requirement that true and accurate documents accompany every sale or delivery of alcoholic beverages by or to a licensee of this State. The delivery slip, invoice, manifest, waybill or similar document must include identification of name, address and State assigned license numbers of seller and buyer; the brand, size and quantity of each alcoholic beverage being sold or delivered; price and terms of sale and payment; and an acknowledgement legend on delivery documents of receipt in a form prescribed in N.J.A.C. 13:2-39.2. Copies of this documentation must be retained on the licensed premises of the parties to the transaction and available for Division inspection for three years. Limited exceptions from the above provisions are permitted under stated circumstances.

Section 3 is currently reserved in consequence of an amendment on March 4, 1981 (13 N.J.R. 37(b), 13 N.J.R. 238(b)) which deleted provisions involving delinquent retailer credit notices, a subject matter thereafter and currently addressed in N.J.A.C. 13:2-24.4.

N.J.A.C. 13:2-39.4 prohibits the return of alcoholic beverages by a retail licensee to a wholesale licensee for credit except on terms that are either customary to the industry or set forth by the wholesaler in its current price list or marketing manual.

Amendments which occurred on April 4, 1979, effective May 1, 1979 have caused this Subchapter to sunset on May 1, 1984, pursuant to Executive Order No. 66(1978). The Subchapter has been reviewed within the Division and the existing regulations are necessary, adequate, reasonable, efficient, understandable and responsive to the objectives and purposes that exist today.

Social Impact

The provisions of this subchapter affect the entire alcoholic beverage industry, supplier, wholesaler, retailer. Requirements for true and accurate sale and delivery documentation is essential to provide an identifiable source of information to verify that sales and deliveries occur only by and to entities properly licensed under law and within the parameters permitted by law and regulations. Maintenance of the integrity of alcoholic beverage activity to prevent diversion of alcoholic beverage products or discriminatory sales and credit practices and protection of the consumer and the tax base by providing an audit trail to verify sales is furthered by these basic record-keeping requirements and limits on return of alcoholic beverages for credit.

Economic Impact

Proper invoicing is a standard practice in any business operation and no additional economic impact exists upon the industry to comply with these requirements. True and accurate records provide an audit trial to monitor compliance with the Alcoholic Beverage Tax Law and the collection of approximately $120 million a year. Absent such requirements, enforcement of law, regulations and tax collection statutes would be made significantly more difficult and costly.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:2-39.1 to 39.5, as amended in the New Jersey Register.

(a)

DIVISION OF MOTOR VEHICLES

Point System and Driving During Suspension Regulations N.J.A.C. 13:19-10

25-Day Waiver of Executive Order No. 66(1978)

Authorized by: Governor Thomas H. Kean.

Take notice that the point system regulations of the Division of Motor Vehicles, N.J.A.C. 13:19-10 are due to expire on March 5, 1984 pursuant to the sunset provision of Executive Order No. 66(1978). While the Division of Motor Vehicles has submitted a proposal to readopt these regulations under the provisions of the Administrative Procedure Act, (see 16 N.J.R. 347(a)), that readoption will not be effective until March 29, 1984. As a result, there will be a gap in the law governing the assessment of motor vehicle points upon conviction during the period March 5 through March 29, 1984.

At the request of the Division of Motor Vehicles, Governor Thomas H. Kean has examined this matter and found that this gap in the law governing the assessment of motor vehicle points works to the detriment of the safety and welfare of the general public. This gap will impair the operation of all driver safety and disciplinary programs carried out by the Division of Motor Vehicles and also will impede the effectiveness and enforcement of P.L. 1983, c.65, as amended.

On February 21, 1984, Governor Kean, by virtue of the authority vested in him by Executive Order No. 66(1978) to grant a waiver of the requirements of that Order with regard to any administrative regulation and having determined that good cause exists, ordered and directed that the provisions of Executive Order No. 66(1978) be waived as regards the Division of Motor Vehicles point system regulations, N.J.A.C. 13:19-10, for the period March 5, 1984 through March 29, 1984, inclusive of both dates.

(a)

DIVISION OF MOTOR VEHICLES

Enforcement Service

Standards and Procedures to Be Used by Licensed Reinspection Centers

Proposed Readoption: N.J.A.C. 13:20-33

Authorized By: Clifford W. Snedeker, Director, Division of Motor Vehicles.
Authority: N.J.S.A. 39:8-2, 39:8-4.1 and 39:8-23.

Interested persons may submit in writing, data, views, or arguments relevant to the proposed rule on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Clifford W. Snedeker, Director
Division of Motor Vehicles
25 So. Montgomery Street
Trenton, New Jersey 08666

The Division of Motor Vehicles thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 14, 1984. The readopted rules become effective upon acceptance by the Office of Administrative Law of a notice of their readoption.

This proposal is known as PRN 1984-117.

The agency proposal follows:

Summary

The Division of Motor Vehicles proposes to readopt the provisions of N.J.A.C. 13:20-33.1 through 13:20-33.73 concerning standards and procedures to be used by licensed reinspection centers. These rules were filed and became effective on November 3, 1975. These rules were subsequently amended on February 22, 1978; May 14, 1979; January 16, 1981; and January 9, 1984 and are now to be readopted in accordance with Executive Order 66(1978).

The rules implement the provisions of the Motor Vehicle Inspection Law (N.J.S.A. 39:8-11, 39:8-13 and P.L. 1983, c.236) pertaining to equipment standards which must be complied with by licensed inspection centers in repairing and certifying vehicles which have been initially rejected at State inspection stations and in conducting initial inspections for the trial period ending July 1, 1984. Licensed centers are divided into three classes (Class I centers inspect automobiles, trucks registered for not more than 10,000 pounds and buses except school buses and buses subject to the jurisdiction of the Department of Public Utilities; Class II centers are fleet owners of 10 or more vehicles except school buses and buses subject to the jurisdiction of the Department of Public Utilities; Class III centers inspect motorcycles only.) The rules set forth the general inspection and reinspection procedures for licensed centers on an item by item basis. The rules establish the average length of time required to reinspect specific safety equipment which is the maximum time for which the licensed center may charge for reinspecting said equipment. The rules also provide that the fee which a licensed center may charge for an initial inspection may not exceed one-half of the center's hourly labor charge for motor vehicles or one-quarter of the center's hourly labor charge for motorcycles.

The Division of Motor Vehicles has reviewed the rules in accordance with Executive Order 66 and has determined that they are "necessary, adequate, reasonable, efficient, understandable and responsive to the purpose for which they were promulgated".

Social Impact

The rule proposed for readoption promotes the legislative objective that licensed inspection centers comply with vehicle equipment standards adopted by the Division of Motor Vehicles when repairing and certifying vehicles which have been initially rejected at State inspection stations and when performing initial inspections. The rule also promotes the legislative purpose by establishing maximum charges that may be imposed for initial inspections and reinspections. The rule has a beneficial impact on the public in that the initial inspections performed by the licensed centers are subject to objective standards pertaining to equipment and inspection charges that are monitored by the Division of Motor Vehicles. The public also benefits because the initial inspections and reinspections performed at the 4,600 licensed inspection centers reduce the waiting times at the 38 State inspection stations.

The readoption of this rule will result in a continuing beneficial public impact.

Economic Impact

There is an economic impact on the State in monitoring the activities of the licensed inspection centers. The administrative costs incurred by the State are partially offset by licensing and sticker fees collected from the licensed inspection centers. $4,194,712 in revenue has been generated from the licensing and sticker fees since the inception of the program. There is an economic impact on persons who utilize inspection centers for the initial inspection or reinspection in that charges are imposed for these services. Maximum charges that may be assessed by the licensed inspection centers are specifically established in the rules so that the public interest is not detrimentally affected.

Full text of the proposed readoption can be found in the New Jersey Administrative Code at N.J.A.C. 13:20-33, as amended in the New Jersey Register.

(b)

BOARD OF MEDICAL EXAMINERS

Standards for Licensure of Physicians Graduated from Medical Schools Not Approved by American National Accrediting Agencies

Proposed New Rule: N.J.A.C. 13:35-3.11

Authorized By: State Board of Medical Examiners, Edwin H. Albano, M.D., President.
Authority: N.J.S.A. 45:9-2 and 45:9-8.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19,

1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Edwin H. Albano, M.D.
President, Board of Medical Examiners
28 West State Street
Trenton, New Jersey 08608

The Board of Medical Examiners 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 1984-124.

The agency proposal follows:

Summary

The proposed new rule would specify for graduates of foreign medical schools prerequisites to establish comparability of their medical education with the education provided by medical schools approved by accredited national licensing agencies such as the Liaison Committee on Medical Education and the American Osteopathic Association. The new rule is designed to assure that graduates of foreign medical schools comply with all of the pertinent requirements which would satisfy the host country of the medical school as to the fitness of the graduate for practice within that country. The rule appears to be necessary because the New Jersey Medical Board has observed a substantial variability in the educational experiences received by foreign medical graduates, both as to those who complete the entirety of their medical training in the foreign host country and those who take merely the first two years of medical studies in the foreign country and then seek clinical training somewhere within the United States. As the practice of medicine is regulated independently in each of the American states and territories, the New Jersey Board has no way to ascertain that appropriately stringent questions are being asked of persons who are initially licensed by this route in other states and then seek licensure by endorsement in New Jersey. As a result of the extreme background variability, the Medical Board has determined that a uniform requirement of three years of post-graduate education will be applied to all foreign medical school graduates. The rule also provides for licensure by endorsement of a United States sister state license where the licensing examination grade in the sister state was less than that required in New Jersey, but the applicant has then completed ten years of reputable practice.

Social Impact

The proposed new rule is expected to have minimal social impact, as most medical graduates these days take a residency program of between three and five years after completion of medical school. Its main social impact will be to prevent or limit "moonlighting" by persons who are residents and who would like to secure additional work outside of the hospital in their spare time where such work requires licensure. The Board believes there will be a beneficial social impact from the mandate that all foreign graduates complete three years approved post-graduate training, which should remedy most of the deficiencies in their prior medical schooling. Such a requirement has been imposed by the State of New York with apparent acceptance by the profession and the public.

Economic Impact

Economic impact is expected to be limited to physicians in hospital residency programs who will not be able to moonlight at second jobs prior to receiving their licenses. It will in no way prevent them from continuing their residency, unless their hospitals require licensure to be received at an earlier stage of post-graduate training; but even that impact may be substantially alleviated by the proposed amendment of N.J.A.C. 13:35-2.13, presently pending, (see 16 N.J.R. 216(a)) which would permit a foreign medical school graduate to take the uniform licensing examination (FLEX) at the conclusion of the first year of post-graduate training, even though not yet eligible for full licensure.

Full text of the proposed new rule follows.

13:35-3.11 Standards for licensure of physicians graduated from medical schools not approved by american national accrediting agencies

(a) An applicant for a license to practice medicine and surgery in this State, who is a graduate of a medical school not eligible for and not accredited by the Liaison Committee on Medical Education or the American Osteopathic Association, must satisfy the conditions in this section to be deemed eligible either to sit for the F.L.E.X. or to be licensed by endorsement of a sister-state license.

(b) During the course of the applicant's medical training, and at the time of graduation, the medical school(s) was listed (or notified of eligibility for listing) in the World Directory of Medical Schools published by the World Health Organization, or the medical school(s) was approved and authorized by the country of domicile to confer the degree or certificate evidencing completion of a medical curriculum for the plenary practice of medicine and surgery.

(c) The applicant must demonstrate successful completion of the full medical curriculum (including clinical training) prescribed by the medical school and by the country in which it is located and within which the training took place, and successful completion of all of the educational requirements to practice medicine in that country.

(d) If the applicant is a national of the country in which the medical training was received, the applicant shall have obtained an unrestricted license or certificate of registration to practice medicine and surgery in that country.

(e) An applicant who has successfully completed basic science studies (or the equivalent of the first two years of an American medical school) in the foreign medical school and has been given academic credit for successful completion of clinical training programs in United States hospitals, shall demonstrate that the medical school was approved by the New Jersey State Board of Medical Examiners to conduct such a program in this State, or that the program was performed in a sister-state and recognized as acceptable by this Board.

(f) A graduate of a foreign medical school shall demonstrate successful completion of three years of post-graduate training approved by the Board of Medical Examiners.

(g) The applicant shall demonstrate satisfaction of all other requirements of N.J.S.A. 45:9-1 et seq.

(h) The applicant shall demonstrate attainment of a grade of at least 75 on the F.L.E.X.

(i) An applicant who has successfully completed the full medical curriculum in a foreign medical school approved by the Board of Medical Examiners pursuant to N.J.S.A. 45:9-8 but who has completed clinical training in the United States in a program not specifically approved by the Board, must demonstrate prior licensure in a sister-state and compliance with all other provisions of this section and of N.J.S.A. 45:9-1 et seq., and may then be licensed in this State by endorsement. An applicant from a program specifically disapproved by the Board or conducted outside of an available approved-program procedure, shall not be eligible under this subsection.

(j) A graduate of a foreign medical school satisfying each of the above subsections, as pertinent, but who has been licensed in a sister-state with a F.L.E.X. grade of less than 75, may be eligible for endorsement of license in this State upon demonstration of good and reputable clinical practice in the sister-state for no less than ten years, and compliance with all other requirements of N.J.S.A. 45:9-1 et seq. Proof of good and reputable practice shall include, but not necessarily be limited to:

1. Review, to the satisfaction of the Board, of all malpractice claims, if any, filed against the applicant;
2. Certification of all hospital affiliations during the pertinent time and letters of recommendation from each such institution. There must be at least one such affiliation; and
3. Letters of recommendation from all professional society affiliations.

(a)

BOARD OF MORTUARY SCIENCE

Rules of the Board of Mortuary Science

Proposed Repeal: N.J.A.C. 13:36-1.2, 1.7, 1.9, 2.3, 2.5, 2.12, 2.13, 2.14 and 3.8
Proposed New Rules: N.J.A.C. 13:36-1.9, 2.1, 2.3, 2.5, 2.14
Proposed Readoptions: N.J.A.C. 13:36-5 and 7
Proposed Readoptions with Amendments: N.J.A.C. 13:36-1, 2, 3, 4, 6 and 8.

Authorized By: Frank Tomaino, President, Board of Mortuary Science.
Authority: N.J.S.A. 45:7-38.

Interested persons may submit in writing, data, views or arguments relevant to the proposed amendments on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Maurice W. McQuade
Executive Secretary
Board of Mortuary Science
1100 Raymond Boulevard, Room 331
Newark, New Jersey 07102

The Board of Mortuary Science thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). The adopted new rules and amendments become effective upon publication in the Register of a notice of adoption. The readoptions become effective upon acceptance for filing by the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-137.

The agency proposal follows:

Summary

The Board of Mortuary Science has undertaken a comprehensive review of its regulations in accord with the spirit of the "sunset" provisions of Executive Order No. 66(1978) to ensure that its administrative rules are necessary, adequate, reasonable, efficient, understandable and responsive. The Board now proposes to repeal certain sections, and to readopt others, some with no change or with minor changes for clarification and consistency, and others with extensive amendments. The Board is also proposing one new section in subchapter 2. Pursuant to N.J.A.C. 1:30-4.3(b)(1) the same expiration date will attach to all the Board regulations, some of which have no expiration date, thus ensuring that a thorough periodic review will be made of all subchapters, but at the same time avoiding the inefficient and burdensome piecemeal review of the various subchapters at different times. Pursuant to Executive Order No. 66 (1978), these rules would otherwise expire on: October 18, 1984 for subchapter 1; subchapter 2 has no expiration date; December 2, 1985 for subchapter 3; October 4, 1987 for subchapter 4; September 10, 1986 for subchapter 5; subchapters 6 and 7 have no expiration date; October 18, 1984 for subchapter 8.

N.J.A.C. 13:36-1.2, 1.7, 1.9, 2.3, 2.5, 2.12, 2.13, 2.14 and 3.8 are proposed for repeal since they are either obsolete or unnecessary. Subchapters 5, 6, and 7 are proposed for readoption without change, with the exception of a single word in subchapter 6, since they have found to be efficient and necessary rules governing mortuaries, embalming procedures, and embalming schools. The rules of subchapter 5 ensure that funeral parlors and embalming facilities will be adequately equipped and sanitary and that all embalmings and other funeral directing activities be done by licensed personnel. They also detail the requirement of separate registration for all facilities used, the need for adequate staffing of branch mortuaries, and reporting procedures for changing locations or closing facilities. Removal of bodies without authorization is prohibited. The advertising and sign regulations prohibit misleading advertising and ensure that consumers will know the identity of the licensed personnel in each funeral parlor. The funeral parlor is declared to be a place of public accommodation where the laws against discrimination apply. The readopted provisions of subchapter 6 govern embalming procedure. The rules ensure the privacy of burial preparations, and detail dress requirements and necessary sanitary procedures in the preparation room. The use of certain poisonous substances in embalming is prohibited and permitted poisonous substances must be carefully labelled. Interns who do embalming must be properly supervised. A licensee who has reason to suspect an unnatural cause of death must not embalm the cadaver until the proper authorities release the body. Subchapter 7 provides for the inspection of embalming schools and requires reporting to the Board of the names of students who are suspended or dismissed. Subchapter 1, Administration, has been extensively revised, especially in the important area of itemization of funeral charges. Thus proposed new rule N.J.A.C. 13:36-1.9 clarifies the requirement that the licensee who makes funeral arrangements or quotes prices to a consumer must present the consumer with a signed estimate sheet in which all charges are detailed and explained. This estimate cannot contain a promissory note form or other unrelated items. A proposed form is included. Subchapter 2 dealing with interns (formerly called trainees) has also been extensively revised and a new section added, N.J.A.C. 13:36-2.1, to clarify the periodic reporting requirements for the interns, to ensure that interns attending college concurrently with their practical training maintain satisfactory grades, and to make explicit the areas of training for which the licensed preceptor is responsible. N.J.A.C. 13:36-2.3, 2.5 and 2.14 replace obsolete rules which are repealed. The proposed

amendments to subchapter 3 detail procedures and requirements for applying to take the licensing examination. Subchapter 4, which deals with procedures for license renewals and registration of facilities, will contain, in addition to a few clarifying amendments, a new provision concerning time in which notice of a change of ownership must be submitted. Subchapter 6 contains only one amendment changing the term "trainee" to "intern". The only proposed amendment to subchapter 8 clarifies the requirement that a licensee must be present when any disposition of a human body is made in this State, by providing that a licensee must be present at a disinterment as well as an interment of a body, except in the case of a disinterment made under court order in connection with a criminal investigation. The readopted sections of subchapter 8 require that licensees carry identification cards and provide that licenses are not to be transferred, and that only licensees are to be employed to do work for which a license is required. Funeral directors are prohibited from removing or embalming a body without authorization and they must promptly surrender a cadaver to any person lawfully entitled to its custody. N.J.A.C. 13:36-8.6 regulates the handling of pre-need funds by funeral directors.

Social Impact

The repeal of the five sections listed in the summary is expected to have no social impact since these rules are deemed to be either obsolete or unnecessary.

The proposed amendments to subchapter 2 will benefit candidates for licensure in that they clarify the practical training requirements and the duty of the licensed preceptor to provide adequate training opportunities. In addition applicants who choose to serve their internship concurrently with their college training, instead of completing their academic requirements before working as interns, will be required to maintain a minimum number of credits and grade average, thus ensuring that these interns are acquiring an adequate academic background.

The amendments to subchapter 3 will assist applicants since they serve to clarify the examination requirements, and now permit interns who have completed all other requirements to take the Board's practical examination within the two months preceding completion of the internship, allowing more flexible scheduling of this examination.

The amendment to subchapter 4 requiring 15 days advance notice to the Board of a change of ownership of a mortuary will lessen the administrative burden on the Board in processing such changes.

The proposed amendments to subchapter 1 in the area of itemization may require certain licensees to change the estimate forms they now use, but the changes will have a decided beneficial impact on consumer in that the itemized price estimate presented to the consumer will be separate and distinct from any promissory notes and other unrelated items. Consumers should thereby be enabled to compare prices for comparable services at different funeral homes, and to make more rational choices about the services and merchandise to be selected.

The regulations to be readopted have had a beneficial impact on the bereaved families who are clients of the New Jersey funeral directors and on the public in general because they ensure that funeral homes have adequate facilities and that the handling of dead bodies is done in a competent professional and sanitary manner. Licensees and applicants for licensure or registration of facilities are benefitted by the detailed information contained in the rules about Board procedures and standards, which provided guidelines for those entering into or continuing in the funeral business. The rules obviously impact on licensees and owners of funeral parlors and their enforcement creates administrative burdens for the Board but the burden of compliance is no greater than what is necessary to conform with applicable law, and the burdens on the Board and the licensee are well justified by the need to protect consumers whose dealings with the funeral profession almost invariably take place at times when they are under great stress because of the death of a family member of friend.

Economic Impact

The proposed amendments to subchapter 1 dealing with itemization may have a minimal economic impact on some licensees who may be required to obtain new forms. It is expected, however, that these provisions will have a positive economic impact on consumers who will be enabled to make more informed choices when purchasing funeral services and merchandise. The other proposed amendments are expected to have no appreciable economic impact. The regulations proposed for readoption obviously have an economic impact on licensees who must build and maintain their facilities to conform with the rule requirements. These costs of doing business may of course affect the price charged to consumers, but the readoption of the rules in general will have a positive economic effect on consumers by assuring that the quality of services rendered by the funeral business to the public remains high. The administrative costs of enforcement will not be increased by any of these proposals, and, in fact, the existence of a detailed body of rules such as this probably diminishes the costs of enforcement because licensees are informed about procedures and standards that they must abide by.

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

SUBCHAPTER 1. ADMINISTRATION

13:36-1.1 Seal of the Board
(No change.)

13:36-1.2 [Office of the Board] **(Reserved)**
[The Board may determine the location of the offices of the Board unless otherwise directed by the Chief Administrative Officer of the Department of Law and Public Safety.]

13:36-1.3 Board meetings
(a) The Board shall hold an annual meeting [on the first Tuesday of July] **in May** each year, or at such other time as the President may direct, at which time the President and Secretary of the Board shall be elected for the ensuing year.
(b) Special meetings of the Board may be called by the President upon [five days] **reasonable** notice being given to the members [by mailing such notice to their addresses as filed with the Secretary of the Board]. In the event of unavailability of the President for illness or otherwise, three members of the Board shall have the power to call a special meeting in cases of emergency.

13:36-1.4 Duties of Executive Secretary
(No change).

13:36-1.5 Inspector's duties
(a) The inspector shall:
1. Inspect mortuaries **for cleanliness** wherein practitioners of mortuary science, embalmers and funeral directors are practicing;

[2. See that such establishments are properly and cleanly maintained;
3. At the request of the Board, interview all applicants requesting registration as trainees;
4. See that there is, in each mortuary, proper and adequate sanitary means for preparing and caring for dead human bodies;
5. Have the power to serve and execute any process issued by any court of record under the provisions of the law regulating the practice of mortuary science, embalming and funeral directing;
6. Have the power to serve any papers or process issued by the Board, or any officer or member of the Board, in pursuance to the provisions of the aforesaid law of this chapter.
(b) The inspector may:]
[1.] **2.** Where necessary, [examine] **view** dead human bodies which have been placed in the care of any practitioner of mortuary science, embalmer or funeral director;
[2.] **3.** Inspect the license and registration of practitioners of mortuary science, embalmers and funeral directors;
[3.] **4.** [Check all trainees in training under each practitioner of mortuary science or under each embalmer and funeral director;] **Verify employment and check credentials of all interns in training;**
[4.] **5.** Visit any place where the practice of embalming is being conducted or where a funeral is in process of being directed; provided, however, that such visitation shall be made in a respectful and decorous manner, as may be fitting the presence of the dead;
[5.] **6.** Visit any cemetery, crematory or public mausoleum for the purpose of determining whether dead human bodies entrusted to the care of a practitioner of mortuary science or funeral director are being properly disposed of according to law.
[c] **(b)** The inspector shall perform such other duties as may be directed by the Board and shall report to the Board at each regular meeting and at such other times as the Board may direct.
[(d) The inspector shall in no way be connected with the work of a practitioner of mortuary science, embalmer or funeral director.]

13:36-1.6 Fees and charges
(No change.)

13:36-1.7 [Amendments] **(Reserved)**
[These rules and regulations may be amended by a majority of the Board; provided, that reasonable notice of such intent is given at a previous Board meeting.]

13:36-1.8 Record keeping by practitioner of mortuary science
(a) All persons engaging in the practice of mortuary science shall be required to maintain full, accurate records of all funerals which they conduct or in which they participate in any manner.
(b) Such records are to be kept on a yearly basis and each funeral will be designated by a number assigned consecutively at the time funeral arrangements are made [immediately preceding the conduct of funeral services]. **The information on such records shall be recorded after the completion of each funeral.**
(c) Such records are to include[, but are not limited to,] the following:
1. Name and last address of deceased;
2. Date and place of death;
3. Name and address of person making funeral arrangements;
4. [Dates of viewing and date of burial;] **Dates of visitation and date of disposition;**
5. Itemization of all [goods] **merchandise** and service provided as required by the rule entitled "Itemization of funeral expenses" promulgated in conjunction herewith but including in addition thereto the wholesale price of any merchandise provided in conjunction with the funeral service and the name and address of the person or company from which such merchandise was purchased. Merchandise provided in conjunction with funeral service is defined to include, but not be limited to casket, vault or other outer enclosure **(including model and invoice numbers, date of purchase and wholesale cost)**, clothing, flowers, prayer cards, registration book, religious artifacts and any other item purchased by the practitioner for resale without substantial alteration;
6. Cemetery in which burial was made or name of crematorium where appropriate, and the charges made by the cemetery or crematorium;
7. The name and address of any church [or temple], **synagogue** and/or clergy[man, minister or rabbi] who participated in the funeral service [in any manner] and who received any [payment or gratuity, and the amount thereof;] **offering or honorarium, and the amount thereof, if paid by the funeral home;**
8. A specific enumeration of all services [provided] **charged for** in conjunction with the rendering of funeral services.

13:36-1.9 Itemization of funeral expenses
(Delete text of N.J.A.C. 13:36-1.9 and replace with new text as follows:)
(a) No one, but a duly licensed practitioner of mortuary science or funeral director, shall make funeral arrangements or quote funeral prices to a consumer in connection with a service when funeral arrangements are being made. No unlicensed person shall act in the licensee's stead, except that a duly registered intern may do so under the supervision of a licensee. The licensee shall compile a specific itemization of charges which will be made for such arrangements.
(b) Such itemization form shall be on a single sheet of paper and shall include the full name, legal address and date of death of the deceased and at least the five general categories as listed below. All charges relative to the funeral are to be listed on the itemization form with sub totals and grand totals as indicated, and the name and address of the person making funeral arrangements. It shall be exclusive of promissory notes and other non related items.
(c) Each general category must be further itemized at least to the extent indicated below by the licensee handling the funeral arrangements. Cash advancements (disbursements) paid by the family shall be noted on the itemization form with the amount, if known. If any category is not applicable, that item shall be so marked. Estimated charges shall be so noted.

ITEMIZATION FORM FOR FUNERAL EXPENSES

Category I—Professional Services
A. Arrangements and Supervision
B. Preparation and Care of Deceased
1. Embalming
2. Sanitary Care, without Embalming
3. Other (Specify) CATEGORY I TOTAL $

Category II—Facility Charge
A. Facility Charge, excluding

Visitation and/or Ceremony
B. Use of Funeral Home for Visitation and/or Ceremony
$ Per Day and Total $

C. Other (Specify) CATEGORY II TOTAL $

Category III—Transportation
A. Transfer of Deceased to Funeral Home
B. Use of Hearse
C. Use of Limousine(s)
D. Use of Flower Car(s)
E. Other (Specify) CATEGORY III TOTAL $

Category IV—Merchandise
A. Casket (Description)
B. Vault or other Outer Enclosure (Description)
C. Clothing
D. Miscellaneous items of Merchandise (List separately) CATEGORY IV TOTAL $
Sub-Total for Categories I-IV $

Category V—Cash Disbursements
A. Cemetery or Crematory
B. Clergy or Church
C. Newspaper Notices
D. Certified Copies of Death Certificate and Permit Fee
E. Pallbearers
F. Other (Specify) Sub-Total for Category V $
Grand Total $

(d) Immediately upon completing the itemization form, the licensee shall have the consumer sign the following statement on the completed itemization form: "I have read and received a copy of the Itemization of Funeral Expenses". The licensee shall also sign his name and license number under the following statement, "I have prepared the above Itemization of Funeral Expenses". The licensee shall also date the form and immediately provide a copy to the person for whom the itemization form was prepared.

(e) Any change, addition or deletion authorized by the purchaser after the completion of the itemization form, shall be included on the final funeral bill.

(f) A copy of the "Itemization of Funeral Expenses" and final funeral bill shall be retained by the licensee for at least six years thereafter and each itemization form shall bear a number corresponding to the funeral record number required by the funeral record keeping rule, N.J.A.C. 13:36-1.8.

SUBCHAPTER 2. [TRAINEES] **INTERNS**

13:36-2.1 [(Reserved)] **Qualification for intern registration**

(a) An applicant to be registered as an intern shall have satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey State Department of Education or shall be completing the requirement while registered as an intern.

(b) An intern who is registered while concurrently attending college to complete the two year academic educational licensure requirement shall:

1. Attend college in the Fall and Spring semester of each year until the requirement is met.

2. Achieve a minimum of eight credits per semester with a minimum cumulative average of 2.0 or its academic equivalent throughout the concurrent registration program. A person who receives less than a 2.0 cumulative average or withdraws from a course, shall have his internship terminated unless good cause is established for the continuation of the internship.

3. Have an official transcript of credits forwarded directly to the Board by the institution being attended immediately at the completion of every semester.

4. Notify the Board immediately if the college program is interrupted for any reason.

(c) An out of state resident may be registered as an intern, provided that the applicant is registered with a New Jersey practitioner of mortuary science.

(d) CLEP credits may be included in an academic evaluation by the New Jersey State Department of Education.

13:36-2.2 Request for application

An application for [trainee] **intern** registration shall be requested, in writing, by the prospective [trainee's] **intern's** preceptor. Upon receipt of the request, an application shall be issued. The application shall be executed by the preceptor and [trainee] **intern** and certified in affidavit form, **and returned to the Board office immediately**.

13:36-2.3 Availability of [trainees] **interns**

[Student trainees shall be available for funerals, embalmings, removals and training instruction.] **Registered interns shall be available for funerals, embalmings, removals and other training instruction in accordance with N.J.A.C. 13:36-2.4 and shall assist in the embalming of at least 75 bodies and the conduct of at least 75 funerals during the one or two year Practical** Training period, whichever is applicable.

12:36-2.4 [Trainee] **Intern** identification card

During the course of his training every student [trainee] **intern** shall at all times carry on his person the [trainee] **intern** card issued to him by the Board.

13:36-2.5 Reporting embalments and funeral attendance, form

[(a) The Secretary shall furnish forms to the trainees for reporting embalments and funerals attended. Within 15 days after the last day of each month, the trainee shall complete such report setting forth all information required therein.]

(a) The Board shall furnish monthly report forms to the intern for reporting embalments and funerals attended, which shall be signed by the intern and preceptor and dated and filed with the Board no later than 15 days after the last day of each month. The intern shall complete such report setting forth all information required therein and file the forms with the Board.

[(b) The trainee shall be chargeable with the responsibility of obtaining the aforesaid forms and filing the same upon completion with the Board.]

(b) No internship credit shall be granted for the month when a report is received after the prescribed monthly filing date except upon presentation of proof acceptable to the Board that good cause exists for failing to timely file the report.

13:36-2.6 Credit for embalming body

No practitioner of mortuary science shall credit more than one student [trainee] **intern** for the embalming of any one body.

13:36-2.7 [Trainee] **Intern** qualifications for employment

No practitioner of mortuary science shall engage a student [trainee] **intern** unless, prior to such engagement, his case

volume during the previous calendar year shall meet a minimum requirement of 25 cases which shall not include stillbirths.

13:36-2.8 Absence from training

If for any reason it becomes necessary for [a trainee] **an intern** to absent himself during his [traineeship] **internship** for a period longer than 30 days, he must submit to the Board in letter form the reason for his absence and the length of time he intends to be away.

13:36-2.9 Termination of training

Upon termination of any [traineeship] **internship**, the licensee preceptor shall immediately request of the Board a notice of termination form to be completed by him and filed with the Board within five days of its receipt.

13:36-2.10 Return of [trainee] **intern** identification card

Upon completion or termination of [a traineeship] **an internship** for any reason, the [trainee] **intern** shall be charged with the responsibility of returning his [trainee] **intern** identification card immediately to the Board. When [a traineeship] **an internship** is completed and the [trainee] **intern** is eligible for examination, permission may be requested to carry the [trainee] **intern** card and to continue the period of practical training for a period not exceeding one year from the date the required [traineeship] **internship** is completed.

13:36-2.11 Affidavit recommendation form

(a) Upon termination of [a traineeship] **an internship**, an affidavit recommendation form shall be filed with the Board. Any practitioner of mortuary science who refuses to certify any [trainee] **intern** for the [traineeship] **internship** served under his license shall furnish the Board with a statement under oath setting forth the reasons for such refusal. If not satisfied with such statement, the Board may take such action as it may deem proper.

(b) In the event a preceptor or licensee is not available when the affidavit is to be executed, the Board may in its discretion, upon proper proof of satisfactory [traineeship] **internship**, select someone to sign the affidavit.

13:36-2.12 [Recognition of traineeship] **(Reserved)**

[The Board shall not recognize any traineeship except that which shall have been served in New Jersey and is registered with the Board.]

13:36-2.13 [Concurrence of traineeship and school attendance] **(Reserved)**

[No trainee shall serve his traineeship concurrently with his attendance at a school of mortuary science.]

13:36-2.14 Preceptors' responsibility for training

[All preceptors shall be charged with the responsibility of insuring bona fide traineeships for all student trainees by seeing to it that such students are thoroughly trained in the theory and practice of mortuary science, and all laws, rules and regulations pertaining thereto.]

The preceptor shall be charged with the professional responsibility of insuring bona fide internships for all student interns by seeing to it that such interns are thoroughly trained in the theory and practice of mortuary science, the laws, rules and regulations pertaining thereto, and are proficient in the following areas:

1. Removal of remains, embalming, restorative art, dressing and casketing remains;

2. Making funeral arrangements with families which includes selling of merchandise, arranging flowers, taking statistical information from families, filing death certificates, preparing obituary notices and placing same with newspapers, completing funeral cortege lists, arranging cortege cars in proper order on the day of the funeral, attending viewings;

3. Ordering and pricing funeral merchandise, arranging for and coordinating a schedule for the clergyman, church, crematory or cemetery, livery, pallbearers, visitation of various organizations, transportation by common carrier, delivery of outer enclosures to cemetery and;

4. Performing such other incidental duties related to the practice of mortuary science and the maintenance of the funeral establishment.

SUBCHAPTER 3. EXAMINATIONS

13:36-3.1 Application for examination

[(a) Upon request by the applicant, the Secretary of the Board shall forward to him an application form for examination. All applications shall be duly signed and certified and in the hands of the Secretary of the Board on or before the first day of the month in which the examination is to be held.]

(a) Upon request, an application for examination shall be forwarded to the applicant. The form shall be signed by the applicant and certified, unless notified otherwise. All applications shall be filed with the Board on or before the first day of the month in which the examination is to be held.

(b) The statements contained in the application must be complete and accurate before the application is processed or accepted by the Board.

(c) Any candidate who fails to appear, without good cause, [for an examination shall be required to reapply] **shall forfeit the examination fee.**

(d) An out of state resident may make application for a written examination administered by the Board, provided the applicant meets all admission requirements.

13:36-3.2 Waiver of practical training and experience

(a) An applicant for examination having satisfactorily completed two years of academic instruction in a college or university approved by the New Jersey Department of Education and one year of instruction in a school of mortuary science approved by the Board, [or a minimum three year integrated or co-op program,] may be admitted to **the written** examination without having first served [his] **the** required period of practical training [and experience as a registered trainee but]. **However,** a license to enter into the practice of mortuary science shall not be issued or granted to any such applicant [by the Board] unless and until the applicant has served the required period of practical training and experience as a registered [trainee] **intern**.

(b) Such period of training and experience may be served in whole or in part before or after the applicant's commencement of instruction in an approved school of mortuary science.

13:36-3.3 through 3.6

(No change)

13:36-3.7 Practical examination requirements

[(a) No candidate will be eligible for the practical part of the examination until after he has:]

(a) No applicant will be given the practical examination until after the candidate has:

1. [Completed the prior traineeship] **Completed the prescribed period of practical training except that an intern may be examined two months prior to the completion of the required practical training provided the intern has assisted with 75 embalments and 75 funerals.**

2. Attained an average of 70 percent or higher on the written examination. [After a candidate has successfully completed the above requirements, the Board will notify such candidate he is eligible for the practical examination.]

(b) Such practical examination shall be at the establishment of the preceptor or such other place as determined by the Board and the examination shall be conducted by one or more Board members. In the event a candidate does not have a preceptor at the time of the scheduling of his practical examination, the examination will be held at a place designated by the Board. A candidate who has failed his practical examination must wait three months before [he will be eligible for reexamination.] **being rescheduled for examination.**

13:36-3.8 [Presentation of certificates of licensure] **(Reserved)**

[The Board may request candidates who have passed the examination and fulfilled all licensure requirements to be notified of a time and place to appear before the Board for personal presentation of their certificates of licensure.]

SUBCHAPTER 4. LICENSE AND REGISTRATION GENERALLY

13:36-4.1 License renewals

(No change)

13:36-4.2 Notice of residence address change

(No change)

13:36-4.3 Legal name change

[(a) If a licensee changes his or her name legally, the change of name will be recorded upon the records only if proof of the change of name is submitted in the form of the original or a certified copy of the court order or marriage certificate which is to be retained by the Board.]

(a) If a licensee changes his or her name, the change will only be recorded by the Board upon receipt of legal documentation to substantiate the name change.

(b) If it is necessary to issue a duplicate license certificate, the original certificate must be returned for cancellation, **if possible**.

13:36-4.4 New installations

(a) Any person desiring to operate, maintain or use a mortuary after adoption of these rules and regulations, shall first apply to the Board for a new installation inspection and an application for certificate of registration.

(b) [An inspection] **A new installation inspection** of the premises shall be made by the inspector before an application is granted.

(c) When the new installation inspection is made, temporary approval may be granted to operate[:] [provided, however a certificate of registration shall not be issued until a majority of the Board approves the inspector's report and application for certificate of registration] **until a certificate of registration is issued**.

13:36-4.5 Change of ownership

Whenever there are any changes whatsoever in ownership, except a change of stockholders in an existing and continuing corporation, it shall be necessary for the new ownership to [apply in advance for a change of ownership.] **notify the Board a least 15 working days before the ownership changes**.

13:36-4.6 through 4.8

(No change.)

13:36-4.9 Participation of unlicensed persons [financially interested in corporation]

No unlicensed person, [financially interested in the corporation in any manner whatsoever,] shall actively participate in any capacity in the actual funeral arrangements, preservation, preparation or disposal of dead human bodies.

13:36-4.10 through 4.12

(No change.)

SUBCHAPTER 5. MORTUARIES

13:36-5.1 through 5.19

(No change.)

SUBCHAPTER 6. EMBALMING PROCEDURE

13:36-6.1 through 6.6

(No change.)

13:36-6.7 [Trainees] **Interns**

An [trainee] **intern** may not embalm or perform any part of embalming procedure on a dead body unless such activity is performed under the immediate and direct supervision and control of a licensed practitioner of mortuary science holding a New Jersey license.

13:36-6.8 Sterilizing instruments

(No change.)

SUBCHAPTER 7. EMBALMING SCHOOLS

13:36-7.1 and 7.2

(No change.)

SUBCHAPTER 8. GENERAL RULES OF PRACTICE

13:36-8.1 through 8.9

(No change.)

13:36-8.10 Presence of licensee for disposition of dead human body

No interment, **disinterment,** cremation or other disposition of a dead human body shall be made in the State of New Jersey unless a New Jersey licensed practitioner of mortuary science or funeral director is present at the time of disposition**, provided, however, that this rule shall not apply to a disinterment resulting from a court order in connection with a criminal investigation**.

13:36-8.11 Multiple burials

(No change.)

ENERGY

(a)

BOARD OF PUBLIC UTILITIES

Meters
Adjustment of Charges

Proposed Repeal Rule: N.J.A.C. 14:3-4.7
Proposed New Rule: N.J.A.C. 14:3-4.7

Authorized by: Board of Public Utilities, Barbara A. Curran, President.
Authority: N.J.S.A. 48:2-12 and 48:2-13.
BPU Docket No. 842-83.

Interested persons may submit in writing, data, views, or arguments relevant to the proposed rule on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Blossom A. Peretz,
Secretary
Board of Public Utilities
1100 Raymond Boulevard
Newark, New Jersey 07102

The Board of Public Utilities 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 1984-119.

The agency proposal follows:

Summary

The proposed new rule re-writes N.J.A.C. 14:3-4.7. In its current form, the rule provides for adjustment of a utility customer's bill only if a meter is registering fast by more than two percent. If the time period covered by the fast metering is known, a full adjustment is made. If the time period is unknown, the amount of the adjustment is calculated by applying the discovered error rate to one-half of the total billed amount since the last meter test, or for the last six years, whichever is shorter.

The proposed new version of the rule will recognize other causes of inaccurate billings, including but not limited to slow meters, incorrectly installed meters, and meters subjected to tampering, and will establish the time limits applicable to adjustments in each situation.

The proposed new rule will continue full adjustment of bills where the time period of incorrect billing is ascertainable. Where the time period of incorrect billing is unknown, the amount of the adjustment shall be calculated as before, but the maximum amount of time for which adjustment can be made will be limited to four years. The four year limit is proposed in recognition of the applicability of the Uniform Commercial Code's provisions to contracts for the sale of gas, water or electricity. Adjustments to bills will be made where meters are found to be registering fast or slow by two percent or more.

In situations where the inaccurate billing is a result of negligent meter installation, or of tampering with a meter, adjustment of bills will be for the full rate of error for the period of time since the last test for the error causing condition, or six years, whichever is shorter. This longer period of adjustment is proposed because New Jersey's statute of limitations for situations involving negligent conduct or wrongful taking of property is six years.

No customer shall receive or be billed for an adjustment for a period of time that exceeds the period of service through the meter in question.

Social Impact

The major beneficial effect of this rule will be to provide for equitable adjustment of inaccurate utility bills, regardless of the cause. Current rule do not clearly provide the authority or method of adjustment for most of these situations.

Limiting adjustments to a four-year period in cases where the period of error is unknown will allow the Board of Public Utilities to establish standardized procedures for dealing with metered utilities.

Full adjustments on negligently installed meters or meters subjected to tampering will have the beneficial effect of promoting care in installation by the utility, and of deterring tampering activity.

The new rule provides the public with the overall scheme for adjustments in a manner that is understandable, and easily applied, so that a customer need not rely solely on a utility's determination of what constitutes a proper adjustment.

Economic Impact

The economic impact of the proposed rule will be that the customer will not be required to pay for something that has not been received; conversely, the utilities will be entitled to payment for everything that they have delivered. Because the scheme for adjustments is more comprehensive than before, it should result in fuller payment to the utilities for their services, and a resulting decrease in costs passed on to the general public.

Because the Board of Public Utilities already performs adjustment of utility bills, implementation of this rule is not expected to impose any additional public costs.

Full text of the proposed repeal can be found in the New Jersey Administrative Code at N.J.A.C. 14:3-4.7.

Full text of the proposed new rule follows.

14:3-4.7 Adjustment of charges

(a) If bills for a metered utility are found to be inaccurate, adjustments shall be made in accordance with the following:

1. Inaccurate meters:

i. If the period of inaccurate billing can be definitely ascertained, bills for that entire period must be adjusted so that the customer pays the lawful rate for the gas, water or electricity consumed.

ii. If the period of inaccurate billing cannot be definitely ascertained, the discovered error rate shall be applied to the total amount billed for the period since the last test for the condition causing the error, or for four years, whichever is shorter, and the adjustment shall be equal to one-half of that amount.

2. Improperly installed meters:

i. Overcharged accounts shall be adjusted in full if the period of incorrect billing is ascertainable.

ii. If the period of overcharging is not ascertainable, full adjustment shall be made on the amount billed since the last

test for the condition causing the error, or for six years, whichever is shorter.

iii. If the period of undercharging is ascertainable, full adjustment shall be made for the period of undercharging, or four years, whichever is shorter.

iv. If the period of undercharging is not ascertainable, full adjustment shall be made on the amount billed since the last test for the condition causing the error, or for four years, whichever is shorter.

3. Meters subjected to tampering:

i. Undercharged accounts shall be adjusted in full if the period of incorrect billing is ascertainable.

ii. If the period of undercharging is not ascertainable, full adjustment shall be made on the amount billed since the last test for the condition causing the error, or for six years, whichever is shorter.

(b) No adjustment shall be made for a period greater than the time during which the customer has received service through that meter.

(c) A meter which registers either fast or slow by less than two per cent shall be considered to be accurate.

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Restricted Parking and Stopping Route U.S. 202

Proposed Amendment: N.J.A.C. 16:28A-1.55

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 April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Mr. Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 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 New Jersey Register of a notice of adoption.

This proposal is known as PRN 1984-116.

The agency proposal follows:

Summary

The proposed amendment to N.J.A.C. 16:28A-1.55, will establish "no parking" zones along Route U.S. 202, in the Borough of Morris Plains, Morris County, for the safe and efficient flow of traffic along the highway system and the safe off/on loading of passengers at established bus stops.

Based upon requests from the local officials, engineering studies were conducted. The engineering studies proved that the traffic volumes and congestion warranted the installation of traffic control devices to regulate the traffic on Route U.S. 202 and Franklin Place in the Borough of Morris Plains, Morris County. The proposed amendment and the installation of traffic control devices will contribute to the enhancement of public safety along a heavily travelled highway system.

The Department therefore proposes to amend N.J.A.C. 16:28A-1.55 in compliance with the request of the local officials, and the results of the engineering studies.

Social Impact

The proposed amendment will restrict parking along Route U.S. 202 in the area designated for the safe and efficient flow of traffic, the enhancement of safety and the safe off/on loading of passengers at the designated bus stop in the Borough of Morris Plains, Morris County. Additionally, the amendment ensures confidence in State government's commitment to the protection and safety of the populace. Appropriate signs will be installed advising the motoring public.

Economic Impact

The Department and local officials will incur direct and indirect costs for its workforce for mileage, personnel and equipment requirements, in engineering studies. The local officials will install appropriate signs designating bus stops. Motorists in violation of the regulations will be assessed the appropriate fines.

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

16:28A-1.55 Route U.S. 202

(a) The certain parts of State Highway Route U.S. 202 described in [(a) of] this section shall be designated and established as "no parking" zones where stopping or standing is prohibited at all times except as provided in N.J.S.A. 39:4-139.

1.-9. (No change.)

(b) The certain parts of State Highway Route U.S. 202 described [herein below] **in this section** shall be [and hereby are,] designated and established as "no parking" zones for designated curb loading zones.

1. (No change.)

(c) The certain parts of State Highway Route U.S. 202 described in [(c) of] this section shall be designated and established as "no parking" zones where parking is prohibited at all times. In accordance with the provisions of N.J.S.A. 39:4-199 permission is [hereby] granted to erect appropriate signs at the following established bus stops:

1.-2. (No change.)

3. Along the southbound (**westerly**) side in Morris Plains Borough, Morris County:

i.-ii. (No change.)

iii. From the southerly curb line of Franklin Place and extending to a point 105 feet southerly therefrom.

4. (No change.)

(a)

DIVISION OF PLANNING

Transportation of Hazardous Materials

Notice of Pre-Proposal of New Rule: N.J.A.C. 16:49

Authorized By: John P. Sheridan Jr., Commissioner, Department of Transportation.
Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-1 et seq. and "Hazardous Materials Transportation Act" P. L. 93-633 (49 U.S.C. & 1801 et seq.).

Interested persons may submit in writing data, views or arguments relevant to the proposal on or before May 15, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Mr. Charles L. Meyers
Administrative Practice Officer
Department of Transportation
1035 Parkway Avenue
CN 600
Trenton, New Jersey 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 proposal is known as PRN 1984-1.

The agency proposal follows:

Summary

Under the provisions of N.J.S.A. 27:1A-5, 27:1A-6, 39:5B-1 et seq., and "Hazardous Materials Transportation Act," P.L. 93-633 (49 U.S.C. § 1801 et seq.) the New Jersey Department of Transportation intends to propose new rules as N.J.A.C. 16:49, concerning the transportation of hazardous materials. The rules will conform to the requirements established by 49 CFR Parts 100-199, adopted by the United States Department of Transportation, and will be applicable to all movements of hazardous materials throughout the State.

The Department intends to adopt by reference the applicable parts of the "Code of Federal Regulations - Title 49 - Transportation," pertaining to the transportation of hazardous materials. Comments are being sought as to suggested changes to these regulations which may be necessary to facilitate hazardous materials movements in New Jersey.

Copies of the existing Code of Federal Regulations, Parts 100-199, may be obtained from:

Superintendent of Documents
United States Government Printing Office
Washington, D.C., 20402

The two-volume, 1982 edition (current through October 1, 1982) is available for a total price of $17.00. The 1983 two-volume edition is scheduled for availability in mid-March. A price for this edition has not yet been determined.

TREASURY-TAXATION

(b)

DIVISION OF TAXATION

Alcoholic Beverage Tax Act State Licensees

Proposed Readoption: N.J.A.C. 18:3

Authorized by: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54:42-1 and 54:50-1.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street
Trenton, NJ 08646

The Division of Taxation thereafter may adopt this proposal without further notice (see: N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), N.J.A.C. 18:3 et seq. would otherwise expire on May 3, 1984. The readoption of these rules becomes effective upon filing by the Office of Administrative Law of the notice of their readoption.

This proposal is known as PRN 1984-121.

The agency proposal follows:

Summary

The Alcoholic Beverage Tax Law, N.J.S.A. 54:41-1 through 54:47-8 as amended and supplemented was originally enacted as P.L. 1933 c.434 effective December 5, 1933. Subsequent amendments were chiefly in the area of modification of rates of tax.

The tax is applied to the first sale or delivery to retailers in New Jersey and is based upon the number of gallons sold or otherwise disposed of in the State. The tax is collected from licensed manufacturers, wholesalers, and State beverage distributors. The law provides tax exemptions for qualified sales for medicinal, dental, industrial and other non beverage use (N.J.S.A. 54:43-2) as well as sales to Armed Forces or Coast Guard personnel (N.J.S.A. 54:43-2.1).

The Alcoholic Beverage Tax rules, N.J.A.C. 18:3, have been updated and revised periodically through internal agency review as required by changes in legislation. The rules implement the statute pursuant to which $59,716,182 in revenue was raised in fiscal year 1983.

N.J.A.C. 18:3 is summarized as follows:

SUBCHAPTER 1. GENERAL PROVISIONS, supplies definitions of particular words and phrases used in the chapter.

SUBCHAPTER 2. DESCRIPTION OF TAX, EXEMPTIONS, CREDITS OR REFUNDS, provides for certain methods of payments of tax, exempt transactions and tax credits and refunds.

SUBCHAPTER 3. TAX RULINGS, offers guidance on tax treatment of certain beverages and mixes, sales to certain special groups and delivery to steamships.

SUBCHAPTER 4. PENALTIES, provides penalties for failure to file reports and pay the tax.

SUBCHAPTER 5. BONDS, provides for satisfactory bonds for applicants and licensees with certain exceptions.

SUBCHAPTER 6. RECORDS, deals with persons required to keep receiving and sales records and records of accounts payable and receivable and supplies further details concerning maintenance of records.

SUBCHAPTER 7. REPORTS IN GENERAL, supplies guidance for executing and filing reports and the manner in which certain items and transactions are to be reported.

SUBCHAPTER 8. RULES, REGULATIONS AND INSTRUCTION CONCERNING MANUFACTURERS, concerns the information to be contained upon certain schedules for manufacturers.

SUBCHAPTER 9. RULES, REGULATIONS AND INSTRUCTIONS CONCERNING WHOLESALERS AND STATE BEVERAGE DISTRIBUTORS, describes the schedules and manner of required reporting for wholesalers and distributors.

SUBCHAPTER 10. RULES, REGULATIONS AND INSTRUCTIONS CONCERNING ALCOHOLIC BEVERAGE WAREHOUSE RECEIPTS LICENSEES, deals with the manner of reporting for warehouse receipts licensees, when purchasing or selling warehouse receipts given upon the storage of alcoholic beverages in New Jersey in a United States Internal Revenue or United States Custom warehouse under Federal bond.

SUBCHAPTER 11. RULES, REGULATIONS AND INSTRUCTIONS CONCERNING PUBLIC WAREHOUSE LICENSEES, describes the manner of reporting transactions involving public warehouse licensees.

SUBCHAPTER 12. RULES, REGULATIONS AND INSTRUCTIONS CONCERNING TRANSPORTATION LICENSEES AND SPECIAL PERMITTEES TO TRANSPORT ALCOHOLIC BEVERAGES, deals with the manner of reporting transactions for transport licensees.

SUBCHAPTER 13. RULES, REGULATIONS AND INSTRUCTIONS CONCERNING PLENARY RETAIL TRANSIT LICENSEES, deals with the manner of reporting for transit licensees.

SUBCHAPTER 14. RULES AND REGULATIONS CONCERNING SPECIAL PERMITTEES TO SELL ALCOHOL, contains rules dealing with reporting requirements for Permittees.

The most recent changes in the rules effective June 21, 1982 (see 13 N.J.R. 839(a), 14 N.J.R. 664(a)) involved amendment of rates of tax for certain wines produced from New Jersey fruits caused by new legislation P.L. 1981, c.280. Pursuant to Executive Order 66(1978), these rules were reviewed by the Division and were found to be understandable, adequate, reasonable and necessary in their interpretation and clarification of the Alcoholic Beverage Tax Act. In order to continue the orderly administration of the Alcoholic Beverage Tax Act, these rules will continue in effect until five years after the filing of the readoption notice.

Social Impact

The Alcoholic Beverage Tax rules were enacted to provide taxpayers, licensees, permittees and their attorneys and accountants with guidance and assistance in the administration of the Alcoholic Beverage Tax Act. These rules are also intended as guidelines to assist taxpayers and licensees in their preparation of various tax reports and records pursuant to that Act. The readoption of these rules will continue to provide taxpayers and those required to report under the Act with guidance in fulfilling their statutory obligations. It will also continue the orderly administration and collection of the tax for the State of New Jersey.

Economic Impact

The readoption of the Alcoholic Beverage Tax Rules will provide for continued accurate filing of the reports and maintenance of tax related schedules and records by licensees and for payment of the applicable tax. It will assist in supplying the anticipated revenue for State budgetary purposes and additionally provide mechanisms for refunds of tax in appropriate situations. In fiscal-year 1983, $50,354,406 was collected; in 1982, $58,438,198; and in 1981, $64,531,427. It is anticipated that the readopted rules will generate approximately $50 million in tax revenue from alcoholic beverages.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 18:3.

(a)

DIVISION OF TAXATION

Gross Income Tax
Extension of Time to File New Jersey Gross Income Tax Return

Proposed New Rule: N.J.A.C. 18:35-1.18

Authorized By: John R. Baldwin, Director, Division of Taxation.
Authority: N.J.S.A. 54A:9-17(a).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Jack Silverstein
Chief Tax Counselor
Division of Taxation
50 Barrack Street, CN 269
Trenton, NJ 08646

The Division of Taxation 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 1984-122.

The agency proposal follows:

Summary

The proposed new rule sets forth the requirements for obtaining an extension of time to file the annual New Jersey Gross Income Tax Return. It makes clear that to obtain a valid extension of time to file a return, a taxpayer must file the required extension form and also make the required tax payment. Where the required tax payment has not been made, the extension is invalid and automatically terminates. The taxpayer becomes liable for the late filing penalties and also for the late payment penalties and for interest on any tax balance due.

Social Impact

The proposed new rule puts into formal regulation the procedures and requirements for obtaining an extension of time to file the annual New Jersey Gross Income Tax Return pursuant to the provisions of N.J.S.A. 54A:8-1(b). Taxpayers are made fully aware of all the penalties and interest liability for failure to meet all the requirements for obtaining an extension of time to file their annual New Jersey Gross Income Tax Return.

Economic Impact

The proposed new rule should result in a more widespread compliance with all the requirements for obtaining a valid extension of time to file the annual New Jersey Gross Income Tax Return. This will include, in addition to the filing of any required extension form, the making of the required tax payments. This should result in an increase in tax collections. Furthermore, making clear to taxpayers the liability for late filing penalties for noncompliance with all the extension requirements should also aid in tax collections.

Full text of the proposal follows.

18:35-1.18 Extension of time to file New Jersey gross income tax return

(a) An automatic two month extension of time may be obtained by all taxpayers for filing their annual New Jersey Gross Income Tax Returns provided the taxpayer has been granted at least a two month extension for Federal income tax purposes.* A copy of the Federal application for automatic extension must be attached to the taxpayer's New Jersey return.

(b) If no automatic Federal extension has been obtained, the taxpayer must file a request for an automatic two month extension on Form NJ-630-Application for Extension of Time to file New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, CN-269, 50 Barrack Street, Trenton, New Jersey 08646, or at any District Office. The request for extension must be filed with full payment of the estimated tax (as required on Form NJ-630) on or before the original due date of the New Jersey return.

(c) Additional extensions beyond the automatic two month extension in (a) and (b) above must be specifically requested by a taxpayer from the New Jersey Division of Taxation using Form NJ-630-Application for Extension of Time to File New Jersey Gross Income Tax Return. This form can be obtained from the Forms Section of the Division of Taxation, 50 Barrack Street, CN 269, Trenton, NJ 08646, or at any District Office. An extension beyond two months will not be considered unless the request is submitted on Form NJ-630 and the full amount of any estimated tax (as required on Form NJ-630 has been paid. The request for additional extension must be filed on or before the extended due date of the New Jersey return.

(d) Extensions may be granted for a maximum of six months from the original due date of the return unless exceptional circumstances justify a longer period.

(e) At least 80 percent of the taxpayer's tax liability as shown on the final return must be paid, either in the form of withholdings or estimated payments, on or before the original due date of the New Jersey tax return. Where a taxpayer has failed to pay at least 80 percent of the actual New Jersey tax liability, the extension will be deemed to be invalid and the taxpayer will be subject to late filing and late payment penalties as described in subsections (f) and (g) below as if no extension had been granted.

(f) A taxpayer who has not paid the required 80 percent of the tax liability at the time of the extension will become liable for the following late filing penalties (see N.J.S.A. 54:49-4).

1. $2.00 per day for each day of delinquency, and
2. Five percent per month or fraction thereof for each month of delinquency up to a maximum of 25 percent of the balance of any tax due with the return.

(g) All taxpayers making a late payment of tax, whether or not they have obtained an extension of time to file, are subject to the following late payment penalty and interest payments:

1. A five percent penalty for late payment of any tax balance (see N.J.S.A. 54:49-4), and
2. Interest at the rate of nine percent per annum from the original due date of the return to the date of payment where the amount thereof is $1.00 or more (see N.J.S.A. 54A:9-5(a)).

*Note: Under present Federal procedure, an automatic four month extension is granted.

OTHER AGENCIES

(a)

CASINO CONTROL COMMISSION

Casino Service Industries

Proposed Readoption: N.J.A.C. 19:43-1

Authorized By: Casino Control Commission, Theron G. Schmidt, Executive Secretary.
Authority: N.J.S.A. 5:12-63(c), 69, 70(a), (b) and (i) and 92.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on on before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Richard P. Franz, Senior Assistant Counsel
License Division
Casino Control Commission
Arcade Building
Tennessee Avenue and the Boardwalk
Atlantic City, NJ 08401

The Casino Control Commission thereafter may adopt this proposal without further notice (see N.J.A.C. 1:30-3.5). Pursuant to Executive Order No. 66(1978), these rules would otherwise expire on May 3, 1984. The readoption becomes effective upon filing with the Office of Administrative Law of a notice of readoption.

This proposal is known as PRN 1984-139.

The agency proposal follows:

Summary

In accordance with the "sunset" and other provisions of Executive Order 66(1978), the Casino Control Commission proposes to readopt N.J.A.C. 19:43-1 concerning casino service industries (CSI's). These rules were originally filed with the (then) Division of Administrative Procedure and became effective on February 16, 1978. The rules implemented the provisions of the Casino Control Act (N.J.S.A. 5:12-1 et seq.) concerning casino service industries N.J.S.A. 5:12-12 and the requirement of the Act that such casino industries be licensed by the Commission (N.J.S.A. 5:12-92). N.J.S.A. 5:12-12 defines the term casino service industry. N.J.S.A. 5:12-92(a) requires that all casino service industries which provide goods and services directly related to casino or gaming activity must be licensed by the Commission prior to transacting business with casino licensees, while N.J.S.A. 5:12-92(c) requires licensure of non-gaming related casino service industries in accordance with the rules of the Commission. Chapter 43, Subchapter 1 of the Commission's rules sets forth the manner in which these casino service industry licenses are administered by the Commission.

The rules proposed for readoption describe in more detail than the Act those enterprises which must become licensed casino service industries. The rules also define the standards for qualification or disqualification as a casino service industry and identify those persons who must be qualified before a license may be issued by the Commission. They provide authority to the Commission to regulate and control competition in the area of casino service industries in accordance with the dictates of the Act (see N.J.S.A. 5:12-1(b)(12)) and they place upon the casino service industry the continuing duty to cooperate with the Commission and the Division of Gaming Enforcement in their regulation and investigation of a casino service industry.

Chapter 43, Subchapter 1 also establishes the period of time for which a CSI license can be issued. Such periods are one year for a license issued pursuant to Section 92(a) of the Act and three years for one issued pursuant to Section 92(c). The rules also set forth the grounds upon which such licenses can be suspended or revoked or upon which the Commission can choose not to renew.

Finally, this Subchapter requires that CSI's adhere to the affirmative action requirements described in Chapter 53 of the Commission's regulations and requires payment of fees as set forth in Chapter 41 of the regulations. Additionally, these rules set forth a standard for recordkeeping for these enterprises.

The Commission's License Division is primarily responsible for administering Chapter 43. The Division is constantly engaged in reviewing compliance with the requirements of this chapter. This review includes both in-house review of applications and submissions, as well as some on-site review of casino service industry and casino licensee compliance with these rules.

Chapter 43 has served as a basic framework for the Commission in its efforts to fulfill the statutory mandate to oversee the operation of those companies that provide goods and services to casino licensees in Atlantic City. Since the inception of casino gaming in Atlantic City, the Commission has been made aware of over 11,000 different enterprises which have provided some goods or services to operating casino licensees. Chapter 43 has and will continue to aid the Commission in determining which of those enterprises should be subjected to the more rigorous investigation attendant upon the casino service industry licensing process.

Social Impact

The most significant social impact of Chapter 43 has been its ability to provide the Commission with a framework to use in regulating those companies which transact business with casino licensees. Because of the requirements of this portion of the Commission's regulations, the Commission and the Division of Gaming Enforcement have been able to exert some control over this very important area of the regulation of casino gaming in New Jersey. The ability to request disclosure of information and to investigate the operation of casino service industries provided by Chapter 43, has led to the exclusion of approximately 200 enterprises, and in some cases their principals, from transacting business with the casino industry in New Jersey. In addition, over 1,400 enterprises have been required to apply for casino service industry licenses as a result of standards set forth in this chapter of the regulations.

This control over casino service industries and the exclusion of certain enterprises from the ability to participate, even peripherally, in the benefits of casino gaming, is a direct outgrowth of the Legislative mandate contained in the Casino Control Act requiring strict control of all aspects of casino gaming. See N.J.S.A. 5:12-1.

Economic Impact

The rules requiring licensure of casino service industries have had a varied economic impact.

In the most recent fiscal year, fees from casino service industry license applications, both gaming and non-gaming, totaled approximately $713,000.00. This figure represents 2.2% of all amounts collected by the Commission and deposited in the Casino Control Fund.

Although no studies have been made, it is possible that the cost attendant upon a casino service industry license application may have the effect of discouraging some enterprises from transacting business with casino licensees. In addition, it is also possible that costs incurred by enterprises in the licensing process may be passed on in whole or in part to the casino licensees which purchase their goods or services. However, with the obvious overriding Legislative concern regarding the ability of the Commission to regulate all enterprises transacting business with casino licensees, this sort of impact is minimal when weighed against the ability to regulate these companies provided by the rules.

Both the Commission and the Division of Gaming Enforcement incur certain administrative costs associated with the enforcement of these rules. Pursuant to the Act, however, these costs are largely borne by the casino industry, and, to an extent, by CSI licensure fees.

These rules also enable the Commission to "control and prevent economic concentration" in casino operations and the ancillary industries regulated by the Act. See N.J.S.A. 5:12-1(b)12.

Full text of the rules proposed for readoption appear in the New Jersey Administrative Code at N.J.A.C. 19:43-1, as supplemented by the New Jersey Register.

(a)

EXECUTIVE COMMISSION ON ETHICAL STANDARDS

Positions in State Government with Responsibility for Matters Affecting Casino Activity

Proposed New Rule: N.J.A.C. 19:61-5.5

Authorized By: Richard J. Murphy, Director, Executive Commission on Ethical Standards.
Authority: N.J.S.A. 52:13D-12 et seq., specifically 52:13D-17.2(d).

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

Richard J. Murphy, Director
Executive Commission on Ethical Standards
28 West State Street, Room 1407
CN 082
Trenton, New Jersey 08625

The Executive Commission on Ethical Standards thereafter may adopt this proposal without further notice. The adoption becomes effective upon publication in the Register of a notice of adoption.

This proposal is known as PRN 1984-142.

The agency proposal follows:

Summary

The proposed new rule is based on the Executive Commission's legislatively mandated responsibility to determine and publish and periodically update a list of those positions in State government with responsibility for matters affecting casino activity. The purpose of this list is to allow the Executive Commission on Ethical Standards and other appropriate enforcement bodies to apply and enforce the restrictions imposed by the Casino Ethics Amendment, L. 1981, c.142, (N.J.S.A. 52:13D-17.2) on certain persons, including those holding positions in State government with responsibility for matters affecting casino activity. Such persons are subject to both the concurrent and post employment restrictions of that amendment with respect to various dealings with the casino industry.

The proposed new rule reflects the determination of the Executive Commission as to which positions carry such responsibility so as to be subject to the restrictions of the Amendment. The provisions and restrictions of the Casino Ethics Amendment apply with equal force to those persons specifically identified in the Amendment without any requirement for determination that they occupy positions with casino responsibility. These include all members and non-secretarial or clerical employees of the Casino Control Commission and Division of Gaming Enforcement as well as all persons subject to Financial Disclosure by Executive Order.

Social Impact

The proposed new rule is intended to enable the Executive Commission and other appropriate bodies to enforce the Casino Ethics Amendment by identifying those positions in State government having responsibility for matters affecting casino activity. The rule will thus extend coverage of the Act beyond the persons specifically identified to include any persons occupied in such positions or responsibility.

Economic Impact

There is no economic impact on the State as a result of the promulgation of this rule in that it results in no increased revenue and requires no increased expenditure to carry out its provisions. The Casino Ethics Amendment, L. 1981, c.142, (N.J.S.A. 52:13D-172) does substantially enlarge the jurisdiction of the Executive Commission, but this particular rule serves only to identify those positions in State government to which the restrictions of that Amendment apply.

Full text of the proposed new rule follows.

19:61-5.5 Positions in State government with responsibility for matters affecting casino activity

(a) The Executive Commission on Ethical Standards has, in consultation with the Attorney General's Office, determined that the following positions in State government have responsibility for matters affecting casino activity and therefore are subject to the restrictions of the Casino Ethics Amendment (N.J.S.A. 52:13D-17.2):

1. Department of Environmental Protection; Division of Coastal Resources.

i. Bureau of Coastal Project Review (1 Chief and 3 Regional Supervisors classified as Supervising Environmental Specialists);

ii. Tidelands Resource Council (members of the Council);

2. Department of Community Affairs (Division of Housing).

i. Bureau of Construction Code Enforcement (Chief; Assistant Chief; Supervisor, plans approval)

ii. Bureau of Housing Inspection (Chief; Supervisor, Housing Code Compliance Assistant Regional Supervisor, Housing Code Enforcement;

3. State Athletic Commissioner.

(b) The list in (a) above is exclusive of the following persons identified in N.J.S.A. 52:13D-17.2(a) as being covered by the provisions of the Casino Ethics Amendment:

1. As used in this section "person" means any State officer or employee subject to financial disclosure by law or executive order and any other State officer or employee with responsibility for matters affecting casino activity; any special State officer or employee with responsibility for matters affecting casino activity; the Governor; any member of the Legislature or full-time member of the Judiciary; any full time professional employee of the Office of the Governor, or the Legislature; the head of a principal department, the assistant or deputy heads of a principal department, including all assistant and deputy commissioners; the head of any division of a principal department; any member of the governing body, or the municipal judge or the municipal attorney of a municipality wherein a casino is located; any member of or attorney for the planning board or zoning board of adjustment of a municipality wherein a casino is located, or any professional planner, or consultant regularly employed or retained by such planning board or zoning board of adjustment. N.J.S.A. 52:13D-17.2(a).

RULE ADOPTIONS

AGRICULTURE

(a)

DIVISION OF ANIMAL HEALTH

Quarantine and Embargoes on Animals

Poultry Embargo

Readoption: N.J.A.C. 2:5-3

Proposed: December 5, 1983 at 15 N.J.R. 2048(a).
Adopted: February 17, 1984 by Arthur R. Brown, Jr., Secretary, Department of Agriculture.
Filed: February 21, 1984 as R.1984 d.59, **without change**.

Authority: N.J.S.A. 4:5-1 and 4:5-94 to 106.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order 66(1978): February 17, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

SUBCHAPTER 3. POULTRY EMBARGO

2:5-3.1 Poultry embargo

(a) By order of the State Board of Agriculture and pursuant to N.J.S.A. 4:5-1 and 4:5-94 to 106 of the agricultural laws of the State of New Jersey hereby order, in order to prevent the spread of highly pathogenic Avian Influenza, an infectious and contagious disease of fowl, that all live fowl and poultry manure and litter originating from the State of Pennsylvania be prohibited entrance into New Jersey except under prior permit issued by the Director of the Division of Animal Health, N.J.D.A., CN 330, Trenton, New Jersey 08625 (609) 292-3965.

(b) Day old chicks hatching eggs and eggs for human consumption are exempt from this section but must be in compliance with the Code of Federal Regulations, Part 81.

(b)

DIVISION OF RURAL RESOURCES

State Agriculture Development Committee Agricultural Development Areas

Adopted New Rule: N.J.A.C. 2:76-1

Proposed: December 19, 1983 at 15 N.J.R. 2086(a).
Adopted: February 16, 1984 by Arthur R. Brown, Jr., Chairman, State Agriculture Development Committee.
Filed: February 21, 1984 as R.1984 d.58, with **technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 4:1C-15f and 4:1C-16a.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 17, 1989.

Summary of Public Comments and Agency Responses:

There was one written comment submitted regarding the proposal from the New Jersey Farm Bureau. Farm Bureau comments and agency responses follow:

1. County Agriculture Development Boards (CADBs) should be encouraged to establish procedures to operationalize municipal referrals of certain development applications proposed in Agricultural Development Areas (ADAs).

Response: The degree to which CADBs wish to request and review non-agricultural development impact studies within ADAs will vary from county to county. Therefore, it would be more appropriate to address the issue via guidelines.

2. The "reasonably free of suburban and conflicting commercial development" statutory criteria may be a desirable objective under ideal circumstances but, in reality (may) be very difficult to use and subject to wide differences of interpretation.

Response: First, the rules cannot change the statute. Second, the potential wide differences of interpretation is the perogative of local boards in keeping with the local control philosophy of the program.

3. ADA designations should not be used as a "pyramid" with other government regulations to achieve the inflexible land regulations that violate the compensatory, voluntary, and local level orientation of the program.

Response: Other than the statutory requirement that ADAs only contain land where agriculture is a zoned or permitted use, the incorporation of other criteria such as the State Development Guide Plan is entirely up to the CADB. Local control prevails.

4. The supplemental criteria offered by the SADC to the CADBs to assist the establishment of ADAs (N.J.A.C. 2:76-1.4) are almost exclusively focused on land based criteria. Very few if any deal with agronomic factors.

Response: By statute, when identifying ADAs, each board may "incorporate any other characteristics deemed appropriate". It is noted that no additional specific "agronomic" factors are offered.

5. The guidelines for interpreting the factors in N.J.A.C. 2:76-1.4 should be contained in these rules.

Response: There is a distinct separation between rules and guidelines. It is not acceptable to co-mingle guidelines in the

codification of rules. However, every attempt will be made to incorporate the adopted rules into the guidelines document.

6. Apprehension about the level of detail that may be required in the "comprehensive report" referred to in N.J.A.C. 2:76-1.5. The reports should be complete but not so detailed as to necessitate small bureaucracies in support of each CADB.

Response: The intent of the SADC is in line with the comment. The reports are not expected to be overly-detailed. Also, the SADC staff will be available to assist CADBs.

7. As time proceeds, the program may wish to use certified ADAs as a substitute for 8-year programs as a condition for the sale/purchase of development rights.

Response: It is a point for future legislative discussion but has no bearing on the proposed rules.

8. The SADC's supervision of an ADA should be limited to only those instances where State funds are involved.

Response: ADAs are the precursers of all "benefits" made available under the provisions of the Agriculture Retention and Development Act of 1983. The potential benefits such as protection from eminent domain takings and exemption from emergency restrictions on the use of water and energy supplies do not involve State funds but, nevertheless, would require, in part, inclusion in an SADC certified ADA. Counties not interested in seeking the various "benefits" of the Agriculture Retention and Development Act are not bound to any of the provisions of the Act.

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

CHAPTER 76
STATE AGRICULTURE
DEVELOPMENT COMMITTEE

SUBCHAPTER 1. *[AGRICULTURE RETENTION AND DEVELOPMENT]* ***AGRICULTURAL DEVELOPMENT AREAS***

2:76-1.1 Applicability

This subchapter applies to County Agriculture Development Boards and Subregional Agricultural Retention Boards when identifying and receiving State Agriculture Development Committee certification for agricultural development areas.

2:76-1.2 Definitions

As used in this subchapter, the following words and terms shall have the following meanings:

"Agricultural Development Area", hereinafter referred to as ADA, means an area identified by a county agriculture development board pursuant to the provisions of N.J.S.A. 4:1C-21 and certified by the State Agriculture Development Committee.

"Board" means a county agriculture development board established pursuant to N.J.S.A. 4:1C-17 or a subregional agricultural retention board established pursuant to N.J.S.A. 4:1C-20.

"Committee" means the State Agriculture Development Committee established pursuant to N.J.S.A. 4:1C-4.

2:76-1.3 Statutory criteria

(a) The board may, after public hearing, identify and recommend an area as an agricultural development area, which recommendation shall be forwarded to the county planning board. The board shall document where agriculture shall be the preferred, but not necessarily the exclusive, use of land if that area:

1. Encompasses productive agricultural lands which are currently in production or have a strong potential for future production in agriculture and in which agriculture is a permitted use under the current municipal zoning ordinance or in which agriculture is permitted as a non-conforming use;
2. Is reasonably free of suburban and conflicting commercial development;
3. Comprises not greater than 90 percent of the agricultural land mass of the county;
4. Incorporates any other characteristics deemed appropriate by the board.

2:76-1.4 Other criteria

(a) The factors in this section that shall be considered by the board in developing criteria for the identification of agricultural development area(s) shall include, but not necessarily be limited to, the following:

1. Soils;
2. Current and anticipated local land use plans and regulations;
3. Farmland assessment status;
4. Anticipated approvals for non-agricultural development;
5. Accessibility to publicly funded water and sewer systems;
6. Compatibility with comprehensive and special purpose county and State plans;
7. Proximity and accessibility to major highways and interchanges;
8. Minimum size of an ADA;
9. Landowner sign-up;
10. Land within boroughs, towns or cities;
11. Inclusion of entire or partial lots and blocks;
12. Land ownership;
13. Natural and special features;
14. Type and distribution of agriculture.

(b) Guidelines for interpretation of the above factors may be obtained from the committee upon request. Requests shall be addressed to:

The State Agriculture
Development Committee
CN 330
Trenton, New Jersey 08625

2:76-1.5 Certification request

(a) In order to obtain committee certification of board approval of ADAs, the board shall submit the following to the committee:

1. Board certification that a hearing was held in compliance with the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq.;
2. A copy of the approved minutes of the hearing which shall include a summary of the testimony;
3. A comprehensive report consisting of the following:

i. Discussion of factors considered for arriving at the adopted ADA criteria;

ii. Adopted criteria for ADA identification;

iii. A resolution of adoption of ADA(s);

iv. Map(s), preferably but not necessarily U.S.G.S. (1:24000), showing the general location of the ADA(s) as defined by the application of the criteria.

2:76-1.6 Committee review

(a) The committee shall review board submissions pursuant to N.J.A.C. 2:76-1.5.

(b) In order to certify, the committee must make a finding that the board's analysis of factors and resultant criteria are reasonable and consistent with the provisions of this subchapter.

2:76-1.7 Certification

Upon compliance with the provisions of this subchapter, the committee shall present to the Secretary of Agriculture its findings and recommendations to certify, to certify with conditions, or deny the request made pursuant to N.J.A.C. 2:76-1.5.

BANKING

(a)

DIVISION OF BANKING

Restrictions on Real Property Transactions

Readoption: N.J.A.C. 3:1-10

Proposed: January 3, 1984 at 16 N.J.R. 2(a).
Adopted: February 21, 1984 by Michael M. Horn, Commissioner, Department of Banking.
Filed: February 27, 1984 as R.1984 d.63, **without change.**

Authority: N.J.S.A. 17:1-8.1.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 3:1-10, as amended in the New Jersey Register.

(b)

DIVISION OF BANKING

Investments
Domestic Operating Subsidiaries

Adopted New Rule: N.J.A.C. 3:11-5
Adopted Repeal: N.J.A.C. 3:11-5

Proposed: November 7, 1983 at 15 N.J.R. 1787(a).
Adopted: February 28, 1984 by Michael M. Horn, Commissioner, Department of Banking.
Filed: March 2, 1984 as R.1984 d.69, **without change.**

Authority: N.J.S.A. 17:9A-25.2 and 17:9A-25.3.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

Summary of Public Comments and Agency Responses:

There was only one comment received relative to the proposed repeal of the existing regulation and the proposed new rule. The comment received, fully endorsed the repeal and the new rule as being beneficial to the vitality of commercial banking in the State of New Jersey.

Therefore, the regulations are adopted without change.

Full text of the adoption follows.

SUBCHAPTER 5. INVESTMENT BY BANK IN CAPITAL STOCK OF DOMESTIC OPERATING SUBSIDIARIES

3:11-5.1 Operational subsidiaries

(a) With the prior approval of the Commissioner of Banking, a bank may engage in activities, which are a part of the business of banking or incidental thereto, by means of an operating subsidiary corporation. In order to qualify as an operating subsidiary hereunder, at least 80 percent of the voting stock of the subsidiary must be owned by the bank.

(b) An operating subsidiary may perform any business function which the parent bank is permitted to perform.

(c) The Department considers an application for the establishment of a domestic operating subsidiary to be primarily a business decision of the applicant, however, the Commissioner must be satisfied that the general condition of the applicant is satisfactory. The existence of conditions warranting special supervisory attention by the Banking Department normally will preclude approval. A bank should not have an undue amount of criticized assets, particularly in relation to capital; serious or frequent violations of law; inadequate liquidity; adverse operating trends; poor internal controls or other significant problems. Capital, earnings and retention of earnings should be sufficient to support the current level of operations as well as the proposed expansion. In determining the applicant's capacity to support the proposed subsidiary, the estimated cost of establishing or acquiring the subsidiary and the volume and scope of anticipated business will be considered. If the application is for the acquisition of an existing business, the Commissioner will also take into account the public interest factor, similar to the requirement for this consideration on mergers as called for in N.J.S.A. 17:9A-136.

(d) Transactions between the parent bank and the operating subsidiaries are not subject to the limitations in N.J.S.A. 17:9A-62.

(e) Except as otherwise permitted by statute or regulation, all provisions of State banking laws applicable to the operations of the parent bank shall be equally applicable to the operations of its operational subsidiaries.

(f) Unless otherwise provided by statute or regulation, pertinent book figures of the parent bank and its operating subsidiaries shall be consolidated for the purpose of applying applicable statutory limitations.

(g) Each operating subsidiary shall be subject to examination and supervision by the Commissioner of Banking in the same manner and to the same extent as the parent bank. If upon examination, the Commissioner shall ascertain that the subsidiary is created or operated in violation of law or regulation or that the manner of operation is detrimental to the

business of the parent bank and its depositors, he may order the bank to dispose of all or part of such subsidiary upon such terms as he may deem proper. The cost of an examination into the condition of an existing business proposed to be acquired and operated as an operating subsidiary shall be paid by the applicant as will any subsequent examinations of an approved subsidiary.

(h) Prior to the disposition of an operating subsidiary, the parent bank shall inform the Commissioner of Banking, by letter, of the terms of the transaction.

CIVIL SERVICE

(a)

CIVIL SERVICE COMMISSION

Compensation
Title Reevaluation Requests and Appeals

Adopted New Rule: N.J.A.C. 4:2-7.1 (proposed as 4:1-7.6)

Proposed: August 15, 1983 at 15 N.J.R. 1290(b).
Adopted: February 22, 1984 by the Civil Service Commission, Eugene J. McCaffrey, Sr., President.
Filed: March 2, 1984 as R.1984 d.73, **with substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 11:1-7a, 11:5-1a and 11:8-3.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): December 7, 1986.

Summary of Public Comments and Agency Response:

N.J.A.C. 4:2-7.1 (proposed as N.J.A.C. 4:1-7.6) Title reevaluation requests and appeals is a new rule that details the procedures employed when a title reevaluation is requested or a determination is appealed. All State agencies utilize the reevaluation process as a regular part of management procedures but especially at the present time to help effectuate State-wide reorganizations.

The proposed rule was approved by the Civil Service Commission on July 12, 1983, and was published for comment in the New Jersey Register on August 15, 1983 at 15 N.J.R. 1290(b). Comments concerning proposed N.J.A.C. 4:1-7.6 were received from four local chapters of the Communications Workers of America, from the Department of Human Services, and the Department of the Treasury.

Comments from the Communications Workers of America (CWA) addressed: 1) The Director of Classification and Compensation's mandate to review all requests and appeals with the option of utilizing the Job Content Evaluation Committee for recommendation prior to the Director's determination; 2) The President of the Civil Service Commission's option to appoint an independent salary reviewer to review the determinations made below and submit a recommendation for the President's determination; and 3) The prohibition of new evidence at the informal review conducted by the independent salary reviewer.

The comments from the CWA local chapters regarding the mandatory use of the Job Content Evaluation Committee (Committee) and the methodology which is used by the Committee was carefully reviewed. The Civil Service Commission has determined that the rule is to be retained as proposed and the Committee be requested reevaluation requests and appeals when the Director of Classification and Compensation determines that this additional review is appropriate. The method of review utilized by the Committee, a modified Hay-point system, is applied uniformly throughout the State in evaluating job titles. No basis was presented for the adoption of a different method of evaluation.

The Civil Service Commission has decided not to incorporate the suggestion that the President of the Civil Service Commission be required to utilize an independent salary reviewer. The independent salary reviewer is an aid to the President rather than an autonomous decision-maker and, as such, the use of this review is discretionary with the President. Some cases may present no factual disagreements such that a further informal hearing may not be required.

The CWA local chapters requested that the independent salary reviewer accept new evidence when conducting the review. The reviewer may take relevant evidence where warranted if it was not previously presented. The rule does, however, preclude the introduction of new argument or issues not considered below. Since this is an informal review that takes place upon the request of the President subsequent to two lower levels of review, it is not considered appropriate that new arguments be presented at this time.

The Director of Personnel at the Department of Treasury suggested that a 20-day time limit be required for appeal from appointing authority determinations. Since this suggestion is consistent with appeal procedures throughout the rule, appropriate language shall be added.

The Director of Personnel, Department of Human Services, takes exception to the new policy of accepting the requests for an evaluation from individual employees as well as from appointing authorities. The Department of Civil Service recognizes that this procedure may create some additional burden on the appointing authority, however, since the employee is directly affected by an evaluation, it is only equitable that he or she be allowed the right to request a reevaluation of his or her title. The Director also questions the fairness of giving the appointing authority and independent salary reviewer 30 days to render a decision whereas the Department of Civil Service has 60 days. It is essential that salary reevaluations be resolved as expeditiously as possible, therefore fairly tight time constraints have been written into the rule at all levels. The period of time allotted to the Department of Civil Service is to allow the Job Content Evaluation Committee to conduct its review and submit a recommendation to the Director of Classification and Compensation. The Director must then review the recommendation and make the final determination. This is a two-step process requiring additional time.

All additional revisions are strictly technical. Rather than incorporating all of N.J.A.C. 4:2 and 4:3 into Chapter 1, the Department of Civil Service has determined that rules that apply exclusively to either State or local government should be placed in either Chapter 2 (State) or Chapter 3 (local). Therefore, since reevaluation applies exclusively to State service, the proposed codification, N.J.A.C. 4:1-7.6, has been revised to N.J.A.C. 4:2-7.1. The language that refers to "State" has

become redundant because of the recodification and has been deleted.

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

[4:-7.6] ***4:2-7.1*** Title reevaluation requests and appeals *[(State)]*

[(a) This section applies only to State service.]

*[(b)]****(a)*** A reevaluation is a review of a title to determine its proper salary range. A request for a reevaluation must identify and explain the areas of substantive change in job content ***through written narrative and a revised title specification*** and include evidence that all employees in the title are performing specific tasks at a higher level than defined in the current class specification. Increased volume of work is not evidence of substantive change in job content.

*[(c)]****(b)*** Employees, union representatives, and appointing authorities may request a reevaluation or appeal a decision from a reevaluation. A request initiated by an employee or the employee's representative shall be submitted to the appointing authority. A request initiated by an appointing authority shall be submitted to the Division of Classification and Compensation.

*[(d)]****(c)*** All parties requesting a reevaluation or appealing a decision shall be notified of a determination by decision letter which includes an analysis, findings of fact, conclusion, decision and appeal rights. The analysis shall be based on the New Jersey Job Content Evaluation system, the "modified Hay point system," which evaluates the factors of know-how, problem solving and accountability associated with the functions and responsibilities of a title.

*[(e)]****(d)*** An appointing authority that receives a request for reevaluation shall conduct a review and notify all parties of its decision within 30 days of receipt of the request. The decision letter shall indicate either that there is no substantive change in job content or that the request shall be submitted to the Department of Civil Service, in which case the appointing authority shall submit a request for reevaluation to the Division of Classification and Compensation.

1. If the employee requesting reevaluation does not receive a decision letter from the appointing authority within the specified 30 days, *[s/he]* ***he or she*** may, in the following 20 days, submit an appeal including a copy of the original request to the Division of Classification and Compensation, Department of Civil Service, CN 313, Trenton, New Jersey, 08625.

2. An employee who disagrees with the appointing authority's decision may appeal the decision ***within 20 days of notification*** to the Division of Classification and Compensation. The appeal shall include a copy of the initial request, the appointing authority's decision letter, a statement identifying the specific portions of the decision being contested, and the basis for the appeal.

*[(f)]****(e)*** The Director of Classification and Compensation shall review a request or appeal and make a determination. A decision letter shall be issued within 60 days of receipt of the ***request or*** appeal.

1. The Director may forward the request or appeal to the Job Content Evaluation Committee (Committee). The Committee shall notify all parties of the time and place of the meeting at least seven days prior to the meeting. Subsequent to the meeting, the Committee shall recommend an evaluation to the Director who shall accept, reject or modify the recommendation and inform all parties of the decision.

2. Appellants who disagree with the decision from the Director of the Division of Classification and Compensation may appeal the decision to the President of the Civil Service Commission. The appeal shall include copies of the determinations and decision letters from the lower levels and state which findings are being disputed and the basis for the appeal. Appeals shall be submitted in writing within 20 days of receipt of the decision letter to:

Department of Civil Service
Division of Appellate Practices
and Labor Relations
CN 312
Trenton, New Jersey 08625

*[(g)]****(f)*** The President of the Civil Service Commission may render a decision based on the written record, appoint an independent salary reviewer, or refer the appeal to the Civil Service Commission. If the President appoints an independent salary reviewer to conduct an informal review of the appeal, all parties will be advised of the review date and shall present their arguments before the reviewer. An employee appealing his*[/]* ***or*** her reevaluation before a salary reviewer may be heard personally or be represented by counsel or an authorized union representative. The strict postponement policy set forth in N.J.S.A. 11:1-25 et seq. shall be followed.

1. The salary reviewer shall not consider new arguments added subsequent to the decision from the last level of appeal.

2. The salary reviewer shall submit a report and recommendation to the President of the Civil Service Commission within 30 days after the review.

3. The report and recommendation shall be sent to all parties. Exceptions may be filed within 15 days of receipt of the report and recommendation with the Division of Appellate Practices and Labor Relations. If exceptions are filed, cross-exceptions may be filed within five days of receipt of the exceptions. Exceptions and cross-exceptions shall be served on all parties.

*[(h)]****(g)*** A decision by the President of the Civil Service Commission or by the Commission is the final administrative determination.

*[(i)]****(h)*** If *[an appeal is upheld]* ***a title is reevaluated***, the effective date of the reevaluation shall be the first pay period after expiration of 14 days from the date the ***request or*** appeal was filed with the Division of Classification and Compensation.

*[(j)]****(i)*** An appeal from one or more titles in a title series that has been reevaluated and approved by the Commission shall not delay the implementation of the total title series.

ENVIRONMENTAL PROTECTION

(a)

OFFICE OF THE COMMISSIONER

Interim Environmental Cleanup Responsibility Act Regulations

Readopted New Rule: N.J.A.C. 7:1-3

Proposed: January 17, 1984 at 16 N.J.R. 151(a).
Adopted: March 5, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: March 5, 1984, as R.1984, d.81, **with substantive changes** not requiring additional public notice and comment.

Authority: Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.).

Expiration Date pursuant to Executive Order No. 66(1978): March 5, 1986.
DEP Docket No. 075-83-12.

Summary of Public Comments and Agency Responses:

The New Jersey Department of Environmental Protection ("NJDEP" or "Department") held a February 6, 1984 public hearing concerning the Interim Environmental Cleanup Responsibility Act Regulations, N.J.A.C. 7:1-3 ("Regulations") promulgated pursuant to the Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.) ("Act" or "ECRA"). Although over fifty people attended, only two individuals gave public comments on the record on February 6, 1984 at the Labor Education Center, Rutgers University, New Brunswick, New Jersey. Over thirty written comments were received on the Regulations during the written comment period.

The Department's changes to the Regulations upon adoption primarily consist of clarification of text and format. For example, N.J.A.C. 7:1-3.7(d) has been rearranged to address a majority of public commenters concerns. Also, N.J.A.C. 7:1-3.18 has been restructured to more clearly set forth the Department's position. Please note that the Department outlines plans below to solicit more public comments on the Regulations. NJDEP would like to propose any substantial revision deemed necessary to the Regulations within the next few months.

NJDEP summarizes and responds to the comments received concerning the Regulations according to the following major issues:

1. Most commenters requested an extension of the written comment period that terminated on February 17, 1984 for an additional period of between 30 to 60 days. The Department determined that this would not be practical since the original emergency adoption expired on February 28, 1984. A prolonged period without ECRA regulations in effect would cause undue disruption and confusion among citizens of the State involved in closing or selling industrial establishments. However, the Department recognizes the need to continue a dialogue with the public to develop the best possible ECRA program. The Department has decided to form an ECRA Advisory Committee consisting of representatives from industry advocacy groups, environmental groups and other appropriate interested parties to be selected by the Department.

The ECRA Advisory Committee will provide a forum for public input and recommendations concerning the best methods for this Department's implementation of ECRA. Also, the Department plans to schedule a public meeting concerning the Department's ECRA program with special focus on possible regulatory amendments within the next two months. The date, time and location of the public meeting will be announced by publication of a notice in the New Jersey Register and by other appropriate methods.

The Department feels that these efforts will provide a continuing source of public input into the development of this important and innovative new Departmental program. Furthermore, the ECRA Advisory Committee and public meeting underscores the Department's firm commitment to develop a dynamic and adaptable regulatory program that ensures the successful implementation of our responsibilities under the Act. NJDEP may propose substantial amendments to the Regulations within the next few months as a result of this dialogue.

2. Most commentors requested that the proposed new rule be revised to establish definite time periods for the Department's actions as part of the ECRA program. Recommendations were made to establish time periods of between 7 and 30 days for various Departmental actions such as approving sampling plans, conducting preliminary inspections and approving cleanup plans.

Please note that the Act establishes only two time periods for Departmental ECRA actions. The Department has 45 days to approve or deny any negative declaration submitted (see Section 5(b) of ECRA and N.J.A.C. 7:1-3.11(c)) and 60 days to approve, conditionally approve or deny a cleanup plan deferral if the premises of the industrial establishment would be subject to substantially the same use (see Section 6(b) of ECRA and N.J.A.C. 7:1-3.14). The Department does not have enough experience with this new program to establish firm time constraints for activities under the Act. Personnel constraints and changing case priorities further complicate the matter of establishing the time periods requested by commenters. After the Department acquires more ECRA program experience, a possibility exists that actual time periods for ECRA reviews and approvals may be promulgated. However, the Department restates its firm commitment to work with the owners or operators of the industrial establishments to ensure expeditious ECRA reviews and to avoid delays that may negatively affect pending sales or closures.

3. A majority of commenters expressed several problems, both general and specific, with N.J.A.C. 7:1-3.7 entitled "Initial ECRA Notice Requirements". The consensus of opinion was that Section 3.7(d)1 through 17 required extensive information that could not possibly be collected, assembled and submitted to the Department within the statutorily mandated five days from public release of closure decision or execution of an agreement of sale or an option to purchase. Commenters were concerned that the extensive nature of the notice required would force them to miss the five day requirement and be in violation of the Act.

The Department originally required submission within the five day period of the information pursuant to Section 3.7(d)1 through 17 to expedite the Department's ECRA review process by receiving important information immediately. The De-

partment concurs in general with the request for reducing the amount of information required as part of the initial five day notice. The Department rearranged Section 3.7(d) to require only submission of eight of the original 17 items to be known as the General Information Submission. All other information available pertaining to Section 3.7(d) 9-17 may also be submitted at this time. However, all the information required pursuant to Section 3.7(d) 9-17, known as the Site Evaluation Submission, now must be submitted to the Department no later than 30 days subsequent to public release of its decision to close operations or execution of any agreement of sale or any option to purchase to satisfy the entire notice requirements of Section 3.7. This revision allows the owner or operator of an industrial establishment flexibility in preparing their complete Section 3.7(d) initial notice submission while still meeting the five day statutory deadline by submission of a simplified intitial notice. Please note that the Department clearly expresses at Section 3.7(f) that it shall not process any ECRA review until all information required pursuant to (d) 1 through 17 has been satisfactorily completed and submitted to the Department.

4. Several commenters vigorously expressed their belief that development of a sampling plan pursuant to N.J.A.C. 7:1-3.7(d)8 (now cited at N.J.A.C. 7:1-3.7(d)14) would not be necessary in all cases, especially in those involving a negative declaration. The Department agrees with this observation. Section 3.7(d)14(1) now expressly allows the owner or operator of an industrial establishment to propose to the Department that no sampling plan need be developed or implemented for the site. N.J.A.C. 7:1-3.9 entitled "Implementation of Soil, Groundwater and Surface Water Sampling Plan" has also been revised to reflect the changes mentioned above. Please note that Section 3.7(d)14 has also been clarified to more completely define the requirements of any sampling plan submitted.

5. N.J.A.C. 7:1-3.7(d)10 (formerly cited as N.J.A.C. 7:1-3.7(d)3) has been clarified to indicate that the Department wants the detailed description of the current operations and process at the industrial establishment organized in the form of a narrative report designed to guide the Department step-by-step through a plant evaluation. This revision will greatly facilitate the Department's understanding and review of the site of an industrial establishment.

6. Several commenters questioned the necessity of submitting a list of all Federal and State environmental permits applied for and received throughout the history of ownership of the site pursuant to N.J.A.C. 7:1-3.7(d)7 (formerly cited as N.J.A.C. 7:1-3.7(d)10). Similar comments were received about the list of all Departmental or other governmental enforcement actions for violations of any applicable Federal, State or local environmental laws or regulations throughout the history of ownership of the site pursuant to N.J.A.C. 7:1-3.7(d)8 (formerly cited as N.J.A.C. 7:1-3.7(d)11). The commenters felt that this information should already be in Departmental files and would constitute a needless and redundant exercise on the part of the industrial establishment. Many commenters thought that only current permit or enforcement actions were relevant.

The Department strongly believes that the owner or operator of the industrial establishment will be in the best position to compile the permit and enforcement information required and, therefore, will ultimately expedite the overall ECRA review process. Also, the Department files may not contain Federal, local or other governmental information concerning an industrial establishment. The Department believes that information relating only to current permits and enforcement matters will not be sufficient for Departmental ECRA review purposes.

7. One commenter criticized N.J.A.C. 7:1-3.7(d)17 for constituting an overbroad catchall provision. The Department clarified this provision to allow only other information requested in writing by the Department deemed necessary for the purpose of implementing the Act and the Regulations. N.J.A.C. 7:1-3.11(b)3 has been revised in the same manner.

8. Several commenters reported serious problems with the "retroactive" application of N.J.A.C. 7:1-3.7 entitled "Effective Date of Act; Special Provisions for Industrial Establishments Initiating Sale or Transfer or Closure of Operations Before December 31, 1983." The Department stands by its interpretation of the Act that the owner or operator of an industrial establishment that initiated the closure or transfer of title prior to Decembre 31, 1983 but will not complete the closure operations or transfer of title until on or after December 31, 1983 shall be subject to all the provisions of the Act and the Regulations. The provisions of ECRA are triggered not by the initiation of a closure or sale, but by the actual closure or transfer of title of an industrial establishment. Therefore, the Department does not contemplate any retroactive application of the Act, only prospective application as mandated by the Act.

The Department agrees that Section 3.17(c) extending the initial five day notice until January 5, 1984 and the submission of negative declaration or cleanup plans until March 1, 1984 was ill-advised since the Regulations were not published until January 17, 1984. Therefore, the Department has again extended the dates for submission of the initial notice until April 19, 1984 and the submission of negative declaration or cleanup plans until May 18, 1984 or as otherwise required by the Regulations. NJDEP feels that these changes will allow industrial establishments that initiated sale or closure prior to December 31, 1983 with the opportunity to comply with ECRA without being at risk of violating the statutory deadlines established at Section 4 of ECRA.

9. Several commenters requested that standards or guidelines be developed immediately for soil, groundwater and surface water quality to be utilized for negative declaration or cleanup plan determinations by the Department. Section 5(a) of ECRA requires the Department to develop minimum standards for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public, health and safety is minimized to the maximum extent practicable taking into consideration the location of the site and surrounding ambient conditions. This formible task will take a considerable amount of the Department's time and effort. Although initiated, the Department's development of such minimum standards will be a long-term project. Until adoption of the minimum standards, ECRA authorizes the Department to review, approve or diapprove negative declarations and cleanup plans on a case-by-case basis. NJDEP shall continue to equitably and reasonably conduct case-by-case reviews to implement the intent of ECRA prior to development of the minimum standards.

10. A few commenters felt changes should be made to N.J.A.C. 7:1-3.14 entitled "Deferral of Implementation of Cleanup Plan". Primarily, the commenters felt that the written certification stating that the industrial establishment shall be subject to substantially the same use by the other party to the transfer should also be signed by the other party to the

transfer. The Department agrees that the transferor will not alone be in a position to assure NJDEP that the transferee will conduct the business operation subject to substantially the same use. N.J.A.C. 7:1-3.14(b) has been revised to require that the signature of the other party to the transfer be included on the written certification.

Some commenters asserted that the deferral procedure in the Act at Section 6(b) and (c) was intended to be an automatic deferral of implementation of the cleanup plan. The Act, however, provides the Department with discretion to approve, conditionally approve or deny the certification. The Department stands behind revised N.J.A.C. 7:1-3.14 as a proper implementation of the specific statutory authority of Section 6(b) and (c) of the Act and the underlying environmental protection provisions of ECRA.

11. Commenters suggested the inclusion of several new definitions for terms utilized in the Act and the Regulations. A new commenters proposed the text for the terms. New definitions were recommended for "owner or operator," "substantially the same use", "agricultural commodities", "spill" and "detoxify". At this time the Department does not plan to add any new definition. However, NJDEP plans to reconsider the need for additional definitions and solicit further opinions on the subject from the ECRA Advisory Committee and the public at the proposed public meeting.

12. A few commenters requested that NJDEP develop a pre-meeting mechanism for owners and operators of industrial establishments prior to any required ECRA submissions. The Department's Bureau of Industrial Site Evaluation has been meeting and will continue to meet whenever possible with representatives of industrial establishments. However, NJDEP has decided not to formalize this for every situation as a precondition to ECRA review. The Department's Bureau of Industrial Site Evaluation will be available to answer any ECRA questions within the limits of available staff time.

13. One commenter noted that inadvertant omission of "and for all direct and" from N.J.A.C. 7:1-3.16(a)2 pertaining to a violation of the Act. Section 3.16(a)2 has been revised to incorporate the exact language of Section 8(a) of ECRA.

14. Many commentors supported N.J.A.C. 7:1-3.13(e) which allows the owner or operator of an industrial establishment to propose for NJDEP approval self-bonding measures to provide the financial security required to guarantee implementation of the cleanup plan. At this time, NJDEP will not establish acceptable forms of self-bonding measures, such as a particular corporate or financial test, that will be acceptable by the Department. The Legislature intended for industrial establishments to propose their own forms of self-bonding measures for the Department's careful review and, if deemed acceptable by NJDEP, for approval as an alternative method of financial security. If NJDEP does not approve the proposed measures, Section 3.13(e)1 requires that the industrial establishment obtain the required financial security pursuant to Section 3.13(b), (c) or (d). As experience with the Act is accumulated, criteria for self-bonding may be developed.

15. N.J.A.C. 7:1-3.20 entitled "Procedures for Exemptions of Sub-Groups within SIC Codes from Definition of Industrial Establishments" received many favorable comments. The Department intends to request that the ECRA Advisory Committee review the Standard Industrial Code ("SIC") numbers within the ECRA's jurisdiction and recommend sub-groups or classes of operations with SIC major group numbers within 22-39 inclusive, 46-49 inclusive, 51 or 76 to determine any possible exemptions. NJDEP also encourages industry advocacy groups and individual establishments to conduct their own review. The Department looks forward to exempting specific types of industrial establishments not posing a risk to public health and safety from the purview of the Act. Please note that public comment will be invited on any exclusion of a business operation from consideration under ECRA as an industrial establishment pursuant to the normal rulemaking procedures under the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq. The reasons for the exemptions shall be disclosed and available for public scrutiny as a part of the rulemaking procedure. Future amendments of Section 3.20(e) excluding sub-groups or classes of specific industrial establishments will remove many potential deminimis situations from the provisions of ECRA.

16. A few commenters felt that N.J.A.C. 7:1-3.10(d)1 should be amended to allow the financial security requirements for cleanup pursuant to N.J.A.C. 7:1-3.13 to be subject to negotiation and distributed between the parties upon NJDEP's prior written approval of any appropriate agreement to be executed between the parties. Commenters argued that the other party to a transfer may already agree to implementation of an approved cleanup plan pursuant to N.J.A.C. 7:1-3.10(d) and that NJDEP should only be concerned with obtaining the necessary financial security, not who pays it. The Department agrees with these comments and N.J.A.C. 7:1-3.10(d)1 has been revised.

17. Many commenters expressed concern that initial notice submission pursuant to N.J.A.C. 7:1-3.7, preliminary inspections pursuant to N.J.A.C. 7:1-3.8 and other provisions may reveal proprietary or trade secret information. Similar comments concerning sensitive provisions of real estate agreements were also made by the commenters. The Department plans to explore this issue further in conjunction with the ECRA Advisory Committee. The NJDEP suggests that industrial establishments with such concerns at this time should request that such information remain confidential and not become a part of NJDEP's record open to the public. The Department will review such documents and, after any appropriate clarifications, determine whether such requests will be honored pursuant to applicable statutory requirements or notify the proper individuals concerning any problems.

18. Several commenters felt that N.J.A.C. 7:1-3.8(c)1 should be changed to required that NJDEP should be bound by representations, oral or written, made by NJDEP representatives given at or concerning the preliminary inspections. One commenter felt that Section 3.8(c)1 would promote a cavalier attitude among NJDEP inspectors. Another commenter stated that NJDEP should properly train ECRA inspectors and stand behind their representation. NJDEP has revised Section 3.8(c)1 so that only oral representations will not bind the Department. Written representation given at or concerning the preliminary inspection will be binding on NJDEP.

19. A few commenters requested that the definition of "authorized officer or management official" at N.J.A.C. 7:1-3.3 should not require a duly authorized principal executive officer of at least the level of vice-president for a corporation. Commenters pointed out that the United States Environmental Protection Agency generally only requires signature of lower level corporate officials, such as a plant manager. NJDEP believes that the corporate review and decision making necessary to obtain the signature of a corporate vice-president will be important to the completeness and quality of all ECRA submissions. The personal liability provisions and signature of corporate vice-presidents on all ECRA submissions of Section 8(c) of ECRA and N.J.A.C. 7:1-3.16(d) en-

courages ECRA submissions of the highest quality to facilitate NJDEP reviews.

20. Several commenters expressed great concern over the potentially broad jurisdiction of the Act due to the types of hazardous substances and wastes and full range of SIC numbers involved. Commenters requested that the Department develop some deminimis or household exemptions in the Regulations. Many commenters proposed the utilization of the reportable quantities levels associated with the list of hazard ous substances adopted pursuant to Section 311 of the Federal Water Pollution Control Act Amendments of 1972. Please note that N.J.A.C. 7:1-3.20 provides a statutory deminimis exemption procedure and the Department intends to utilize it for that purpose. NJDEP remains limited upon adoption to adopt any additional deminimis or household exemption procedures at this time. The Department realizes the nature of the problem and plans to solicit recommendations from the ECRA Advisory Committee on appropriate deminimis exemptions other than 7:1-3.20.

21. A commenter noted that N.J.A.C. 7:1-3.13(a) inadvertantly required an industrial establishment to obtain financial security as set forth in "(b), (c) and (d) below." In fact, the industrial establishment shall obtain financial security as set forth in "either (b), (c), (d) or (e) below." NJDEP has made this correction.

22. A few commenters expressed interest in reviewing the "Wording of Instruments" document referred to in N.J.A.C. 7:1-3.13(b)2, (c)2 and (d)2. The Department will be finalizing this document in the very near future and copies will be available from the Bureau of Industrial Site Evaluation.

23. Many commenters complained of difficulty interpreting "within 60 days prior to transfer of title" at N.J.A.C. 7:1-3.10(b). One commenter wondered whether information should be submitted no later than 60 days before transfer of title, within 60 days, up to one day or immediately preceding transfer? NJDEP will accept relevant submission before the beginning of the 60 day period to transfer of title. However, the cleanup plan or negative declaration must be submitted at least 60 days prior to transfer of title.

24. Onc commenter requested clarification upon whether a cleanup plan should be approved by NJDEP before transfer of title of an industrial establishment and whether a cleanup plan need be implemented and completed before transfer of title. The Department requires that a cleanup plan must be approved prior to transfer of title, unless an appropriate agreement has been reached between the industrial establishment and NJDEP. A cleanup plan may be implemented after the sale since NJDEP remains protected by financial security obtained pursuant to N.J.A.C. 7:1-3.13.

25. Several commenters expressed concern that actions of past owners or neighbors could cause the environmental problems resulting in ECRA cleanup under the Regulations. NJDEP intends to utilize the Regulation as a site specific environmental problem tool. Subsequent legal actions may be necessary by the owner or operator of an industrial establishment to determine and distribute responsibility among other parties. ECRA reviews may result in NJDEP's utilization of other statutory authority to cleanup environmental problems at any adjacent sites.

26. One commenter felt that the Act's definition of "negative declaration" did not authorize harzardous substances or water remaining on site of an industrial establishment "above a level found acceptable by the Department based upon its review of the data submitted". (see N.J.A.C. 7:1-3.11(a)). NJDEP believes that the present interpretation permits a reasonable utilization of the concept of negative declarations without posing any environmental harm. The Department needs this flexibility to administer the Act for the benefit of the entire State. Demanding that absolutely no hazardous materials remain on-site would render the entire concept of negative declarations unworkable.

27. Many commenters requested pamphlet that NJDEP develop further ECRA guidance in the form of an instructional pamphlet or manual. NJDEP agrees that such guidance would be helpful and facilitate ECRA program administration. The Bureau of Industrial Site Evaluation plans to develop this type of guidance for public disbursement as soon as possible. Also, ECRA forms may be developed in the near future as time and staffing constraints allow.

28. A few commenters felt that an express administrative appeal process should be developed and written into the Regulations. Clearly the administrative hearing procedures of the Administrative Procedure Act, N.J.S.A. 52:14V-1 et seq., and court review of a final NJDEP decision will be available. NJDEP does not feel it necessary to futher define this process in the Regulations.

29. One commenter felt that ECRA conflicted directly with the provisions of the Federal Bankruptcy Code concerning the distribution of the assets of a bankruptcy estate, particularly in Chapter 11 reorganization. NJDEP disagrees and so does a recent decision of a New Jersey District Bankruptcy Court. ECRA has held not to be preempted by the Federal Bankruptcy Code and would apply to the sale of an industrial establishment approved by the judge in a Chapter 11 reorganization sitatuion.

30. Many commenters felt that NJDEP went beyond the Act in many instances, for example, requiring substantiation of negative declarations. However, the Legislature did not leave the Department without the means to carry out the intent of ECRA. Section 5(a) of ECRA authorizes NJDEP to adopt regulations which include "any other provisions or procedures necessary to implement this Act." The Department stands behind the Regulations as a proper interpretation of the Act.

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

INTERIM ENVIRONMENTAL CLEANUP RESPONSIBILITY ACT REGULATIONS

7:1-3.1 Scope and authority

This subchapter shall constitute interim rules governing implementation of the Environmental Cleanup Responsibility Act, P.L. 1983, c. 330 (N.J.S.A. 13:1K-6 et seq.) by the Department of Environmental Protection. This subchapter establishes the procedures to be followed by indsutrial establishments to ensure adequate preparation and implementation of acceptable cleanup procedures as a precondition of any closure or sale of transfer of any industrial establishment in accordance with the Act. The provisions of any law, rule or regulation to the contrary notwithstanding, the transferring of an industrial establishment is contingent on the implementation of the provisons of this subchapter and the Act.

7:1-3.2 Construction

(a) This subchapter shall be liberally construed to allow the Department to implement its statutory functions pursuant to the Environmental Cleanup Responsibility Act, P.L. 1983, c.330 (N.J.S.A. 13:1K-6 et seq.).

(b) This subchapter may be amended, repealed or rescinded from time to time in conformance with the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., as amended and supplemented, and the Office of Administrative Law's Rule for Agency Rulemaking, N.J.A.C. 1:30.

7:1-3.3 Defintions

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

"Act" or "ECRA" means the Environmental Cleanup Repsonsibility Act, P.L. 1983, c. 330 (N.J.S.A. 13:1K-6 et seq.).

"Authorized officer or management official" means for the purposes of the Act and this subchapter a duly authorized principal executive officer of at least the level of vice president for a corporation; a general partner for a partnership; the proprietor for a sole proprietorship; and by either a duly authorized principal executive or ranking elected official for a municipality, county or other public agency.

"Cleanup plan" means a plan for the cleanup of ***an*** industrial establishment*[s]*, approved by the Department pursuant to this subchapter, which shall include a description of the location, types and quantities of any and all hazardous substances and wastes that may remain on the premises and those hazardous substances and wastes to be removed; a description of the types and location of storage vessels, surface impoundments, or *[secured]* landfills containing hazardous substances and wastes; recommendations regarding the most practicable method of cleanup; ***a time schedule for cleanup plan implementation;*** and a cost estimate of the cleanup plan. The Department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, may require graphic and narrative descriptives of geographic and hydrogeologic characteristics of the industrial establishment and evaluation of all residual soil, groundwater, and surface water contamination as set forth in this subchapter.

"Closing, terminating or transferring operations" (see N.J.A.C. 7:1-3. *[17]* ***18***.

"Department" means the New Jersey Department of Environmental Protection.

"Hazardous substances" means those elements and compounds, including petroleum products, which are defined as such by the Department, after public hearing, including, but not limited to, the "List of Hazardous Substances" set forth in Appendix A of N.J.A.C. 7:1E, and which shall be consistent to the maximum extent possible with, and which shall include, the list of hazardous substances adopted by the Environmental Protection Agency pursuant to Section 311 of the "Federal Water Pollution Control Act Amendments of 1972" (33 U.S.C. §1321) and the list of toxic pollutants designated by Congress or the Environmental Protection agency pursuant to Section 307 of that Act (33 U.S.C. §1317); except that sewage and sewage sludge shall not be considered as hazardous substances for the purposes of the Act and this subchapter.

"Hazardous waste" means any amount of any waste substances required to be reported to the New Jersey Department of Environmental Protection on the special waste manifest pursuant to N.J.A.C. 7:26-7.4, designated as hazardous waste pursuant to N.J.A.C. 7:26-8, or as otherwise provided by law.

"Industrial establishment" means any place of business engaged in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling, or disposal of hazardous substances or wastes on-site, above or below ground, having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated in the Standard Industrial Classification manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States.

"Negative declaration" means a written a declaration submitted and substantiated by an industrial establishment in accordance with this subchapter and approved by the Department, that there has been no discharge of hazardous substances or wastes on the site, or that any such discharge has been cleaned up in accordance with procedures approved by the Department, and there remain no hazardous substances or wastes at the site of the industrial establishment.

7:1-3.4 Applicability

(a) This subchapter applies to all industrial establishments in the State of New Jersey ***which satisfy the ECRA threshold test set forth below*** except as set forth in (b) below.

1. A place of business shall be considered an industrial establishment if the place of business:

i. Having a Standard Industrial Classification number within 22-39 inclusive, 46-49 inclusive, 51 or 76 as designated by the Standard Industrial Classification Manual prepared by the Office of Management and Budget in the Executive Office of the President of the United States; and

ii. Engaged in operations after December 31, 1983 or currently is engaging in operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling of hazardous substances or waste on-site, above or below ground.

(1) Any business operation which closed operations prior to December 31, 1983, but upon which site remains storage vessels, surface impoundments, landfills, or other types of storage facilities containing hazardous substances or wastes on-site after December 31, 1983, shall be considered by the Department to be a place of business engaged in operations which involve storage of hazardous substances or wastes, above or below ground, for the purposes of this subchapter.

2. A place of business that fails to satisfy either (a)1i or ii above shall not be considered an industrial establishment for the purposes of this subchapter.*

(b) This subchapter shall not apply in the following cases and the facilities listed below shall not be considered industrial establishments for the purpose of this subchapter:

1. Those portions of facilities currently subject to operational closure or post-closure maintenance requirements pursuant to:

i. the "Solid Waste Management Act", N.J.S.A. 13:1E-1 et seq., or

ii. the "Major Hazardous Waste Facilities Siting Act," N.J.S.A. 13:1E-29 et seq., or

iii The "Sold Waste Disposal Act," 42 U.S.C. §6901 et seq.

2. Any establishment engaged in the production or distribution of agricultural commodities.

3. Sub-groups or classes of operations within those subgroups within the Standard Industrial Classification major group numbers within 22-39 inclusive, 46-49 inclusive, 51 or 76 that have been exempted by the Department pursuant to Section 3(f) of the Act and N.J.A.C. 7:1-3.20.

7:1-3.5 Program information

Unless otherwise specified, any questions, advice, requests for meetings or conferences needed by industrial establishments concerning the requirements of this subchapter shall be addressed to the *[ECRA Office]* ***Bureau of Industrial Site Evaluation***, Division of Waste Management, New Jersey

Department of Environmental Protection, CN-028, Trenton, New Jersey 08625.

7:1-3.6 Severability

If any section, subsection, provision, clause, or portion of this subchapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this subchapter shall not be affected thereby.

7:1-3.7 Initial ECRA notice requirements

(a) The owner or operator of an industrial establishment planning to close or sell or transfer operations shall comply with the initial ECRA notice requirements of this section.

(b) The owner or operator of an industrial establishment planning to close operations shall provide the Department written notice of its decision to close operations no more than five days subsequent to public release of its decision to close operations.

(c) The owner or operator of an industrial establishment planning to sell or transfer operations shall provide the Department written notice within five days of the execution of any agreement of sale or any option to purchase.

(d) The written notice required pursuant to (b) and (c) above shall ***initially*** include *[, but not be limited to the following information:]* ***at least items 1 through 8 below (known as the General Information Submission) and may include any additional information required by items 9 through 17 below (known as the Site Evaluation Submission) available at that time. All other information required pursuant to items 9 through 17 below shall be submitted no later than 30 days subsequent to public release of its decision to close operations or execution of any agreement of sale or option to purchase to satisfy the entire notice requirements of this section.***

1. Name, current ownership *,**Standard Industrial Classification number,*** and location of the industrial establishment, including lot and block number, municipality and county *[;]* ***and latitude and longitude;***

*[2. A scaled site map identifying all areas where hazardous substances or wastes have been or currently are generated, manufactured, refined, transported, treated, stored, handled or disposed, above or below ground;

3. A detailed description of the current operations and process at the industrial establishment *organized in the form of a narrative report designed to guide the Department step-by-step through a plant evaluation*, with particular emphasis on areas of the process stream where hazardous substances and wastes are generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground;

4. A description of the types and locations of storage vessels, surface impoundments, secured landfills, or other types of storage facilities containing hazardous substances or wastes;]*

[5.] ***2.*** The names, current addresses, and descriptions of all previous known operations at the site prior to the current owner or operator;

*[6. A complete inventory of hazardous substances and wastes, including description and location of all hazardous substances or wastes generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground, and a description of the location, types and quantities of hazardous substances and wastes that will remain on site;

7. A detailed description and location on a scaled map of any known spill or discharge of hazardous substances or wastes that occurred during the historical operation of the site and a detailed description of any remedial actions undertaken to handle any spill or discharge of hazardous substances or wastes;

8. Any detailed soil, groundwater and surface water sampling plan, including, but not be limited to, any graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and any evaluation of all residual soil, groundwater and surface water contamination, and include, but not be limited to, the following:

i. A scaled site map indicating areas where soil, groundwater and surface water will be sampled;

ii. The methodology to be utilized to obtain soil, groundwater and surface water samples, including for example, depth and location of soil borings, procedures for installing groundwater monitoring well and other sampling methodology details;

iii. The types of analyses to be performed on the soil, groundwater and surface water samples;

iv. The name of the laboratory hired to perform the analyses of soil, groundwater and surface water;

v. The Quality Assurance/Quality Control Plan developed for the detailed sampling plan; and

vi. The provisions made to provide the Department with split samples of all soil, groundwater and surface water samples.

9. A detailed description of the procedures to be used to decontaminate and/or decommission equipment and buildings involved with the generation, manufacture refining, transportation, treatment, storage, handling, or disposal of hazardous waste or substances including the name and location of the ultimate disposal facility.

10. A list of all federal and state environmental permits applied for and received throughout the history of ownership of the site, including:

i. Application date;

ii. Date of approval or denial;

iii. Reason for denial, if applicable;

iv. Permit expiration date; and

v. Permit identification number.

11. A list of all Departmental or other governmental enforcement actions for violation of any applicable federal, state or local environmental laws or regulations throughout the history of ownership of the site, including:

i. Type of enforcement action;

ii. Date of enforcement action;

iii. Description of enforcement action; and

iv. Final resolution of enforcement action.]*

[12.] ***3.*** Date of public release of the closure decision and a copy of the appropriate public announcement, if applicable;

[13.] ***4.*** Date of execution of the agreement of sale or option to purchase, the name and address of the other parties to the transfer, and a copy of the agreement of sale or option to purchase, if applicable;

[14.] ***5.*** Actual date for closure of operations or transfer of title, as applicable;

[15.] ***6.*** Name, address and telephone number of an authorized agent of the industrial establishment who shall be designated to work with the Department concerning the owner or operator's responsibilities under the Act and this subchapter;

*7. A list of all Federal and State environmental permits applied for and received throughout the history of ownership of the site, including:

i. Application date;

ii. Date of approval or denial;

iii. Reason for denial, if applicable;

iv. Permit expiration date; and

v. Permit identification number.

8. A list of all Departmental or other governmental enforcement actions for violation of any applicable Federal, State or local environmental laws or regulations throughout the history of ownership of the site, including:

i. Type of enforcement action;

ii. Date of enforcement action;

iii. Description of enforcement action; and

iv. Final resolution of enforcement action.

9. A scaled site map identifying all areas where hazardous substances or wastes have been or currently are generated, manufactured, refined, transported, treated, stored, handled or disposed, above or below ground;

10. A detailed description of the current operations and process at the industrial establishment organized in the form of a narrative report designed to guide the Department step-by-step through a plant evaluation, with particular emphasis on areas of the process stream where hazardous substances and wastes are generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground;

11. A description of the types and locations of storage vessels, surface impoundments, landfills, or other types of storage facilities containing hazardous substances or wastes;

12. A complete inventory of hazardous substances and wastes, including description and location of all hazardous substances or wastes generated, manufactured, refined, transported, treated, stored, handled or disposed on site, above and below ground, and a description of the location, types and quantities of hazardous substances and wastes that will remain on site;

13. A detailed description and location on a scaled map of any known spill or discharge of hazardous substances or wastes that occurred during the historical operation of the site and a detailed description of any remedial actions undertaken to handle any spill or discharge of hazardous substances or wastes;

14. Any detailed sampling or other environmental evaluation measurement plan, including soil, groundwater, surface water, and air sampling, proposed as appropriate for the site of the industrial establishment by the owner or operator of the industrial establishment for review and approval of the Department. Any sampling plan developed may include, but not be limited to, any graphic and narrative descriptions of geographic and hydrogeologic characteristics of the industrial establishment and any evaluation of all environmental media, and including, but not limited to, the following:

i. A detailed, scaled site map that indicates all areas of environmental concern, including possible routes of exposure to possible environmental hazards;

ii. A detailed, scaled site map that indicates locations of all samples or areas of environmental measurements;

iii. Justification for the location, number and frequency of samples proposed for collection;

iv. Sampling methodology for all environmental media, including soil, groundwater, surface water and air shall be detailed including:

(1) Types of sample containers and closures, cleaning procedures of sample containers/closure and sampling equipment;

(2) Use of quality assurance samples (blanks, duplicates);

(3) Groundwater monitoring well installation techniques and designs; and

(4) Chain of custody procedures and sample documentation.

v. The analytical methodologies to be performed by parameters to be analysed, justification for selection of monitoring parameters and analytical methodologies;

vi. The name, address of the laboratory contracted to provide analytical and technical support to the project;

vii. A site specific Quality Assurance plan developed for the detailed environmental evaluation, measurement, or sampling plan; and

viii. The provisions made to provide the Department with split samples of all environmental media.

(1) The owner or operator of an industrial establishment may propose to the Department that no sampling plan need be developed and implemented for the site of the industrial establishment pursuant to N.J.A.C. 7:1-3.7(d)14 and shall provide full documentation of the justifications, other than economic reasons, for exemption from the requirements of subparagraph 14 above to the Department for review and approval.

15. A detailed description of the procedures to be used to decontaminate and/or decommission equipment and buildings involved with the generation, manufacture refining, transportation, treatment, storage, handling, or disposal of hazardous waste or substances including the name and location of the ultimate disposal facility.*

16. Copies of all soil, groundwater and surface water sampling results*, including effluent quality monitoring,* conducted at the site of the industrial establishment during the history of ownership by the owner or operator, including a detailed description of the location, methodology, analyses, laboratory and other factors involved in preparation of the sampling results; and

17. Other information requested in writing by the Department *deemed necessary for the purpose of implementing the Act and this subchapter*.

(e) All initial ECRA notice submissions pursuant to this section should be addressed to:

[ECRA Office] *Bureau of Industrial Site Evaluation*
Division of Waste Management
New Jersey Department of Environmental Protection
CN-028
Trenton, New Jersey 08625
Attention: Initial ECRA Notice Submission

(f) The Department shall not process any ECRA review until all information required pursuant to (d)1 through 17 above has been satisfactorily completed and submitted by the owner or operator of an industrial establishment to the Department; therefore, information required pursuant to (d)1 through 17 above should be completed and submitted to the Department as expeditiously as possible.

7:1-3.8 Preliminary inspection

(a) The Department *[shall]* *intends to* schedule and conduct a preliminary site inspection of all industrial establishments notifying the Department pursuant to N.J.A.C. 7:1-3.7*(d)1 through 17*.

1. The Department may decide not to schedule and conduct a preliminary site inspection of an industrial establishment based upon the review of the information submitted pursuant to N.J.A.C. 7:1-3.7(d)1 through 17.

(b) The Department's representative shall be accompanied by appropriate technical, scientific and engineering representatives of the industrial establishment and have access to all site areas, buildings and records deemed necessary by the Department for the purposes of the Act and this subchapter.

(c) The Department shall *[issue]* ***prepare*** a preliminary inspection report detailing conditions on the site of the industrial establishment and provide guidance to the owner or operator of the industrial establishment concerning ECRA compliance.

1. The Department shall not be bound by any ***oral*** representations*[, oral or written,]* given at or concerning the preliminary inspection.

(d) The Department shall be permitted to conduct any additional inspections as deemed necessary by the Department for the purpose of the Act and this subchapter.

(e) The owner or operator of the industrial establishment shall provide the Department with access to all site areas, buildings, and records upon reasonable notice for any additional inspections as deemed necessary by the Department for the purposes of the Act and this subchapter.

(f) The Department *[shall]* ***intends to*** conduct a review of the ***reasonably available*** records of the United States Environmental Protection Agency, the Department, the appropriate county and the appropriate municipality pertaining to the relevant industrial establishment to further supplement their information concerning the relevant industrial establishment.

7:1-3.9 Implementation of soil, groundwater and surface water sampling plan

(a) The Department will advise the owner or operator of the industrial establishment concerning the adequacy of *[the]* ***any*** detailed soil, groundwater and surface water sampling plan submitted pursuant to N.J.A.C. 7:1-3.7***(d)14***.

***1. Any revision of a sampling plan required by the Department shall be developed and resubmitted by the owner or operator of an industrial establishment to the Department for final review and approval.**

2. If the Department requires development of a detailed sampling plan based upon review of information submitted pursuant to N.J.A.C. 7:1-3.7(d)1 through 17 and the owner or operator of the industrial establishment has not developed any sampling plan, the owner or operator of the industrial establishment shall propose and submit a detailed sampling plan pursuant to N.J.A.C. 7:1-3.7(d)14*.

(b) The owner or operator of the industrial establishment shall, after written Departmental approval, implement prior to submission of their negative declaration or cleanup plan pursuant to this subchapter the detailed soil, groundwater and surface water sampling plan for the site of the industrial establishment reflecting the known historical and current uses of the site. The Department will be available to advise the owner or operator of the industrial establishment concerning such plan. ***The owner or operator of the industrial establishment shall provide the Department with notice and opportunity to observe actual sampling conducted pursuant to an approved plan.***

(c) Upon receipt and review of a negative declaration or cleanup plan the Department, after evaluating the site, may require that additional sampling information be prepared and submitted to the Department prior to approval or disapproval of a negative declaration or cleanup plan.

7:1-3.10 Required submission of cleanup plan or negative declaration

(a) The owner or operator of an industrial establishment planning to close operations shall, upon closing operations or 60 days subsequent to public release of its decision to close or transfer operations, whichever is later, submit to the Department for approval either of the following:

1. A negative declaration prepared pursuant to N.J.A.C. 7:1-3.11, or

2. A copy of a cleanup plan prepared pursuant to N.J.A.C. 7:1-3.12.

[3. A surety bond or other financial security guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan pursuant to N.J.A.C. 7:1-3.13.]

(b) The owner or operator of an industrial establishment planning to sell or transfer operations shall within 60 days prior to transfer of title submit to the Department for approval either of the following:

1. A negative declaration prepared pursuant to N.J.A.C. 7:1-3.11, or

2. A copy of the cleanup *must be* attached to the contract or agreement of sale or any option to purchase which may be entered into with respect to the transfer of operations prepared pursuant to N.J.A.C. 7:1-3.12.

i. In the event that any sale or transfer agreements or options have been executed prior to the submission of the cleanup plan to the Department, the cleanup plan shall be transmitted, by certified mail, prior to transfer of operations, to all parties to any transaction concerning the transfer of operations, including purchasers, bankruptcy trustees, mortgagees, sureties and financers.

[(c) Upon written approval by the Department of the cleanup plan the surety bond or other financial security submitted pursuant to (a)3 above may be increased to reflect revised cost estimates, as necessary.]

[(d)] ***(c)*** *[Upon]* ***Within 14 days of*** written approval by the Department of the cleanup plan required by ***(a)2 and*** (b)2 above, the owner or operator of an industrial establishment shall obtain ***and submit to the Department*** a surety bond or other financial security approved by the Department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the approved cleanup plan pursuant to N.J.A.C. 7:1-3.13.

[(e)] ***(d)*** **The cleanup plans and site detoxification required pursuant to *(a)2 and*** (b)2 above shall be implemented by the owner or operator of the industrial establishment except that the purchaser, transferee, mortgagee or other party to the transfer may assume cleanup plan implementation responsibility upon the Department's prior written approval of any appropriate agreement ***to be*** executed between the parties.

1. The surety bond or other financial security required pursuant to *[(d)]* ***(c)*** above and N.J.A.C. 7:1-3.13 shall *[in all cases]* remain the responsibility of the owner or operator of the industrial establishment *[and shall not be assumed by]* ***except that*** the purchaser, transferee, mortgagee or other parties to the transfer ***may assume the financial requirements for cleanup pursuant to N.J.A.C. 7:1-3.13 upon the Department's prior written approval of any appropriate agreement to be executed between the parties.**

(e) The Department shall not approve any cleanup plan or negative declaration submitted pursuant to this section until all information required pursuant to N.J.A.C. 7:1-3.7(d)1 through 17 has been satisfactorily completed and submitted by the owner or operator of an industrial establishment to the Department.*

7:1-3.11 Criteria for negative declarations

(a) A negative declaration shall be a written affidavit duly notorized and signed by an authorized officer or management official of the industrial establishment stating that there has been no discharge of hazardous substances or waste on the site or that any such discharge has been cleaned up in accordance with procedures approved by the Department, and there remains no hazardous substances or wastes at the site of the industrial establishment above a level found acceptable by the Department based upon its review of the data submitted.

(b) A negative declaration shall include the following information to substantiate the written affidavit required in (a) above:

1. Description of cleanup actions taken at the site, including but not limited to, any revisions to the *[approved]* ***proposed*** decontamination/decommissioning plan, activities involving the removal of contaminated substances, completed manifest forms and ultimate disposal site utilized;

2. The sampling results from the detailed soil, groundwater and surface water sampling plan prepared by the owner or operator of the industrial establishment, pursuant to 7:1-3.*[7;]* ***9*** and

3. Other information requested in writing by the Department ***for the purposes of implementing the Act and this subchapter***.

(c) The Department shall within 45 days of submission of a negative declaration from the owner or operator of the industrial establishment approve or disapprove a negative declaration after evaluation of the negative declaration, other information submitted, inspection reports and existing Departmental records as follows:

1. Issue written approval of the negative declaration based upon the information provided; or

2. Inform the industrial establishment by certified or registered mail that the negative declaration shall not be approved by the Department and that a cleanup plan pursuant to N.J.A.C. 7:1-3.12 must be submitted to the Department for approval within 60 days of notification of the Department's decision pursuant to this subsection.

7:1-3.12 Criteria for cleanup plan

(a) A cleanup plan shall be prepared and submitted by an authorized officer or management official of the industrial establishment to the Department for written approval including the following information:

1. The sampling results from the detailed soil, groundwater and surface water sampling plan prepared by the owners or operators of the industrial establishment *[and approved by the Department]*, pursuant to N.J.A.C. 7:1-3.9.

2. Preparation of a detailed, recommended cleanup plan for the most practicable method of cleanup for the site of the industrial establishment, including time schedules for implementation and itemized cost estimates for each item of the cleanup plan; and

3. The Department, upon a finding that the evaluation of a site for cleanup purposes necessitates additional information, shall notify the owner or operator of the industrial establishment by certified mail of any additional information required and the due date for that submission.

(b) The Department shall evaluate the cleanup plan, other information submitted, inspection reports and existing Departmental records prior to approval or disapproval of a cleanup plan.

1. Upon dissapproval of the cleanup plan by the Department, the owner or operator of the industrial establishment shall be informed of the cleanup plans deficiency and be advised by certified mail of the changes required to insure the Department's written approval of a revised cleanup plan.

2. Appropriate meetings and conferences between a representative of the industrial establishment and the Department may be scheduled as necessary.

3. The industrial establishment shall continue to prepare and submit revised cleanup plans satisfying the deficiencies noted by the Department until the Department issues a written approval of a cleanup plan.

4. An industrial establishment filing a cleanup plan shall not be in compliance with the Act or this subchapter until receiving written Department approval of a cleanup plan, including time schedules for cleanup plan implementation.

(c) *[Upon]* ***Within 14 days of*** written approval of a cleanup plan by the Department, the owner or operator of the industrial establishment shall obtain a surety bond or other financial security approved by the Department guaranteeing performance of the cleanup plan in an amount equal to the cost estimate for the cleanup plan as set forth in N.J.A.C. 7:1-3.13.

(d) Upon written approval of the cleanup plan and the surety bond or other financial security pursuant to (c) above, the owner or operator of the industrial establishment shall begin implementation of the cleanup plan according to the time schedule for implementation therein, unless implementation of the cleanup plan has been deferred pursuant to N.J.A.C. 7:1-3.14 or the industrial establishment obtains the prior written approval of the Department of any appropriate written agreement allowing another party to implement the cleanup plan pursuant to N.J.A.C. 7:1-3.10(d).

(e) The Department shall conduct a final inspection of the site of the industrial establishment to insure compliance with the cleanup plan.

1. The owner or operator of the industrial establishment shall correct any deficiencies noted by the Department concerning the implementation of the requirements of the cleanup plan during the final inspection.

2. The Department, upon satisfactory completion thereof, shall notify in writing the owner or operator of the industrial establishment that the cleanup plan has been fully implemented.

7:1-3.13 Financial requirements for cleanup plans

(a) *[Upon]* ***Within 14 days of written*** approval of the cleanup plan by the Department, the owner or operator of the industrial establishment shall obtain a surety bond or other financial security in an amount equal to the cost estimate approved by the Department for the cleanup plan as set forth in ***either*** (b), (c) *[and]* *,* (d) ***or (e)*** below.

(b) Surety bond guaranteeing payment into a cleanup plan trust fund requirements include the following:

1. An owner or operator of an industrial establishment may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this *[paragraph]* ***subsection*** and by having the bond delivered to the Department by certified mail after the Department's

cleanup plan approval. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in the most recent version of Circular 570 issued by the U.S. Department of the Treasury which is published annually on July 1 in the Federal Register and specifically be approved in writing by the Department.

2. The wording of the surety bond shall be *[similar to]* ***identical with*** the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. The owner or operator of an industrial establishment who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund.

4. The bond shall guarantee that the owner or operator of an industrial establishment will:

i. Fund the standby trust fund in an amount equal to the penal sum of the bond prior to the expected date of beginning implementation of the cleanup plan, or

ii. Provide alternative financial assurance as specified in this section within 15 days after receipt by the Department of a notice of cancellation of the bond from the surety.

5. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond shall be in an amount *[at least]* equal to *[the amount of]* the cost estimate approved by the Department for the cleanup plan;

7. Whenever the cleanup plan cost estimate increases to an amount greater than the amount of the surety bond the owner or operator shall within 60 days of the increase, cause the amount of the surety bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted cleanup cost estimate decreases during the operating life of the facility, the surety bond may be reduced to the amount of the new estimate following written approval by the Department. Notice of an increase or decrease in the amount of the surety bond shall be sent to the Department by certified mail within 60 days of the change.

[7.] ***8.*** The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Department.

[8.] ***9.*** The surety bond no longer satisfies the requirements of this section subsequent to the receipt by the Department of a notice of cancellation of the surety bond. Upon receipt of such notice the Department will issue a compliance order unless the owner or operator has demonstrated alternative financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within 30 days after issuance of the compliance order, the Department may direct the surety to place the penal sum of the bond in the standby trust fund.

[9.] ***10.*** The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this section.

[10.] ***11.*** The Department will notify the surety when the owner or operator funds the standby trust fund in the amount guaranteed by the surety bond or if the owner or operator provides alternative financial assurance as specified in this section.

(c) Surety bond guaranteeing performance of cleanup requirements include the following:

1. An owner or operator of an industrial establishment may satisfy the requirements of this section by obtaining a surety bond which conforms to the requirements of this *[paragraph]* ***subsection*** and by having the bond delivered to the Department by certified mail after the Department's cleanup plan approval. The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on federal bonds in the most recent version of Circular 570 issued by the U.S. Department of Treasury and specifically be approved in writing by the Department.

2. The wording of the surety bond shall be *[similar to]* ***identical with*** the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. The owner or operator of an industrial establishment who uses a surety bond to satisfy the requirements of this section shall also establish a standby trust fund by the time the bond is obtained. Under the terms of the surety bond, all payments made thereunder will be deposited directly into the standby trust fund.

4. The bond shall guarantee that the owner or operator of an industrial establishment will:

i. Perform final cleanup in accordance with the cleanup plan;

ii. Provide alternative financial assurance as specified in this section within 15 days after receipt by the Department of a notice of cancellation of the bond from the surety.

5. The surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

6. The penal sum of the bond shall be in an amount *[at least]* equal to *[the amount of]* the cost estimate approved by the Department for the cleanup plan.

7. Whenever the cleanup plan cost estimate increases to an amount greater than the amount of the surety bond the owner or operator shall within 60 days of the increase, cause the amount of the surety bond to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted cleanup cost estimate decreases during the operating life of the facility, the surety bond may be reduced to the amount of the new estimate following written approval by the Department. Notice of an increase or decrease in the amount of the surety bond shall be sent to the Department by certified mail within 60 days of the change.

[7.] ***8.*** The bond shall remain in force unless the surety sends written notice of cancellation by certified mail to the owner or operator and to the Department.

[8.] ***9.*** Following a determination that the owner or operator has failed to perform final cleanup in accordance with the cleanup plan and other permit requirements when required to do so under the terms of the bond, the surety will perform final cleanup in accordance with the cleanup plan. As an alternative, the surety may deposit the amount of the penal sum into the standby trust fund.

[9.] ***10.*** The surety bond no longer satisfies the requirements of this paragraph subsequent to the receipt by the Department of a notice of cancellation of the surety bond. Upon receipt of such notice the Department will issue a compliance order unless the owner or operator has demonstrated alternative financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternate financial assurance within 30

days after issuance of the compliance order, the Department may direct the surety to place the penal sum of the bond in the standby trust fund.

[10.] ***11.*** The owner or operator may cancel the bond if the Department has given prior written consent based on receipt of evidence of alternative financial assurance as specified in this section.

[11.] ***12.*** The Department will notify the surety if the owner or operator provides alternative financial assurance as specified in this section.

[12.] ***13.*** The surety will not be liable for deficiencies in the performance of cleanup by the owner or operator after the owner or operator has been notified by the Department that the owner or operator is no longer required by this section to maintain financial assurance for cleanup of the facility.

(d) Letter of credit guaranteeing payment into a cleanup plan trust fund requirements include the following:

1. An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph and by having it delivered to the Department by certified mail after the Department's cleanup plan approval. The letter of credit shall be effective before the initial implementation of the cleanup plan. The issuing institution shall be a bank or other financial institution which has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a Federal or State agency.

2. The wording of the letter of credit shall be *[similar to]* ***identical with*** the wording in the "Wording of Instruments" guidelines available on request from the Department.

3. An owner or operator who uses a letter of credit to satisfy the requirements of this section shall also establish a standby trust fund by the time the letter of credit is obtained. Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department will be deposited promptly and directly by the issuing institution into the standby trust fund.

4. The letter of credit shall be irrevocable and issued for a period of at least one (1) year. The letter of credit shall provide that the expiration date will be automatically extended for a period of at least one (1) year. If the issuing institution decides not to extend the letter of credit beyond the then current expiration date it shall, at least 90 days before that date, notify both the owner or operator and the Department by certified mail of that decision. The 90-day period will begin on the date of receipt by the Department as shown on the signed return receipt.

5. The letter of credit shall be issued for an amount equal to the cost estimate approved by the Department for the cleanup plan.

6. Whenever the cleanup plan cost estimate increases to an amount greater than the amount of the credit the owner or operator shall within 60 days of the increase, cause the amount of the credit to be increased to an amount at least equal to the new estimate or obtain other financial assurance as specified in this section to cover the increase. Whenever the adjusted cleanup cost estimate decreases during the operating life of the facility, the letter of credit may be reduced to the amount of the new estimate following written approval by the Department. Notice of an increase or decrease in the amount of the credit shall be sent to the Department by certified mail within 60 days of the change.

7. Following a determination that the owner or operator has failed, when required to do so, to perform cleanup in accordance with the cleanup plan or other permit requirements, the Department may draw on the letter of credit.

8. The letter of credit no longer satisfies the requirements of this paragraph subsequent to the receipt by the Department of a notice from the issuing institution that it has decided not to extend the letter of credit beyond the then current expiration date. Upon receipt of such notice, the Department will issue a compliance order unless the owner or operator has demonstrated financial assurance as specified in this section. In the event the owner or operator does not correct the violation by demonstrating such alternative financial assurance within 30 days of issuance of the compliance order, the Department may draw on the letter of credit.

9. The Department will return the original letter of credit to the issuing institution for termination when:

i. The owner or operator substitutes alternative financial assurance for cleanup plan as specified in this section, or

ii. The Department notifies the owner or operator, in accordance with N.J.A.C. 7:1-3.12(e)2, that the owner or operator is no longer required by this section to maintain financial assurance for cleanup of the industrial establishment.

(e) The owner or operator of an industrial establishment may propose, in writing to the Department, other self-bonding measures to provide the financial security required by this section to guarantee implementation of the cleanup plan.

1. If the Department does not approve in writing the other self-bonding measure proposed by the owner or operator of the industrial establishment, then the owner or operator shall comply with either (b), (c) or (d) above.

7:1-3.14 Deferral of implementation of cleanup plan

(a) If the premises of the industrial establishment would be subject to substantially the same use by the purchaser, transferee, mortgagee or other party to the transfer the owner or operator of the industrial establishment may apply in writing to the Department for approval to defer implementation of an approved cleanup plan until the use changes or until the purchaser, transferee, mortgagee or other party to the transfer closes, terminates or transfers operations.

(b) The owner or operator of the industrial establishment applying for a deferral pursuant to (a) above shall prepare a written certification duly notarized and signed by an authorized officer*s* or management official *s* of the industrial establishment ***and the other parties to the transfer*** stating that the industrial establishment shall be subject to substantially the same use by the other party to the transfer, detailing the proposed operations of that party, and attaching the written certification to the initial notice required pursuant to N.J.A.C. 7:1-3.7***(d)1 through 7*.**

(c) The Department shall, within 60 days of receiving the initial notice required pursuant to N.J.A.C. 7:1-3.7 ***(d)1 through 17*** and the written certification required pursuant to (b) above, either approve, conditionally approve or deny the written certification submitted by the owner or operator of the industrial establishment.

1. Upon the Department's approval or conditional approval of the written certification, the implementation of an approved cleanup plan and site detoxification shall be deferred until the use of the industrial establishment changes or until the other party to the transfer closes, terminates or transfers operations, subject to any Departmental conditions.

2. Upon the Department's denial of the written certification, the owner or operator of the industrial establishment shall engage in the immediate implementation of an approved

cleanup plan and site detoxification pursuant to the provisions of this subchapter and the Act.

3. The Department shall only approve the deferral of cleanup plan implementation after conducting a case-by-case review during which the owner or operator proves to the satisfaction of the Department that the deferral of cleanup plan implementation poses no threat of potential harm to the public health and safety of the citizens, property and natural resources of New Jersey, taking into consideration the location of the site and the surrounding ambient conditions.

4. The Department's authority to defer implementation of the cleanup plan set forth in this section shall not be construed to limit, restrict or prohibit the Department from directing site cleanup nor limit the liabilities of past owners or operators under any other statute, rule or regulation, but shall be solely applicable to the obligations of the owner or operator of the industrial establishment pursuant to this subchapter and the Act.

7:1-3.15 Standards for detoxification of industrial establishments

(a) Until adoption of the minimum standards required pursuant to Section 5(a) of the Act, the Department shall review, approve or disapprove negative declarations and cleanup plans on a case-by-case basis for soil, groundwater and surface water quality necessary for the detoxification of the site of an industrial establishment, including buildings and equipment, to ensure that the potential for harm to public health and safety is minimized to the maximum extent practicable, taking into consideration the location of the site and surrounding ambient conditions.

7:1-3.16 Violations and penalty provisions; voiding sales of industrial establishments

(a) Failure of the transferor of an industrial establishment to comply with any of the provisions of the Act or this subchapter shall be grounds for voiding the sale or transfer of an industrial establishment or any real property utilized in connection therewith by the transferee.

1. Transferee shall further be entitled to recover damages from the transferor due to the voiding the sale pursuant to (a) above.

2. Failure to comply with any provisions of the Act or this subchapter shall render the owner or operator of an industrial establishment strictly liable, without regard to fault, for all cleanup and removal costs ***and for all direct*** and indirect damages resulting from the failure to implement any cleanup plan necessary.

(b) Failure of an industrial establishment to submit a negative declaration or cleanup plan pursuant to this subchapter shall be grounds for voiding the sale or transfer of the industrial establishment or any real property utilized in connection therewith by the Department.

(c) Any person who knowingly gives or causes to be given any false information or who fails to comply with the provisions of the Act or this subchapter shall be liable to a penalty of not more than $25,000 for each offense.

1. If the violation is of a continuing nature, each day during which it continues shall constitute an additional and separate offense.

2. Penalties shall be collected in a civil action by a summary proceeding under the Penalty Enforcement Law, N.J.S.A. 2A:58-1 et. seq.

(d) Any officer or management official who knowingly directs or authorizes the violations of any provisions of the Act or this subchapter shall be personally liable for any penalties established pursuant to (c) above.

7:1-3.17 Effective date of act; Special provisions for industrial establishments initiating sale or transfer or closure of operations before December 31, 1983

(a) The Department interprets Section 11 of the Act to mean that the Act becomes fully effective on December 31, 1983.

(b) Any owner or operator of an industrial establishment planning to close, terminate or transfer operations or sell or transfer title of an industrial establishment on or after December 31, 1983 shall be subject to all the provisions of the Act and this subchapter.

(c) The owner or operator of an industrial establishment that initiated the closure or transfer of title prior to December 31, 1983 but will not complete the closure operations or transfer of title until on or after December 31, 1983 shall be subject to all the provisions of the Act and this subchapter provided that the following exceptions to N.J.A.C. 7:1-3.7 and 3.*[8]* ***10*** shall apply:

1. Initial notice of the closure or transfer of title of these industrial establishments may be submitted to the Department *[five days from December 31, 1983 or until January 5, 1984.]* ***no later than April 19, 1984*.**

2. Negative declarations or cleanup plans, as appropriate, may be submitted to the Department for approval *[60 days from December 31, 1983 or until March 1, 1984.]* ***no later than May 18, 1984 or as otherwise required by this subchapter*.**

3. All other applicable provisions of this subchapter not conflicting with (c)1 and 2 above shall apply to any industrial establishment under the circumstances described in this section.

7:1-3.18 Closing, terminating or transferring operations of an industrial establishment

(a) For the purposes of this subchapter, the closing, terminating or transferring operations of an industrial establishment shall mean:

1. The cessation of all operations which involve the generation, manufacture, refining, transportation, treatment, storage, handling or disposal of hazardous substances and wastes;

2. Any temporary cessation for a period of not less than two years;

3. Any other transaction or proceeding through which an industrial establishment becomes non-operational for health or safety reasons;

4. Any change in ownership *[, except for corporate reorganization not substantially affecting the ownership of the industrial establishment,]* including but not limited to:

i. Sale of stock in the form of a statutory merger or consolidation;

ii. Sale of the controlling share of the assets;

iii. Conveyance of the real property;

iv. Dissolution of corporate identity;

v. Financial reorganization; and

vi. Initiation of bankruptcy proceedings.

(b) For the purposes of (a)4i through vi above and this subchapter corporate reorganization not substantially affecting the ownership of the industrial establishment shall not be considered any change in ownership.

7:1-3.19 Bankruptcy provision

(a) No obligations imposed by the Act or this subchapter shall constitute a lien or claim which may be limited or discharged in a bankruptcy proceeding.

(b) All obligations imposed by the Act or this subchapter shall constitute continuing regulatory obligations imposed by the State of New Jersey for the purposes of 11 U.S.C. 362(b)(4).

7:1-3.20 Procedure for exemptions of sub-groups within SIC codes from definition of industrial establishment

(a) Sub-groups or classes of operations within Standard Industrial Classification major group numbers within 22-39 inclusive, 46-49 inclusive, 51 or 76 may petition the Department in writing for an exemption as a class from the requirements of the Act and this subchapter due to their determination that the operations of their type of industrial establishment do not pose a risk to public health and safety.

(b) Industrial establishments set forth in (a) above shall submit all appropriate documentation, evidence and other proofs that they deem justify exemption as a class from the Act and this subchapter.

(c) The Department on its own initiative may also establish a record based on experience or other appropriate research justifying an exemption of sub-group or class of operations as noted in (a) above.

(d) Upon a finding that a sub-group or class of operations noted in (a) above do not pose a risk to the public health and safety, the Department may amend (e) below pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., to exempt said sub-group or class of operations from consideration as an industrial establishment for the purposes of the Act and this subchapter.

(e) The following sub-groups or classes of operations within those sub-groups described in (a) above shall not be considered industrial establishments for the purposes of the Act and this subchapter: (Reserved).

7:1-3.21 Additional Departmental remedial actions

(a) Approvals by the Department of negative declarations and cleanup plans pursuant to this subchapter shall be based upon all information provided to the Department and existing information and standards, as applicable; provided however, that nothing herein shall be construed to limit, restrict or prohibit the Department from imposing requirements or remedial actions for subsequent closing, terminating or transferring operations of an industrial establishment pursuant to the Act.

(b) Nothing in the Act or this subchapter shall be construed to limit, restrict, or prohibit the Department from directing immediate site cleanup under any other statute, rule or regulation.

(a)

MARINE FISHERIES COUNCIL

Crab Dredging in the Atlantic Coast Section

Notice of Vetoed Amendment: N.J.A.C. 7:25-7.13

On November 2, 1983, Robert E. Hughey, Commissioner, Department of Environmental Protection, adopted amendments to N.J.A.C. 7:25-7.13 governing crab dredging in the Atlantic Coast Section. These amendments were proposed on September 6, 1983 at 15 N.J.R. 1413(a) and were effective upon publication of the adoption notice at 15 N.J.R. 1943(a) on November 21, 1983. Pursuant to N.J.S.A. 23:2B-5b empowering the Marine Fisheries Council to disapprove within 60 days of submittal thereto any rule or regulation or any amendment thereto proposed by the Commissioner pursuant to the Marine Fisheries Management and Commercial Fisheries Act, N.J.S.A. 23:2B-1 to -18, the Marine Fisheries Council vetoed this adoption by unanimous vote at its regular December 8, 1983 meeting wherein a quorum of seven was present.

The Notice of Vetoed Amendment serves to give notice of the disapproval of the Marine Fisheries Council of this amendment, thereby removing the previously-adopted amendments and rendering those amendments no longer of full force and effect.

(b)

THE COMMISSIONER

Recycling Grants and Loans Program Application and Funding Criteria

Adopted Amendments: N.J.A.C. 7:26-15.5 and 15.7, N.J.A.C. 14A:6-1.5 and 1.7

Proposed: January 3, 1984 at 16 N.J.R. 6(a).
Adopted: February 7, 1984 by Leonard S. Coleman, Jr., Commissioner, Department of Energy, and Robert E. Hughey, Commissioner, Department of Environmental Protection.
Filed: March 5, 1984 as R.1984 d.75 **without change.**

Authority: L.1981, c.278, N.J.S.A. 13:1E-6(a)2 and N.J.S.A. 52:27F-11q.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 1, 1987.

Summary of Public Comments and Agency Responses:

The Departments received one letter addressing the subject matter of the proposed amendments. The commenter favored extending the application deadline in order to give municipalities sufficient time to coordinate their grant applications. The Departments agree with this comment and will adopt the proposed amendments without change.

The Departments also received one other comment to the effect that a date should be set in the regulations for awarding grants and loans. This particular comment did not specifically concern the amendments proposed by the Departments. However, the Departments believe that it merits a response at this time. Since the number of grant and loan requests received by the Departments varies in number and complexity from year to year, it is difficult for the Departments to determine in advance the dates on which the awards can reasonably be made. The Departments have endeavored to award grants on an expedited basis in the past, and will continue to do so in the future. In addition, wherever possible, deadlines will be

specified in the guidelines that the Departments prepare and distribute to applicants. This should provide an additional measure of certainty with respect to the award process.

Full text of the adoption follows.

14A:6-1.5(7:26-15.5) Application and award procedures for Recycling Grants

(a) (No change.)

(b) Applications for Recycling Grants shall be accepted by the Departments between January 1 and March 15 of each grant year beginning in 1983 and ending in 1987. Applications shall be made on such forms as provided by the Departments and shall be submitted in triplicate to:

NJDEP and NJDOE
Office of Recycling
Grant and Loan Officer
101 Commerce Street
Newark, New Jersey 07102

(c)–(g) (No change.)

14A:6-1.7(7:26-15.7) Application and award procedures for Planning and Program Grants and Education Grants

(a) Subject to the further restrictions contained in (c) below the following shall be eligible to apply for and receive either or both Program and Planning Grants and Education Grants, unless specifically limited to Program and Planning Grants alone or Education Grants alone:

1. Counties, provided that the county has a recycling coordinator during the grant period;
2. Municipalities, provided that the project is not inconsistent with the appropriate county solid waste district management plan(s);
3. Regional recycling coalitions, provided that an ordinance or resolution, as appropriate authorizing application and funding has been approved by the appropriate governing bodies of the coalition members, and that the project is not inconsistent with the appropriate county solid waste district management plan(s);
4. Non-profit groups involved directly with the implementation of recycling or litter abatement programs, provided that the project is not inconsistent with the appropriate county solid waste district management plan(s). Non-profit groups shall be eligible to apply only for Education Grants.

(b) Applications for Planning and Program Grants and Education Grants shall be made at such time as announced on such forms provided and in accordance with any guidelines issued by the Departments. Applications shall be submitted in triplicate to:

NJDOE and NJDEP
Office of Recycling
Grant and Loan Officer
101 Commerce Street
Newark, New Jersey 07102

(c) Planning and Program Grants and Education Grant applications shall be subject to the following minimum amounts. The Departments shall issue such guidelines as are necessary to encourage counties to include provisions in the applications that will allocate grant monies to municipalities which require less than the minimum amounts.

1. For Planning and Program Grant applications, $5,000;
2. For Education Grant applications, $2,000.

(d) Planning and Program Grants may be used for any legitimate administrative, planning or operating expenses associated with publicly sponsored recycling programs, including but not limited to:

1. Staff salaries and fringe benefits;
2. Office expenses;
3. Equipment purchases;
4. Enforcement; and
5. Construction of facilities.

(e) Education Grants may be used for any legitimate expenditures associated wsith recycling and litter abatement publicity, information and education programs, including:

1.–3. (No change.)

(f) Planning and Program Grants and Education Grants shall be awarded competitively based on the Departments' assessments of factors which shall include but not be limited to the following:

1. The ability of the applicant to successfully implement the proposed project;
2. The relative contribution that the proposal will make toward achieving the State's recycling goals; and
3. The cost effectiveness and innovativeness of the proposed projects.

(g) Applicants receiving either Planning and Program Grants or Education Grants shall file annual progress reports with the Departments during the grant year and for two years following receipt of the grant. Applicants who receive a municipal recycling grant pursuant to N.J.A.C. 14A:6-1.5(7:26-15.5) shall be deemed to have satisfied this requirement.

HIGHER EDUCATION

(a)

BOARD OF HIGHER EDUCATION

Colleges and Universities
Licensing and Degree Program Approval Rules

Adopted New Rule: N.J.A.C. 9:1

Proposed: September 6, 1983 at 15 N.J.R. 1418(a).
Adopted: December 21, 1983 by T. Edward Hollander, Chancellor and Board Secretary.
Filed: March 5, 1984 as R.1983 d.74, **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:3-14, 18A:3-15, 18A:68-6.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): January 17, 1989.

Summary of Public Comments and Agency Responses:

The Department received twelve letters from various institutions and associations commenting on the proposed rules. Many of the letters objected to the applicability of Subchapter One to the independent institutions and to certain of the public institutions. The criticisms held that once the college had satisfied the "licensure threshold," it was not subject to

regulation by the Board of Higher Education. The Department's response, confirmed by advice of the Attorney General, was that such was not the intent of the Legislature in conferring upon the Board the responsibility to protect the public interest in higher education.

Specific criticisms follow:

Comment:
9:1-1.3 should not list the responsibilities and duties of trustees or chief executive officers.

Response:
The language is included as guidance and is not limiting.

Comment:
9:1-1.3 should be amended to provide flexibility in the provision of handbooks and other materials to students, faculty, and staff.

Response:
The agency amended the rule to exclude staff and to provide for provision "on a timely periodic basis."

Comment:
9:1-1.5 should not require distribution of course objectives, requirements, and standards of achievement to students at the start of the term.

Response:
The agency rejected this suggestion in the belief that students have the right to this information and that having it is necessary to their success in college.

Comment:
9:1-1.5 should be amended to be more flexible in the definition of the 30 week length of the academic year.

Response:
The agency amended the rule to read "30 weeks or its equivalent."

Comment:
9:1-1.6 should be deleted because the Board of Higher Education does not have authority to approve branch campuses.

Response:
The agency rejected this suggestion because branch campuses are a legitimate concern of the Board of Higher Education and are within its licensing power conferred by N.J.S.A. 18A:68-3, which conclusion is supported by formal opinion of the Attorney General.

Comment:
9:1-1.7 is too restrictive in requiring community college faculty to have earned the master's degree in the field of specialization in which they teach.

Response:
The agency added the words "or must present unassailable compensating qualifications."

Comment:
9:1-1.12 should not require that college credit courses offered in high school be the same as those offered to regularly admitted students on the college campus.

Response:
The agency rejected this suggestion in the belief that courses for which credit is given should be equivalent no matter where they are offered.

Comment:
9:1-2.1 should be amended to remove the requirements that all reports filed by the institution with the Middle States Commission on Higher Education and reports filed by the Commission with the institution be submitted to the Chancellor.

Response:
The agency amended the rule to require the filing with the Chancellor of the letter of the Middle States Commission informing the institution of its accreditation status provided that the representatives of the Chancellor working with the Middle States team participate fully in accreditation visits, excluding voting privileges with respect to recommendations regarding accreditation status.

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

SUBCHAPTER 1. REGULATIONS FOR NEW JERSEY INSTITUTIONS OF HIGHER EDUCATION

FOREWORD

New Jersey statutes provide that corporations furnishing instruction or learning leading to a diploma or degree shall obtain from the Board of Higher Education "a license to carry on the business under such rules as the Board of Higher Education may prescribe" (18A:68-3). The statutes further require that corporations submit and obtain approval of the basis and conditions of "any course or courses of study" leading to "the grade of a degree" prior to the conferring of such a degree (18A:68-6).† To assist institutions seeking to fulfill the necessary requirements outlined in 18A:68-3 and 18A:68-6, and to aid the Department of Higher Education and the Board of Higher Education in making judgments concerning institutions, the board has from time-to-time set forth rules pertaining to licensure and approval. These newly revised rules have been drafted to serve the above mentioned purposes. These rules were viewed by the Licensure and Approval Advisory Board and by the presidents of New Jersey institutions of higher education prior to their adoption by the Board of Higher Education.

In developing and administering the rules for licensure, the Board and Department are mindful of the responsibilities vested in the trustees of individual institutions and of the institutional autonomy that is characteristic of American higher education. These rules delineate the Board's expectations for degree granting institutions of higher education; in the case of institutions already licensed and accredited, they do not contemplate that, in the absence of compelling reason, the Board will substitute its review processes (N.J.A.C. 9:1-2.1) for those of the institutions themselves or for those of the established accrediting agencies.

† Independent institutions whose charters antedate 1887 are exempt from approval of the basis or conditions for awarding the degree as stipulated in N.J.S.A. 18A:68-6.

The following assumptions governed the drafting of these regulations and serve to define their scope and intention:

1. Regulations shall apply to all colleges in New Jersey generally except where other statutes and Board of Higher Education regulations exist that supplement these regulations or more specifically govern the situation (other regulations are defined as written regulations, standard, or policy statements duly approved by the Board of Higher Education, such as "Regulations Governing County Community Colleges"; "Standards for the Development and Evaluation of Graduate Programs in New Jersey Colleges and Universities", and so forth);

2. While it is desirable that regulations be written to permit as much institutional flexibility as possible, their primary purpose is to protect the public interest when institutional good will, competence or knowledge are absent;

3. Although the primary purpose of the regulations is to assure that minimum standards are met, they should also promote those facets of management that lead to institutional good health, productivity, and excellence beyond the minimum;

4. Regulations are intended to make the applications of the law specific and have the effect of law (for example, "Copies of all statements of purpose shall be filed with the Chancellor. . . ."");

5. Standards specify desirable and acceptable practices which further implement the good intentions of the law but are not required in a specific form so that institutional flexibility may be maintained (for example, "Statements of institutional purpose should define the educational climate to be established. . . .");

6. While the ultimate responsibility for the enforcement of the regulations must by law rest with the Chancellor and the Board of Higher Education, the Chancellor and the Board may choose to look to the educational community for the sources of good practice in academic and financial management that have already won peer group approval.

7. Because of changes in peer group emphasis on the details of good management and in order to permit flexibility on the part of the State when administering the regulations (and on the part of institutions governed by the regulations), where appropriate, the regulations shall use language such as "adequate", "suitable", "proper", "desirable", and so forth, to describe the end sought;

8. Specific interpretations of such words as "adequate", and so forth, are to be determined by the Chancellor and ultimately the Board of Higher Education in accord with existing standards of good peer group practice;

9. Where peer group practice has evolved variations in desired requirements because of the nature of the degree offered, as in the case of faculty qualifications for associate level versus baccalaureate level degrees, the regulations and standards shall so specify.

In addition to those provisions of Title 18 developed in these regulations and standards, the Board of Higher Education is further charged by statute with special responsibilities for the public institutions. Other documents, such as the county community college regulations and standards and policy statements concerning the State colleges and the State university should be consulted.

9:1-1.1 Definitions

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

"Adequate, appropriate, equivalent, significant, suitable, and sufficient" mean adequate, appropriate, equivalent, significant, suitable, and sufficient, respectively, in the judgment of the Chancellor or his representative and ultimately the Board of Higher Education.

"Academic department" is a subdivision of an institution of higher education designated as such which is responsible for instruction and/or research in a specific discipline or disciplines.

"Academic division" is a major administrative unit of a school, college or university, usually consisting of related departments or disciplines.

"Branch campus" is a physical facility located at a place other than the institution's principal campus offering one or more ***complete*** programs leading to a credit bearing certificate, degree or diploma, without regard to the number of courses and course enrollments per academic year. A branch campus requires approval by the Board of Higher Education.

"College" means an institution of higher education which offers instruction beyond the 12th grade level, has an independent board of trustees and whose programs satisfy the requirements for a degree at the associate, baccalaureate, and/or graduate level and, with the exception of those institutions which have as their major mission the preparation of individuals for religious vocation, offer a range of degree programs. It has a faculty whose duties include some combination of the instruction of students and involvement in scholarship and research. A junior/community college or county college is an institution of higher education which offers the associate degree. A senior college offers degrees up to the baccalaureate level and/or offers graduate and professional degrees.

"Educational program" is a group of related courses, organized for the purpose of attaining specified educational objectives.

"Extension Center" means a physical facility located at a place other than the institution's principal campus with no complete credit bearing certificate, diploma or degree programs but more than 15 courses for credit or more than 350 course enrollments for credit in any academic year. The establishment of an extension center requires approval by the Chancellor of Higher Education.

"Extension course" means a course for credit or enrichment which does not require attendance at the institution's principal location.

"Full-time faculty member" is one who is appointed as such and who occupies a full, faculty position and whose primary employment is directly related to teaching, research, and/or other aspects of the educational programs of institutions.

"Full-time student" means one who, in a semester, carries a minimum of 12 semester credit hours as an undergraduate or 9 semester credit hours as a graduate or the equivalent in quarter hours, courses or other methods of measurement used by the institution.

"General Education" means instruction which presents forms of expression, fields of knowledge, and methods of inquiry fundamental to intellectual growth and to a mature understanding of the world and the human condition, as distinguished from "specialized education" which prepares individuals for particular occupations or specific professional responsibilities.

"Off-Campus Location" is a physical facility located at a place other than the institution's principal campus with no complete credit bearing certificate, diploma or degree programs and 15 or fewer courses for credit and 350 or fewer

course enrollments for credit in any academic year. It requires no separate approval.

"Part-time faculty member" means one who does not occupy a full faculty position whose employment is related to teaching, research, and/or other aspects of the educational programs of the institution, but whose assigned responsibilities do not constitute full-time work.

"School is ordinarily a major subdivision of a college or university, and is organized to carry out instruction and/or research in related academic and/or professional fields.

"Semester credit hour" usually means 50 minutes of class activity each week for 15 weeks ***,or the equivalent attained by scheduling more minutes of class activity per week for fewer weeks in the semester,*** in one semester complemented by at least two hours each week of laboratory or outside assignments*[.]* ***, or the equivalent thereof for semesters of different length.*** A semester credit hour shall not be counted on an hour-for-hour basis for library, an independent-study, a laboratory, a physical education activity. ***No more than one semester credit hour shall be granted for an experience compressed into one week's time or less.***

"University" means an educational institution which provides a wide range of undergraduate and graduate studies, programs in two or more professional fields, and operative programs leading to the doctorate or comparable terminal degrees in two or more areas, whose faculty are involved in extensive research, and which clearly identifies graduate studies and programs as distinct elements in its organization. See N.J.A.C. 9:1-3.1 et seq.

9:1-1.2 Mission Statement

(a) Each institution shall develop and promulgate, subject to the provisions of this Subchapter, an appropriate and operationally effective Mission Statement (such as that found in a college catalog and other official documents) and shall review this statement for possible revision and improvement at periodic intervals not to exceed five years.

(b) Copies of all Mission Statements shall be filed with the Chancellor.

(c) A Mission Statement should define the institution's educational philosophy, the purposes of the curricula students may pursue, the nature and extent of the knowledge and skills expected of graduating students, and the learning environment to be provided. Such statements shall be periodically reviewed and updated.

(d) Each institution shall develop a long-range plan to implement its goals. The plan should include a written schedule of priorities, resource allocations and responsibility assignments, with target dates for the realization of specific objectives.

9:1-1.3 Organization and administration

(a) Each institution shall be organized to provide sufficient administrative, program, and resource support for the attainment of its mission.

(b) Each institution shall operate under a governing board responsible for all legal aspects of operations, the formulation of policy, consistent with the mission of the institution, and the selection of the chief executive.

(c) Student enrollment *[shall]* ***should*** be of sufficient size to demonstrate a need for the institution, to provide the learning environment described in the mission statement, and to permit effective use of the institution's human, physical, and financial resources.

(d) The governing board should develop and maintain policies consistent with the mission of the institution, *[and specifying its membership manner of appointment terms of office,]* which specify its duties, responsibilities, and procedures ***as well as its membership, manner of appointment, and terms of office*.**

(e) Under the governing board, the duties of the chief executive should include, but not be limited to, the following:

i. To administer the policies of the governing board;

ii. To provide general educational leadership and to promote educational effectiveness;

iii. To establish academic and administrative regulations and procedures dealing with:

a. Organizational structure;

b. Personnel appointments, reappointments, tenure and promotions;

c. Salary schedules;

d. Budgets

e. Planning, development, and management of facilities;

f. Educational programs and academic policies and research;

g. Granting of degrees, diplomas, and certificates;

h. Community services;

iv. To prepare and submit an annual report and any other reports as may be requested by the governing board, the Chancellor of Higher Education, or the State Board of Higher Education.

v. To provide faculty, *[staff]* and student handbooks, a college catalog, and other related documents or publications ***on a timely periodic basis*.**

(f) The role of each ***institutional*** constituent group and the nature and extent of its involvement in the resolution of issues and the determination of policies *[shall]* ***should*** be available in writing for distribution to all constituent groups. Every institutional constituency directly concerned with the educational process should have a voice in the governance of the institution with respect to those issues in which it is appropriately involved.

(g) As prescribed by law, there shall be no discrimination on the basis of race, creed, color, sex, national origin, age, marital status, military classification, or physical condition, but this shall not impair or abridge the right of members of any particular group to establish and maintain educational institutions worthy of licensure which are primarily for their own members or to further the principles for which they stand.

(h) A statement of institutional principles, policies, and procedures governing matters of academic integrity *[shall]* ***should*** be developed and disseminated widely among the institutional community and shall be reviewed periodically. Proper measures *[shall]* ***should*** be established to enforce the principles contained in the statement.

9:1-1.4 Finances

(a) Each institution shall have financial resources sufficient for the realization of its mission and characterized by adequate stability to assure continuation for an extended period of time.

(b) Each institution shall have a well-developed plan for long-range financial development which includes a program designed to secure gifts, grants, or other appropriate income.

(c) Each institution shall plan its expenditures by budgeting available resources in support of specific institutional purposes.

(d) Each institution not audited by the State of New Jersey Auditor shall maintain adequate financial records which shall be audited annually by an independent certified public accountant in accordance with generally accepted auditing standards promulgated by the American Institute of Certified Public Accountants for colleges and universities.

(e) Each institution shall carry insurance or provide for self-insurance sufficient to maintain the solvency of the institution in case of loss by fire or other causes, to protect the institution in instances of personal and public liability and to assure the continuity of the institution.

9:1-1.5 Educational programs

(a) The educational program shall reflect and support the mission of the institution.

(b) The educational program shall provide opportunities for the acquisition of the vocabulary and basic knowledge and the development of the fundamental techniques of intellectual and scientific discourse. It shall require students to extract and organize information, to exercise and develop critical faculties of the mind, and to express ideas clearly. Methods to accomplish these objectives should include course work and other educational activities extending over a sufficient period of time and in sufficient intensity to fulfill the mission of the institution. Course objectives, requirements, and standards of achievement and evaluation, shall be clearly stated and available in writing and distributed to students at the start of the term. The internal structure of each particular course shall rest within the purview of the appropriate faculty.

(c) Instructional materials and equipment appropriate to attainment of the educational objectives of the institution shall be available.

(d) The processes for establishment, development, and review of educational policy shall be clearly defined and available in writing.

(e) A diploma, certificate, or degree awarded by an institution shall constitute evidence that the recipient, in the considered judgment of the institution, has attained in satisfactory measure the educational standards of achievement set by the program;

(f) Institutions planning an educational program that requires approval of the Board of Higher Education shall not offer or advertise the program or recruit or enroll students in the program until receipt of Board of Higher Education approval.

(g) The educational program shall provide for the development of the skills and techniques of learning, for opportunities for general education, as well as for preprofessional, professional, or occupational education, each to the extent appropriate to the mission of the institution;

(h) The academic year, regardless of its organization, should be of at least 30 weeks ***or its equivalent*** in duration;

(i) Each educational program leading to an associate degree shall consist of college courses carrying a minimum of 60 semester credit hours or the equivalent in quarter hours, courses, or other measurement used by the college.

(j) Each educational program leading to a baccalaureate degree shall consist of courses carrying a minimum of 120 semester credit hours or the equivalent in quarter hours, courses, or other measurement used by the college.

9:1-1.6 Off-campus offerings *[†]*

(a) *[Summer, evening, weekend, and]* *[o]* ***O***ff-campus offerings shall be considered part of the total program of the institution and shall be judged by the same criteria used for the sessions and courses offered by the institution *[in the regular academic year]* ***or its main campus***.

(b) The establishment of *[off-campus]* ***extension*** centers shall have prior approval of the Chancellor of Higher Education. The establishment of branch campuses shall have prior approval of the Board of Higher Education. In requesting approval for Extension Centers and Branch Campuses, a formal request shall be submitted to the Department of Higher Education which shall include a statement justifying the need for the site and a description of proposed courses/programs. It shall also include evidence that the proposed courses/programs at the off-campus site are at least equivalent in quality to the comparable courses/programs on the main campus and that the institution has provided for effective monitoring and control for the maintenance of quality. Specifically, it shall include:

1. Evidence regarding the adequacy of classroom, laboratory, and library facilities.

2. Provisions for sufficient administration, support staff, and counseling; and

3. Evidence that the qualifications of faculty, a suitable ratio of whom should be full-time employees of the institutions, are appropriate.

(c) Upon receipt of a request for approval of an Extension Center or a Branch Campus, the Department of Higher Education shall provide to all New Jersey institutions of higher education a summary of the request to enable the institutions to inform the Department as to how they would be affected by the proposed Extension Center or Branch Campus. Extension Centers and Branch Campuses will be approved for a period of up to five years; reapproval at the end of this period will be considered following the submission by the institution of a new request for approval. An institution proposing to offer at a Branch Campus a degree program which has not been previously offered at the main campus shall submit the program for full Departmental review and Board of Higher Education approval required for any new program.

(d) Any existing Extension Center which has been operating but has not yet received approval by the Chancellor will be permitted to continue operating without such approval for a period no longer than five years from the effective date of this regulation. Any existing Branch Campus which has been operating but has not yet been approved by the Board of Higher Education must submit a formal request to the Board for approval within six months of the effective date of this regulation.

(e) Off-Campus sites at which credit courses are offered by a college in conjunction with or under contract with a noncollegiate organization must be approved by the Chancellor regardless of the size or scope of the effort. If a complete degree, certificate, or diploma program is offered under such an arrangement, it must be approved by the Board of Higher Education under the same procedure as holds for any Branch Campus. The approval process will include a review of the college's adherence to the following standards:

1. A college may grant credit only at the level and only in those areas for which it has degree granting authority; for example, a college may not award postbaccalaureate credit if it does not have authority to award graduate degrees. Nor may it offer graduate or post-baccalaureate courses in a field (e.g., psychology) if such offerings are not acceptable in an authorized graduate degree program at that college.

2. The credentials of instructors used by the contracting agency shall be reviewed and approved by the appropriate faculty of the college, and shall meet the college's standards

for regular adjunct faculty, and the individual shall be granted adjunct status.

3. The courses shall be clearly and publicly identified as belonging to the college; i.e., both parties shall take appropriate steps to ensure that the public understands that the college assumes responsibility for the course.

4. In determining the amount of credit to be granted for participation in a course offered by a contracting agency, the college shall adhere to the minimum definition of the credit hour as defined in N.J.A.C. 9:1-1.1. No more than 25 percent of a degree program shall be satisfied through such courses, except in the cases of arrangements between colleges and hospital-based programs in the health professions in which the clinical component of the program is provided by the hospital school. All course requirements with respect to student attendance, amount of class time, amount of outside work, standards for performance, and prerequisites shall be the same as for courses offered on campus. No more than one credit hour shall be granted for an experience compressed into one week's time or less.

5. The college shall apply to these contract courses the same requirements it applies to its own courses with respect to class attendance and participation, student evaluation, course content and quality.

6. The college shall insure that appropriate academic services are provided for students enrolled in such courses. These services shall include opportunities for access to library, laboratory facilities and computers, and *[advisement]* ***advising***.

7. The college shall determine that the combined tuition and fees charged to students are consistent with policies established by the appropriate governing body. The payment of additional costs not covered by student tuition and fees shall be negotiated by the college and contracting agency.

8. All contracts between the college and a contracting agency shall require the formal approval of the college governing board or its designee.

(f) All institutions shall submit a report to the Chancellor by December 1 which will include the following information for each off-campus site for the previous academic year:

i. The location of the off-campus site;

ii. The number of credit courses offered at the site for the academic year; and

iii. The number of credit course enrollments at the site for the academic year.

(g) For the purposes of State fiscal support of off-campus instruction to eligible institutions where such support is provided for in State appropriations, only students enrolled at reported Off-Campus Locations or formally approved Extension Centers and Branch Campuses may be included in FTE enrollments for funding purposes.

(h) The Chancellor should be notified at the time an institution formally determines that there is no longer a need for approved off-campus sites and discontinues offerings at that site.

[†The applicability of this section (9:1-1.6) the regulations to the institutions chartered before 1887 is still in question. An opinion of the Attorney General in this matter is anticipated. Should that opinion find these institutions exempt from the requirement of this section, language will be included to so indicate.]

9:1-1.7 Faculty

(a) The faculty shall consist of persons who are professionally prepared and able teachers and whose professional background and experience are suitable to the teaching and other educational activities for which they are responsible.

(b) The faculty shall be sufficient in number, and the proportion of full-time members and the student/teacher ratio shall be such as to contribute to the effectiveness of the educational program, including counseling and advising of students.

(c) Faculty responsibilities shall be *[defined by various accepted professional criteria in terms of hours taught, course development and preparation required, number of students, level of instruction, research expected, and administrative, committee and counseling assignments]* ***clearly defined in writing***.

(d) Faculty personnel policies *[with regard to academic freedom, economic security, opportunities for professional growth, responsibilities, and conditions of appointment and dismissal]* shall be clearly specified in writing.

(e) Newly appointed faculty members in ranks above instructor in a two-year institution offering the associate degree should have earned the master's degree or the equivalent in the field of specialization in which they are teaching ***or must present unassailable compensating qualifications***. A significant proportion of the faculty should have *[satisfactorily]* completed graduate work beyond the master's degree in an accredited graduate school.

(f) Full-time faculty members appointed to any rank above instructor in a four-year institution offering the baccalaureate degree should have earned doctoral degrees or the appropriate terminal degrees in the fields in which they are appointed or must present unassailable compensating qualifications. A majority of the faculty should have satisfactorily completed work beyond the master's degree in an accredited graduate school, and a significant number should have the doctorate.

(g) Faculty members should be engaged in continuing professional study, publication and research appropriate to their responsibilities.

9:1-1.8 Library

(a) Each institution shall formulate, adopt and implement a library policy adequate for the support of its mission, the range of its educational programs, and the needs of students and faculty. The statement shall define the size, nature, and scope of the library holdings, the nature of faculty involvement in the determination of library policy, and the extent to which the library is planned to be self-contained or to draw on other sources.

(b) The library shall be staffed by qualified professionals and support personnel in numbers sufficient to serve the needs of the students and faculty.

(c) There shall be annual acquisition of books, and other library materials.

(d) *[Staff, study, and work space]* ***Study space and work space*** shall be provided to support the instructional strategies utilized.

(e) A two-year college with a library of fewer than 20,000 titles or a four-year college with a library of fewer than 50,000 titles is expected to justify the adequacy of the size of its holdings.

9:1-1.9 Students and student services

(a) Each institution shall have a clearly defined admissions policy appropriate to its mission and shall admit students whose educational interests and abilities qualify them to pursue a program offered by the institution.

(b) Each institution shall provide adequate educational and student support and financial aid services and facilities for assisting students to succeed in the institution.

(c) Each institution shall maintain accurate records of individual students academic progress.

(d) An institution shall maintain transcript for all students and shall provide transcripts to all students who request them showing dates of attendance and academic performance. Should an institution terminate its activity, adequate provisions shall be made through the Department of Higher Education for the permanent deposit ***of*** and access to student transcripts.

9:1-1.10 Physical facilities

(a) The physical facilities shall be sufficient for attainment of the institution's mission, *[and]* shall be ***safely*** maintained *[for purposes of safety]* and shall be adequate in quality, size, and number to accommodate the students, faculty and staff.

(b) Adequately equipped laboratories shall be provided as required for effective instruction and learning.

9:1-1.11 Official publications

(a) All information officially released by the institution shall be true and accurate.

(b) Official catalogs shall be printed at intervals sufficient to assure currency of information and in quantities sufficient to supply interested persons.

(c) Official catalogs ***or other official publications*** shall include at least the following information:

1. Statement of institutional mission;
2. Lists of faculty and administrative officers including their earned degrees.
3. Complete curricular information, including course descriptions, and the grading system;
4. Admission, transfer, and graduation requirements;
5. Policy for the awarding of degree credit.
6. Policies on academic progress, academic standing, and withdrawal;
7. ***[Status]* *Statement*** of institutional and programmatic accreditation;
8. A description of available student support services;
9. Description of facilities;
10. Student costs, refund, and financial aid policies;
11. Academic calendar;
12. A list of members of the governing board.
13. A description of disciplinary rules and hearings and appeals procedures for students, should they not be described in other publications available to students.

9:1-1.12 College credit courses offered in New Jersey secondary schools by colleges and universities.

(a) Participation shall be limited to secondary school students who are recommended by the high school principal and/or who have superior academic records.

(b) Only courses normally taken by college freshmen may be made available. These courses shall be the same as those offered by the college to its regularly admitted students.

(c) Students shall be permitted to take no more than two courses each semester, but in no case more than 16 college credits in one academic year.

(d) Adequate and appropriate library and laboratory resources shall be readily available to students.

(e) Each participating high school faculty member designated by the high school shall have a minimum of a master's degree in the specific academic area to be taught.

(f) The college shall offer and the high school faculty shall be required to attend an initial orientation and training program and thereafter one or more annual training and evaluation seminars as determined by the college.

(g) The college shall provide examination materials and specific criteria for grading by the high school faculty to insure comparability of student performance.

(h) College syllabi and standard college texts shall be used.

(i) The agreements between the college and the high school shall provide for scheduled visits by faculty from the respective college to evaluate the program, review examinations, student projects and reports, and to discuss any problems students or faculty might be experiencing.

(j) Before enrolling, each student shall be given a written statement making clear that there is no obligation to attend the college offering the course, and making clear the credits may not be acceptable at other institutions. That statement and an up-to-date list of those institutions that have given recognition to the credits earned by previous participants shall be included in the application of the college to the Department of Higher Education to offer college level courses at a high school.

(k) Each college shall report annually to the Department of Higher Education the number and title of courses offered in New Jersey, the names of the New Jersey high schools in which the courses were offered, the number of students in each course in each New Jersey high school, the credits gained, the colleges at which the New Jersey students enrolled, the numbers and percentage of credits accepted by the enrolling colleges, the value of the program in the students' view and such other appropriate information as shall be specified from time to time.

(l) Financial arrangements must be consistent with New Jersey's constitutional and statutory guarantee to a free public education. (Article VI, section IV, paragraph 1, of the New Jersey Constitution).

SUBCHAPTER 2. LICENSURE AND APPROVAL OF DEGREES WITH RESPECT TO CERTAIN INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY

9:1-2.1 Licensure of New Jersey *[independent]* institutions regionally accredited

(a) With respect to institutions accredited by the Middle States Association the Board of Higher Education will ordinarily accept such accreditation as sufficient for the continuance of licensure and approval, provided that the institution shall submit to the Chancellor within 30 days of *[their filing or receipt, as the case may be, copies of all reports filed by the institution with the Middle States Commission on Higher Education and of reports transmitted to the institution by the Commission, and the filing of such reports is hereby required pursuant to the authority of N.J.S.A. 18A:3-16p.]* ***its receipt of the letter of the Middle States Association informing the institution of its accreditation status and provided that the representatives of the Chancellor working with the Middle States team participate fully in accreditation visits, excluding voting privileges with respect to recommendations related to accreditation status.***

[Institutions that choose to keep confidential the reports described above may elect instead to have special Department of Higher Education reviews.]

(b) The Chancellor may proceed separately with respect to an institution and recommend to the Board with respect to continuation of institutional license.

[(b)] *(c)* The Board of Higher Education may direct the Chancellor at any time to proceed with respect to any particular institution as though that institution were not accredited by the Middle States Association.

9:1-2.2 Licensure and Approval Advisory Board

(a) The Licensure and Approval Advisory Board shall consist of a representative of Rutgers, The State University, designated by the President of the University; a representative of the New Jersey Institute of Technology designated by the NJIT President; a representative of the University of Medicine and Dentistry of New Jersey designated by the President of the University; two representatives of the State Colleges designated by the Council of State Colleges; two representatives of the County Colleges designated by the Council of County Colleges; three representatives of the Association of Independent Colleges and Universities in New Jersey designated by the Association; three persons representative of the independent colleges not members of the aforesaid Association selected as hereinafter provided; and one representative of the Department of Higher Education designated by the Chancellor serving as an ex officio non-voting member.

(b) The representatives of the independent colleges not members of the Association of Independent Colleges and Universities in New Jersey shall be chosen by ballot at a meeting of the presidents of these institutions to be convened by the Chancellor when appropriate for this purpose. The persons having the highest number of votes, provided it is a majority of the total number of votes cast, shall be declared elected. In the case of a tie, the Chancellor shall break the tie; in the case of inability to elect, the Chancellor shall designate the persons to serve.

(c) The term of membership on the Advisory Board shall be three years except in the case of the Department of Higher Education representative. Members may be reappointed. Vacancies shall be filled for any expired term.

(d) The Advisory Board shall elect its own officers and determine its own rules of procedure. The Department of Higher Education shall provide the Advisory Board with staff and secretarial assistance.

(e) The responsibilities of the Licensure and Approval Advisory Board will be as follows:

1. To advise the Chancellor with respect to policies for licensure and degree approval designed to promote the maintenance of educational quality and the optimal use of educational resources in the State;

2. To recommend to the Chancellor and to the Board of Higher Education action on petitions for licensure by independent New Jersey institutions not regionally accredited;

3. To recommend to the Chancellor and to the Board of Higher Education action on petitions for licensure by any out-of-state institutions;

4. To advise the Chancellor, when requested, with respect to reports filed with the Department of Higher Education by any New Jersey institution, public or independent, or by committees that may from time to time be appointed to visit institutions of higher education operating in the State;

5. To advise the Chancellor, when requested, as to the action to be taken with respect to any college or university, public or independent, whose educational quality may be called in question;

6. To review any proposed action by the Chancellor with respect to any institution which could result in the revocation of licensure or the withdrawal of approval to confer degrees. The Chancellor will request and the Advisory Board will provide an advisory opinion before the statutory procedures are invoked by the Board of Higher Education; and

7. To advise the Chancellor, when requested, with respect to any matters the Chancellor may deem appropriate.

9:1-2.3 Specification of degrees

In implementing its responsibilities for approving the basis or conditions of conferring degrees, the Board of Higher Education will specify the nomenclature, location and term of the degree program that an institution is authorized to offer.[2]

[2]The current status of New Jersey independent institution of higher education varies with respect to degree approvals. The pre-1887 institutions are not required to secure the approval of the Board of Higher Education. These institutions include Drew University, Seton Hall University, St. Peter's College, St. Michael's, Stevens Institute of Technology, Princeton Theological Seminary, Princeton University, and Centenary College. Institutions founded more recently are subject to the policy set forth in this Subchapter. ***It should be noted, however, that Upsala College and the College of Saint Elizabeth were granted broad powers by the State Board of Education following passage of the law of 1912 and 1916. It is clear that to make the policy with respect to degree approval outlined in this Subchapter truly effective, there must exist for each institution established since April 1, 1887, a sharply defined, agreed upon statement of the precise nature of the approvals that currently exist so that both the institution and the Department of Higher Education may have a base or reference point with respect to which future applications and actions can be judged.***

9:1-2.4 New Degree Programs

The basis or conditions for the conferring of degrees not previously approved by the Board of Higher Education with respect to a particular institution, shall be submitted for prior approval in accordance with law. The Board will examine the quality of the proposed program, the institution's ability to offer the program and the extent to which the program ***unnecessarily*** duplicates or supplements existing programs offered by other institutions.

SUBCHAPTER 3. CHARACTERISTICS OF A UNIVERSITY

9:1-3.1 Programs

In an atmosphere of freedom of inquiry and expression, a university provides a wide range of undergraduate and graduate studies in the arts and sciences, programs in two or more professional fields such as medicine, law, public administration, engineering or education, and operative programs of instruction leading to the doctorate or comparable terminal degrees in two or more areas. A university should offer a range of graduate studies related to those fields in which it offers advanced degrees to provide students elective opportunities and a selection of support studies which may be useful but not prescribed by a graduate degree program. Additionally, a university should explore the possibilities of public service.

9:1-3.2 Organization

(a) A university clearly identifies graduate studies and programs as distinct elements in its organization. Characteristically, it selects graduate and professional students who show evidence of superior achievement in undergraduate studies.

(b) A university recruits faculties for graduate or professional programs whose competence is known beyond the institution. *[Its m]* ***M***embers of ***of faculties*** are associated with the institution full time, have attained the doctorate or have terminal degrees appropriate to their disciplines or records of substantial and superior professional achievements, and remain abreast of their respective fields. The faculty, including representation from the departments offering graduate programs, participates in the initiation, development and approval of curricula as the institution determines.

(c) A university provides an appropriate and adequate administrative staff whose primary responsibility is the administration of graduate and professional programs.

9:1-3.3 Resources

[(a)] A university possesses the financial ability to support graduate and professional programs, and its facilities and equipment reflect the more sophisticated level of work required in both. Laboratories and library support permit specialized study in depth in the fields of graduate study and professional study offered, as well as in supporting fields. An adequate financial base is provided to support the appropriate independent research activity of faculty and students.

9:1-3.4 Accreditation

A university is accredited by the regional association*.* *[and, its programs are accredited by professional accrediting agencies where appropriate and applicable.]*

SUBCHAPTER 4. REGULATIONS FOR GRADUATE PROGRAMS

9:1-4.1 Application

Colleges and universities required to secure approval to offer graduate instruction and confer advanced degrees in New Jersey shall apply to the Department of Higher Education, following a format and procedure prescribed by the Department.

9:1-4.2 Authorization and review

(a) Authorization to confer advanced degrees shall be specific with respect to nomenclature, location of the program and to the term for which approval is granted.

(b) Graduate programs in institutions already authorized by the Board of Higher Education to confer advanced degrees shall be reviewed periodically. Such reviews shall be conducted ***by the institutions themselves and*** cooperatively, insofar as possible, with regional and professional accrediting agencies.

9:1-4.3 Objectives and nature of graduate work

The objectives of every graduate or graduate professional program ***required to seek approval*** shall be clearly defined and stated. The work in such programs shall be beyond the baccalaureate level in intellectual demand; and a substantial proportion of the work shall be taken in courses designed *[exclusively]* ***explicitly*** for graduate students, *[and in courses regularly open only to qualified degree candidates,]* although occasionally exceptionally well qualified undergraduates may be admitted.

9:1-4.4 Post-baccalaureate study

An institution may offer credit for post-baccalaureate study only in *[these]* ***those*** areas for which it has graduate degree authority.

9:1-4.5 Master's degree programs

(a) Master's degree programs should be distinguishable by their primary objectives as belonging to one of two general types, disciplinary or professional. The immediate purpose of the former is advanced study and exploration in a particular discipline. The immediate purpose of the latter is the application and extension of previous studies to professional ends. The two types of programs need not have the same requirements but should be of comparable quality. A master's degree requires a minimum of 30 credits of graduate study or its equivalent.

(b) Disciplinary type: A disciplinary master's degree program consists of advanced studies in an academic discipline (for example, history, physics, engineering science, or musicology). The primary objective is increased knowledge of the subject rather than its application to professional use. The major portion of degree credit awarded in every master's program of this type *[shall]* ***must*** be at the advanced level in the principal field. Credit toward the master's degree may not be given for introductory or elementary courses in this field.

(c) Professional type: A master's degree program of the professional type consists of that lead to practice in such fields as engineering, law, applied music, pastoral ministry, or teaching. Some such subjects obviously lend themselves also to programs of the first type. The determining criterion is the objective that the program is designed to serve. Graduate professional programs should be complete in themselves, although they may in some circumstances also be adaptable to preparation for a research or professional doctorate. A master's program of this type *[shall]* ***should*** consist of a carefully designed pattern of professional preparation in accordance with the principles set forth above; in this case a limited amount of introductory work in the field may have an appropriate place, especially in first level professional programs.

[(d) Independent study. Every master's degree program of either type should include independent work performed by the student under faculty supervision, which is related to the balance of the program and is sufficiently significant to be counted as an important element among the degree requirements. Such independent work in a disciplinary program might include a thesis, preparation for a comprehensive examination, or both. In the professional program, this requirement might very well be satisfied by several substantial term papers or equivalent projects.]

[(e)] ***(d)*** Degree: The degree award for completion of disciplinary programs *[shall]* ***should*** be master of arts or master of science with disciplinary designation. For a professional program, the degree also should be appropriately specific (for example, master of library science, master of business administration, master of education, master of social work, master of arts in teaching).

9:1-4.6 Sixth-year programs

(a) Institutions may organize programs of graduate work at the post-master's level *[which]* ***that*** are not intended to lead to doctorates but to specialist's degrees or to comparable certificates. Within the discipline of education, no new Ed.S. degree programs will be approved. New specialist's certificate programs in this discipline will be limited to the fields of educational administration and education services, when a definitive need can be demonstrated. Approval of these certificates programs by the State Board of Higher Education will be required.

(b) All six year programs shall possess a definite philosophy, purpose, design, and sequence, and be self-contained and terminal in nature.

(c) They shall perform a definable function and not be merely a continuation of courses beyond the master's degree. A student admitted to a specialist's certificate program in education must have a master's degree in the same field in which the certificate is being offered. Students who possess a master's degree in an unrelated field will be required to complete preliminary course work or demonstrate equivalent knowledge acquired through work experience.

(d) Specialist's certificate programs in education must be composed of course work which is more advanced than that required for master's degrees.

(e) A *[qualifying]* ***comprehensive*** examination *[shall]* ***should*** be required for the degree or the certificate.

9:1-4.7 Doctoral degree programs

(a) Programs leading to doctoral degrees shall *[require]* ***represent*** three or more years of ***full-time*** study and research beyond the baccalaureate.

(b) They should be so designed that elements such as course requirements, foreign language requirements, qualifying examinations, research requirements, and the dissertation are coherently related to a clearly defined set of educational goals.

(c) A doctoral program benefits from complementary programs in other fields, and no institution should seek to establish doctoral studies piecemeal or to initiate its first doctoral program before it is able to formulate long-range plans for mounting cognate programs in related fields.

(d) Programs leading to the doctor of philosophy degree shall be oriented toward original research. Professional doctorates are usually oriented toward increased professional competence. The requirements for a professional degree *[shall]* ***should*** include either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) In seeking approval of doctoral programs, an institution shall demonstrate that:

1. It has established clear educational objectives;
2. That its requirements are appropriate for the nature of the doctorate;
3. It possess adequate library holdings, laboratory space, research facilities, and other necessary resources;
4. Above all, its faculty is recognized beyond the bounds of the institution as possessing professional qualifications and research achievements sufficient to support the program for which approval is sought;
5. It is prepared to make the commitment in faculty time necessary for thesis supervision and research guidance;
6. Its proposed program is supported by related studies and research in ancillary fields; and
7. It has in fact formulated acceptable long-range plans for the development of cognate programs leading to the doctorate in other fields if such programs do not already exist at the institution.

9:1-4.8 Faculty

(a) The term "graduate faculty" as used here means faculty who have instructional and/or research responsibilities in a graduate program. They shall hold appropriate terminal degrees or have unassailable compensating qualifications. They shall be productive contributors to the field of their specialities, participants in its professional activities and work under conditions and schedules which encourage them to continue their professional development. The academic schedule *[shall]* ***should*** permit adequate time for instruction, *[advisement]* ***advising***, direction of research, supervision of theses, as well as continued professional growth and achievement. Every faculty member with graduate responsibilities *[shall]* ***should*** be thoroughly familiar with current research in his field.

(b) The qualifications of part-time faculty shall be comparable to those of full-time faculty.

9:1-4.9 Budget

The governing board of the institution shall be prepared to make a continuing commitment of institutional funds for the support of the graduate programs, and particularly for the indispensable faculty and student research activity. Only in the most extraordinary circumstances can the necessary level of support be provided exclusively through tuition and fees of the programs themselves.

9:1-4.10 Facilities

The institution should have those facilities necessary for the *[efficient]* attainment of the objectives of each program. These include adequate library study space for faculty and students, seminar rooms, office space for the faculty, provision for secretarial service as well as modern apparatus and instruments in those disciplines in which sophisticated activity demands them.

9:1-4.11 Library

(a) Beyond the needs of the undergraduate college, the graduate school shall have, for each program, a variety and depth of specialized material available on the campus.

(b) A library that supports a graduate program shall provide an adequate and curren*[n]*t base for research activities. The library should provide books and other essential materials both in the fields of instruction and research and in related areas to serve as background material and, in much greater depth for special investigations.

9:1-4.12 Graduate catalogue

The graduate catalogue shall state clearly the admission requirements, tuition, fees, degree requirements, course descriptions (including prerequisites), ***and*** thesis or research requirements*.* *[(if any) and other information.]*

SUBCHAPTER 5. RULES FOR PROPRIETARY INSTITUTIONS OF HIGHER EDUCATION IN NEW JERSEY

9:1-5.1 General provisions

(a) Proprietary Institutions of Higher Education in New Jersey may be licensed to operate and approved to award the degree of associate in applied science subject to conformation with the regulations and standards for such licensure and approval as contained in N.J.A.C. 9:1-1.

(b) The regulations in this subchapter are designed to recognize the distinctive character of proprietary institutions and for these institutions take precedence over any regulations and standards with which they may be in conflict.

9:1-5.2 Authorized degree

The degree authorized for proprietary schools shall be the Associate in Applied Science degree as defined in Standards Governing Community Colleges, specifically N.J.A.C. 9:4-1.6.

9:1-5.3 Reassessment of licensure and approval

In the event of a change in the ownership of a proprietary school, a reassessment of the licensure and approval shall be made within six months to one year's time after the change.

9:1-5.4 Duration of License

(a) Any license to operate and grant a degree shall be for a definite period, not to exceed five years, as determined by the Board of Higher Education.

(b) At the expiration of this period, license must be reviewed, renewed or revoked at the discretion of the Board of Higher Education.

9:1-5.5 Minimum library requirements

(a) A proprietary institution offering a degree shall have a minimum library collection of sufficient size to support adequately the program offered.

(b) This shall normally consist of at least 5,000 titles of general and specific materials for every single purpose curriculum for each enrollment unit of 500 students.

(c) Proportionate increases shall be made to accommodate additional students or curricula.

9:1-5.6 Composition of governing board

The governing board shall have a proportion of its membership drawn from the general public and/or the academic community and be of sufficient size to provide for appropriate committee membership.

9:1-5.7 Term of public membership

The public membership should be appointed for a specified term similar to the procedure followed in nonprofit institutions of higher education.

9:1-5.8 Faculty teaching loads

(a) Faculty should normally have teaching loads not to exceed the equivalent of 15 semester credit hours.

(b) Work load credit should normally be granted to faculty involved in heavy administrative, advisory, or committee assignments.

9:1-5.9 Academic freedom of faculty members

(a) The institution shall promulgate a statement concerning the academic freedom of faculty members which should include statements supporting the following principles:

1. Freedom in research and publication where these activities do not interfere with adequate performance of academic duties;

2. Freedom in the classroom to discuss controversial issues ***pertinent to the discipline***;

3. Retention of all rights as a citizen to free speech and publication. Such rights are not, as such, subject to institutional censorship or discipline. *[However, the teacher presents an image to the public by which the teaching profession and college may be judged. Therefore, he must at all times be accurate, show respect for the opinions of others, and must make clear that he is not an institutional spokesman.]*

SUBCHAPTER 6. RULES REGARDING PETITIONS FROM OUT-OF-STATE INSTITUTIONS DESIRING TO OFFER CREDIT-BEARING COURSES OR DEGREE PROGRAMS IN NEW JERSEY

9:1-6.1 Review of Petitions

(a) The Board of Higher Education in its coordinating capacity will review all petitions from out-of-state institutions to offer credit-bearing courses or degree programs in New Jersey from a statewide perspective. The Board will approve only those offerings that in the opinion of the Board meet state standards for program quality, are fiscally viable, serve a demonstrable need, and are in accordance with the Statewide Plan. Whenever a course or program is approved by the Board for presentation within the state by an out-of-state institution, said offering shall not preclude the right of an institution within the state to develop a similar program or course offering.

(b) Programs may be approved for periods of one to five years. Initially programs will not be approved for longer than a three-year period. With respect to requests to offer credit-bearing courses but not a degree program, approval will be for a period of only one year.

9:1-6.2 Petitions from Institutions

(a) Out-of-state institutions wishing to offer credit-bearing courses or degree programs in New Jersey shall petition the Board of Higher Education for authorization.

(b) Institutions shall submit requests for new programs at least one academic year before the requested date of implementation. Requests for approval to offer courses shall be submitted at least six months prior to the requested date of implementation.

(c) The petition shall contain:

1. Responses to the items enumerated in *[Section III of Appendix C of N.J.A.C. 9.1.]* ***"A Guide for Obtaining the Basic Information for Appraising New Jersey Institutions of Higher Education," DHE, 1975.*** These responses shall relate fully to the proposed New Jersey operation.

2. The accreditation status of the institution.

3. Information equivalent to the annual summary sheet required by the institution's regional accrediting association.

4. The institution's financial statements (prepared by independent auditors) for each of the last three years.

5. A description of the selection and review process for faculty teaching in New Jersey.

6. A catalog and other data that the institution recognizes as appropriate.

7. Other information which the Department specifically requests.

9:1-6.3 Department of Higher Education Review Procedures

(a) Petitions from out-of-state institutions invited by in-state parties to offer educational services to specific and delimited constituency in New Jersey:

1. Upon receipt of petition, the Department of Higher Education *[will]* ***shall*** provide to all New Jersey Institutions of higher education a summary of the petition's content and will invite the institutions to submit their comments and to indicate whether or not they wish and are prepared to offer comparable services. Those in-state institutions that wish to offer comparable services may submit proposals to the Department within 60 days after the Department's notification regarding the out-of-state request. Proposals from in-state institutions received within this time period will be forwarded immediately by the Department to the party requesting instructional services (as well as to the out-of-state institutions).

2. Specifically with respect to a New Jersey high school seeking educational services, the high school shall inform the Department of Higher Education of its intent to seek an education program prior to entering into negotiations for college credit-bearing courses with an out-of-state institution. The notice shall contain a detailed itemization of the services

desired by the high school. After receipt of the notification, the Department shall provide copies of the notice to all New Jersey institutions of higher education and shall invite these institutions to submit their comments and to indicate both to the Department and to the high school, within 60 days, whether they wish to try to meet the needs of the high school.

3. The high school shall enter into negotiations with an out of state institution only after the high school has notified the Department of Higher Education which in-state institution, if any, the high school will be dealing with in addition to the proposed out-of-state party.

4. The Department *[will]* ***shall*** review all full proposals, usually with the assistance of a consultant who is mutually acceptable to the Department and the institutions. A "needs survey" is not required when an educational institution is invited by an in-state party to provide credit-bearing educational offerings to a specified and delimited constituency. The invitation itself demonstrates that a need exists.

5. The petition and all pertinenet materials *[will]* ***shall*** be provided to the Licensure and Approval Advisory Board (LAAB) for its review.

6. If the Department determines, in consultation with LAAB, that an in-state proposal is comparable or superior to the out-of-state proposal, the Department *[will]* ***shall*** strongly encourage the in-state party requesting instructional services to accept an in-state proposal.

7. The in-state party requesting instructional services shall inform the Department as to its choice of institution and specify the reasons for the selection.

8. The Chancellor *[will]* ***shall*** make a recommendation concerning the program or course(s) to the Board of Higher Education.

(b) Petitions from out-of-state institutions seeking to offer educational services independently (without invitation) in New Jersey:

1. Upon receipt of petition, the Department of Higher Education *[will]* ***shall*** provide all New Jersey institutions of higher education with a summary of the petition's content and invite the institutions to submit their comments within 60 days.

2. The Department *[will]* ***shall*** review the petition, usually with the assistance of a consultant which is mutually acceptable to the Department and the institution.

3. The petition and all pertinent materials *[will]* ***shall*** be provided to LAAB for its review.

4. The Chancellor *[will]* ***shall*** make a recommendation concerning the program or course(s) to the Board of Higher Education.

(a)

BOARD OF HIGHER EDUCATION

County Community Colleges Chargeback Calculation

Adopted Amendment: N.J.A.C. 9:4-1.5

Proposed: January 17, 1984 at 16 N.J.R. 117(a).
Adopted: March 5, 1984 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.

Filed: March 5, 1984 as R.1984 d.78, **without change.**

Authority: N.J.S.A. 18A:64A-7 and 18A:64A-23.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 2, 1986.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

9:4-1.5 Chargeback

(a) (No change.)

(b) Eligibility rules include:

1. (No change.)

2. A student residing in a county which sponsors a community or county-assisted college and who desires to attend an out-of-county college of the aforementioned type, pursuant to criteria of the aforesaid law, shall first receive certification of eligibility for chargeback assistance from the aforementioned home-county college. This certification will be executed upon a standard Department of Higher Education form.

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

(e) The college accepting such out-of-county students shall charge the sending counties, pursuant to N.J.S.A. 18A:64A-23, according to a system of differential chargeback rates as determined by the Board of Higher Education, calculating the amount to be charged in the following manner:

1. Total the number of the current year's estimated resident credit-hour and equivalent credit-hour enrollments and divide by 30 to equal full-time equivalent student enrollments (resident FTE's).

i. Equivalent credit hours for State fundable non-credit course offerings shall be calculated by dividing total contact hours by 15.

ii. Resident credit-hour and equivalent credit-hour enrollments are defined as all county resident enrollments which are State fundable and/or not self-supporting.

2. Divide the sum of all resident FTE's from (e)1 above into the current county operating appropriation to determine the base chargeback rate.

3. Multiply the sending county's eligible credit-hour and equivalent credit-hour enrollments for each group by their respective differential ratios, and total. Divide by 30 to determine the sending county's eligible weighted FTE's.

4. Multiply the base chargeback rate times the sending county's eligible weighted FTE's to determine the charge to the sending county.

5. The receiving college shall adjust the charge to sending counties when audited actual credit-hour and equivalent credit-hour enrollments become available from the annual enrollment audit. The calculations in (e)1-4 above shall be made utilizing the audited actual credit-hour and equivalent credit-hour enrollments divided by 30 to equal FTE's (and adjusted county operating appropriation, if applicable). The difference between this adjusted chargeback amount and the previous State Fiscal Year's chargeback amount to each sending county shall be added to or subtracted from the following year's initial chargeback billing to said sending counties, and be so identified upon that bill.

(f)-(g) (No change.)

(a)

BOARD OF HIGHER EDUCATION

County College Contract Rules

Adopted New Rule: N.J.A.C. 9:4-8
Adopted Repeal: N.J.A.C. 9:4-3.7

Proposed: November 21, 1983 at 15 N.J.R. 1916(a).
Adopted: February 6, 1984 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 5, 1984 as R.1984 d.80, **without change.**

Authority: N.J.S.A. 18A:64A-25.1 et seq., specifically 18A:64A-25.29.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): November 2, 1986.

Summary of Public Comments and Agency Responses:

No comments received.

Full text of the adoption follows.

9:4-3.7 (Reserved)

SUBCHAPTER 8. RULES GOVERNING THE COUNTY COLLEGE CONTRACTS LAW

9:4-8.1 Extraordinary unspecifiable services and products

(a) Any purchase, contract or agreement qualifying as an extraordinary unspecifiable service and product which is expected to exceed the total sum set forth in N.J.S.A. 18A:64A-25.3 in a single fiscal year shall be authorized by resolution at a public meeting of the County College Board of Trustees.

(b) Services or products which qualify as extraordinary unspecifiable services and products may not be combined in a contract with other services or products which are characterized as being biddable.

9:4-8.2 Accounting procedures for contracts which do not coincide with a fiscal year.

All purchase agreements that extend over two fiscal years and which exceed the total sum set forth in N.J.S.A. 18A:64A-25.3 shall be awarded in accordance with the county college contract law. The colleges shall allocate funds between the two fiscal years in accordance with the American Institute of Certified Public Accountants guidelines.

9:4-8.3 Contracts for food service management and food supplies

Contracts or agreements for food service management or food vending machine services shall be made, negotiated or awarded by the College Board of Trustees after solicitation and receipt of the contract proposal for such services.

9:4-8.4 Joint purchasing agreements

All purchase agreements regarding joint purchasing which exceed the total sum set forth in N.J.S.A. 18A:64A-25.3 shall be approved by the County College Board of Trustees.

(b)

BOARD OF HIGHER EDUCATION

County Colleges Reduction in Force

Adopted Amendment: N.J.A.C. 9:4-5.7

Proposed: July 5, 1983 at 15 N.J.R. 1070(b).
Adopted: March 5, 1984 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 5, 1984 as R.1984 d.77, **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:3-14(h) and 18A:64A-7.

Effective Date: January 1, 1985.
Expiration Date pursuant to Executive Order No. 66(1978): November 2, 1986.

Summary of Public Comments and Agency Responses:

The Department received two letters commenting on the proposed rule. The letters objected to the enactment of a notice period through the regulatory process rather than by collective negotiations. The Department's response indicated that the State Supreme Court has considered this issue and has upheld the Department's authority to adopt regulations specifically setting forth employee's rights concerning reductions in force at public colleges.

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

9:4-5.7 Notice requirements; time period

Upon the board determining the areas that may be affected by the layoff, it shall give notice to all individuals subject to the proposed layoff two weeks prior to the formal board action on said layoffs. After formal board action on said layoff, the board of trustees shall notify each employee who is to be laid off of such fact *[45]* ***120*** days prior to the date of layoff for layoffs due to fiscal crisis and 210 days prior to the date of layoff for layoffs due to a natural diminution in the number of students in a program or a reduction of programs. Appeals of layoffs due to fiscal exigency shall be given emergent consideration, if requested.

(c)

STUDENT ASSISTANCE BOARD

Tuition Aid Grant Program 1984-1985 Award Table

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

Proposed: January 3, 1984 at 16 N.J.R. 9(a).
Adopted: March 5, 1984 by Student Assistance Board, Joseph Streit, Chairman.

Filed: March 5, 1984 as R.1984 d.76, **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:71-47(b) and 18A:71-48.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order 66(1978): April 13, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows (additions to the proposal shown in boldface with asterisks ***thus***; deletions from the proposal shown in brackets with asterisks *[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 at 15 N.J.R. 1427(a), 15 N.J.R. 1864(a) and **replace** it with the following table.)

TUITION AID GRANT (TAG) AWARD TABLE FOR 1984-85 APPROXIMATE TUITION AID GRANT VALUES[1]* NEW JERSEY COLLEGES AND UNIVERSITIES

New Jersey Eligibility Index (NJEI)	County Colleges	State Colleges	Independent Institutions
A	B	C	D
Under 750	$700	$1024	$1800
750-1049	600	920	1700
1050-1349	500	820	1600
1350-1649	400	720	1500
1650-1949	300	620	1400
1950-2249	200	520	1300
2250-2549	0	420	1200
2550-2849		320	1100
2850-3149		200	1000
3150-3449		0	900
3450-3749			800
3750-4049			700
4050-4349			600
4350-4649			500
4650-4949			400
4950-5249			300
5250-5549			200
Over 5549			0

New Jersey Eligibility Index (NJEI)	Rutgers U. *[NJ Inst. of Tech.,]* & UMDNJ[1][2]*	***NJ Inst. of Tech.***	Renewal[2] Out-of-State Colleges & Universities
A	E	***F***	*[F]* ***G***
Under 750	$1490	***$1596***	$450
750-1049	1390	*** 1490***	260
1050-1349	1290	*** 1390***	260
1350-1649	1190	*** 1290***	260
1650-1949	1090	*** 1190***	200
1950-2249	990	*** 1090***	0
2250-2549	890	*** 990***	
2550-2849	790	*** 890***	
2850-3149	690	*** 790***	
3150-3449	590	*** 690***	
3450-3749	490	*** 590***	
3750-4049	390	*** 490***	
4050-4349	290	*** 390***	
4350-4649	200	*** 290***	
4650-4949	0	*** 200***	
4950-5249		*** 0***	
5250-5549			
Over 5549			

[1]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.] ***[1]Rutgers Engineering and Pharmacy students will receive the award values shown in column F. Approved programs only at UMDNJ. Contact the financial aid office for details.***

[2]"Renewals" are students who received a Tuition Aid Grant in *[a prior year]* ***1981-82 or prior years*.**

[[3]Approved programs only at UMDNJ. Contact the financial aid office for details.]

(a)

BOARD OF HIGHER EDUCATION

Independent Colleges and Universities

Financial Aid; Audits

Adopted Amendments: N.J.A.C. 9:14-1.3 and 1.4

Proposed: January 3, 1984 at 16 N.J.R. 10(a).
Adopted: March 5, 1984 by Board of Higher Education, T. Edward Hollander, Chancellor and Secretary.
Filed: March 5, 1984 as R.1984 d.79, **with technical changes** not requiring additional public notice and comments (see N.J.A.C. 1:30-3.5).
Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): February 28, 1985.

Summary of Public Comments and Agency Responses: **No comments received.**

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

9:14-1.3 Audit of full-time equivalent enrollment

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

(d) The Department of Higher Education shall use these audited enrollments as the basis for distributing that portion of the aid to independent colleges and universities prescribed in N.J.S.A. 18A:72B-18c. as based upon full-time equivalent enrollment.

9:14-1.4 Audit of students receiving need-based financial aid

(a) The audited head count of students receiving eligible financial aid should be displayed on the schedule as provided by the Department of Higher Education.

(b) The eligible forms of financial aid are:

1. Those students who receive State administered need-based financial aid (for example, TAG); and

2. Those students who receive school administered aid of $1,000 or more and who meet the school's criteria for financial need.

[(b)] ***(c)*** Students who receive both State administered need-based financial aid and $1,000 or more in need-based financial aid from the institution should be counted only once in the audit of students receiving need-based financial aid.

[(c)] ***(d)*** The Department will use this audited headcount of students receiving eligible financial aid as the basis for distributing that portion of the aid to independent colleges and universities prescribed in N.J.S.A. 18A:72B-18(c).

HUMAN SERVICES

(a)

DIVISION OF PUBLIC WELFARE

Food Stamp Program
General Provisions, Application Process, Eligibility Factors Other Than Need, Financial Eligibility, Certification Procedures, Fair Hearings, Fiscal Procedures, Incorrect Issuances, Maximum Income and Coupon Allotments, and Benefit Determination and Proration Formulas

Readopted: N.J.A.C. 10:87-1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12
Readopted with Amendment: N.J.A.C. 10:87-11

Proposed: December 19, 1983 at 15 N.J.R. 2134(b).
Adopted: March 1, 1984 by George J. Albanese, Commissioner, Department of Human Services.
Filed: March 1, 1984 as R.1984 d.68.

Authority: N.J.S.A. 30:4B-2, 48 FR 6836, and FR 16828.

Effective Date of Readoption: March 1, 1984.
Effective Date of Amendment: March 19, 1984.
Expiration Date pursuant to Executive Order 66(1978): March 1, 1989.

Summary of Public Comments and Agency Responses:

Two letters of comment were received regarding the proposed amendment to N.J.A.C. 10:87-11. One letter, from a county welfare agency director, supported the proposed changes. The other letter received was from the Department of the Public Advocate concerning amendments to N.J.A.C. 10:87-11.16. That Department raised three objections to the amendments which would limit restoration of lost benefits in instances of overturned intentional program violation disqualifications to a 12-month period. First, the commenter indicated that the reason for the amendment was not adequately explained. The Department concurs that the "Summary" statement may have lacked specificity in this regard. The proposed amendments are the result of Federal requirements as published in the Federal Register (April 19, 1983 at 48 FR 16828). The Department is provided with no option with respect to its implementation.

Second, concern was expressed that a food stamp recipient who, through no fault of his or her own, fails to request a restoration when a disqualification for intentional program violation is overturned, would be unfairly penalized by this 12-month limit on restoration. In response, the Department observes that in the context of this amended rule, the date the recipient requests a hearing for reconsideration of program disqualification also serves as the date of request for restoration. No specific request for restoration is required of the recipient. Subsequent inaction by a county welfare agency, in violation of regulations, would have no effect on the amount of restoration due the recipient.

Third, the commenter suggested recipients be advised of their new legal requirements under this revised rule. As indicated above, the recipient need not specifically request a restoration. There are, in fact, no new legal requirements imposed on recipients and, therefore, the Department, in response, does not feel notice is necessary.

Full text of the readoption appears in the New Jersey Administrative Code at N.J.A.C. 10:87-1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 as amended in the New Jersey Register. See specifically the amendments pertaining to N.J.A.C. 10:87-2, 3, 4, 5, 6, 7 and 9 proposed November 7, 1983 at 15 N.J.R. 1821(a), adopted at 16 N.J.R. 246(a); and N.J.A.C. 10:87-12.5, proposed November 21, 1983 at 15 N.J.R. 1918(a), adopted at 16 N.J.R. 246(b).

Full text of the adopted amendments to the readoption follows.

10:87-11.12 Period of restoration

(a) Benefits shall be restored for a period of not more than 12 months prior to whichever of the following occurred first:

1. Date the CWA was notified: The date the CWA was notified by the household or by another person or agency in writing or orally of the possible loss to that specific household;

2. Date CWA discovers loss: The date the CWA discovers in the normal course of business that a loss to a specific household has occurred; or

3. Date of household request: The date the CWA receives a request for restoration of lost benefits from a household.

(b) The CWA shall restore benefits to households which were found by any judicial action to have been wrongfully withheld. If the judicial action is the first action the recipient has taken to obtain restoration of lost benefits, then benefits shall be restored for a period of not more than 12 months from the date the court action was initiated. When the court action is a review of a CWA action, benefits shall be restored for a period of not more than 12 months from the date the court action was initiated. When the court action is a review of a CWA action, benefits shall be restored for a period of not more than 12 months from the earliest of the following dates:

1. The date the CWA received a request for restoration; or

2. If no request for restoration is received, the date the fair hearing action was initiated.

(c) In no case shall benefits be restored for more than one year prior to the date the CWA is notified of or discovers the loss.

10:87-11.13 Errors discovered by the CWA

(a) If the CWA determines that a loss of benefits has occurred, and the household is entitled to restoration of those benefits, the CWA shall automatically take action to restore any benefits that were lost. No action by the household is necessary.

1. Loss more than 12 months prior to discovery or notification: Benefits shall not be restored if the benefits were lost more than 12 months prior to the date the loss was discovered by the CWA in the normal course of business, or were lost more than 12 months prior to the date the CWA was notified in writing or orally of a possible loss to a specific household.

2. (No change.)

10:87-11.16 Individuals disqualified for intentional program violation

(a) Restrictions on restoration: Individuals disqualified for intentional program violation are entitled to restoration of any benefits lost during the months they were disqualified, not to exceed 12 months prior to the date of CWA notification, only if the decision which resulted in disqualification is subsequently overturned or reversed. For example, an individual would not be entitled to restoration of lost benefits for the period he or she was disqualified based solely on the fact that a criminal conviction could not be obtained, unless the individual successfully challenged the disqualification in a separate court action.

(b) Calculating restoration due: For each month the individual was disqualified, the amount to be restored, if any, shall be determined by comparing the allotment the household received with the allotment the household would have received had the disqualified member been allowed to participate. If the household received a smaller allotment than it should have received, the difference equals the amount to be restored. Benefits shall not be restored for a period of more than 12 months prior to CWA notification. Participation in an administrative disqualification hearing in which the household contests the CWA assertion of intentional program violation shall be considered notification that the household is requesting that benefits be restored.

10:87-11.23 Instances requiring a claim determination for inadvertent household errors or administrative errors

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

(e) Calculating amount of the inadvertent household error or administrative error claim: After excluding those months that are more than six years prior to the date the overissuance was discovered, the CWA shall determine the correct amount of food stamp benefits the household should have received for those months the household participated while the overissuance was in effect. If the household received a larger allotment than it was entitled to receive, the CWA shall establish a claim against the household equal to the difference between the allotment the household received and the allotment the household should have received.

1. If the household failed to report a change in circumstances within the required time frames, the first month affected by the household's failure to report shall be the first month in which the change would have been effective had it been reported timely. However, in no event shall the CWA determine as the first month in which the change would have been effective any month later than two months from the month in which the change in household circumstances occurred.

2. If the household reported a change timely, but the CWA did not act on the change within the required time frames, the first month affected by the CWA's failure to act shall be the first month the CWA would have made the change effective had it acted timely. However, in no event shall the CWA determine as the first month in which the change would have been effective, any month later than two months from the month in which the change in household circumstances occurred. If a notice of adverse action was required but was not provided, the CWA shall assume for the purpose of calculating the claim that the maximum advance notice period would have expired without the household requesting a fair hearing.

(f) (No change.)

10:87-11.29 Methods of collection

(a) The CWA shall collect intentional program violation, inadvertent household error and administrative error claims as provided below:

1.-6. (No change.)

7. Other collection action: The CWA may also pursue other collection actions, as appropriate, to obtain restitution of a claim against any household which fails to respond to a written demand letter for repayment of a claim.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF MOTOR VEHICLES

DEPARTMENT OF INSURANCE

Joint Adoption: Motor Vehicle Insurance Surcharge Collection Supplemental Surcharges

Adopted New Rule: N.J.A.C. 13:19-13

Proposed: January 17, 1984 at 16 N.J.R. 124(a).
Adopted: February 22, 1984 by Clifford W. Snedeker, Director of the Division of Motor Vehicles, and Joseph F. Murphy, Commissioner, Department of Insurance.
Filed: February 23, 1984 as R.1984 d.61, with **substantive and technical changes** not requiring additional public notice and comment (see N.J.A.C. 1:30-3.5).

Authority: N.J.S.A. 17:29A-35.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): March 19, 1989.

Summary of Public Comment and Agency Responses and Reasons for Changes upon Adoption:
No comments received.

The substantive changes delete N.J.A.C. 13:19-13.2 and 13:19-13.4 which provided for the collection of surcharges for convictions of refusal to submit to a chemical breath test and for administrative suspensions imposed for out-of-state breath test refusals and convictions for driving while under the influence. The enactment of P.L.1984, chapter 1 renders such provisions superfluous.

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

SUBCHAPTER 13. MOTOR VEHICLE INSURANCE SURCHARGE; SUPPLEMENTAL SURCHARGES

13:19-13.1 Surcharges for three year period; convictions; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for convictions of violations set forth in (b) below which violations occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act. The surcharges shall be annually assessed for a three year period.

(b) The following violations shall be subject to surcharges as indicated in (a) above for the amount set forth below:

1.	N.J.S.A. 39:3-10	Unlicensed driver	$100.00
2.	N.J.S.A. 39:3-40	Driving while suspended	$250.00
3.	N.J.S.A. 39:4-14e	Failing to have insurance on motorized bicycle	$100.00
4.	*[N.J.S.A. 39:6b-2]* ***N.J.S.A. 39:6b-2***	Failing to maintain liability insurance on motor vehicle	$250.00

*[13:19-13.2 Surcharge for refusing to submit to chemical test; amount

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for convictions of refusal to submit to a chemical test under N.J.S.A. 39:4-50.4a, which refusal occurred on or after the effective date of N.J.S.A. 17:29A-33 et seq. The surcharge shall be assessed once and shall be $1,000 for each of the first two convictions and $1,500 for the third conviction occurring within a three year period.

(b) A driver convicted under both N.J.S.A. 39:4-50 and N.J.S.A. 39:4-50.4a for offenses arising out of the same incident may in the discretion of the Director of the Division of Motor Vehicles be assessed only one surcharge for both offenses.]*

[13:19-13.3] ***13:19-13.2**** Surcharges for three year period; administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for violations resulting in license suspensions imposed administratively which are set forth in (b) below and which violations have occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act of 1982. The surcharge shall be assessed each year for a three year period and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) The following violations resulting in administrative license suspensions shall be subject to surcharge as indicated in (a) above for the amount set forth below:

1. Operating while suspended $250.00
2. Failure to maintain liability insurance on motor vehicle $250.00
3. Any motor vehicle violation resulting in fatal accident $250.00

(c) Plan surcharges levied pursuant to (b) 3 above shall be in addition to any other plan surcharge to which a driver is subject under the Merit Rating Plan.

*[13:19-13.4 Surcharges for administrative violations; amounts

(a) Plan surcharges shall be levied by the Division of Motor Vehicles for violations resulting in license suspensions imposed administratively which are set forth in (b) below, which violations occurred on or after the effective date of the New Jersey Automobile Insurance Reform Act of 1982. The surcharge shall be assessed once and shall be in addition to the license restoration fee charged pursuant to N.J.S.A. 39:3-10a.

(b) The following administrative license suspensions shall be subject to surcharge as indicated in (a) above for the amount set forth below:

1. Driving a motor vehicle while under the influence of or while impaired by intoxicating liquor or a narcotic drug in another jurisdiction $1,000.00
2. Refusal to submit to a chemical test for intoxication in another jurisdiction ..... $1,000.00]*

(a)

BOARD OF MEDICAL EXAMINERS

Prescribing, Administering or Dispensing Amygdalin (laetrile)

Adopted Amendment: N.J.A.C. 13:35-6.8

Proposed: December 5, 1983 at 15 N.J.R. 2029(b).
Adopted: January 20, 1984 by New Jersey State Board of Medical Examiners, Edwin H. Albano, M.D., President.
Filed: February 30, 1984 as R.1984 d.67, **without change.**

Authority: N.J.S.A. 45:9-2.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 1, 1988.

Summary of Public Comments and Agency Responses:

Two comments were received. The drug control program of the New Jersey Department of Health noted that it has no objections to the content or intent of the rule amendment. The Medical Society of New Jersey stated that its Board of Trustees had reviewed the proposal, but it offered no comment on the content or intent of the amendment. The Society did, however, set forth its views that laetrile is of no true medical value and has no place in legitimate therapy. The support of the Medical Board was requested by the Medical

Society for a petition to the New Jersey Legislature and the Department of Health to remove the drug from use in this State.

No objections to the amendment having been received, the Board adopted it on January 18, 1984 in the form published at 15 N.J.R. 2029(b). It should be noted that this adoption simply continues in effect the wording of a prior rule patterned upon the requirements of c.318, P.L.1977.

With respect to the Medical Society's petition for repeal of the underlying legislation, the Board of Medical Examiners responds as follows. The Board believes that research to date does not indicate any medical value for laetrile, and the Board would not be opposed to reconsideration by the Legislature of the express authorizing statute. At present, however, given the current existence of the law permitting prescribing of laetrile, and in the absence of adverse effects directly attributable to the mere administration or usual level of ingestion of the substance, the obligation of the physician to secure a detailed informed consent from the patient continues to be an essential caution for patients wishing to use laetrile.

Full text of the adoption follows.

13:35-6.8 Prescribing, administering or dispensing amygdalin (laetrile)

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

(c) The informed request for prescription of laetrile for medical treatment must utilize the wording appearing on a form which is available on request from the Board.

1. The form shall be prepared in quadruplicate and distributed as follows:

i. Original copy to State Department of Health;

ii. Copy to be retained by the physician;

iii. Copy to patient or person who signed form for the patient;

iv. Copy to pharmacist.

2. When amygdalin (laetrile) is utilized in the treatment of a malignancy, the diagnosis of malignancy shall be documented by a positive tissue diagnosis rendered by a qualified pathologist which shall include the size, location and type of malignancy. In the absence of tissue for diagnosis, the treating physician shall be required to obtain consultative and/or professional reports to support a positive diagnosis of a malignancy.

3. The alternative medically recognized and accepted form of therapy offered by a physician shall be thoroughly discussed with the patient and documented in writing.

(d) (No change.)

TRANSPORTATION

(a)

TRANSPORTATION OPERATIONS

Routes 27

Adopted Amendment: N.J.A.C. 16:28-1.44

Proposed: January 3, 1984, at 16 N.J.R. 39(a).
Adopted: February 7, 1984 by Jarrett R. Hunt, Assistant Chief Engineer, Traffic and Local Road Design.
Filed: March 2, 1984 as R.1984 d.71, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 39:4-98 and 39:4-199.

Effective Date: March 19, 1984
Expiration Date pursuant to Executive Order No. 66(1978): November 7, 1988.

Summary of Public Comments and Agency Responses:
No comments received.

Full text of the adoption follows.

16:28-1.44 Route 27

(a) The rate of speed designated for the certain parts of State highway Route 27 described in this section shall be established and adopted as the maximum legal rate of speed thereat:

1. For both directions of traffic:

i. 30 miles per hour from the intersection of Route US 206 and 27, to a point 100 feet south of the centerline of Cedar Lane, Princeton Borough, Mercer County; thence,

ii. 35 miles per hour to the intersection of Snowden Lane, Princeton Township, Mercer County; thence,

iii. 45 miles per hour to the intersection of Church Street-Academy Street, South Brunswick Township, Middlesex County, Franklin Township, Somerset County; thence,

iv. 35 miles per hour to a point 300 feet north of the centerline of Shaw Drive, South Brunswick Township, Middlesex County and Franklin Township, Somerset County; thence,

v. 45 miles per hour from a point 300 feet north of Shaw Drive and 1,450 feet north of Raymond Road, Franklin Township, Somerset County and South Brunswick Township, Middlesex County; thence,

vi. 50 miles per hour from a point 1,450 feet north of Raymond Road and 100 feet south of Allston Road, South Brunswick Township, Middlesex County, Franklin Township, Somerset County; thence,

vii. 45 miles per hour to a point 110 feet north of the centerline of New Road, South Brunswick Township, Middlesex County, and Franklin Township, Somerset County; thence,

viii. 50 miles per hour to a point 800 feet south of the centerline of Henderson Road, South Brunswick Township, Middlesex County, and Franklin Township, Somerset County; thence,

ix. 40 miles per hour to a point 50 feet south of the centerline of Finnegan Lane, South Brunswick Township, Middlesex County, and Franklin Township, Somerset County; thence,

x. 50 miles per hour to a point 300 feet north of the centerline of Industrial Drive, City of New Brunswick, Middlesex County; and Franklin Township, Somerset County; thence,

xi. 40 miles per hour to a point 100 feet south of the centerline of Sandford Street, City of New Brunswick, Middlesex County; thence,

xii. 30 miles per hour from the southerly end of the Bridge over the Raritan River to the intersection of Eighth Avenue, Highland Park Borough, Middlesex County; thence,

xiii. 40 miles per hour to a point 300 feet south of the centerline of Kentnor Street, Borough of Metuchen, Middlesex County; thence,

xiv. 30 miles per hour to the intersection of Oak Avenue, Metuchen Boro, Middlesex County; thence,

xv. 40 miles per hour to the intersection of Frederic Street, Edison Township, Middlesex County; thence,

xvi. 45 miles per hour to the intersection of Route 35, City of Rahway, Union County; thence,

xvii. 35 miles per hour to the intersection of Baltimore Avenue West, Roselle Borough and City of Linden, Union County; thence,

xviii. 30 miles per hour to the intersection of Broad Street, City of Elizabeth, Union County; thence,

xix. 35 miles per hour to the City of Elizabeth-City of Newark corporate line, Union County; except,

xx. A 25 miles per hour speed limit for the Roosevelt grammar school zone, during recess or while children are going to or leaving school, during opening or closing hours, in the City of Rahway, Union County.

(a)

CONSTRUCTION AND MAINTENANCE UNIT

Contract Administration
Distribution and Sale of Construction Plans and Supplementary Specifications

Adopted Amendment: N.J.A.C. 16:44-3.2 (Recodified from 16:65-3.2)

Proposed: November 21, 1983, at 15 N.J.R. 1930(a).
Adopted: February 24, 1984 by Jack Freidenrich, Assistant Commissioner for Engineering and Operations.
Filed: March 2, 1984 as R.1984 d.70, **without change.**

Authority: N.J.S.A. 27:1A-5, 27:1A-6, 27:2-1, 14A:1 et seq., 14:15-2.

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): July 5, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

16:44-3.2 Requirements

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

(e) Requests from outside the NJDOT for distribution of a set or sets of plans, or for any portion thereof, or for any individual sheet or sheets therefrom shall be honored during the advertised period. However, distribution under such requests will only be made after the following:

1. The Department Cashier has furnished a receipt indicating that the proper remittance ($0.60 per sheet not to exceed the scheduled price for a complete set of blank line prints) has been submitted; and

2. The purchaser has indicated that delivery of the plans and supplementary specifications will be accepted on a C.O.D. basis;

3. (No change.)

(f) (No change.)

(b)

NEW JERSEY TRANSIT CORPORATION

Private Carrier Capital Improvement Program

Adopted New Rule: N.J.A.C. 16:76

Proposed: December 19, 1983, 15 N.J.R. 2149(a).
Adopted: March 2, 1984 by Jerome C. Premo, Executive Director, New Jersey Transit Corporation.
Filed: March 2, 1984 as R.1984 d.72, **without change.**

Authority: N.J.S.A. 27:25-5(e), (h) and (k).

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66 (1978): December 19, 1988.

Summary of Public Comments and Agency Responses: **No comments received.**

Full text of the adoption follows.

CHAPTER 76
PRIVATE CARRIER CAPITAL IMPROVEMENT PROGRAM

SUBCHAPTER 1. GENERAL PROVISIONS

16:76-1.1 Purpose

NJ TRANSIT was established by the New Jersey Public Transportation Act of 1979 (N.J.S.A. 27:25-1 et seq.) as the instrumentality of the State government to establish and provide for the operation and improvement of a coherent public transportation system in the most efficient and effective manner. One of the programs by which NJ TRANSIT proposes to fulfill this responsibility is through the leasing of capital improvements purchased with funds provided by the State, the federal government or the Port Authority of New York and New Jersey. This chapter is designed to provide guidelines and procedures pursuant to which NJ TRANSIT will allocate such capital improvements to private bus carriers.

16:76-1.2 Definitions

The following words and terms, as used in this chapter, shall have the following meanings.

"Additional Regular Route Service" means the operation of any new intrastate or interstate regular route or the extension or alteration of any such existing services which affects 10 percent or more of the number of route miles of that route.

"Affiliate" means any individual, company, proprietorship, corporation, trust or partnership where by reason of the relationship of such entity with the carrier (whether by reason of the method of, or circumstances surrounding organization or operation, or whether established through common directors, officers, stockholders, a voting trust or trusts, a holding or investment company or companies, family relationships, or any other direct or indirect means) there is a reason to believe

that the affairs of the carriers may be managed in the interest of such individual, company, proprietorship, corporation, trust or partnership.

"Board" means the Board of Directors of the New Jersey Transit Corporation.

"Capital Improvements" means items including, but not limited to, electronic equipment (including fareboxes or other revenue handling equipment), radios and related equipment, revenue and non-revenue rolling stock, portable garage maintenance equipment, maintenance or garage facilities and any other equipment, facility or property useful for or related to the provision of regular route peak services by private bus carriers. The lease of revenue rolling stock under this program is also guided by N.J.A.C. 16:75.

"Executive Director" means the Executive Director of NJ TRANSIT or his designee.

"NJ TRANSIT" means the New Jersey Transit Corporation.

"Private Bus Carrier" means any individual, co-partnership, association, corporation, joint stock company, trustee or receiver who is not receiving operating subsidies from or operating under contracts for service with NJ TRANSIT and is operating or controlling regular route bus peak service on established routes within this State or between points in this State and points in adjacent states.

"Regular Route Peak Services" means the operation of any motor bus or motor buses on streets, public highways or other facilities, over a fixed route and between fixed termini on a regular schedule for the purpose of carrying passengers for hire or otherwise, in this State or between points in this State and points in other states during the time of 6:00 A.M. to 9:30 A.M. and 4:00 P.M. to 7:00 P.M. Services which are exclusionary or personal in nature or are to special purpose areas such as to casinos or special events are not included within this definition.

SUBCHAPTER 2. GUIDELINES

16:76-2.1 Eligibility

(a) To be eligible to receive assistance pursuant to this program a private carrier must be registered with the New Jersey Department of Transportation and/or the Interstate Commerce Commission and provide regular route peak service.

(b) The funding for this program (except whatever local match is required) shall be provided generally by the Urban Mass Transportation Administration (UMTA) pursuant to its Section 9 and 9A programs and attributable to the total private carrier revenue including miles apportioned to urbanized areas in New Jersey.

1. For Federal fiscal years 1983 and 1984, apportionment is based on calendar years 1980 and 1981 regular route revenue mileage operated by the private carriers for those periods as reported to the New Jersey Department of Transportation.

2. Future year apportionments by UMTA will be based on appropriate data submissions by NJ TRANSIT to UMTA pursuant to 49 U.S.C. 1611 (Section 15).

3. A decision by an eligible carrier to participate or not in the program for one fiscal year will not affect its eligibility to participate in future fiscal years.

(c) Eligibility in this program is contingent upon the inclusion by NJ TRANSIT and acceptance by UMTA of a private carriers' annual revenue including mileage pursuant to Section 15. Revenue vehicle mileage includes only those miles attributable to New Jersey intrastate regular route service or to interstate regular route service which primarily services New Jersey residents.

(d) The allocation to each private carrier of capital improvements pursuant to this program shall be determined by a review of the following criteria:

1. A carrier's revenue vehicle mileage as a percentage of the total revenue vehicle mileage included in Section 5 submissions;

2. A carrier's demonstrated relative need for capital improvements as compared to the total need of all qualified carriers;

3. Consideration of the level of capital assistance the carrier has received under past programs, such as various bus allocations for transit, suburban, and cruiser type vehicles, including funds made available to that carrier because of assets replaced under other NJ TRANSIT'S programs:

4. Consideration of a carrier's financial ability to capitalize a program utilizing company funds, including depreciation reserves;

5. The determined public need for all or a portion of the regular route peak service operated by the carrier;

6. Consideration of facilities whose use is shared with non-regular route service affiliates or subsidiaries, or any type of shared or cross ownership of facilities with non-regular route service parties, with particular regard to charter/tour affiliates and school bus operations.

i. Capital improvements will be adjusted so as to equal the percentage of a carrier's facility dedicated in whole or substantial part for New Jersey regular route peak service.

ii. Capital improvements will only be eligible to the extent that the carrier offers regular route service which in whole or substantial part serves New Jersey residents. However, carriers may elect to fund that portion of a capital improvement. not covered by the capital assistance program with their own monies. In this case, NJ TRANSIT shall retain a security interest in the portion of the capital improvements attributable to this program.

16:75-2.2 Other requirements

(a) Carriers must agree to abide by all requirements of NJ TRANSIT, UMTA, and the Port Authority of New York and New Jersey, to the extent applicable. A listing of requirements will be provided to qualified participants.

(b) Carriers must agree to comply with UMTA audit requirements pursuant to 49 U.S.C. 1607 and 1607A (Section 9 and 9A). Audit requirements include an independently conducted annual review of conformity with various program aspects of Section 9 and 9A.

1. In addition to the aforementioned annual review, UMTA statutory obligations require a triennial audit, to be conducted by UMTA, to ensure compliance with all Sections 9 and 9A program requirements.

2. Carriers must agree to provide any records or documentation that UMTA or NJ TRANSIT may require to facilitate completion of the audit process. The requirements specifically direct that such reviews ascertain the accuracy of data used for making annual apportionments, and will constitute certification that carriers are eligible to continue receiving capital improvements.

3. Any such audit shall be conducted at the carrier's expense and shall be completed in a timely fashion.

(b) Carriers will be required to certify to NJ TRANSIT that all allocated capital improvements are being satisfactorily maintained along accepted product standards throughout its useful lifespan. Carriers must agree to develop and submit to

NJ TRANSIT a maintenance plan if required by UMTA or NJ TRANSIT.

(c) A carrier must agree to enter into a leasing arrangement with NJ TRANSIT for any items received through capital allocations. No disbursement of capital improvements will occur until a fully executed lease agreement between the carrier and NJ TRANSIT has been completed and appropriate insurance requirements met. The lease will clearly outline all obligations pertaining to the carrier and NJ TRANSIT.

16:76-2.3 Disposal of capital equipment

(a) If capital assistance results in the replacement of a carrier-owned equipment, the carrier must agree to remove the equipment from regular route service. The carrier may dispose of this equipment and keep the proceeds for recapitalization of its regular route services.

(b) A carrier must submit a plan for disposition of the equipment and use of the proceeds to NJ TRANSIT for its approval.

1. If the item was originally purchased through UMTA funding, the proceeds will revert to NJ TRANSIT for disposition per UMTA regulations. Disposition of funds from retired UMTA assets cannot occur without prior written approval from NJ TRANSIT.

2. If the equipment to be replaced is leased, the carrier must terminate the lease agreement for the equipment.

16:76-2.4 Ineligibility

(a) A carrier or any of its affiliates which is not current in any and all accounts it has with NJ TRANSIT and/or its predecessors, as well as with the State of New Jersey and all of its agencies, will not be able to receive any capital improvements through this program until such time as any outstanding sums are paid.

(b) Consideration will be given to the adequacy of performance by the carrier or any of its affiliates under prior vehicle leasing or other contractual arrangements with NJ TRANSIT and/or its predecessors. A carrier or any of its affiliates which have demonstrated a negative performance in the past may not be considered eligible under this program.

(c) Consideration will also be given to a carrier's ability to maintain and operate capital equipment that require sophisticated and expensive maintenance systems. Carriers may be considered ineligible for the receipt of such capital equipment based on its apparent inability to maintain and operate such equipment.

(d) A carrier may be declared ineligible under this program if NJ TRANSIT determines that the lease of or the continued lease of capital equipment to the carrier is inconsistent with its statutory obligation to provide efficient, effective, coordinated and coherent state transportation systems.

SUBCHAPTER 3. PROCEDURE

16:76-3.1 Notification

(a) When NJ TRANSIT contemplates declaring an operator ineligible under its capital equipment program pursuant to N.J.A.C. 16:75-2.4, a designee of the Executive Director shall notify the carrier of the preliminary decision, the reasons therefor and allow the carrier the opportunity to respond. Such notification shall not be given without the prior written approval of the Chairman of the Board.

(b) The Executive Director shall consider the carrier's response and all other relevant material including the applicable provisions of N.J.S.A. 27:25-1 et seq. and any other applicable law and shall render a decision. A carrier may seek a review of such decision by the Board by filing a notice of such intention within 10 days after receipt of the Executive Director's decision.

(c) No final action shall be taken by NJ TRANSIT regarding an operator's eligibility for capital equipment until the operator has had the opportunity to exhaust its right to respond to NJ TRANSIT'S preliminary decision or seek review of the Executive Director's decision by appeal to the Board of Directors.

16:76-3.2 Factors to be considered

(a) The factors to be considered by the Executive Director in determining whether a carrier is eligible to lease capital equipment shall include, but not be limited to:

1. Whether a carrier or its affiliates are current in its accounts with NJ TRANSIT or its predecessor as well as with the State of New Jersey and all of its agencies;

2. The adequacy of performance by a carrier or its affiliates under prior leasing or other contractual arrangements with NJ TRANSIT or its predecessor;

3. Whether a carrier has the ability to maintain and operate technologically complex capital equipment;

4. The public need for all or a portion of the service operated by the carrier;

5. The impact of the service operated by the carrier on other carriers, the riding public and the taxpayers of the State;

6. The extent to which the carrier operates a complete array of service, or only operates on the more profitable routes and at the more profitable times, leaving other service to be operated by NJ TRANSIT or other carriers;

7. The extent to which the carrier has other equipment available for its use and not otherwise eligible for replacement under this program; and

8. Whether the lease should be conditioned on a carrier agreeing that it or any present or future affiliate shall not provide additional regular route services without NJ TRANSIT'S approval. This paragraph shall not apply to additional intrastate regular route service which is approved in accordance with the procedures of the New Jersey Department of Transportation.

TREASURY-TAXATION

(a)

DIVISION OF TAXATION

New Jersey Gross Income Tax Setoff of Individual Liability

Adopted Amendments: N.J.A.C. 18:35-2.2 and 2.12

Proposed: December 5, 1983 at 15 N.J.R. 2031(a).
Adopted: February 23, 1984 by John R. Baldwin, Director, Division of Taxation.
Filed: February 24, 1984 as R.1984 d.62, **without change.**

Authority: N.J.S.A. 54A:9-8.1 and 54A:9-17(a).

Effective Date: March 19, 1984.
Expiration Date pursuant to Executive Order No. 66(1978): August 12, 1988.

Summary of Public Comments and Agency Responses:

A comment received from a State agency expressed concern that the lower threshold might encourage particular creditors to use the setoff program as a primary collection method.

The Division stated in response that lowering the minimum amount for the setoff program would permit several additional agencies to make use of the program that were previously unable to participate. In addition, both by current rules and by periodic reminders, agencies are advised that the setoff program is not intended to be the primary method of collecting outstanding accounts.

Full text of the adoption follows.

18:35-2.2 Definitions

"Debtor file" means a list of liquidated accounts for which the claimant agency has exhausted its collection methods. A minimum of $25.00 for total debts per individual per claimant agency or institution will be established. This threshold amount is subject to change in future years by the Division of Taxation based upon experience. Accounts involving more than one debtor must be broken down individually, and the debt allocated to each individual by a claimant agency. The list must be supplied on magnetic tape, punched cards, or other input media as provided by the Division of Taxation and contain such information as the Division may require in order to setoff with the beginning of the refund cycle in February. One update of this file will be permitted per agency prior to the homestead rebate cycle in June.

. . .

18:35-2.12 Disposition of proceeds collected; collection assistance fees

(a) (No change.)

(b) From the gross proceeds collected by the Division through setoff, the Division shall retain 10 percent which amount shall be charged to the respective claimant agency as a collection assistance fee subject to adjustment based upon experience.

EMERGENCY ADOPTIONS

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES BUREAU OF SHELLFISH CONTROL

Special Permits Relay Program

Adopted Emergency Repeal and Concurrent Proposal: N.J.A.C. 7:12-2.7
Adopted Emergency New Rule and Concurrent Proposal: N.J.A.C. 7:12-2.7

Emergency Repeal and New Rule Adopted: February 15, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.
Gubernatorial Approval (See: N.J.S.A. 52:14B-4(c)): February 21, 1984.
Emergency Repeal and New Rule Filed: February 29, 1984 as R.1984 d.66.

Authority: N.J.S.A. 58:24-1 et seq.

Emergency Repeal and New Rule Effective Date: March 1, 1984.
Emergency Repeal and New Rule Expiration Date: April 30, 1984.

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submissions, and any inquiries about submissions and responses, should be addressed to:

William J. Eisele Jr., Chief
N.J. Department of Environmental Protection
Bureau of Shellfish Control
Stoney Hill Road, Leeds Point
Star Route
Abescon, N.J. 08201

This repeal and new rule 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). Concurrently, the provisions of this emergency repeal and new rule 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 becomes 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 1984-151.

The agency emergency adoption and concurrent proposal follows:

Summary

The Department of Environmental Protection, by emergency rule, repeals the current rule N.J.A.C. 7:12-2.7 and adopts a new rule in its place concerning the relay of contaminated shellfish originating in Condemned, Special Restricted, or Seasonal Special Restricted waters to leased lots in approved waters for cleansing. This longstanding program provides a means for commercial shellfishermen to utilize a renewable resource that would otherwise be unavailable for harvest. In addition, shellfish populations in closed waters, in the absence of harvesting pressure, tend to reproduce to levels rarely found in Approved waters and thus represent an "attractive nuisance" and threaten public health.

The body of rules contained herein regulate the harvest, transport, replanting and reharvest of an easily marketable food product. It is felt that these changes are needed to insure that shellfish harvested under this program do indeed complete the cleansing process and do not prematurely reach the market. The increased availability of department enforcement personnel to monitor the relay on a daily basis has been integrated into the current rules and will result in an increased level of confidence that those shellfish reaching the market (and originating in prohibited waters) have been purged of bacterial contaminants and are fit for human consumption.

Social Impact

The hard clam relay is scheduled to begin on March 1, 1984 to preclude catastrophic impact on the shellfish industry, the individual clammers involved therein, and the families they support thereby from loss of income forseeable from delaying the start of the hardclam relay. New provisions at N.J.A.C. 7:25-15.1 are being adopted by emergency procedures, effective March 1, 1984, to ensure delivery of wholesome product to market.

The provisions at N.J.A.C. 7:25-15.1 would be rendered ineffective in achieving their dual purpose, precluding imminent peril to the welfare of the public involved in the hard clam relay and precluding imminent peril to the health and safety of the shellfish consuming public, without concurrent adoption of amendments to N.J.A.C. 7:12-2.7 made necessary by changes at N.J.A.C. 7:25-15.1. In order to effect concurrent adoption of these amendments at N.J.A.C. 7:12-2.7 (that is, have them effective by March 1, 1984), emergency adoption is essential.

The acceptance of the rules contained herein will exert a positive social impact through the public knowledge that this natural resource can and is being utilized in a safe and healthful manner.

Economic Impact

A positive economic impact can be expected to be generated from the sale of reharvested shellfish after cleansing. Many shellfishermen have come to depend upon the relay program for their livelihoods due to the continuing decreases observed in the overall harvest of shellfish originating in Approved waters.

Full text of the emergency new rule and concurrent proposal follows.

7:12-2.7 Relay program

(a) The purpose of this program is to harvest market size hard clams from areas other than Approved Areas, for replanting in Approved Areas on special leased lots for purposes of natural purification prior to marketing. Two different types of permits are issued depending on participant request.

1. Permit 5a (Harvest, Buy, Sell, and Relay Hard Clam Permit) allows hard clams to be harvested, purchased, sold and relayed from specified Special Restricted, Seasonal Special Restricted or Condemned Waters in conjunction with a State approved shellfish relay program. All applicants are required to possess a special relay lease issued by the department (see N.J.A.C. 7:25-15.1) as a condition of this permit. The applicant is solely responsible for maintenance of all signs, stakes and markers as established in N.J.S.A. 50:1-5.

2. Permit 5b (Harvest Hard Clams For Sale Purposes Only Permit) allows hard clams to be harvested from specified Special Restricted, Seasonal Special Restricted, or Condemned Waters for sale purposes only (thus eliminating the requirement for obtaining a special relay leased plot in Approved waters) in conjunction with a state approved shellfish relay program.

(b) Permits 5a and 5b shall be valid only under the following specific requirements or conditions. Violation may subject the holder to prosecution under N.J.S.A. 58:24-3. These rules must be read together with the Shellfisheries regulations which appear at N.J.A.C. 7:25-15.1.

1. Species limited under said permit to hard clams (Mercenaria mercenaria).

2. Areas of harvest are limited to those delineated on the chart attached to each permit. These areas specified for harvest may consist of Special Restricted, Seasonal Special Restricted or Condemned waters as classified by this department.

3. The inclusive dates of the permit shall be specified on the face of the special permit unless revoked or suspended by the department prior to the dates indicated and for cause. A schedule of harvest dates by section and landing sites will be sent by the department to the permittee at the address on file with the Bureau of Shellfish Control (Leeds Point). A change of address must be reported to the Bureau of Shellfish Control (Leeds Point) within one week of the change.

4. The harvester must possess a valid NEW JERSEY COMMERCIAL HARVESTING LICENSE issued by the New Jersey Division of Fish, Game and Wildlife.

5. Harvesting from waters designated for relay purposes shall be subject to all state laws and regulations applicable to the harvest of hard clams from Approved waters.

6. The relay of hard clams from the waters designated for relay purposes shall be permitted as established by N.J.A.C. 7:25-15.1. Hard clams shall be planted on the specified leased lots in Approved waters as scheduled by the department. The shellfish shall be removed from the bags at time of planting.

7. The participant must have this permit in his possession while working in all phases of the relay program.

8. This permit shall apply only to the waters specified in an attached chart provided with each permit and further specified in a schedule determined by the department to manage the resource and protect the public health, safety and welfare.

9. All hard clams taken from the designated relay waters shall be relayed to the special relay leased plots on a schedule set by this department and shall remain upon said leased lots until written permission for harvest has been granted by the Bureau of Shellfish Control. Relayed hard clams are required to remain for a minimum of 30 days in the special relay leased plots. The minimum 30-day purging period will begin on a schedule established by the department. Additionally, the water temperature of the Approved waters during the minimum 30 day purging period shall be at or above 13 degrees centigrade (55 degrees Fahrenheit) as determined by the Bureau of Shellfish Control. Reharvesting of the relayed shellfish will be regulated by the Department of Environmental Protection's Division of Water Resources, Bureau of Shellfish Control. Reharvesting of shellfish from the special relay leased plots may commence only after receipt of written permission from this office.

10. The State Department of Environmental Protection reserves the right to suspend or revoke this permit at anytime that, in the department's judgement, its continued use may imperil the public health.

11. Signs having a white background with 6 inch legible black lettering, giving the participant's first initial and last name and Special Relay permit number shall be placed and maintained (amidships) on both sides of the participants boat while participating in any phase of the program.

12. Said boats shall remain in the designated relay section during the time harvesting operations are underway. Harvesting beyond the designated section is prohibited.

13. Upon completion of the day's harvesting, all shellfish shall be transferred to the authorized vehicle(s). No clams are to remain in the marked clam boats or transferred to other vehicles or boats. The location(s) of all loading and unloading sites associated with the transfer of shellfish from one vehicle/vessel to another, shall be assigned by the enforcement unit(s) designated in the Bureau of Shellfisheries regulations appearing at N.J.A.C. 7:25-15.1. There shall be no variance from said designated area unless so authorized by same.

14. Dredging and other illegal methods of harvesting are prohibited.

15. Shellfish taken from the designated relay area shall be bagged by the participant, three quarter bushel to the bag, in bags approved by the department. All bags shall be marked "RELAY CLAMS" with 2 inch letters on the side. No unmarked bags will be allowed in the harvesters' or buyers' vehicles or boat except during reharvest. Each bag shall have a tag attached, marked with the harvesters' and/or buyers' name and permit number. Shellfish not in compliance with the bagging requirements will be seized and returned to Condemned waters by the designated enforcement unit. Participants will place the shellfish in vehicles provided by them and approved by the department or New Jersey State employee designated by the department. The vehicles will be sealed by the department or New Jersey State employee designated by the department at the harvest landing site and opened by the department at the off-loading site. Each participant shall inform the designated enforcement unit(s) of the route he will routinely follow from the harvest area to the planting area.

16. The bags will be counted by the relay harvester and listed on the numbered three-part relay receipt forms which shall be certified by the harvester. The forms must be filled out in their entirety before the clams are transported. Receipts for all clams must be in the transporting vehicle. When clams are sold to the holder of a 5a permit, the form shall be signed by both the harvester and the buyer-planter at the landing site. The possession or submission of incomplete, fraudulent or misleading relay receipt forms shall be a violation of this permit.

17. Participants shall not harvest approved clams from their leased plots on the same trip they plant clams from the

day's relay. Persons harvesting clams from relay lots after written permission has been received from the Bureau of Shellfish Control shall not have any "RELAY" transport bags, as described in N.J.A.C. 7:25-15.1 of the relay rules, in their vehicles or vessels at the time they harvest.

18. The department shall have the authority to inspect and collect shellfish from any phase of the relay to ensure compliance with all relay program regulations. Shellfish found under participant's control contrary to these and other appplicable statutes and regulations shall be subject to seizure.

19. Only the lessee or a substitute harvester shall remove clams from the leased plots. A substitute harvester must possess a Letter of Permission (issued by the Division of Fish, Game and Wildlife) from the lessee giving the dates for which he is allowed harvest privileges, and the lessee's permit number from the Division of Water Resources Permit 5a.

20. Violations of these conditions may subject the violator to prosecution under N.J.S.A. 58:24.

21. This permit shows on its face specific conditions that are deemed necessary for the proper operation of the shellfish relay program. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit are charts of the harvest sites showing specific sections within the estuaries that may be harvested on a particular day, as determined by the designated enforcement unit(s).

i. Penalty: Any participant violating the regulations or the terms of the special relay permit issued by the Division of Water Resources, may be subject to prosecution under the provisions of N.J.S.A. 58:24-3, proscribing the taking shellfish from Condemned Areas in violation of the permit, and may incur the penalty prescribed by the N.J.S.A. 58:24-9 described below.

ii. Any person who shall gather any oysters, clams or other shellfish from a place which has been Condemned by the department pursuant to N.J.S.A. 58:24-2 of this title or who shall distribute, sell, offer or expose for sale or have in his possession any such shellfish so gathered unless he shall first have secured a permit in writing from the department to distribute, sell, offer or expose for sale or have in his possession any such shellfish so taken, is guilty of a petty disorderly offense and any such person convicted of a subsequent offense is guilty of a disorderly persons offense (N.J.S.A. 58:24-9). Additionally, N.J.S.A. 58:24-10 states that the vessel, vehicle and all equipment used to violate this law, regulation or permit may be subject to seizure and forfeiture.

22. Due to the necessity to closely monitor this program for the purpose of protecting public health, the Division of Water Resources shall immediately suspend the Special Relaying Permit of any participant who violates any condition of the permit or any of these regulations. Pursuant to the Administrative Procedure Act, such individual may apply to the Division of Water Resources for an administrative hearing regarding the decision to suspend such permit.

23. Conviction of a shellfish violation as provided in N.J.S.A. 58: 24-1 et seq., and N.J.S.A. 50:2-1 et seq., shall be adequate cause for the suspension and denial of all special permits issued by the New Jersey Department of Environmental Protection involving the harvesting of shellfish from the waters of this state.

24. Discrimination against any harvester on the basis of race, sex, creed, domicile, or any other non-work related factor shall be adequate cause for revocation of this permit.

(a)

DIVISION OF FISH, GAME AND WILDLIFE
BUREAU OF SHELLFISHERIES

Relay of Hard Clams

Adopted Emergency Repeal: N.J.A.C. 7:25-15.1
Adopted Emergency New Rule: N.J.A.C. 7:25-15.1

Emergency Repeal and New Rule Adopted: February 15, 1984 by Robert E. Hughey, Commissioner, Department of Environmental Protection.

Gubernatorial Approval (See: N.J.S.A. 52:14B-4(c)): February 21, 1984.

Emergency Repeal and New Rule Filed: February 29, 1984 as R.1984 d. 6.5

Authority: N.J.S.A. 50:1-5.

Emergency Repeal and New Rule Effective Date: March 1, 1984.

Emergency Repeal and New Rule Expiration Date: April 30, 1984.

DEP Docket No. 001-84-01.

Summary

This emergency repeal and new rule adoption incorporates public comments received in response to the emergency adoption and concurrent proposed amendment appearing on November 21, 1983 at 15 N.J.R. 1959(a). The new rule, applicable Statewide, outlines a procedure by which licensed commercial clammers may move (relay) clams from polluted waters to areas in clean water (relay lots) where the clams can, over a period of time, purge themselves of impurities to become wholesome and fit for market. Emergency adoption will allow the relay to open March 1, 1984. A proposal similar to this emergency adoption was proposed at 16 N.J.R. 186(a) and will be adopted and promulgated concurrently with the expiration of the emergency adoption. Commencement of the hard clam relay on March 1, 1984 under N.J.A.C. 7:25-15.1, which last season's experiences demonstrated to be inadequate to ensure the delivery of wholesome product to market, would potentially result in imminent peril to public health. Repeal of this rule, concurrent adoption of new rule also at N.J.A.C. 7:25-15.1, and concurrent adoption of amendments to Division of Water Resources, Bureau of Shellfish Control, rule at 7:12-2.7 will provide an orderly procedure for recovery of clams in New Jersey waters for relay to lots in clean waters for ultimate purification thereby avoiding possible severe negative health impact on the general population. If the Department of Environmental Protection is forced to proceed without emergency procedures for rule adoption, effective date for adoption of this rule would be no earlier than April 2, 1984. With emergency adoption of this rule, the hard clam relay could begin on March 1, 1984 with the rules essential to protecting public health already in effect.

Social Impact

In the past the relay of hard clams has provided valuable employment for many baymen who would otherwise be unable to work steadily at their chosen trade. This new rule provides an orderly procedure for the recovery of clams in New Jersey waters for relay to lots in clean waters for ultimate purification.

Economic Impact

Loss of a source of legitimate income, if the relay is not implemented by March 1, 1984, would have a catastrophic economic impact on the clammers involved and the families they support on income from the hard clam relay. The baymen who work on the relay are hardworking, and they are dedicated to making a living on the water. It is what they know best, and, as pollution has forced them to adapt their way of life, many have come to depend on the State's relay programs for them to continue their work without serious disruption.

Environmental Impact

Relay harvest has had little adverse environmental impact on the bays of New Jersey or its clam resource. The possibility of severe negative health impact on the general population can be avoided by providing for legal harvest and safe relay of clams from polluted waters beginning March 1, 1984.

Full text of the new rule follows.

7:25-15.1 Relay of hard clams

(a) This rule is intended to implement the hard clam relay program administered statewide by the Department of Environmental Protection (department). This rule must be read together with the shellfish growing water classification rules and definitions which appear at N.J.A.C. 7:12 and are subject to amendment at anytime. N.J.S.A. 58:24-2 requires the department to condemn immediately shellfish beds subject to pollution.

(b) The general intent of this rule is to control the relay of hard clams (Mercenaria mercenaria) from Special Restricted, Seasonal Special Restricted, or Condemned Waters within the Atlantic Coast Section (see: N.J.S.A. 50:1-18) to specially designated leased shellfish cleansing grounds also situated in the Atlantic Coast Section. These designated Special Restricted, Seasonal Special Restricted, or Condemned Waters will be charted by the department and such charts will be issued to participants and available to the public. Anyone who meets the requirements set forth below in this rule may participate in this program. If it becomes necessary to limit the number of participants, then applicants will be admitted in order of their application.

(c) The department will schedule areas for harvest and designate the landing site and so notify the participants. The department will designate certain specific areas as off limits to the use of clam rakes and tongs for the harvest of hard clams in such shallow water areas as it deems abundant with soft clams. Charts of the designated soft clam areas will be provided to all participants by the department. In these designated soft clam areas, the harvest of hard clams shall be permitted only by treading.

(d) Participants shall be furnished numbered receipt forms, with the date they are to be used, by the Division of Fish, Game and Wildlife, (division). These forms shall be completed in their entirety and signed by the harvester, and also signed by the buyer if the shellfish are to be sold at the landing site, for each date used. Completed and all unused receipt forms shall be sent to the division's Bureau of Shellfisheries' Nacote Creek Office no later than one week after the forms are completed.

(e) Any person who wishes to participate in this program must comply with the following conditions in order to be eligible for participation:

1. Possess a current, valid, commercial clamming license issued by the division (see: N.J.S.A. 50:2 et seq.);

2. Possess one of the following special permits issued by the Division of Water Resources (N.J.S.A. 58:24-3 and N.J.A.C. 7:12-2) to harvest and/or buy and/or sell hard clams from condemned waters:

i. Permit 5a: SPECIAL PERMIT TO HARVEST, BUY, SELL AND RELAY HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; or

ii. Permit 5b: SPECIAL PERMIT TO HARVEST HARD CLAMS FROM SPECIFIED SPECIAL RESTRICTED, SEASONAL SPECIAL RESTRICTED, OR CONDEMNED WATERS FOR SALE PURPOSES ONLY IN CONJUNCTION WITH A STATE APPROVED SHELLFISH RELAY PROGRAM; and

3. The above permits will show on their face the specific conditions that are deemed necessary for the proper operation of the shellfish relay program. All permittees are also required to comply with all other applicable statutes and regulations. Included with every permit will be department charts of the harvest areas showing specific sections within the estuaries that may be harvested on any particular day, as determined by the department.

(f) Any person applying for permit 5a must have acquired a special relay lease from the department for three one-half acre lots of shellfish cleansing grounds on which the relayed shellfish are to be planted by the means hereinafter set forth. No person shall hold more than one relay lease. Applications for leases must be made in person at the Nacote Creek Shellfish Office of the department. The lease shall be subject to the following additional conditions:

1. This special relay lease shall be issued for only one year and can be reapplied for annually;

2. The fee for this lease, to be paid at the time of application, shall be $50.00;

3. Once the lease lots have been marked by the division, the lessee shall be solely responsible for the placement and maintenance of the stakes marking same, or their necessary replacement;

4. This special relay lot shall be used for relay from the specified harvest areas only. No special relay lease will be renewed if the lessee did not actively participate in the previous year's program unless such inactivity was due to unusual hardship, as determined by the department, or was due to the department's failure to administrate or operate a hard clam relay program during the previous year. Upon termination of the program by the department, special relay lessees, subject to subsection (h) below, shall retain exclusive rights, for a period of 18 months, to the clams planted on their leased grounds before the termination date and may thereafter reapply to lease the grounds;

5. A lessee vacating a relay lot shall have exclusive right to hard clams planted before the date of vacation for a period of six months from that date;

6. Signs, having a white background with six-inch black lettering giving the participant's special relay permit number

or code symbol and relay lot "Section A", "B", or "C", shall be placed and maintained on the participant's relay lot corners. Failure to mark lots as specified shall be deemed a violation of these regulations;

7. The participant's harvest boat shall be marked on both sides, amidships, with six-inch black letters on a white background giving the participant's first initial, last name, and special relay permit number while he is engaged in any phase of the program; and

8. The division's Marine Enforcement Unit (enforcement unit) shall have the authority to inspect any relay lot to ensure compliance with all relay program regulations. Shellfish found on any relay lot contrary to these and other applicable statutes and regulations shall be subject to seizure.

(g) All clams harvested from the specified Special Restricted, Seasonal Special Restricted, or Condemned Waters shall be landed at the site and at the time specified by the enforcement unit.

(h) All clams harvested by the participant shall be bagged, threequarter bushel to the bag, in bags approved by the department. All bags shall be marked, "RELAY CLAMS," with two-inch letters stenciled on the side. No unstenciled bags will be allowed in the harvester's or buyer's vehicle or boat at the harvest, landing, planting off-loading, or transplant sites. Each bag shall have a tag attached, marked with the harvester's and/or buyer's name and permit number.

1. The bags will be counted by the relay harvester and listed on the numbered three-part relay receipt forms which shall be certified by the harvester. The forms must be filled out in their entirety before the clams are transported. Receipts for all clams must be in the transporting vehicle. In the event that the clams are to be sold to the holder of a Permit 5a, the form shall be signed by both the harvester and the buyer-planter at the landing site. The department will provide receipt forms and seals and designate procedures for their use.

2. The harvester shall retain one copy, forward one copy to the Bureau of Shellfisheries' Nacote Creek Office each Friday, and give the third copy to the buyer who shall carry it with the bagged clams directly to the relay lot. Unused, spoiled, or voided forms shall be returned to the Bureau of Shellfisheries' Nacote Creek Office with the completed forms each Friday.

3. Participants will place their counted bags in the truck, said vehicle provided by the participants and approved by the enforcement unit, for transportation to the planting area. The truck or trucks will be sealed by department personnel or their designated agents at the harvest landing site and opened by same at the planting off-loading site. The enforcement unit may specify the route to be taken from the harvest landing site to the planting off-loading site. Deviation from a specified route will not be tolerated except in an emergency. In the case of a mechanical failure or act of God interrupting this process, the transporter will notify the enforcement unit immediately in order to receive further instructions with which he shall comply.

4. Clams in bags shall be transported to the participant's leased lots and planted within the time frame specified by the enforcement unit. The bags of clams will be directly transported to the respective planting lots and immediately planted thereon. All clams shall be removed from the bags as they are planted on the relay lots.

5. Participants shall not harvest any shellfish on the same trip they plant clams from the day's relay. Persons harvesting clams from relay lots after receipt of written permission from the Bureau of Shellfish Control shall not have any stenciled transport bags in their boats at the time they harvest.

6. The Bureau of Shellfisheries shall notify the participants of the dates the relay shall be conducted, the area to be harvested, the hours clams must be landed and planted, and the landing site to be used.

(i) Clams shall be relayed to the leased lots on a schedule set by the department and shall remain upon said leased lots until written permission for harvest has been granted by Division of Water Resources, Bureau of Shellfish Control. Further, relay clams shall only be planted on the sublot designated by the department. Planting on sublots already in the cleansing period or released for harvest is a violation of these regulations and will jeopardize the entire program.

(j) Only the lessee or his designated substitute harvester shall remove clams from the leased lots. The designated substitute harvester must possess a Letter of Permission, issued by the Division of Fish, Game and Wildlife, Bureau of Shellfisheries, from the lessee giving the dates for which he is allowed harvest priviledges and the lessee's Division of Water Resources Permit 5a number at all times during harvest operations.

(k) The department shall establish a schedule of dates and times for the relay and the areas of the Special Restricted, Seasonal Special Restricted, or Condemned Waters which shall be opened to participants in this program for the harvest of clams. Trucks will be sealed at the landing site and unsealed at the planting off-loading site at times established and announced to all participants by the enforcement unit. Any vehicle carrying relay clams not under seal, or with a broken seal, shall be in violation of these regulations.

(l) The department may terminate this program, or anyone's participation therein, at any time for just cause and upon notice to the affected participants. Just cause shall include, but not be limited to, peril to public health, excessive depletion or threat thereof to the shellfish stocks, lack of industry participation, and violation of the rules of the relay program deemed by the department detrimental to the program. Possession of any unmarked bag of clams, or loose clams, in a vessel which has left the relay lots after planting, or any misrepresentation on the receipt form by the harvester or buyer, shall be prima facie evidence of a violation of these rules.

(m) Penalty: Any participant violating this rule or the terms of the special relay permit issued by the Division of Water Resources may cause the violator's permits to be revoked or suspended. This participant may also be subject to prosecution, including fine, imprisonment and forefeiture of vessel, vehicle, and all equipment. Any lessee who is convicted of an offense which results in the revocation of a Shellfish Harvesting License or a Special Permit mentioned in (e)2 above shall have his lease terminated by the department; provided, however, that upon lessee's giving notice to the division within 10 days of departmental notice of termination of said lease, the lessee shall be given the opportunity to show why his lease should not be terminated. Upon issuance of summons to lessee, any transfer of lease will be stayed pending final disposition of said summons. If notice is given within the aforementioned 10-day period, termination of the lease will not be effective until the next regularly scheduled meeting of the Atlantic Coast Shellfisheries Council. The Atlantic Coast Shellfisheries Council shall have the authority to permanently suspend such termination for good cause shown. Nothing in this section shall allow the termination of a lease because of a violation of N.J.S.A. 50:2-1 or N.J.S.A. 50:2-5. A violation of this rule is a violation of 50:1-5 and is subject to a penalty under 23:2B-14a (first offense $100.00 to $3,000.00; subsequent offense $200.00 to $5,000.00.)

ADDITIONAL PROPOSAL

ENVIRONMENTAL PROTECTION

(a)

BOARD OF PUBLIC UTILITIES

Small Water Company Takeover Act Regulations

Joint Proposed New Rule: N.J.A.C. 7:19-5.1

Authorized By: Robert E. Hughey, Commissioner, Department of Environmental Protection, and Barbara A. Curran, President, Board of Public Utilities.
Authority: N.J.S.A. 58:11-59 et seq. and 58:12A et seq.
DEP Docket No. 006-84-02.

Two public hearings concerning this proposal will be held at the following times and locations:

April 9, 1984
10:00 A.M.
Labor Education Center
Rutgers University
Ryders Lane and Clifton Avenue
New Brunswick, New Jersey 08903

April 10, 1984
7:00 P.M.
Essex County Environmental Center
621 Eagle Rock Avenue
Roseland, New Jersey 07068

Interested persons may submit in writing, data, views or arguments relevant to the proposal on or before April 19, 1984. These submisssions and responses should be addressed to:

Joseph N. Schmidt, Jr., Esq.
Office of Regulatory Services
Department of Environmental Protection
CN 402
Trenton, New Jersey 08625

The Department of Environmental Protection and the Board of Public Utilities thereafter may adopt the 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 joint proposal is known as PRN 1984-146.

The joint agency proposal follows:

Summary

N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act" ("Act"), developed as a legislative attempt to help solve the problem of small water companies in New Jersey. Numerous private small water companies remain too small to operate as self-sustaining entities. These financially overburdened small water companies cannot provide the necessary operation and maintenance to satisfy the requirements of the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations promulgated thereto, N.J.A.C. 7:10-1 through 11. Small water companies are often approved by local municipalities as part of housing developments without sufficient consideration of future operation and management. Many small water companies are delapidated and under capitalized with little hope that urgent rehabilitation needs will be undertaken. As a result of these conditions, the customers receive water of an inadequate quality, pressure and volume. The Department of Environmental Protection ("Department") and the Board of Public Utilities ("Board") regard the Act as a major enforcement tool to bring small water companies into compliance with statutory and regulatory requirements.

To better implement the brief, yet complex, provisions of the Act, the Department formed a Small Water Company Takeover Act Task Force ("Task Force") to develop regulations for the utilization of the Act. The Board of Public Utilities joins the Department in this rulemaking activity due to the joint nature of the commitment and responsibility of both state agencies to insure the successful implementation of the Act. The Department invited representatives of the Board of Public Utilities, the Public Advocate, several water purveyors and representatives from the environmental community to serve as Task Force members. The Task Force met initially on January 21, 1983 and has met regularly since then. Through these consultative and deliberative proceedings, this proposal has been developed. The Department and the Board of Public Utilities would like to thank the members of the Task Force for their interest and efforts in preparing the proposal.

The proposal carefully adheres to the many procedural requirements of the Act. The Department and the Board feel that the proposal provides the best procedures allowable under the Act to order the takeover of small water companies by appropriate entities in accordance with the procedural requirements of the Act. However, the Department and the Board are interested in public comments and recommendations which will improve the provisions of the proposal.

The Act defines a "small water company" as any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections (see: N.J.S.A. 58:11-59). The proposal establishes the procedure by which the Department and the Board may jointly order the acquisition of a non-complying small water company by the most suitable public or private entity. Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., and the regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of the proposal. Violations of statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent

public health problems for the purpose of the proposal. For example, aesthic water quality problems or minor design deficiencies shall not be considered actual or imminent public health problems.

The proposal provides for three types of public hearings in strict compliance with the Act's procedural safeguards and the practical recommendations of the Task Force. An initial Departmental hearing shall be held to determine compliance with a Departmental order by a small water company (see: N.J.A.C. 7:19-5.8). The initial Departmental hearing shall be followed by two hearings held concurrently in time. A joint public hearing of a quasi-legislative, informational nature will provide a vehicle for public input into the non-complying small water companies problems (see: N.J.A.C. 7:19-5.9) and a quasi-judicial hearing will determine through a fact finding adversarial hearing the expenditures that may be required to make improvements necessary to insure compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems (see: N.J.A.C. 7:19-5.10). The quasi-judicial hearing shall be considered a contested case affording all parties opportunity to respond, appear and present evidence and argument pursuant to the "New Jersey Uniform Administrative Procedures Rules, 1980", N.J.A.C. 1:1. These hearings will provide the record upon which the Department and the Board shall jointly determine the appropriate actions to be taken concerning the non-complying small water company including the possible acquisition of the non-complying small water company by the most suitable public or private entity (see: N.J.A.C. 7:19-5.11). The joint order shall include an action by the Board ordering the immediate inclusion in the rates of the acquiring entity of the anticipated cost of necessary improvements and approved tariffs. The Board will also extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over. Acquisition costs shall be determined by agreement of the parties, and approved by the Board (see: N.J.A.C. 7:19-5.11(f)), or if no agreement exists between the parties, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1 (see: N.J.A.C. 7:19-5.12). Compliance with the joint takeover order is mandated by N.J.S.A. 58:11-62 and N.J.A.C. 7:19-5.13. Also the Act allows the Board discretion to permit the acquiring entity to charge and collect a differential rate from customers of the non-complying small water company for the use or service of the acquiring company's water supply system or facilities pursuant to N.J.S.A. 58:11-63 (see: N.J.A.C. 7:19-5.14).

Social Impact

A positive social impact will result from the takeover of a non-complying small water companies pursuant to joint orders of the Department and the Board by the most suitable public or private entity as set forth in the proposal. The successful implementation of the procedures in the proposal will insure the availability of water, the potability of water and the provision of water at adequate volume and pressure to the customers of small water companys currently receiving water of inadequate quality, pressure and volume.

Economic Impact

Major economic impacts will result upon non-complying small water companies, private or public entities ordered to take over non-complying small water companies, and the water usage rate payers of both the non-complying small water companies and the acquiring entities. However, the public health and welfare benefits to the citizens of New Jersey currently receiving inferior and inadequate water service from small water companies favorably counter balances the economic impacts mandated by the Act.

Environmental Impact

Major positive environmental impacts will result from the successful implementation of the proposal by assuring the availability of water, the potability of water and the provision of water at adequate pressure and volume to citizens of New Jersey currently receiving inferior and inadequate water service from non-complying small water companies.

Full text of the proposed new rule follows.

SUBCHAPTER 5. SMALL WATER COMPANY TAKEOVER ACT REGULATIONS

7:19-5.1 Purpose

These rules implement N.J.S.A. 58:11-59 et seq., commonly known as the "Small Water Company Takeover Act," which authorizes the New Jersey Department of Environmental Protection and the New Jersey Board of Public Utilities, upon a determination that the costs of improvements to and the acquisition of the small water company are necessary and reasonable, to order the acquisition of the small water company by the most suitable public or private entity.

7:19-5.2 Definitions

Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Act" means the "Small Water Company Takeover Act", N.J.S.A. 58:11-59 et seq.

"BPU" means the New Jersey Board of Public Utilities.

"Capable" shall be defined for the purposes of the Act as financially and operationally able to provide safe, adequate and proper water service for the customers of the small water company to be acquired currently or in the foreseeable future. BPU shall be consulted by the Department concerning any public or private water systems' financial status for the purposes of this subchapter.

"Commissioner" means the Commissioner of the New Jersey Department of Environmental Protection or his designated representative.

"Department" means the New Jersey Department of Environmental Protection.

"Division" means the Division of Water Resources of the New Jersey Department of Environmental Protection.

"Proximate" shall be defined to include all public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities or any other suitable governmental entities wherein the small water company provides service regardless of their ability to reasonably physically interconnect with the small water company to be acquired.

"Public Advocate" means the New Jersey Department of the Public Advocate.

"Small water company" means any company, purveyor or entity, other than a governmental agency, that provides water for human consumption and which regularly serves less than 1,000 customer connections.

7:19-5.3 Construction

(a) This subchapter shall be liberally construed to permit the Department and BPU to discharge their statutory functions.

(b) The Commissioner may amend, repeal or rescind this subchapter from time to time in conformance with the Administrative Procedures Act, N.J.S.A. 52:14B-1 et seq., and any regulations promulgated thereto.

7:19-5.4 Applicability

This subchapter shall apply to all small water companies within the State of New Jersey.

7:19-5.5 Severability

If any section, subsection, provision, clause or portion of these regulations is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

7:19-5.6 Scope

(a) Any small water company not in compliance with appropriate statutory and regulatory standards, including but not limited to the New Jersey Safe Drinking Water Regulations, N.J.A.C. 7:10-1 through 13, concerning actual or imminent public health problems as determined by the Department may be subject to the provisions of this subchapter.

(b) Violations by a small water company of appropriate statutory and regulatory standards not adversely affecting the quality, pressure or volume of water delivered as determined by the Department shall not be considered actual or imminent public health problems for the purposes of this subchapter. For example, aesthetic water quality problems or minor design deficiencies shall not be considered actual or imminent public health problems.

7:19-5.7 Departmental action

(a) Prior to the implementation of procedures under the Act, the Department shall actively pursue appropriate and available enforcement options to bring a small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems including but not limited to:

1. Issuance of directive letters;
2. Issuance of administrative orders;
3. Direct negotiation;
4. Appropriate legal proceedings; or
5. All other enforcement options deemed appropriate by the Department.

(b) A Departmental order issued to a small water company concerning the availability of water, the potability of water and the provisions of water at adequate volume and pressure may initiate the proceedings under the Act and this subchapter.

1. A Departmental order shall specify a reasonable time period in which the small water company must comply with the appropriate statutory and regulatory standards concerning actual or imminent public health problems as determined by the Department.

2. If administrative hearing procedures have been initiated by a small water company concerning any outstanding Departmental order, the Department shall move to join any new order issued with the ongoing administrative hearing procedures.

3. The Department may issue another order concerning any small water company if the outstanding Departmental order remains over one year old or administrative hearing procedures have commenced.

(c) After the expiration of time for compliance with the Departmental order, the Department may invoke and initiate the provisions of the Act as set forth in N.J.A.C. 7:19-5.8.

7:19-5.8 Initial public hearing

(a) The Director of the Division, upon behalf of the Commissioner, shall delegate to appropriate staff the function of conducting a quasi-legislative, informational public hearing in the proximate area of the small water company at a convenient time and place, preferably in the evening, to determine whether the small water company complied with the Departmental order required by N.J.A.C. 7:19-5.7(b) to initiate the provisions of the Act and this subchapter.

1. The initial public hearing shall also encourage a general discussion of the problems concerning the small water company, including public input on preliminary cost estimates and information on various options available to remedy the problems concerning the small water company.

(b) Notice of the time, place and subject matter of the initial public hearing shall be given at least two weeks prior to the scheduled hearing date by the Department, after consultation with the BPU, as follows:

1. Publication of a notice in a newspaper circulating within the proximate area of the small water company for a minimum of one day per week for two weeks prior to the scheduled date of the initial public hearing; and

2. Written notice sent to the following parties:

i. The affected small water company;

ii. The Public Advocate;

iii. Capable proximate public and private water companies; and

iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. municipalities or any other suitable governmental entities wherein the small water company provides water service.

(c) After the initial public hearing, the delegated hearing officer shall within 15 days of the date of the initial public hearing prepare an initial public hearing report for utilization by the Director of the Division pertaining to the objective fact of non-compliance with the Departmental order required by N.J.A.C. 7:19-5.7(b) and summarizing any public comments received.

(d) If the Director of the Division prepares a written finding of the small water company's non-compliance with the Departmental order required by N.J.A.C. 7:19-5.7(b), then the Department shall within 30 days notify BPU and the Public Advocate, and shall initiate the two part public hearing process described at N.J.A.C. 7:19-5.9 and 10.

7:19-5.9 Joint public hearing

(a) Designated hearing officers from the Department and BPU shall conduct a joint quasi-legislative, informational public hearing in the proximate area of the non-complying small water company, preferably in the evening, concerning the non-complying small water company after 30 days notice pursuant to (b) below.

(b) Notice of the time, place and subject matter of the joint public hearing shall be given at least 30 days prior to the scheduled hearing date by the Department and BPU as follows:

1. Publication of a display advertisement in a newspaper circulating within the proximate area of the small water com-

pany for a minimum of one day per week for two weeks prior to the scheduled date of the joint public hearing;

2. Issuance of press releases and utilization of other appropriate methods of notice;

3. Written notice by certified or registered mail sent to the following parties:

i. The non-complying small water company;

ii. The Public Advocate;

iii. Capable proximate public and private water companies; and

iv. Capable proximate municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq., municipalities and any other suitable governmental entities wherein the non-complying small water company provides water service.

(c) The joint public hearing shall be conducted to receive public input into the possible options available to bring the non-complying small water company into compliance with the appropriate statutory and regulatory standards concerning actual or imminent public health problems. The acquisition of the non-complying small water company by the most suitable public or private entity shall be discussed. Information should be required concerning any estimates of expenditures, including acquisition and improvement costs, that may be required to:

1. Assure the availability of water;

2. Assure the potability of water; and

3. Assure the provision of water at adequate volume and pressure.

(d) The Department shall make a technical presentation at the joint public hearing of the non-complying small water company's deficiencies, indicate necessary improvements and discuss, after consultation with BPU, possible options with preliminary improvement cost estimates. The Department's presentation shall be based on information reasonably available to the Department and be intended to focus attention for the purpose of the joint public hearing on the relevant issues concerning the non-complying small water company.

(e) The non-complying small water company shall be ordered to appear at the joint public hearing and provide all available information pertaining to the value of their water supply facilities and the cost of correcting deficiencies.

(f) Public comments shall be solicited at the joint public hearing and transcribed for the record at the expense of the non-complying small water company.

(g) The designated Department and BPU hearing officers shall require answers, if possible, to all reasonable questions put forward at the joint public hearing.

(h) All participants shall be afforded the opportunity to testify under oath.

(i) After the joint public hearing held pursuant to this section, designated Department and BPU hearing officers shall review the record and prepare a joint report within 45 days of the joint public hearing detailing no more than three options and their estimated costs, including their rationale for selection of each option in order of priority, for utilization by the Department and BPU concerning which option to select.

(j) The joint report required by (i) above shall be mailed to all those noticed by certified or registered mail of the joint public hearing and made available for public review. The Department and BPU shall undertake reasonable efforts to make copies of the joint report available to all other interested parties.

1. All interested persons shall be allowed to file comments to the report within 30 days of issuance of the joint report.

i. Failure to file any comments to the joint report by the small water company, capable proximate public or private water companies, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1, municipalities or other suitable governmental entities wherein the non-complying small water company provides service shall create a rebuttable presumption that no objections to the joint report exist.

(k) The joint public hearing shall be initiated concurrently in time with the quasi-judicial hearing required by N.J.A.C. 7:19-5.10.

7:19-5.10 Quasi-judicial hearing

(a) A quasi-judicial contested case hearing(s) shall be held concerning the non-complying small water company after 30 days notice pursuant to (d) below.

(b) This quasi-judicial hearing(s) shall determine through a fact-finding adversarial hearing the expenditures that may be necessary to make improvements necessary on the non-complying small water company to insure compliance with the appropriate statutory and regulatory standards concerning actual or potential public health problems. Also to be considered at this quasi-judicial hearing(s) shall be the issue of acquisition costs.

(c) The entire record adduced pursuant to this subchapter shall be admissable in the quasi-judicial hearing(s) proceedings.

(d) Notice of time, place and subject matter of the quasi-judicial hearing shall be given by certified or registered mail to the following parties:

1. The non-complying small water company;

2. The Public Advocate;

3. Capable proximate public and private water companies; and

4. Capable proximate municipalities, municipal utilities authorities established pursuant to N.J.S.A. 40:14B-1 et seq. and any other suitable governmental entities wherein the small water company provides water service.

(e) Since this quasi-judicial hearing is a "contested case", opportunity shall be afforded all parties to respond, appear and present evidence and argument on all issues involved pursuant to the "New Jersey Uniform Administrative Procedure Rules, 1980", N.J.A.C. 1:1-1.1.

(f) The quasi-judicial hearing(s) shall be transcribed for the record at the expense of the non-complying small water company.

(g) This quasi-judicial hearing(s) process shall be initiated concurrently in time with the joint public hearing required by N.J.A.C. 7:19-5.9.

7:19-5.11 Joint takeover order by the Department and BPU

(a) Upon receipt of the entire record of the joint public hearing and the quasi-judicial hearing(s), the Department and BPU shall jointly determine in a written order the appropriate actions to be taken on the basis of the entire record. If the acquisition option is not selected, then procedures under the Act terminate.

(b) If the Department and BPU have determined that the costs of improvements to and the acquisition of the non-complying small water company are necessary and reasonable, the Department and BPU shall jointly order the acquisition of the non-complying small water company by the most suitable entity.

1. This order shall include an action by BPU which provides for the immediate inclusion in the rates of the acquiring

entity of the anticipated costs of necessary improvements. Said order shall also include the approved tariffs.

2. The Department maintains responsibility for technical determinations and BPU maintains responsibility for the rate making function.

3. The Department will consult with BPU technical staff prior to making any technical determinations with regard to this joint order.

(c) If anticipated improvement costs are customer provided, the improvements shall be considered contributions in all future rate cases. Separate records shall be maintained as to contributions occurring under this process.

(d) The BPU shall extend or transfer the franchise area of the acquiring public or private entity to the extent necessary to cover the service area of the non-complying small water company taken over pursuant to the Act and this subchapter.

(e) If this joint order results in an increase in the rates this process shall be considered a proceeding initiated by the application of a utility for an increase in rates for the purposes of N.J.S.A. 52:27E-19.

(f) Any acquisition costs which are deemed necessary and reasonable, based on evidence from the quasi-judicial hearing(s), and agreed to by the small water company and the acquiring entity and approved by BPU, after consultation with DEP and the Public Advocate, may be included in the rates.

7:19-5.12 Acquisition costs

(a) If there has been no agreement as to acquisition costs, BPU and DEP delegated representatives shall convene, 60 days of the issuance of the joint hearing report pursuant to N.J.A.C. 7:19-5.9(i) and again within 15 days after issuance of the joint order prepared pursuant to N.J.A.C. 7:19-5.11, at least one meeting at each time of the Public Advocate, non-complying small water company and acquiring entity concerning the possibility of mutual agreement on compensation for the acquisition and the other details pertaining to takeover of the non-complying small water company by the acquiring entity.

1. Meetings shall be continued if the Department and BPU determine in writing that a reasonable possibility of success for an agreement exists.

2. BPU and DEP representatives shall certify in writing to the Department and BPU the status of these meetings every three months.

(b) If no agreement between parties exist, compensation for the acquisition of the non-complying small water company shall be determined through the use of the eminent domain procedures pursuant to the "Eminent Domain Act of 1971", N.J.S.A. 20:3-1.

7:19-5.13 Compliance with joint order

(a) The acquiring entity which receives a joint order pursuant to N.J.A.C. 7:19-5.11 shall acquire the non-complying small water company and make necessary improvements to assure the availability of water, the potability of water and the provision of water at adequate volume and pressure as mandated by N.J.S.A. 58:11-62.

(b) The non-complying small water company shall immediately comply with the joint order and facilitate its sale to the acquiring entity as mandated by N.J.S.A. 58:11-62.

7:19-5.14 Differential rate for customers of small water company for use of service of acquiring company's system or facilities

BPU may, in its discretion, allow the acquiring entity ordered by the joint order pursuant to N.J.A.C. 7:19-5.11 to acquire a non-complying small water company to charge and collect a differential rate from the customers of the non-complying small water company for the use or service of the acquiring entity water supply system or facilities pursuant to N.J.S.A. 58:11-63.

MISCELLANEOUS NOTICES

ENVIRONMENTAL PROTECTION

(a)

DIVISION OF WATER RESOURCES

Announcement: Application Period for Water Supply Bond Rehabilitation Loan Program

Public Notice

Take notice that Robert E. Hughey, Commissioner of the Department of Environmental Protection, pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261, and the Water Supply Bond Loan Regulations for the Rehabilitation of Water Supply Facilities, N.J.A.C. 7:1A-1 and 2, announces that the Department will be accepting loan applications until May 1, 1984 for State or local projects for the rehabilitation or repair of antiquated, obsolete, damaged or inadequately operating publicly owned water supply transmission facilities. Any political subdivision of the State or agency thereof shall be eligible to apply for a water supply bond rehabilitation loan. Note that N.J.A.C. 7:1A-2.4(a) requires every applicant to schedule an informal pre-application conference with the Division of Water Resources prior to making a formal application for a water supply bond rehabilitation loan.

Applications may be obtained and pre-application conferences may be scheduled by contacting the Division of Water Resources as listed below. Any questions concerning the water supply bond rehabilitation loan program should be addressed to:

Robert Oberthaler, Program Manager
Division of Water Resources
Water Supply and Watershed Management Administration
1474 Prospect Street
CN 029
Trenton, New Jersey 08625
(609) 292-5550

Note that all applications for the water supply bond rehabilitation loan program must be received on or before May 1, 1984. This Notice is published as a matter of public information.

(b)

DIVISION OF WATER RESOURCES

Announcement: Application Period for Water Supply Bond Loan Regulations forthe Interconnection of Water Supply Systems

Public Notice

Take notice that Robert E. Hughey, Commissioner of the Department of Environmental Protection, pursuant to the Water Supply Bond Act of 1981, P.L. 1981, c.261, and the Water Supply Bond Loan Regulations for the Interconnection of Water Supply Systems, N.J.A.C. 7:1G-1 and 2, announces that the Department will be accepting loan applications until June 18, 1984 for local projects for the interconnection of unconnected or inadequately connected water supply systems. Any political subdivision of the State or agency thereof shall be eligible to apply for a water supply bond interconnection loan. Note that N.J.A.C. 7:1G-2.4(a) allows every applicant to schedule an informal pre-application conference with the Division of Water Resources prior to making a formal application for a water supply bond interconnection loan.

Applications may be obtained and pre-application conferences may be scheduled by contacting the Division of Water Resources as listed below. Any questions concerning the water supply bond interconnection loan program should be addressed to:

Robert Oberthaler, Program Manager
Division of Water Resources
Water Supply and Watershed Management Administration
1474 Prospect Street
CN 029
Trenton, New Jersey 08625
(609) 292-5550

Note that all applications for the water supply bond interconnection loan program must be received on or before June 18, 1984. This Notice is published as a matter of public information.

LAW AND PUBLIC SAFETY

(a)

DIVISION OF CONSUMER AFFAIRS BOARD OF MORTUARY SCIENCE

Petition to Repeal Advertising Rule

N.J.A.C. 13:36-5.12

Petitioner: Menorah Chapels.
Authority: N.J.S.A. 52:14B-4(f) and N.J.A.C. 1:30-3.6.

Take notice that on January 6, 1984 the Menorah Chapels at Millburn, Inc., Vaux Hall Road, Union, New Jersey pursuant to N.J.S.A. 52:14B-4(b), petitioned the State Board of Mortuary Science to repeal N.J.A.C. 13:36-5.12, the Board's advertising regulation. The petitioner asserted that there was no statutory authority for the Board's regulation of licensee advertising, and further that the regulation violated Menorah's constitutional rights to freedom of speech and freedom of religion.

Take further notice that the Board considered the petition at its meeting on January 10, 1984. The Board found that pursuant to N.J.S.A. 45:7-38 the Board had broad authority to promulgate regulations which promote the public welfare. The Board further determined that N.J.A.C. 13:36-5.12 was carefully drawn to prohibit only that advertising which is clearly misleading and to require that the consumer with whom the licensed funeral director deals be made aware of the true identity of the licensees who are responsible for fulfilling the terms of any advertisement. Petitioner's specific objection to N.J.A.C. 13:36-5.12(d)(1) on the ground that it unconstitutionally regulated the publication of the names of clergy who conduct the religious rites connected with funerals was rejected, since the regulation merely requires that when the names of clergymen or clergywomen are used in advertising they must be identified as unlicensed in the same way as any other unlicensed person. Petitioner's specific objection to the ban on testimonials was also rejected because testimonials can be misleading in that they represent only one person's opinion. The Board therefore voted to deny the petition.

Interested persons may request copies of the petition and the Board's statement of reasons for denying the petition by writing to:

Maurice W. McQuade
Executive Secretary
State Board of Mortuary Science
Room 331, 1100 Raymond Boulevard
Newark, New Jersey 07102

OTHER AGENCIES

(b)

CASINO CONTROL COMMISSION

Petition for Rulemaking Patron Cash Deposits

N.J.A.C. 19:45-1.24

Petitioner: Division of Gaming Enforcement.
Authority: N.J.S.A. 5:12-69(c), 52:14B-4(f) and 1:30-3.6.

By petition filed pursuant to N.J.S.A. 5:12-69(c), 52:14B-4(f) and N.J.A.C. 1:30-3.6 and received by the Commission on February 23, 1984, the Division of Gaming Enforcement requests that the Commission approve for publication regulations amending the procedures for the acceptance and redemption of patrons' cash deposits.

The Division of Gaming Enforcement's statement of reasons for this petition follows:

The Division of Gaming Enforcement has reviewed patron cash deposit accounts in excess of $10,000 for all nine operating casinos for the months of June and September, 1983. It has been determined that an unacceptable number of patrons utilizing the cash deposit procedures are providing fictitious names or aliases in opening up such accounts. This significantly impedes the legitimate law enforcement and regulatory objective of preserving the integrity of legalized gaming in New Jersey by extending strict State regulation to all persons dealing with licensed casino enterprises and excluding from paticipation therein persons with known criminal records, habits, or associations. Therefore, the Division proposes that prior to acceptance of a cash deposit from a patron, a general cage cashier examine the patron's identification credentials. It is further proposed that the safekeeping file for each cash deposit account contain the address of the patron and a recordation of the type of identification credentials examined, accompanied by the signature and license number of the cage cashier and the date.

Full text of the Division of Gaming Enforcement's proposed amendment follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]).

19:45-1.24 Procedure for acceptance, accounting for and redemption of patrons cash deposits

(a) (No change.)

(b) Prior to acceptance of a cash deposit from a patron the general cage cashier shall examine that person's identification credentials.

[(b)] **(c)** A file for each patron shall be prepared manually or by computer prior to the acceptance of a cash deposit from a patron by a general cage cashier and such file shall include, at a minimum, the following:

1. (No change.)

2. The address of the patron;

3. The type of identification credentials examined, accompanied by the signature and license number of the cash cashier and the date;

Renumber 2.–4. as **4.–6.**

Recodify (c)–(q) as **(d)–(r)**.

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c), 52:14B-4(f) and N.J.A.C. 19:42-8 and 1:30-3.6.

(a)

CASINO CONTROL COMMISSION

Petition for Rulemaking
Blackjack: Irregularities

N.J.A.C. 19:47-2.15

Petitioner: Sidney Solomon

Authority: N.J.S.A. 5:12-69(c), 5:12-70(f), 52:14B-4(f) and N.J.A.C. 19:42-8 and 1:30-3.6.

Take notice that on February 14, 1984, the Casino Control Commission received a petition for rulemaking from Sidney Solomon concerning irregularities in the game of blackjack. Specifically, the petitioner requests that N.J.A.C. 19:47-2.15 be amended to include the following language:

"If a player, whose turn it is to play his hand, signals for an additional card (a hit), and the dealer inadvertently, erroneously, or deliberately delivers the requested card to the next player position, in that event, the dealer (a) must return (back up) or (b) may, at the discretion of the casino, return (back up) the card to the player who made the original request."

The situation addressed by the petitioner is not covered by the existing regulations, and he believes that the proposed amendment will "correct an unjust condition and afford all patron players fair and just playing conditions in all Atlantic City casinos."

After due notice, this petition will be considered by the Casino Control Commission in accordance with the provisions of N.J.S.A. 5:12-69(c), 52:14B-4(f) and N.J.A.C. 19:42-8 and 1:30-3.6.

INDEX OF PROPOSED RULES

The *Index of Proposed Rules* contains rules which have been proposed in the New Jersey Register between March 7, 1983, and March 5, 1984, and which have not been adopted and filed by March 5, 1984. **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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1:1-1.3	Reaching the merits	9-6-83	15 N.J.R. 1398(a)
1:2-2	Readopt conference hearing rules	1-17-84	16 N.J.R. 94(a)
1:2-3	Readopt hearings on the papers	1-17-84	16 N.J.R. 95(a)
1:6A-5.3	Special education hearings: transfer of record	3-5-83	16 N.J.R. 408(a)
AGRICULTURE–TITLE 2			
2:3-2	Readopt Livestock of Breeding and Herd Replacements	2-21-84	16 N.J.R. 294(a)
2:5-4	Area quarantine for avian influenza (with Emergency Adoption)	12-19-83	15 N.J.R. 2176(a)
2:32-2.17, 2.32, 2.36	Sire stakes conditions	2-21-84	16 N.J.R. 297(a)
2:69-1.11	Commercial values for fertilizers and conditioners	5-2-83	15 N.J.R. 658(a)
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3:1-2.21	New capital stock savings and loan associations	2-6-84	16 N.J.R. 174(a)
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3:19-2.1	Repeal maximum interest rate on home repair contracts	11-7-83	15 N.J.R. 1788(a)
3:22-1	Repeal maximum finance rate on insurance premiums	10-17-83	15 N.J.R. 1707(a)
3:22-1.4	Premium finance agreement disclosure	2-21-84	16 N.J.R. 298(a)
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4:1-5.5	Awarding back pay	1-17-84	16 N.J.R. 97(a)
4:1-14.6	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:2-14.1	Interim appointments	12-5-83	15 N.J.R. 1975(a)
4:3-8.2	Repeal county welfare board promotion rules	11-7-83	15 N.J.R. 1788(b)
4:3-14.2	Interim appointments	12-5-83	15 N.J.R. 1975(a)
COMMUNITY AFFAIRS–TITLE 5			
5:11	Readopt Relocation Assistance and Eviction rules	2-6-84	16 N.J.R. 175(a)
5:23-1.4, 2.23	UCC: Certificate of continued occupancy	2-6-84	16 N.J.R. 179(a)
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5:23-6.1, 6.2	Technical standards for fire suppression systems	2-6-84	16 N.J.R. 180(a)
5:27-1.6, 1.9	State-contracted community residences	2-6-84	16 N.J.R. 181(a)
5:27-5.3	Fire safety in rooming and boarding houses	2-21-84	16 N.J.R. 299(a)
5:30-10.1, 10.2	Local finance: municipal port authorities	8-15-83	15 N.J.R. 1304(a)
5:37-11.6	Municipal and county employees deferred compensation programs: annual audit	9-6-83	15 N.J.R. 1408(b)
5:80-2	Private investment in HFA-financed housing	8-1-83	15 N.J.R. 1208(a)
EDUCATION–TITLE 6			
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7:7D	Repeal	12-19-83	15 N.J.R. 2090(a)
7:11-2.10–2.13	Sale of water from D/R Canal and Spruce Run/Round Valley	8-15-83	15 N.J.R. 1311(a)
7:13	Flood hazard area rules	12-19-83	15 N.J.R. 2104(a)
7:13	Flood hazard area rules: public comment period	12-19-83	16 N.J.R. 396(b)
7:13-1.11(c)30	Delineated floodways for Delaware Bay tributaries	9-19-83	15 N.J.R. 1541(a)
7:13-1.11(d)	Floodway delineation in Roseland, Essex County	8-15-83	15 N.J.R. 1313(a)
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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).

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